

Dial-A-Law

A starting point for information on the law in
British Columbia

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Introduction to Dial-A-Law

Dial-A-Law is a service of People's Law School, a non-profit society in British Columbia that provides public legal education. Dial-A-Law features free information on the law in British Columbia in over 130 topic areas. The information is reviewed by lawyers and updated regularly.

To listen to Dial-A-Law information on the telephone, call 1-800-565-5297 (604-687-4680 in the Lower Mainland). Dial-A-Law is also available on its own website at dialalaw.ca ^[1], including audio recordings of all the information.



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At People's Law School, we believe accurate, plain English information can help people take action to work out their legal problems. This information explains in a general way the law that applies in British Columbia. **It is not intended as legal advice.** For help with a specific legal problem, contact a legal professional. Some sources of legal help are highlighted in the page on free and low-cost legal help.

About Us

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.



604-331-5400

info@peopleslawschool.ca ^[2]

peopleslawschool.ca ^[3]

Acknowledgements

The Law Foundation of British Columbia ^[4] funds law-related programs and projects that benefit the public in British Columbia. The Dial-A-Law service is funded by the Law Foundation of BC. We are extremely grateful for their support.

The Canadian Bar Association, BC Branch ^[5] operated the Dial-A-Law service from the 1980s until 2019. As our focus at People's Law School is helping the public understand the law, we're honoured to have the opportunity to carry on the excellent work of the CBABC with Dial-A-Law, supported by dedicated volunteers in the legal profession.

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- [1] <http://dialalaw.ca>
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- [4] <https://www.lawfoundationbc.org>
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Part 1. Consumer & Money

Cars & Getting Around

Problem with a Used Car

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mario Garcia ^[1], CarbonCure Technologies in October 2022.

You bought a used car. Just days later, it broke down. Your mechanic says the problem will cost thousands to repair. What can you do? Learn your rights and steps you can take.

What you should know

You're protected by the legal warranty

Under the law in BC, a level of quality, performance and durability is implied into every sales contract.

When you buy a car from a dealer, it has to be:

- fit for the purpose you bought it for
- of “merchantable” quality (it has to run)
- durable for a reasonable period of time
- “as described”

These conditions are the **legal warranty**. They apply whether the dealer mentions them or not.

If the car is faulty or it's not as described, the legal warranty is your escape hatch. It can give you the right to get the car repaired or replaced — or cancel the contract and get your money back.

The legal warranty is more limited if you buy privately

If you buy privately from an individual, the legal warranty is more limited than if you buy from a car dealer.

A dealer (this is anyone who sells or trades motor vehicles for a living — so not just car dealerships), is bound by strict conditions. The car has to be of decent quality and “fit for the purpose” you bought it for. A private seller isn't bound by these rules.

That said, when you buy from a private seller, the car still has to be “reasonably durable” and “as described.”

Take action

Possible outcomes

If the used car you just bought breaks down, you aren't always entitled to a refund or discount. For example, if you:

- just don't like the car — you can't just change your mind
- should have spotted the problem during an inspection (like a big dent in the fender)
- were told about the problem before you bought
- caused the problem

In each of these cases, you're likely out of luck.

On the other hand, if you can show the vehicle didn't meet the **legal warranty**, or the seller **misrepresented** the vehicle, you may be entitled to:

- return the vehicle,
- get a discount, or
- have the seller pay for the repairs.

Misrepresentation is where the seller told you something about the vehicle that is untrue or misleading, and you relied on that in buying.

Steps to take

Here are steps you can take to resolve a problem with a used car.

Step 1. Decide what you want

Step 2. Contact the seller directly

Step 3. Try dispute resolution (dealer only!)

Step 4. File a complaint (dealer only!)

Step 5. Try consumer agencies (dealer only!)

Step 6. Take to social media

Step 7. Take legal action

More on each step

Step 1. Decide on what you want

Once you understand your legal rights and options, decide what outcome you're seeking.

Are you hoping to have the vehicle repaired? To get a refund? A discount?

Step 2. Contact the seller directly

Try to raise any problems with the seller first.

If you bought from a dealer, ask to speak to someone with authority, such as a manager or owner. Clearly explain your problem. Let them know the outcome you're seeking.

You can talk to them in person. But many people are more comfortable sending a letter. We have a tool to help you build a letter. See our letters to complain to a dealer ^[2] and to a private seller ^[3].

We've got in-depth info See our in-depth information on problems with a used car ^[4] for tips on how to explain your problem to the seller, as well as a template letter you can use.

Step 3. Try dispute resolution (dealer only!)

If the letter doesn't clear things up, dispute resolution might. It involves a third party helping you and the dealer reach a solution.

Here's an example. There's a free program called the Canadian Motor Vehicle Arbitration Program. It can help you resolve disputes with car makers about defects or a warranty. Visit the CMVAP website ^[5].

Step 4. File a complaint (dealer only!)

If you're buying the vehicle from a dealer, you can file a complaint with the Vehicle Sales Authority of BC. Visit the VSA website ^[6].

The Vehicle Sales Authority also runs the motor dealer customer compensation fund. It reimburses people who have lost money because a dealer has gone out of business or failed to meet certain legal obligations.

The authority's website explains who can apply for compensation, what losses the fund covers, and how to file a claim. Visit the VSA website to learn more ^[7].

Step 5. Contact a consumer agency or industry association (dealer only!)

The Better Business Bureau may not be able to solve the problem, but complaining to them can help others avoid problems going forward.

Better Business Bureau

Receives complaints about local businesses that are members.

Call 1-888-803-1222

Visit website ^[8]

Complaining to an association a car dealer is a member of can help get their attention.

Automotive Retailers Association

Many car dealers belong to this voluntary organization.

Visit ARA ^[9]

Recreation Vehicle Dealers Association

A national, voluntary organization for RV dealers.

Visit RVDA ^[10]

New Car Dealers Association of BC

Representing franchised car dealers who sell new vehicles.

Visit NCDA ^[11]

Step 6. Take to social media

Consider telling your story on social media. Be factual and truthful about what happened — using foul or insulting language may work against you.

Social pressure is powerful. The seller may be motivated to make things right to show they're good citizens (corporate or otherwise).

Step 7. Consider legal action

If you can't solve the problem with the above steps, your next option may be to take legal action.

For claims under \$5,000, you can apply to work out your dispute with the Civil Resolution Tribunal. This is a cheaper and faster option than going to court.

Seeking legal advice can help you clarify your options.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[12]

Access Pro Bono's Free Legal Advice


Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.

Call 1-877-762-6664

Visit website ^[13]

Go deeper

We have even more coverage of sorting out a problem with a used car, whether you bought from a private seller or a car dealer. See our in-depth coverage of problems if you bought privately ^[4] and problems if you bought from a dealer ^[14].

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Leasing a Car

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mario Garcia ^[1], CarbonCure Technologies in October 2022.

Leasing a vehicle is quite different from buying one. Leasing can offer lower monthly payments, but you typically spend more in the long run. Learn your rights if you lease.

What you should know

How leasing differs from buying

When you **lease**, you rent and use someone else's property. A lease can last from several months to several years.

At the start of a lease, you make an initial payment. You may also have to pay a security deposit. After that, you make monthly payments.

If you lease, you don't own the vehicle. And you have different rights and responsibilities than if you buy

Advantages and disadvantages of leasing

Leasing can be more appealing than buying. You often get a newer vehicle, and monthly lease payments can be much lower than monthly car loan payments.

But there are disadvantages. The dealer owns the vehicle, not you. This means the dealer may place restrictions on who can drive it. You may also have to follow — and pay for — a set maintenance schedule.

The result is that leasing typically costs you more than borrowing money to buy.

Types of leases

In a **straight lease**, you return the vehicle when the lease ends and owe nothing more. This is rarely used.

Most of the time, you'll get a lease with an option to purchase.

In a **closed lease** with an option to purchase, you pay an agreed-on amount if you decide to buy the vehicle at the end of the lease.

In an **open lease** with an option to purchase, there's less certainty. At the beginning of the lease, a dealer estimates what a vehicle will be worth at the end of the lease (its residual value), and then calculates the monthly payments based on that estimate.

If the vehicle is worth less at the end of the lease, you have to pay more to make up the difference. You may also have to pay extra if you drove more than the lease allowed or if the vehicle has more than normal wear.

What the lease must tell you

A **lease agreement** is a legally binding contract. Make sure you understand it before you sign it. Under the law in BC, the lease agreement must include:

- a summary of costs
- all express warranties and guarantees
- who's responsible for maintenance and service
- a description of any insurance that you must provide and pay for
- any limits, including who can drive the vehicle and whether you can take it outside of BC
- the amount of tax in each monthly payment
- the cooling-off period

These contracts can be thick! The good news is a dealer has to give you a **disclosure statement** before you sign. Read it carefully. It has all the key terms and details.

Anyone leasing to you has to say if there are any **liens**. A lien is a legal claim to make sure someone pays a debt. Liens are attached to a vehicle, not to its owner.

If you lease a vehicle with a lien on it, the lien holder (could be a mechanic who hasn't been paid for work done) can take the vehicle from you as payment for the debt.

You can change your mind during the cooling-off period

You get one business day after you sign the lease to cancel it — this is the **cooling-off period**.

If you change your mind in that time, you can cancel the lease and get your money back without penalty. While you have the whole day to cancel, it's better to tell the dealer during business hours in writing.

Some days don't count in the cooling-off period — like statutory holidays, Sundays, and any day the dealership is closed.

The dealer can ask you to **waive** (give up) the cooling-off period. **Read the lease documents carefully!** It may include this waiver, which you would have to cross out before signing if you want to keep the cooling-off period.

What if I have trouble paying under a lease?

If you fail to make a payment under a lease, it's called a **default**.

Under BC law, two rules kick in to protect you if the lease is a **secured lease** and the vehicle is used primarily for "personal, family or household purposes."

A secured lease is one where at the end of the lease, you have very little to pay (compared to the car's actual value) in order to buy the car.

If you default, the leasing company can seize the vehicle or sue you, but they can't do both.

If you've already been making payments, the **two-thirds rule** comes into play if you've paid back at least two-thirds of what you owed. In this case, the creditor needs a court order before seizing the vehicle.

Protect yourself!

The steps involved

You'll save in the long run if you follow a few simple steps before leasing a car.

Step 1. Research and negotiate

Step 2. Clarify how to pay

Step 3. Get it in writing

Step 4. Read and understand the agreement before you sign

More on each step

Step 1. Research and negotiate

Do your research. You'll want to think about:

- comparable prices of other vehicles
- the car's accessories and added features
- any recent updates or upgrades
- the mileage and wear and tear, if it's used

If it's a used car and a vehicle history report reveals that the vehicle has been damaged, check to make sure it's been properly repaired. Don't be afraid to bring up any other problems you find.

When you make your offer to the seller, say it with confidence.

If negotiating with a dealer, make sure all the items that are part of the transaction are clear (for example, any dealer fee, documentation fee, or warranties).

This isn't a stick of gum. It's a big commitment! Remember that almost anything about the sale of the car can be negotiated.

Take all the time you need. No matter what, don't rush this decision!

If the seller makes a counteroffer to your original offer and you'd like to think about it, that's OK.

You can simply stop the deal if you feel like you're being pressured to pay too much or buy additional features. There are many other used car fish in the sea.

Step 2. Consider how to pay

Before you sign, think about how you'll pay.

Understand your monthly payments, and review how much you'll have to pay at the end if you want to buy the car.

In deciding whether to buy or lease, consider that when you lease a used vehicle from a dealer:

- you don't own the vehicle until you've made the last payment
- there will be a fixed monthly cost — so it's easier to budget
- the vehicle can be repossessed if you can't keep up the payments

Step 3. Write down the agreement

Having clear, written terms protects both parties from unforeseen surprises.

When leasing, the dealer *must* give you a written lease agreement.

The dealer must give you a copy of the lease agreement at the time it's accepted. Be sure to keep a copy of the agreement in your records.

Now, you're almost ready to sign.

Step 4. Read and understand the agreement before you sign

Don't take this step lightly. Fine print isn't just for lawyers! Here are a few pointers:


- Go over every section, including any text on the reverse side.
- Ask the salesperson to explain what things mean if you don't understand them.
- Have the salesperson fill in all areas of the document or put a line through any blank spaces.

Once you sign the document, the other party can accept it. Once the other party has accepted it, you're locked in.

Once the cooling-off period ends (presuming you didn't waive it), you have to lease the vehicle.

Go deeper

For a closer look at car leases, check our in-depth guidance on the topic. See leasing a car ^[2].

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Car Repairs

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mario Garcia ^[1], CarbonCure Technologies in October 2022.

Vehicle repairs can be complex and expensive. You can avoid or minimize problems with repairs by following these tips.

Protect yourself!

Tips to minimize problems

A good mechanic is like a bald eagle in the wild: rare, beautiful, and elusive. Until you find a shop that you fully trust, be a good consumer and think about the following.

Shop around

Beat the bushes for a reliable mechanic. Ask friends for names of good mechanics they've used. Compare price estimates from various repair shops.

Ask to see a mechanic's credentials to ensure they're experienced. For any repair shops you're considering, check with the Better Business Bureau to see if there have been any complaints against them. Visit the BBB's website ^[2].

The BC Automobile Association (BCAA) has an approved auto repair services program for its members to ensure they get quality service at a fair price. BCAA inspects repair shops in the program to verify the quality of their equipment and service. See their website for details ^[3].

Let them diagnose

Let the mechanic figure out what to repair. Describe the problem as clearly as you can, but don't try to guess what's wrong. If you do, you may end up getting work you don't need.

You can also suggest a road test with the mechanic to point out the problem.

Allow enough time for the repair — if you rush the mechanic, the repair may not be done well.

Give the mechanic your phone number in case of problems or questions.

Get a written estimate

Ask for a written estimate of the repair cost and the time it will take. Tell the mechanic to stop working if the repair is going to cost more than the estimate — unless they call you and you approve the higher cost.

Keep replaced parts

Ask the mechanic to return all replaced parts to you. You may need them to prove a problem with the repair. You may have to pay a charge for some replaced parts (like starter motors).

Take action

The steps involved

There are a handful of steps you can take to resolve a problem with a car repair.

Step 1. Let the mechanic know right away

Step 2. Pay for the repairs

Step 3. Contact a consumer agency (not always applicable)

Step 4. Tell your story on social media

Step 5. Take legal action

More on each step

Step 1. Report any problems right away

Report unsolved or new problems to the mechanic right away. Brakes still grinding? Engine smell funny? The sooner you report, the less of a chance they can say it was your fault!

If you have a problem with the work, or the cost of it, talk to the mechanic or the owner of the repair shop and try to solve it. Be firm, but polite.

You can talk to them in person. But many people are more comfortable sending a letter. We have tools to help you build a letter for your situation. See this letter about poor servicing ^[4] or this one about excessive charges ^[5].

If the business won't own up to the mistake, you can write a review online describing your experience. Stick to the facts, and avoid making personal attacks. Sometimes, a negative review will compel them to act.

Step 2. Pay the repair bill

If you can't solve the problem, you should still pay for the repair work. If you don't, the repair shop can register a **lien** against the vehicle.

That'll make it hard to sell your vehicle, and the mechanic could have the right to seize it from you and sell it.

Step 3. Contact a consumer agency or industry association

If you're a member of the BC Automobile Association (BCAA), and you use a BCAA-approved mechanic, you can ask BCAA for help if you have a problem. Visit the BCAA website ^[6].

You can contact the Better Business Bureau, which receives complaints about local businesses. At the very least, future consumers can be warned about that shady mechanic. See the BBB website ^[2].

You might want to contact the Automotive Retailers Association. See the ARA's website ^[7]. Only some repair shops and dealers belong to this voluntary organization. Or, if the repair was done by a dealer franchise, you can call the head office to lodge a complaint.

Step 4. Take to social media

Consider telling your story on social media. Be factual and truthful about what happened — using foul or insulting language may work against you.

Social pressure is powerful. The mechanic may be eager to make things right to protect their reputation.

Step 5. Consider legal action

If you can't solve the problem with the above steps, your next option may be to take legal action to recover amounts you feel you're still owed.

For claims of under \$5,000, you can apply to work out your dispute with the Civil Resolution Tribunal. This is a cheaper and faster option than going to court, and you don't need a lawyer. Visit the CRT's website ^[8].

Who can help

Legal advice

There are options for free legal advice.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit Website ^[9]

Access Pro Bono's Free Legal Advice


Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.

Call 1-877-762-6664

Visit Website ^[10]

Go deeper

For more on this topic, see our in-depth guidance on car repairs. We take a closer look at your rights, and explain each step in more detail. See our in-depth info ^[11].

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Insurance Benefits and Compensation for Accident Victims

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Janet Mackinnon ^[1], ICBC and Krista Prockiw ^[1], ICBC in February 2019.

Being involved in a motor vehicle accident can have a serious impact on your health, as well as your wallet. **Accident benefits** and **damages** can help ease the financial burden.

Alert! On May 1, 2021 a law came into effect that changed how ICBC insurance works. A motor vehicle accident that occurs in BC after that date is covered by a new insurance model, called **enhanced care**. We're currently updating this content to reflect the changes. In the meantime, visit ICBC's website for details ^[2].

What you should know

Basic vehicle insurance is mandatory in BC

Everyone who owns a motor vehicle in BC must have basic vehicle insurance from the Insurance Corporation of British Columbia (ICBC), called **Basic Autoplan**. You can choose to buy additional insurance coverage — from ICBC or a private insurance company.

Autoplan includes basic third party liability coverage

If you injure someone or damage their vehicle in an accident, your **third party liability** insurance will pay their claim up to the limit of your insurance. The minimum third party liability coverage you must have is \$200,000. This insurance will also pay for most of the legal and investigative costs arising from an accident.

Underinsured motorist protection

Underinsured motorist protection means you don't have to rely on other drivers having enough insurance coverage. Basic Autoplan insurance includes underinsured motorist protection up to \$1 million.

Here's how this type of coverage works. Say you are hurt in an accident that is the other driver's fault, and that driver has only the basic \$200,000 third party liability insurance. But your claim is worth \$800,000. What happens? ICBC will pay your full \$800,000 claim through your underinsured motorist protection.

Protection against hit-and-run accidents

All BC residents — even if they do not own a vehicle — are insured up to \$200,000 by Autoplan if a hit-and-run driver kills or injures them.

You can buy more than the basic insurance

In motor vehicle accident cases, courts often award much more money (also called **compensation** or **damages**) than \$200,000. Sometimes they award \$1 million or more — especially if the victim was seriously injured. You can choose to buy much more third party liability insurance than \$200,000 — up to several million dollars. And most people do.

You can buy this extra insurance from ICBC ^[3] or from a private insurance company. Buying more than the basic insurance is even more important if you drive to the United States. The costs of an accident (especially medical costs) can be much higher there.

Similarly, you can choose to increase the underinsured motorist protection from the \$1 million in the Basic Autoplan coverage. ICBC offers optional coverage up to \$2 million, \$3 million, \$4 million or \$5 million.

You can lose your insurance coverage if you break the law

You can lose your insurance coverage by:

- driving while you're prohibited from driving
- driving while your licence is suspended
- committing a crime while driving

Any of these acts may breach your third party liability insurance, and you may have to pay for any damage or injury you cause in an accident.

If you're hurt in a motor vehicle accident

If you're injured in a motor vehicle accident, there are two sources of compensation:

1. no-fault accident benefits, and
2. damages for losses if another person was at fault.

No-fault accident benefits are paid no matter who caused the accident

No-fault accident benefits are available to almost everybody in BC who is injured in a motor vehicle accident — no matter who caused the accident.

Anyone who is in a vehicle licensed and insured in BC is eligible for accident benefits. So is a pedestrian or cyclist hit by a vehicle, if they or a member of their household has a BC driver's licence or an Autoplan policy. The accident could occur in BC, elsewhere in Canada, or in the United States.

You must meet the conditions of the insurance to get accident benefits. For example, if you were injured while driving without a valid driver's licence, or while racing your car, ICBC will not pay you any accident benefits.

Accident benefits are limited

Accident benefits help with medical care and wage loss. They include rehabilitation and medical expenses, as well as disability benefits for workers and homemakers. We explain these more fully shortly.

Accident benefits only provide limited coverage. They're not designed to pay you for all the losses you may suffer from an accident, especially if you were seriously injured. You may also be entitled to additional damages for losses caused by the negligence of others, explained in the next section.

Damages for losses if another person was at fault

If another person was legally at fault for (or caused) the accident, you can also be paid **damages** for your losses. There are several types of damages. For example, you could be fully paid for the loss of your future earnings if you can't work because of the accident. Or you may be paid for the pain and suffering the accident caused you; these are called **non-pecuniary damages**. (Note as of April 2019, the law in BC ^[4] limits the amount that can be awarded for pain and suffering for "minor injuries.")

For more details, see our information on making a personal injury claim ^[5].

You cannot collect twice for the same accident

You cannot collect twice for the same loss. Accordingly, ICBC will subtract the accident benefits and other insurance benefits paid to you from any damages (or compensation) you receive arising from someone's negligence.

Common questions

Should I buy extra insurance coverage?

With Basic Autoplan insurance, if you injure someone in an accident, your third party liability coverage will pay their claim up to \$200,000. If someone you injure is awarded more than that amount, you may have to pay the rest out of your own pocket. That can lead to financial ruin. It's a good idea to buy more insurance — for both third party liability and underinsured motorist protection.

What is covered by no-fault accident benefits?

No-fault accident benefits help with medical care and wage loss if you are injured in a motor vehicle accident, regardless of who is at fault. See the ICBC website for updated information on benefit amounts ^[6].

Rehabilitation and medical expenses

Accident benefits cover reasonable expenses for medical and rehabilitation services, up to \$300,000. This can include chiropractic and physiotherapy treatments and nursing attendant care.

Disability benefits for workers

If you were working before the accident but were disabled in it and can no longer work, you can receive weekly disability benefits. Your benefits are based on 75% of your average gross weekly earnings (up to a maximum amount).

Tip If you are eligible for employment insurance benefits ^[7], you should apply for them. ICBC will include these benefits to calculate the disability benefits owing to you — even if you do not collect your EI benefits.

Disability benefits for homemakers

If before the accident you looked after your family and home, and your injury makes you unable to perform most of your household tasks, you can get weekly homemaker benefits. These benefits continue for as long as your disability lasts or until you turn 65, whichever comes first.


As a pedestrian, I was hurt when a car hit me. Can I qualify for accident benefits?

Yes. If you are injured as a pedestrian or cyclist in an accident with a vehicle, you can get accident benefits if you:

- are named in an Autoplan insurance policy, or
- have a valid BC driver's licence, or
- are a member of the household of a person who is named in an Autoplan policy or has a valid BC driver's licence.

ICBC denied my claim. Can I appeal?

Yes. If you don't agree with an assessment or decision ICBC has made about your claim, you have options for disputing it. See the ICBC website for details.

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Making a Personal Injury Claim

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Murray Wolf^[1], McLarty Wolf; Janet Mackinnon^[2], ICBC; and Krista Prockiv^[2], ICBC in February 2019.

Getting injured in a motor vehicle accident is an awful experience. Learn your legal rights in the event you're injured, and the steps involved in making a **personal injury claim**.

Alert! On May 1, 2021 a law came into effect that changed how ICBC insurance works. A motor vehicle accident that occurs in BC after that date is covered by a new insurance model, called **enhanced care**. We're currently updating this content to reflect the changes. In the meantime, visit ICBC's website for details ^[3].

What you should know

No-fault accident benefits are paid no matter who caused the accident

If you're injured in a motor vehicle accident, there are two sources of compensation:

- no-fault accident benefits
- damages for losses if another person was at fault

Everyone in BC who owns a vehicle must buy basic insurance from the Insurance Corporation of British Columbia ^[4], called ICBC. This insurance pays **no-fault accident benefits** to almost everybody in BC who is injured in a motor vehicle accident — no matter who caused the accident.

Eligibility for accident benefits

Anyone who is in a vehicle licensed and insured in BC is eligible for accident benefits. So is a pedestrian or cyclist hit by a vehicle, if they or a member of their household has a BC driver's licence or an Autoplan policy. The accident could occur in BC, elsewhere in Canada, or in the United States.

You must meet the conditions of the insurance to get accident benefits. For example, if you were injured while driving without a valid driver's licence, or while racing your car, ICBC will not pay you any accident benefits.

Accident benefits are limited

No-fault accident benefits help with medical care and wage loss. They include rehabilitation and medical expenses, as well as disability benefits for workers and homemakers. We explain accident benefits ^[5].

Accident benefits only provide limited coverage. You may also be entitled to additional damages for losses caused by the negligence of others, explained in the next section.

Damages for losses if another person was at fault

If another person was legally at fault for (or caused) the accident, you can also be paid **damages** for your losses. There are several types of damages. These include:

- damages for your pain and suffering (called **non-pecuniary damages**)
- damages for your lost wages
- damages for the loss of your future earnings if you can't work because of the accident
- damages for your future care

Your claim for damages is called a **tort** claim. A tort is a civil wrong committed by one person against another for which the law will give a remedy. The damages aim to put an injured person who didn't cause the accident in the same position they would have been in if the accident had not happened (as far as money can do this).

ICBC will typically offer an amount to resolve your claim

ICBC will typically offer you money to settle or resolve your claim — if it decides you were not at fault for the accident.

It is best not to settle your claim until your medical condition is stable and your doctor can say when your injury will probably be resolved and whether you will have any lasting effects. Then, if you agree with ICBC's offer, you can settle your claim.

Once you settle your tort claim, you can't make any further tort claims related to that accident. That's true even if you later suffer new effects from your injuries, which you hadn't expected. You will also have to sign a release of claims before receiving the settlement money.

Work out the problem

Step 1. Make a claim to ICBC

To make a claim to ICBC, report the accident by calling ICBC's Dial-A-Claim at 604-520-8222 in the Lower Mainland and 1-800-910-4222 elsewhere in BC. You can also report a claim online ^[6].

Tip You must report the accident promptly to ICBC. Some people prefer to see a lawyer before talking with ICBC. If you do that, your lawyer can report the claim to ICBC for you.

Step 2. See your doctor

If you're injured, see a doctor as soon as possible. A doctor is in the best position to prescribe treatment, such as medication and physiotherapy. ICBC will then consider funding the treatment. (Be sure to keep all your medical receipts.)

Step 3. Consider ICBC's offer on your claim

An ICBC adjuster will investigate the accident. They will make a decision about who caused it. The adjuster will also review your medical information and expenses.

ICBC will give you its decision about who is at fault. They may offer you money to settle or resolve your claim.

Take time to consider ICBC's decision and its offer. You can negotiate with ICBC, making a counteroffer. You could do this yourself or have a lawyer do it on your behalf.

Tip If you want an opinion about whether ICBC's decision about who caused the accident or their offer is fair, see a lawyer for advice.

Step 4. Appeal ICBC's decision or offer

If you are not happy with ICBC's decision or their offer, you can use ICBC's internal appeal process ^[7]. You can appeal ICBC's decisions on who is at fault, its settlement offer, its denial of your claim, or its treatment of you.

ICBC also has a fairness process ^[8] you can try if you're not satisfied with how they have treated you.

Step 5. Bring a legal action

If you can't reach an agreement with ICBC, you may sue the owner and driver of the other vehicle in the accident. ICBC's decision on who is at fault or what amount is fair for tort damages does not bind a court or tribunal. A judge or tribunal member can decide the matter without considering what ICBC decided.

You may want to sue the owner and driver of the other vehicle if ICBC:

- offers less than you think is fair
- decides you caused the accident and refuses to pay any damages
- decides you're partly at fault for the accident and reduces the damages by the proportion you're at fault

You may also decide to sue ICBC if it refuses to pay you the accident benefits you are entitled to.

Tip See a lawyer before you make a personal injury claim. It's critical to know all your rights and be prepared. Insurance companies, however fair they may be in assessing your claim, are not looking out for your interests.

Common questions

What are the deadlines to sue?

The law in BC ^[9] creates a time window to bring a legal action. In the case of an injury claim, that window (or **limitation period**) is two years. Once two years have passed after a claim is **discovered**, it's too late to start a lawsuit.

The two-year period to sue for damages starts when you knew or reasonably ought to have known you suffered an injury.

If you were under the age of 19 at the time of the accident, the two-year period to sue for damages does not start to run until you turn 19.

In some cases, if you think a municipality is at least partly at fault for your losses from an accident, you must give them notice of your claim much sooner — sometimes within just two months of the accident date.

Where do I sue?

The amount you are seeking affects the choice of court you would sue in.

If you are seeking **up to \$5,000**, you can file a claim with the Civil Resolution Tribunal ^[10]. The tribunal is an online system designed for people to represent themselves.

For amounts between **\$5,000 and \$35,000**, you would sue in Small Claims Court ^[11]. Many people represent themselves in this court. It's less expensive and less risky than going to the Supreme Court. See our information on Small Claims Court ^[12].

For amounts over \$35,000, you would sue in BC Supreme Court ^[13].

Tip The Civil Resolution Tribunal's jurisdiction over personal injury claims is currently being litigated in the courts ^[14]. We'll be updating this page as things unfold.

How much does it cost to sue?


If you're suing for damages, you must pay your own lawyer. Most lawyers who handle personal injury claims accept cases on a **contingency fee agreement**. This means you pay your lawyer's fees only if you win damages at the end of your lawsuit, based on a percentage of what you recover. But you must still pay expenses, even if you lose.

ICBC pays the lawyer for the people you are suing. If you win your lawsuit, the court may order the other side to pay some of your legal fees.

Lawsuits in BC Supreme Court often don't go to trial because the parties settle the case before trial, but not always. Sometimes, cases go to mediation and an independent person acts as a mediator to help you and the other party reach a settlement agreement.

Can ICBC sue me?

Yes, ICBC can sue you in some cases. For example, if you drink and drive or text and drive and cause an accident that injures a person, that person may sue you. ICBC can pay the injured person and then demand you pay it back. The various situations in which ICBC can collect that money from you are quite complex. So if you're involved in such a situation, you should get legal advice.

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Making a Vehicle Damage Claim

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Janet Mackinnon^[1] and Krista Prockiw^[1] of ICBC in February 2019.

If your car is damaged in an accident — or you damage someone else's car — insurance may cover the damage. Learn the steps to make a **vehicle damage claim**.

Alert! On May 1, 2021 a law came into effect that changed how ICBC insurance works. A motor vehicle accident that occurs in BC after that date is covered by a new insurance model, called **enhanced care**. We're currently updating this content to reflect the changes. In the meantime, visit ICBC's website for details^[2].

What you should know

Basic vehicle insurance is mandatory in BC

Everyone who owns a motor vehicle in BC must have basic vehicle insurance from the Insurance Corporation of British Columbia (ICBC), called **Basic Autoplan**.

The Basic Autoplan coverage includes **third party liability coverage**. This means if you are at fault for an accident that damages someone else's vehicle, your insurance will pay that other person for their damage (up to the limit of your insurance).

You may also buy optional collision insurance from ICBC^[3] or a private insurance company. Collision insurance pays for damage to **your** vehicle — whether or not you were at fault — minus a deductible amount.

Your insurance may also pay if your parked vehicle is hit by an unknown driver.

Who pays for the repairs to your vehicle

When your vehicle is damaged, who pays for the repairs depends on who caused the accident and whether you have collision insurance.

If the accident wasn't your fault, ICBC may pay the whole repair bill.

If you caused the accident, but you have collision insurance with ICBC, you'll have to pay the deductible, and ICBC will pay the rest.

If you don't have collision insurance and you caused the accident, you will have to pay to repair your own vehicle. And you will have to pay any towing and storage charges.

If you don't have collision insurance and ICBC hasn't decided whether you were at fault, you may have to pay the repair shop, then try to get ICBC to pay you back later, when it decides who caused the accident.

If the vehicle is too badly damaged to repair

If your vehicle is wrecked, it's called a **write-off** or a total loss. This means the cost of repairs is more than the current market value of your vehicle. You don't have the choice to get it repaired.

ICBC will calculate the market value of your vehicle based on its condition before the accident. The value depends on several things, including your vehicle's make, model, age, mileage, condition and options.

If your vehicle is a write-off and the other driver was at fault or you have collision coverage, ICBC will pay you the current market value of your vehicle. If you still owe money to a bank (or someone else), and they had registered a lien against your vehicle, ICBC will pay the bank what you owe them and then pay the rest to you.

Work out the problem

Step 1. Report the accident

Report an accident to ICBC as soon as you can. In the Lower Mainland, call ICBC's Dial-A-Claim Centre at 604-520-8222. Elsewhere, call 1-800-910-4222. You can also report a claim online ^[4].

If you bought your collision insurance from a private insurance company, report your accident to them too.

If someone was injured in the accident or the damage is likely to be \$2,000 or more, you must report the accident to the police.

Step 2. Get the vehicle damage assessed

Many vehicle damage claims are settled without going to an ICBC claim centre. If your claim qualifies, you can go directly to a c.a.r. VALET repair shop for a vehicle damage estimate ^[5], and get the repairs done at the same location. There are more than 400 c.a.r. bodyshops in BC. ICBC will tell you if your claim qualifies for this service when you report your claim.

Other times, Dial-A-Claim may give you an appointment to take it to the nearest ICBC claim centre, where an estimator will look at it. They fill in a form listing the repairs needed. Then you take your vehicle, with the estimator's form, to a repair shop you choose.

If you can't drive your vehicle after the accident and it has been towed to a storage lot, ICBC will have it towed directly to a claim centre. In the Greater Vancouver area, it may be towed to ICBC's central estimating facility first, and then to a body shop for the repairs.

Step 3. Consider ICBC's decision and offer

An ICBC adjuster will investigate the accident. They will make a decision about who caused it. Often, you may not actually meet the adjuster and, instead, may deal with them by phone.

ICBC will give you its decision about who is at fault for the accident. They may offer you money to settle or resolve your vehicle damage claim.

If you're not happy with ICBC's decision on fault or the amount they offer to settle your claim, you have options:

1. **Ask a manager to review your claim.** You can ask a manager at the centre handling your claim to review your case.
2. **Apply for a claims assessment review.** You can apply for a claims assessment review ^[6], known as a CAR. You have 60 days after ICBC tells you its decision to apply for a review.

Step 4. Use arbitration for your dispute

If you're still not satisfied, the Insurance (Vehicle) Regulation ^[7] lets you use arbitration for your dispute. If you want to use arbitration, you must apply within two years after the loss or damage to your vehicle occurred. If you and ICBC can't agree on the choice of an arbitrator, the ADR Institute of BC can appoint an arbitrator ^[8].

The arbitrator must promptly meet or communicate with both you and ICBC, gather relevant information, and set a date for a decision.

The arbitrator's written decision with full reasons will be sent to you by registered mail. The costs of the arbitration are shared equally between you and ICBC.

Step 5. Bring a legal action

If you remain unsatisfied with ICBC's decisions, you can sue the other driver involved in the accident.

You may decide to sue for any deductible you had to pay on your collision coverage. Or, if you had no collision coverage, you may sue for the cost of your vehicle repairs or the write-off value of your vehicle.

Where you sue depends on much you sue for. For a claim of \$5,000 or less, you can bring your claim to the Civil Resolution Tribunal ^[9]. For a claim over \$5,000 and up to \$35,000, you can go to Small Claims Court. Supreme Court is for claims over \$35,000 ^[10].

Tip For motor vehicle accidents taking place in BC after April 1, 2019, injury claims up to \$50,000 must be brought to the Civil Resolution Tribunal. However, vehicle damage claims brought to the tribunal are capped at \$5,000.

Common questions

Will my insurance premiums go up?

If ICBC finds you were more than 25% at fault for an accident that results in a claim — by you or the other driver — ICBC will usually increase your insurance premium the next year. If you have another claim, the increase will be even greater.

If ICBC finds you at least 50% at fault in three crashes within three years, and they all result in claims, you'll have to pay an additional multiple crash premium of \$1,000 ^[11]. And for each additional at-fault crash within the three years, you'll have to pay another \$500.

Can I pay for the damage myself without involving ICBC?

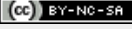
If you cause a small accident, you can pay for any damage to your vehicle and the other vehicle yourself to avoid higher insurance premiums. But you should discuss this with the ICBC adjuster for your file, as the increase in your insurance cost may be small if you're an ICBC Roadstar customer.

Will my insurance cover me if I was drinking and driving?

If you were drinking and driving or under the influence of drugs when you had your accident, or you're convicted of a *Criminal Code* offence related to motor vehicles, you'll have problems claiming insurance because you may have violated your insurance contract. If you're charged with any criminal offence relating to a vehicle accident, you should consult a lawyer. See our information on drinking and driving ^[12].

What if I have a complaint with ICBC?

If you have a complaint about how ICBC handles your claim, contact its customer relations department at 604-982-6210 in the Lower Mainland or toll-free 1-800-445-9981 elsewhere. A customer relations advisor will help you. If you still feel you haven't been treated fairly, you can make use of ICBC's fairness process^[13].

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The Points System and ICBC

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Janet Mackinnon, ICBC in May 2018.

If you get a ticket for a driving offence, you'll typically get **points** on your driver's record. The more points you rack up, the more you'll pay in insurance premiums.

What you should know

Driving violations lead to driver penalty points

When you receive a ticket for speeding or some other driving offence under the BC *Motor Vehicle Act*, you typically get points on your driver's record. You also get points for certain *Criminal Code* offences like impaired driving, criminal negligence, and failure to remain at the scene of an accident. **Driver penalty points** are like black marks on your driving record.

How many points you get

The number of points you get depends on the driving violation involved. Many driving violations result in two or three points. All speeding violations are three points. Distracted driving is four points. Driving while prohibited or suspended is 10 points.

You don't get points for parking tickets and other minor violations of city bylaws.

If you dispute a driving violation

Points are added to your record if you plead guilty to a driving offence or if a court convicts you of the offence. If you pay a traffic ticket, you're admitting you are guilty.

If you don't agree with a ticket, you must fight (or dispute) it. You have 30 days from the date of the ticket to dispute it. If you don't do so, the offence and points are automatically added to your driving record. See our information on traffic tickets for more information on how to fight a traffic ticket.

Driver penalty points can increase your insurance premiums

Everyone who owns a motor vehicle in BC must have basic vehicle insurance from the Insurance Corporation of British Columbia ^[1] (ICBC). Each year, ICBC looks at your record of driver penalty points. If you had four or more points in the previous year, ICBC bills you a **driver penalty point premium**. This is an additional premium beyond the premium you pay to insure any vehicle you own. You are billed even if you don't own or insure a vehicle.

The amount of the premium

The driver penalty point premium depends on the total number of points you get in a 12-month period, called the assessment period. ICBC reviews your driver's record for this period, which starts about 17 months before your birthday.

If you have four points, the premium is \$252. It's \$331 for five points, \$432 for six points, and so on. If you have 50 points or more, you get the maximum driver penalty point premium of \$34,560. ICBC's website lists all the premiums ^[2].

How you are billed for the premium

The bill for any driver penalty point premium is sent four weeks before your birthday. ICBC uses the points just once to calculate the premium and bill you. So if you have three or fewer points in an assessment period, you won't be billed for any premium.

Another driver premium program applies to more serious driving offences

ICBC has a second program, **driver risk premiums**, that applies to more serious driving offences. Under this program, ICBC reviews your driving record for offences for the previous three years. You will have to pay a driver risk premium if, during the previous three years, you have:

- one or more driving-related *Criminal Code* convictions (such as impaired driving)
- one or more *Motor Vehicle Act* convictions worth 10 points or more (such as driving while suspended)
- one or more excessive speeding convictions
- two or more roadside suspensions or prohibitions

The amount of the premium

The amount of the driver risk premium depends on the type and number of convictions you get. For example, the premium for one *Criminal Code* conviction (such as for impaired driving) is \$1,303. The premium for two *Criminal Code* convictions is \$5,414.

How you are billed for the premium

You will be billed only for one driver premium, whichever is highest. Because the assessment period for the driver risk premium is three years, one conviction during this period means you have to pay this premium each year for three years.

Common questions

What if I can't (or don't) pay the premium?

If you don't pay the bill for a driver premium within 30 days, ICBC will charge you interest. ICBC can also refuse to renew your vehicle insurance until you pay. Also, you won't be able to renew your driver's licence if you don't pay a driver premium bill.

If you give up your driver's licence to an ICBC driver licensing office for the whole one-year billing period, you won't have to pay the bill.

Or you can reduce a driver premium bill by giving up your licence for 30 days or more during the billing period. When you want your licence back, go to a driver licensing office and pay the reduced bill, plus any extra licence fees. But this works only if you do not have to take a driver re-examination and don't have any outstanding prohibitions.

What if I'm not allowed to drive? Do I have to pay the driver premium?

ICBC will reduce a driver premium bill if you've been prohibited or legally banned from driving for 60 days or more in the billing period. It usually does this automatically, but you may have to ask it to do so and to prove your situation.

Also, you can apply to ICBC for a refund or reduction if, for at least 30 days in a row during the billing period, any of the following apply:

- you lived in another province and legally held a driver's licence there
- you were not in Canada or the US
- you were in jail
- you had medical reasons for not driving

Again, you may have to prove your case to ICBC.

Are there premium increases if I cause multiple accidents?

Yes. If you are 50% (or more) at fault for three motor vehicle accidents in three years, you might need to pay a **multiple crash premium** of \$1,000. This is in addition to your regular Autoplan premiums.

For each additional crash within three years, you would pay an extra \$500.


Who can help

With more information

ICBC has information on the driver penalty point premium ^[2] and the driver risk premium ^[3].

Call 1-800-663-3051 (toll-free)

Visit website ^[4]

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Consumer

Problem with a Purchase

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Dean Davison ^[1], Davison North Law in January 2020.

The TV won't turn on. That computer doesn't have Wi-Fi. The blender doesn't blend. The item broke. The salespeople lied. Don't forget that you have rights. Let's get after it.

What you should know

Remedies available to you

If your new toaster clashes with your countertop, that's not the manufacturer's fault. If it doesn't toast, that certainly is. If something you bought doesn't work, you may be entitled to a refund, a repair, or a replacement.

When you buy something, that's a contract. If the other side doesn't do what they promised (like sell you a bike that works), they've **broken the contract**.

When this happens, a handful of solutions are available. The law calls these **remedies**.

Let's say that on your first ride with that new bike, the frame breaks. The law offers these potential solutions:

- The contract is **cancelled**. Return the bike and get a refund.
- You're awarded **compensation**. The seller must repair or replace the bike — and if you broke your leg when the frame broke, you may be entitled to compensation for that too.
- The seller is ordered to **perform** the contract. In other words, they have to provide you with a working bike.

If what went wrong was essential to the purchase (that broken frame), you're entitled to cancel the contract. If it wasn't essential (a squeaky pedal), you're likely entitled to a partial refund, but you can't return the bike.

If something is faulty

The law requires a baseline level of quality for the things you buy. When you buy something from a business, the product has to:

- be fit for the purpose you bought it for
- work and be undamaged
- be durable for a reasonable period of time
- match the advertised description

These conditions are sometimes referred to as the **legal warranty**.

If any of these conditions aren't met, you're entitled to cancel the contract. Act immediately if you want to do that. If you wait, it's harder to prove the defect isn't just normal wear and tear.

If the item was damaged by regular use, an accident or misuse, you likely won't be covered. As well, the law likely won't help if you examined the goods beforehand and ought to have spotted the problem.

If the seller misled you

The seller can't tell you something misleading or deceiving, or take advantage of you.

If the seller has lied about something essential (they said it's four-wheel drive, but it isn't) you may be entitled to a refund. If it's non-essential (they said 24 kms per litre, but really it gets 18), you're likely entitled to some compensation, but you can't cancel the contract.

We've got more information on what is misleading or acting unfairly. See our information on the basics of making a purchase ^[2].

If a cooling-off period applies

A **cooling-off period** means a stretch of time, after the purchase, when you can decide this product doesn't spark joy after all, and return it. You can cancel the contract without penalty. *You don't need to give a reason.*

Not every purchase features a cooling-off period. It's available in some situations but not others. And the length of the cooling-off period varies depending on what you're buying.

Cooling-off periods apply in these situations:

- When you buy something in person, but not at the business location (like a door-to-door sale), you have a cooling-off period of 10 days after you receive a copy of the contract.
- When you receive services on an ongoing basis (like a yoga or gym pass), you have a cooling-off period of 10 days after you receive a copy of the contract.
- When signing a cellphone contract, you have a cooling-off period of 15 days after your cellphone service begins.

Two more examples:

- When leasing a car, you have a one "clear" (full) day after you sign to reconsider.
- If you buy a newly built condo, you have a cooling-off period of seven days after you sign the contract or acknowledge seeing the developer's disclosure statement, whichever comes last.

For a product or service you buy online, you may or may not have a cooling-off period. It depends on the circumstances. We've got specific content on this if you're interested. See our information on online shopping ^[3].

Otherwise, keep in mind that a store's return policy may be able to help.

If there is a return policy

If you bought something from a retail store and have changed your mind, check the store's policy on returns.

It's best to know this policy in advance, especially for a big purchase. Some larger items, or electronics, have a stricter return policy.

First and always, keep your receipt! Often it has the return policy printed on it.

Check the following:

- How many days until the return period expires. If there's no time limit, great!
- Whether you can have used the product before returning it.
- Whether there are any "restocking" or other charges.

Some stores offer a satisfaction guarantee. This is a great thing for consumers! It gives you the legal right to return the product for a full refund, even if what you bought is perfectly alright.

Always remember, as a consumer, you have rights. (And a duty to keep businesses honest!) Let's move on to how you can deal with these sorts of problems.

Take action

Step 1. Decide what outcome you're seeking

Once you understand your legal rights and options, decide what outcome you're after. Do you want to return the item and get your money back? Do you want to keep the item but get things put right?

Step 2. Collect your information

Collect copies of any documents, such as any contract, receipts, correspondence, advertising, or warranty. Prepare notes. Include:

- details of the problem, including when you first noticed it
- anything the other party said that you relied on in making the purchase or contract
- what outcome you're seeking

Step 3. Contact the other party

Tip If there's a cooling-off period, you need to give the other party written notice telling them you want to cancel. (Email is best; a regular letter can take time and may not get to them before the cooling-off period ends!) Once they get the notice and you return the item, you have no further legal obligations under the contract.

Start by finding the right person to talk to about the problem. If there's a complaints department, use it. If there isn't, talk to someone in authority, such as a manager or owner.

They may say you have to make your complaint in writing. If they do, get a name and address of the person to contact.

Be firm and businesslike, but polite. Let them know you understand what you're entitled to. Tell them what you want them to do to resolve the problem.

Promises are one thing, but followup is key. The person may agree to do what you suggest, but confirm when they will do this. Ask them for their name so you can refer to the conversation later. Follow up with a written note confirming what was agreed to.

If the person doesn't agree to do what you suggest, ask who you can contact with a formal complaint. Get the address of that person.

Make notes of your conversation. Date your notes.

Step 4. Send a complaint letter

If discussing the situation with the other party doesn't resolve the problem, the next step is to send a complaint letter to them. We've got a template for you ready to go. Here's our complaint template ^[4].

Step 5. Take to social media

You can also take to social media to voice your concerns. Be accurate. Be truthful. You may end up getting what you want. Companies are eager to protect their reputations. If none of this works, there are agencies that can help.

Who can help

Helpful agencies

Shoddy goods? Seller refusing to give you a refund? If you need help with that or other consumer-related issues, there are agencies that can help.

Consumer Protection BC

Assistance relating to certain types of consumer problems and contracts in BC.

Call 1-888-564-9963

Send email

Visit website ^[5]

Better Business Bureau

Might not solve problems, but helps people find businesses they can trust.

Call 1-888-803-1222

Visit website ^[6]

Competition Bureau

Deals with complaints about false or misleading advertising.

Call 1-800-348-5358

Visit website ^[7]

Legal advice

Affordable legal help **does** exist. (To be fair, two of these are options for help, and the third — the online tribunal — is a cheap and fast option to resolve a dispute yourself.)

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[8]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit website ^[9]

Civil Resolution Tribunal

Resolve disputes of less than \$5,000 online 24/7 (no need for a lawyer!).

Visit website ^[10]

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The Basics of Making a Purchase

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Dean Davison ^[1], Davison North Law in January 2020.

A cup of coffee. A bus ticket. A new big-screen TV. Another day, another purchase. Learn your rights and what to watch out for when buying things.

What you should know

You're making a contract

When you buy something, even something small, you're making a contract. Most of the time, the receipt is the only proof you'll have! Regardless, you and the seller have certain legal rights and obligations.

The seller must not mislead you

Sellers can't mislead you to convince you to buy something. What's misleading?

- If they offer you a special "30% discount" but, really, everyone can get that special price.
- If they tell you the TV can play Netflix, but you get it home and realize it can't.
- If the mortgage lender says they are "CMHC approved," but really they aren't.

This is when a seller advertises something at a bargain. But guess what, it isn't in stock.

You only discover this once you're in the store. The "bait" is sold out. Now the seller tries to "switch" you to some other (typically more expensive) item.

They can't do that. Such unfair practices are against the law.

The seller must not act unfairly towards you

Sellers can't act unfairly. What's unfair?

- They charge you a price that's far higher than what other sellers are asking for the same thing.
- They pressure you — a seller tells you that you have to sign a contract immediately to get the “special price” they're offering.
- They try to get you to buy something they know you can't afford.

Sellers can't take advantage of any physical or mental disability, illiteracy or language difficulties.

For example, a seller can't force people whose first language is Mandarin to sign a complicated contract in English.

If the seller does something unfair, then the agreement isn't binding. That means you can return what you bought for a refund.

You're protected by the legal warranty

The things you buy must meet a baseline level of quality, the law says. When you purchase something from a business, the product has to:

- be fit for the purpose you bought it for
- be undamaged and work properly
- be durable for a reasonable period of time
- match the advertised description

These conditions are sometimes referred to as **the legal warranty**.

So if that big screen TV doesn't turn on (and you've already made sure you plugged it in ☐), you can bring it back for a refund, or ask to get it repaired or replaced at no charge.

If you buy from an individual (think: deals on Craigslist or Facebook Marketplace), the legal warranty is weaker. The product only has to be reasonably durable and match the advertised description. So pay special attention (and adjust your expectations accordingly) if you're buying that TV from a guy named Fred and not from Best Buy.

Do your homework on any extended warranty

On top of the legal warranty, many sellers and manufacturers offer their own warranty or guarantee for their product. If it's free, great. Just make sure you're not being sold an **extended warranty** you don't need.

An extended warranty may or may not be worthwhile. Do your homework. And keep in mind: sellers count on at least some customers forgetting they bought the extended warranty!

If you're thinking about an extended warranty, check its terms:

- How long is it good for?
- If the item breaks, will the company repair it, replace it, or return your money?
- Can you take it back to the store where you bought it? Or will you have to ship it somewhere at your own cost?
- Sometimes, if you try to repair it yourself (or at a corner shop instead of an “authorized dealer”) it could void the warranty altogether!

Take action

Think you're ready to buy? Wait a tick. Here are a few practical tips to keep in mind.

Step 1. Do your research

First and foremost, Google, Facebook, Yelp, etc. These are the quickest and easiest ways to determine if a seller is legitimate, has the best prices, and can be trusted.

Don't forget to check more credible sources. For example, if you're buying a car, try the Canadian Black Book or AutoTrader to learn the average price of the vehicle models you're considering.

Read reviews from trustworthy sources. Consumer Reports is an independent, non-profit source of product reviews. See their website ^[2].

You can also get solid crowdsourced product reviews on sites like Wirecutter and @thingtesting. The Better Business Bureau also collects complaints about bad actors. Visit the BBB online ^[3].

Step 2. Negotiate with confidence

Everything can be negotiated. Sure, haggling with your grocer over the price of a pear is a bit ... thrifty. But for big purchases, don't assume there isn't wiggle room.

Mention competing offers from other sellers. Businesses will often match or beat prices. Ask them to throw in the extended warranty or protection plan for free.

This can be especially effective with cellphones and other electronics. And when you do make an offer to the seller, say it with confidence. Be polite and reasonable, but firm.

Step 3. Have a contract

If you're buying something expensive, get it in writing, especially if you're dealing with a private seller.

If a problem arises, you can go back to the written contract. You won't have to argue over "who said what" when you struck the agreement.

Law can be tricky, but it isn't rocket science. We've got a great template to get you started. Here's a basic contract template ^[4].

Step 4. Read and understand any contract

Read the fine print on any contract before you sign.

- Go over every section of the document, including any text on the reverse side of printed pages.
- Ask the other party to explain what something means if you don't understand it.
- Fill in all areas of the document. If there are blank spaces, put a line through them to prevent something being added in later. If you do that, make sure both of you initial the strikethrough as proof you understood.

Step 5. Don't rush the decision

If the other party makes a counteroffer to your original offer and you'd like to think about it, that's OK. You can simply stop the deal if you feel like you're being pressured into paying too much or buying additional features.

Who can help

Helpful agencies

Shoddy goods? Seller refusing to give you a refund? If you need help with that or other consumer-related issues, we've got content on that. See our information on problems with a purchase ^[5]. Or, consider getting in touch with the following agencies.

Consumer Protection BC

Assists with some consumer problems and contracts. Includes online complaint form.

Call 1-888-564-9963

Start a complaint ^[6]

Visit website ^[7]

Better Business Bureau

Receives complaints about local businesses that are members.

Call 1-888-803-1222

Visit website ^[3]

Competition Bureau

Deals with complaints about false or misleading advertising.

Call 1-800-348-5358

Visit website ^[8]

Legal advice

Affordable legal help **does** exist. (To be fair, two of these are options for help, and the third — the online tribunal — is a low-cost path to bringing a legal action.)

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit Website ^[9]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit Website ^[10]

Civil Resolution Tribunal

Resolve disputes of less than \$5,000 online 24/7 (no need for a lawyer!).

Visit website ^[11]

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Online Shopping

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Dean Davison ^[1], Davison North Law in January 2020.

It's easier than ever to do all of your shopping online (even for toilet paper). Like any purchase, online shopping creates a contract, and you have rights.

What you should know

The seller must give you certain information when you buy online

When you buy something online (or by phone), you can't inspect the goods beforehand. So special rules apply. The seller has to tell you:

- their name, address, and phone number — and their email address if you're buying online
- detailed information about the product
- the total price you'll pay, with a breakdown of taxes and other charges
- the currency you must pay in
- an explanation of how the goods will be shipped to you
- the seller's cancellation and return policy

The seller must give you a copy of the contract

For it to be legally binding, the seller must give you a copy of the contract — a detailed receipt, basically — within 15 days of the sale.

For online shopping, the seller must make the contract available to you in a way that lets you keep and print the information, like in your online account. The seller may also send you a copy of the contract by email.

If the contract doesn't include the required information

If the contract doesn't include all the information the seller is required to give you, you can walk away. You can cancel up to **seven days** after receiving the contract.

If the seller doesn't provide you with a copy of the contract

If you don't get a copy of the contract within 15 days of the sale, you can cancel. In this case, you have up to **30 days** after placing your order to cancel the contract.

If you don't receive your order

If you don't receive what you ordered within 30 days of the estimated delivery date, you can cancel the contract any time before the goods or services are delivered.

No estimated delivery date? Then you can cancel within 30 days of ordering.

If the company sends you emails and ads you didn't sign up for

Seems like every time you buy something online, ads from the same company start appearing on your desktop. Canada has laws against spam, but the sellers may actually be allowed to do this.

There's an exemption in the spam laws for "existing customers." Since you've bought something, that means you have a business relationship with the online seller. They use this cozy status as a reason to send you ads.

You can always opt out — ads from businesses must have an "unsubscribe" link. (Hint: It's always buried at the bottom.) And stay on guard for emails that seem to come from an online business that you know, but are really spam. Never download suspicious files or respond to suspicious messages.

Take action

Savvy online shoppers abide by a handful of (non-biblical) commandments. Hot tips coming up.

Step 1. Do your research

Before you buy that sleek-looking dehumidifier for your basement, make sure it's the right one for you. Read reviews. Make sure it'll handle your needs but isn't more than you need. A little homework on the front end may save you trouble later.

Step 2. If you want to cancel, contact the seller directly

If you want to cancel because you never got your contract or the goods didn't arrive in time, reach out to the seller directly.

Be firm but polite. Explain why you're cancelling. You may have to speak to a manager. Make sure you get confirmation in writing that they've accepted the cancellation and the amount they're going to refund you (if you've pre-paid).

If you decide to cancel a contract for something you bought online, notify the seller in **writing**. You can use a notice of cancellation form provided by Consumer Protection BC: they have forms for if the seller didn't provide the required info ^[2], didn't provide a copy of the contract ^[3], or didn't deliver within the required time ^[4].

Step 3. Wait 15 days

The seller has 15 days to give you a refund. If nothing has happened by then, give them a call. Confirm they got your letter. Demand your refund.

Step 4. If you paid by credit card, contact your credit card provider

Still no refund from the seller? Ask your credit card provider to reverse the charge. The credit card provider must do so — plus refund any associated interest — within two complete billing cycles or 90 days, whichever is earlier.

Contact your credit card provider with:

- the seller's name
- the date of the purchase
- the amount charged to the credit card
- a description of the goods or services
- the reason for cancellation
- the date and method of cancellation
- a copy of your notice of cancellation that you sent to the company

Step 5. Take to social media

You can also tell the whole sorry tale on social media. Be accurate. Be truthful. Not being truthful may expose you to a lawsuit. You may end up getting what you want. Companies are eager to protect their reputations.

Who can help

Helpful agencies

Still stuck waiting for that pair of shoes you bought but that never arrived? If you need help with that or other consumer-related issues, consider getting in touch with these agencies.

Consumer Protection BC

Assistance relating to certain types of consumer problems and contracts in BC.

Call 1-888-564-9963

Send email

Visit website ^[5]

Better Business Bureau

They may not solve your problem, but reporting can help others avoid problems.

Call 1-888-803-1222

Visit website ^[6]

Legal advice

Getting legal advice can help you decide on the best next step. Or if you're up for a self-help approach, the Civil Resolution Tribunal is a great option.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

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If You're Not Happy with a Service

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mario Garcia ^[1], CarbonCure Technologies in April 2020.

If you hired someone and you're not happy with their work, you have options, and rights. It can feel overwhelming, but there are steps you can take to help yourself.

What you should know

Your options if the other party is in breach of contract

When you hire someone to perform a service, you're making a contract. They've made a promise to you in return for payment. If they've broken the terms of that promise, they're in **breach of contract**.

A breach of contract can be dealt with in one of three ways. Which applies depends on what exactly is wrong and what kind of agreement you made.

Option 1. The contract can be **cancelled**. This puts the parties back to the situation they were in before the contract was made.

Option 2. The party in breach can be made to pay **damages**. This is money to cover the injured party for their losses.

Option 3. The party in breach can be made to **perform** the contract. Basically, they're being told: Do what you promised.

You're no doubt curious about which option applies. The key factor is how important the breach is. That is, whether or not it relates to a **condition** in the contract.

A condition is a term of the contract that's crucial — so crucial that without it, you'd never have agreed to the contract in the first place.

Examples of what amounts to **crucial** would be the price you were going to pay for the services, or the scope of what was going to be done.

When a condition is broken, the contract can be cancelled. When a non-essential term of the contract is broken, the injured party can recover damages but the contract cannot be cancelled.

If the work is poorly done

Under the law, certain terms are implied in all service contracts. The person you hire must:

- use reasonable care
- do the work in a "proper and workmanlike manner"
- use materials of reasonable quality

If you hire someone to perform a service, and the work is badly done, you can argue the service provider broke one of these implied terms of the contract — for example, they didn't do the work in a "proper and workmanlike manner."

In addition, many service providers offer a warranty or guarantee. This is their promise to provide quality service and what they'll do if problems arise. Read any warranty or guarantee to see if it covers the problem.

If a service provider misled you or used unfair practices

A service provider can't mislead you. For example, they can't tell you — or advertise — that their services are of a high standard when they aren't, or that something's on sale when it's not.

And they can't use **unfair practices**. For example, they can't charge you for unnecessary services. And they can't exploit you, like take advantage of a disability or language difficulty you might have.

If the service provider did something misleading or unfair, any agreement you signed is no longer enforceable. You can walk away. Remember, though, if you just feel like it's unfair (and it isn't something *objectively* unfair), and you walk away from paying, you can be exposed to a lawsuit.

Work out the problem

There are steps you can take to work out the problem.

Step 1. Prepare your thoughts, including the outcome you're seeking

Put together some notes. What's the problem? When did you first notice it? What, if anything, did the other party say that persuaded you to make the contract in the first place?

Decide the outcome you're seeking. Do you want the service provider to put things right (that is, redo or repair the work)? To reduce their bill? To stop their work and cancel the remainder of the contract?

Step 2. Complain promptly

You can do this in a conversation or in writing. The advantage of writing is that there's a clear record of your complaint.

Be firm and businesslike, but polite. Cover these points:

- a description of what was agreed to
- details of the problem
- what you want them to do to fix things

It's a good idea to start with a template letter. We have some templates that might help ^[2].

Step 3. Contact a consumer protection agency

If you don't get results from complaining to the service provider, you can file a complaint with a consumer protection agency. One option is Consumer Protection BC. They have an online complaint form ^[3]. They can help resolve issues resulting from a breakdown between you and a service provider.

Step 4. Consider legal action

If you can't solve the problem with the above steps, your next option may be to take legal action. You can consider suing the other party for breach of contract or negligence.

For claims of under \$5,000, you can apply to work out your dispute with the Civil Resolution Tribunal. This is a cheaper and faster option than going to court. You don't need a lawyer to do this!

Go deeper

If you want to dig deeper, we explain these steps in more detail. See our in-depth coverage of if you're not happy with a service provider ^[4].

Who can help

Helpful agencies

There are options for help if you're not happy with a service provider.

Consumer Protection BC

Assists with some consumer problems and contracts. Includes online complaint form.

Call 1-888-564-9963

Start a complaint ^[3]

Visit website ^[5]

Better Business Bureau

Receives complaints about local businesses that are members.

Call 1-888-803-1222

Visit website ^[6]

Competition Bureau

Deals with complaints about false or misleading advertising.

Call 1-800-348-5358

Visit website ^[7]

Legal advice

The good news is that not all legal advice comes with a hefty price tag.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[8]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit website ^[9]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[10]

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Fitness Centres, Yoga Studios, and Other “Continuing Service Contracts”

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Dean Davison^[1], Davison North Law in January 2020.

Thinking of joining a fitness centre or yoga studio? Or taking other ongoing classes? Special rules apply to these types of contracts. Learn about these arrangements, including how to get out of them if you're not happy.

What you should know

Special rules apply

A service you get that that continues over time — like a gym membership or self-defence lessons — is legally different from a one-shot deal like a haircut. These agreements are called **continuing service contracts**, and there are special rules for them.

The contract must include certain information

When you sign up, make sure the contract has the following:

- the name, address, and phone number of the service provider — and the email address too if you bought online
- detailed information about the product
- the **total** price, with a breakdown of taxes and other charges
- your cancellation rights
- the amount due each payment period — weekly, monthly or whatever period is in play
- if it's for classes, a description of when they will take place, and any details on missed or make-up classes

The contract can't be for more than two years

A continuing services contract **can't extend beyond two years**. But it can include a section on renewals. If it does, you can renew by consenting in writing within one month of the contract's expiry date.

Be careful if they try to “automatically” renew your membership via ongoing credit card charges. Online companies with a subscription service (think: Amazon Prime, or Netflix) have contracts with automatic renewals. Bear in mind that since these companies have head offices outside of BC, and operate online, it can be difficult to enforce our laws against them.

You can cancel the contract during the cooling-off period

After receiving a copy of the contract, you have a 10-day **cooling-off period** to change your mind. You can back out *for any reason* during this time. The business must give you a full refund within 15 days.

Be careful with “free trials,” especially online. With these, you give your credit card info up front but aren't billed until the trial period is over. The problem is, people are busy. We forget these dates. Business count on it! Studies show that almost half of all people who accept free trials forget to cancel before the auto payments kick in. Half! Don't end up paying for something you won't use.

You can cancel if there has been a material change in your circumstances

Even after the cooling-off period, you can still cancel one of these contracts if your circumstances have **materially changed**.

What might this look like? Maybe:

- you broke your leg, so you can't do a downward dog (or any pose, really) for several months, or
- you moved to Vernon from Vancouver, and don't intend to commute five hours every Tuesday evening to enjoy that painting class.

Tell them your reason for cancelling, and be prepared to provide proof (such as a doctor's note, or a bill from your new address). You're entitled to a prorated refund, and the business can charge you a reasonable admin fee to process the cancellation.

We've covered a material change in your circumstances. What if the business changes things?

Say the gym promises spin classes, but then cancels all of them. Or the yoga studio moves to Vernon, but you're still living in Vancouver. In these circumstances, you can cancel and get a prorated refund.

Take action

Step 1. Do research

Being a good consumer is equal parts proaction and measured reaction. (Sorry, that sounded like rocket science. It's not.) The key thing is — be prepared, and be firm.

Before you sign up for that great deal at the new fitness studio, read the fine print. Will the classes you've paid for in advance expire after a few months? Does the studio have a lot of negative online reviews?

Step 2. Be alert during trial periods

There's plenty of competition out there. Businesses will try to woo you with extra perks and services, or give you a free trial.

Again, read the fine print. After the trial ends, are you already committed to a one-year term? After the first month, do you have to pay more to access (let's say) the lockers, hot tub, and sauna? If it is unclear, ask. Do. Your. Homework.

Step 3. Keep the contract

We're increasingly paperless, but keeping contracts is important. Ask the business to email you a copy. Or take a phone photo of each page for future reference. That way, if things go wrong (or if the business can't find a copy), you'll have back-up.

Step 4. If you decide to cancel, be firm

If you want to cancel because of a material change in your circumstances, or if you're still within the 10-day cooling off period, first call the business or go in-person.

Be firm, but polite. Explain why you're cancelling. You may have to speak to a manager. Make sure you get confirmation in writing that they've accepted the cancellation and the amount they're going to refund you (if you've pre-paid).

Step 5. Followup in writing

If the business continues to deny you a refund, write them a letter. Consumer Protection BC has a handful of handy templates: to cancel during the cooling-off period ^[2], due to a material change for you ^[3], or due to a material change for them ^[4].

Step 6. Wait 15 days

They have 15 days to give you a refund. If nothing happens by then, give them a call. Confirm they got your letter. Demand your refund.

Step 7. Take to social media

If the business still refuses to comply, take to social media to voice your concerns. Be accurate. Be truthful. (If you are not truthful online, you may expose yourself to being sued.) You may end up getting what you want. Companies are eager to protect their reputations.

Who can help

Helpful agencies

Is the business still denying your rights? If you need help with that or other consumer-related issues, consider getting in touch with the following agencies.

Consumer Protection BC

Assists with some consumer problems and contracts. Includes online complaint form.

Call 1-888-564-9963

Start a complaint ^[5]

Visit website ^[6]

Better Business Bureau

Receives complaints about local businesses that are members.

Call 1-888-803-1222

Visit website ^[7]

Competition Bureau

Deals with complaints about false or misleading advertising.

Call 1-800-348-5358

Visit website ^[8]

Legal advice

Affordable legal help does exist. (To be fair, two of these are options for help, and the third — the online tribunal — is a low-cost path to bringing a legal action.)

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit Website ^[9]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit Website ^[10]

Civil Resolution Tribunal

Resolve disputes of less than \$5,000 online 24/7 (no need for a lawyer!).

Visit website ^[11]

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Money & Debt

Getting a Credit Card

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Fung, KC ^[1], BC Utilities Commission in October 2019.

We use them all the time — to make purchases, shop online and collect points. But before you get a credit card, learn your rights and how to protect yourself.

What you should know

Your rights are set out in a cardholder agreement

The deal with a credit card is this: you get to buy things now in exchange for a promise to pay later. Basically, the card issuer is giving you a loan. If you fail to pay the money back by a certain date, you're charged interest on top of it. The longer you take to pay back what you borrowed, the more it costs you.

The credit card issuer (Visa or Mastercard, for example) allows you to spend up to a certain amount. That's called your "credit limit."

The important terms of your credit card come in a contract called the **cardholder agreement**. You must accept the terms of the cardholder agreement before using the card.

When you buy something with a new credit card, you're saying you accept the terms of the cardholder agreement. It's no excuse to say you didn't read the agreement. Or didn't understand it.

You must be given certain information

The card issuer must tell you certain things in the credit card application form. This includes:

- the interest rate
- the grace period (the time before interest charges kick in)
- any non-interest charges

With your credit card, you also receive a copy of the cardholder agreement. (The issuer is bound by law to include it.)

The agreement must set out the card's terms and conditions, including:

- the minimum periodic payment
- the credit limit
- how interest is calculated
- your maximum liability if the card is lost or stolen

You'll receive a monthly statement

The card issuer must send you a statement every month. You can choose to get it by mail or email.

The monthly statement must contain important information, including:

- the period covered by the statement
- the balance at the beginning of the period
- a description of each charge and transaction during the period
- the balance owing at the end of the period
- the due date for payment
- the amount you have to pay before the grace period ends to avoid interest

Protect yourself!

Step 1. Keep a record of your account numbers

Find a safe place for your credit card account numbers. Write down the expiration dates on the cards. Keep the toll-free customer service number handy in case you lose your cards.

Step 2. Don't lend your card to anyone

Under the law in BC, your liability for a lost or stolen card is limited. That usually means you're protected. But if you give your card and PIN to someone, you lose this protection.

Step 3. Shred credit cards you're finished with

Shredding your bank statements when you've read them is also a good idea.

Step 4. Be careful about giving out your credit card number

Don't give out the number over the phone or online until you're certain you're dealing with a reputable company. If the company's new to you, search for complaints against it online before you buy anything.

Step 5. Check your bills often

Review your credit card bills as soon as you get them. If you use online banking, check your account frequently.

Step 6. Report questionable charges

If there are any charges on your statement you think might be fraudulent, contact your card issuer right away. They can put a fraud alert on your card and prevent any more charges.

Go deeper

Want to dive deeper into your rights and how to prevent problems with a credit card? Check out our in-depth information on this topic ^[2].

Helpful agencies

If you run into trouble, these agencies may be able to help.

Financial Consumer Agency of Canada

Deals with complaints against federally-regulated banks and trust companies.

Call 1-888-461-3222

Visit website ^[3]

Consumer Protection BC

If you don't think a credit card issuer disclosed the required information.

Call 1-888-564-9963

Visit website ^[4]

Legal advice

A legal professional can help you explore options and decide on your next step.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[5]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.

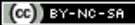
Call 1-877-762-6664

Visit website ^[6]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[7]

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Disputing a Credit Card Bill

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Fung, KC ^[1], BC Utilities Commission in October 2019.

You're looking over your monthly credit card statement and you notice a mistake or an unauthorized charge. Learn your rights and what to do to dispute a credit card bill.

What you should know

Your credit card bill must include certain information, including how to correct errors

Your credit card issuer sends you a **monthly statement of account** — they have to by law. The statement (or bill, as it's called) must include certain information.

The bill must include a description of each charge and transaction during the billing period. Importantly, it must explain how you can correct billing errors. There'll typically be a number to call if you have issues.

The time frame to dispute a charge

Check the credit card bill closely for the time window for you to dispute a charge. Typically, card issuers require you to let them know of any mistakes within 30 days of the end of the period the bill covers.

You can dispute different types of transactions

You can dispute various errors that may show up on your credit card bill:

- **An unauthorized transaction.** When someone who isn't supposed to have access to your credit card makes a charge to your account.
- **An incorrect charge.** When you're charged the wrong amount.
- **An overcharge.** When you're charged an amount more than you agreed to.
- **A double charge.** When you're charged twice.
- **A missing or inaccurate refund.** When you don't get a refund, or get one for the wrong amount.

Work out the problem

Here are the steps to dispute a charge on your credit card bill.

Step 1. Confirm the charge isn't valid

Make sure it's a real mistake. For example, you may not recognize a transaction because it was posted late; or maybe the business uses more than one name. Check your files. Does the charge match your credit card receipts?

Step 2. Contact the business

The quickest way to get a charge off your credit card bill is to speak directly to someone at the business. Call and explain what's happened. Give them any evidence you have (such as a receipt number). They'll often be able to fix things on the spot and refund your money.

Create a paper trail — or an electronic trail — of the dispute. Keep a record of everything that happened. Save copies of all emails and letters.

Step 3. Contact the credit card issuer

If you can't solve the problem with the business — or if you suspect fraud or identity theft — contact the credit card issuer right away. The clock is ticking. There's often a short time window to bring a dispute. (Your monthly statement will tell you if that's the case.)

Many financial institutions have dedicated phone lines just for credit card issues. Do your homework before you call. Have all your details ready, including the date and description of the charge.

Step 4. Pay your bill

It may take your credit card issuer a few weeks to investigate. In the meantime, keep paying your credit card bill. Otherwise, you may be charged interest on the balance. You should get a refund if your dispute is successful.

Step 5. Contact an ombudsperson

You may be wondering, *ombudsperson*, what's that? It's a person who resolves complaints from the public. If you're still having problems, and your credit card was issued by a bank, a further option is the bank ombudsperson. This is a bank employee who helps customers resolve their disputes with the bank.

Check your credit card issuer's ombudsperson policy. The Canadian Bankers Association provides a contact list for the ombudsperson offices for most Canadian banks. Visit their website ^[2].

Go deeper

If you're looking to go further, we have more detail on the steps to dispute a credit card bill. See our in-depth coverage of this topic ^[3].

Who can help

Helpful agencies

Depending on the nature of the problem, you might try this agency.

Better Business Bureau

Receives complaints about local businesses that are members.

Call 1-888-803-1222

Visit website ^[4]

Legal advice

If a large dollar amount is involved, getting legal advice can help you decide what to do next.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[5]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit website ^[6]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[7]

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Taking Charge of Your Credit Report

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Wendy Andersen ^[1], Digby Leigh & Co. and Casey Harris, Barrister & Solicitor in February 2020.

Your credit report shows your history of paying bills and borrowing money. It's used to calculate your credit score. Here are key things to know about how credit reports work.

What you should know

Where your credit report and credit score come from

Say you open a new line of credit at the bank. Or you're late paying your phone bill. For events like these, the bank or business you're dealing with reports the information to a **credit reporting agency**.

There are two main credit reporting agencies in Canada: Equifax and TransUnion. They gather your information into a **credit report**.

You're entitled to a free copy of yours. We offer guidance on how to get it. See ordering your credit report ^[2].

The credit reporting agencies plug your credit information into mathematical formulas to come up with your **credit score**. A high credit score is good. It means you're a good bet to lend money to — because you're seen as likely to pay it back.

Your credit report includes credit information

Your credit report is really the story of you and your money. Your history of borrowing, paying back, and covering your bills. The moment you get your first credit card or take out your first loan, the credit reporting agencies open a file on you.

Your file grows as you do business with banks and companies. These “creditors” regularly report details about you to the credit reporting agencies.

For example, when you open an account. If you miss payments. What your credit limit is.

What counts as “credit information”

Credit information is broadly defined. It includes your history of paying bills and borrowing and paying back money.

But it also includes:

- your name and age
- where you live now and where you've lived in the past
- where you work and roughly how much you earn
- your education and work qualifications
- your spouse's name and age
- your marital status

Any of these details can appear in your credit report. So can information collected from public records — for example, court or marriage documents.

What can't be in your credit report

Certain information *can't* be in your credit report. Including:

- information about members of your family (other than your spouse)
- your race, religious beliefs, skin colour, sexual orientation, ethnic background, or politics
- criminal convictions that have been discharged or pardoned
- criminal charges that were withdrawn or dismissed

As well, some information can't be in your report if it's more than six years old:

- a court judgment against you (unless you still haven't paid the debt)
- a criminal conviction
- a bankruptcy (unless you've been bankrupt more than once)
- any other negative information about you

If you notice something in your credit report that shouldn't be there, we can help you get it fixed. See fixing a mistake in your credit report ^[3].

Your credit score can help you understand your credit report

Credit reporting agencies use a formula to generate a **credit score** from the information they have on you. Banks, businesses, and others look at it to decide whether to lend you money.

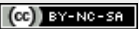
Your credit score doesn't appear on your credit report. But you can order it from either credit reporting agency. Visit Equifax ^[4] or TransUnion ^[5].

Credit reporting agencies don't have to say how they calculate credit scores. And lenders often have their own ways of doing the math. So your credit score might be slightly different depending on who came up with it.

We offer guidance on how to boost your score. See improving your credit score ^[6].

Go deeper

If you're interested, we have more on everything we've covered here. See our in-depth information on taking charge of your credit report ^[7].

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Co-Signing or Guaranteeing a Loan

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mario Garcia ^[1], CarbonCure Technologies in December 2019.

Before lending money to someone, a lender may ask for a third party to **co-sign** or **guarantee** the loan. Learn how to protect yourself when co-signing or guaranteeing a loan — and how to deal with problems that arise.

What you should know

How co-signing and guaranteeing are different

When you **co-sign** a loan, you and the borrower are jointly responsible for the debt. You're both on the hook for the full amount. If one of you misses a payment, the lender can ask either of you for the money.

When you **guarantee** a loan, you promise to pay the debt of the borrower if they don't pay. Before asking you, the lender must first demand payment from the borrower.

In both cases, the lender can come after you if the borrower defaults. But if you co-sign, the lender can come *directly* to you for payment.

Guaranteeing a loan

If a lender is nervous about providing a loan, they may ask for a **guarantee**. This is a promise by another person to pay the debt if the borrower can't. The borrower is called the "principal debtor." The person guaranteeing the debt is called the "guarantor."

As a guarantor, you only become responsible for the debt if the borrower defaults on an obligation. For example, by missing a loan payment. The lender must ask for payment from the principal debtor before coming to you.

Your responsibilities also depend on the type of guarantee you give. There are three types:

- **Specific or limited guarantee.** You agree to be responsible for a certain amount for a certain thing.
- **Continuing guarantee.** You agree to be responsible for a loan (or loans) for as long as the guarantee lasts.
- **All-accounts guarantee (or unlimited guarantee).** You agree to pay whatever the principal debtor owes.

Co-signing a loan

When you **co-sign** a loan, you and the borrower are now equal owners of the debt. You are **joint debtors**. If one of you misses a payment, the lender can expect it from the other. And the lender needn't ask the borrower first. They can come directly to you.

For example, say you co-sign a \$5,000 loan for your daughter. You are both responsible for paying back the full amount. If she misses a payment after repaying \$1,000, the lender can ask you for the outstanding payments. The lender doesn't need to ask your daughter first.

Pro tip: Check the loan agreement for an **acceleration clause**. It lets the lender demand immediate payment of the whole loan if the borrower defaults. So one missed payment could mean the whole loan becomes due.

Protect yourself

Step 1. Ask questions before guaranteeing or co-signing a loan

Before putting yourself at risk, ask questions like:

- Why does the lender want a co-signer or guarantor?
- How high is the risk the borrower will have trouble making payments?
- What'll happen if you don't sign?
- Can you afford to pay off the loan if the borrower can't?

Step 2. Ask the lender to keep you informed

Ask the lender (in writing) to keep you informed in writing of all activity on the loan. This can help you catch a problem before it's too late.

Step 3. When the loan is paid off

Once the loan is fully repaid, take steps to end your responsibility. For example, ask the lender to return the original loan document to you. Or ask for a document releasing you from all liability for the debt. This could be a letter of acknowledgment, a copy of the borrower's discharge, or a release.

Work out problems

Step 1. Consider whether you are liable

In some cases you may not be responsible for a debt if you guarantee or co-sign a loan. For example, a lender (or borrower) can't use force, fraud, duress or illegal means to get you to sign.

The law allows certain defences for guarantors that aren't open to co-signers. For example, if the lender and principal debtor make changes to the guarantee that are harmful to the guarantor, the guarantor may not be liable.

Step 2. Negotiate a reduced payment

Say you've co-signed or guaranteed a loan, the borrower has defaulted, and the lender is asking you to pay up. What do you do if you can't afford it? One option is to negotiate a reduced payment. The lender may agree to release you from liability if you pay a portion of the loan.

Step 3. Negotiate to limit your liability

Consider negotiating with the lender to limit your liability for the loan. For example, the lender may agree to release you from responsibility if:

- someone else is willing to replace you as co-signer or guarantor
- the borrower has already repaid most of the loan
- there are enough other co-signers or guarantors to satisfy the lender

Step 4. Make an agreement with the other borrower

As a guarantor or co-signer, you can make a separate contract with the other borrower. In it, you can set out what happens in the event of a default. For example, you could say that the other borrower must reimburse you for any payments you make if they default. This is called “indemnifying” you.

Go deeper

If you want to go further, we have more on co-signing or guaranteeing a loan. See our in-depth coverage of this topic ^[2].

Who can help

Helpful agencies

This agency can help with some types of borrowing problems. **Consumer Protection BC** can help if you're having trouble with a debt collector or debt collection agency.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[3]

Legal advice

If you get into a tricky situation co-signing or guaranteeing a loan, consider getting legal advice.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[4]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit website ^[5]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[6]

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Collecting on a Debt

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Robert Rogers^[1], Hamilton Duncan, and Adam Roberts^[2], Barrister & Solicitor in January 2020.

No one enjoys it when they're owed money and don't get paid. Learn the options available to you when collecting on a debt, and the steps to deal with problems.

What you should know

You have options to collect on a debt

To collect on a debt, you can:

- try to collect yourself
- hire a collection agency
- hire a lawyer to collect the debt for you

Collection agencies typically charge between 25% and 50% of the amount of the debt they recover.

Lawyers generally charge a flat hourly rate. But they may also work for a “contingency fee.” This means they get a percentage of whatever they recover. So if they don't collect anything, you don't pay. But you may still be on the hook for any expenses.

You can't take the debtor's property

Whatever approach you decide on, you can't take the debtor's property — except through legal action. If you sue the debtor and get a judgment in your favour, you may be able to take their property as repayment. We explain this elsewhere. See our information on repossessing property^[3].

Nor can you harass the debtor. For example, you can't use threatening, profane, or intimidating language. We cover this in some detail in our information on debt collectors. Here's a link to that information^[4].

There's a time limit to sue to collect a debt

In BC, there's a basic **limitation period** of two years for starting a legal action. You can't start a lawsuit more than two years after the claim is "discovered." If the debtor hasn't made a payment or acknowledged the debt in more than two years, you may be too late to collect.

If the time limit is approaching on a debt owed to you, consider starting legal action right away. That way, you'll keep your right to collect. If you aren't sure about the time limit, consider getting legal advice.

Work out the problem

If you run into problems collecting on a debt, there are steps you can take.

Step 1. Decide on a course of action

Collecting debts can be a pain. As a first step, ask yourself if it's worth the effort. For example, maybe the debt is very small. Or the debtor is unlikely to be able to repay anything. In either case, it may cost you more time and money to collect than the debt is worth.

Step 2. Collect information on the debt

You should gather information and documents relating to the debt. These include:

- the name and contact information of the debtor and any other person or company responsible for paying the debt
- how and when the debt arose
- the ability of the debtor to pay
- the reason the debt hasn't been paid, if you know

The information and documents will help you collect the debt.

Step 3. Contact the debtor

Reach out to the debtor by phone, email or text. Remind them of the debt and ask what they can do to pay it. If the debtor agrees to pay based on a payment schedule, put the agreement in writing. Get them to date and sign it.

Step 4. Send a demand letter

A **demand letter** is a letter insisting on payment. In it, you can offer payment options that are acceptable to you. For example, payment by credit card or e-transfer.

Your letter can't threaten to take improper action to collect. But you can say you're considering legal action. You can also give the debtor a time window to make payment arrangements (for example, 30 days).

A template is always a good place to start. We have a loan demand letter template ^[5].

Step 5. Consider legal action

If the debtor doesn't pay, you may want to bring a legal action. You can sue in British Columbia if the debt arose in BC, or if the debtor lives or carries on business in BC.

Just starting a lawsuit will sometimes make the debtor pay. As well, after starting the action, you may be able to collect from the debtor's employer and others who owe money to the debtor. We explain the concept of "garnishment" elsewhere. See our information on garnishment ^[6].

If the amount you're trying to collect is less than \$5,000, you can bring your claim to the Civil Resolution Tribunal. This is an online system designed for people to bring claims on their own. If your claim is between \$5,000 and \$35,000, you'd sue in Small Claims Court.

For amounts over \$35,000 you'd sue in BC Supreme Court. You can also sue in Small Claims Court for up to \$35,000 and forget the rest.

Who can help

Legal advice

There are options for free legal advice.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[7]

Access Pro Bono's Free Legal Advice

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Call 1-877-762-6664

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People's Law School

See more options for free or low-cost legal help.

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When a Creditor Wants to Take Money From Your Wages or Bank Account

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Rachel Lammers^[1], Morelli Chertkow LLP in July 2018.

If you don't repay a debt, the creditor might try accessing money owed to you by someone else. The legal process in play is called **garnishment**. Learn how it works.

What you should know

If a creditor tries to garnish your wages

If you don't pay back a debt, the person you owe can try having a portion of your wages paid to them. This is called **garnishing wages**.

The garnishing process

There are several steps the person you owe (the **creditor**) must follow. To begin, they must bring a legal action against you for the debt. They must get a **court judgment** in that action to be able to garnish your wages.

As well, the creditor must apply for a **garnishing order**. This is a separate court order. It requires a third party who owes money to you (in this case, your employer) to make payments to the creditor.

If the garnishing order is made, the creditor serves that order on your employer. The employer must send a portion of your wages to the court registry.

The creditor then must apply to the court to have the money paid out to them.

Laws to protect you if your wages are garnished

If your wages are garnished, there's a limit to how much of your wages a creditor can take. Usually, that limit is 30% of your net income.

However, if the creditor is claiming spousal or child support payments, they can take up to 50%.

A garnishing order applies only to wages payable within the next seven days. So if the creditor wants to tap into what you're owed in the next pay period, they must apply for a new garnishing order. (There's an exception for support payments.)

An employer isn't allowed to dismiss or demote a worker just because the employer receives a garnishing order. If that happens to you, you should seek legal advice. There are options for free or low-cost legal advice^[2].

Meanwhile, if having your wages garnished causes you serious financial hardship, you can apply to court for relief. We explain how shortly.

If a creditor tries to garnish your bank account

If you don't pay a debt, a creditor may try to get funds from your bank account. This is called **garnishing a bank account**.

There's no limit on how much money can be garnished from a bank account. All the money in the account — up to the amount of the judgment — can be taken.

And there's a difference in the process as well.

This type of garnishment also starts with a creditor bringing a legal action against you to confirm the debt.

However, the creditor can seek a garnishing order for your bank account at the same time as they start the debt lawsuit against you. No court hearing is required, and no notice is owed to you. These types of garnishing orders often take debtors by surprise.

Money that's garnished from a bank account doesn't go directly to a creditor. It gets paid into court. The creditor can't access it until they get a judgment against you for the debt.

Some types of benefits are protected

Any government benefits you receive cannot be garnished — except by some government agencies.

For example, income assistance received by a debtor cannot be garnished. But there's an exception for the Family Maintenance Enforcement Program, in enforcing a court order for child and spousal support.

Work out the problem

There are steps you can take if a creditor gets a garnishing order against you.

Step 1. Apply to set aside the garnishing order

You can apply to court to set aside (or “release”) a garnishing order.

First, you'll need to prepare a court form to start the application. Your material will need to explain why it's “just in all the circumstances” to release the garnishing order. For example, you might argue that the order causes you serious financial hardship.

Step 2. File and serve the application

Next, you file the application in court, and serve it on the other party.

Step 3. Attend the court hearing

At your hearing, you explain to the judge why they should release the garnishing order.

We go into detail on these steps and provide links to the court forms involved. See our in-depth information on this topic ^[3].

Who can help

Helpful agencies

Consider reaching out to this agency for help with managing your money.

Credit Counselling Society of BC

A non-profit society that helps people better manage their money and debt.

Call 1-888-527-8999

Email: info@nomoredebts.org

Visit website ^[4]

Legal advice

Getting legal advice can help you clarify how to proceed.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

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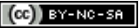
Call 1-877-762-6664

Visit website ^[6]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[2]

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You Have Options for Getting Out of Debt

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Robert Rogers^[1], Hamilton Duncan in October 2017.

Being in debt is stressful, and can seriously affect your daily life. The good news is there are options for getting out of debt — and people who can help.

What you should know

You have options for getting out of debt

Whether you're deep in the red or behind on a payment or two, being in debt is no fun. And coming up with a plan for reducing your debt can feel overwhelming.

But you have options for getting out of debt. They include things you can do yourself, such as making a budget or negotiating with your creditors. We'll walk you through them shortly.

There are people who can help

As well, there are professionals who can help you get out of debt. (There are also shady players offering “debt relief services” to be aware of. More on those in a moment.)

Credit counsellors help people manage their finances and reduce their debt. They can help you improve your financial habits and create a plan to repay your debts. Many work for non-profit agencies, where their services are free or low-cost.

A credit counsellor can help you make a **budget**. This helps you understand how much you can afford to put towards your monthly debt payments.

They can also help you improve your financial skills. They can teach you how to avoid going into debt in the future.

As well, credit counsellors can help you put together a **debt repayment plan**. This involves lumping together all your debt payments into one monthly payment. You pay that amount to the credit counselling agency. The credit counsellor then pays your creditors.

To make the plan, the credit counsellor will call your creditors on your behalf and propose a payment schedule.

Under the law, anyone who represents you in negotiations with your creditors must be licensed as a **debt repayment agent**. This includes credit counsellors.

You can check with Consumer Protection BC to make sure anyone you hire to negotiate with your creditors has a licence to be a debt repayment agent. Their website features a licence search^[2].

Be on the lookout for bad actors

You may come across companies offering “debt relief services.” Be careful. Often, they’re trying to scam you.

Some “guarantee” they can negotiate a deal with your creditors. But a guarantee isn’t possible. Your creditors might turn down a settlement proposal. And you’ll be left on the hook for the fee for the “debt relief service.”

Some companies offer a loan to allow you to repay your debts until they can “negotiate a better deal with your creditors.” But these loans can come with fees, set-up costs, and high interest rates.

Some companies claim they can “fix” or “repair” your credit score. But the steps they can take you can do yourself, at no cost (for example, fix information on your credit report that is inaccurate or dated).

Licensed insolvency trustees help with formal legal processes

One more note on people who can help. A **licensed insolvency trustee** provides advice to people on getting out of debt. They’re professionals regulated by the government office that oversees bankruptcies.

An insolvency trustee can help you decide on a strategy to get out of debt. If you decide to make a consumer proposal or declare bankruptcy (explained shortly), you must hire a licensed insolvency trustee.

The federal government’s website includes a way to search for an insolvency trustee in your area. Find a licensed insolvency trustee ^[3].

Work out the problem

There are several options for getting out of debt.

Option 1. Budgeting out of debt

To tackle your debts, you need to understand your financial situation. Your first step should be to list your **assets** (what you own) and **debts** (what you owe).

Then you should make a **budget**. A budget is a plan for how you will spend money over a period of time (one month, for example). It shows how much you expect to get and spend over that period.

First, list your monthly **income**. This includes income from your job, pensions, or other sources.

Next, list your **expenses**. Some common monthly expenses are:

- mortgage payment or rent
- phone bill
- utility bill
- groceries
- daycare

Compare your totals for income and expenses. If you’re spending more than what’s coming in, try to cut back on any non-essential spending. For each expense, ask yourself: do I want this, or do I need it?

We provide more detailed guidance on making a budget. See budgeting out of debt ^[4].

Option 2. Negotiate with your creditors

First, a caution. Have more than two years passed since you made a payment on a debt or the creditor demanded payment? If so, the creditor may have lost their legal right to enforce the debt. You should seek legal advice before contacting the creditor. See options for legal help ^[5].

If you're having trouble making payments, consider contacting your creditors. Show them the budget you've prepared. Make them an offer based on what you can afford. Your creditors may agree to change the terms of your agreement to help you pay.

We offer step-by-step guidance on negotiating with your creditors. See negotiating payment terms ^[6].

Option 3. Consolidate your debts

Consolidating your debts means combining them into a single payment. There are three main ways to do this:

- a consolidation loan
- a line of credit
- a debt repayment plan

A **consolidation loan** is a single, new loan used to pay off multiple debts. Usually, the interest rate (and monthly payment) is lower than when paying multiple debts.

Opening a **line of credit** for the amount you owe is another way to consolidate your debts. You use the funds in the line of credit to pay off your debts. Usually, the interest rate on a line of credit is lower than when paying multiple debts.

With a **debt repayment plan**, you set up an account with a credit counselling agency. You deposit a monthly amount into the account. The credit counsellor uses this amount to pay your creditors until your debt is erased.

We walk you through each of these options in more detail. See consolidating your debts ^[7].

Option 4. Negotiate a debt settlement

With a **debt settlement**, you pay your creditors a lump sum that is less than the full value of what you currently owe. This can range between 20% and 80% of the debt currently owed. (Settlements at the low end of this range are very rare.)

A debt settlement only works if you have a good reason why you can't pay the full amount you owe. For example, maybe you lost your job, or have a serious health problem.

You'll have to persuade your creditors it's in their interests to accept your lower offer, rather than a smaller amount or nothing at all (if you go bankrupt).

You can get help with negotiating a debt settlement. Non-profit credit counselling agencies offer these services. (So do for-profit companies, some of which don't have your best interests at heart. So be careful.)

We have in-depth information on debt settlements. See negotiating a debt settlement ^[8].

Option 5. Make a consumer proposal

A **consumer proposal** is an offer you make to your creditors to settle your debts. If they accept your proposal, you pay them a portion of what you owe and they forgive the rest.

It's a formal, legally binding process overseen by a licensed insolvency trustee. It can take up to five years. Some of your assets may need to be sold. We explain the process in detail. See making a consumer proposal ^[9].

Option 6. Declare bankruptcy

Bankruptcy is a legal process where you give up most of your assets to get rid of your debts. Going bankrupt is a long process with serious consequences. It's the most drastic option for getting out of debt.

A licensed insolvency trustee must file an application for you with a government office. The trustee guides you through the process. They sell your assets (except for a few that are exempt) to pay off your creditors. When the process is complete, you're "discharged" from bankruptcy. We walk you through declaring bankruptcy ^[10].

Who can help

Helpful agencies

These agencies may be able to help in your efforts to get out of debt.

Credit Counselling Society of BC

A non-profit society that helps people better manage their money and debt.

Call 1-888-527-8999

Email: info@nomoredebts.org

Visit website ^[11]

Consumer Protection BC

Regulates "debt repayment agents" in the province.

Call 1-888-564-9963

Visit website ^[12]

Office of the Superintendent of Bankruptcy

Oversees consumer proposals and bankruptcies.

Call 1-877-376-9902

Visit website ^[13]

Canadian Association of Insolvency and Restructuring Professionals

Represents licensed insolvency trustees in Canada.

Call 1-647-695-3090

Visit website ^[14]

Legal advice

Getting legal advice can help you decide on your next step.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[15]

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Call 1-877-762-6664

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Dealing with Debt Collectors

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Bruce Hallsor, KC ^[1], Crease Harman LLP and David Madani ^[2], Swadden & Company in March 2020.

If you're behind on debt payments, the law limits how a debt collector can contact you and others around you. Learn your rights and steps to take to protect them.

What you should know

Collectors versus agents (and why that matters)

First, a bit of terminology. A **debt collector** is someone who is attempting to collect a debt. The laws we explain here apply to any person or business that fits this description.

A **collection agent**, meanwhile, is someone whose business it is to collect debts for other parties. Someone who is owed money (a creditor) might decide to "sell" the debt to a collection agent.

So what, you wonder? Two reasons. One is collection agents are known for their aggressive tactics. (They make money only if they recover some of the debt.) Many of the laws explained here are to protect you from these tactics.

Second, collection agents must be *licensed* by Consumer Protection BC. If a collection agent is treating you badly, Consumer Protection BC has more scope to penalize them.

A debt collector can't harass you

Now, for a few rules that apply to *any debt collector*, including collection agents.

First, they can't communicate with you in a way that amounts to **harassment**.

Harassment can include:

- using threatening, intimidating, or profane language
- exerting excessive or unreasonable pressure
- publishing or threatening to publish your failure to pay

For example, a debt collector can't phone your home every hour demanding payment. This would be exerting excessive or unreasonable pressure.

This rule also covers members of your family, household, a relative, neighbour, friend, or your employer.

As well, a debt collector can't break criminal laws. For example, they can't:

- threaten to harm you or your property
- abuse their authority to get money from you
- convey false information with the intent to alarm you

They're also not allowed to be deceptive. For example, a debt collector can't send you letters that look like they come from the government when they don't.

Additional restrictions the law puts on debt collectors

A debt collector must send you written notice of the debt before calling you. (One exception: they can call you before sending notice if they're only trying to find out your home address or email.)

They must wait five days after sending notice before calling.

As well, debt collectors are only allowed to contact you at certain times of day. They mustn't contact you by phone or in person:

- from Monday to Saturday before 7 am or after 9 pm
- on a Sunday before 1 pm or after 5 pm
- on a statutory holiday at any time

A debt collector can only contact you at work if:

- They're trying to find out your home address, phone number, or email (if they don't have that information already).
- You permit them to.
- They tried to reach you at home, by phone, or by email, but failed to connect. If that's the case, they're still limited to one verbal attempt to contact you at work.

There are also strict limits on when a debt collector can contact your friends and family. A collector can only contact them to request your home address, phone number, or email.

Two exceptions to this rule are where:

- the person being contacted has **guaranteed** the debt, and is being contacted about the guarantee
- you've given permission to the collector to contact the person about the debt

You can ask the collector to only communicate with you in writing. Or, you can request the collector communicate directly with your lawyer.

Consumer Protection BC has forms you can fill out and give to the collector for these requests. See the Consumer Protection BC website ^[3].

If you dispute the debt

You can dispute a debt. You might do this where the debt has already been paid, it's someone else's debt, or the debt collector is asking for more than you owe.

When you dispute a debt, you're saying you would like the creditor (the party who is owed money) to take the matter to court. Once you do that, the debt collector must stop communicating with you.

To dispute a debt, you need to contact the creditor in writing. Consumer Protection BC provides a form you can use. Visit their website ^[4].

Meanwhile, if you think the debt collector has the wrong person, you should tell them in writing. The Consumer Protection BC website has a form you can use for this, too. It's on their website ^[5].

Work out the problem

There are steps you can take to work out a problem with a debt collector.

Step 1. Keep a record of all communications

If you run into problems with a debt collector, start with creating a paper trail. Keep records of all your correspondence. This includes anything they say to you — or anyone else — about the debt you owe.

Record the date, time, and content of any phone calls or messages you receive.

Step 2. Research the debt collector

Confirm the identity of the debt collector. Use caller ID or tracing if you have to.

If it's a **collection agent**, they must be licensed by Consumer Protection BC. You can use the licence search on their website to find out if the agent is properly licensed. Visit the Consumer Protection BC website ^[6].

Step 3. Contact the debt collector

First, a caution: If you're being asked to pay a debt and you think the limitation period may have expired, seek legal advice *before* contacting the debt collector. If you contact the collector, you may restart the limitation period. (There are options for free or low-cost legal advice ^[7].)

Tell the debt collector you want to see written notice of the debt, if you haven't gotten it already. (They're legally required to wait five days after giving you written notice before they call you.)

Let the collector know you're aware of the debts and want the calls to stop. Tell them you'll make a complaint to Consumer Protection BC if the calls continue. You can also say you'll take legal action if there is any further harassment.

You can request the collector only contact you in writing or through your lawyer. They're legally obliged to cooperate.

Also, consider sending a written letter outlining your proposal for paying back the debt. The collector may agree to change the terms to make it easier for you.

Step 4. Complain to Consumer Protection BC

If the harassment continues, you can make a complaint to Consumer Protection BC. They oversee debt collectors and license collection agents in the province.

You can contact them by phone or make a complaint. See the Consumer Protection BC website ^[8].

Go deeper

Want to go further? We offer more detailed guidance on your rights and how to deal with debt collectors. See our in-depth coverage of this topic ^[9].

Who can help

Helpful agencies

Consider reaching out to this agency for help in dealing with debt collectors.

Consumer Protection BC

They can help if you have a complaint about a debt collector.

Call 1-888-564-9963

Visit website ^[10]

Legal advice

Getting legal advice can help you clarify how to proceed.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[11]

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Understanding Warehouse Liens

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Nathan Ganapathi^[1] and Anna Kurt^[2], Ganapathi Law Group in October 2017.

When someone leaves goods at a storage facility, the business has a legal claim on the goods. This is called a “warehouse lien”. It can help the business recover their fees.

What you should know

A warehouse lien helps a storage facility get paid

Under the law in BC^[3], a **warehouse lien** is a legal claim made on goods stored with a “warehouser”. A warehouser is someone in the business of storing goods. The warehouse lien helps ensure a warehouser gets paid for storing goods.

If the warehouser isn’t paid, the lien allows them to keep the stored goods and sell them to recover their storage fees and related costs.

How a warehouse lien is established

Warehousers automatically have a lien on goods left with them for storage when the goods are left by:

- the owner of the goods,
- someone with the owner’s authority, or
- any person entrusted with the goods by the owner.

In the third case, there is an additional requirement for the warehouser to preserve their lien. Where the goods were left for storage by a person entrusted with them by the owner, the warehouser must give **written notice** of the warehouse lien to the owner of the goods. The warehouser must give this notice within *two months* of the goods being left with them.

If someone has registered a security interest in the goods, the warehouser must also give the notice of the lien to them.

This notice must include:

- a brief description of the goods,
- the location of the warehouse where the goods are stored, the date they were left there, and the name of the person who left them, and
- a statement that the warehouser is claiming a warehouse lien on the goods.

If a warehouser does not get paid

If a warehouser does not get paid storage fees they are due, the warehouser can sell by public auction any goods on which they have a warehouse lien. In doing so, they must follow a process set out under BC law^[3].

The warehouser must give written notice of their intention to sell

First, the warehouser must give written notice to specific parties that they **intend to sell the goods**. These parties include the owner of the goods, the person owing the storage fees, and anyone who had a registered security interest in the goods at the time the goods were left for storage.

The notice must describe the goods and the storage arrangements, as well as:

- an itemized statement of the warehouser’s charges, showing the amount due at the time of the notice,

- a demand to pay the charges due by a certain date, not less than 21 days from the delivery of the notice, and
- a statement that, unless the charges are paid by the date in the notice, the goods will be sold by public auction at a time and place set in the notice.

The warehouse must advertise the public auction

If the warehouse's charges are not paid by the date in the notice, the warehouse must **advertise the public auction**. The ad must be published at least once a week for two consecutive weeks in a newspaper in the local area where the auction is to be held.

The warehouse must wait at least 14 days after the first ad is published before holding the public auction.

Anyone with an interest in the goods can pay off the debt

At any time before the goods are sold at auction, any person claiming an interest in the goods can pay off the warehouse lien. This involves paying the storage fees that are owing as well as the warehouse's expenses in preparing for the sale.

If this happens, the warehouse must deliver the goods to the person who paid the debt — as long as that person is entitled to the goods. Otherwise, the warehouse must keep the goods pursuant to the contract they signed when the goods were left with them.

What happens to the sale proceeds

Where the goods are sold at auction, the warehouse must satisfy the warehouse lien from the sale proceeds. This involves covering their charges for storing and preserving the goods, and any reasonable charges from the sale.

If any money is left after these charges are paid, the warehouse must pay it to the person entitled to it. If it's not clear who is entitled to any remaining money, the warehouse must pay it into court.


Common questions

Can self-storage operators claim a warehouse lien?

No. BC law ^[3] defines "warehouse" as a person in the business of storing goods "as a bailee for hire." A bailee for hire is someone who takes care of property left with them as someone would take care of their own property. Self-storage facilities do not meet this definition.

What happens to a warehouse lien if the warehouse gives the goods up?

To claim a warehouse lien, a warehouse must have the goods. If a warehouse has returned the goods to the person who left them before being paid for storing them, the lien is no longer valid.

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Financial Help for People with Disabilities

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by David Butcher KC ^[1], Wilson Butcher in June 2018.

People with disabilities have options to get financial help from the government. Learn about the government programs available, and where you can turn to get help and find more information.

What you should know

Disability assistance for “persons with disabilities”

Someone can get **disability assistance** from the BC government if they are designated as a “person with disabilities.” If you qualify for disability assistance, you get a higher monthly income than someone on basic income assistance in BC. You also get a wider range of medical benefits (such as coverage for health equipment), a higher asset limit (meaning you can own more and still qualify for assistance), and more income exemptions.

Qualifying for the benefit

To qualify for disability assistance:

- You must be at least 18, live in BC, and meet immigration rules.
- You must have income and assets within certain limits.
- Your disability must be severe, expected to last at least two years, and restrict your daily living activities.
- You must also need help from another person, an assistive device, or an assistance animal.

Applying for the benefit

To get disability assistance, you apply to the government Ministry responsible for welfare in BC, the Ministry of Social Development and Poverty Reduction. To start, you apply for welfare and attend an eligibility interview.

If you meet the Ministry’s basic criteria, you complete a **persons with disabilities (PWD) application form**. The form includes portions for your doctor and other health professionals to complete.

For more information, see the Ministry’s website at gov.bc.ca/sdpr ^[2] or call 1-866-866-0800.

Shortly, we describe options for getting help in applying for benefits.

Tax benefits for people with disabilities

Several tax benefits are available to people with disabilities. A key one is the **disability tax credit**. It helps a person with disabilities or those supporting them reduce the amount of income tax they may have to pay.

For someone to be eligible for the disability tax credit, a medical practitioner must certify the person has a severe and prolonged impairment in physical or mental functions. The Canada Revenue Agency website has details at cra-arc.gc.ca/disability ^[3].

Tip Being eligible for the disability tax credit can open the door to other government programs such as the registered disability savings plan (explained shortly) and the child disability benefit ^[4] (a tax-free monthly payment made to families with a child who has a severe and prolonged disability).

Savings plan for people with disabilities

A **registered disability savings plan** (RDSP) is a savings plan intended to help parents and others save for the long-term financial security of a disabled person.

For every \$1 put in an RDSP account, the federal government can match with up to \$3. This is the Canada Disability Savings Grant.

For people living on a low income (less than \$30,000), the federal government will put in \$1,000 each year for 20 years. This is the Canada Disability Savings Bond.

Anyone under 60 who is eligible for the disability tax credit can establish an RDSP. For more information, see the federal government website at canada.ca/rdsp ^[5].

Disability benefits for workers

The Canada Pension Plan (CPP) provides benefits to workers who become disabled. If you become disabled and cannot work at any job on a regular basis, you may qualify for a monthly **disability benefit under the CPP**.

The amount of your disability benefit is based on how much you contributed to the Canada Pension Plan while working. The federal government website provides current benefit amounts at canada.ca/cpp ^[6].

Qualifying for the benefit

To qualify for a CPP disability benefit:

You must be under age 65.

You must have contributed to the Canada Pension Plan for at least four of the last six years (or three of the last six years if you have contributed for at least 25 years).

The government must find you have a physical or mental disability that is both severe and prolonged.

“Severe” means you have a mental or physical disability that regularly stops you from doing any type of gainful work.

“Prolonged” means your disability is long-term and indefinite or is likely to result in death.

Applying for the benefit

You must apply in writing for the CPP disability benefit. To get the application form, go to canada.ca/cpp ^[7] or call toll-free 1-800-277-9914.

Shortly, we describe options for getting help in applying for benefits.

Other government benefits for disabled workers

Employment Insurance benefits

Disabled workers can also seek help through the Employment Insurance (EI) program. EI provides benefits to people who lose their jobs. It also helps those who can't work because of sickness, or need time off work to care for a family member.

You may be eligible to get up to 15 weeks of **EI sickness benefits** if you're unable to work because of sickness or injury.

EI also offers **family caregiver benefits** and **compassionate care benefits**. These can help if you have to miss work temporarily to care for a family member who is critically ill or injured, or gravely ill with a significant risk of death.

For more on EI benefits, see the federal government website at canada.ca/ei ^[8].

Workers compensation benefits

You may be able to get compensation from WorkSafeBC^[9] if you're a victim of a work accident or have a work-related illness.

Support for return to work

The Canada Pension Plan offers a voluntary program^[10] to help CPP disability benefit recipients return to work. The program offers vocational counseling, financial support for training, and job search services.

Financial help for students with disabilities

Several government programs offer financial help for students with disabilities.

Grants and bursaries for students with disabilities

The federal government offers a grant program for students with a permanent disability^[11]. It is designed to help with the cost of post-secondary education.

The BC government offers a supplemental bursary^[12] for students with a permanent disability. Another BC grant program, the access grant^[13], helps students with a permanent disability by replacing \$1,000 in BC student loan funding.

The federal government also offers a grant program for services and equipment^[14] for students with a permanent disability. This is to help disabled students who require exceptional education-related services or equipment.

If you have used the funds available through that federal grant program, you can apply to receive the BC government's assistance for exceptional services and equipment^[15] for disabled students.

Forgiven student loans

The BC government offers a student loan repayment assistance plan for borrowers with a permanent disability^[16]. This plan helps you manage your student loan debt by reducing your monthly payment and letting you pay back what you can reasonably afford.

Students with a severe permanent disability can apply to have their student loans **forgiven**^[17] (so they don't have to repay the loans). To qualify, the disability must prevent them from working and from participating in post-secondary studies for the rest of their life.

Tip The BC government's StudentAid BC^[18] website has information on student loans, grants, and scholarships. Search the site for "disability" to find information on programs for students with disabilities.

Common questions

The government turned down my application for disability assistance. Can I challenge it?

Yes. If the BC Ministry of Social Development & Poverty Reduction denies you disability assistance or reduces your benefits, you have the right to challenge their decision. See our information on reconsiderations and appeals of income assistance ^[19].

A warrant is out for my arrest. Can I get disability assistance?

Not if you have an outstanding arrest warrant for an indictable or hybrid offence anywhere in Canada. If you do, you cannot get income or disability assistance in BC. You must first do something about the warrant. See our information on outstanding warrants and welfare ^[20].

Who can help

With applying for disability benefits

For help in applying for disability benefits, you could seek out an **advocate**. Advocates are community workers trained to help people, including with the paperwork involved. PovNet has a Find an Advocate Map at povnet.org ^[21]. Clicklaw's HelpMap ^[22] lists dozens of advocates in BC.

At **student legal clinics** in the Lower Mainland and Victoria, law students help people with disabilities who cannot afford a lawyer. The students help with applying for disability benefits and with appeals. In Victoria, call 250-385-1221 or visit uvic.ca/law/about/centre ^[23]. In the Lower Mainland, call 604-822-5791 or visit lslap.bc.ca ^[24].

More information


Disability Alliance BC has help sheets on BC disability benefits ^[25] and Canada Pension Plan disability benefits ^[26].

- Call 1-800-663-1278
- Visit website ^[27]

Legal Aid BC offers free booklets on "How to Apply for Welfare ^[28]" and "Welfare Benefits ^[29]" that explain disability assistance from the BC government.

- Call 1-866-577-2525
- Visit website ^[30]

The **Canadian government** offers a Benefits Finder ^[31] at benefitsfinder.services.gc.ca that asks several questions about your situation and gives a list of possible government benefit programs, with links to more information.

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Income Assistance: Reconsiderations and Appeals

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Alanna Valentine and Marilyn McNamara ^[1], Employment and Assistance Appeal Tribunal, and Lillian Budac and Melissa Bauer ^[2], Ministry of Social Development and Poverty Reduction in January 2018.

The government provides welfare benefits to those in financial need. If the government denies you welfare or reduces your benefits, there are steps you can take to challenge the decision.

What you should know

You have the right to challenge a decision on welfare benefits

Many reasons might cause you to seek financial help from the BC government — a lack of available jobs, a family breakup, an illness or disability. The government provides **welfare benefits** to pay for shelter and daily living costs to those who qualify. These benefits include income assistance, disability assistance, and hardship assistance. The government also pays **supplements** for certain things, such as unexpected needs and dental expenses.

These government benefits are managed by the Ministry of Social Development & Poverty Reduction ^[3]. The Ministry may decide to refuse, reduce or stop your monthly welfare benefits or a supplement. You have the right to challenge their decision.

A challenge of a Ministry decision has three stages

To challenge a Ministry decision:

- If you disagree with a Ministry decision, you can ask for a **reconsideration**. This is an internal review by the Ministry.
- If you disagree with the reconsideration decision, you can **appeal** to the Employment and Assistance Appeal Tribunal. The tribunal is an independent body similar to a court.
- If you disagree with the decision of the tribunal, you can go to court to ask for a **judicial review** of that decision.

This information explains each of these stages.

Work out the problem

Step 1. Ask for the Ministry's decision in writing

As soon as you find out the Ministry made a decision you don't agree with, ask the Ministry to give you their decision and the reasons for their decision in writing. Ask what law or policy they based their decision on. Also ask for copies of everything they used to make the decision. You have a right to this information.

Tip Find an **advocate**. Advocates are community workers trained to help people. An advocate can tell you if challenging the government's decision might succeed. They can also help you with the paperwork involved. See below for how to find an advocate.

Step 2. Ask for a reconsideration — within 20 days

If you disagree with the Ministry's decision, ask for a **reconsideration**. You can submit your request online at myselfserve.gov.bc.ca ^[4]. Or you can get a **request for reconsideration** form from the Ministry.

The deadline to ask for a reconsideration is **20 business days** from the day the Ministry gives you their decision. *You must meet this deadline.*

Include all your information with your request

Attach all your information to the request form. It's important to give as much information and evidence as you can. If you decide to appeal further, *you may be limited to the information you use* in your original request for reconsideration.

If you need more time to give the Ministry other documents, such as records or letters that support your request, you can ask the Ministry for 10 to 20 extra business days. Write on the request form that you need more time when you give it to the Ministry.

You can ask for a supplement

If you are challenging a decision to cut off your benefits or a supplement, you can ask the Ministry for a **repayable supplement** while you are waiting for the result. However, be aware you will need to sign an agreement to repay this money if you lose your challenge.

The reconsideration decision

A government officer will review your request and make a new decision about your matter. The new decision will be mailed to you.

Step 3. Appeal to the Employment and Assistance Appeal Tribunal

If you disagree with the reconsideration decision, you can **appeal** to the Employment and Assistance Appeal Tribunal ^[1]. The tribunal is an independent body similar to a court.

You have seven days to appeal

You must complete a **notice of appeal** form and send it to the tribunal within seven business days of when you receive the Ministry's reconsideration decision.

The tribunal hearing

You can ask the tribunal to hold your hearing in person, by phone, or in writing. You have the right for a lawyer, friend, witness or other person to come to the hearing with you.

The tribunal will send you an appeal record with a copy of all the information the Ministry decision-maker considered in making the reconsideration decision.

You can't present new evidence at the hearing, but you can explain the evidence already on file and give evidence to support the information on file. And you can question the Ministry.

The Ministry presents its case at the hearing. As part of this, it can question you.

The tribunal's decision

The tribunal decides if the decision you are appealing was reasonably supported by the evidence, and if the Ministry reasonably applied the law to the facts.

Step 4. Ask for judicial review

If you disagree with the tribunal's decision, you can ask the court to review it. You can file a petition for a **judicial review** in the BC Supreme Court. There are deadlines to file a judicial review, so it's important to act quickly.

An advocate can help you assess the chances of bringing a judicial review. The Community Legal Assistance Society ^[5] and the BC Public Interest Advocacy Centre ^[6] have lawyers who may be able to help with judicial review of some Tribunal decisions.

Step 5. Other options if you experience unfairness

If you are not satisfied with a tribunal decision, you have two options in addition to bringing a judicial review.

Complain to the tribunal chair

If you have a concern about the conduct of an appeal or any interaction with the tribunal, you can make a written **complaint to the tribunal chair**. You can contact the tribunal online ^[1], by email at info@eaat.ca, or by toll-free phone at 1-866-557-0035.

Complain to the ombudsperson

If you think you were treated unfairly, you can **complain to the ombudsperson**. The ombudsperson investigates complaints about administrative unfairness. You can submit your complaint online ^[7] or contact the ombudsperson by toll-free phone at 1-800-567-3247.

Who can help

With challenging a government decision

An **advocate** can help you with challenging a government decision, including with the paperwork involved. PovNet has a Find an Advocate Map at povnet.org ^[8]. Clicklaw's HelpMap ^[9] lists dozens of legal advocates in BC.

Understanding your welfare rights

Legal Aid BC offers free booklets on "How to Apply for Welfare ^[10]" and "Welfare Benefits ^[11]".


- Call 1-866-577-2525
- Visit website ^[12]

Disability Alliance BC offers help sheets ^[13] and tools ^[14] on applying for disability benefits.

- Call 1-800-663-1278
- Visit website ^[15]

The **Ministry of Social Development and Poverty Reduction** is responsible for welfare in BC.

- Call Enquiry BC at 1-800-663-7867
- Visit website ^[3]

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Your Bank Account

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Bruce Hallsor KC ^[1], Crease Harman in July 2018.

Most of us open a bank account at some point in our lives. Learn the rights and responsibilities that come with having a bank account, and practical tips to avoid problems.

What you should know

You have a written agreement with your bank

People usually don't think much about their relationship with the bank. But the important details are set out in a written agreement. When you open a bank account, you typically sign some forms. One form is usually a signature card, so the bank has a record of your true signature. For a chequing account, you must sign a form to obtain personalized cheques. At least one of the documents you sign has the details on how the bank will operate your account.

Tip Most bank account agreements have similar terms. But there are some differences. To find out exactly what you've agreed to, get a copy of the agreement from your bank and read it.

Bank account service charges vary

Service charges vary between banks and accounts. Depending on your account, you may be charged for the cheques you write and for other services the bank provides. For example, if you **overdraft** your account (that is, withdraw more money than the account holds), you may have to pay an overdraft fee, plus interest. Or you may have to pay a service charge every time you use an automated teller machine (ATM).

Often banks have package deals with a set monthly charge for a certain number of transactions. Many waive fees if you keep a minimum balance in your account.

The bank must tell you the service charges when you open an account

Your account agreement likely doesn't specify the service charges. But it probably says you agree to the bank's general schedule of rates, and permits the bank to debit your account for any charges the bank sets from time to time.

And when you open an account, the bank must tell you its service charges. The charges are typically listed on its website, as well. If you're looking to open a bank account, shop around for the best account option for your needs.

Changes to service charges

Banks change their service charges periodically. If your account agreement permits, this can be done without notice to you. Even if your agreement requires the bank to notify you about changes in your service charges, the bank doesn't need your consent to change its charges.

Overdraft services can avoid unexpected charges

If you have a personal chequing account, you expect your bank to honour your cheques when you write them. But unless you've arranged for **overdraft protection**, your agreement likely says the bank must honour a cheque only if there's enough money in your account.

Overdraft protection means the bank will honour your cheque even if you don't have enough money in your account to cover it. Overdraft protection is not automatic.

Tip Overdraft protection helps not only with avoiding unexpected charges. If you pay for something and your bank doesn't honour your cheque because there's not enough money in your account, your credit rating ^[2] will suffer.

If you deposit an NSF cheque to your account

When someone pays you with a cheque, you deposit the cheque in your bank account. Your bank will typically credit the money to your account, and present the cheque to the cheque writer's bank for payment. This process ideally ends with the cheque being "cleared". But sometimes a cheque bounces. That means there's not enough money in the cheque writer's account to cover the cheque. The cheque is returned to your bank stamped **NSF** (standing for **non-sufficient funds**).

Most account agreements make you responsible for cheques that don't clear

Your account agreement likely says your bank can debit your account for the amount of the NSF cheque — even if you have not withdrawn the money. That's true even if your bank is slow and doesn't clear the cheque promptly.

(It's possible your bank's delay contributed to a cheque not clearing. That is, there might have been enough money in the cheque writer's account to cover the cheque when it was written, but your bank's delay in presenting the cheque to the other bank meant that by the time your bank did so, there was no longer enough money in the account. In such a case, you may have a claim against your bank, but even this may be limited or denied by your account agreement.)

Banks have their own policies on whether you can redeposit an NSF cheque (and if you can, how many times you can redeposit it).

An alternative to writing cheques

An **electronic funds transfer** (EFT) is an alternative to writing a cheque. An EFT fails immediately if there's not enough money in an account. It removes the uncertainty that comes after depositing a cheque.

If someone uses your PIN or bank card

When you have a bank card and personal identification number (PIN), you're responsible for all amounts withdrawn from your account through the authorized use of your card. If you lose your card or find out someone has stolen your card or PIN, phone the bank immediately. Most agreements require you to phone within 24 hours.

You normally won't be responsible for the unauthorized use of your card or PIN after you've told the bank about the loss or theft. But you must not have "knowingly contributed" to the unauthorized use — for example, by lending your card to a friend to withdraw money. And you must have been careful to keep your PIN separate from your card.

For more information about bank cards, see our information on credit cards ^[3].

If you sign up for a joint bank account

A **joint bank account** allows two or more people, from the same account, to make withdrawals, deposits and payments, and conduct other transactions. As a joint account holder, you share access to the account.

You're also responsible for any transactions made by the other account holders. For example, let's say the joint account is overdrawn — one of the account holders has written a cheque for more money than is in the account. The bank can demand payment of the overdrawn amount from any of the joint account holders. If you end up paying more than your "share" of the overdraft, then it's up to you, not the bank, to get the difference from the other account holders.

Protect yourself

Check your bank account statements carefully

In your account agreement with the bank, you likely agreed to review all entries on your **account statement** and advise the bank of any errors. Reviewing your statements can also alert you to important information — the first you may learn of a cheque returned NSF (non-sufficient funds) may be from your bank statement.

Point out if the bank makes a mistake

You have a certain window of time to point out a mistake made by the bank — typically 30 days from the date of the account statement. If you don't point out a mistake, you're considered to have agreed the information shown in your statement is correct.

(There are some exceptions to this rule. For example, if someone forges your signature on your cheque. If this happens, you should immediately notify the bank and make a claim for the lost money.)

Keep your receipts

If a mistake is made by the bank, you must prove it. For this reason, always get a receipt for any deposit you make, and keep your cancelled cheques and bank account statements for a reasonable time.

If you use an automated teller machine (ATM), keep the receipts from the machine to compare them with your account statements. This way, you'll have a record of all the transactions in your account. (Note that any deposits and transactions made at an ATM on a weekend or holiday are processed on the bank's next business day.) ATM receipts aren't considered proof of actual deposits to your account. But they are a starting point. Only a bank teller receipt or a copy of the actual deposited cheque is accepted as evidence of a deposit.

Common questions

What happens if I don't use my account?

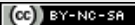
Under the federal *Bank Act* ^[4], if a bank account has been inactive for 10 years and the owner can't be contacted, any amount in the account is considered an "unclaimed balance". Under the law, the bank must transfer the money to the Bank of Canada ^[5]. For more information on unclaimed balances, call 1-800-303-1282 or visit bankofcanada.ca ^[6].

How do I complain about my bank?

First, discuss the problem with your bank's branch manager.

If you're not satisfied with the response, contact the bank's head office. You can get a contact name and telephone number by calling the Office of the Superintendent of Financial Institutions ^[7] at 1-800-385-8647. This office is the federal government agency that oversees Canadian banks.

If you're still not satisfied, you can contact the Ombudsman for Banking Services and Investments ^[8] at 1-888-451-4519.

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Part 2. Work & Business

Work

Protection Against Job Discrimination

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Sara Hanson ^[1], Moore Edgar Lyster LLP in November 2022.

If you're treated badly or unfairly based on a part of your identity that is protected under human rights law (such as age or sex or religion), this is called **discrimination**. Learn your rights and options if someone discriminates against you in the workplace.

What you should know

Which human rights laws apply in your workplace

There are provincial and federal human rights laws that protect workers from discrimination in the workplace.

The *BC Human Rights Code* applies to most workplaces in the province. This information focuses on this law.

Federal human rights law applies to some workplaces, including those in federally-regulated industries (such as banking and telecommunications).

If your situation involves federal law, or you think it might, you can contact the Canadian Human Rights Commission. See their website ^[2]. They can point you to information on federal human rights law.

You are protected against discrimination in the workplace

The law protects you from discrimination at work. An employer must not discriminate against you based on certain parts of your identity.

These are:

- your race, colour, ancestry, or where you're from
- your Indigenous identity
- your sex, sexual orientation, or gender identity or expression
- your age
- any physical or mental disability
- your marital or family status
- your religion or political belief
- any criminal convictions that are unrelated to the job

The law calls these **protected characteristics**. You can't be treated badly or unfairly in the workplace based on a protected characteristic. If you are, you've experienced discrimination.

This protection applies in all aspects of employment

The protection against discrimination applies in all aspects of your employment. It applies in hiring, firing, wages, benefits, hours, and other terms and conditions of work.

This means an employer cannot factor a protected characteristic into:

- not hiring you
- not promoting you
- firing you
- discriminating against you in some other way in your job

The protected characteristic does not need to be the only or main reason for a decision or action by an employer. It's discrimination if the characteristic is a factor in your treatment. For example, if you weren't hired in part because of your religion or sex, that's discrimination.

Employers must provide a discrimination-free workplace. They may be liable for discrimination, including harassment, by their workers in the workplace.

What workplace discrimination can look like

Discrimination at work can take many forms. It can be **direct**. This is where you're treated differently in the workplace because of a protected characteristic, and you suffer harm.

For example:

- an employer doesn't hire a person for a job because they're transgender
- co-workers harass a worker over their race, religion, sex or other protected characteristic (harassment is conduct a reasonable person would consider objectionable or unwelcome)
- an employer fires a worker because she's pregnant

Discrimination can also be **indirect**. This is trickier to spot. Here, you're treated the same as your co-workers, but you're still disadvantaged by a protected characteristic. This is usually because of a workplace rule or practice.

For example, say you follow a religion that requires you to wear a head covering. Your employer has a rule prohibiting workers from wearing anything on their heads. The rule applies to everyone at work, so in that way it seems fair. But it hits you harder than your colleagues because head-covering has another level of meaning for you.

The employer's duty to accommodate

If you're disadvantaged at work because of a protected characteristic, your employer has a **duty to accommodate** you.

For example, a person with a disability may not be able to perform a certain part of their job because of their disability. The employer must take reasonable steps to accommodate the disability and support the worker to do the job. For more on this, see our information on an employer's duty to accommodate ^[3].

An exception for a bona fide occupational requirement

An employer has one main legal defence against a worker's claim of workplace discrimination. An employer can try to justify a rule or practice that appears to be discriminatory by showing it is based on a **bona fide occupational requirement**.

To use this defence, an employer must show that:

- the rule or practice has a purpose legitimately connected to the performance of the job, and
- they acted in good faith, believing the rule or practice was necessary to achieve the purpose, and

- the needs of the person discriminated against cannot be accommodated without the employer experiencing undue hardship.

Options for action

Make a human rights complaint

You can make a **human rights complaint**. The BC Human Rights Tribunal deals with complaints under the BC *Human Rights Code*. It operates like a court but is less formal. It has staff who help people resolve complaints without going to a hearing. If that's not possible, they hold a hearing to decide if there was discrimination.

If the tribunal decides your complaint is justified, it can order the employer or other person to stop discriminating. It can order that you get your job back, or be given the right to compete for a job. The tribunal can also award you money for lost income and for injury to your dignity, feelings, and self-respect.

If you decide to bring a human rights complaint, you must file it with the tribunal within **one year** of when the discrimination happened. We explain the steps involved. See our in-depth coverage of making a human rights complaint ^[4].

Make an employment standards complaint

If your employer didn't follow the *Employment Standards Act*, you can **make an employment standards complaint**. You must file your complaint within six months of your last day of employment.

However, if you go this route you'll only be able to claim whatever severance pay your employer owes you. You won't be able to get compensation for discrimination. And if you choose this option, you could be barred from starting a human rights complaint.

We have information on the steps involved. See making an employment standards complaint ^[5].

Sue for wrongful dismissal

If you lose your job because of discrimination, you may decide to sue for **wrongful dismissal**. You must bring your claim within two years of being dismissed from your job.

But the court can only award you damages for your lost wages; it can't award extra damages to compensate you for the discrimination. You're likely to collect more if you file a human rights complaint, because you can get damages for lost wages as well as discrimination.

If you belong to a union

If you belong to a union, one option is to ask the union to file a **grievance** about the discrimination. If your union refuses to file a grievance on your behalf, you may be able to file a complaint against your union for failing to represent you fairly. This complaint is called a **section 12 complaint** and is filed with the BC Labour Relations Board.

If you bring a human rights complaint

If you make a human rights complaint and also pursue another option, the tribunal can wait until the other process is finished before dealing with your complaint. If the tribunal finds that the other process adequately addressed the issue, the tribunal may decide not to hear your complaint.

It's a good idea to seek legal advice on your options. There is free and low-cost legal help available ^[6].

Who can help

Helpful agencies

Consider reaching out to these agencies for help if you experience discrimination at work.

BC Human Rights Tribunal

Receives and resolves discrimination complaints under BC law.

Call 1-888-440-8844

Visit website ^[7]

BC Human Rights Clinic

Provides free assistance and representation to those who qualify for help with a discrimination complaint under BC law.

Call 1-855-685-6222

Visit website ^[8]

Canadian Human Rights Commission

Deals with discrimination complaints under federal human rights law.

Call 1-888-214-1090

Visit website ^[2]

Labour Relations Board

May be able to help if your union has refused to file a grievance for you.

Call 1-604-660-1304

Visit website ^[9]

Legal advice

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[10]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit website ^[11]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[12]

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Sexual Harassment

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Richard Johnson ^[1], Ascent Employment Law and Sara Hanson ^[2], Moore Edgar Lyster LLP in August 2021.

Harassment is conduct a reasonable person would consider objectionable or unwelcome. Learn your rights when harassment involves conduct of a sexual nature, as well as options if you're sexually harassed.

Common questions

What is sexual harassment?

Sexual harassment is a form of discrimination based on sex. **Sex discrimination** occurs when you're treated badly or denied a benefit because of your:

- sex,
- sexual orientation, or
- gender identity or expression.

Sexual harassment can take many forms. It can be a physical act, like unwanted touching or kissing. It can be verbal, like making demeaning comments about how someone looks. It can also be less direct, like someone displaying inappropriate pictures at work.

Sexual harassment can have an impact in many settings. It can affect your ability to do your job, find somewhere to live, or otherwise enjoy activities of daily life. BC's *Human Rights Code* ^[3] prohibits sex discrimination, including sexual harassment, in specific contexts. The Code offers protection from sexual harassment when you're shopping or receiving a service, renting accommodation, and working in your job.

Someone is sexually harassing me at work. What are my options?

There are three key elements of sexual harassment in the workplace:

1. conduct of a **sexual or gender-based nature**,
2. conduct that is **unwelcome**, and
3. conduct that **detrimentally affects** the work environment or leads to negative job-related consequences.

If you're being sexually harassed at your workplace, take action as soon as possible. Let the harasser know that you don't accept the behaviour and you want it to stop. Tell them you'll report it if it continues.

If dealing directly with the harasser doesn't work, you can talk to your employer or someone in human resources. Find out your employer's policy on human rights complaints. All employers in BC are required to have a policy on bullying and harassment, which should include a complaint process. If you belong to a union, talk to the union representative.

If the behaviour continues, you can make a human rights complaint to the BC Human Rights Tribunal ^[4]. If the tribunal finds your complaint justified, they can make an order to stop the harassment. As well, they can order the harasser to compensate you for lost income or expenses and injury to your dignity, feelings, and self-respect.

If the sexual harassment you experience results in you developing a mental disorder, you may be entitled to **workers' compensation**. See the WorkSafeBC website ^[5] for further guidance.

We take you through these steps in detail in our in-depth coverage of if you're sexually harassed at work ^[6].

Are there agencies that can help me if I'm being sexually harassed at work?

Yes. The Ending Violence Association of BC ^[7] and the Community Legal Assistance Society ^[8] have teamed up on a project called **SHARP Workplaces** ^[9]. Workers who are experiencing (or have experienced) sexual harassment at work can attend a legal clinic where they can speak to a lawyer for free. The lawyer can help you with all aspects of your case. For example, they can explain your legal rights, coach you through the complaint process, or help you draft documents.

The **BC Human Rights Clinic** ^[10] provides legal help to people who have cases before the BC Human Rights Tribunal. You can speak to a lawyer or legal advocate — for free — who can give you advice or represent you in your matter.

My co-worker keeps making suggestive comments about me even after I asked them to stop. Is that sexual harassment?

Yes, it likely is. Sexual harassment is any unwanted conduct of a sexual nature. If your co-worker's comments are of a sexual nature, and you've made it clear you're not okay with their behaviour, it's likely sexual harassment.

For the steps to take to deal with the problem, see our guidance on if you're being sexually harassed at work ^[6].

Who can help

With a sexual harassment complaint

BC Human Rights Clinic

Provides free assistance and representation to those who qualify for help with a discrimination complaint under BC law.

Call 1-855-685-6222

Visit website ^[10]

SHARP Workplaces

Offers free legal advice and support for those experiencing sexual harassment at work.

Call 1-888-685-6222

Visit website ^[9]

University of Victoria Law Centre

Provides help with human rights claims for eligible people in Greater Victoria.

Call 1-250-385-1221

Visit website ^[11]

Respect at Work Legal Clinic

A free legal clinic for newcomers to Canada who have experienced sexual harassment at work.

Call 1-604-404-1931


Visit website ^[12]

Stand Informed

An independent legal advice service for British Columbians who have experienced sexual assault.

Call 1-888-685-6222

Visit website ^[13]

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Farm Workers' Wages

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Richard Johnson ^[1], Ascent Employment Law and Amanda Aziz ^[2], Migrant Workers Centre in November 2023.

BC's main employment standards law sets out rules employers must follow in paying their workers. Some of these rules apply differently to farm workers. Learn your rights around getting paid as a farm worker.

Common questions

As a farm worker, am I entitled to the minimum wage?

Yes. All farm workers who are paid hourly, by salary, or by any other method (other than piece rate, explained below), are entitled to the general minimum wage. As of June 1, 2023, the general minimum wage is \$16.75 per hour.

The rules are a little different for farm workers who are paid by piece rate. Here, there are different minimum wage rates for each type of crop.

For more information, see our in-depth coverage ^[3].

As a farm worker, am I entitled to overtime pay?

No, farm workers are not entitled to overtime pay. The law doesn't limit the hours that farm workers can work, but it does say an employer cannot let a worker work excessive hours ^[4] or hours that could harm their health or safety.

For more, see our in-depth info on getting paid as a farm worker ^[3].

Are farm workers entitled to minimum daily pay?

If a farm labour contractor takes you to a worksite and then there is no work, the contractor must pay you for the longer of:

- two hours, or
- the time it takes to go from the starting point to the worksite and back (or to another place that's a similar distance and acceptable to you).

If work is not available because of bad weather or another cause beyond the control of the contractor, you aren't entitled to be paid.

Can a farm labour contractor deduct money from my wages for hiring me or finding me work?

No. A farm labour contractor must not charge a worker for hiring or obtaining work for that person.

Can a farm labour contractor charge me for gas, travel costs, or GST?

No. An employer can't require a worker to pay any portion of the employer's cost of doing business. As well, an employer can't deduct or offset a worker's earnings except for statutory deductions required by law, or with the written authorization of the worker.

For more, see our in-depth info on your rights around getting paid as a farm worker ^[3].

Who can help


Helpful agencies

Employment Standards Branch

Administers the law in BC that sets minimum standards for workers.

Call 1-800-663-3316

Visit website ^[5]

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Farm Workers' Rights

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Richard Johnson^[1], Ascent Employment Law and Amanda Aziz^[2], Migrant Workers Centre in August 2021.

Farm workers are covered by most sections of the main provincial law that protects workers in BC. But there are exceptions. Learn how they affect the rights of farm workers.

Common questions

As a farm worker, am I protected by BC's employment standards law?

Farm workers have rights under BC's *Employment Standards Act*^[3], the main law that protects workers. For the most part, farm workers have the same rights as other workers covered by this law. For example, they have the right to earn a minimum wage and get notice or pay if they're fired. But there are some exceptions.

For example, farm workers aren't entitled to overtime pay. They're also excluded from statutory holiday entitlements.

For more, see our in-depth coverage^[4].

I'm a farm worker. What are my options if my employer is violating my rights?

Farm workers (including temporary foreign workers) are covered by BC's main employment standards law, the *Employment Standards Act*^[3]. This law sets minimum standards for things like minimum wage and how much notice you're entitled to. If your employer isn't following the minimum standards under this law, you can file a complaint with the Employment Standards Branch.

All workers have the right to be protected from **discrimination** at work. Your employer (or co-workers) cannot treat you differently based on certain protected characteristics. If they do, you may be able to start a human rights claim.

For more, see our in-depth info on your rights as a farm worker^[4].

As a farm worker, am I entitled to workers' compensation benefits?

Yes. All BC employers — including farmers and farm labour contractors — must pay into the workers' compensation program. If you're hurt on the job or you get sick on the job, you can apply for benefits.

WorkSafeBC, the government office that administers the program, will assess your application and make a decision on your claim.

For more, see our in-depth info on making a claim for workers' compensation^[5].

As a farm worker, am I entitled to EI?

Maybe. To be eligible, you must have worked a certain number of hours in a job covered by the employment insurance program.

Generally, farm workers working under a contract of service for an employer are covered by the EI program. However, farm workers often have trouble getting EI benefits because they haven't worked enough hours in a year to be eligible. The number of hours needed to make a claim varies, depending on where you live.

For more, see our in-depth info on applying for EI^[6].

What are my rights working for a farm labour contractor?

A farm labour contractor helps agricultural producers connect with and hire farm workers. Farm labour contractors must get a licence from the BC government and follow certain rules. They have to deposit money with the government to ensure they'll follow these rules. The government can use this money to pay you if a farm labour contractor hasn't paid you for work you've done.

Farm labour contractors must keep records that show:

- the dates you work,
- the type of crops you pick each day, and
- the amount of crops you pick each day.

As well, all vehicles used to take you to a job site must be maintained to certain safety standards.

For more, see our in-depth info on your rights as a farm worker ^[4].

Who can help

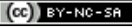
Helpful agencies

Employment Standards Branch

Administers the law in BC that sets minimum standards for workers.

Call 1-800-663-3316

Visit website ^[7]

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Workers' Compensation

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Richard Johnson^[1], Ascent Employment Law and Sara Hanson^[2], Moore Edgar Lyster LLP in August 2021.

Getting hurt or ill on the job not only impacts your health, but can leave you without a source of income. That's where British Columbia's workers' compensation program comes in.

Common questions

What type of injuries and illnesses are covered by workers' compensation?

The program covers a wide range of occupational injuries and illnesses, including:

- **physical injuries**, such as a broken bone, burn, or concussion
- **diseases**, such as cancer or a respiratory disease like asbestosis
- **psychological injuries** (the law uses the term **mental disorders**), such as diagnosed anxiety caused by harassment or some other traumatizing incident at work

For your claim to be successful, the injury or illness must have occurred in the course of your employment.

For more, see our in-depth coverage^[3].

What do I do if I get injured at work?

First, report the injury to your employer right away. They're responsible for getting you any necessary first aid and taking you to a medical facility (if needed).

Second, see your physician. Your doctor will recommend treatment, and may refer you to another health care practitioner. Ask them if there are modified work duties you can continue during your recovery. Make sure to let your health care providers know you were injured at work.

Third, start a claim for **workers' compensation**. This is a BC government program that compensates workers who suffer a workplace injury or illness. We have in-depth coverage of making a claim for workers' compensation^[3].

If my workers' compensation claim is accepted, what do I receive?

WorkSafeBC — the agency that runs BC's workers' compensation program — offers a variety of benefits and services to those who are eligible. Depending on the nature of injury or illness, you could receive:

- health care benefits and services, to cover the cost of health care services and supplies considered reasonably necessary to treat your injury or illness
- wage-loss benefits, to compensate you if you lose pay as a result of your injury or illness
- vocational rehabilitation services, a collaborative process to help you safely transition back to the job you were doing
- permanent disability benefits, to compensate you if your disability is likely to impair your future earning capacity

If you had a condition that predated the workplace injury, workers' compensation only covers you for the problems caused specifically by the workplace injury.

We explain each type of benefit in our guidance on making a claim for workers' compensation^[3].

I'm self-employed. Am I eligible for workers' compensation?

In BC, there's no requirement for self-employed workers to register for coverage under the workers' compensation program. But if you're self-employed, you may be able to purchase **optional coverage**. This would cover your lost salary and medical expenses if you're injured on the job.

The WorkSafeBC website explains how to apply for optional coverage ^[4].

Who can help

With a claim

WorkSafeBC

Deals with complaints about unsafe working conditions and injuries on the job.

Call 1-888-967-5377


Visit website ^[5]

Workers' Advisers Office

A government office that helps workers with claims for workers' compensation benefits. They are separate from WorkSafeBC and there's no charge for their services.

Call 1-800-663-4261

Visit website ^[6]

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Appealing a Workers' Compensation Decision

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Richard Johnson^[1], Ascent Employment Law and Sara Hanson^[2], Moore Edgar Lyster LLP in August 2021.

If you disagree with a decision on a workers' compensation claim, you can request a review of the decision. If you're still not satisfied, you can **appeal to a tribunal**.

Common questions

If my claim for workers' compensation is denied, can I appeal?

Yes. You can ask WorkSafeBC (the agency that operates BC's workers' compensation program) to review a decision on a workers' compensation claim. If you're unhappy with the outcome of the review, you can appeal to a tribunal.

The Workers' Compensation Appeal Tribunal^[3] hears appeals of workers' compensation decisions. We explain the process in our guidance on appealing a workers' compensation decision^[4].

Can any workers' compensation decision be appealed?

No. Only certain types of decisions can be appealed to the Workers' Compensation Appeal Tribunal. Among those that can be appealed are decisions on:

- whether a certain type of injury or illness is covered by workers' compensation
- whether a workers' injury or illness arose out of and during the course of employment
- whether someone was a worker when they were injured

Some WorkSafeBC decisions that can't be appealed include:

a decision regarding vocational rehabilitation benefits
a decision about whether or not to refer a decision back to WorkSafeBC
a decision not to give you more time to bring your review

We explain this in greater detail in our guidance on appealing a workers' compensation decision^[4].

How can I get a copy of my claims file?

On the WorkSafeBC website^[5], you can view all the information associated with your claim. You can also request a copy of your claim, and WorkSafeBC will send the information to you.

To request a copy, complete and send a **request for disclosure** form^[6] to this address:

Disclosure Department
WorkSafeBC
PO Box 4700 Stn Terminal
Vancouver, BC V6B 1J1

All your information is usually in your claim file, but sometimes other WorkSafeBC records have personal information too. To see these records, send a written request to:

Freedom of Information and Protection of Privacy Office
WorkSafeBC
PO Box 2310 Stn Terminal

Vancouver, BC V6B 3W5

Who can help

With more information

WorkSafeBC

Deals with complaints about unsafe working conditions and injuries on the job.

Call 1-888-967-5377


Visit website ^[7]

Workers' Advisers Office

A government office that helps workers with claims for workers' compensation benefits. They are separate from WorkSafeBC and there's no charge for their services.

Call 1-800-663-4261

Visit website ^[8]

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If You Are Fired: Wrongful Dismissal

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ashley Syer^[1], Syer Law in April 2020.

You've been let go from a job. You may be unsure where you stand, and what to do next. Learn the rules employers must follow in firing someone, and steps you can take to protect your rights.

What you should know

Whether employment standards law applies to you

Several factors affect your rights if you're fired. A key one is whether you're covered by **employment standards law**.

A BC law, the *Employment Standards Act*, sets minimum standards for employers in how they treat workers. This law applies to "employees" — which covers most but not all workers in the province.

Need help figuring out if employment standards law applies to you? See our information on who's covered^[2].

What your employment contract says

A second factor that comes into play is your **employment contract**. It may include terms that deal with how your employment can be ended. (Note there's *always* an employment contract between a worker and an employer, even if nothing is in writing.)

Your contract rights may be greater than the protections in employment standards law. But, if employment standards law applies to you, your contract rights *cannot be less* than the minimum standards the law sets. If they are, you're still entitled to the minimum protections of the law.

If you're fired and you've done nothing wrong

Generally speaking, your employer can fire you whenever they want as long as they give you **notice of termination**.

There are two ways they can give you notice:

1. They can warn you in advance. This is called the **notice period**.
2. They can let you go right away. But then they have to pay you the money you would have earned during the notice period. This money is called **severance pay**.

The notice your employer gives you must be **reasonable** (with one exception: if your employment contract spells out how much notice you get).

For workers covered by employment standards law, there is a **minimum notice** your employer must give you depending on how long you've been in the job.

What is "reasonable" and what are the minimums? See our guidance on how much notice an employer needs to give^[3].

If you're fired for just cause

If you do something seriously wrong, an employer can fire you for **just cause**. In these situations, the employer *doesn't* have to give you notice of termination.

Just cause behaviour is where you do something **seriously incompatible with the employment relationship continuing** — to the point the employer cannot be expected to provide you with another chance.

For example, your employer might have just cause to fire you if you:

- are dishonest about something important
- steal from your employer
- repeatedly breach a clear workplace policy or rule

In all but the most serious cases of misconduct, you're entitled to receive warnings and opportunities to improve before being dismissed for just cause.

(Tip: if your employer fires you for just cause, they have to tell you what the reason is.)

We have more on what amounts to just cause. See our in-depth info on this topic ^[4].

If you're fired for poor performance

If an employer is unhappy with your job performance, they can't just fire you out of the blue — they must give you notice of termination.

Unless they can show *all* of the following:

- They established a reasonable standard of performance, and communicated it to you.
- They warned you that you were falling short, and gave you reasonable time and help to meet the standard.
- And you still failed to meet the standard.

If they can show all of that, an employer can let you go for poor performance and not give you notice.

Things you can't be fired for

You can't be fired for doing something you have the legal right to do. For example, your employer can't fire you for raising a health or safety issue or refusing unsafe work.

If you're covered by employment standards law, you can't be fired for doing something permitted under that law. For example, your employer can't fire you for taking an annual vacation you're entitled to. Or making a complaint to the government office that administers that law.

Your employer is breaking BC's human rights law if they fire you because of:

- your race, colour, ancestry, ethnic origin, citizenship, or where you were born
- your religious beliefs
- a physical or mental disability you have (including addiction)
- the fact you have children, plan to have children, or are pregnant
- your marital status
- your gender
- your sexual identity, gender identity, or gender expression

You're entitled to all outstanding wages and a ROE

If you're fired, your employer must pay all your outstanding wages and vacation pay — no matter why you are fired.

Your employer must also give you a **record of employment**. Your ROE is a form the employer prepares saying how long you worked for them and how much you earned. You'll need this form to apply for employment insurance benefits.

Work out the problem

Step 1. Ask your employer why you've been fired

Legally speaking, your employer doesn't need to give you a reason for firing you — unless you're fired for just cause. But you should ask anyway.

If they do give you a reason, this can help you decide what to do next.

Step 2. Apply for benefits

Losing a job can mess up your finances in a hurry. It's a good idea to apply for employment insurance benefits.

EI benefits are temporary payments made to people who lose their job through no fault of their own. The benefits are paid by the federal government.

There are time limits involved, so you should apply right away. See our guidance on applying for EI benefits ^[5].

Step 3. Start looking for work

You have a duty to seek new and comparable work, even during the notice period.

Step 4. Gather relevant documents

Collecting any documents related to your firing can help clarify your thinking. They also can serve as evidence, should you end up in a hearing or trial.

Pull out your employment contract (if you have a written one).

Collect any letters, memos, or emails that help show why you were fired. Locate any documents that show how you asserted your rights as a worker.

Gather any paperwork your employer gave you when you were let go, including your record of employment.

If you're dealing with serious work-related stress, consider getting medical treatment. Medical records are a very strong form of evidence.

Step 5. Consider your legal options

If you think your employer breached your legal rights by firing you, you may have as many as three options, depending on your situation.

If you're covered by BC employment standards law, you can **make an employment standards complaint**. We explain the steps involved. See how to make an employment standards complaint ^[6].

If your employer fired you for a reason that violates your human rights, you can bring a **human rights claim**. You may be able to recover lost wages, or compensation for injury to your self-respect or dignity.

Or you can start a legal action against your employer. You can sue for **wrongful dismissal**. The amount you claim affects where you bring your lawsuit. If it's for \$5,000 or less, you can file online with the Civil Resolution Tribunal.

This online tribunal can be a faster and cheaper option than court.

In deciding between these options, it's valuable to get legal advice. Once starting on one of these paths, you may be legally prevented from using the others. Plus, there are time limits in play for each process.

Don't have access to a lawyer? There are options for free or low-cost legal advice ^[7].

Go deeper

Want more on these steps and your legal rights on getting fired? See our in-depth coverage of this topic ^[4].

Who can help

Helpful agencies

Consider reaching out to these agencies for help if you lose your job.

Employment Standards Branch

The BC government office that deals with complaints against employers.

Call 1-800-663-3316

Visit website ^[8]

Employment and Social Development Canada

Deals with complaints against employers in federally-regulated industries.

Call 1-800-641-4049

Visit website ^[9]

BC Human Rights Tribunal

Receives and resolves discrimination complaints under BC law.

Call 1-888-440-8844

Visit website ^[10]

WorkSafeBC

Can help if you want to report an unsafe workplace

Call 1-888-621-7233

Visit website ^[11]

Service Canada

Can help with questions or concerns about employment insurance benefits.

Call 1-800-206-7218

Visit website ^[12]

Legal advice

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[13]

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.


Call 1-877-762-6664

Visit website ^[14]

People's Law School

See more options for free or low-cost legal help.

Visit website ^[15]

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Getting Laid Off

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Trevor Thomas ^[1], Ascent Employment Law in March 2020.

Your employer says they have to lay you off or asks you to work fewer hours “until things pick up.” Learn your rights if you're laid off from work.

What you should know

An employer can lay off workers

Generally speaking, an employer can lay you off whenever they want as long as they give you **notice of termination**.

There are two ways they can do this. They can warn you in advance. This is called the **notice period**. Or they can let you go right away. But then they have to pay you the money you would have earned during the notice period. This money is called **severance pay**.

There are rules around how much notice (or pay) an employer needs to give — and when they don't need to give any (such as if they had **just cause** to fire you). See our guidance on how much notice an employer needs to give ^[2] and if you are fired ^[3].

In limited circumstances, an employer can lay off workers temporarily

A **temporary layoff** is when an employer tells a worker they must take an unpaid leave from work. The law in BC doesn't give employers a general right to temporarily lay off workers.

Temporary layoffs are only legal if one of the following applies:

You have a written employment contract that allows for a layoff.

- You work in an industry where layoffs are standard practice.
- You consent to the layoff.

Your employer must prove they had the right to lay you off for one of these reasons.

If you're let go temporarily and none of the above apply, you have the same rights as someone who's let go without cause. That means you're entitled to notice (or pay). See our information on how much notice an employer needs to give ^[2].

The law limits the length of any temporary layoff

If a temporary layoff is permitted in your situation, and if you're covered by **employment standards law**, there are limits on how long the layoff can last. Your employer can temporarily lay you off for up to **13 weeks** in a consecutive 20-week period.

Need help figuring out if employment standards law applies to you? See our information on who's covered ^[4].

If the layoff lasts more than 13 weeks in a consecutive 20-week period, it's no longer “temporary.” It would be treated as if you were fired without cause on the first day of the layoff.

If your employer reduces your hours

If you're covered by employment standards law and your employer reduces your weekly hours so you're earning less than half of your regular wage, this counts as a week's layoff. That is, it counts as one week towards the 13-week "temporary layoff" period.

Work out the problem

Step 1. Tell your employer if you don't consent to the layoff

If you don't consent to the layoff, let your employer know right away. Do it in writing. Keep a copy.

Step 2. Make an employment standards complaint

You can challenge the layoff. If you're covered by employment standards law, you can **make a complaint** to the government office that administers that law.

We explain the steps involved. See our information on making an employment standards complaint ^[5].

Go further

For more steps to consider, see our information on if you've been fired ^[3].

Who can help

Helpful agencies

Consider reaching out to these agencies for help if you are laid off.

Employment Standards Branch

Deals with complaints against employers relating to layoffs.

Call 1-800-663-3316

Visit website ^[6]

Employment and Social Development Canada

Deals with complaints against employers in federally-regulated industries.

Call 1-800-641-4049

Visit website ^[7]

Legal advice

There are options for free legal advice.

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

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Call 1-877-762-6664

Visit website ^[9]

People's Law School

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Visit website ^[10]

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If You Quit Your Job

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Richard Johnson^[1], Ascent Employment Law in June 2023.

Quitting a job affects your legal rights to things like employment insurance benefits and compensation you are owed. Learn your rights if you quit, and steps to protect yourself.

What you should know

There are some key things to know if you quit (or intend to quit) your job.

What your employment contract says

A key factor affecting your rights when you're leaving a job is your **employment contract**. It may include terms that deal with how your employment can be ended. (Note there's *always* an employment contract between a worker and an employer, even if nothing is in writing.)

Many employment contracts set out how much notice the worker must give to the employer if they quit.

Make sure you're aware of any term in your contract that might limit your future activities. For example, a **non-compete clause** that tries to limit your ability to take a similar job.

It's best to give your employer notice

BC's main employment law doesn't say you need to provide notice to your employer before quitting. But under common law, workers are expected to provide reasonable notice (more on what this means in a moment). This is to ensure your employer has enough time to adjust to your departure.

Your employment contract may set out how much notice you need to provide.

If not, the amount of notice must be reasonable in the circumstances. The factors in play include the duties and responsibilities you have, how long you've been in the job, and the time it would reasonably take the employer to have others handle your work or to hire a replacement.

For more junior workers, two weeks' notice is common. For workers with a lot of responsibility, four weeks' notice is more typical. However, these are only general guidelines.

The best way to tell your employer you quit is to give them a letter of resignation. To be effective, your resignation must be clear. Your employer should have no doubt about your intention to quit. Uttering the words "I quit!" as part of an emotional outburst is not enough.

If you give your employer notice

If you do give notice, your employer can accept or refuse.

If they accept, you'll continue to earn your regular wage until your last day of work.

If your employer refuses (and says "take your things and go home, you're done here"), they must pay you compensation. They must pay you for the amount of notice you have given. Or if your legal entitlement to notice on dismissal is a shorter period, they can pay you for that shorter period.

Your employer must pay any outstanding wages

Regardless of whether you notify your employer ahead of time that you're quitting, your employer must pay all wages owed to you through your last day of work. This includes annual vacation pay, statutory holiday pay, and overtime.

If you're covered by employment standards law, your employer must pay your outstanding wages within **six days** of your last day of work.

Your eligibility for employment insurance benefits

If you quit your job, you will usually not be eligible to receive employment insurance (EI) benefits. The exception to this rule is if you had **no other reasonable choice** except to leave your job.

Some examples are:

- you experienced sexual or other harassment
- you needed to move with a spouse or dependent child to another place of residence
- your employer made major changes to your work duties or pay

When you apply for EI, you will have to describe your situation and explain what steps you took to fix the problem before you quit.

Work out the problem

Taking these steps can help protect your rights if you quit your job.

Step 1. Try to fix the problem

If you haven't quit your job yet, consider options to fix the problem. You might consider:

- talking with your employer
- talking with a trusted colleague or union representative
- asking for new duties or to work under a different manager
- taking job-protected leave instead of quitting

Step 2. Figure out if you have no other reasonable choice but to quit

If you quit your job and you want to get EI benefits, you must prove you had no other reasonable choice except to quit your job.

Step 3. Check your employment contract

Check the terms of your employment contract to make sure you meet any notice requirements on quitting your job.

Step 4. Start looking for another job

You can start looking for another job before you quit. If you don't want your current employer to be contacted, indicate on your application that you're applying "in confidence."

Step 5. Give your employer notice

It's best to prepare a letter. It doesn't need to be overly detailed. It should fit on a single page and include:

- a clear statement that you're going to resign
- the date of your last day of work
- your appreciation for what you have learned
- an offer to help with the transition

Hand the letter to your employer in person. Even if it's uncomfortable. It's the professional thing to do.

Go deeper

We explain these steps in more detail and have more information on your rights if you quit your job. See our in-depth coverage of this topic ^[2].

Who can help

Helpful agencies

Consider reaching out to these agencies for help if you quit your job.

Employment Standards Branch

Administers the law in BC that sets minimum standards for workers.

Call 1-800-663-3316

Visit website ^[3]

Employment and Social Development Canada

Administers the law that protects workers in federally-regulated industries.

Call 1-800-641-4049

Visit website ^[4]

Legal advice

There are options for free or low-cost legal advice.

Access Pro Bono's Free Legal Advice

Volunteer lawyers provide 30 minutes of free legal advice to people with low or modest income.

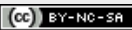
Call 1-877-762-6664

Visit website ^[5]

Access Pro Bono's Everyone Legal Clinic

Clinicians provide affordable fixed-fee services on a range of everyday legal problems.

Visit website ^[6]

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Applying for Employment Insurance

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Trevor Thomas ^[1], Ascent Employment Law in October 2022.

In Canada, the government offers financial assistance to people who are without work. Learn whether you're eligible for **employment insurance benefits**, and the steps to apply for benefits.

What you should know

Employment insurance benefits help people who are without work

Employment insurance benefits are temporary payments made to people who lose their job through no fault of their own.

EI, as it's often called, also offers help if you can't work because of illness or injury. And it provides benefits for people who take time off work to have or parent a child, or to care for family members who are ill or injured.

The EI program is run by the federal government.

Types of EI benefits available

EI regular benefits are for people who lose their job through no fault of their own — for example, you were laid off.

There are also other types of EI benefits available.

- **Maternity and parental benefits** are for people who can't work because they're pregnant, recently had a baby, are adopting a child, or are caring for a baby.
- **Sickness benefits** are for people who can't work because they're ill, injured, or quarantined.

There are benefits available for caregivers.

- **Family caregiver benefits** are for people who can't work because they've stepped away to care for or support a critically ill or injured family member.
- **Compassionate care benefits** are for people who can't work because they've stepped away to care for or support a family member who is gravely ill with a significant risk of death within six months.
- **Benefits for parents of critically ill children** are for eligible parents who take time off work to care for their critically ill or injured child.

And there are **fishery benefits** for self-employed fishers who are actively seeking work.

Qualifying for EI benefits

To qualify for **EI regular benefits**, you must:

- in the last 52 weeks, have worked a minimum number of hours in work covered by the EI program
- have lost your job through no fault of your own (you won't qualify if you were fired for misconduct or chose to quit when you had other options)
- have gone seven straight days without work or pay from a particular employer

The federal government website goes through these requirements, and who qualifies for the other types of EI benefits. Visit the website ^[2].

How much you might get on EI

The amount of EI you get depends on the type of EI benefit, how much you've been earning, and where you live.

For most people, the basic rate for calculating EI regular benefits is 55% of your pay, up to a maximum amount. The maximum amount changes over time. The federal government posts the current figure. See their website ^[3].

In calculating your EI benefits, the government considers your gross earnings (before deductions), including tips and commissions. EI benefits are taxable income, so taxes are deducted.

Your benefits may be reduced if you earn certain types of income during your benefit period. For example, income from self-employment. Other types of income won't reduce your benefits, such as pension income from an RRSP or RRIF.

The federal government provides a full list of income types, and how they affect EI benefits. See the EI earnings chart ^[4].

You can work part-time and still get EI. Under the working while on claim rules, you keep 50 cents of EI benefits for every dollar you earn in wages, up to a maximum amount.

Apply for EI benefits

Here are the steps to apply for EI benefits.

Step 1. Gather your information

Collect all the documents and information you'll need. These include:

- your social insurance number
- your government-issued ID
- details of your most recent employment, including your salary and why you left
- your record of employment (ROE), which is a form the employer prepares saying how long you worked for them and how much you earned

Step 2. Apply for benefits

You should apply for EI as soon as you stop working. If you delay, you may lose benefits.

To apply, you must start your application online. If you don't have internet access at home, you can apply at a public internet access site, like a library. Here's the online application form ^[5].

Step 3. After you apply

If your application is approved, there may be a one-week waiting period for which you won't be paid.

If your application is denied, Service Canada will contact you by letter or phone to explain why.

Step 4. If your application is denied, request a reconsideration

If your application is denied, your first step to challenge the decision is to request a reconsideration. There is no cost to do this.

Step 5. Appeal the reconsideration decision

If you disagree with the decision made on your reconsideration request, you can appeal to the Social Security Tribunal. This is a body similar to a court. It hears appeals on pensions and benefits provided by the federal government.

Go deeper

We have more detail on these steps if you want to go further. See our in-depth information on applying for EI ^[6].

Who can help

Helpful agencies

For help with applying for employment insurance benefits.

Service Canada

This federal government agency helps people access the employment insurance program.

Call 1-800-206-7218

Visit website ^[7]

Legal advice

There are options for free legal advice.

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Business

Starting a Small Business

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Oliver Hamilton ^[1], Severide Law Group in July 2018.

There's a lot to be said for starting your own business. You can be your own boss, and shape something of value. Learn the options and considerations in starting a business.

Options to start a business

Option 1. Buy an existing business

One way to start a business is to buy an existing business. You can buy either the **shares** of a business or the assets. Buying the **assets** is usually less risky. Both options have pros and cons.

Advantages

The advantages of buying a business include loyal customers (an existing brand and goodwill), trained employees, reliable suppliers, and fully equipped premises. Sometimes the seller will stay on for a while until you learn the business.

Disadvantages

But you pay for these benefits. Buying a business usually costs more than the alternatives. Be careful you get what you have been promised and are paying for, without any hidden liabilities. Investigate the business and its assets to ensure there are no liens or third-party claims on the business or its assets. Ensure the assets are in good working order. Start early because this due-diligence process takes time to complete and you need to verify these things before you finalize the deal.

Make a written agreement

All these things should be covered in a written purchase agreement. If you're thinking of buying a business, it's best to consult a lawyer to protect yourself — and to do so before making an offer. Then you can still negotiate the deal you want, based on all you have learned about the business.

Tip You might want the seller to sign an agreement promising not to compete with you, recruit your key employees, or use confidential information about your business.

Option 2. Buy a franchise

A **franchise** is a common way to start a business. It's a system for distributing and marketing a product or service, such as the right to sell a certain brand of fast-food hamburgers or a dollar store.

How franchises work

Sometimes financing and training are supplied, so a franchise can be a good turnkey operation. Usually you must buy goods or services from the **franchisor** (the person or company who grants you the franchise) on an ongoing basis, as well as pay for your initial investment. And there are almost always restrictions on how you run the franchise. Sometimes these are so strict you're the boss in name only. And there's a danger you may end up paying substantial royalties or supply premiums. Also, franchisors often require a deposit to apply. Don't give the deposit until you're sure you qualify for the franchise.

Do your due diligence

If you're thinking of a franchise, check its reputation in the business community. Have a lawyer examine the agreement before you sign. Depending on the franchise, some terms of the agreement may be negotiable, so you may be able to do better than what the franchisor first offers you. On the other hand, many terms of franchise agreements are not negotiable (unlike agreements to buy a business). So be sure the franchise business model will work for you before you are legally bound.

Option 3. Start a new business

There are pros and cons to starting a new business. It's usually less expensive than buying a franchise or buying an existing business. But on the other hand, you don't get any support from a seller or franchisor. So you start with no customers, and you may lose money while starting up.

If you start from scratch, you must decide what form of business to use:

- a sole proprietorship
- a partnership
- an incorporated company

There are advantages and disadvantages to each of these. What's best for you will depend on your circumstances.

Options to structure a business

Option 1. Sole proprietorship

A **sole proprietorship** is the simplest form of business. It has several advantages:

- It's the least expensive form of business to set up.
- You don't have to share the profits with anyone.
- Decision-making is quick, and management is relatively easy — there's no one to consult but yourself.
- You can do business under a business name even if you're a sole proprietorship. For example, as John Smith, you can do business under the name of "The Sandwich King." (But make sure you've registered the name before using it.)

But there are disadvantages too:

- If you die, the sole proprietorship comes to an end.
- You have unlimited personal liability for the debts of the business. If the business fails, you may risk losing your personal assets, such as your house and car.

If the business makes money, it will be taxed as your personal income — you don't get the benefit of the lower, small-business tax rate. On the other hand, as many businesses don't make money in the first few years, you'll have tax deductions you can use personally. A good rule of thumb is to save a percentage equal to your potential taxes so you don't have a large tax bill at the end of the year.

If you start with a sole proprietorship and things go well, you can always incorporate a company later and transfer the business to the company. Then you get the benefits of carrying on a business through a company instead of personally. This is called a **roll-over** in tax language.

Option 2. Partnership

A **partnership** combines the talents and resources of two or more people to suit the needs of a business. A partnership agreement setting out each partner's rights and responsibilities is very important, and you should take the time to develop one before you start the partnership.

Disadvantages

But there are disadvantages to a partnership. As a partner, you'll be personally responsible for all the debts of the partnership and, generally, you'll be bound by the acts of your partners, even if you don't agree with them.

The biggest disadvantage of a partnership is **joint liability**. Any partner can be held wholly liable for the actions of another partner who acted within the scope of the partnership and incurred liability.

A way to limit your liability

A **limited liability partnership** (LLP) can limit your liability for another partner's actions. You should discuss it with a lawyer. Our information on forming a partnership has more on this.

For tax purposes, each partner treats their share of the partnership's profits as personal income.

Option 3. Incorporated company

A **company** is a separate legal entity from its owners. A company is liable for its own debts, owns its own property, and can sue or be sued. Its owners, called **shareholders**, enjoy **limited liability**. This means their personal assets are generally not at risk and they are not personally liable for the company's debts. They risk losing only their initial investment to buy shares and any shareholder loans they made to the company.

Disadvantages

But sometimes this isn't as good as it sounds. Lenders often insist that shareholders of small companies personally guarantee the company's debts, so the lender is sure of getting repaid even if the company can't pay. And in some cases, a shareholder may be personally liable for a company's debts. Shareholders are not required to provide any work or services for the company unless there's a contract requiring them to. You should have a **shareholder's agreement** to deal with these topics. A lawyer can help with that.

If you decide to incorporate

If you incorporate, you must use the words “incorporation,” “limited” or “corporation” (or Inc., Ltd., or Corp.) after the company name.

You can incorporate federally or provincially. If you’re going to do most of your business in BC, you should incorporate in BC, as it’s much easier in the long run. Companies that incorporate federally must register extra-provincially in each province they do business in.

A company files its own separate tax return and pays its own tax. Shareholders pay tax on what they receive in dividends, bonuses or salary from the company. Depending on your personal income level, you might be able to save tax by incorporating.

In addition to filing tax returns, each year a company must file either provincial or federal corporate returns with the corporate registry in the jurisdictions where it operates.

For more information on incorporating a company, see our information on forming a private company.

Next steps

Consents from third parties

If you are buying the assets or shares of a business, the purchase may require third-party consent and approval. For example, if the business operates from leased premises, the landlord will need to agree to the sale and transfer (assignment) of the existing lease to a new lease with the new owner. The buyer and seller of the business should not assume the landlord will automatically agree.

Business licence and name approval

Whatever form of new business you choose, you’ll need to get a **business licence** and **name approval**.

You get a business licence from your town or city hall. The cost will vary depending on the type of business and whether it’s operated from commercial or residential premises.

You can get the name approval ^[2] from the provincial government.

Many banks won’t give you financing until you have a business licence and name approval.

Licences and registrations

Some businesses cannot be carried on at all unless you’re legally qualified to do so. For example, you can’t start up a real estate agency unless you’re licensed. So make sure you have any special licenses or registrations required for your particular business.

Employee accounts

If you plan to have workers, you’ll have to set up a payroll program account ^[3] with the federal government. You use this account to withhold your workers’ income tax deductions, Canada Pension Plan contributions, and employment insurance (EI) premiums to pay to the government.

You’ll need to register with WorkSafeBC ^[4] so your workers are covered in the event of a workplace accident or illness.

You may also have to set up accounts for Goods and Services Tax (GST) and Provincial Sales Tax payments.

Zoning and bylaws

Do you know where your business will be located? Some types of business can't be operated in certain areas because of zoning bylaws. If you're planning to run your business from home, check the bylaws at your town or city hall. If you live in a condominium, look at the strata corporation bylaws. As for commercial premises, just because someone is willing to sell or rent space to you doesn't mean the property meets all zoning requirements for the business you have in mind. Check this out yourself at your town or city hall before you sign a lease.

Building permits

If you're going to renovate the premises, you'll need a building permit. If you're renting commercial space, you'll probably have to pay at least a share of all municipal taxes on the premises, including a business tax, over and above your rent. Review any lease agreement before signing it.

Other regulations

Depending on the business, regulations may apply to your product or service. For example, some products have labeling requirements, and door-to-door sales are regulated.

Who can help

With more information

Small Business BC ^[5] has information and guides on starting a business. Call 604-775-5525 in Vancouver or 1-800-667-2272 elsewhere in the province.


Innovation, Science and Economic Development Canada ^[6] has information and guides on starting a business and incorporating a federal company.

For more information on incorporating a BC company, check the BC Corporate Registry website ^[7].

Many school boards and colleges offer seminars on starting a business. Your public library has a wealth of information including trade directories and information on sources of government assistance. Talk to other people who have started their own business. A lawyer, accountant or bank manager can advise you on certain matters.

Registering your new business

The provincial OneStop Business Registry ^[8] website lets you apply for various business licences and registrations at one time. It also refers you to "kiosks" where you can get a real person to help. The OneStop Help Desk number is 250-370-0332 in Victoria or 1-877-822-6727 elsewhere in BC.

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Incorporating a Company

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Oliver Hamilton ^[1], Severide Law Group in July 2018.

If you're forming a company with a small group of shareholders, a private company can be a good option. Learn the legal issues and steps involved in incorporating a private company.

What you should know

You have options on how to structure a new business

You have options on how to structure a new business. You could use a sole proprietorship, form a partnership, or incorporate a company. For an explanation of the pros and cons of each approach, see our information on starting a small business ^[2].

Before incorporating, you may also want to get advice from a lawyer and an accountant. They can help you decide the best way to set up the company's authorized share structure (called the capital structure, and explained below), and how to structure the company for optimal tax planning.

There are two types of companies

Under BC's *Business Corporations Act* ^[3], there are public companies and private companies.

A **public company** has its shares listed and traded on a stock exchange and must follow securities laws.

A **private company** is typically a small company with very few shareholders (sometimes called a **closed corporation**). Its shares aren't offered for sale to the public.

This information deals with private companies in BC.

All private BC companies are incorporated online

You can use the BC Registry Services' Corporate Online ^[4] to incorporate a company. You can pay the fees by credit card.

Consider consulting a lawyer and accountant before incorporating a new BC company, as the standard **articles** (the set of rules that govern the company) and the authorized share structure provided through a basic online incorporation are simplistic and may not properly meet your needs.

Incorporating a federal company

You can incorporate a **federal company** under the *Canada Business Corporations Act* ^[5]. A federally incorporated company has the right to carry on business anywhere in the country and will have its name protected across Canada. But a federal incorporation usually takes more time, and the corporation is often more expensive to operate than a BC company.

BC companies can carry on business in other provinces

A private BC company can carry on business in other provinces if it registers itself extra-provincially in those provinces. But unlike a federally incorporated company, an extra-provincially registered BC company may have its application to register its name in another province refused by the Registrar of that other province.

Form the company

Step 1. Decide on a name for the company

The name must end in "Limited", "Ltd.", "Inc.", "Incorporated", "Corp." or "Corporation", or the French equivalent to these words. Your new company name needs to be distinctive and have a descriptive element, or you can choose (or be assigned) a numbered BC company name. The Corporate Registry ^[6] has more information on choosing a name.

If you decide to carry on business under a trade name (called a DBA or a doing-business-as name), you must still display the full legal name of your company on certain documents like contracts and invoices.

Step 2. Reserve the company name

The easiest way to reserve the company name with the Corporate Registry is using Corporate Online ^[4]. If the name you want is available, it will be reserved for 56 days.

Step 3. Decide who will be involved in the company

The **shareholders** own the company and vote to appoint the **directors**. The directors control and govern the company and oversee how it is run. They may appoint **officers**, such as a president, secretary and senior management. Typically, the officers handle the daily operations of the company and are overseen by the directors.

One-person company

You can have a one-person company and be the sole shareholder, director and officer. In BC, unlike in other provinces, there is no requirement to have a BC resident director. There are other restrictions under the law^[7] on who can be a director of a BC company.

Shareholders

Consider carefully who the shareholders of your company should be. Even minority shareholders have considerable rights that can affect how a company is run. Shareholder disputes can be destructive. Removing an unhappy shareholder from a company can be very expensive, time-consuming and hard.

Sometimes, it is best if investors in a new company are just creditors who lend the company money, and not also owners. Or, you can see how a person works as an independent consultant before hiring them as an employee or making them a shareholder. You can see how they get along with the existing shareholders and how they will fit in the company in the long term.

There is no requirement for shareholders of BC companies to be BC or Canadian residents.

Directors

Part 5 of the Business Corporations Act^[8] deals with directors.

- A private company must have at least one director.
- A director doesn't have to live in BC or Canada, but they do have to consent in writing to act as a director.
- A director must provide the Corporate Registry with an address where they can receive documents during standard business hours. If there's no such office, then the Registry requires the director's home address.
- A director must be at least 18 years old and cannot have certain criminal convictions, be a bankrupt person (who hasn't yet been granted formal discharge from bankruptcy) or have been found by a court to be incapable of managing their own affairs.

Step 4. Pick a registered and records office

A company must have a **registered and records office**. The registered office is where legal documents can be delivered to the company. The records office is the address where all records for the company are kept. The registered and records offices must be in British Columbia and may be at the same address.

Every company must also have both a mailing address and a delivery address for its registered and records offices. The registered office mailing address is where the company will receive its mail. The registered office delivery address is where the company is given any notices like legal documents. The registered office mailing address may be a post office box, but the registered office delivery address must be a street address accessible to the public during business hours.

Step 5. Decide on an authorized share structure

The number of shares a company is authorized to issue to its shareholders is called the **authorized share structure**. This number can be limited or unlimited. You have to decide the type and number.

There are two main kinds of shares: par value shares and shares without par value. **Par value shares** have a minimum price they can be sold for. **Shares without par value** don't have a minimum price. You can also have different classes of shares with different attributes and rights, such as common shares and preferred shares, voting rights, the right to receive dividends, plus different series of shares within a class of shares. The specifics can be complicated, so consider getting advice from a lawyer or accountant.

Step 6. Prepare the incorporation documents

The documents needed to incorporate a company are:

- the incorporation agreement
- the incorporation application
- the articles
- the notice of articles

Incorporation agreement

This is an agreement between the incorporator (or incorporators) and the company. It describes the number, kind and class of shares each incorporator agrees to take once the company is incorporated. The incorporator must agree to take at least one share of the company and therefore become the company's first shareholder. The incorporation agreement must be signed by the incorporator before submitting the incorporation application to the Corporate Registry. You don't submit the incorporation agreement itself to the Corporate Registry, but a signed original should be placed in the company's records book.

Incorporation application

The incorporation application is available from Corporate Online ^[4]. The person who completes it is called the "completing party". They must ensure the incorporation agreement and articles are properly prepared and signed by the incorporator.

Articles

The articles are the rules and regulations for your company. You can use the sample set in the regulation under the *Business Corporations Act* ^[9], or have articles specially drafted to suit your needs. The incorporator must sign the articles. You don't need to submit them to the Corporate Registry, but you should file a copy in the company's records book.

Notice of articles

This document has the following information:

- the company's name
- the authorized share structure
- whether there are special rights and restrictions attached to the shares
- the addresses of the registered and records offices
- the names and residential or business addresses of the directors

Step 7. Submit the incorporation documents to the Corporate Registry

You must e-file or electronically submit your incorporation application and attached notice of articles to the Corporate Registry, along with the prescribed fee, through Corporate Online ^[4]. Your company will then be incorporated almost instantly.

After you e-file, the Corporate Registry will issue a certificate of incorporation and send you certified or true copies of the incorporation application and notice of articles.

Next steps

Organizing your company

This includes preparing the company's records book, preparing director and shareholder resolutions, issuing shares, and preparing a directors' register plus a "central securities register" or share register. You may wish to talk to a lawyer about this. Keeping a well-organized corporate record book and set of financial statements will help when you sell your company and if the Canada Revenue Agency (CRA) decides to audit your company.

Maintaining your company

To keep your company alive, it must file an annual report with the Corporate Registry each year within two months of its anniversary date of incorporation. Failure to file an annual report for two consecutive years will result in the company being struck off the registry and dissolved. You can restore a company but it's costly to do so.

If the company changes its registered or records office, or if the directors resign or change their address, the company must e-file other forms with the Corporate Registry. There are fees for most of these filings. As well, each year, every BC company must choose to either appoint an auditor or waive the appointing of an auditor.

Protecting your company's brand

Registration and use of a trademark is the best protection for your company's name and brand. See our information on trademarks.

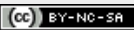
Who can help

With more information

Check the Corporate Registry website ^[10].

Small Business BC ^[11] has information on incorporating a company and free guides. Call 604-775-5525 in Vancouver or 1-800-667-2272 elsewhere in BC.

Check your local library, bookstore and Chamber of Commerce for other books and resources on incorporating a company.

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Forming a Partnership

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Oliver Hamilton ^[1], Severide Law Group in March 2018.

If you're starting a business with someone else, a **partnership** is an option to consider. They can work well for real estate businesses, professionals and new businesses. Learn what's involved.

What you should know

Pros and cons of a partnership

A **partnership** is a legal entity formed when two or more people — or companies — carry on a business together, intending to make a profit. It doesn't matter if they make a profit. The law can find that a partnership exists even if it doesn't make a profit.

Advantages

Partners can get personal tax exemptions and use partnership expenses as personal tax deductions during the startup phase of a new business. Shareholders in a company can't do these things. Later, when the business grows and has greater risks, it may be good to convert the partnership to a company.

Disadvantages

Being in a partnership can have serious legal consequences. Most important is the potential **joint liability** — each partner could be personally liable for the acts or omissions of the other partners. Creditors of the partnership, or other people harmed by it, can sue one, some or all of the partners for their losses. So one partner could be responsible for all the losses of a partnership, even though they didn't directly cause the losses.

But partners can take steps to reduce the risks. For example, they can use a limited liability partnership (LLP), explained below. And they can get insurance.

How a general partnership works

The *Partnership Act* ^[2] establishes three types of partnerships:

- general partnerships
- limited partnerships
- limited liability partnerships

General partners share equally in the profits...

To understand how a **general partnership** operates, say you and your friend Lin want to open a store and be business partners. You would both be equal (50/50) partners. The law presumes that, as partners, you and Lin would share equally in the profits and losses of the partnership, unless your partnership agreement sets out a different split. And you would both have the right to manage the partnership.

...and share equally in the losses

General partners are each **personally responsible** for the partnership's debts. This is true for both active and inactive partners in the business.

To show how a general partnership works, suppose that you and Lin borrow \$10,000 to set up a shop. Your business doesn't do well, and the partnership cannot repay the loan. The bank can ask you and Lin to pay back \$5,000 each. But if Lin can't or won't pay their share, the bank can sue you alone for the whole \$10,000. It would then be up to you to try to get Lin's share from them.

And if you don't have enough to repay the debt, the bank could take your personal assets — such as your house or car — even though they are not used in the business.

In contrast, company shareholders are liable for company debts only if they have personally guaranteed the company's debts.

In a general partnership, each partner is personally liable for all the obligations of the partnership, including those resulting from any negligent conduct of a partner in the partnership business.

Any general partner can make decisions for the partnership

Each general partner is an agent for both the partnership and the other partners. You and Lin can both make contracts for the partnership that legally bind all the partners. If Lin signs a contract with Jane Jones for supplies for the partnership business, you, Lin, and the partnership must each fulfill the contract, whether you agree with it or not.

And any partnership agreement between you and Lin cannot limit your responsibility to people who innocently sign a deal with Lin, believing Lin is authorized to act for the partnership.

Duties general partners owe one another

General partners owe a duty to each other to act with **good faith** and **fairness**. You must give each other full information on matters affecting the partnership. You can't take advantage of something that belongs to the partnership without your partners' permission, such as using the partnership's business connections to set up a competing business on the side. And you can't take a personal benefit from any transaction involving the partnership — like kickbacks from suppliers.

A limited partner is not involved in running the business

Limited partnerships are mainly for investors who want to invest in a partnership business, but who don't want to run the business. If you're an investor only, you could be a limited partner and you would be responsible only for the debts of the partnership up to the amount of money you invested or agreed to invest. This is true if you don't help manage the partnership. But if you help manage the business, then you would have the same liability as if you were a partner in a general partnership.

A limited partnership must have at least one general partner who has the usual unlimited personal liability described earlier. Usually, the general partner is a company incorporated just for that purpose, so that its shareholders aren't personally liable for the obligations of the company (see our information on companies ^[3]). The general partner is the only partner who can manage the business, so the shareholders who have most of the voting shares of a general partner company also control the management of the partnership business.

A limited liability partnership can limit your liability

A **limited liability partnership** (LLP) is an alternative to a general partnership. If you're a partner in an LLP, you aren't liable for the obligations of other partners or the partnership that you would be liable for in a general partnership — unless those obligations result from your own actions or inaction. If you haven't personally incurred any debts, the most you would lose is your investment in the partnership. Your personal and other assets, like your home, wouldn't be at risk. So with a limited liability partnership, you can help run the partnership business, but have some protection from being sued for the negligence or wrongdoing of your partners.

It's possible to convert a general partnership or limited partnership to a limited liability partnership.

Income tax payable by a partnership

A partnership doesn't have to pay any income tax on its profits. But each partner must pay income tax on their share of partnership profits.

If a partnership loses money, the losses are divided among the partners in the same way as profits would be. For income tax purposes, it's as though each partner had lost that money running their own business.

Before setting up a partnership, consider getting income tax advice from a qualified professional.

Ending a partnership

Any partner can end a partnership any time by giving notice to all the other partners — unless the partnership agreement says otherwise. Alternatively, a partnership agreement can set a fixed term for the partnership, meaning it automatically ends after a certain time, or after a task or project ends.

When the partnership is over, you file a **dissolution of partnership registration** ^[4] with the BC Registrar of Companies. At that point, your ongoing liabilities end.

Disputes between partners

Under the *Partnership Act* ^[2], a partner cannot be expelled from a partnership, even by a majority vote, unless the power to do so is in a partnership agreement. If no expulsion power is in the partnership agreement, the only option would be to dissolve the partnership.

Form the partnership

Step 1. Choose your partners carefully

You should be partners only with people you trust and have confidence in.

Step 2. Make a partnership agreement

A carefully drafted contract called a **partnership agreement** can be a very useful planning tool and help your partnership run smoothly. It can cover things like:

- Will you share the profits 50/50? What if one of you puts up more money at the start than the other?
- Will you share equally in the losses?
- Who will manage the business? (If you're going to run the store and expect to get a salary, this should be included in your agreement or in a separate employment agreement.)

- How much money or property (for example, equipment) will each partner contribute, and when will it have to be paid?
- How will decisions be made? By majority vote, or unanimous decision? (You could agree to make some decisions one way, and other decisions another way.)
- How will new partners be brought into the business, and how can you get rid of a partner or leave the partnership if you must?
- How will you end the partnership when the time comes, and who'll get what?
- What happens when a partner doesn't live up to their obligations?

Verbal partnership agreements or hand-shake agreements are enforceable, but they can pose problems. Partnership agreements should be in writing, dated, and signed by all parties, so you can more easily prove its terms and have more certainty in your business. The best time to create a partnership agreement is early, before disagreements arise and become unsolvable.

Step 3. Register the partnership

Limited partnerships and limited liability partnerships must be registered with the Registrar of Companies. The *'Partnership Act'*^[2] has a list of the documents that must be filed to create these partnerships. General partnerships should be registered, but they still exist even if you don't register them.

You should let the Registrar know if any information on your registration changes (for example, if a partner joins or leaves, or if your address changes).

You must pay a fee to register your partnership with the Registrar of Companies and to have the Registrar search the corporate records to make sure someone else isn't using your partnership name. Depending on the type of partnership, there are procedures for using the partnership name and address.

If your partnership is for trading, manufacturing, or mining purposes, or is a limited partnership or a limited liability partnership, you must also file other information and documents with the provincial government.


Who can help

With more information

Small Business BC^[5] is a government resource centre with information and free guides. Call 604-775-5525 in Vancouver or 1-800-667-2272 elsewhere in BC.

See the Ministry of Finance small business website^[6].

Also see the provincial government's Resource Centre for Small Business^[7].

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Trademarks, Copyright and Other Intellectual Property

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ling Wong, Fasken Martineau DuMoulin LLP in July 2018.

Inventors, designers, writers, other creative people, and entrepreneurs naturally want to protect the things they create. The laws involved in protecting ideas, inventions and designs are called **intellectual property** laws.

What you should know

The meaning of "intellectual property"

Intellectual property is property in ideas, inventions and designs — intangible things that people create.

A **patent** protects new, useful and ingenious inventions.

An **industrial design** registration provides protection for the original visual features of a product.

A **trademark** is a combination of letters, words, sounds or designs that distinguishes one business' goods or services from those of others.

Copyright provides protection for literary, artistic, dramatic and musical creations.

A **non-disclosure agreement** protects trade secrets and confidential business information.

A federal government agency administers intellectual property

The **Canadian Intellectual Property Office (CIPO)** is the federal government agency responsible for administering intellectual property in Canada. This office is where you file an application to protect intellectual property. They can be contacted online ^[1] or by toll-free phone at 1-866-997-1936.

Patents

A patent protects inventions

A **patent** is an agreement between an inventor and the federal government. The government gives the inventor the right to prevent others from making, selling or using their invention in Canada (and possibly elsewhere) for the life of the patent. In return, the inventor shares the technological information behind their invention, so others can benefit from and

build on this knowledge when the patent expires.

A company, let's call it National Mousetrap Corporation, that has developed a new and better mousetrap can apply for a patent to protect it.

A patent can be a valuable business asset. It gives the patent owner the competitive advantage of a limited monopoly. A patent owner can license the patent to others or sell it.

A patent lasts for up to 20 years from the time the patent application is first submitted.

How to get a patent

You can apply for a patent ^[2] by filing a patent application with the Canadian Intellectual Property Office ^[3] (CIPO). You have to pay the required fees. Your application must describe your invention in full and show you would put it into practice. The invention must meet patentability requirements, meaning that it is new and useful, and has inventive ingenuity.

The Patent Office will not review your application unless you ask them to. Within five years of filing the patent application, you must formally ask the CIPO to consider (or examine) your application. You must pay the examination fee.

About 18 months after you've paid this fee, a government patent examiner familiar with the subject matter will examine your application and decide if it meets the requirements for a patent. If the examiner has any objections to the application, they will issue an examiner's report explaining why they are rejecting it. The applicant (or a patent agent they hire) must then respond within a certain time with arguments or amendments (or both) to support their application. The process can take one to four or more years before a patent is granted.

Tip Most applicants hire a registered patent agent or patent lawyer to help them with the application process. A list of registered patent agents is available from the CIPO ^[4] and from the Intellectual Property Institute of Canada ^[5] (IPIC).

Time limits for submitting a patent application

If you're concerned about a competitor being on the same track, you should submit your patent application as soon as possible. In all countries, including Canada, the person who applies first gets the patent over another person who applies later, claiming the same invention. This is normally true even if the second person can prove they developed the invention before the first person did.

Also, in Canada and the US, any public disclosure, use or sale of your invention starts a one-year clock running. After that one year, if you have not filed a patent application, you cannot get a valid patent for your invention. Many countries don't allow this one-year grace period — they don't allow any public disclosure before a patent application can be validly filed. You could lose your right to obtain a patent internationally if you rely on the one-year grace period in Canada. So it's important to keep your invention secret and file a patent application (or assess your other options) before you publicly disclose your invention.

Industrial designs

An industrial design registration protects unique visual design

Returning to the mousetrap example, imagine the company has designed its mousetrap so it has an attractive shape or design that appeals to consumers. But the company is worried that a competitor might soon copy the look and visual design of the mousetrap. To protect the design, the company can apply for an industrial design registration^[6] from the Canadian Intellectual Property Office.

An industrial design registration protects the original visual features of a product. (This differs from a **patent**, which generally protects how an invention works.) Examples of industrial design that people might seek to protect include the shape of a table, the pattern of a fabric, the visual design of a computer keyboard, or the decoration on the handle of a spoon.

How to apply for an industrial design registration

You can apply for an industrial design registration^[6] from the CIPO. You have to pay the required fees. You must apply within one year after the design, or an article showing the design, has first been publicly used, displayed or sold.

Many countries outside of Canada and the US require you to submit your application for registration before there is any public disclosure of your design, the same as with patents.

Registration protects an industrial design for 10 years, but a maintenance fee must be paid after five years.

Trademarks

Trademark registration protects words and logos

Suppose the National Mousetrap Corporation, in addition to designing a unique mousetrap, has also developed a catchy name to brand the product. Or it might have developed a distinctive logo to use on the boxes the mousetraps are sold in and in magazine ads for its mousetraps. To prevent competitors from using the same brand name or logo, it can apply for trademark registration. (Copyright protection for the logo may also be available, discussed later.)

A **trademark** is a combination of letters, words, sounds or designs that distinguishes one business' goods or services from those of others in the minds of consumers. The words "Under Armour" on athletic clothing, the red "K" on a box of Kellogg's Corn Flakes, and the alligator on Lacoste t-shirts, are familiar trademarks.

How to protect a trademark

You can apply to register a trademark^[7] with the Canadian Intellectual Property Office. You must pay the required fee. You may file a trademark application based on use (if you have already started using the trademark in your business) or based on proposed use (you intend to use the trademark soon, but you haven't yet started using it).

Your application is reviewed by a trademark examiner who decides if the application meets the requirements for registration (they consider, for example, whether it is confusing with any prior registrations or applications). If the application is approved, the trademark is published (to give others a chance to oppose the application). If no one opposes it, your trademark will be registered.

Although trademark applications are not as tricky and complex as patent applications, it's still helpful to hire a trademark agent to handle the process. The Trademarks Office at the CIPO keeps a list of trademark agents^[8]. So does the Intellectual Property Institute of Canada^[5] (IPIC).

You don't have to register a trademark, but there are advantages to doing so

You don't have to register a trademark to use it. But there are advantages to registering. Registration gives you the exclusive right to use your trademark (with the types of goods or services the trademark is registered for) throughout Canada for 15 years. It also gives you the right to stop others from using a mark that is confusingly like yours.

On the other hand, an unregistered trademark can be protected only where you can prove the trademark is known and has an established reputation.

Copyright

Copyright protects literary, artistic, dramatic and musical creations

Suppose the National Mousetrap Corporation, having developed its unique mousetrap, is ready to launch an advertising campaign. Its advertising department creates a brilliant script for a TV commercial. The law of **copyright** protects the ownership of the script.

In Canada, the law automatically gives the author, artist or creator of original works like poems, books, plays, musical scores, computer programs, and paintings ownership rights or "copyright" in that creation. Copyright can arise only when a work has been fixed or created in some way: for example, a book has been written, a song recorded, or a movie filmed.

Many items in a business — such as the company website, advertising materials and more — are probably protected by copyright. Copyright means no one else can copy or substantially reproduce your work without your permission. This right generally lasts during the life of the author plus 50 years after they die.

Copyright does not apply in some circumstances

There is no copyright in ideas; only the original expression of an idea can be copyrighted.

If you use your artistic work on a useful article, such as a decorative lamp or goblet, by using the article as a model or pattern to make 50 or more decorative lamps or goblets, then copyright protection, with some exceptions, isn't usually available. You generally have to apply for registration of an industrial design instead.

You can't claim copyright in a very short combination of words, such as the title of a book or song. This likely doesn't meet the originality requirement.

Copyright arises automatically

Because copyright is automatic, you don't have to register it. But registering a copyright^[9] with the Canadian Intellectual Property Office (and paying the required fees) can help prove you own the copyright. This can be especially helpful if you have to sue someone for **infringement** of your copyright. When you register your copyright, you are the presumed owner of the work and the burden of proof is on the person challenging your copyright to disprove your ownership. If you don't register your copyright, the burden of proof is on you to prove you own the copyright.

Protecting trade secrets and confidential business information

The law recognizes that businesses want to protect their **trade secrets** and confidential business information. This could include special recipes, training manuals, methods of doing business and inventions that aren't patented — all of which the business might want to keep secret from competitors and the public.

You don't register this type of information. The law on trade secrets hinges on whether you have taken steps to keep the information secret. Having employees, customers or business partners sign a **confidentiality** or **non-disclosure agreement** is the most common way to show you are taking steps to protect secret and confidential information. As well, if someone breaks the agreement, you can sue them.

One risk with a trade secret is that once it is no longer secret, it can be lost. Without a contractual obligation, nothing can prevent someone else from independently creating or reverse engineering the subject matter of your trade secret.

Who can help

The **Canadian Intellectual Property Office** (CIPO) is the federal government agency responsible for administering intellectual property in Canada.


Call 1-866-997-1936

Visit website ^[10]

The **Intellectual Property Institute of Canada** (IPIC) is the professional association of patent agents, trademark agents, and lawyers practising intellectual property law.

Call 1-613-234-0516

Visit website ^[11]

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Music Law

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ronan Reinart ^[1], Bell Alliance in March 2018.

Whether you make music or listen to it, it's important to know the laws that apply to creating and engaging with music. Learn the laws that apply to musicians and music listeners.

What you should know

Songwriters and musicians automatically have copyright in their music

Under the law in Canada ^[2], when a song is created, **copyright** exists immediately and automatically for the music, the **lyrics** (the words) and the combination of music and lyrics. The owner of the copyright is the person who creates the song (the **lyricist** or author) and the person who writes the music (the **composer**).

This right can be assigned by a written contract to another party, such as a publisher or recording company. (Copyright can't be assigned by a verbal agreement.)

A song is called a **composition**. A recording of the song is called a **master recording**. A separate and independent copyright applies to the recording.

Copyright owners (in some cases, the authors and composers, but often the publishers and recording companies under written contracts) can control copying and distributing of their compositions and recordings.

You can't copy music without permission, with some exceptions

It is generally illegal to copy songs and recordings without permission of the copyright holder. But there are some exceptions.

For example, one exception ^[3] allows you to reproduce a song for private purposes if you legally bought the original copy of the song. Other exceptions ^[4] allow you to make a backup copy of music and reproduce a work for criticism or review.

Another exception ^[5] allows you to use a work in creating a new work, as long as it is solely for non-commercial purposes. This exception is designed to allow non-commercial user-generated content, such as YouTube videos.

To play someone else's music, you have to pay a royalty

To publicly play or perform music created or recorded by another lyricist or musician, you, your label, or the place where you play must pay a fee or **royalty**. So if you perform cover songs with a group in public, a musicians' collective may ask you (or the place where you're playing, called a **venue**) to pay a royalty. You also have to pay royalties if you record cover songs, whether you make CDs or sell them online.

Musicians' collectives include:

- The Society of Composers, Authors and Music Publishers of Canada ^[6] (or SOCAN). SOCAN can demand a play list and royalty fees for pieces performed.
- The Canadian Musical Reproduction Rights Agency ^[7]. It collects mechanical royalties for songwriters and publishing companies.

- Connect Music Licensing^[8] (formerly, Audio-Visual Licensing Agency or AVLA). They collect royalties for owners of master recordings, something that disc jockeys should pay special attention to.
- Re:Sound^[9]. It collects fair compensation for artists and record companies for their performance rights.

The same laws on copyright and royalties protect you too if you write and record your own music. You should register with SOCAN, which collects licensing fees and royalties for member songwriters and musicians whenever their compositions are broadcast on radio or TV or performed in public. (That's done through the Canadian Intellectual Property Office^[10].)

If you work independently on a single performance or a call-out basis

As a **performer** (as opposed to a songwriter), you are normally paid on the day of performance just for that performance. You have no rights in the music beyond the day of performance. Generally, you aren't entitled to any other payment.

But there are exceptions. For example, if your performance is recorded and the recording is later used on TV or radio or in some other commercial way. In such a case, you would be owed further payments called royalties. The organization recording you should ask for your permission before recording you.

Tip It's always good to have a written agreement, even a simple, handwritten one. It's best to clarify how much you will be paid, when you will be paid, details of the scheduling, and any requirements such as equipment rentals or wardrobe.

The legal relationship among group members

Most of the time, a group works together with the common goal of earning money, and they make decisions together. Legally, without any other agreement or incorporation, the group or band will be considered a **partnership**.

The importance of making an agreement

The arrangement among members should be made in writing by all members. It's best to set out the rights and responsibilities of each member, how members may join or leave, who writes the music, who owns the band name and so on. Misunderstandings can lead to break-ups and even lawsuits, so take time to make sure everyone understands the agreement.

A band leader can be a proprietor

Sometimes, a group leader hires and pays the musicians and makes all the decisions for a particular kind of show. That person is called a **band leader** and is legally a **proprietor**. The hired musicians are independent contractors or employees only. They have no ownership interest in the group, unless a different agreement has been negotiated and put in writing.

A group can carry business as a company

A group can also consider carrying on business as a company. The group may do this if their earnings are significant or if they are signed to publishing or recording deals. Individual members of the group may also incorporate their own companies (called "**loan out**" companies), which can offer certain tax benefits if the musician's earnings are significant.

Protecting the name of a band

It's important as a group becomes popular to ensure that another group isn't using your group name. To properly protect your band name, you need to consider registering it as a **trademark**. Other registration methods, such as securing a domain name for a website, will not protect you fully. See our information on trademarks, copyright and other intellectual property.

Protecting a band's music

It's important to discuss writing credits for original music and agree on who the writers are. Is the music created by the band, or only by certain members? This should be written down for each piece of music, and agreed to by all. Sometimes the co-writing credits involve people outside the band, and those people need to be acknowledged.

Take steps to protect the band's copyright

Since copyrights arise immediately when a song is created, evidence of when a song was created can be critical if you have a copyright dispute. You may also need to show that you (or your band) actually created the song.

Formally registering the work with the Canadian Intellectual Property Office ^[10] is one very powerful way to prove you created a song at a certain time. But there are other ways, such as emails and other electronic files. And you don't *have* to register.

If you keep notes, communications (such as email messages) and other material (such as song and lyric versions) relating to the song, those can be valuable evidence in a copyright dispute. There are several inexpensive online storage tools available (check out secure cloud storage).

Also, you can document who wrote the song (including the date and the percentage each band member owns) and have everyone sign it. That can be good evidence of the copyright.

Copyright cannot be fully protected only by mailing the original music, lyrics, and recording to yourself by registered mail. This may help verify the date the work was created, but it alone doesn't connect the creation to the creator. So generally, this is not an effective way to protect copyright.

Registering a song

If you want to register your song with the CIPO, it does not accept copies of single physical recordings. But the US Copyright Office does ^[11].

Canadian albums that go into general release are registered at the National Library of Canada ^[12] by the publisher.

Distributing and marketing recordings

After a song is recorded, it has to be **distributed** (by CD and online). It also has to be **marketed**. And a band should make appearances to support the recording.

At this stage, a group usually hires a manager and agent, and looks for deals with publishers and record companies. Make sure everyone is clear on their rights and responsibilities, the commission to be paid to the manager and agent, and how long the agreements last. These should be put in writing and ideally reviewed by a lawyer.

Common questions

How long does copyright last?

All copyrights expire eventually. After copyright expires, a work goes into the public domain. Generally, in Canada, copyrights expire 50 years after the author dies (plus the rest of the calendar year when the author died). There are some exceptions. For example, if the author is anonymous, the copyright term is 50 years from the end of the year of publication.

Once a work is in the public domain, usually anyone can copy and use it. But other rights that do not expire may still apply (such as personality rights). So it's a good idea to get legal advice before using or copying any works you think may be in the public domain, unless your use fits clearly into an exception.

When can I ask for a songwriting credit?

If you work on a piece of music written by others and suggest changes that have a large impact on the music, you may want **co-writing credit**. You should ask for songwriting credit at the time the music is written. The agreement must be in writing and properly say what you are getting credit for.

When does a record company get involved?

If a group creates enough buzz, a record company may become interested. Deals offered by record companies tend to be long and very technical. All agreements must be in writing and ideally reviewed by the group's manager and a lawyer.

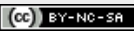
Who can help

With more information

A good resource is *Musicians and the Law in Canada* ^[13] by Paul Sanderson. The book is available at most libraries and is published by Carswell.

Another good book is *Confessions of a Record Producer* ^[14] by Moses Avalon.

Music BC ^[15] has many resources for musicians, including seminars, a library and technical help. Initial membership is free.

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Part 3. Families & Children

Family Relationships

Introduction to Family Law

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by JP Boyd, QC ^[1], Boyd Arbitration Chambers in March 2021.

Family law deals with the legal issues that come up when family relationships begin and end. Marriage, separation, divorce, parenting, support, dividing property, adoption, and family violence — all fall within this area of law. Learn the basics of family law.

Alert! This information has been updated to reflect changes to the *Divorce Act* ^[2] that took effect on March 1, 2021.

What you should know

Family law deals with family issues

Family law problems often come up when people who've been in a relationship separate. But family law problems can also come up for people who've never lived together or dated but have had a child together. They can also affect people who haven't been in a relationship at all, like a grandparent who wants more time with their grandchild.

Family law applies to people in same-sex relationships the same way it does to people in opposite-sex relationships. There's no legal difference between opposite-sex relationships and gay, lesbian, and other LGBTQ+ relationships.

This information provides an introduction to family law and the courts that deal with family law issues. It also explains some of the legal words and phrases used in family law.

Common family law problems

When a couple separates, they must make many decisions. For example:

- Does one person need financial help from the other? Can the other person afford to pay it? If so, how much can they afford to pay and for how long? This problem is about **spousal support**.
- Who will stay in the family home? Can everybody still live there or does someone need to move out? This problem is about the **use of family property**.
- How will property be divided? How will debts be shared? This problem is about **property and debt division**.
- If there are children, where will they live? How will decisions about their care be made? How will the parents share the children's time? This problem is about **parenting after separation**.
- Does child support need to be paid? If so, which parent should pay child support and how much? This problem is about **child support**.
- After parents separate, can one parent move away to another town or province, with or without the children? This problem is about **relocation**.

Different rules for different relationships

Family law deals with all of these common family law problems and more. But not all family law problems are important to all families. It really depends on the type of relationship.

Family law is about four types of relationships:

- **Married spouses.** Married spouses are legally married and have to get **divorced** to end their legal relationship.
- **Unmarried spouses.** Unmarried spouses, also known as **common-law partners**, have lived together in a “marriage-like relationship” for at least two years. Except when it comes to property and debt division, the term also includes people who’ve lived together for *less than two years* but have had a child together. Unmarried spouses *don’t* need a divorce to end their legal relationship. It ends when they separate.
- **Parents.** Parents are people who have had a child together, regardless of the nature of their relationship with each other. Parents can be married spouses, unmarried spouses, in a dating relationship, or not in a relationship with each other at all. Parents can also have had a child by adoption or assisted reproduction. Or they might have helped a family to have a child by assisted reproduction, by donating eggs or sperm, or by being a surrogate mother.
- **Child’s caregivers.** People who have a significant role in a child’s life but aren’t the child’s parents.

Family law legislation

Two different family laws may apply, depending on the type of relationship.

Divorce Act

The federal *Divorce Act* ^[3] applies throughout Canada. This law only applies to people who are married to each other or who used to be married to each other. It talks about:

- divorce
- parenting after separation, including how children’s time is shared between married spouses
- child support
- spousal support
- relocation

Family Law Act

The *Family Law Act* ^[4] is a BC law that applies to married spouses, unmarried spouses, parents, and children’s caregivers. It talks about:

- parenting after separation, including how children’s time is shared between guardians and people who are not guardians
- child support
- spousal support
- dividing property and debt
- relocation
- court orders that might be needed to protect people
- court orders that might be needed to protect property

But, different parts of this law apply to different people, depending on the type of relationship:

- The parts that talk about child support and the care of children apply to everyone who is a parent or a guardian.
- The parts that talk about spousal support apply only to married and unmarried spouses.

- The parts that talk about dividing property and debt apply to married spouses as well as unmarried spouses, but only to those who've lived together in a marriage-like relationship *for at least two years*.

Understanding the legislation

This chart shows which law applies to whom and for what purpose:

	Married spouses	Unmarried spouses	Parents	Child's caregivers
<i>Divorce Act</i>	Yes	No	No	No
Divorce	Yes	No	No	No
<i>Family Law Act</i>	Yes	Yes	Yes	Yes
Guardianship of children	Yes	Yes	Yes	No
Making decisions about children	Yes	Yes	Yes	No
Parenting time and contact with children	Yes	Yes	Yes	Yes
Child support	Yes	Yes	Yes	Yes
Spousal support	Yes	Yes	No	No
Dividing property and debt	Yes	Yes, for some*	No	No
Orders protecting people	Yes	Yes	Yes	Yes
Orders protecting property	Yes	Yes, for some*	No	No

* Orders about dividing property and debt and protecting property can come into play for unmarried spouses, but only if they've lived together in a marriage-like relationship for at least two years.

Resolving family law problems

You can deal with family law problems in ways that don't involve going to court. Options include:

- **Negotiation.** You and your ex talk about your legal problems and try to agree on as many of those problems as possible.
- **Mediation.** You and your ex meet with a trained, neutral person (called a mediator) who helps you talk to each other and agree on as many of your legal problems as possible.
- **Collaborative negotiation.** You and your ex hire specially-trained lawyers and agree to do everything you can to resolve your legal problems without going to court.
- **Arbitration.** You and your ex hire a trained, neutral person (called an arbitrator) to make a decision resolving your legal problems. Hiring an arbitrator is like hiring a private judge.
- **Parenting coordination.** If you and your ex already have a plan about parenting, you can hire a parenting coordinator to help resolve continuing problems about parenting. A parenting coordinator is a neutral person who tries to help you agree on a resolution, like a mediator, but they can make a decision, like an arbitrator, if you can't agree.

For more on resolving family law issues outside of court, see our information on mediation, collaborative negotiation, and arbitration.

If you can't resolve your problems using these processes, you may have to go to court to have a judge make a decision.

Going to court

There are two courts in BC that make decisions about family law problems: Provincial Court (often called Family Court) and Supreme Court.

Family Court is a division of the Provincial Court. Family Court can deal only with some issues under the *Family Law Act*: guardianship, parenting after separation, child support, and spousal support. It doesn't charge court filing fees and uses simplified rules and forms. Learn more in our information on Family Court.

The **Supreme Court** can deal with all issues under the *Family Law Act* and all issues under the *Divorce Act*. Its rules are complicated. Also, it charges fees to file documents and schedule certain hearings.

This chart shows which court deals with which family law problems:

	Family Court	Supreme Court
<i>Divorce Act</i>	No	Yes
Divorce	No	Yes
<i>Family Law Act</i>	Yes	Yes
Guardianship of children	Yes	Yes
Making decisions about children	Yes	Yes
Parenting time and contact with children	Yes	Yes
Child support	Yes	Yes
Spousal support	Yes	Yes
Dividing property and debt	No	Yes
Orders protecting people	Yes	Yes
Orders protecting property	No	Yes

Key words and phrases in family law

Here are definitions of some key words and phrases used in family law.

Separation is the breakdown of a romantic relationship. Separation usually means at least one of the spouses has moved out. But it's possible for people to be separated while still living under the same roof. To learn more, see our information on separation and separation agreements and deciding who will move out.

Divorce is the end of a marriage by a court order. Here, we explain the requirements for divorce.

Child is any person under 19, the age of majority in BC. It may include a person who is an adult child for the purposes of child support. The *Divorce Act* uses the term "child of the marriage" when it talks about children.

Parent is someone who is the birth parent of a child, the adopted parent of a child, a parent by assisted reproduction, and, in some cases, a donor of eggs or sperm, and a surrogate mother. A parent is usually, but not always, a guardian of their child.

Guardian is someone who has the right to make decisions about children. Most of the time a parent is a guardian of their child.

The two main laws use different terms to talk about how parents make decisions about children. The *Divorce Act* talks about **decision-making responsibility**. This includes making all significant decisions about a child. The *Family Law Act* talks about **parental responsibilities**. This includes making significant decisions about a child and often day-to-day

decisions as well.

Parenting time is the time a spouse or guardian has with a child. Parenting time is usually divided between spouses or guardians on a fixed schedule.

Contact is the time someone who isn't a spouse or guardian has with a child. Contact is usually provided on a fixed schedule.

For more on these terms about parenting after separation, see our information on guardianship, parenting arrangements, and contact.

Child support is money usually paid by one parent to the other to help raise their child. Here, we explain child support.

Spousal support is money one spouse pays to the other to help them financially after a separation or divorce. Here, we explain spousal support.

Who can help

With more information

The **Family Law website** from Legal Aid BC features self-help information and guides for people in family disputes.


- Visit website ^[5]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, provides comprehensive information on family law, including sample court forms and how-to information.

- Visit website ^[6]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Getting Married in British Columbia

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Amber van Drielen ^[1], One World Law Group in February 2020.

You've decided to tie the knot. Congratulations! Learn the legal requirements and the steps involved to get married in British Columbia.



"My partner and I are getting married next month! Last week, I bought a marriage licence through a local notary public. I also hired a licensed marriage commissioner to do our ceremony. Within two days of the ceremony, she'll send the paperwork to the government to get our marriage registered. After that, we'll receive our marriage certificate. I can't wait until we can put the 'Just Married' sign on the back of our car!"
– Zach, Williams Lake, BC

What you should know

Who can get married in BC

Before you can get married in British Columbia, you must meet these qualifications at the time of the marriage:

- Each of you has to be **unmarried**. In other words, you can't already be married to someone else. If you were married before, you need to be divorced before you can remarry.
- You must **not be too closely related** to each other. That is, you can't marry anyone in your immediate family or any near relative. This includes half-siblings, whether by birth or adoption.
- Each of you has to be **19 years of age or older**. If you're under 19, you may still get married, but you need your parents' or guardians' agreement. If you're under 16, you need a court order to get married.
- Both of you have to **understand the nature of the ceremony**. You also have to understand the rights and responsibilities that marriage involves.

Tip In BC, and in the rest of Canada, opposite- as well as same-sex couples can marry. The marriage laws that apply to same-sex couples are the same as those that apply to opposite-sex couples.

To get married, you need a licence

You don't have to be a resident of British Columbia to get married here. Blood tests aren't required. But you do need a **marriage licence** to get married.

At some time in the **three months before** your wedding date, you'll need to get a marriage licence. We explain below how to get one.

If you don't get married within three months, the marriage licence expires, and you'll need to apply for a new one.

Tip If one of you was **married before**, you must show proof of your divorce before you can get a marriage licence. This is usually done by providing the original or certified true copy of your divorce order, certificate of divorce, or annulment.

You can get married in a religious or civil ceremony

You can have a religious or civil marriage ceremony, or both. The person performing the ceremony must be licensed to perform marriages under the provincial *Marriage Act* ^[2]. For civil ceremonies, this person is known as a **marriage commissioner**. For religious ceremonies, they are known as a religious official.

Not all religious officials are licensed under the *Marriage Act*. If you want, you can first be married in a civil ceremony. Then you can have a religious ceremony. If you do that, it doesn't matter if the religious official is licensed to perform marriages because you'll already be legally married.

There's no need for a public announcement of the marriage to be published before the marriage ceremony takes place.

Your marriage will be registered

In BC, the marriage commissioner or religious official who conducts the ceremony will help you register your marriage with the Vital Statistics Agency ^[3]. This is the government office that registers all marriages that occur in BC. We explain how this works below.

The person who conducts your ceremony may give you a document confirming your marriage. This can be used to prove you're married before your marriage is registered and you receive your government-issued **marriage certificate**.

If someone doesn't agree with the marriage

If someone believes there's a reason why two people should not marry, they can try to stop the proceedings. This is done by filing a document called a **caveat** with a marriage licence issuer. In this case, a marriage licence will not be issued until:

- the marriage licence issuer has looked into the matter and is satisfied the caveat shouldn't stop a licence from being issued, or
- the caveat is withdrawn by the person who filed it.

If a caveat has been filed, you should speak to a lawyer.

Steps to getting married

Step 1. Get a marriage licence

To get a marriage licence, at least one of you has to go **in person** to a marriage licence issuer. You can go to any Service BC office. Many insurance agents and notaries public also issue marriage licences. The BC government website has a search form to help you find the marriage licence issuer closest to you ^[4]. Or you can contact the Vital Statistics Agency ^[3].

You both need to show "primary" government-issued photo ID, such as a birth certificate or a citizenship card. The licence costs \$100.

Step 2. Have the marriage ceremony

The person performing the marriage ceremony must be licensed to perform marriages under the provincial *Marriage Act* ^[2]. See “What you should know,” above, for details.

The marriage ceremony must take place in the presence of at least **two witnesses**. (The marriage commissioner or religious official don’t count as witnesses.)

Step 3. Your marriage will be registered

After the marriage ceremony, the couple, two witnesses, and the official marrying them must sign the marriage licence, and a **registration of marriage** form.

Within 48 hours of the ceremony, the registration of marriage form must be sent to the Vital Statistics Agency for registration. The person who conducts your ceremony will normally take care of this for you. If you’re not sure, ask them if they will.

The Vital Statistics Agency will send you a **marriage certificate**.

Who can help

With more information

The **Vital Statistics Agency** is the government office that registers all marriages that occur in BC.


- Call 1-888-876-1633 (toll-free)
- Visit website ^[3]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has information about how to get married in BC.

- Visit website

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Marriage Agreements and Cohabitation Agreements

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit ^[1], Brown Henderson Melbye in April 2020.

Not all relationships last forever. But the law can help. A **marriage agreement** or **cohabitation agreement** can set out how couples will deal with issues that come up if their relationship ends. These types of agreements can also cover what will happen during their relationship. Learn more about these agreements.



"I own a condo and have some good investments that have added up over the years. My partner Krystle will be moving in with me in a few weeks. We've talked about making a cohabitation agreement. She doesn't own property, but she owns an antique car she inherited from her dad and has some savings. We've decided that each of us will keep what we own before we start living together and want to put this in writing."
— Levi, Campbell River, BC

What you should know

What is a marriage or cohabitation agreement?

Marriage and cohabitation agreements are **contracts**. They set out promises each person makes to the other. The promises are usually about what will happen if the relationship ends. But they can also set out what will happen during the relationship if problems arise. The main goal is to head off future conflict.

A **marriage agreement** can be made between spouses who are already married. Or it can be made by a couple planning to marry. It's optional. You don't have to make a marriage agreement before or after you marry someone.

A **cohabitation agreement** can be made between two people who are already living together, or who are planning to live together. Again, you don't have to make a cohabitation agreement before or while you live together.

Tip Under the BC *Family Law Act* ^[2], couples are considered **spouses** if they're married or have lived together in a marriage-like relationship for at least two years. Couples who've lived together in a **marriage-like relationship** for less time but have a child together are also spouses (except for when it comes to property, debt, or pensions).

These types of agreements are often used at the start of second relationships — especially when there are children from a previous relationship. They're also common when one party is bringing more money or debt into the relationship.

Issues a marriage or cohabitation agreement might deal with

Typically, a marriage or cohabitation agreement talks about how **property** and **debts** will be managed during the relationship. Each type of agreement also talks about how property and debts will be divided if the couple breaks up. They sometimes also say if spousal support will be paid if the relationship ends.

For example, an agreement might say that in the event you and your partner split up:

- each of you will keep whatever property you had before you started living together
- one of you will have the right to stay in the family home (at least temporarily)
- one of you will (or won't) receive support from the other for a certain period of time
- one of you will get a certain share of the property you acquire during the relationship

There are many possible arrangements for how property, debts, and spousal support can be dealt with.

A marriage or cohabitation agreement might also cover what will happen **during the relationship**. For example, it might say how household chores or household expenses will be handled.

Issues a marriage or cohabitation agreement can't deal with

Married and unmarried spouses have certain legal obligations, like supporting their children. They can't make an agreement to get out of these obligations.

Under the *Family Law Act* ^[3], any **parenting** or **child support** agreement is only binding if it's made when the parties are about to separate or after they actually do.

The legal requirements to make an agreement

A marriage or cohabitation agreement must be in **writing**. Both parties (the people who enter into an agreement) must **sign** the agreement. Their signatures should be **witnessed** by at least one other person. Witnesses aren't bound by the agreement — they're just saying they watched the parties sign it.

The enforceability of an agreement

In BC, a court can set aside part or the whole of a marriage or cohabitation agreement. This can happen if the agreement is found to be **significantly unfair**.

A court can set aside a marriage or cohabitation agreement where one party took advantage of the other. For example, if one party failed to tell the other about significant property or debts, an agreement may be set aside. Similarly, an agreement signed under pressure a day or two before a wedding may not be enforceable.

There must be fairness in the way the agreement is negotiated, in the way it's drafted, and in the way it's signed.

A key way to have fairness is to have each party get **independent legal advice** before signing the agreement. That is, each party meets with their own lawyer to get advice about:

- what the agreement means,
- what rights and obligations the agreement gives to each party, and
- how the agreement affects other legal options that might otherwise be available.

Changing or ending an agreement

The parties to a marriage or cohabitation agreement can always change or cancel their agreement if they both agree to do so. The parties can change an agreement by making a second written agreement called an **addendum agreement** or an **amending agreement**. This second agreement can change some parts of the first agreement, or can cancel and replace it. Like the first agreement, the parties must sign the new agreement and have their signatures witnessed.

Tip The Family Law website from Legal Aid BC has detailed information and steps for changing agreements ^[4].

Common questions

My fiancé is pressuring me to sign a marriage agreement. Do I have to?

No. There's no legal requirement that you have a marriage agreement if you're planning to marry someone. (Or a cohabitation agreement if you're planning to live with someone.) You can't be forced to sign one. A court may set aside an agreement you were pressured into.

Should my spouse and I use separate lawyers?

If you want to make a marriage or cohabitation agreement, you can write down some general ideas and expectations with your partner. Then you can either prepare a written agreement based on these notes or have a lawyer draft the agreement.

Whether or not a lawyer writes the agreement, you should meet with a family lawyer for advice and to ensure you understand your rights and obligations. Some lawyers offer unbundled legal services ^[5]. This is when a lawyer handles specific parts of your case without taking on the whole thing. Such a lawyer can look at a draft of your agreement. They can explain how the agreement affects your rights and obligations **before** you sign it.

Should my spouse and I use separate lawyers?

This may seem unnecessary. But as a general rule, both parties entering into a marriage or cohabitation agreement should get **independent legal advice** (advice from their own lawyer) **before** signing the agreement.

Independent legal advice is important for two reasons:

- it helps the parties know exactly what their rights and obligations are, and
- it makes the agreement stronger by preventing either party from later claiming they didn't fully understand parts of it or how it would impact them.

To save money, one spouse's lawyer could prepare the agreement. Then the other spouse's lawyer could provide that spouse with legal advice.

Who can help

With more information

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has in-depth information about marriage agreements and cohabitation agreements, including drafting tips.


- Visit website

The **Family Law website** by Legal Aid BC has information about agreements, including cohabitation agreements.

- Visit website ^[6]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Couples Who Are Not Spouses: Your Income, Support and Property Rights

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Shelagh Kinney ^[1], Watson Goepel in April 2020.

Not all couples who live together meet the definition of spouse under BC's family law. Those who aren't considered spouses have some rights but not others. Learn what happens if you're in an unmarried relationship that ends.



"My partner and I lived together for 17 months before we ended our relationship. We had bought a place together. It was only in my partner's name, as was the mortgage. I thought I was automatically going to get half the property. But because we lived together for less than two years, that's not the case. I have a harder path to asking a court for a share of the property."
— Serena, Kimberley, BC

What you should know

Who a spouse is

There are two main laws that define who a **spouse** is. The federal *Divorce Act* ^[2] defines a spouse as either of two people who are **married** to each other.

BC's *Family Law Act* ^[3] expands the definition. Here, the term spouse also includes:

- people who have lived together in a marriage-like relationship for at least **two years**, and
- people who have lived together in a marriage-like relationship for less than two years and have had a **child together** (in this case, though, you **aren't** considered a spouse when it comes to property, debt or pensions; we explain what this means shortly).

A couple is living in a **marriage-like relationship** if they present themselves as a couple to family and friends, and carry out their financial and household affairs as a couple.

This information is for couples who are **not spouses** under BC's family law. For example, you may have lived together in a marriage-like relationship for **less than two years** (and not had a child together). Or you have a child together but have never lived together.

Your rights to support

Support is money paid by one parent or guardian to another, or one spouse to the other, for financial help after a relationship ends.

Child support

Under BC law, each parent and guardian of a child has a duty to financially support the child. It doesn't matter if the parents of a child have ever lived together. Generally, you can ask for child support from the other person as long as they're a parent of the child under BC law. The other parent must pay child support for that child under the Child Support Guidelines.

To learn more, see our information on child support.

Spousal support

A person who's a spouse under the BC *Family Law Act* is eligible to apply for spousal support. (See "Who a spouse is" above). Someone who isn't a "spouse" under BC family law cannot apply for spousal support.

To learn more, see our information on spousal support.

Your rights to property acquired during the relationship

Property division is one of the areas in which being a spouse under the *Family Law Act* makes a difference. Under the Act, **spouses** are presumed to:

- keep the property each of them brought into their relationship
- keep certain other property such as inheritances and gifts from someone other than your spouse
- share the other things they acquired during their relationship, no matter who bought it (called **family property**)

Only spouses who are **married** or who've lived together in a marriage-like relationship *for at least two years* share an interest in family property. If you're in a relationship that doesn't meet this definition of spouse, you're only allowed to keep the property you brought into the relationship.

If you own property together (jointly) — such as a house, a car, or bank accounts — you're each presumed to have an equal interest in that joint property.

If you contributed to the purchase of an asset owned by your partner, or paid more for the purchase of a joint asset than your partner, you may be able to get out what you put in. But you'll have to prove your contributions to the purchase. And you'll have to show that you didn't mean for your extra contributions to be a gift.

To learn more, see our information on dividing property and debt.

Because the law in this area is complex, you should get legal advice.

Your rights to property based on unjust enrichment

If you contributed in some way to the assets owned by your partner, you may be entitled to a share of that property based on **unjust enrichment**. To claim an interest in your partner's property, you must show three things:

- your partner gained a **benefit** from your contributions,
- you suffered a **loss** as a result of making those contributions, and
- there's **no legal reason** why your partner should have received the benefit of your contributions at the cost of your loss.

If you can prove these things, a court may agree your partner was **unjustly enriched** by your contributions, and that you should be compensated for your loss. The court can order that your partner compensate you. If your partner can't afford to make the payment, the court may impose a trust, called a **constructive trust**, on their property. Then you can be paid the compensation you're owed.

The law in this area is complex and it's highly advisable to seek legal advice.

Responsibility for debts

If you sign for a loan, it's your loan and your responsibility — not your partner's. Likewise, if your partner signs for a loan, it's their responsibility. But if you both sign for a loan, you are both responsible to repay the debt.

If you **guarantee** (promise to pay) your partner's loan, and your partner is unable to make the payments (or refuses to), you're responsible. That's true even though you may have had no benefit from the loan. If you end up paying some or all of the loan, you can ask your partner to pay you back.

Getting income assistance

The BC government gives income assistance to those who need financial help.

As soon as you start living with someone else, the income assistance office may treat you like spouses. When you apply for income assistance, your caseworker will look at what income and assets you both have.

Under BC's income assistance law ^[4], **spouse** includes people living together for at least the last **12 months** in a row. The income assistance caseworker must believe that, like a marriage-like relationship, your relationship shows:

- financial dependence or interdependence, and
- social and familial interdependence.

If you meet this definition and qualify for income assistance, you'll get it at the rate for a couple or family — not as two single people.

You have the right to challenge the decision of the income assistance office. For step-by-step guidance, see our information on income assistance reconsiderations and appeals.

If you claim income assistance as a single person when you're actually living with someone else as a couple, you:

- may have to pay back any benefits you've received,
- may face a civil court case or even criminal charges, and
- could be refused future services by the Ministry of Social Development and Poverty Reduction.

Getting benefits under a pension plan

Old Age Security provides Canadian residents with a monthly pension beginning at age 65. People between age 60 and 64 whose spouse qualifies for a low-income pension supplement can receive an allowance benefit. To qualify for the **allowance** as a spouse, you need to be living together for **one year**.

The **Canada Pension Plan** allows pension credits earned during a marriage-like relationship to be divided. This is true as long as spouses have lived together for at least one year and an application is made within four years of the separation date.

Private pension plans generally don't provide benefits for people who aren't spouses.

Getting employment insurance benefits

The federal government provides **employment insurance (EI) benefits** to workers who lose their job. You may be eligible for EI benefits if you leave a job to follow your partner to a new place. Employment insurance defines a couple as **spouses** if they've lived together in a "conjugal relationship" for at least **12 months** in a row.

You can also get EI benefits if you leave your job to follow your partner if you're:

- expecting the birth of a child, or
- caring for an immediate family member.

Note that you won't qualify for benefits if the government concludes there were reasonable ways you could have kept your job. These might include requesting a transfer or commuting from the new place of residence.

Coverage under your partner's medical and dental plans

The BC Medical Services Plan covers people who live together in a marriage-like relationship. There's no requirement about how long you must be living together.

Medical or dental plans or employers' extended health plans generally don't provide benefits for people who aren't spouses.

Common questions

Will I have to go to court?

If you separate, you may have to go to court to sort out some of your support and property rights. BC Provincial (Family) Court can help you deal with support for you and your children, plus guardianship, parenting arrangements, and contact. Family Court can't deal with property issues. It also can't make orders about who will live in the family home. For these issues, you'll have to go to the BC Supreme Court.

For more on going to court, see our information on Family Court.

Tip You may be able to deal with some or all of your family law issues outside of court through **mediation**. You can try contacting a **family justice counsellor**. They are mediators who are specially trained to help families with guardianship, parenting, child support, and other family law issues. See the BC government website to learn more ^[5].

Do I need to make a will?

If you want to make sure your partner and children are taken care of after your death, you need to make a **will**. In it, you can say who you want your property to go to. You can also name a guardian. They'll be legally responsible for your children after you and your partner die.

For more, see our information on preparing a will and when someone dies without a will.

Who can help

With more information

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has information on unmarried relationships.


- Visit website

Legal Aid BC has information about family law basics in its booklet *Living Together or Living Apart: Common-Law Relationships, Marriage, Separation, and Divorce*.

- Visit website ^[6]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Introduction to Family Violence

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by JP Boyd, KC ^[1], Boyd Arbitration Chambers; Tannis Baradziej ^[2], Duncan Allen Law LLP; and Manjeet Chana, People's Law School in December 2021.

If you or someone you know is a victim of family violence, there is help. You can get in touch with the police, community workers, the court system, or all of these resources as needed. Learn steps you can take to stay safe and protect yourself and your family.

Alert! This information has been updated to reflect changes to the *Divorce Act* ^[3] that took effect on March 1, 2021, as well as new Provincial Court Family Rules ^[4] that took effect on May 17, 2021.

What you should know

Family violence is abusive, controlling behavior

Family violence is any kind of abusive behavior used to get power and control over a family member. It can be intentional or unintentional and can happen during a relationship or after it ends.

Family violence includes physical abuse (such as hitting a partner or child). It also includes:

- sexual abuse
- psychological abuse
- emotional or verbal abuse
- threats, including threats to harm other people or pets
- harassment, intimidation, and coercive controlling behaviours

- stalking or following
- limiting a person's independence, including their financial independence
- damaging property

In family violence cases, anyone can be a victim, including children. Children can be victimized indirectly — that is, when they see violence happening between family members.

Family violence can occur once or often. Either way, **abuse is wrong**. If you've been abused, know this: **abuse is not your fault**.

Family violence can be a crime

Family violence is not only a family law problem. It's a crime. Under Canadian law ^[5], no one is allowed to physically or sexually abuse, harass, stalk, or threaten another person. Anyone who does any of these things to you or your children can be charged with a crime. The list of possible crimes is long. It includes assault, sexual assault, criminal harassment, unlawful confinement, and uttering threats.

If you're in immediate danger

If you think that you, your children, or others are in immediate danger from your partner, there is help available.

Call the police

First, call the police by **dialing 9-1-1**. The police will usually act quickly. They'll ensure that you, your children, and others are safe.

The police can also gather evidence and suggest further options. They may, for example, recommend **criminal charges** or a **peace bond**. They may also suggest you ask for a **protection order** in Family Court. These steps can keep you safe by limiting your partner's contact with you. These options are discussed below.

Contact community services

The police can also connect you to community services. This might include helping you find emergency shelter. You and your children might be able to stay in a nearby **transition house** for several days or weeks. This will give you time to find a new, safer place to live.

Going to a transition house, a safe house, or another emergency shelter won't compromise your right to return home. The immediate priority, though, is your and your children's safety.

In a moment, we highlight key community services that can help.

If you aren't in immediate danger

If you aren't in immediate danger, you may still be afraid for your safety, and at the same time afraid to leave the relationship. There may be many different reasons for this. You may be:

- someone who is in a cycle of violence
- financially dependent on your partner
- worried about losing your children
- worried about losing your home and having nowhere to go
- discouraged by family or community members from reporting the abuse
- isolated and have few social supports
- unsure of your legal rights or the social services that can help you

Whether you want to stay in your relationship or not, **you can get help**. A counsellor or a victim support worker can meet with you to talk about the family violence and provide emotional support. They can also help develop a **safety plan**. This way you and your children can stay safe while you're in the relationship or if you leave.

Some people have insurance that might pay some of the cost of counselling through their work. (For example, through an extended health benefit plan or employee-assistance program.) If not, there are other services that are free. You don't always have to pay. Speaking to a counsellor or a support worker can help. The two of you can decide the next steps for you and your children.

Making a safety plan Legal Aid BC explains what's involved in making a safety plan ^[6] for yourself and your family.

Community services are available to help

These community and healthcare services can help with counselling and support.

VictimLinkBC is a 24-hour information and helpline for victims of family violence. Operators give support and information. Call 1-800-563-0808 (toll-free in BC) or visit their website ^[7].

Battered Women's Support Services offers crisis support and counselling. Contact them if you've been abused in an intimate relationship. Call 604-687-1867 (Lower Mainland) or 1-855-867-1868 (toll-free in BC), or visit their website ^[8].

Vancouver & Lower Mainland Multicultural Family Support Services offers counselling for victims of family violence and also for children who witness abuse. Translators are available for police or court interviews. Call 1-888-436-1025 (toll-free) or visit their website ^[9].

BC Society of Transition Houses offers safe temporary shelter for women and children fleeing family violence. You can stay up to 30 days. They also offer group and individual counselling for children and youth who witness family conflicts and violence. Call 604-669-6943 (Lower Mainland) or 1-800-661-1040 (toll-free in BC), or visit their website ^[10].

Vancouver Rape Relief & Women's Shelter operates a transition house for women and their children. They also have a 24-hour crisis line for women trying to prevent or escape family violence. Call 604-872-8212 (Lower Mainland) or visit their website ^[11].

QMUNITY provides free counselling and support groups to the LGBTQ+ community. Call 604-684-5307 (Lower Mainland) or visit their website ^[12].

If you contact the police

If you contact the police to report family violence, they'll investigate. This involves taking a statement from you, your partner, and any witnesses. The police will consider whether to recommend a criminal charge. If so, they'll prepare a report for a government lawyer, called Crown counsel.

Crown counsel will review the police report. They'll decide whether your partner should be charged with a crime (such as assault). If so, your partner will be arrested.

Most people who are charged are released on bail

Most people charged with a crime don't stay in jail after their arrest. They're usually released on **bail**, on conditions ordered by a judge. A condition might be, for example, that they have no contact with you. They're not allowed to come to your home, work, or school. If they break their bail order, you can tell the police, who can arrest and charge them.

If you and your children want to resume contact with your partner, or want to stop the criminal court process, you'll need to first talk to Crown counsel about changing the bail order conditions.

If there is a criminal trial

If your partner is charged with a criminal offence, they might decide to **plead guilty**. A guilty plea means they accept responsibility for the offence. So there's no trial. But if they choose to plead not guilty, a **trial** will be held in criminal court.

At trial, you'll testify under oath or affirmation. That means telling the judge the truth about what happened.

If your partner is found guilty of assaulting or threatening you, they'll be sentenced. If they have no prior criminal record, they may not go to jail. Instead, they might be given a fine, or placed on probation with conditions such as to have no contact with you or to attend counselling.

You can get a court order to protect yourself

You can get a court order to protect yourself and your family from family violence. You can apply for a criminal law **peace bond** or a family law **protection order** — or both.

Anyone can apply for a peace bond, but only **family members** can apply for a protection order. Family members include, for example, you, your partner, your child's parent or guardian, and a relative of yours who lives with you.

Peace bonds

A **peace bond** is a criminal court order that usually lasts for a full year. However, it can take several weeks to get a peace bond in place.

You apply for a peace bond before a justice of the peace in criminal court. Or, if you're already in the middle of a criminal court process, your partner may agree to enter into a peace bond voluntarily — in exchange for Crown counsel dropping any criminal charges against them. The deal will come with certain conditions. Your partner agrees to "keep the peace" and, typically, not contact you for a certain length of time.

If your partner follows the peace bond conditions, your partner will avoid getting a criminal record. If they don't, they can be sent to trial. There, they'll have to deal with the *original* criminal charge plus a new charge for not following the peace bond. See our information on peace bonds ^[13] for more on this process.

Family law protection orders

A **protection order** is another option to help you stay safe. It's typically quicker and easier to get than a peace bond. (In Provincial Court, you may be able to get one on the same day.) You apply for this order under the *BC Family Law Act*. It can set out conditions your partner must follow. These might include:

- how much, if any, contact they can have with you (and sometimes how they can communicate with you)
- not going to your home, school, or workplace
- not stalking (or following) you
- not possessing weapons

A protection order can also require the police to:

- remove your partner from the home
- escort them while they gather up their belongings
- take away their weapons

A protection order can also require your partner to report to the court.

Common questions

How do I apply for a family law protection order?

Anyone at risk of family violence can apply for a family law protection order. You can apply on your own, or a lawyer can help you.

If you're afraid for your safety, you can apply for a protection order without having to notify your partner. You can apply in either BC Supreme Court or Provincial Court (which is sometimes called Family Court). In Family Court, there are no filing fees, and you may find the paperwork easier. On the other hand, if you also want to ask for a divorce or division of property, it might be more efficient to apply in Supreme Court. (Only BC Supreme Court can make decisions about division of property and divorce.)

In either court, along with your request for protection, you'll need to file an **affidavit**. In it, you describe what happened and what your concerns are. (This is a legal document; you must tell the truth.)

Self-help guide Legal Aid BC's Family Law in BC website has a free step-by-step guide ^[14] for applying for a protection order in Provincial Court.

How does a protection order or peace bond affect my family case?

Family violence can affect a court's decisions about guardianship, parenting arrangements, or contact with a child. A court has to make decisions in the best interests of the child, and any threat or history of coercive control or family violence can make a difference. The court must consider whether there's a child protection case or a criminal court case happening, and if any protection orders or peace bonds are in place when making decisions about parenting children. A person who is responsible for family violence could see their parenting privileges restricted or cut altogether.

What if a protection order conflicts with another family court order?

If you get a protection order (or even a *Criminal Code* order), and there's already a parenting order in place that says something different, a few things will change. The parts of the parenting order that conflict with the protection order are suspended. For example, say there's an existing order about parenting time. But the new protection order forbids all contact with the children. This new order trumps the old one. No time with the children will be allowed.

What if my partner pressures me to drop the criminal charges?

It's not up to you to drop the charges. You didn't even lay the charges against your partner in the first place — Crown counsel did. If your partner pressures you to drop the charges — or tries to contact you — you can report them to the police or Crown counsel.

What if my partner ignores a protection order?

If they do, and they continue to contact or harass you, they can be arrested. And charged with a criminal offence. They may be brought before the court. If they're found to have breached the protection order, they can be fined, placed on probation, or put in jail.

Who can help

Free and low-cost legal help

Legal Aid BC provides free legal help to people who can't afford a lawyer. This is important: when you apply, tell them if you're in crisis and fear violence from your partner.

Call 604-408-2172 (in the Lower Mainland)

Call 1-866-577-2525 (toll-free)

Visit website ^[15]

Other options for free legal help include pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help ^[16].

The BC government's **Victim Services Directory** provides contact information for service providers across BC that assist women and children impacted by violence.

Visit website ^[17]


With more information

Legal Aid BC's **Family Law in BC website** includes extensive information on family violence.

Visit website ^[18]

Clicklaw's *JP Boyd on Family Law* wikibook also has a lot of information about family violence.

Visit website

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Changing Your Name

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Amber van Drielen ^[1], One World Law Group in February 2020.

If you're getting married or divorced, you may be thinking about changing your legal name. Or maybe you just feel like changing your name. Learn what's involved in a name change.



"My spouse and I are getting divorced. When we married 21 years ago, I took his last name. My credit cards, bank accounts, and even my driver's licence are in my married name. On separating, I thought I might have to make some kind of application to change my last name back to my maiden name. But, it turns out I don't have to — I can just start using my maiden name again."
— Jacinda, Abbotsford, BC

What you should know

What name you use

Government identification, such as a passport or driver's licence, is only issued in your **legal name**. Anyone age 19 or older can apply to change their legal name under the law in BC ^[2]. They can choose any new name they want. But the change can't cause embarrassment or confusion to anyone. It also can't be objectionable or used for an improper purpose — such as avoiding paying your debts.

We explain the process to apply for a legal name change below.

If you get married

When they marry, some people choose to change their last name. Under BC law ^[3], you have a number of choices for your last name when you marry:

- You can keep the last name you had before the marriage.
- You can use the last name you had at birth or by adoption.
- You can take the last name of the person you're marrying.

This applies to both men and women and to same-sex and opposite-sex couples. You can choose any of these options and start using that name.

(You don't *have* to change your last name if you don't want to.)

No application required

To be clear, for any of the above options, you **do not** have to complete a legal name change or make a court application. You can simply start using that name and apply for and get identification (such as a driver's licence) in your new name right away. The same goes for other documents like credit cards, business cards, and so forth. You just need to provide a copy of your government-issued **marriage certificate**.

Using a hyphenated, combined, or new last name

On getting married, if you and your spouse want to use a hyphenated or combined last name, or switch to an entirely new last name, you must **apply** for a legal change of name. It is not automatic. We explain the process shortly.

Tip The choice of taking the last name of the person you're marrying doesn't apply to common-law relationships. This is because the law involved only mentions name changes after marriage ^[3]. Common-law spouses can keep their own last name *or* apply for a legal name change.

If you get divorced

If you divorce, you may **choose** to use any of the following last names:

- the last name you used while you were married
- a previous married last name, if you were married before
- your last name at birth

You **don't** have to apply for a legal change of name. You can just start using one of these last names.

If you want a completely new name

After your divorce, if you want to change your name to a name you've never used before, there's a special procedure. You have to ask for the new name in your notice of family claim or counterclaim. Then you file the appropriate forms asking for the name change with your divorce application. (By taking this approach, you don't have to get a certified criminal record check, which is otherwise a required step in applying for a legal name change.)

Applying for a legal name change

For a name change that requires you to make an application, here are the steps involved.

Step 1. Make the application

To carry out a legal change of name, you need to apply to the BC Vital Statistics Agency. You must be at least 19 years old. As well, you must have lived in BC (or had a permanent residence in BC) for at least three months before making your application.

To start the process, you fill out an **application for name change**. You can complete the application form online ^[4] or in person at a Service BC location ^[5].

With the application, you need to provide certain supporting documents and the required fee. The supporting documents vary, depending on your situation:

- If you were born in Canada, you must provide an **original** Canadian birth certificate.
- If you were born outside Canada, you must have **certified copies** of immigration and citizenship documents.
- If you were married in BC, you must provide an **original** BC marriage certificate.
- If you were married outside of BC or Canada, you must provide a **photocopy** of your marriage certificate.

Step 2. Get a criminal record check

In support of your name change application, you must get a certified **criminal record check**. This has to happen **within 30 days** of applying for the name change. The process starts with getting your fingerprints taken. Contact your local police or the RCMP ^[6] for information on getting a certified criminal record check.

Step 3. Certificate of change of name

After your legal name change application has been processed and the name change registered, you'll get a copy of your **certificate of change of name**. Now you can apply for other identification in your new name.

The name change will be recorded in government records. As well, if your birth or marriage is registered in BC, a note will be made on the original registration. Any later copies will be issued in your new name.

Who can help

With more information

The **Vital Statistics Agency** is the government office that deals with legal change of name applications.


- Call 1-888-876-1633 (toll-free)
- Visit website ^[7]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has information on names and changes of name.

- Visit website

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Divorce & Separation

Separation and Separation Agreements

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit^[1], Brown Henderson Melbye in May 2020.

The end of a relationship is very difficult. There are many issues to work through and decisions to make. But this practical step can help: preparing an agreement about the family law issues you and your spouse agree on. Learn about **separation agreements**.



“My spouse and I just finished making our separation agreement. We didn’t agree on everything so it took us a while to put it together. We got help from a family justice counsellor to work out parenting arrangements and support. After we signed off on the agreement, we filed it in Family Court because there aren’t any filing fees. And it will be enforceable like a court order. I’m glad we did this! Now we both understand what our rights and obligations are.”
– Hannah, Pemberton, BC

What you should know

When you are separated

Under the law in BC^[2], a **spouse** is someone who:

- is married, or
- has lived together with another person in a “marriage-like relationship”
 - for at least two years, or
 - for less than two years and has a child with the other person.

Spouses are separated when **one or both** people:

- decide their relationship is over,
- tell the other person their decision, and
- act like the relationship is over.

Spouses don’t need to agree to separate.

Separation usually marks the end of a couple’s relationship. Most separating couples stop eating and sleeping together. They also stop doing chores for each other and going out together.

Attempts to get back together

Separation doesn't always mean a relationship is over for good. Some people go to counselling to try to rebuild their relationship.

Married spouses can try to reconcile (get back together) by living together for **up to 90 days** without it affecting the date they are seen to have separated. (Married spouses can divorce after having lived separate and apart for at least one year.) If they live together for more than 90 days, the clock resets and a new one-year separation period begins, if they separate again.

Separated but living in the same home

After separating, couples live apart. But, they don't have to move into separate homes. Sometimes people stay together under the same roof but have separate bedrooms. It's less expensive to live in the same home while they figure out how to deal with their property, children, and any potential support claims.

Tip You can be considered separated even if you and your spouse still live in the same home after your relationship ends. Legal Aid BC's Family Law website explains what factors can prove you're separated if you and your spouse still live together ^[3].

There is no “legal separation” in BC

There's no such thing as a “legal separation” in British Columbia. You don't have to sign any papers or see a judge or a lawyer to separate. Couples can just ... split up.

That said, it's important to keep track of the **date you separate**. It'll affect your rights to division of property, debt, and support. Unless a cohabitation agreement or marriage agreement says otherwise, the **date of separation** is generally the day that:

- one person tells the other they want to end their relationship, or
- a couple jointly decides to end their relationship.

Why make a separation agreement

A **separation agreement** is a written and signed document. It records how a couple has agreed to settle their family law issues.

You should consider making a separation agreement for these reasons:

- It's a legal contract recording the terms of your agreement.
- It can be enforced by the court.
- It's a lot cheaper and often quicker to resolve family law issues by an agreement than by going to court.
- It helps avoid confusion over what to do about family law issues after separation.

A separation agreement can deal with support and parenting arrangements

For married and unmarried spouses, a separation agreement can cover many different family law issues, including whether a spouse should receive financial help — and, if so, who should get it and how much. This is called **spousal support**.

For parents, there may be additional family law issues in a separation agreement, including:

- How the parents will cover the children's financial needs. This is called **child support**.
- How the parents will care for and share time with the children. This is called **parenting arrangements** and includes **parenting time** and **contact**.
- Who the children should live with and how child care decisions will be made.

A couple might agree that their children will live mainly with one parent. (The other parent can have time with the children on certain times and days.) Or they may agree to share parental responsibility. In that case, the children live partly with each parent. Whatever parenting plan you and your spouse agree to, you can put it in a separation agreement.

A separation agreement can deal with property and debt

A separation agreement can deal with property and debt issues, including:

- How **family property** (property acquired during the relationship) will be divided.
- How responsibility for **family debts** will be shared.

The *Family Law Act* provides guidelines^[4] on what assets are considered family property and what debts are considered family debt. It also sets out the rules for how to divide that family property and debt. Basically, when a couple separates, each spouse has a right to equally share in property they acquired together. Each spouse also gets a share of the *increase* in value of any property that either brought into the relationship. The law calls this increase family property as well.

The Act also sets out how to handle **excluded property** (assets that are **not** family property). This can be complicated — if you have a lot of assets, you should get help from a lawyer.

If you own other property besides your home (for example, a car, a cottage, or investments), a separation agreement can cover how to divide these assets too.

See our information on dividing property and debts for more on this topic.

Who is responsible for debts

When a couple separates, each spouse is usually responsible for half of the debt incurred during the relationship. The law calls this **family debt**^[5]. Each spouse may also be responsible for half of the debt incurred *after* separation. This is true if the money went to maintaining family property.

Spouses can deal with division of debt in a separation agreement. Until then, they must make decisions about paying the family bills. Does the spouse who gets to live in the house have to pay the mortgage? Who will pay for the credit cards and utilities? Our information on dividing property and debts has more on this topic.

What happens to the family home

A separation agreement can say what happens with the **family home**. Spouses can decide whether one spouse will keep it, whether it'll be sold, or whether some other arrangement will be made. Even if the home is in one spouse's name, the other spouse may be entitled to a share in it.

Some spouses think the parent who usually has the children ought to be the one who stays in the home. This is so that the children can continue to live in the family home until they finish high school.

Others think it's best for only the children to stay in the home, while the parents take turns moving in and out. This is called **nesting**.

Yet another option: both spouses stay in the home until an agreed-upon date or until one of them wants to sell. There are many possibilities so it's helpful to get legal advice about your options.

Common questions

Do I need a separation agreement to get divorced?

You don't need a separation agreement to get divorced. But if you have children, the court will want to see evidence that reasonable financial arrangements have been made for them. Otherwise the divorce order won't be granted.

Having a separation agreement can be helpful because:

- you can set out the arrangements you and your spouse have agreed to, and
- the divorce application process could end up being less expensive, faster, and uncontested.

If you don't have children and there aren't any property or support issues, then you may not need a separation agreement. It's a good idea to get independent legal advice from a family lawyer. They can help you decide whether you need a separation agreement or whether to sign one.

What happens if one spouse won't work on a separation agreement?

You can't force someone to sign a separation agreement. If you want to resolve things but the other spouse doesn't, you have a few options.

First, you can get a lawyer. They might be able to help with negotiating an agreement.

Second, you can suggest ways to work out an agreement without going to court. One way is **mediation**. This involves meeting with a neutral person, a mediator, who helps you both find a solution you agree on. Or you can suggest a **collaborative negotiation** approach. This is a kind of negotiation where you each have your own lawyer and agree you will do everything possible to reach an agreement without going to court. A third way you might suggest is **arbitration**. This involves hiring a neutral third party to make decisions about your dispute. You and your spouse agree to be bound by these decisions. We explain all of these options here.

Lastly, you can go to court. Know that this approach will be more expensive, stressful, and adversarial.

Are mediation or collaborative negotiation helpful?

Both the *BC Family Law Act* and the *Divorce Act* encourage separated spouses to resolve their family law issues out of court. Using negotiation or mediation is a good idea — unless it would be inappropriate in the circumstances (for example, where there has been family violence).

You and your partner may *want* to make decisions together. But you may be having trouble negotiating with one another. **Mediation** can help. A trained family law mediator, such as a family justice counsellor or a private mediator, can work with you. They can help you to develop a parenting plan for the children and help you make other decisions as well.

A **collaborative negotiation** approach may also be used to settle things. Here, the couple and their lawyers agree to work together. They can negotiate an agreement. The couple and their lawyers sign a collaborative participation agreement saying no one will go to court or threaten to. If the collaborative negotiation process breaks down, the spouses must hire new lawyers if they want to go to court.

For more on these options, see our information on mediation and collaborative negotiation.

What happens if one spouse dies during negotiations?

If a spouse dies before a separation agreement is signed or before a court action is started, this can seriously affect how property and debts are divided. Things can get complicated.

You should get legal advice about how best to protect yourself if:

- you know you are dying,
- your partner may die before things are resolved, or
- your partner died after separation but before you finalized a separation agreement.

What if we run a family business together?

If you run a business together, you may not want to be business partners after you separate. It's important to resolve all of the financial issues relating to your business. They can be complicated (especially if there are tax issues), so it's a good idea to get legal advice from a family lawyer *before* making a separation agreement.

Should we hire a lawyer to write our separation agreement?

Separation agreements can have a serious and long-lasting impact on your legal rights and obligations. So it's a good idea to have a lawyer prepare yours if you can.

Spouses can't share the same lawyer. To keep legal fees down, one spouse's lawyer could prepare the agreement. Then, the other spouse can see a lawyer to get independent legal advice about it.

If you and your spouse decide to prepare your own agreement, it's a good idea to **get legal advice** *before* you sign it. Once signed, the agreement is legally binding and enforceable by a court.

In our "Who can help" section below, we describe options for low-cost legal advice.

What does a separation agreement cost if a lawyer prepares it?

It depends on the lawyer you pick and how complicated your situation is. Lawyers typically charge an hourly rate. You may want to call a few different lawyers and ask what they charge to make a separation agreement. An agreement may start at about \$2,500 but may ultimately end up costing many thousands of dollars.

To save time and money, take as much information with you as you can when you see your lawyer, including:

- income tax returns
- pay stubs for you and your partner
- documents about the home and any mortgage
- papers about other assets such as pensions, retirement savings plans, life insurance policies, investment accounts, and savings accounts
- documents relating to any debts such as credit cards and lines of credit
- documents relating to any assets or debts you or your spouse brought into the relationship

Also, think about your financial needs. Consider preparing a list of your monthly expenses before you see a lawyer. This will help your lawyer give you informed advice about your options.

Should we file our separation agreement in court?

You don't *have* to file your completed separation agreement in court. But if you do, you can file in BC Provincial (Family) Court or BC Supreme Court. Filed agreements that include terms about parenting and support can be enforced as if they are court orders.

Tip Legal Aid BC has self-help guides that can help you with filing your agreement in BC Provincial Court ^[6] or in BC Supreme Court ^[7]. It's free to file an agreement in Provincial Court. You have to pay a court filing fee and fill out an extra form if you file in Supreme Court.

How long does a separation agreement last?

They're meant to be permanent, so most separation agreements last until one or both people die. Agreements that end sooner will say so. However, agreements about children and support may be changed if there's a material change in circumstances.

I'm married but separated. Do I have to apply for a divorce?

For a marriage to end, married but separated spouses **must divorce**. That means they must get a BC Supreme Court order saying they are divorced. After that, they can remarry. (For more on divorce, see our information on the requirements for divorce.)

For **unmarried** spouses and other unmarried couples, the relationship is over the moment they separate. They **do not** have to apply for a divorce. Unmarried couples include people who have lived together for less than two years and have no children together.

Who can help

With more information

The **Family Law in BC website** from Legal Aid BC has a **step-by-step guide** for making a separation agreement.

- Visit website ^[8]

The wikibook *JP Boyd on Family Law* explains the formal requirements of a separation agreement in detail.


- Visit website

Free and low-cost legal help

The **Unbundled Legal Services** website can help you find a lawyer who can review a draft of your separation agreement and give you independent legal advice.

- Visit website ^[9]

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Deciding Who Will Move Out When You Separate

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha Rapoport^[1], Brown Henderson Melbye and Renée Aldana^[2], South Coast Law Group in April 2020.

When a couple separates, a question arises: who's going to move out? Learn your rights when deciding who goes and who stays — and how to enforce the decision.



"Melina and I were arguing a lot. Last week she told me I had to move out. I didn't know what to do. We bought our home together; it's in both of our names! (Plus I've helped with the renos, the mortgage and the bill payments.) A lawyer told me I had just as much right to be in our home as Melina. The lawyer also told me that we can be separated while living in the same home. Now, I live downstairs and Melina lives upstairs while we figure out how to deal with our family issues."

— Sergio, Maple Ridge, BC

What you should know

Who should move out

Some couples keep living together after they separate, often to save money. But this isn't possible for everyone. Sometimes living in the same home is *not* a good option. For example, if:

- There's a risk of family violence.
- There is serious conflict involving the relationship and the children who live at home.

Be honest:

- Do the two of you get along well enough to stay in the home together?
- If you have children, how much are they exposed to your conflict?
- Can you afford to live apart?

If you've decided that living together in the same home is **not** possible, the question then becomes: *Who* gets to stay in the home?

There are some things to consider when deciding who'll stay in the home and who'll move out:

- Does one of you own the home?
- Which one of you will be keeping the home after separation?
- Can either of you afford to keep it?

If you have children, consider:

- Where are they likely to live after the separation, and who'll be responsible for looking after them?
- Where do they go to school or daycare? Where do their extracurricular activities happen?

It often makes sense for the person who'll be the primary caregiver to stay in the home. Or, if a spouse is buying out the other spouse's interest in the home and keeping it, it makes sense for them to stay in the home while the other moves out.

If you want to move out

There's no rule that says when you can and can't move out. And nothing says you have to tell your partner your plan ahead of time. If it's a very emotional separation — or there's been violence or the threat of violence — you might want to move out when your partner isn't home.

Tip Get legal advice if you're unsure about whether to move out. A lawyer can advise you on how moving out would affect such things as parenting arrangements or who gets the home.

You can move back in after you've moved out

If you both own the home or are both listed on the lease or rental agreement, you can move back in if you want. It's your place, too. But in this case, you *should tell* your partner your plan. If returning could escalate conflict, you may want to think twice. If you can't get along, you may need a court order to move back in or to force your partner to move out. You should get legal advice in this case.

You won't lose your legal right to a share of the home

You may be anxious that if you move out of the family home, this will affect who gets what. Don't worry. If you have a legal right to a share in the family home, you won't lose that right by moving out. (However, it might be tricky to later move back in, should you decide you want to try to work through your issues and your partner isn't sure.)

If the family home is in your partner's name, you can make a court application to protect your interest in the property. To do this, you need to be a "spouse." This means the two of you have lived together in a "marriage-like relationship" for **at least two years**.

If you haven't started a court case yet:

- You can file a **charge** against the property under the *Land (Spouse Protection) Act* ^[3]. This will prevent your spouse from selling it without notice to you.
- You can file a **notice of property agreement** against the property if you and your partner have a written agreement dealing with the property. Filing this notice will stop your partner from dealing with the property.

If a court case has started, you can file a **certificate of pending litigation** in BC Supreme Court to protect your interest in the family home. The certificate means the property can't be refinanced or sold without your knowledge.

Tip Legal Aid BC's Family Law website explains how to protect yourself financially after you separate ^[4], including steps you can take to protect your interest in the family home.

If you live together in rented accommodation

If you and your partner live in rented accommodation, the key point is whose name is on the lease or rental agreement. That person is legally responsible for paying the rent.

That doesn't mean the other person — whose name *isn't* on the lease or rental agreement — can't be the one who stays. But in that case, arrangements need to be made with the landlord to **transfer** the rental agreement into the other person's name.

If the lease or rental agreement is in **both** of your names, you need to change it to just the name of the person who's staying.

It could be that *both* parties want to move out. In that case, you need to arrange with the landlord to end the agreement or to set up a sublet.

Rights to household belongings

Each of you has the right to keep anything you brought into the relationship. Couples who qualify as “spouses” under the law (which includes living together in a “marriage-like relationship” for at least two years) are presumed to equally share everything they acquired during the relationship. This is called **family property**.

If spouses want to divide their family property or debt differently, they can make an agreement to do so.

If you’re moving out

If you’re the one moving out and you’re taking the children with you, you’ll need to consider their needs when deciding what to take with you. But don’t strip the place bare or take more than a fair share. And don’t take things out of spite. Later on, you can always apply to court if there are more things you want from the home and you and your partner can’t agree on whether you can have them.

If you’re staying in the home

If you’re the one staying and your former partner hasn’t removed their belongings from the home, there are steps you can take.

If the property is in *your name* alone (owned or rented), and your partner’s financial interest in it is small, you may try giving them a written deadline to remove their things.

If the property is in *joint names* (owned or rented), then your partner may have a valid reason to leave their possessions in the home until the family law issues are resolved.

Next steps

Step 1. Make sure you’re safe

If you’re concerned for your physical safety, call the police right away.

If you’re being harassed by your partner but there’s no risk to your physical safety, you have options:

- You could contact the police to learn if criminal charges or a **peace bond** are appropriate. With a peace bond, your partner agrees to keep the peace and follow certain conditions — for example, not contacting you for a set amount of time. A peace bond is more common *after* criminal charges are laid.
- You could apply to Provincial (Family) Court or BC Supreme Court for a **protection order** under the *Family Law Act*. This can limit how your partner communicates with you.

As well, there are community and healthcare services that can help with counselling and support.

For more on these options, see our information about family violence.

Step 2. If you're moving out, decide what to take with you

If you want your children to live with you, you may want to take them with you when you move out. If you can't do that, and you're sure they're safe in the home with your partner, then you may leave them. Moving out without your children does **not** mean you have abandoned them. (If, after you leave, your partner tries to prevent you from seeing your children or spending time with them, you should see a lawyer as soon as possible.)

If you're taking your children with you, bring their birth certificates and passports. Also bring some of their clothing, personal belongings, and (if it's feasible) furniture. Bring any medications and prescriptions they need.

Also bring the following important documents and information:

- your marriage certificate, if you're married
- financial information such as your tax returns for at least three years, statements from bank accounts, investment accounts, retirement savings accounts and debt accounts, and copies of recent pay stubs
- your CareCard and other health- and dental-insurance cards
- your social insurance number (SIN) card, your driver's licence, your passport, and any immigration papers
- copies or pictures of your partner's financial information, such as recent pay stubs, tax returns, company records and ledgers, bank accounts, investment accounts, and retirement savings accounts
- a record of your partner's social insurance number, CareCard number, and date of birth

Step 3. Cancel joint credit cards and accounts

Do you and your partner have any joint credit cards? Consider calling the credit card issuer to tell them you're separating. Ask them to cancel your credit card for the joint account. You don't want the card issuer to hold you responsible for new charges on the account if you can help it.

If you have a line of credit or an open mortgage with your partner and you worry they might withdraw more money from it, call the lender and ask them to:

- freeze the line of credit or mortgage
- reduce the credit limit to the present balance
- convert the account to deposit only
- require two signatures to withdraw more money

Tip You should talk to a lawyer before taking these kinds of financial steps. They will give you legal advice about whether you should first let your partner know what you're doing.

Common questions

Can I lock my partner out?

Often, each spouse has as much legal right to be in the home as the other until a court decides otherwise or one of you agrees to move out. Simply not wanting to live with your partner isn't enough for you to lock your partner out of the home.

If you're worried there might be violence, it may be reasonable to lock your partner out until you can contact the police or get a protection order from the court. But if the possibility of violence isn't an issue, locking out your partner could backfire. They could complain you've treated them unfairly. If possible, get legal advice before changing the locks.

If one partner is the sole owner of property, that doesn't necessarily mean they can demand the other party move out or force them out. Whether one of you has the legal right to demand this will depend on the facts of each case. The police

will often assist in third-party disputes over property. But, when it comes to separations, they are reluctant to interfere. They'll tell you to see a lawyer.

Can I get a court order to make my partner leave the family home?

The *Family Law Act* allows the BC Supreme Court to make an order giving a spouse **exclusive occupancy** of the family home. This means one spouse can live in the home for a specific period of time but the other spouse can't. This rule applies to both property that's owned and property that's rented.

To get an order for exclusive occupancy, you must show the judge that:

- it's practically impossible for the two of you to remain together in the same home, and
- it's more convenient for you to live there than for your spouse to.

If there's been family violence or there's a risk of it, the court can order that only one person be allowed to live in the home. The court can also set conditions for contact and communication.

Who should pay the household bills?

If you want your partner to move out, or if you're asking for an order for exclusive occupancy of the home, you should be prepared to pay the household bills. These include the rent or mortgage, utilities and taxes. If you qualify under the law as a spouse, you can apply for financial support from your partner to help cover these bills. The court can also make an order that requires one of you to pay the household bills.

If you and your partner are both legal owners of the home, your partner may be able to ask that the home be sold and the money from the sale kept "in trust" until your case is resolved.

These issues are complex. You should speak to a lawyer before deciding what to do.

Can I take money from a joint account?

If you have a joint bank account with your partner, you can usually take up to half the money in the account. Don't take more than half. Consider not taking anything if:

- you have an income and your partner doesn't, or
- payments for important family expenses like the mortgage come from the joint account.

Tip If you do take money from a joint account, consider letting your partner know so they're not surprised when they see it missing.

What if my partner doesn't want to sell the home?

If the two of you are joint owners of your family home and your partner refuses to sell, you'll likely need to sue to force the sale of the home. The court can make orders about selling the home and how it's to be sold. (This might include who the real estate agent should be.) If the sale of the home will prejudice (harm) your partner's interest in the home, then:

- a court may not order the sale of the home, or
- the order may be for a later date or after other issues in the case have been settled.

You should speak with a lawyer about how to force the sale of the home and whether a court will make that order.

Should I make a separation agreement?

If you and your spouse are separating, the best plan is to make an agreement. But you need to be getting along well enough to work out the issues, either on your own or with the help of lawyers.

A **separation agreement** puts in writing who will live in the home. It can also sort out other issues, such as:

- if and when the home will be sold
- where the children will live
- how the children will be cared for
- whether support will be paid

See our information on separation and separation agreements.

Tip Get a lawyer's advice **before you sign** a separation agreement, even one that's been negotiated by a mediator. Legal advice can help you fully understand what the agreement means and how it affects your legal rights and obligations.

Who can help

With more information

The **Family Law in BC website** from Legal Aid BC has information about preparing for and going through separation.


- Visit website ^[5]

The wikibook *JP Boyd on Family Law* explains how to prepare for separation.

- Visit website

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Requirements for Divorce and Annulment

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit^[1] in April 2020.

A **divorce** is the legal process that ends a valid marriage. It's different from an **annulment**, which is a court order declaring a marriage invalid. An order for a divorce or an annulment is granted only if certain requirements are met. Learn about the requirements to get a divorce or annulment.

Alert! This information has been updated to reflect changes to the *Divorce Act*^[2] that took effect on March 1, 2021.

What you should know

Divorce ends a valid marriage

Canada's divorce law is called the *Divorce Act*^[3]. Under it, a court order for **divorce** ends a valid marriage. Only **married spouses** can get a divorce. Unmarried spouses can't, and don't need to.

Some religions allow for religious or ritual divorces. These divorces *don't* legally end a marriage. Under Canadian law, you and your spouse are married until a court makes a divorce order.

To remarry, a married spouse first needs to get a divorce.

The grounds for getting a divorce

The *Divorce Act* applies to all divorces in Canada, whether you were married in Canada or not. Under the *Divorce Act*, to get a divorce you must prove your marriage has broken down. You can show **marriage breakdown** in one of three ways:

- the spouses are separated and have **lived separate and apart for at least one year**
- one spouse has committed **adultery** that the other spouse did not approve of or forgive
- one spouse has been mentally or physically abusive (or both) to the other spouse — called **cruelty** in the *Divorce Act* — which has made living together intolerable

Basing divorce on living separate and apart

Separation usually means living apart. But some couples can be living in the same home and still be separated, as long as the "marriage-like" quality and intimacy of their relationship has ended. For example, even though they live in the same home, they no longer:

- sleep together
- do chores for each other
- eat meals together
- share finances
- go to family events as a couple

When separation starts

Separation starts when one spouse tells the other they no longer want to be in the relationship. The decision to separate can be made by one or both spouses. It's not necessary for both spouses to agree to the separation. Nor do they have to sign any documents or go to court to be separated.

If you reconcile for a short time

Spouses who are separated can live together again to try and make the marriage work. Within the one-year separation period, they can get back together in a marriage-like relationship for **up to 90 days** without restarting the clock on the separation date. If they live together for **more than 90 days**, the one-year separation period **starts over** if they break up again later. For more details, see our information on separation and separation agreements.

Basing divorce on adultery or cruelty

Adultery is when a spouse has sex (even once) with someone who isn't their spouse. You can't claim a divorce based on cruelty or adultery that *you* committed. If you ask for a divorce based on **your spouse's** adultery or cruelty, you must prove that the adultery or cruelty occurred. That can be difficult if the other spouse doesn't agree. This is why most people ask for a divorce order based on having lived separate and apart for at least one year -- even if adultery or cruelty has occurred.

Proving adultery in a divorce proceeding

Adultery is usually proven by having the spouse who committed it say so in an **affidavit**. An affidavit is a legal document where a witness makes statements about facts they say are true.

If your spouse won't admit to the adultery, then you will have to prove it some other way. Saying that you believe or suspect that your spouse committed adultery isn't enough. A court will only grant a divorce based on adultery if it's convinced there's credible evidence that the adultery occurred.

You could prove your spouse committed adultery by having them, or another witness, testify in court about it. The person with whom your spouse committed adultery doesn't have to be involved in the court case. But you can ask them to give evidence of the adultery.

Proving cruelty in a divorce proceeding

You can establish the breakdown of a marriage by showing **cruelty** that makes living together **intolerable**. Cruelty can be either physical or mental abuse or both. You have to prove your spouse's behaviour toward you made staying with them impossible. Mental cruelty is harder to prove than physical cruelty.

To support your case, evidence can be provided in the form of police reports, medical records, text messages, emails, and photos of physical injuries or property damage caused by your spouse. You should speak to a lawyer to see if you have enough evidence to prove cruelty.

Starting divorce proceedings

When you can start divorce proceedings

To start divorce proceedings in BC, you need to have lived in the province for **at least one year** immediately beforehand. This is the **residency requirement**. If you meet it, you can start a court action any time after you separate. But you can't apply for a divorce order until *after* you've been separated for at least one year (if you're applying for a divorce on the legal basis of being separated for a year).

If you're applying for a divorce on the basis of adultery or cruelty, you don't have to wait. You can start your court action *and* make an application for divorce right away.

Which court you sue in

Two courts deal with family law in BC: Provincial Court and Supreme Court. But **only Supreme Court** can make divorce orders under the Divorce Act. So that's where you must start a court action if you want a divorce.

Desk order divorce

A **desk order divorce** is a process that lets you get a divorce order without having to appear in front of a judge. It's also called an **undefended** or **uncontested divorce**. You can apply for a desk order divorce once you and your spouse have resolved any other family law issues.

Either one spouse, or both together, can apply for a desk order divorce in BC Supreme Court. The process involves preparing and filing several court forms.

We explain this process in our information on desk order divorce.

When the court will not grant a divorce

The court **won't** grant a divorce if neither you nor your spouse has lived in BC for at least a year. Here are some other situations in which the court won't grant a divorce.

Collusion or connivance

If you try to trick the court, the court won't grant a divorce. **Collusion** is when spouses plan to lie to the court to get a divorce order. This can happen either in an affidavit or by way of oral statements made in court. An example is when a couple agrees they will lie about the date of separation to speed up the divorce.

Connivance is when one spouse encourages the other to commit adultery, or tricks the other spouse into committing adultery to speed up the divorce.

Condonation

Forgiving your spouse's conduct may prevent a divorce from being granted on the grounds of adultery or cruelty. **Condonation** is when one spouse has approved of the other spouse's adultery or cruelty.

Insufficient child support

Before granting a divorce order, a judge must be satisfied that reasonable arrangements have been made for the financial support of the children. This usually means that adequate child support is being paid. (That is, the support payments meet the level required by the Federal Child Support Guidelines, either under a court order or a separation agreement.) See our information on child support.

Annulment is a court order declaring a marriage invalid

An **annulment** means that, by law, you and your partner aren't actually legally married. If the court declares a marriage annulled, you don't have to apply for a divorce. While an annulment ends an **invalid marriage**, divorce ends a valid marriage.

A marriage is invalid when, for example:

- one spouse was already married when they married the other person
- one of the spouses was under age 16 at the time of the marriage ceremony
- a spouse married someone other than the person they intended to marry

Effect of annulment

If the court annuls a marriage, it's as if the marriage never happened.

Even if a marriage is annulled, spouses can still make claims against each other about the parenting of children, the payment of support, and the division of property and debt under the BC provincial *Family Law Act*.

Foreign marriages

The law around foreign marriage annulment is complicated. If you want to annul a foreign marriage, you should speak to a lawyer who deals with annulments in the country where the marriage occurred.

Some religions allow for religious annulments. These annulments **do not** legally cancel a marriage or divorce people. The couple stays married until **a court** declares an annulment.

Common questions

How long does it take to get a divorce?

The time to get a divorce varies. There may be many family law issues such as parenting arrangements, child support, spousal support, and division of family property and debt. All these issues must be resolved before a court will make a divorce order, except in special circumstances.

Once your family law issues are resolved, a divorce can take three to five months to finalize, depending on:

- what steps have already been taken,
- how busy the court registry is, and
- if the spouses live in the same jurisdiction.

It may be faster if an application for divorce is done through a court hearing. If you have a legitimate reason to speed up the process — for example, you're getting remarried — you should speak with a lawyer.

Does it make a difference if my divorce is based on adultery or cruelty?

If you can show marriage breakdown based on adultery or cruelty, the court can make a divorce order sooner. That is, the court doesn't have to wait until you've lived separate and apart for one year. But adultery can be hard to prove (and take longer and cost more) if the other spouse doesn't agree. This is why most people ask for a divorce order based on having lived apart for at least one year.

The court doesn't consider adultery or cruelty when it divides property or makes a support order. It will consider adultery or cruelty when making decisions about children if the behaviour limits:

- a spouse's ability to parent the children, or
- a spouse's ability to become self-supporting after separation.

In some cases, you can claim **damages** (money to compensate you) for a loss or injury caused by your spouse's cruelty. This may be hard to do. You have to present medical evidence showing the nature of the injuries and their consequences. You should speak to a lawyer if you're thinking about claiming damages caused by your spouse's cruelty.

Who can help

With more information

The **Family Law in BC website** from Legal Aid BC has free **step-by-step guides** for applying for a desk order divorce.

- Visit website ^[4]

The BC government has a free step-by-step online tool, the **Online Divorce Assistant**, to help couples with or without children apply for a divorce together.

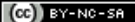
- Visit website ^[5]

The wikibook ***JP Boyd on Family Law*** explains the requirements for divorce in detail.

- Visit website ^[6]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Desk Order Divorce: The Do-It-Yourself Divorce Process

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Amber van Drielen ^[1], One World Law Group in February 2020.

If you and your spouse agree on the issues of parenting, support and property, there's a fast-track way to get a divorce. Learn how you can apply for a **desk order divorce**.



"When Jay and I decided to separate, we both wanted to avoid a drawn out, expensive divorce. Thankfully, we were able to talk through the key issues, and I was game to take the lead on doing the paperwork. That made it feasible to get a desk order divorce. It cost us around \$500, and we didn't have to go in front of a judge."
— Roya, Terrace, BC

What you should know

You need a divorce order to end a marriage

To be divorced, you need to get a **divorce order** under the *Divorce Act* ^[2]. In BC, only the Supreme Court can grant this order. So, to get one, you have to apply to that court. This is true even if you and your spouse agree on all your other family law issues and only need a divorce order.

To get a divorce, you must prove your **marriage has broken down**. You can show marriage breakdown in three ways: having been separated for at least one year, adultery, or cruelty. We explain these in our information on requirements for divorce.

What a desk order divorce involves

A **desk order divorce** is a process that lets you get a divorce order without having to appear in front of a judge. It's also called an **undefended** or **uncontested divorce**. You can apply for a desk order divorce once you and your spouse have resolved any other family law issues.

Either one spouse, or both together, can apply for a desk order divorce in BC Supreme Court. The process involves preparing and filing several court forms. When one spouse starts the court case, the process is called a **sole application for an uncontested divorce**. When the spouses start the court case together, it's called a **joint application for an uncontested divorce**. If you're not sure which procedure to use, it's a good idea to get legal advice.

You can file on your own

Here's how a **sole** divorce proceeding typically works. One spouse — let's say it's you — starts a BC Supreme Court case by filling out, filing, and serving a court form asking for a divorce. Your spouse agrees and doesn't file a response in court. After the deadline for filing a response has passed, you can make an application for a divorce order. This involves completing additional court forms and filing them in court. A judge will review the application and make a decision, usually without either of you having to appear before a judge.

You can file jointly

Another option is that both of you can start the court case together by filling out and filing certain court forms in BC Supreme Court. The joint application is less expensive and faster than if only one spouse starts the court case. This is because there's no need to serve anyone with the court forms and no need to wait for the response deadline.

You give evidence without going to court

In a desk order divorce, the material you file in court will include **affidavits**. These will give the court the evidence it needs to make a divorce order. An affidavit is a legal document in which a witness makes statements sworn to be true.

Unless the court decides that further evidence or a full hearing is required, it will usually make the divorce order. No one needs to attend a court hearing.

If you have children together

The court needs evidence that reasonable arrangements have been made for the financial support of the children. This is true even if the spouse who has the children most of the time is happy with the support arrangements. The court has a special duty to make sure the children are taken care of. It needs proof of your income and your spouse's income. It needs to know the children's living arrangements, and the amount of child support being paid (or an explanation why it isn't being paid). Without this information, the court won't make an order for divorce.

When the divorce takes effect

You aren't actually divorced the moment the divorce order is made. The divorce won't take effect until **31 days after** the court grants a divorce order. (That's if there are no special circumstances and **no one has filed an appeal**.) So, don't plan on remarrying within that 31-day period.

Once the 31 days have passed, you'll be divorced. If you choose to, you can ask the court to issue a **certificate of divorce** confirming this. But you'll be divorced whether you get the certificate or not.

If you bring joint divorce proceedings

If both of you agree to the divorce order, and to any other orders you want the court to make, you can start the divorce proceeding **together** by filing a **joint uncontested divorce proceeding**.

With this action, neither spouse has to serve court documents on the other. So you may be able to apply for the divorce order on the same day you file your joint claim. (That's so long as the one-year period of separation has passed.)

Both you and your spouse must sign the **notice of joint family claim** (form F1). Both of you must also complete **affidavits**. These give the court the information it needs to decide if the divorce order is justified. If you have children, one affidavit you'll both need to prepare and file deals with the child support arrangements you have in place.

The steps in the desk order divorce process

These steps describe the process for a **sole application for an uncontested divorce**.

Step 1. Get your marriage certificate

You need your **original, government-issued marriage certificate** to apply for a divorce. If you don't have an original, you have to get a new one.

Tip Photocopies of your marriage certificate won't be accepted by the court registry, except in special cases and with special permission. A copy of an original marriage certificate may be acceptable if it's **certified to be a true copy** of the original by a lawyer, notary public, or government official.

If you were married in BC, you can get an original marriage certificate for \$27 from the Vital Statistics Agency ^[3]. You can call the agency at 250-952-2681 in the Victoria area, or toll-free 1-888-876-1633 elsewhere in BC.

If you were married outside of BC, you'll need to contact the equivalent government agency to get an original marriage certificate or a certified true copy. It's not the certificate from the person who performed the marriage that's needed, but the **government-issued record** of your marriage.

If you have a foreign marriage certificate that isn't in English, you'll also have to file a certified English translation of the foreign marriage certificate.

If you were married outside of Canada and can't get an original, government-issued marriage certificate, you can't get a divorce by desk order. Instead, you may need to apply to court to bypass filing a marriage certificate. In your material, you'll need to explain why you can't get the certificate. If possible, get legal advice if you find yourself in this situation.

Step 2. Complete forms to start the court case

A form called the **notice of family claim** (form F3) starts a divorce proceeding in Supreme Court. This form states the basis for the divorce (such as being separated for at least a year). It also gives information about you, your spouse, and any children, as well as the details of your marriage and separation. If you file the notice, you are the **claimant**. Your spouse is called the **respondent**.

The notice form also allows you to ask for other orders besides a divorce order. Other orders might involve the parenting arrangements for your children, child support, spousal support, or the division of property and debt.

Along with the notice form, you also need to complete and file a **registration of divorce proceedings** form. This form helps the court check on whether there are other divorce proceedings in your or your spouse's name that have been started in Canada.

Tip You can **download** the notice of family claim form, as well as other court forms, on the BC government website ^[4]. The wikibook *JP Boyd on Family Law* includes samples of many completed forms.

Step 3. File your documents in court

Once you've filled out and signed the notice form, you must **file** it in court, along with your marriage certificate. You'll need to pay a \$210 filing fee. You have to file the original notice form together with at least three photocopies. The court keeps the original and gives you the copies, stamped with the court's official stamp.

Step 4. Serve the court documents on your spouse

Anyone who's being sued must be given formal notice of the court case; this applies even to a sole application for an uncontested divorce proceeding. Your spouse must be served by **personal service**. That means arranging for the court-filed notice of family claim to be physically delivered to them. You can't serve the document yourself. You must have someone else, who's at least 19 years old, leave the filed notice form with your spouse.

You must prove personal service

The person who serves the court documents must swear an **affidavit of service** (form F15). In it, they'll describe how, when, and with what your spouse was served.

If personal service is not possible

If your spouse can't be personally served — for example, because you don't know where they live — there are other ways to let them know about the court action. This is called **substitutional service** or **alternative service**. You must have a court order to use this type of service.

The court may, for example, allow notice to be served through a classified ad in a local newspaper. Or it may order that the notice be given to someone your spouse knows, such as their parents, a co-worker, or a roommate.

Step 5. Wait for 30 days

If your spouse doesn't agree with the claims you're making, they have 30 days to defend the court case by filing a **response** (form F4). If they do file a response, you can't get a desk order divorce, as your divorce is now considered **contested**.

Your spouse may choose to respond to your claim **and also** file a **counterclaim** (form F5). In the counterclaim, your spouse can make their own family law claims against you.

Tip If you've been served with divorce papers, and you don't agree with the other party's claims, you have **30 days** to file a response in court. See our information on responding to divorce proceedings — and get legal advice, if possible.

Step 6. If your spouse doesn't respond, apply for a divorce order

If the 30 days have passed and your spouse hasn't filed a response, you can apply for a **divorce order**. The filing fee is \$80. You must prepare and file the following forms in court:

- A **requisition** in form F35, which asks for a divorce order.
- The **affidavit of service** in form F15, which says your spouse was personally served with the notice of family claim (the form that started the court case). An affidavit is a legal document in which a witness makes statements they swear are true.
- Your **affidavit** in form F38, which gives the court your evidence in support of a divorce order.
- A **certificate of pleadings**, which tells the judge that the documents filed in your case are correct and complete.
- A draft of the final **divorce order** in form F52.

If you have children, you'll also have to file a **child support affidavit** (form F37). This affidavit gives the court more information about your income and your spouse's income, your children's living arrangements, and the child support amount being paid.

Who can help

With more information

Legal Aid BC's **Family Law in BC website** has free step-by-step guides for applying for a desk order divorce.

- Visit website ^[5]

The BC government has a free step-by-step online tool, the **Online Divorce Assistant**, to help couples with or without children apply for a desk order divorce together.

- Visit website ^[6]

The wikibook *JP Boyd on Family Law* gives a step-by-step explanation of how to get divorced by desk order in BC. It also includes completed sample forms.


- Visit website

Free and low-cost legal help

The **Family LawLINE**, operated by Legal Aid BC, is staffed with lawyers who provide free family law legal advice over the telephone to people who can't afford a lawyer.

- Call 604-408-2172 (Metro Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[7]

Also see our information on free and low-cost legal help. It explains options such as pro bono services, legal clinics, and advocates.

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Responding to Divorce Proceedings

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Shelagh Kinney^[1], Watson Goepel in April 2020.

If a divorce proceeding has been started against you, you have two choices: do nothing or respond. Learn what's involved in responding to divorce proceedings in BC.

Alert! This information has been updated to reflect changes to the *Divorce Act*^[2] that took effect on March 1, 2021.

What you should know

A notice of family claim starts a divorce proceeding



"I was served with divorce papers five days ago. I don't agree with everything my spouse is asking for. So I'm putting together a response. I have to file my papers in Supreme Court in the next few weeks. I've set up an appointment for next week with a family lawyer — for free — because I have some questions before I file my paperwork."
— Rhyen, Cranbrook, BC

When your spouse starts divorce proceedings, they file a **notice of family claim** in BC Supreme Court. Your spouse is the **claimant**. You are called the **respondent**.

You must be served with the notice

As the claimant, your spouse must arrange for the notice of family claim to be **personally served** on you. This means it must be given to you in person, but not by your spouse.

If you aren't available to receive the papers or the claimant has trouble serving you personally, they can seek the court's permission to serve you **substitutionally**. That means using a different method of service. It might involve, for example, leaving the papers at your last known address, with your close relatives, or in your mailbox.

Read the notice

Read the notice of family claim carefully. It sets out the court orders your spouse wants the court to make. If and how you respond to the notice depends on the orders your spouse is asking for, and whether or not you agree with the claims.

Tip The claims in a divorce proceeding could significantly affect your rights. Consider asking a lawyer to review the notice of family claim with you and explain what it means. See below under "Who can help" for free and low-cost options for advice.

The notice can include several claims

The notice of family claim gives the court basic information about you, your spouse, and any children. It also includes information about your marriage and separation. And it describes the orders your spouse is asking the court to make, such as for a divorce, support, and a division of property and debts.

The grounds for divorce

To get a divorce, your spouse must show your **marriage has broken down**. This can be done in three ways:

- by showing the two of you have lived apart for at least one year,
- by showing you committed adultery, or
- by showing you treated your spouse with cruelty that makes living together intolerable.

The notice of family claim will state your spouse's reason for marriage breakdown, such as being separated for a year. You may agree with this. On the other hand, if your spouse is claiming adultery or cruelty and those claims aren't true, you probably won't agree. For more on the legal basis for divorce, see our information on the requirements for divorce.

Other claims

In the notice of family claim that starts a divorce proceeding, your spouse can also ask for orders about other issues. These might include the parenting and support of your children, spousal support, the division of family property and debts, and other matters.

Carefully consider what your spouse is asking for. If you have children, your spouse may be asking for parenting time and all decision-making responsibility under the *Divorce Act*. Do you feel that shared decision-making responsibility would be better? Or do you believe that *you* should have all decision-making responsibility? If your spouse is seeking a 50/50 division of family property, do you feel you should get more than half?

It's a good idea to meet with a family lawyer and get legal advice if your spouse is making claims beyond seeking an order for divorce.

If you don't agree with the notice of family claim

If you disagree with any of the orders your spouse is asking for in the notice of family claim, you must respond. You do that by filling out a **response to family claim** (form F4). Part of this form involves certifying that you know about your duties under the *Divorce Act* to:

- exercise parenting rights in the best interests of the children,
- protect your children from conflict because of the court case,
- try to resolve your disagreements through mediation, collaborative negotiation, or arbitration, and
- provide complete, accurate, and up-to-date information as required.

Once you've completed the form, you must file it in the same court in which the notice of family claim was filed.

Along with your response, you may need to fill out and file other forms (such as a financial statement), depending on what claims your spouse is making. Then, you must serve the filed court forms on your spouse.

Tip You can **download** the response to family claim form, as well as other court forms, on the BC government website ^[3]. The wikibook *JP Boyd on Family Law* includes samples of many completed forms.

There are time limits to respond

If you don't agree with any of the orders your spouse is asking for, you must respond to the notice of family claim. You need to do so **within 30 days of the date you were served**.

If you want to make your own claims

If you have claims of your own you want to make — for example, about the parenting of your children, support, or how to divide property — you must file a **counterclaim**. The counterclaim says what orders you want the court to make. Just as you did with the response, you must fill out, file, and serve the counterclaim on your spouse. You must do this **within 30 days** of the date you were served with the notice of family claim.

Common questions

What if I don't respond?

It's very important to respond if you disagree with any of the orders your spouse is asking for. If you don't, the court can make the orders your spouse is asking for without any further notice to you.

If your spouse is only asking for a divorce and you don't respond, the proceeding will become an **uncontested divorce proceeding**. But if you file a response to family claim, the divorce proceeding is **contested**. In that kind of proceeding, there's usually disagreement about how to settle some or all of the family law issues. A trial may be necessary if you can't reach an agreement.

Can I object to a divorce?

You can object, but you're unlikely to succeed. Most of the time, the judge will make a divorce order as long as the basis for the divorce is proven. It doesn't matter whether you want it or not. In some rare situations a judge *may* refuse a divorce. For example, a divorce wouldn't be granted if reasonable arrangements haven't been made for the support of any children. The judge could also refuse to grant a divorce if it would mean the end of the pension benefits a spouse is receiving, at least until the property division and any support claims are dealt with.

What's a judicial case conference?

After you file a response, you or the claimant can schedule a **judicial case conference**. This is an informal meeting with a judge or master to talk about the claims each of you has made, see what can be agreed to, and talk about how the claims will be resolved.

A judicial case conference (or JCC) is a good time to tell the judge — and your spouse — what you really want. The conference is held in private and everything you say is confidential and **without prejudice**. This means it can't be repeated outside the meeting room or used against you later if you don't reach an agreement. The judge won't make any decisions unless you and your spouse both agree. But, the judge can make procedural orders, including asking you or your spouse (or both of you) to provide required financial information.

What about urgent family law issues?

From the time a notice of family claim is filed, it can take a year or more to have a trial if a case can't be settled out of court. Before the trial, you or your spouse may need the court to make **temporary orders** about important issues such as:

- the payment of child support or spousal support
- where the children will live
- who will live in the family home

These are called **interim orders**. They can be made when one or both of you make an interim application to the court. An interim (or temporary) order lasts until another interim order is made. Or it will stay in place until the final order ending the case is made at trial or by agreement.

Interim applications should be taken very seriously. Interim orders can influence the final outcome of the case. For more, see our information on applying for an interim order in a family law case in Supreme Court.

Tip Each time you go to court, it costs time and money. Try to save interim applications for really important problems. The more you can agree on things with your spouse, the easier and less expensive the court process will be for each of you.

When will the divorce be granted?

If the claim for divorce is based on a one-year separation, a divorce application and divorce order can be made any time **after** the one-year period is over. If the divorce claim is based on cruelty or adultery, the order can be made at any time. But, there must be evidence to support those claims.

No matter what the claim is based on, the court must be satisfied that reasonable arrangements have been made for the financial support of any children. Otherwise it will not make the divorce order.

A divorce order can be made before all the issues are resolved. But the court will usually be hesitant to do so without a very good reason (such as remarriage).

When does the divorce order take effect?

Divorce orders take effect **31 days after** the date the divorce order is made. That's unless there are special circumstances and the judge says it will take effect sooner. The delay is to allow a spouse to appeal the divorce. Appeals like these are very rare.

Can I make a claim after the divorce order is made?

If your divorce order doesn't cover the division of property or debt and you didn't claim a division of property in the divorce proceeding, you have **two years** after the date of your divorce to make a claim under the *Family Law Act*. The same deadline applies to seeking spousal support for the first time under the *Family Law Act*.

Divorced spouses can always claim spousal support under the *Divorce Act*. It doesn't matter how long they've been divorced.

Divorced spouses can always make a claim about children — such as claims for parental responsibility, decision-making responsibility, parenting time, or child support. That's as long as the children qualify as "children of the marriage" under the *Divorce Act* or as "children" under the *Family Law Act*.

Who can help

With more information

The **Family Law in BC** website from Legal Aid BC has a free step-by-step guide for responding to Supreme Court proceedings.

- Visit website ^[4]

The wikibook *JP Boyd on Family Law* includes information on replying to a court proceeding in a family matter.

- Visit website


Free and low-cost legal help

Unbundling allows you to hire a lawyer for specific parts of your case or to coach you through the court process.

Unbundled Legal Services lists family law lawyers who offer these services.

- Visit website ^[5]

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Guardianship, Parenting Arrangements, and Contact

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by JP Boyd, KC ^[1], Boyd Arbitration Chambers in March 2020.

When parents separate, they must work out the details of how their children will be cared for. This includes decisions about guardianship, parenting arrangements, and contact. Learn about these parenting after separation issues and the laws that apply in your situation.

Alert! This information has been updated to reflect changes to the *Divorce Act* ^[2] that took effect on March 1, 2021, as well as new Provincial Court Family Rules ^[3] that took effect on May 17, 2021.

What you should know

Two laws deal with the care of children

When parents separate, they have to make some basic decisions about their children. Where will they live? How will they make decisions about the children? How much time will they spend with each parent?

There are two laws that deal with these issues: the federal *Divorce Act* ^[4] and BC's *Family Law Act* ^[5]. The *Divorce Act* only applies to parents who are (or used to be) **married** to each other. The *Family Law Act* applies to **all** parents. It applies whether the parents are:

- married or unmarried spouses,
- dating, or
- not in a relationship.

Under both laws, if parents can't agree about the care of their children, they can ask a court to decide. Under the *Family Law Act*, parents can also ask an arbitrator to decide. When making decisions like these, courts and arbitrators *only* consider the **best interests of the children**.

The terms used to talk about parenting after separation

As of March 1, 2021, the terms “custody” and “access” are no longer used in the *Divorce Act*. Instead, the Act uses terms to talk about parenting arrangements that are very much like the BC *Family Law Act*.

Decision-making responsibility and parenting time

Under the *Divorce Act*, **decision-making responsibility** means how married spouses make choices about important aspects of the children's lives. This includes where they go to school and how they're treated when they get sick. It also includes what sports and other important activities they'll be involved in and if they'll be raised in a religion. Decision-making responsibility can be shared between spouses or given to just one spouse.

Parenting time is just like it sounds. It's the time a spouse spends with a child. Usually this is set by a schedule agreed on by the spouses or set by the court. During their parenting time, each spouse can make daily decisions about a child, such as decisions about bedtime, homework, and meals.

A spouse who has decision-making responsibility or parenting time also has the right to ask for and get information about a child's health, education, and welfare.

Guardians, parental responsibilities, and parenting time

Meanwhile, the BC *Family Law Act* talks about **guardians**. Guardians are usually the parents of a child. (Below we explain some situations where others can be guardians.) While a child's parents are living together and even when they separate, each parent is presumed to be the child's guardian.

Guardians have **parental responsibilities** for a child. Parental responsibilities under the *Family Law Act* is like decision-making responsibility under the *Divorce Act*. That is, parental responsibilities mean how guardians make choices about important aspects of the children's lives. This includes where they go to school, how they're treated when they get sick, and if they'll be raised in a religion. It also includes making daily decisions affecting the children, like what they wear or what they eat. Parental responsibilities can be shared between guardians or they can be given to just one guardian.

The time a guardian spends with a child is called **parenting time**. During a guardian's parenting time, the guardian is responsible for the care of the child. They are also responsible for making decisions about day-to-day matters involving the child.

Contact

Someone who isn't a spouse or guardian can have time with a child. Under both the *Divorce Act* and the *Family Law Act*, this is called **contact**. A grandparent or another family member might have contact with a child. So might another adult with an important role in the child's life. A key difference is that a person with contact can't make daily decisions about a child. A person with contact also isn't entitled to ask for or get information about the child's health, education, or welfare.

How decisions about parenting are made



"Marcie and I broke up almost a year ago. We have two kids (9 and 13) together. At first, the kids lived with each of us half the time. Now, I only see the kids on the weekends. We've been working with a family justice counsellor. They've been helping us figure things out through mediation because the kids want to see me more often."
— Jannik, Cranbrook, BC

After they separate, a child's parents may be able to reach an agreement about parental responsibilities (or decision-making responsibility under the *Divorce Act*) and parenting time. They may decide to put this agreement into writing. This is called a **separation agreement** or a **parenting agreement**.

If they can't agree, the parents can try **mediation**. If they still can't agree, or if mediation isn't possible, they can ask a court or an arbitrator to decide. The court (or arbitrator) will make a decision based on what's best for the child. That is the only consideration courts and arbitrators can take into account.

The arrangements for parenting made in orders and agreements are called **parenting arrangements** in the *Family Law Act*. Under the *Divorce Act* they are called a **parenting plan**.

For more, see our coverage of resolving family disputes ^[6].

Common questions

Can a child decide who to live with?

A child's views must be considered when deciding on parenting arrangements, unless it would be inappropriate to do so. However, while children have a *voice* in these decisions, they don't have a *choice*. These decisions are made by parents or, if the parents can't decide, by a court or an arbitrator.

If a child is old enough and mature enough, the court or arbitrator will consider what the child wants when determining parenting arrangements and contact.

There's no particular age at which children have a right to decide who they'll live with. The views and preferences of all children are important. The wishes of children who are 12 and older will carry more weight. The wishes of an older teenager may be decisive.

How does a court consider a child's wishes?

Parents may disagree about a child's parenting arrangements. If that's the case, a court or an arbitrator may ask a professional to prepare a report about the child's wishes. The professional may be a family justice counsellor, parenting coordinator, social worker, psychologist, clinical counsellor, or a lawyer with special training. Many parents also agree to have a report done privately without a court order.

There are two main types of reports about children's wishes:

- **A non-evaluative views of the child report.** This describes what a child says during an interview with the professional.
- **An evaluative views of the child report.** This describes what a child says *and* gives an opinion about the child's needs or views. For example, how closely do the views expressed by the child match the child's actual views? Does the child understand the consequences of their wishes? Has the child been coached to say something in particular?

The costs of these reports range from about \$1,000 for non-evaluative views of the child reports to about \$3,500 for an evaluative views of the child reports. A court can also ask that a family justice counsellor prepare an evaluative views of the child report for free. But these reports can take up to six months to finish.

What is a parenting assessment?

Where parents disagree about a child's care arrangements, a court or an arbitrator can ask for a **parenting assessment**, sometimes called a **section 211 report**, after the part of the *Family Law Act* that talks about them. These reports are prepared by family justice counsellors, social workers, psychologists, and clinical counsellors. They make recommendations about the parenting arrangements that are likely to be in the best interests of the child.

The report writer will look at:

- the needs of the child,
- the views of the child, if the child is old enough to express them, and
- the ability of the parents to meet the child's needs.

The cost of these assessments can range from \$5,000 to \$15,000. A judge can also ask that a family justice counsellor prepare a parenting assessment for free. Because of high demand, reports prepared by family justice counsellors can take many months to complete. Psychologists and other counsellors can write a private report faster but they are expensive.

Who can be a guardian of a child?

The *Family Law Act* ^[7] says that a child's parents are the guardians of the child while they live together and after they separate. But, if the parents of a child did not live together after the child was born, the parent with whom the child lives is treated as the child's guardian.

A parent who has never lived with their child is not the child's guardian unless one of the following applies:

- the parent regularly cares for the child,
- there's an agreement or court order saying that the parent is a guardian, or
- they are a parent under a written agreement providing for the child's birth through assisted reproduction.

Someone can become a guardian through a guardian's will. Or they can be appointed as a guardian when a guardian dies or becomes incapacitated. Or they can apply to court to become a guardian.

What's involved in applying to become a guardian of a child?

If you apply to court to become a guardian, the law in BC ^[8] says you have to give evidence for why this would be in the best interests of the child. This means:

- filling out a guardianship affidavit ^[9] that provides information about any children that are or have been in your care (an affidavit is a legal document where you make statements about facts you say are true),
- getting a criminal record check,
- getting a record check from the child protection authorities, and
- getting a record check from the BC government's protection order registry ^[10].

Do I need a lawyer to work out parenting arrangements?

You don't need a lawyer. But you should get legal advice and representation where possible. See who can help, below.

Options to consider If you're planning to represent yourself, consider getting legal advice about your case beforehand. Or you could explore hiring an **unbundled lawyer** to help coach you or help with part of your case. To find a lawyer who offers unbundled services, see unbundlinglaw.ca ^[11].

Are there options to avoid going to court?

Yes. The *Divorce Act* and the *Family Law Act* encourage parents to resolve their family law problems out of court. You can try to work out parenting arrangements through mediation or collaborative negotiation.

Mediation is a process where the parents meet with a neutral person called a **mediator**. The mediator helps them talk to each other and find a solution they agree on. The provincial government offers couples the services of trained mediators, called family justice counsellors, for free. (In fact, at some Provincial Court locations, meeting with a family justice counsellor is one of the first steps in the court process.) Or you can hire a private mediator.

A **collaborative negotiation** approach may also be used to settle things without going to court. In collaborative negotiation you and the other parent each hire specially-trained lawyers. You and your lawyers sign an agreement saying that no one will go to court or threaten to go to court. If the collaborative process breaks down, you and the other party must hire new lawyers if you want to go to court.

If you're not able to come to an agreement, you could also try **arbitration**. An arbitrator can't make an agreement, but will make a decision, just like a judge.

For more on these options, see our information on mediation, collaborative negotiation, and arbitration.

Some exceptions There are times when mediation, collaborative negotiation, and arbitration might be inappropriate. This might be true if there has been family violence, or if someone is making threats to damage property or leave with a child.

Are orders and agreements about children final?

No order or agreement about children is ever absolutely final. When there's a significant change in circumstances affecting a child's best interests, a parenting order or agreement may be changed or set aside. That is, something new must have happened since the original order or agreement was made to justify the change.

What can I do if the other parent won't follow a court order?

The *Family Law Act* ^[12] has rules about enforcing parenting and contact orders (and agreements too). How an order is enforced depends on whether it was made in Provincial Court or Supreme Court. Either court can order police to help with enforcement in special circumstances. But this is usually a last resort.

If you're afraid the other parent is about to take your children out of the country and not bring them back, see a lawyer immediately. There are special rules in the *Family Law Act* and the *Divorce Act* that can help with this too.

Self-help guides Legal Aid BC's Family Law in BC website has free step-by-step guides about enforcing orders and agreements ^[13] in Provincial Court and Supreme Court.

What if a parent wants to move after separation?

There are rules about what happens when someone wants to move away — with or without their children — after separation. Such a move might have a significant impact on the relationship of a child with another person who has parenting time, decision-making responsibility, or contact. The law calls this type of move a **relocation**.

Under the *Family Law Act*, where there is a written agreement or court order about parenting arrangements, someone who wants to relocate has to give **60 days' written notice**. The notice must be given to anyone who is a guardian of the child or has contact with the child. Only guardians may object to the move. To do so, they must file a court application to stop the move **within 30 days** of receiving notice of the move.

Under the *Divorce Act*, someone who wants to relocate also has to give **60 days' written notice**. This relocation notice ^[14] must be given to anyone who has parenting time, decision-making responsibility or contact with the child under a *Divorce Act* order. Only someone who has parenting time or decision-making responsibility may object to the move. To do so, they must object **within 30 days** of receiving notice of the move by giving written notice ^[15] or filing a court application.

Under both laws, when there has been family violence, you can ask the court for an exception to the rule that the relocating person give notice of the move.

Who can help

With more information

The wikibook *JP Boyd on Family Law* has extensive coverage of parenting arrangements after separation.

- View website

Legal Aid BC's **Family Law in BC website** has information and self-help guides on parenting and guardianship.


- Visit website ^[16]

Free and low-cost legal help

Family justice counsellors in **Family Justice Centres** throughout BC can help with guardianship, parenting, and related issues. Their services are free.

- Call 604-660-2421 (in the Lower Mainland)
- Call 1-800-663-7867 (toll-free)
- Visit website ^[17]

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Introduction to Child Support

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by JP Boyd, KC ^[1], Boyd Arbitration Chambers in March 2021.

Parents are legally responsible for financially supporting their children. This is true even if one parent doesn't see or take care of the children. Learn about **child support**, how it's calculated, and how to get it.

Alert! This information has been updated to reflect changes to the *Divorce Act* ^[2] that took effect on March 1, 2021.

What you should know

What child support is for

Child support is money paid by one parent or stepparent (the payor) to another (the recipient). It's paid after separation to help cover the costs of raising the children. Child support is the right of **the child** — whether or not there's an agreement or an order between the parents saying that child support must be paid.

The parent with whom the child lives most of the time is entitled to receive child support from the other parent. If a child spends the same (or almost the same) amount of time with both parents, the parent with the higher income usually has to pay child support.

Who has to pay child support

Parents have a legal duty to provide child support. This includes biological parents, stepparents, parents who have had a child through assisted reproduction, and adoptive parents. It also includes parents who are married to each other and parents who aren't.

Surrogates and donors

When a woman agrees to have a child for someone else using assisted reproduction, she is a **surrogate mother**. A person who helps someone have a child by donating eggs or sperm is a **donor**.

Surrogate mothers and donors may or may not have to pay child support. The people involved in having the child can make an agreement that says a surrogate mother or a donor is or *is not* a parent. Surrogate mothers and donors who *are* parents may have to pay child support.

Stepparents

In BC law, a **stepparent** is a spouse of a child's parent who lives with the parent and the child. If a stepparent and a parent separate, the stepparent can be required to pay child support. This can happen under the *Divorce Act* ^[3] if the stepparent and parent were married. It can also happen under the *Family Law Act* ^[4] if:

- the stepparent contributed to the support of the child for **at least one year**, and
- a claim for child support is made against the stepparent **within one year** of their last support of the child.

A stepparent can be required to pay child support even when another biological parent is already doing so. A stepparent may pay less child support than what the law would normally require. There's no formula for this calculation. Often the court treats the stepparent's obligation as a top-up to the amount owed by a child's birth parent.

How much child support is payable

How much child support a parent pays is determined by the Federal Child Support Guidelines ^[5]. The Guidelines have tables that set out the amount of support based on:

- the payor's income,
- the province or territory where the payor lives, and
- the number of children child support is being paid for.

There are some exceptions to the Guidelines tables, which we explain below.

This basic child support amount is a contribution to the child's basic expenses and the cost of raising the child. This includes the child's share of the rent or mortgage, phone bill, utility bills, cable bills, grocery costs, clothing, haircuts, basic school supplies, toiletries, and so forth.

Tip You can calculate the basic child support amount under the Guidelines using the federal government's Child Support Table Look-up ^[6].

What “special or extraordinary” expenses are

In some cases, *all* of a child's parents may have to contribute to certain expenses on top of the basic amount of child support. Qualifying expenses are called **special expenses** or **extraordinary expenses** under the Guidelines. These can include:

- child care expenses, so the parent who looks after the child can work or go to school in order to get work
- medical or health-related expenses for the child, including the cost of medical insurance
- some educational expenses, including post-secondary education or private school fees
- some expenses for extracurricular activities like music, art lessons, or sports

These types of expenses don't automatically qualify as special expenses or extraordinary expenses. To qualify, the expenses have to be *reasonable* in light of the parents' financial circumstances. They also have to be *necessary* in terms of the child's particular needs. This means that piano lessons, for example, might qualify as a special or extraordinary expense for one family but not for another.

How “special or extraordinary” expenses are calculated

Parents share special expenses and extraordinary expenses in proportion to their incomes. They share the *net cost* of an expense. That is, they share the cost that's left over *after* deducting any contributions made by the child, by the government (such as the federal tax deduction for child care expenses), or from another source (such as health insurance, a subsidy, or a bursary).

As a result, if both parents have the same income, they'd each pay for half of the cost of the special or extraordinary expense. If parents have different incomes, they pay an amount proportional to their share of the total income of both parents.

For example, say one parent has an income of \$20,000 and another parent has an income of \$30,000. Together, their incomes total \$50,000. Of this total amount, the first parent's income is 40%, and the second parent's income is 60%. The first parent would pay for 40% of the net cost of the special or extraordinary expense, and the second parent would pay for the remaining 60%.

Parenting arrangements can affect child support

How much time a child lives with each parent can affect who pays child support and how much.

When parenting of a child is shared

Shared parenting time means that a child lives with each parent at least 40% of the time over the course of a year. In cases like this, a parent may pay less child support than what's set out in the Guidelines tables.

In a shared parenting time arrangement, child support is often calculated by figuring out what each parent would pay if the child lived with the other parent *most of the time*. Then, the parents **set off** the two amounts and the higher income parent, with the higher child support obligation, will pay the difference as child support.

Say one parent would have to pay another parent \$400 per month if the child lived mostly with the second parent, and the second parent would have to pay the first parent \$300 per month if the child mostly lived with the first parent. Subtracting \$300 from \$400 leaves a set-off amount of \$100. The first parent would pay child support to the second parent in the amount of \$100 per month.

However, there's no rule that says the set-off calculation must be used. In cases where the set-off isn't helpful, child support can also be calculated by looking at:

- the higher costs of shared parenting to the payor, and
- the financial needs of each parent and the child.

When each parent has a child in their care

When each parent has *one or more* children living mostly in their care, this is called a **split parenting time arrangement**. In this case, each parent calculates the full amount of child support they'd pay to the other parent for the children in that parent's care. The amount that changes hands is the difference between the higher and lower support amounts.

For example, say one parent would have to pay another parent \$400 per month for the children in their care, while the second parent would have to pay the first parent \$300 per month for the children in their care. Subtracting \$300 from \$400 leaves a set-off amount of \$100. The first parent would pay child support to the second parent in the amount of \$100 per month.

If the amount set by the Guidelines is too high or too low

In some cases, a court can order that more or less child support be paid than what the Guidelines say. For this to happen, a parent must show that paying the Guidelines' amount would cause **undue hardship** to either the payor or the recipient. Undue hardship means that paying the usual child support amount would be very unfair and cause a big financial problem for either the payor or the recipient.

When someone makes a claim of undue hardship, the court compares the standard of living of the parents' households. (This includes the income from a new spouse or live-in boyfriend or girlfriend.) If the parent claiming undue hardship has a household standard of living that's **lower** than the other parent, the court may accept a claim of undue hardship.

Proving undue hardship is complicated, and it's a good idea to speak with a lawyer.

Other exceptions to the amount set by the Guidelines

The court can order that more or less child support be paid than what the Guidelines say in other situations. These include when the child is **the age of majority and older**, when the payor **earns more than \$150,000 per year**, and when the payor is a **stepparent**.

Dealing with these situations can be complicated, and it's a good idea to speak with a lawyer.

How to get child support

If you agree on support

Child support can be agreed to in a **separation agreement**. Here, we explain separation agreements.

If you don't agree on support

If parents can't agree on child support, one of them can contact a mediator, start a court case, or go to arbitration. They can ask the court or the arbitrator for an order that child support be paid.

Which court to apply to

An application for a child support order can be made in either the Provincial Court (commonly called Family Court) or the Supreme Court. Each court has its own set of forms and rules. Usually, it's simpler and less expensive to get a child support order in Family Court. (There are no court filing fees, for example.) For more on this option, see our information on Family Court.

However, Family Court cannot make divorce orders, divide property or debts, or make orders protecting family property. If you need to ask for orders like these, it may be better to start your case in the Supreme Court. There, everything can be dealt with at the same time.

There must be financial disclosure

To get an order for child support, there must be **financial disclosure**. The payor must provide proof of their income, which usually includes paystubs, recent income tax returns, and other financial documents. In some cases, the recipient must also make financial disclosure. This is the case, for example, where the parents are sharing the cost of the children's "special or extraordinary" expenses or where they share the child's time.

Tip Family justice counsellors are mediators who are specially trained to help families with family law issues, including child support. They can help negotiate a separation agreement and provide information about obtaining or changing a court order. Their services are free (though eligibility criteria apply). See below under "Who can help" for contact information.

Getting "interim" child support

After a court case is started, a parent can apply to court for an **interim order** for child support. This is a temporary order meant to last until another interim order is made, or the case is settled or goes to trial.

The amount of interim support a court awards may be different than the amount it decides on after a trial. This is because the best information about the parents' incomes and financial circumstances is usually available at the end of a trial. For more on interim orders, see our information on applying for an interim order in a family law case in Supreme Court.

Common questions

How long is child support paid for?

Child support must be paid for as long as a person is a “child” as defined by the *Divorce Act* or the *Family Law Act*. In British Columbia, a child is **under 19** (the provincial age of majority). But the definition also includes adult children (**19 and older**) if they’re financially dependent on a parent. For example, a student in post-secondary school or an adult child with serious health problems may continue to qualify as a child even though they are age 19 or older.

What can I do if the other parent won’t pay child support?

If a parent doesn’t pay the child support owing under an order or an agreement, the **Family Maintenance Enforcement Program** can help. This free government program can help you collect support payments. It can also help monitor a support order or an agreement to make sure payments continue to be made and are made on time.

For more, see our information on enforcing support orders and agreements.

What if I need to change child support?

Either parent can apply to have a child support order or agreement changed if circumstances change. This can happen where, for example, there’s an increase or decrease in a parent’s income, or a change in the child’s living arrangements.

To make sure the appropriate child support amount is being paid, parents should exchange updated financial information and review child support payments every year. If there’s been a change, the Child Support Guidelines can be used to determine the new amount of child support.

Note that if you want to change an order and the other spouse lives *outside* of BC, there is a specific procedure ^[7] to follow under each of the BC *Family Law Act* and the federal *Divorce Act*.

Tip Legal Aid BC’s **Family Law in BC website** has self-help guides that include step-by-step instructions and blank forms. You can use these guides to apply to change a child support order or a court-filed agreement in Supreme Court ^[8] or Family Court ^[9].

What if I’m on income assistance?

If a parent is receiving income assistance, they can get help from the BC government with getting child support. The parent can assign their rights to child support ^[10] to the Ministry of Social Development and Poverty Reduction. The ministry will help get a child support order or agreement. This can be enrolled with the Family Maintenance Enforcement Program for enforcement.

Can a child support order cover the past?

Child support orders can start at an earlier date than the date when an agreement is reached or a court order is made. These are called **retroactive** (backdated) orders. In general, the court will make a retroactive order when:

- a payor has a legal obligation to pay child support and didn’t do so, or
- a payor’s income went up but child support payments did not.

Usually an order for retroactive support will date back no more than three years before the date of the application for retroactive child support.

Who can help

With child support

Family justice counsellors in Family Justice Centres throughout British Columbia can help parents by providing information about the Child Support Guidelines. They can help negotiate parenting and support agreements. They can also explain how to obtain or change support orders in Provincial (Family) Court if parents can't reach an agreement. Their services are free.

- Call 604-660-2421 (Lower Mainland)
- Call 1-800-663-7867 (toll-free)
- Visit website ^[11]

To provide more information about the Federal Child Support Guidelines, **child support officers** are available in Vancouver, Surrey, Kelowna and Nanaimo.

- Call 604-660-2084 (Vancouver)
- Call 1-888-227-7734 (toll-free)
- Visit Website ^[12]


More information

Legal Aid BC's **Family Law in BC website** features information on child support and step-by-step guides on going to court in family matters.

- Visit website ^[13]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has in-depth information on child support.

- Visit website

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Introduction to Spousal Support

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha Rapoport^[1], Brown Henderson Melbye in March 2021.

The breakup of a relationship can leave partners on an unequal financial footing. A spouse who's struggling moneywise may ask the other for help. Learn about **spousal support**.

Alert! This information has been updated to reflect changes to the *Divorce Act*^[2] that took effect on March 1, 2021.

What you should know

What spousal support is for

Spousal support is money paid by one spouse (the payor) to the other (the recipient) after separation. It's meant to:

- help with living costs and ease financial strain the breakup may have caused
- assist a spouse who's struggling financially because of the relationship or its breakdown
- compensate a spouse for their role in the relationship (for example, a spouse who sacrificed their career to care for children)
- help each spouse become financially independent within a reasonable amount of time

Spousal support is usually paid under an agreement or court order after a relationship ends. This doesn't automatically happen — you have to **apply** for spousal support. Anyone who was in a married or unmarried **spousal** relationship can do so. Each couple's circumstances will determine how much support is paid, if any.

Who can claim spousal support

Anyone who qualifies as a **spouse** can ask for spousal support after separation.

There are two laws that deal with spousal support: the federal *Divorce Act* and the provincial *Family Law Act*. Under the federal *Divorce Act*^[3], spouses are people who are, or were, married to each other.

Under BC's *Family Law Act*^[4], spouses are people who:

- are married,
- have lived together in a “marriage-like relationship” **for at least two years**, or
- have lived together in a “marriage-like relationship” for less than two years and **have a child together**.

Married spouses can seek spousal support under **either Act**. Unmarried spouses can **only** ask for spousal support under the *Family Law Act*.

When a spouse can get spousal support

Many factors determine whether a spouse can get spousal support. Some of these include:

- **Length of the relationship.** The longer the relationship, the more likely spousal support will be awarded.
- **Difference in incomes.** The greater the difference between the spouses' incomes at the end of a relationship, the more likely spousal support will be awarded.
- **Economic disadvantage.** The worse off financially the relationship has left one spouse, the more likely that spouse will be awarded support. A struggling spouse may have left the workforce to raise a child, for example, leading them to miss out on developing job skills and on getting raises.
- **Earning capacity.** The less capable a spouse is of earning an income, the more likely spousal support will be awarded. Earning potential can be limited by things like family obligations (such as providing child care) or a serious illness.

During the relationship, one spouse might have been supporting the other financially. That arrangement doesn't end at the moment of the breakup. The supporting spouse must continue to help the other. On the other hand, if the spouses have been self-supporting all along, neither spouse is likely to get financial help after separation.

The effect of a spouse's behaviour on support

How a spouse acts usually doesn't matter when it comes to spousal support. So, a spouse can still get support whether they've been, say, violent or unfaithful, or a victim of violence.

But, under BC family law, a court *can* look at how a spouse has acted to see whether:

- a recipient is taking steps to become self-sufficient, or
- a payor's conduct unreasonably affects their ability to pay support (for example, a spouse quits their job so they don't have to pay support).

How much support a spouse can get

Support payment amounts are usually based on the Spousal Support Advisory Guidelines ^[5]. These guidelines — used by a court or by the parties themselves — help determine how much spousal support should be paid and for how long.

This can get complicated. Especially if the couple has a child. For help, you can use free online calculators, such as mysupportcalculator.ca ^[6]. They can do simple calculations and give you an idea of how much support you might get.

Both spouses must provide full financial disclosure

Both spouses must share all details about their financial situation with each other. It doesn't matter whether they're in court or trying to settle out of court. (Spouses often complete and exchange financial statements using the forms required by the courts, even when they're not in a court proceeding.)

Financial statements help the spouses get a complete picture of their property and debts and their income and liabilities. Financial statements are usually provided along with important documents like income tax returns, tax assessments, and copies of financial documents such as bank statements.

How long spousal support is paid for

Once it's clear that spousal support is owed, and how much is payable, the next question is: for how long? The answer often depends on how long the spouses were together.

People leaving **long** relationships might receive spousal support for their whole lives — or at least until the payor of support retires. The courts recognize that the older a person is, the harder it generally is to get back into the workforce or to retrain.

People who've been in **shorter** relationships might receive support for a limited time. This is true especially where the recipient is either working outside the home or capable of working outside the home.

Each spouse is expected to make reasonable efforts to support themselves. For example, a spouse may need job training before going back to work. In that case, support payments may be limited to the time needed to complete that training.

How to get spousal support

Spouses can make arrangements for spousal support in a **separation agreement**. If they can't agree, one of them can apply to court for a **spousal support order**.

Which court to go to

A married spouse can apply for spousal support in:

- BC Supreme Court, under the *Divorce Act* or the *Family Law Act*, or
- the Provincial Court, under the *Family Law Act*.

An unmarried spouse can apply for spousal support in either the Supreme Court or the Provincial Court under the *Family Law Act*.

Each court has its own rules and forms. For Provincial Court, see our information on Provincial (Family) Court.

Getting “interim” support

While the court case is ongoing, either spouse may ask the court for an **interim order** for spousal support. This is a temporary order meant to last until the case is settled or goes to trial. For more on interim orders in Supreme Court, see our information on applying for an interim order in a family law case in Supreme Court.

When determining whether to make an order for interim support, the court will look at the “means and needs” of the parties. That is: does the recipient have the need for support, and does the payor have the means to pay?

Tip Legal Aid BC's **Family Law in BC website** has self-help guides that include step-by-step instructions and blank forms. You can use these guides to apply for an interim order in Supreme Court ^[7] or Provincial Court ^[8].

Common questions

Is there a time limit to ask for spousal support?

It depends on which law you use and whether you're a married or unmarried spouse. Under the *Divorce Act*, there's no time limit. A married spouse can ask for spousal support **at any point** after a divorce. But, in practice, it's important to apply for spousal support in a timely way.

Under the *Family Law Act*, married spouses have to start a court action for spousal support **within two years** of the date of their divorce or annulment. Unmarried spouses have to start a court action **within two years** of the date of their separation.

What can I do if my spouse won't pay the support?

If your spouse doesn't pay the spousal support required by a court order or agreement, the **Family Maintenance Enforcement Program** can help. This free BC government program can help you collect the support payments you're owed. It can monitor a support order to make sure payments continue to be made. For more, see our information on enforcing support orders and agreements.

Can I change a spousal support order?

What if, after spousal support has been court ordered or agreed to, one spouse has a big change in their financial circumstances — for better or worse? (Examples include a job loss or a wage increase.) In this case, either spouse can apply to change the support order or renegotiate the separation agreement. Generally, the change must be significant. And it can't have been foreseeable when the support order or agreement was made.

Note that if you want to change an order and the other spouse lives outside of BC, there is a specific procedure ^[9] to follow under each of the BC *Family Law Act* and the federal *Divorce Act*.

Tip Legal Aid BC's **Family Law in BC website** has self-help guides that include step-by-step instructions and blank forms. You can use these guides to apply to change a spousal support order or a court-filed agreement in Supreme Court ^[10] or Provincial Court ^[11].

What if I'm on income assistance?

After a couple separates, one spouse might be receiving income assistance from the BC Ministry of Social Development and Poverty Reduction. That spouse may want help with getting an agreement or court order for spousal support. In this case, the ministry may step in to help the income assistance recipient. It may ask that spouse to assign their rights to spousal support ^[12] to them. The ministry can then help with obtaining or defending a spousal support order or agreement, which can be enrolled with the Family Maintenance Enforcement Program for enforcement.

What are the tax consequences of spousal support?

Spousal support is considered **taxable income** for the spouse who receives it. It counts as a **tax deduction** for the spouse paying it. The recipient must report the income to the Canada Revenue Agency and pay tax on it, just like employment income. The payor can claim the payments as a tax deduction, just like RRSP contributions.

For spousal support payments to be taxable and deductible, the payments must be:

- paid because of a written agreement or a court order,
- made on a periodic basis, such as once a month or once every two weeks, and
- actually paid.

Other kinds of support payments — such as those made in a lump sum or “in kind” (that is, paid in services, not money) — aren’t taxable or deductible. It may be necessary to speak to a lawyer to confirm the tax status of spousal support payments.

When you’re figuring out how much spousal support should be paid, keep in mind the tax consequences of support payments. For more on this, see our information on the tax implications of support payments.

Who can help

Free and low-cost legal help

Family justice counsellors in Family Justice Centres throughout BC can help couples understand spousal support, mediate and prepare a separation agreement, or help prepare materials to get a support order in Provincial Court. Their services are free.

- Call 604-660-2421 (Lower Mainland),
- Call 1-800-663-7867 (toll-free, Kelowna)
- Visit website ^[13]

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.


With more information

Legal Aid BC’s **Family Law website** features information on spousal support and has step-by-step guides for going to court in family matters.

- Visit website ^[14]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has in-depth information on spousal support.

- Visit website ^[15]

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Enforcing Support Orders and Agreements

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Maintenance Enforcement & Locate Services ^[1], Ministry of Attorney General in February 2020.

Many parents and spouses make support payments they owe under a support order or agreement. Unfortunately, some don't make their payments. Learn what steps to take to enforce payments owed under a support order or agreement.



"After we separated, my partner followed our separation agreement. He paid child support for both children for two years. Then he suddenly stopped paying after he got into a new relationship. I filed my separation agreement in court and registered with the Family Maintenance Enforcement Program. They've collected my child support payments for me every month for the last five years — for free."
— Irena, Port Alberni, BC

What you should know

Court orders for support are different from agreements

After separation, one spouse may pay the other **spousal support** to help with living expenses. If the couple has children, one parent may pay the other **child support** to help with the costs of raising them.

Spousal support or child support payments can be set out in a court order or a separation agreement.

A **court order** for support is a court's decision that one person (the payor) pay the other person (the recipient) a certain amount, usually on a monthly basis. If support isn't paid, the recipient can take steps to enforce a court order right away.

A **separation agreement**, on the other hand, is a private contract between partners who have separated. It can be enforced in the courts under the law of contracts. But it's simpler to **file** the separation agreement in court. This allows it to be enforced as if it were a court order.

If child or spousal support is not paid

If a payor doesn't pay support under a court order or agreement, they owe money.

This is called **arrears** or **arrears of support**.

There are two ways a recipient can collect arrears. They can:

1. take steps **themselves** to enforce the support order or agreement in court, or
2. get help from a **free** government program called the Family Maintenance Enforcement Program.

Taking enforcement steps on your own

If a payor hasn't made support payments to you, you have many options to enforce payment. As long as a support order or a separation agreement has been filed in court, some things you can do include:

- Apply for a court order to **garnish** the payor's wages or bank accounts. This means that money from a payor's wages or bank account is taken and redirected to you. Up to a maximum of 50% of the payor's wages can be garnished. But, there is no limit on how much money can be garnished from a bank account.
- Apply for an order **to sell** some of their property to pay the arrears.

You can also force the payor to disclose information about their finances. Doing so can help you figure out how to best collect the arrears. For example, you can ask the payor to:

- Attend a **default hearing**. This is a court hearing where the payor has to explain why they aren't paying support. They also have to provide a statement of their finances.
- Attend an **examination hearing**. In this court hearing, you can question the payor under oath about their finances.

For any of these steps, you must apply to court and explain to a judge why the order you're asking for should be granted. The payor will have a chance to respond.

The process of applying to court can be complicated. It's a good idea to speak with a lawyer first.

Registering with the Family Maintenance Enforcement Program

The Family Maintenance Enforcement Program (FMEP) is a free service provided by the provincial government. FMEP enforces support orders and agreements. The program collects support owed from a payor and sends it to the recipient.

How to enroll in the program

Either a payor or recipient can enroll in FMEP as long as a support order or separation agreement has been filed in court. The enrollment package is online ^[2]. Or you can request that FMEP mail you the package.

After you're enrolled in the program

Once a case is enrolled, the payor sends all support payments to the program. FMEP processes them and then sends them on to the recipient. It tracks when payments are due, and how and when payments are made. If a payor misses payments and arrears add up, there are several steps FMEP can take. We explain this shortly.

To withdraw from the program, the person who enrolled the support order or agreement with FMEP needs to send a request in writing.

If it was the recipient who enrolled, they can withdraw at any time. If it was the payor who enrolled, the recipient has to agree to the payor's withdrawal from the program.

Changes to the order or agreement After enrollment, a payor or recipient may want to **change** the support order or agreement. If they start any negotiations or legal action to make a change, they must let FMEP know.

What enforcement steps FMEP can take

To enforce a support order or agreement, the Family Maintenance Enforcement Program can take all legal steps the support recipient could take on their own — and more. For example, it can cancel the payor's driver's licence or take away their passport. We explain several steps here. See the FMEP website for a full list of enforcement steps the program can take ^[3].

If support payments are missed and arrears are owed, the enforcement steps the program can take depend on:

- how much money is owed,
- the current situation of the payor, and
- the actions the program thinks have the best chance of success in the circumstances.

Notice of attachment

FMEP can issue a **notice of attachment** to any person or institution that owes money to the payor. The notice requires that the funds be redirected to the recipient through the program. Sources that can be attached include employers, banks, and WorkSafeBC. Federal government payments — such as income tax refunds and Employment Insurance benefits — can also be attached.

Lien against property

FMEP can file the support order against any property (whether a car, manufactured home, or land) owned by the payor. Doing so means the property can't be sold or re-mortgaged without the support arrears being dealt with first.

Cancel driver's licence or suspend passport

When a payor falls \$3,000 or more behind in support payments and FMEP has been unable to collect the support, it can:

- ask the federal government to **suspend or deny** a payor's passport
- tell ICBC to:
 - **cancel** a payor's current driver's licence
 - **refuse to renew** a payor's driver's licence
 - **refuse to give or renew** a payor's motor vehicle licence ^[4] (without a vehicle licence, a payor can't buy vehicle insurance)

These are serious steps. FMEP takes them only after having tried unsuccessfully to collect the support payments in other ways.

Court enforcement

Ultimately, if a payor still doesn't pay, FMEP can bring the case to court. In court, the payor has to explain why they didn't pay support. The court can decide to take further action to enforce payment of the arrears — including putting the payor in jail.

Common questions

How successful is FMEP in collecting arrears?

In most cases, support recipients enrolled with the program get some or all of the support that is due to them each year. However, some payors make it very difficult for FMEP to collect — even leaving the country to avoid paying support. Others may have no income or assets, or may be receiving income assistance. So it can take a long time to collect what's

owed to recipients. But FMEP will continue to pursue payments as long as the support recipient is enrolled with them.

When should I enroll with FMEP?

It's always a good idea to be proactive and enroll with the program if there are problems around support payments. If you're a support recipient and the payor misses a payment, you should enroll immediately.

Can I take enforcement steps on my own while I'm enrolled with FMEP?

No. You need to contact the program to get permission **before** you can take enforcement action on your own.

Who can help

With more information

The **Family Maintenance Enforcement Program** website explains how to enroll in the program. It also has information about the steps FMEP can take to enforce a support order or agreement. FMEP also has three client offices throughout BC.

- Visit website ^[5]

The **BC government** website has information about enforcing a support order or agreement through FMEP.


- Visit website ^[6]

The wikibook ***JP Boyd on Family Law***, hosted by Courthouse Libraries BC, has information on arrears of child support ^[7] and arrears of spousal support ^[8]. It also has information about enforcing child and spousal support orders.

- Visit website

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Tax Implications of Support Payments

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit^[1], Brown Henderson Melbye in April 2020.

Different income tax rules apply to spousal support and child support. Spousal support payments are handled one way, and child support payments another. Learn how the tax rules affect you.

What you should know

Different tax rules apply to spousal support and child support

After a couple separates, one spouse may be obligated to pay the other **spousal support** to help with living expenses. If they have children, one parent may be obligated to pay the other **child support** to help cover the costs of raising them. (Or, both parents may be obligated to pay the other in a shared parenting arrangement).

Different tax rules apply to each of these types of support payments.

Spousal support is considered **taxable income** for the spouse who receives it. It counts as a **tax deduction** for the spouse paying it.

Child support, however, is generally **not** taxable or deductible.

We explain these general rules and what these terms mean below.

Spousal support is usually taxable and deductible

Spousal support payments are like any other kind of income. The spouse who receives them (the recipient) must report the support payments as taxable income to the Canada Revenue Agency. And they must pay **income tax** on the payments.

The spouse who pays the support (the payor) can claim it as a **deduction**. (It's like deducting contributions to registered retirement plans or child care expenses). These deductions reduce the amount of income tax the payor has to pay.

When spousal support payments are taxable and deductible

For spousal support payments to be taxable and deductible, all child support payments must be fully paid in the current and previous years. Also, the spousal support payments must be:

1. Paid because of a written agreement or a court order. The written agreement or court order must clearly state the amount to be paid to the recipient as spousal support.
2. Paid on a periodic basis, such as once a month or once every two weeks. (Spousal support paid in a one-off lump sum is generally *not* taxable or deductible.)
3. Actually paid by the payor.

Spousal support that's paid indirectly, such as by paying the mortgage, may not be taxable or deductible. If you are considering such an arrangement, you should get legal advice.

Tip Spousal support decisions have serious tax consequences for both spouses. You should get advice from a family lawyer or tax advisor before signing a support agreement.

There must be a written agreement or a court order

For spousal support payments to be taxable and deductible, there has to be a **written support agreement or court order**. A couple can agree between themselves that spousal support will be paid. But the payor won't be able to claim a deduction on their taxable income unless they have a written agreement or court order confirming the periodic spousal support.

If the parties have a written separation agreement, it must state the separation date. It should also set out the terms of the spousal support payments to be made, including:

- the date the support payments begin,
- when the payments are due, and,
- the amount payable.

A spousal support order or written agreement must be registered with the Canada Revenue Agency. (You don't need to register an order or agreement if it's for child support only.) To register your spousal support order or agreement, you need to fill out the **registration of family support payments** form ^[2]. Then submit it to the Canada Revenue Agency.

Tip Spousal support payments are tax deductible and child support payments aren't. Because of this, an agreement or order must be clear about what kind of support is being paid and how much. If the agreement says one sum is to be paid for both spousal support and child support, the Canada Revenue Agency will treat the whole amount as child support. In that circumstance, the spouse paying support will not get a tax deduction.

The spousal support must be paid by a spouse to their spouse

Generally speaking, spousal support payments are only taxable and deductible if they're made by a spouse to a spouse or former spouse.

The payor shouldn't have someone else make the support payments on their behalf, or pay them out of a joint account.

Support payments aren't usually deductible if they're paid to someone else. A spouse might, for example, pay a smaller amount of spousal support. But, they may make up the difference by covering the mortgage on the family home. Before agreeing to this kind of payment arrangement, it's important to get the advice of a lawyer or accountant. You want to be sure that Canada Revenue Agency will treat the support payments in the way that works best for your financial situation.

Proving that the spousal support payments were actually paid

For spousal support payments to be taxable and deductible, the payments must be **actually paid**.

Problems can come up when support is paid in cash. One spouse might say they made a payment while the other spouse denies receiving it.

It's a good idea to make support payments by cheque, electronic money transfer, bank draft, or money order. These are ways that prove you paid. If a payment is made in cash, it's important to get a signed receipt from the spouse. It should clearly state the amount, the date, and the purpose of the payment.

Tip Keep a record of every spousal support payment. Keep copies of cancelled cheques or receipts of electronic money transfers. Make a note on each cheque or receipt what time period the payment covered.

Child support is usually not taxable or deductible

For child support orders or agreements made **after 1997**, there are no tax implications for child support payments. That is, the recipient can't claim them and the payor can't deduct them.

Parents with a child support order or agreement made before 1997

Up until 1997, child-support payments *were* taxable and deductible. So if child support is being paid under a written agreement or court order made **before 1997**, those **older rules apply**. That is, in those cases, child support is taxable income for the recipient and is deductible from the payor's taxable income.

Tip Parents with an agreement or order made *before 1997* can, legally, "grandfather in" the old rules which *allowed* tax credits and deductions for child support payments. But the couple can also agree **not** to. That is, they can agree that they will follow the *current* tax rules (so child support would not be taxable and deductible). If they do decide to go that route, they must file a form with the Canada Revenue Agency. Once they do this, they can't go back to the old rules.

Some legal fees and expenses are tax deductible

For the support **recipient**, the cost of **getting or enforcing** support is deductible from their income. That is, legal fees for these actions *can* be deducted ^[3]. (Though only the fees relating to the support amount.)

The cost of defending a claim for support or payment of support is *not* deductible.

Tip Ask your lawyer for a letter estimating how much of their time on your file went towards the spousal support or child support claim. That will help you know how much you can deduct on your taxes.

Who can help

With more information

Canada Revenue Agency has information on their website about how taxes affect support payments.


- Visit website ^[4]

The **Canadian Bar Association** has an online resource called the *Tax Matters Toolkit*. It explains the rules that apply when you separate or divorce, including child support rules.

- Visit website ^[5]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Dividing Property and Debts

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha Rapoport^[1], Brown Henderson Melbye in March 2020.

When a relationship ends, spouses often have to deal with their property and debt. They have to figure out who gets what and who pays for which debts. Learn what the law says about property and debt division when spouses separate.



“When my spouse and I started living together, I owned a condo. During our four-year relationship, we bought some things together and racked up some credit card debt. We just separated a month ago. I learned that we each get to keep what we brought into the relationship. We’ll share paying off the debt and dividing up the stuff we got together during our relationship. Now, we’re making a separation agreement — so far, so good.”
— Bruno, Nelson, BC

What you should know

There are property and debt division rules

In BC, the *Family Law Act*^[2] sets out rules for dealing with property and debt when a couple separates. These rules apply to people who meet this definition of **spouse**:

- they are married, or
- they have lived together in a “marriage-like relationship” with another person for at least two years.

People who lived together for **less than two years** are **not** spouses for the purpose of property and debt division. This is true whether they've *had a child together or not*.

Tip If you are in a relationship but don't meet the above definition of spouse, different rules apply. See our information for couples who aren't spouses.

Family property is equally divided between spouses

Family property is everything you or your spouse own separately or together at the date of separation. But it **doesn't** include **excluded property**. This is typically property that one of you owned **before** your relationship. We discuss this below.

The starting point for separation is that family property is **equally divided** between spouses. It doesn't matter whose name the property was in, who used it, or who contributed to it.

Family property can include:

- real property (such as land, buildings, and houses, including the family home)
- companies or businesses
- insurance policies
- money owed to a spouse (such as an income tax refund)
- bank accounts and investments
- retirement savings accounts (such as RRSPs)

- pensions

Each spouse keeps their own excluded property

Under BC law ^[3], **excluded property** is:

- property a spouse **brought into** the relationship
- certain kinds of property a spouse receives **during** the relationship, including a gift from someone else, an inheritance, or a court award
- property bought with excluded property during the relationship

Excluded property belongs to the spouse who brought it into the relationship. But if its value goes up during the relationship, that **increase** becomes family property and will be equally divided.

Dividing excluded property

Spouses can decide to share their excluded property when they separate. They can make an agreement that it will be treated like family property. They can agree that it will be divided between them. This agreement can be made during, or at the beginning or end, of their relationship.

If one spouse wants to divide excluded property and the other doesn't, a court can decide to do so. That is, the law says that a spouse can keep their excluded property. But a court *can* divide excluded property to make sure each spouse gets what's fair. Excluded property can be divided if:

- family property or family debt **outside** British Columbia can't be divided, or
- it would be **significantly unfair** not to divide excluded property, considering:
 - how long the spouses' relationship is, and
 - how much the non-owning spouse directly contributed to it.

Tip What property qualifies as excluded property can sometimes be confusing. If you aren't sure whether or not something is excluded property, you should get legal advice from a family lawyer.

Family debt is equally shared by spouses

Family debt is all debt that **one or both** spouses took on during their relationship. It includes mortgages, lines of credit, and credit cards. Family debt may include debt run up **after** separation. This is true if a spouse spent money to pay for or take care of family property.

Family debt is **shared equally** between spouses, regardless of whose name the debt is in or who ran it up. Spouses can make a different agreement about sharing family debt if they don't want to divide it equally.

Unequal division of family property and family debt

Most of the time, a court will order that family property and family debt be divided equally. But, under BC law ^[4], a court can divide property unequally. This can happen if it would be **significantly unfair** to equally divide family property or family debt.

When might an equal division be significantly unfair? To decide, a court looks at many factors, including:

- how long the spouses' relationship was
- whether the debt was incurred in the normal course of that relationship
- if the family debt is more than the value of family property
- the ability of each spouse to pay a share of the family debt

- if a spouse did something after separation to significantly increase or decrease the value of the property or debt
- if a spouse has to pay taxes because of a property transfer

Spouses can agree to unequal division of family property and debt

Spouses can agree to divide family property and debt unequally. They can do this:

- in a separation agreement
- by agreement in a court order called a **consent order**
- in a marriage agreement, made before or during marriage
- in a cohabitation agreement, made before or while living together

Courts respect agreements about property and debt division. They will enforce them as long as the agreements are fair. For more, see our information on separation agreements and marriage and cohabitation agreements.

Common questions

When are family property and family debt divided?

Family property and family debt are divided as of the **date the spouses separate**. On their separation date, each spouse becomes:

- a half-owner of all family property as a tenant-in-common (where a person owns a specific share in the property)
- responsible for half of the family debt

Is an inheritance family property?

Generally speaking, no. An inheritance that a spouse receives before or during a relationship is part of that spouse's **excluded property**. But if an inheritance increases in value during the relationship, that **increase** is family property.

Also, in some unique circumstances, an inheritance can lose its excluded status. If an inheritance is in play, you should get legal advice from a family lawyer.

Are RRSPs and pensions family property?

Yes. Any registered retirement savings plans (RRSPs) or benefits in a pension plan that each spouse built up during the relationship is family property. The law has special rules for dividing most kinds of pension plans. There are separate rules for dividing Canada Pension Plan credits and other pensions not found in the *Family Law Act*.

Tip Dividing pensions is complicated. You should get help from a lawyer with this. In the meantime, the Family Law in BC website from Legal Aid BC has information about dividing pensions and other benefits ^[5].

What happens if a spouse tries to hide or sell property?

If a spouse tries to limit or interfere with the other spouse's property interest, a court can:

- stop the property from being transferred to a third person
- reverse a transfer that's already occurred, whether before or after separation
- make a **compensation order** to the other spouse

Do I have to go to court?

You don't have to start a court case to divide property or debt. Also, if you're married, you don't need to get a divorce order first. You and your spouse can make an agreement to divide property and debt.

But if you and your spouse can't agree, you'll need to apply to court for an order dividing property and debt. There's a **deadline** for starting this action. You have to start it **two years** from the date of divorce (for married spouses) or the **date of separation** (for unmarried spouses).

Who can help

With more information

The **Family Law in BC website** from Legal Aid BC has information about dealing with property and debt when spouses separate.

- Visit website ^[6]

The **BC government** website explains how separated couples can deal with property and debt.

- Visit website ^[7]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has in-depth coverage of family property, excluded property, and family debt.


- Visit website ^[8]

Free and low-cost legal help

The **Family LawLINE**, operated by Legal Aid BC, is staffed with lawyers who provide free family law legal advice over the telephone to people who can't afford a lawyer.

- Call 604-408-2172 (Metro Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[9]

Also see our information on free and low-cost legal help. It explains options such as pro bono services, legal clinics, and advocates.

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Children

Children's Rights

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jeff Rud ^[1] of the Office of the Representative for Children & Youth, Shannan Knutson of the Ministry of Attorney General, and Heidi Sarrazin and Leslie Anderson of the Ministry of Children and Family Development in July 2018.

The legal rights of children vary from those of adults. Learn the rights of children in several contexts, and situations where their views are considered in decisions that affect them.

The rights of children

To consent to their own health care

Under the law in BC ^[2], a child under age 19 may consent to their own health care — **if they are “capable”**.

The law considers a child capable if they understand the need for the health care, what the care involves, and the consequences (the benefits and risks) of getting the care — or not getting the care.

If a health care provider explains these things to the child and is satisfied the child understands them, and that the health care is in the child's best interests, they can treat the child if the child consents to the care. The provider does not need the consent of the child's parents or guardians. The child might have to sign a consent form.

Generally, if a child is capable of consenting to health care, they are also capable of making a decision to refuse health care.

For more on this topic, see our information on children and consent to health care.

If they are hospitalized against their will for psychiatric treatment

A child under age 16 can be hospitalized against their will for psychiatric treatment in one of two ways:

- if a parent or guardian requests it and a doctor agrees it's in the child's best interest, or
- if the child is admitted as an involuntary patient under the *Mental Health Act* ^[3].

In both cases, the child has the right to be told why they've been admitted and the right to contact a lawyer immediately. If they want to leave but their doctor won't let them, the child can ask for a hearing by a review panel or court.

A child age 16 or older can be admitted against their will for psychiatric treatment only as an involuntary patient. To find out more about involuntary admissions, see our information on hospitalizing a mentally ill person.

If they are “in care”

If a child is in the care of the province, or **in care**, BC’s child protection law ^[4] gives the child certain rights. They include the right to be consulted and give their views on decisions that affect them. They also include the rights to reasonable privacy, to be free from physical punishment, and to be informed about (and helped to contact) the Ombudsperson and the Representative for Children and Youth. (We give contact details for these two offices shortly.)

“In care” means a child is in the custody, care or guardianship of the child welfare or adoption authorities. “Care” means physical care and control. If a child is removed from their home by the child welfare authorities, the authorities have care of the child until the child is returned to their parents or a court makes an order. If a child is in care, the child’s worker, other people important to the child, and the child meet and develop a care plan for the child.

For more information, see the publication *Know Your Rights: A Guide to Rights for Young People in Care* ^[5], published by the Ministry of Children and Family Development. Also, the Ministry website includes a section for if you’re a teen in foster care ^[6].

If they are charged with a crime

The *Youth Criminal Justice Act* ^[7] explains how police, courts, and the correctional system must treat young people age 12 to 17 who are arrested for, charged with, or convicted of a crime under federal laws.

The most important federal criminal law is the *Criminal Code* ^[8]. It covers common crimes like shoplifting, breaking and entering, car theft, and assault. Other federal laws deal with things like possessing and selling (or trafficking) illegal drugs.

Provincial laws cover many other crimes, such as drinking under age, trespassing, and breaking traffic laws.

A young person who is stopped and questioned by the police has the right to remain silent. If a young person is arrested or detained, they have the right to legal advice. If they are charged with a federal crime, they have the right to a lawyer to represent them. For more on the rights of young people charged with a crime, see our information on young people and criminal law and trials involving young people.

Common questions

What kind of input can children have on things that affect them?

Under many laws, the views of a child must be considered in making decisions affecting them. Some laws require the child’s approval.

Under the *Family Law Act* ^[9], in making an agreement or order about guardianship, parenting arrangements, or contact with a child, the parties and the court must consider the best interests of the child only. The law lists the **child’s views** as one factor that must be considered in determining their best interests, unless it would be inappropriate to consider them. Both the age and maturity of a child are important when a court considers a child’s views.

If a person other than a child’s parent applies to court for an order appointing them as the child’s guardian, the *Family Law Act* ^[10] requires the **child’s written approval** (if they’re age 12 or older). The approval is not required if the court is satisfied the appointment is in the best interests of the child.

Under BC’s child protection law ^[4], a child in care of the province has a **right to be consulted and to express their views**, according to their abilities, about significant decisions affecting them. If the child is age 12 or older, any consent court order must have the child’s consent.

Under BC's adoption law ^[11], if a child is age 12 or older, their consent to being adopted is required. The views of a child between seven and 11 must be considered.

When a family breaks up, can children choose which parent to live with?

Children do not generally get to choose which parent they live with if their parents separate or divorce, but they can express their views. The parents can agree on parenting arrangements, including where their children will live, how much time the children will spend with each parent, and how decisions about them will be made. To help them make these decisions, the parents may talk to the children, social workers, lawyers, counsellors, or other professionals. If the parents make an agreement their children are not happy with, the children can talk to the parents about it. But it's still the parents' decision.

If the parents can't agree, a court may have to decide who the children live with. Under the *Family Law Act* ^[9], the parties and the court must consider the best interests of the child only. The law lists a number of factors that must be considered, including the child's views, unless it would be inappropriate to consider them. Both the age and maturity of a child are important when a court considers a child's views. A court often assesses a child's maturity by examining how the child behaves at home and at school.

Can children access money held in trust for them by the Public Guardian and Trustee?

It depends on the situation. BC's Public Guardian and Trustee oversees the legal rights and financial interests of children under age 19. The Public Guardian and Trustee holds money that children receive in the following types of cases — if another trustee is not appointed:

- an injury award after an accident
- an inheritance
- life insurance proceeds
- part of the money that a child under 15 makes from acting in TV or films

The Public Guardian and Trustee pays all a child's money (with interest) to the child when they turn 19. The Public Guardian and Trustee may also use some of a child's money — before the child is 19 — to pay for things a child or their family cannot afford, such as school fees, tutoring, camps and trips, transportation, computers, and dental needs.

For more information, check with the Public Guardian and Trustee. Visit their website ^[12] or call 604-660-4444.

Who can help

For children

Children who would like to talk to someone can call the **Helpline for Children**. This confidential service operates at any time of the day or night.

- Call 310-1234 (toll-free)

For children and families

A child receiving services from the **Ministry of Children and Family Development** (or their family member or caregiver) who disagrees with something the ministry did or decided, has a right to complain and be taken seriously. The Ministry website provides information on how to make a complaint ^[13].


- Visit website ^[14]

The **Provincial Ombudsperson** responds to complaints about ministries, schools and other provincial authorities that affect children and youth.

- Call 1-800-567-3247 (toll-free)
- Visit website ^[15]

The **Representative for Children and Youth** supports children and families who need help dealing with the child welfare system. The Representative does not work for government, but is an independent officer of the BC legislature. They also suggest changes to the system.

- Call 1-800-476-3933 (toll-free)
- Visit website ^[16]

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Children Born Outside Marriage

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha Rapoport^[1], Brown Henderson Melbye in April 2020.

Under BC law, a child born outside of marriage is treated the same as a child born to married parents. However, there are some implications for parents and other practical considerations for parents who have children born outside of marriage.

Alert! This information has been updated to reflect new Provincial Court Family Rules^[2] that took effect on May 17, 2021.

What you should know

The legal status of a child born outside of marriage



“My partner Janine and I have a one-year-old daughter. We were together for 21 months before we broke up. Janine told me that because we weren’t married, she could decide when I saw our daughter. I spoke to a family lawyer for free and learned it didn’t matter that our daughter was born outside of marriage. I have the same parental rights and obligations as a married parent. After some help from a mediator, we now have a parenting agreement.”
– Monika, Fort St. John, BC

Under the BC *Family Law Act*^[3], a child is a person under 19 years old. There’s no difference in the legal status of a child born to someone who is married and a child born to someone who is not married.

Put another way, a child born outside of marriage is treated exactly the same in BC law as a child born to married parents. It makes no difference whether a child is born to a single parent, to a person in a common-law relationship, to a couple in a same-sex relationship, or to a couple in an opposite-sex relationship.

Registering the birth of a child born outside of marriage

Under the law in BC^[4], a parent must register the birth of a child with the government. This has to be done **within 30 days after the child’s birth**.

Birth registration can be done online^[5] by the birth mother and the other parent. Each parent must be present during the online registration to certify the registration.

Another option is to ask for a paper birth registration form by calling the Vital Statistics Agency. This is the government office that handles birth registrations. Call 250-952-2681 in Victoria, or 1-888-876-1633 elsewhere in BC.

Both parents must sign the birth registration form, unless one or both parents are incapable. If the child’s father is unknown or doesn’t acknowledge he’s the father, the child’s mother can sign the birth registration form alone.

Choosing the child's last name

The parents may choose any last name they like for a child, as long as they agree on it. Under BC law ^[6], if the parents can't agree on a last name for a child, the child's last name will be:

- the parents' last names **hyphenated** (for example, "Leung-Boden"), or
- the parents' last names combined in **alphabetical order** (for example, "Boden Leung").

If only the birth mother signs the birth registration, she can choose the child's last name.

Placing a child for adoption

Under the law in BC ^[7], a parent or guardian of a child may place the child for adoption. This starts a process to legally transfer parental rights and responsibilities for the child to another family.

Usually both birth parents have to agree to place a child for adoption. A **birth mother's** written consent is required unless the child is in the permanent care of the child protection authorities.

A **biological father's** consent is usually required too, but there are exceptions. For example, a court can be asked to do away with the biological father's consent if he can't be found or if to do so is in the child's best interests.

For more on adoption, see our information on adoption and adoption registries.

Parents are generally guardians of a child

Under the law in BC ^[8], while a child's parents are living together and after they separate, each parent is the child's **guardian**.

A parent who has never lived with their child is **not** a guardian unless:

- the parent regularly cares for the child,
- the parent and all of the child's guardians make an agreement that the parent is also a guardian, or
- they are a parent under a written agreement providing for the child's birth through assisted reproduction.

A parent who isn't a child's guardian does not have "parental responsibilities" for the child. This means that parent doesn't have a say in how the child is raised.

If a parent isn't a guardian of their child, they can apply to court to become one. Other people (such as grandparents or step-parents) can also apply to court to become guardians.

Guardians have parental responsibilities and parenting time

Under BC law ^[9], guardians of a child have **parental responsibilities** and **parenting time**. Together, these are called **parenting arrangements**.

Parental responsibilities

Parental responsibilities are the duties that guardians have while caring for a child. They are also the decisions guardians make about how to raise the child, based on the child's best interests. This includes things like deciding where the child lives and goes to school, how the child gets treated when sick, the religion practiced by the child, and the language they speak.

Where two or more guardians share parental responsibilities, they must consult each other when making their decisions. But parental responsibilities can also be divided between a child's guardians in a separation agreement, parenting plan, or court order. For example, a court might order that one guardian should be able to make final decisions about a child's healthcare or education, if that would be in the child's best interests.

Parenting time

The time a guardian spends with a child is called parenting time. During a guardian's parenting time, the guardian is responsible for the care of the child, and making decisions about day-to-day matters involving the child.

A parent has an obligation to pay child support

Child support is every child's right. Each parent is legally responsible to financially support their child. That's the case whether the parents are married spouses, unmarried spouses, or not spouses at all. Even if you never lived with your child or the child's other parent, you are still obligated to pay child support. A step-parent may also have an obligation to financially support a child.

The obligation to support a child lasts until the child reaches 19 years old (the age of majority in BC). A parent's child support obligation may continue beyond age 19. This can happen if the child is financially dependent on the parent because of disability or illness, or because the child is pursuing post-secondary education.

For more about support obligations, see our information on child support.

Common questions

Can a child's birth certificate be changed later to show the other parent?

If the parents agree, a child's birth registration can be changed to list them both as parents. The parents can also change the child's name on the birth registration.

If the parents don't agree, the parent who wants to have their name added can apply to court for an order declaring they are the child's parent. They can also ask that a child's birth certificate be changed, including a change to the child's last name. An application to the Vital Statistics Agency to change the child's birth certificate can follow.

Before making name changes, though, the court has to believe that the change is in the child's best interests. And if the child is age 12 or older, the child must consent in writing to the name change. If these conditions are satisfied, the court may order a change of the child's last name to be the last name of either parent or a hyphenated combination of their last names.

What are the inheritance rights of a child born outside marriage?

What a child is entitled to inherit depends on a couple of things: whether the parent made a will, and whether the parent has a spouse or other children at the time of their death.

Under the law in BC ^[10], if a person dies without a will and has a spouse, the spouse is entitled to a certain share of their estate. The deceased's children split what's left, whether they're born outside the marriage or to married parents.

If a person dies without a will and doesn't have a spouse, their children are entitled to share in the whole estate, whether they're born outside the marriage or not.

If a person dies with a will, their children receive whatever the deceased left to them in the will. But any child (whether born outside of marriage or to married parents) can apply to court to change the will if they feel their portion of the estate is not "adequate, just and equitable in the circumstances." BC law ^[11] requires a person in their will to provide adequate support for their spouse and children.

For more on inheritance rights, see our information on challenging a will and when someone dies without a will.

If I break up with the other parent, how do issues affecting our child get sorted?

If you and your child's other parent break up, you need to figure out how you'll make decisions about the child. This includes where the child will live and how much time the child will spend with each parent.

If you both agree on these issues, you can make a written agreement. We have information on separation agreements.

If you can't agree on these issues, you might consider **mediation**. This is a process where parties in conflict meet with a neutral person, called a mediator. The mediator helps you find a solution you can both agree on.

If you still can't come to an agreement, one of you may decide to start a court action. A judge will make decisions according to the best interests of the child. The court can also make decisions about how often the child will see each parent (called **parenting time** or **contact**), and how parenting decisions will be made (called **parental responsibilities**).

For more on these issues, see our information about guardianship, parenting arrangements, and contact and resolving family disputes ^[12].

Are parenting time and child support related?

Paying child support is a legal obligation. But, it's not simply a trade of money for time with the child. Nor is it a fee that's paid to have time with the child. Though there are exceptions (such as in shared parenting situations), child support is not determined by the amount of parenting time or contact a parent has with a child. Rather, child support is determined based on the parent's income. For more on this, see our information on child support.

Who can become a child's guardian?

While a child's parents are living together and after they separate, each parent is the child's guardian.

A parent who has never lived with their child is a guardian if they regularly care for the child. They can also become a guardian by making a written agreement with the child's other guardians. Or they can apply to court to be made a guardian.

A person who isn't a parent can apply to court to be made a guardian.

Someone can also become a child's guardian through being named as one in a guardian's will. Or by being appointed when a guardian dies or becomes incapacitated.

Stepparents and guardians Stepparents don't automatically become guardians. Not even if they're living with your children. If you want a stepparent to become a guardian for your children on your death, you have to appoint them in your will or in an appointment of standby or testamentary guardian form ^[13].

What's involved in applying to court to become a guardian?

If you apply to court to become a guardian, the law in BC ^[14] requires you to provide information about why that would be in the best interests of the child. You have to:

- fill out a guardianship affidavit ^[15] that provides information about any children that are or have been in your care (an affidavit is a legal document where you make statements about facts you say are true),
- get a criminal record check,
- get a record check from the child protection authorities, and
- get a record check from the BC government's protection order registry ^[16].

I have a new spouse. Can we change my child's last name to my spouse's last name?

A parent can apply to legally change their child's last name. To do so, you need the agreement of several others involved. All other guardians of the child must agree. Your spouse must agree, if you want to change the child's name to your spouse's last name. And your child must agree, if the child is age 12 or over.

The Vital Statistics Agency can decide to approve an application for a name change even if a required consent is missing. For more about changing a child's last name, see the agency's website ^[17].

Does a stepparent have an obligation to pay child support?

Quite possibly. Under the law in BC ^[18], a **stepparent** is a spouse of the child's parent who lives with the child's parent and the child.

A stepparent may have a duty to provide support for a stepchild if:

- they contribute to the support of the child for at least one year, and
- a claim for child support is made against the stepparent **within one year** of their last contribution.

The stepparent's obligation to pay child support is **secondary** to that of the child's parents and guardians. When deciding if a stepparent should pay child support, a court looks at the child's standard of living when they lived with the stepparent, and how long the child lived with the stepparent. A number of factors come into play. It's a good idea to consult a lawyer if a stepparent is involved.

For more about support obligations, see our information on child support.

I'm in a common-law relationship. Can I adopt my spouse's child?

You can apply to adopt a child in BC if you are 19 years or older and live in BC. You don't need to be married to adopt. You can apply to adopt if you're single or in an opposite-sex or same-sex relationship. For more on adoption, see our information on adoption and adoption registries.

My ex-partner is abusive. What if I'm concerned for my child's safety?

If you or your children are being threatened by a former partner, you can apply for a **protection order** in either Provincial Court or Supreme Court. This is a court order to protect one person from another.

Anyone can apply for a protection order on behalf of a family member (such as a child) whom they believe is at risk of family violence. A protection order can say your partner must stay away from you and your children. It can also restrict how your partner communicates with you.

If your partner breaks this order, they can face criminal charges. For more on protection orders and other ways to stay safe, see our information on family violence.

Self-help guide Legal Aid BC's Family Law in BC website has a free step-by-step guide ^[19] for applying for a protection order in Provincial Court.

Who can help

With more information

The wikibook *JP Boyd on Family Law* explains legal issues affecting children.

- Visit website ^[20]

Legal Aid BC's **Family Law in BC website** has information and self-help guides on legal issues affecting children.


- Visit website ^[21]

Free and low-cost legal help

Family justice counsellors in **Family Justice Centres** throughout BC can help you with guardianship, parenting, child support, and related issues. Their services are free.

- Call 1-800-663-7867 (toll-free)
- Visit website ^[22]

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Adoption of a Child

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Adoption Branch ^[1], Ministry of Children & Family Development in February 2020.

Adoption can be a happy event for two families. But first there are legal matters to take care of — the transfer of parental rights and responsibilities for a child from one family to another. Learn what's involved in adopting a child or placing a child for adoption.

What you should know

There are several types of adoption

There are different ways to adopt a child in BC.

Under the law in BC ^[2], a parent or guardian may place a child for adoption. They can place the child with an adoption agency to find an adoptive family or work with an agency to place the child with someone they know (who is not a relative). This type of adoption is called a **direct placement**.

A child can be placed into the permanent **care of the provincial government**. This is called foster care. The goal is to reunite the child with their birth family. But in some circumstances, this isn't possible or isn't in the child's best interests. These children are placed in the Adopt BC Kids program ^[3].

BC's licensed adoption agencies help with **international adoptions**. These involve adopting a child from another country.

A family may want to adopt a **relative or partner's child**. It could be a niece or nephew, for instance, or the child of your new partner. To adopt a child related to you by blood, or to adopt your partner's child, you need to apply to the BC Supreme Court.

Who can adopt a child

An adult (someone age 19 years or older) who lives in BC can adopt a child in the province. A person does not need to be married to adopt a child. You can apply to adopt a child if you're single or in an opposite-sex or same-sex relationship. A child may be placed for adoption with one adult or two adults jointly.

Who handles adoptions in BC

Only the BC government, or an agency licensed by it, can handle an adoption in BC. The Ministry of Children & Family Development ^[4] helps with the adoption of BC children living in foster care.

Adoption agencies licensed by the BC government ^[5] handle various types of adoptions. A licensed adoption agency must be involved before adoptive parents receive the child. This is true even for a direct placement, where the birth parents choose the adoptive parents.

It's illegal to pay or accept payment for an adoption

Birth parents can't be paid for placing a child for adoption. Under BC law ^[6], it's illegal, with a few specific exceptions.

The **exceptions** are:

- A **parent or guardian** can accept money from a prospective adoptive parent to cover certain expenses. For example, the birth mother can be paid for medical services for the birth of the child, as well as accommodation and transportation of the child.
- An **adoption agency** can receive fees and expenses up to certain limits set under the law.
- A **lawyer** can receive reasonable fees and expenses for providing legal services related to the adoption.
- A **health care provider** can receive reasonable fees and expenses for giving medical services to:
 - a child being adopted, or
 - the birth mother in connection with the pregnancy or birth.

The Ministry of Children & Family Development doesn't charge people to adopt a child in care.

Who must consent to an adoption

A **birth mother** must consent to an adoption unless the child is in the permanent care of the child protection authorities. Her consent is valid only if the child is **at least 10 days old** when she gives it. The consent must be in a specific written form. Other documents are also required.

A **biological father's** consent is usually required too. But there are exceptions. For example, a court can be asked to do away with the biological father's consent if:

- he can't be found, or
- it's in the child's best interests to do so.

Any other **parent or guardian** of the child must also consent to an adoption.

If a **child is age 12 or older**, they must consent to being adopted.

If the mother or father changes their mind

A person who consented to their child's adoption may **revoke** their consent (cancel it) before the child is placed for adoption.

As well, the birth mother may revoke her consent to the adoption in writing within 30 days of the child's birth. This can happen even if the child has already been placed for adoption.

A child who has consented to their adoption has until the adoption order is granted to revoke their consent.

A revocation must be **in writing**. It must be given directly to the adoption agency or the BC director of adoptions.

The child's perspective

If a child is age 12 or older, they must consent to being adopted. The views of a child between ages seven and 11 must be considered. If the child is mature enough, the child must receive counselling about the effects of adoption.

Factors considered in placing a child for adoption

Under BC law, the most important consideration in placing a child for adoption is the **best interests of the child**. The relevant factors here are set out in the *Adoption Act* ^[7] and the *Child, Family and Community Service Act* ^[8]. They include:

- the child's safety
- the child's physical and emotional needs and level of development
- the importance of continuity in the child's care
- the child having a positive relationship with a parent and a secure place as a member of a family
- the quality of the child's relationship with a parent or other individual, and the effect of maintaining that relationship
- the child's cultural, racial, linguistic, and religious heritage
- the child's views
- the effect on the child if a decision is delayed

Relative or stepparent adoption of a child

Someone may want to adopt a **relative or partner's child**. For instance, they may want to adopt a grandchild or the child of their new partner.

In order to adopt a child related to you by blood, or to adopt your partner's child, you need to apply to court. The legal requirements are outlined in BC's adoption law ^[9]. It's a good idea to get legal advice on how to complete this kind of adoption.

The court will consider the **child's best interests** when making decisions about their future. Children older than age seven will have a private interview. An adoption worker will ask questions to make sure they understand what it means to be adopted and to get their views on potential placement. Children age 12 and over must consent to their adoption.

Anyone who has a court order or enforceable agreement for contact with the child will be given notice about the adoption application.

The process to adopt a child

Step 1. Application to adopt

The adoption process begins with an application to adopt ^[10]. An adoption representative ^[11] (such as a licensed adoption agency or the Ministry of Children and Family Development) then reviews the application. They:

- check references
- conduct a criminal record check
- conduct a medical check
- complete a prior contact search through the ministry (including similar searches in any other jurisdiction the applicant has lived in)

After submitting the application, the applicant *must* take adoption training, such as the Adoption Education Program Online ^[12].

Step 2. Homestudy

A social worker conducts a **homestudy**. This involves six to eight visits to the home of the prospective adoptive parents.

Step 3. Placement

The adoption representative carefully considers whether the prospective family meets the best interests of a child. If the prospective family is chosen, the representative calls the prospective adoptive parents with a potential **placement**. If the placement is accepted, a transition plan is made to place the child in the adoptive home.

Step 4. Application for the adoption order

For the first six months, the social worker visits the child in the home.

After the child has lived with the adoptive parents for at least six months, the parents can apply to court for an adoption order. If it's a ministry adoption, the social worker makes the court application for the parents.

If the court is satisfied that the proposed adoption is in the child's best interests, it makes the **adoption order**.

Common questions

What if the child is Indigenous?

Under BC's adoption law ^[7], special consideration is given to Indigenous heritage. If the child is Indigenous, the importance of preserving their cultural identity must be considered in determining the child's best interests.

If the child is under 12 and the birth parent or other guardian doesn't object, the Ministry of Children & Family Development or adoption agency will notify the child's Indigenous community and consult with them about planning for the adoption.

Under the federal *Indian Act* ^[13], an Indigenous person who is adopted doesn't lose any rights or privileges they have as a "status Indian" under the Act and other laws like the *Income Tax Act*.

Can a birth parent choose an open adoption?

Yes, the birth parents and adoptive parents can choose to stay in touch with each other after a child is adopted. Before an adoption order is made, the birth parents and adoptive parents can agree on how much and what type of ongoing communication or contact they want going forward. If an agreement isn't made before the adoption order, they can register with the post-adoption openness registry. Our information on adoption registries has more on open adoptions.

What if I want to adopt a child from another country?

To adopt a child from another country, you must use one of the licensed adoption agencies in BC. You should tell them your plan early in the process if you want to adopt a child from outside of Canada.

Like BC adoptions, an international adoption requires a homestudy. This will help determine if you're the right fit for the adoption.

What information is given to the birth and adoptive parents?

Before a child is placed with their adoptive parents, the Ministry of Children & Family Development or the adoption agency must explain the adoption process, and its alternatives, to the birth parents. The ministry gathers as much information as possible about the medical and social history of the child's birth family. It preserves this information for the child and gives a copy to the adoptive parents.

What is the effect of an adoption?

Under BC's adoption law ^[14], once a child is adopted:

- the child becomes the child of the adoptive parent,
- the adoptive parent becomes the parent of the child, and
- the birth parents have no further parental rights or obligations to the child (unless a birth parent is parenting jointly with the adoptive parent).

After an adoption order is made, the child has only one set of parents: the adoptive parents. The birth parents no longer have any rights to see the child or make any parenting decisions. They have no obligation to pay child support.

An adoption also affects inheritance claims. A child who has been legally adopted by adoptive parents (unless they were adopted by the parent's spouse) is not entitled to inherit from their biological parent's estate.

Who can help

With more information

The **Ministry of Children & Family Development** has information about adoption on its website.

- Visit website ^[1]

There are children in BC waiting for an adoptive family right now. **Adopt BC Kids** features information on applying for a waiting child.

- Visit website ^[15]

The **Adoptive Families Association of BC** supports the adoption community at all ages and stages through education, counselling, and advocacy.


- Call 1-877-236-7807 (toll-free)
- Visit website ^[16]

The **BC Supreme Court** has a package of information and forms on their website ^[17]. People who are representing themselves can use the package to make a basic adoption application.

- Visit website ^[18]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Adoption Registries

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Adoption Branch ^[1], Ministry of Children & Family Development in February 2020.

Adoption registries and reunion services can help adopted people and their relatives reconnect. Learn how British Columbia's **adoption registries** work.

What you should know

Registries help connect adopted people with their relatives

Many adopted people want to know about their birth parents. Often, birth parents want to know how a child they placed for adoption is doing. Many adopted people and birth parents want to meet each other.

In BC, there are **registries** that help put relatives separated by adoption back in touch.

Parents Registry

Birth parents of a child placed for adoption can register with the Parents Registry ^[2]. This allows them to receive notice of adoption details. It also lets them be involved in the adoption planning. Parents can register any time before the child's birth and up to 150 days after the child was placed for adoption. There's no fee to register.

Post-Adoption Openness Registry

When an adoption order is granted for a child under 19 years old, the door opens for potential reconnections. Adoptive parents, birth parents, and relatives can decide to share information with the adopted child, and communicate with each other. To do so they register with the Post-Adoption Openness Registry ^[3]. They choose the level of contact they want. They also decide how much they want to reveal about themselves. There are no fees to register.

Adoption Reunion Registry

The Adoption Reunion Registry ^[4] connects people over 19 years old who were involved in a BC adoption. Adopted adults can search for their birth parents or siblings. Birth parents who placed a child for adoption can start searching for them as soon as the child turns 19.

How the Post-Adoption Openness Registry works

After an adoption order is made for a child under age 19, those involved in the adoption — including adoptive parents, birth parents, and other relatives — can exchange information by registering in the Post-Adoption Openness Registry ^[3]. The adults may choose to share things like medical information, letters, cards and pictures. Or they may opt for full disclosure and exchange of names and addresses for direct contact.

A successful match

When you apply to register ^[3], the registry checks to see if anyone else involved in the adoption is in the system. For example, if both the adoptive parents and the birth mother are registered, that's a match. The registry will only contact parties if there's a match.

Reaching an openness agreement

The registry will next ask the matched parties about the level of contact they want. The parties can choose full disclosure and direct contact, or a non-identifying exchange of information. If one or both want the second (less direct) option, a social worker will help them make an **openness agreement**. This type of agreement sets out the ways that birth parents, relatives, and the adoptive family will communicate after the adoption process is complete.

Any decision to enter into an openness agreement must be made with care. The best interests of the adopted child should determine how it's constructed. Its success depends on the voluntary cooperation of everyone involved.

How long registration lasts

An application to the Post-Adoption Openness Registry lasts until the adopted child reaches age 19, a match is made, or the application is withdrawn in writing. If there's no match by the time the child turns 19, a different, adult registry comes into play. Interested parties can then apply to the Adoption Reunion Registry.

How the Adoption Reunion Registry works

The Adoption Reunion Registry ^[4] connects people over age 19 who were involved in a BC adoption. Everyone must be age 19 or over when the connection is made.

The registry operates a passive registry. In some cases, though, it can help with an active search.

Passive registry

For adoptions that happened in BC, people who have been adopted, as well as their birth parents, siblings, and other relatives, can register to connect.

The **passive registry** requires interest from both sides. The registry is looking for a match. That can only happen if both parties are registered. If there's a match, the registry will contact both parties and help them connect.

Active search

The registry can also help with an **active search** for a relative. First they'll check if the relative is registered. If not, they'll start a search. If they find the person, the registry will contact them to discuss next steps. If this person also wants a reunion, the registry will talk with both parties about the options for contact. These can include letters, phone calls, meetings, or visits in person.

Tip The Adoption Reunion Registry offers brief counselling and support during the reunion search process. You may also seek other counselling through a local social services agency or a private therapist.

Registering with the Adoption Reunion Registry

You can apply to register with the Adoption Reunion Registry by:

- filling out the application form ^[4] and mailing it to the registry
- paying the \$25 fee to register (you can ask for it to be waived)

There are also other documents to complete. Which ones are required depends on who you are.

If you're a person who was adopted or a birth mother, you must send a copy of your birth certificate (as proof of your identity).

Adult siblings searching for a brother or sister who was adopted need to provide their birth parents' birth and death certificates.

An active search costs an additional \$250. You also need to send a copy of the adopted person's original birth registration document and the adoption order. These documents are available from the Vital Statistics Agency. See its website ^[5], or call 250-952-2681 in Victoria, and toll-free 1-888-876-1633 elsewhere in BC.

If a birth parent or adopted person doesn't want to be known or found

Either the birth parent or the adopted person can choose to stay unknown. This requires having a **disclosure veto** or **no-contact declaration** placed on their records in the Vital Statistics Agency.

A **disclosure veto** blocks identifying information from appearing on the birth registration or adoption order. It also prevents the Adoption Reunion Registry from helping to find the person who filed the veto. You can place a disclosure veto on your record if you're a birth parent or adopted person (age 18 and over) involved in an adoption that occurred before 1996.

A **no-contact declaration** allows information to be released, but stops any contact with the person who placed it. If a no-contact declaration was placed on the birth or adoption records you're searching, you'll have to sign a statutory declaration promising not to contact the other person while the no-contact declaration lasts. If you break your promise, you may face a penalty of up to six months in jail and a fine of up to \$10,000.

A person who files a disclosure veto or no-contact declaration can also file a **written statement**. This statement may include social, medical, and health information. It may also tell you why the person doesn't want to be contacted. If the birth and adoption records you're searching at the Vital Statistics Agency contain a written statement, you'll be given a copy.

Who can help

With more information

The **Ministry of Children & Family Development** has information on its website about adoption reunions and registries.


- Visit website ^[6]

The **Adoptive Families Association of BC** supports the adoption community at all ages and stages through education, counselling and advocacy.

- Call 1-877-236-7807 (toll-free)
- Visit website ^[7]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Reporting Suspected Child Abuse

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Christine Churcher ^[1], Churcher Law in April 2020.

The law protects children from physical and sexual **abuse**, as well as **neglect**. Learn how child protection laws work and what to do if you think a child is being abused.

Alert! This information has been updated to reflect changes to the *Divorce Act* ^[2] that took effect on March 1, 2021, as well as new Provincial Court Family Rules ^[3] that took effect on May 17, 2021.

What you should know

How abuse and neglect of children are defined

Protecting children is one of society's greatest responsibilities. There are criminal and civil laws that apply to everyone. There's also a provincial law ^[4] that aims to protect children from neglect and sexual and physical abuse. This law defines a **child** as any person **under 19 years of age**.

Here are some key terms.

Physical abuse means any action or physical force by a parent or adult that could or does hurt a child. It includes:

- hitting, slapping, pushing, shaking, and choking
- locking a child in a room or out of the house
- using unreasonable force to discipline a child

Sexual abuse means any sexual touching or intercourse between a child and an older person, or using a child for sexual purposes. It also includes making a child watch sexual acts.

Sexual exploitation is a form of sexual abuse that occurs when a child is persuaded to engage in sexual or sexualized activity. Usually this happens through manipulation or coercion, in exchange for money, drugs, food, shelter, or other things.

Emotional abuse is when a child suffers serious anxiety, depression, or withdrawal, or shows self-destructive or aggressive behavior, due to persistent abusive actions by a parent. Emotional abuse can include blaming, rejecting, threatening, insulting, ignoring, or humiliating a child. Emotional harm can also happen to children who see violence in their homes.

Neglect is when a parent fails to look after the child's basic physical, emotional, or medical needs. This, in turn, endangers the child's health, development, or safety.

You have a legal duty to report child abuse

If you have **reason to believe** a child has been, or is likely to be, abused or neglected, you have a legal obligation ^[5] to report your concern. You can contact the Ministry of Children and Family Development ^[6] if you suspect a child could be at risk. You don't need proof. You just need "reason to believe," based on what you've seen or some information you have. Report what you know.

Don't assume someone else already reported it. Even if a child protection worker is already on the case, you **must** still make a report. It also doesn't matter who the suspected abuser is. They could be a family member, neighbour, or member of your church or temple. They could be a patient or client. They could be your boss or your employee. Your duty to report your concerns takes priority over any confidentiality or privilege that might apply to your relationship with the suspected abuser.

If you don't report your concerns about abuse or neglect, you're actually breaking the law ^[5].

Tip The law ^[5] protects you from being sued or prosecuted for reporting a suspected abuser. But your concerns must be genuine. The law does not protect you if you **knowingly** report false information, such as saying that someone has abused a child when they haven't.

How you make a report of child abuse

If you know a child (or are a child) who is in **immediate** danger, **call the police by dialing 9-1-1** to be connected to emergency services. They will decide the next steps.

If there's no immediate danger, you can report child abuse in one of two ways:

- Phone the Ministry of Children and Family Development's provincial screening ^[6] line at 1-800-663-9122 at **any time** of the day or night. The team answering these calls assesses child protection reports and initial requests for ministry services across the province.
- Call a Ministry of Children and Family Development office in your area. The ministry's offices are listed on the ministry website ^[7].

If you make a report of child abuse

A child protection worker will take your report to the Ministry of Children and Family Development. The worker will want as much information as possible from you, including:

- the name and address of the child, the parents, and anyone else involved, and,
- the reasons you suspect abuse or neglect.

You don't need to identify yourself

It's helpful for the child protection worker to have your name. But you don't have to give it. Unless you're needed as a witness in a court hearing after criminal charges have been laid by police, your name will stay confidential. (However, it's always possible your identity may become known as a result of the details of the information you provide.)

After you make a report

The child protection worker will assess the information you provide. They'll decide on the best way to keep the child safe. They may opt to:

- take no further action
- refer the family to support services
- use a "family development response"
- conduct an investigation

In a **family development response**, a child protection worker makes a plan with the family to strengthen the family's ability to help keep the child safe. The plan may be used for less serious allegations of abuse or neglect. It's an intensive, time-limited, supportive approach. It involves an assessment of the family's strengths and problem areas. It also provides support services to help the family while monitoring the child's safety.

Child protection may decide to conduct an investigation

The allegations of abuse or neglect you report may be serious. In that case, the director under the *Child, Family and Community Service Act* may decide to conduct a **child abuse investigation**. This may involve a child protection worker seeing and talking to the child and people who know the child. These may include talking to parents, extended family, a teacher, doctor, or childcare provider. If the child is Indigenous, their band or community may also be involved.

If there are physical- or sexual-abuse allegations, the child protection worker will tell the police, who may conduct their own investigation as well.

Children's feelings are considered when child abuse is being investigated. Whenever possible, the Ministry of Children and Family Development and the police conduct a joint investigation to reduce the number of interviews and the anxiety felt by a child involved in the process.

Common questions

Will the child be removed from the home?

Child protection workers may remove children from their homes. Children may be taken into the care of the Ministry of Children and Family Development if:

- that's the least intrusive option that will protect them
- a child is in danger of continued abuse or neglect and there are no other ways of keeping them safe

Another option is for the ministry to place the child with a relative or other person who has a significant relationship with them.

If a child is removed from their home without the parents' agreement, a court process starts. For details, see our information on child protection and removal ^[8].

What about criminal charges?

If the police find evidence that a crime has been committed, they can recommend criminal charges against the abuser. This will result in criminal court hearings. In such cases, Crown counsel (the lawyer for the government) may be in touch with the police and the child protection authorities to make the court experience less upsetting for a child.

What could happen in a family court proceeding?

Under the provincial *Family Law Act* and the federal Divorce Act, family violence, which includes child abuse, is a factor for the court to consider when making decisions about what's best for a child. The court must also take into account whether the child was directly or indirectly exposed to other family violence in the home.

If there has been violence by a family member, the suspected abuser may:

- not be granted time with a child,
- be given limited time, or
- be given time with a child on conditions, such as supervision.

It's also possible that a court could grant a **protection order** against the suspected abuser. This kind of order helps protect the well-being of someone at risk of family violence, including a child. It typically prevents the suspected abuser from contacting the child. The other parent can apply for a protection order on behalf of their child who they believe is at risk of family violence. For more on protection orders, see our information on family violence ^[9].

Who can help

If you are a victim of abuse

A child (anyone under 19 years old) who would like to talk to someone about their situation can call the **Helpline for Children**. This confidential service operates 24 hours a day.

Call 310-1234 (toll-free)

A child can also call or text the **Kids Help Phone**, another confidential service that operates 24/7.

Call 1-800-668-6868 (toll-free)

Text CONNECT to 686868

Visit website ^[10]

If you or someone you know has been a victim of child abuse, there may be an organization in your community that can provide help and support. If you don't know who to contact, call the 24-hour helpline at **VictimLinkBC**.

Call 1-800-563-0808 (toll-free)

Visit website ^[11]

With more information

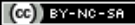
The **Ministry of Children and Family Development** has information on their website about keeping kids safe. They also have a booklet *Responding to Child Welfare Concerns: Your Role in Knowing When and What to Report* ^[12].

Visit website ^[13]

The **Representative for Children and Youth** advocates for and supports children and youth. It works to protect their rights and make the child protection system more responsive.

Call 1-800-476-3933 (toll-free)

Visit website ^[14]

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Child Protection and Removal

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Christine Churcher^[1], Churcher Law in April 2020.

When someone reports that a child has been abused or is at risk, this sets a legal process in motion, aimed at keeping the child safe. Learn about **child protection** law.

What you should know

Get legal help if you are contacted by the child protection authorities

If a child's safety is at risk, the Ministry of Children and Family Development **has to** investigate. If a child protection worker from the ministry decides there's a risk of harm and the child needs protection, the worker can remove the child from the home. They don't need a court order to do so.

If the child protection authorities contact you or visit your home, you have the right to get legal advice. If you can't afford a lawyer, you may qualify for a free lawyer from Legal Aid BC. Their website lists legal aid service locations^[2]. You can also call them at 604-408-2172 in Metro Vancouver or toll-free at 1-866-577-2525 elsewhere in BC.

The law protects children from abuse

In BC, a law called the *Child, Family and Community Service Act*^[3] protects children. Under this law, one person (or more) is appointed as director. They are responsible for applying the law — whether through the Ministry of Children and Family Development or another agency.

This law includes these rules to keep children safe and well cared for:

- Children have a right to be protected from abuse, neglect, and harm or threat of harm.
- The preferred place for children to live is usually with their families.
- Parents are mainly responsible for protecting their children.
- Child protection authorities should provide support services to help deal with identified child protection risks, and to help parents if they need help caring for their children.

The legal duty to report child abuse

Under BC law^[4], a person who believes a child has been abused, or is likely to be abused, **must** report their suspicions to child protection authorities. Not doing so is against the law.

The law sets out circumstances^[3] when a child needs protection. These include when a child has been, or is at risk of being:

- physically harmed, sexually abused, or sexually exploited by their parent
- physically harmed because of a parent's neglect
- emotionally harmed by a parent's conduct
- deprived of necessary health care
- living with a parent who's unable or unwilling to provide adequate care or to arrange for care
- exposed to family violence

How to report suspected child abuse

Someone can report suspected child abuse by phoning the Ministry of Children and Family Development's screening line at 1-800-663-9122. The operators assess child protection reports from across the province, 24 hours a day.

For more details, see our information on reporting suspected child abuse.

When a report of child abuse is made

The Ministry of Children and Family Development takes reports of suspected child abuse seriously. When a report is received, a child protection worker assesses the information provided and investigates further. They ask questions, gather more information, and decide if they need to keep looking into the report. Then they make decisions about the best, least intrusive way to keep the child safe.

Under the law ^[5], the child's views should be taken into account when decisions about the child are made. How this is done, though, is different in each case.

If they decide the child is or may be at risk, the worker must consider less intrusive options for protecting the child. They might, for example:

- Seek in-home supervision of the child's care.
- Suggest an agreement between the parents and the child to better care for the child. This may involve making a safety plan or an agreement that the child stay in someone else's care during the investigation or while the caregivers resolve the child protection issue.

If the child is at risk of immediate harm, the director can step in and remove them from the parents' care. The director may remove one or multiple children from the same home and will look at temporary placements with family or friends.

Child protection authorities may conduct an investigation

Where there are serious concerns about the child's safety, the director may decide to carry out a child protection investigation. This involves asking many more questions to figure out how to best keep the child safe.

Each child protection investigation *usually* (but not always) includes:

- seeing and interviewing the child as soon as possible
- assessing the child's living conditions
- interviewing the parents
- reviewing relevant documents and reports
- getting information from people who know the family and the child

If you're a parent being investigated, you should get **legal advice** about your rights and options *as soon as possible*. From a practical perspective, it's important to cooperate with the Ministry of Children and Family Development. Otherwise, things can escalate and lead to the child's removal. The ministry can interview the child at school or daycare without telling you. This is often very upsetting for both you and your child. But while dealing with the ministry, it's important to remain calm.

After a child protection investigation

When an investigation is complete, there are two possible outcomes: either the child needs protection or doesn't.

When the child doesn't need protection

If the child protection worker decides the child **isn't** at risk, no further action will be taken. But the worker can refer the parents to services available in the community if they so choose.

When the child needs protection

If the child protection worker finds the child **is** at risk of harm, the worker develops a plan with the family to keep the child safe. This might include:

- providing services to help the parents safely care for the child
- arranging for the child to live with relatives or someone who has a significant relationship with the child
- getting a court order to allow the child protection worker to supervise the child

Removal of a child from the home

Under the law ^[3], there are situations in which a child needs protection, including where a child may be in danger of continued abuse or neglect. If there are no other ways of keeping them safe, the child may be removed from the home.

Child protection workers generally consult with both the family and the child when deciding where the child should stay. The workers may also consult with extended family and other adults who have significant relationships with the child. (But only those who come forward or who the legal guardian of the child directs.) This is because of strict privacy guidelines.

The child protection worker will try to place the child with a family member. But if this isn't possible, the child will be placed in a foster home that's been approved by the director.

After a child is removed

There must be a **presentation hearing** in Provincial (Family) Court **within seven days** of a child being removed from the home. At this court appearance, the director has to tell the court:

- what led to the child's removal, and
- what other measures the director considered before removing the child.

The child's guardians may disagree with the removal. The court has to decide if the child should be returned home. If the answer is "no," the child stays in the care of the director until another court appearance, called a **protection hearing**, is set. This often occurs months later, and it is important that a child's guardian get legal advice beforehand. At that hearing, the court decides whether the child needs protection.

If a protection hearing is arranged

At the **presentation hearing**, the court may decide that the director should have custody of the child until the **protection hearing**. There, the court decides if the child needs protection or not, and who will care for them in the future.

The protection hearing **must start no more than 45 days** after the presentation hearing ends. At least 10 days before the protection hearing, the child protection worker must give the parents:

- a document saying what kind of court order they'll be seeking, and
- a plan of care saying how the child will be looked after.

If the parties can't agree

If, at the beginning of the protection hearing, the parents and child protection worker can't agree on what should happen next, the judge will adjourn the hearing and order a **case conference**. This is a meeting of the parents, the child protection worker, their lawyers, and a judge. All of them discuss the case and see if they can reach an agreement.

The judge may also adjourn the hearing to allow a **mediation** to take place. In this process, two people in conflict meet with a neutral person — a mediator — who tries to help them find a solution they agree on. Mediation is often faster than a case conference.

How a child's guardian deals with a protection hearing will often depend on what order the director is asking for. The director must seek the least intrusive option, but can ask for protection orders of a certain length depending on the child's age.

Common questions

What rights do parents have after a child abuse report is made?

While the child protection worker must tell parents what they are investigating, they are cautious about telling parents what's in the child abuse report. The worker may tell the parents that the child will be interviewed. But if it's thought that this might put the child at risk, they may not do so beforehand.

The parents have the right to tell their side of the story and to ask questions. They also have the right to bring a lawyer (or someone else) to meetings with the child protection worker. The family must be given as much information as possible about the investigation and the available support services.

What if the report of suspected abuse is about a youth?

If the concern is about a **youth** — a child aged 16 to 19 — services may be provided to keep the young person safe and help them to develop supports and life skills. A child protection investigation is generally not the best response for a youth.

Will the police be informed?

The Ministry of Children and Family Development will inform the police if a report of suspected abuse suggests a child may have been:

- physically harmed,
- sexually abused, or
- a victim of a criminal act that affects the child's safety.

Police may accompany child protection workers to the family home. That's more likely if the workers suspect the parents may not cooperate or may be a threat.

What if I think my child has been wrongfully removed?

In some parenting cases, one parent makes a false report to the Ministry of Children and Family Development. Once a report of physical or sexual abuse is made, the ministry often reports it to the police. The child may have to undergo a medical examination to see if there's any evidence of abuse. These steps are a regular part of the ministry's investigation process.

During the investigation, the accused parent will often have restricted access to the child. They may be allowed only supervised contact, or may not get to see the child at all.

If you believe you've been wrongfully accused of abusing your child, and have little or no contact with them as a result, you can:

- Make a request under the *Freedom of Information and Protection of Privacy Act* ^[6] to see the ministry's child protection file relating to the child.
- Go to court and ask for an order for the police and the Ministry of Children and Family Development to produce their investigation records. But, you don't have the legal right to know who made the report as this information is confidential.
- Ask the court to order a report under section 59 of the *Child, Family and Community Service Act* ^[7]. This is a report that would be written by a doctor or psychiatrist after an examination of your spouse or child to help figure out if a child needs protection or some other court order.
- Ask the court to set down a hearing to determine whether a child is in need of protection.

Who can help

With more information

Legal Aid BC has publications for parents about child protection law, including booklets and brochures.

- Visit website ^[8]

Legal Aid BC's **Family Law in BC website** includes detailed information on child protection and removal.


- Visit website ^[9]

The **Ministry of Children and Family Development** website has information on child protection services in BC.

- Visit website ^[10]

Free and low-cost legal help

Options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Resolving Family Disputes

Mediation, Collaborative Negotiation, and Arbitration

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by JP Boyd KC ^[1], Boyd Arbitration Chambers; Tannis Baradziej ^[2], Duncan Allen Law LLP; and Manjeet Chana, People's Law School in August 2021.

Going to court over a family law problem can be stressful, time consuming, and expensive. Learn how to use mediation, collaborative negotiation, or arbitration to resolve issues without going to court.

Alert! This information has been updated to reflect changes to the *Divorce Act* ^[3] that took effect on March 1, 2021, as well as new Provincial Court Family Rules ^[4] that took effect on May 17, 2021.

What you should know

You don't have to go to court

When spouses, partners or parents separate, they have to sort out their legal problems. These problems can include deciding how to divide property and debts and who gets to stay in the family home. They also have to figure out whether one of them will pay support to the other. If there are children, more family law problems need to be worked out, including where the children will live and how decisions about them will be made.

Lots of people think going to court is the only way to deal with these issues. Sometimes that's true. For example, if someone is violent, is threatening to take the children out of town, or is hiding significant property.

But most family law problems can be resolved without going to court. In fact, both the provincial *Family Law Act* and the federal *Divorce Act* **require** people to try to resolve their disagreements out of court. Among the approaches available are **mediation, collaborative negotiation, and arbitration**.

Rule changes to help parties stay out of court Provincial Court Family Rules ^[5] that came into effect on May 17, 2021 focus on early resolution of family issues so that people don't have to go to court.

What mediation involves

In **mediation**, the people in a conflict meet with a neutral person — a **mediator** — who helps them talk to each other and find a solution they agree on. Usually the mediator is a lawyer or another trained professional. A family lawyer who works as a mediator can also offer general information about family law.

Without taking sides or giving legal advice, the mediator:

- listens to what's important to each of you,
- gets input from both sides on the issues, and
- helps you and your spouse come to your own decisions and find a way forward.

If you and your ex have a child, the mediator will help you make decisions that are in the child's best interests. The mediator can't make any decisions themselves; their goal is to help the two of you make decisions and reach an agreement about your family law problems on your own.

Advantages of mediation

Mediation is **less expensive** than going to court. You may be able to get free mediation help from a family justice counsellor (a specially trained government worker). Or you can contact a private mediator and ask about the cost and mediation process. Private mediators usually charge an hourly rate, and you and your ex will usually split the cost.

Mediation can lead to a resolution **faster** than a court action. And it's a **more private** process. Because it's confidential, any proposals made during mediation can't be used against you down the road or if you go to court.

How long a mediation takes

Mediation meetings are normally two to six hours long. There may be more than one meeting, depending on how complex the family law problems are, and how many of them need to be resolved. Sometimes the mediator will meet with each of you separately. You may both be given extra tasks to do between meetings. These will usually include gathering additional documents and information.

A written agreement

At the end of a successful mediation, a mediator will sometimes prepare written **minutes of settlement**. These are notes, made during the mediation itself, that describe how you and your spouse settled your issues.

The mediator may or may not be a lawyer. When the mediator is a lawyer, remember that they are not *your* lawyer. But, they will sometimes prepare a more formal written document — called a separation agreement — *after* the mediation. It's a record of how each issue was resolved. It also sets out the terms of the agreement you and your spouse made at the mediation.

When the mediator *is not* a lawyer, one person's lawyer will usually prepare the formal agreement. Regardless of who writes the agreement, you and your ex should get independent legal advice from separate lawyers. You should do this *before* you sign the agreement. This involves each of you meeting with your own lawyer (if you have one) to get legal advice about:

- what the agreement means
- what rights and obligations it gives to each of you
- how the agreement affects other legal options that might otherwise be available

Consider unbundling The website Unbundled Legal Services ^[6] can help you find a lawyer who will review a draft of your agreement and give you independent legal advice **before** you sign it.

What collaborative negotiation involves

Collaborative negotiation, also known as “collaborative practice” or “collaborative family law,” is a kind of negotiation where you and your ex each have your own lawyer. You, your ex, and your lawyers agree to do everything possible to reach a settlement without going to court.

In fact, it's usually agreed in advance that if either of you start a court case, the lawyers will stop acting in the matter. If you want to continue with a lawyer, you'll have to hire a new one.

Collaborative negotiation is centered on the needs of you, your ex, and your children. The approach emphasizes the need for full disclosure, as well as a safe and respectful negotiation environment.

How it works

In collaborative negotiation, you and your ex meet, together with your lawyers, to work towards settling the issues. Your lawyer is your advocate and support through the negotiations. The number of meetings required will depend on how many issues need to be resolved and how complicated they are. Occasionally an agreement is reached after only one meeting.

Specialists such as counsellors, child psychologists, and financial experts may be used to help reach a settlement.

When you and your ex reach an agreement on the legal problems, your lawyers will put the agreement in writing.

What arbitration involves

In **arbitration**, you and your ex hire a neutral person called a **family law arbitrator**. The arbitrator's job is to listen to your evidence and your arguments, and make a decision resolving your legal problems, like a judge would.

Sometimes arbitrators will use arbitration and mediation together in a process called **mediation-arbitration** or **med-arb** for short. You and your ex will work with the arbitrator to decide about the rules that will apply in your arbitration, including whether you will also use mediation.

A family law arbitrator is especially useful when:

- you and your ex need to have someone else make a decision for you, and
- court is too expensive or too stressful an option.

How it works

Before the arbitration, you and your ex will exchange documents about your family law problems. For example, you'll have to exchange income tax returns if child or spousal support is in dispute.

At the arbitration hearing, the family law arbitrator — unlike a mediator or collaborative lawyer — acts like a judge. The arbitrator hears both sides, reviews the evidence, and then makes a decision. The arbitrator will give you their decision in writing.

Like mediation and collaborative negotiation, arbitration can lead to a resolution **faster** than a court action. It's also a **more private** process. And the result of an arbitration is a decision that's just as binding and enforceable as a court order.

Common questions

When is mediation or collaborative negotiation not appropriate?

Both approaches are very good ways of resolving family law issues. But mediation or collaborative negotiation aren't appropriate in all cases. For example, they may not work well if there's been family violence or child abuse. They also won't work well if one party refuses to participate fairly in the process.

How can I find a mediator?

It depends on what kind of mediator you are looking for.

Family justice counsellors ^[7] are trained mediators who may be able to help at no cost. They assist people with guardianship, parenting arrangements, contact, and child or spousal support disputes. At some Provincial (Family) Court locations, meeting with a family justice counsellor is one of the first steps in the court process. Phone 604-660-2421 in the Lower Mainland, 250-387-6121 in Victoria or toll-free 1-800-663-7867 elsewhere in BC. Ask to speak with a family justice counsellor at the nearest Family Justice Centre or Justice Access Centre. You can also visit the BC government's

Family Justice website ^[8].

To find a private family law mediator, phone the **Lawyer Referral Service** at 604-687-3221 in Metro Vancouver or toll-free 1-800-663-1919 elsewhere in BC, or visit their website ^[9]. A private family law mediator is especially useful where the issues in dispute include how to divide up property and debts.

Family Mediation Canada has a directory of some family mediators. Call toll-free 1-877-269-2970, or visit their website ^[10].

Mediate BC keeps a list of family mediators in British Columbia. Visit mediatebc.com ^[11] or call toll-free 1-877-656-1300.

Not all lawyers who are mediators are members of these groups.

How can I find a collaborative lawyer?

Phone the **Lawyer Referral Service** at 604-687-3221 in Metro Vancouver or 1-800-663-1919 elsewhere in BC, or visit their website ^[9].

Visit the **BC Collaborative Roster Society's** website ^[12] or **Collaborative Divorce Vancouver's** website ^[13] for the names of member lawyers. Not all lawyers who are collaborative lawyers are members of these groups.

You can do an online search to see if there is a collaborative professional or group of professionals in your area.

Can an agreement made after a mediation or collaborative process be changed?

Yes, it can be changed in two ways:

- if both parties agree to change it, or
- if a court sets the agreement aside.

If everyone wants to change the agreement, they can go back to mediation or collaborative negotiation. Or they can go to court. A court will generally not want to change an agreement that was fairly negotiated. But the court may make an order on different terms if there was an important, unexpected change in circumstances after the agreement was signed.

How can I find an arbitrator?

To find a family law arbitrator, phone the **Lawyer Referral Service** at 604-687-3221 in Metro Vancouver or toll-free 1-800-663-1919 elsewhere in BC, or visit their website ^[9].

The **ADR Institute of British Columbia** has a directory of some family law arbitrators. Call toll-free 1-877-332-2264 or visit their website ^[14].

You can also check the **Arbitrators Association of British Columbia**, which is an independent association of professional arbitrators and mediators. They too have a directory of arbitrators. Call 604-331-4454 or visit their website ^[15].

Not all lawyers who are arbitrators are members of these groups.

What questions should I ask the mediator, collaborative lawyer, or arbitrator?

To help decide on a mediator, collaborative lawyer, or an arbitrator, you may want to meet with a few and ask some questions. Such as:

- Do they belong to any professional organizations for mediators, collaborative lawyers, or arbitrators?
- What kind of training have they received, and how long have they practiced as a mediator, collaborative lawyer, or arbitrator?
- What kinds of family law issues do they handle? (Some mediators, for example, may only deal with disagreements involving parenting arrangements — including parenting time — and contact. Others only deal with financial or property issues.)
- How much do they think the process will cost?

Who can help

With more information

The wikibook *JP Boyd on Family Law* explains how to resolve family law disputes out of court.

Visit website

The **Family Law in BC website** from Legal Aid BC has information about mediation, collaborative lawyers, and arbitration.

Visit website ^[16]

Free and low-cost legal help


Family justice counsellors in **Family Justice Centres** throughout BC can help with guardianship, parenting, child support, and related issues. Their services are free.

Call 1-800-663-7867 (toll-free)

Visit website ^[7]

Also check **Unbundling Legal Services** at unbundlinglaw.ca ^[17] for family lawyers and paralegals open to being hired for discrete tasks on a family law matter.

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help ^[18].

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Provincial (Family) Court

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by People's Law School ^[1] in January 2022.

If you're dealing with a family law issue, you may end up in Provincial Court (often called **Family Court**). There are advantages to using this court instead of BC Supreme Court. Learn what's involved at each stage.

Alert! This information has been updated to reflect new Provincial Court Family Rules ^[2] that took effect on May 17, 2021 and amendments since then.

What you should know

Family Court can deal with many family law issues

Family Court is a division of the British Columbia Provincial Court ^[3]. (Other divisions of the Provincial Court deal with criminal, traffic, and small claims cases.)

Family Court deals with many, but not all, of the legal issues that affect families. It handles the following issues under the BC *Family Law Act* ^[4]:

- guardianship of a child and parental responsibilities
- parenting time and contact with a child
- child support and spousal support
- protection orders

Family Court also deals with child protection cases.

Family Court **cannot** make orders under the federal *Divorce Act* ^[5]. It can't:

- grant a divorce

- divide property or debts, or make orders about family property
- change an order that was made under the Divorce Act
- make adoption orders

For these issues, you have to go to the British Columbia Supreme Court ^[6]. This is the other court in BC that also deals with family law issues.

Advantages of Family Court



“My spouse and I ended our 16-year relationship. After separating, we couldn’t reach an agreement about spousal support and who our three children should live with. So I started a court action in the Family Court near me. I didn’t have to pay court filing fees, and I found the process easier to follow than I expected. At our family settlement conference, we ended up with a consent order that resolved our issues.”
– Annika, Maple Ridge, BC

The BC Supreme Court can deal with all family law issues, including all of the issues Family Court deals with. So why would you want to go to Family Court?

Family Court has some advantages over Supreme Court:

- The Family Court forms are easier to understand. They’re written in plain language and include information on when to use them, next steps, and tips for completion.
- No court fees are charged in Family Court.
- The rules of court are simpler than the rules of the Supreme Court. Plus, the Family Court rules encourage people to try to resolve their issues by agreement earlier on in the court process.
- Family Courts have **family justice counsellors** available. These are specially trained government workers who can help people resolve certain types of family law issues, including through mediation. Their services are free and confidential.
- The atmosphere of Family Court is more informal.
- Many Family Courts have **family duty counsel** available. These are lawyers who provide free legal advice to help people with low incomes deal with their family law problems.

The court process varies depending on the registry and order involved

There are registries at various Provincial Courts throughout BC ^[7]. How the Family Court process works depends on the registry location and the type of court order you need.

Many Family Court registries have certain requirements you have to meet before you can get a date to appear in front of a judge. We explain these below, under stages in the court process.

But there are exceptions. In certain circumstances, you can fast forward the process. For example:

- If you’re experiencing family violence, you can apply for a **protection order**. This is a court order to protect one person from another.
- If the other parent wants to move with the children or is refusing to agree to you taking them abroad on a planned holiday, you can apply for an **order in a priority parenting matter**.

Self-help guides The Family Law in BC website from Legal Aid BC has step-by-step guides on applying for a protection order ^[8] and applying for a priority parenting matter order ^[9].

Options to resolve a case outside the courtroom

Even after a family law case has been started, you can still try to resolve your issues without going to a hearing before a judge.

You might try **negotiating** with each other to try to reach an agreement. You could do this with or without the help of lawyers. You could also get help from other family members, elders, or other community members.

You could try **mediation**. This involves meeting with a neutral person (a mediator) who helps find a solution everyone can agree on. The mediator doesn't make decisions, but instead helps the parties make decisions for themselves.

You can use a family justice counsellor as a mediator. Their services are free. (At some Provincial Court locations, parties are required to meet with a family justice counsellor as one of the first steps in the court process.) Or you can hire a private mediator.

Or you could try **collaborative negotiation**. This is also known as "collaborative family law." It's a kind of negotiation where each party has their own lawyer and agrees to do everything possible to reach a settlement without going to court. The approach emphasizes full disclosure, communication, and a safe and respectful environment to help the parties negotiate a settlement collaboratively.

For more on these approaches, see our information on mediation, collaborative negotiation, and arbitration ^[10].

If you can agree on the issues

If you can work out your issues, you and the other people involved can put your agreement into writing. Or you might want a judge to make a court order that reflects your agreement. This is called a **consent order**. Most family law cases are settled by an agreement or consent order.

Both parties must sign the written agreement or consent order.

Each party should get **independent legal advice** from a lawyer before they sign the document. This involves each party meeting with their own lawyer to get legal advice. A lawyer can explain:

- what the agreement means
- what rights and obligations the agreement gives to each party
- how the agreement affects other legal options that might otherwise be available

See who can help, below, for options to get legal advice.

Stages in the court process

Starting a matter in Family Court

How you start a matter in Family Court depends on the court registry location and the type of court order you seek.

In the Victoria and Surrey registries, you have to file a notice with the court, and then meet with a family justice counsellor and satisfy certain requirements before you can start a court matter.

In other court registries in the province, you can start a court matter by filing an application with the court ^[11]. Then (depending on the registry location), you may have to meet with a family justice counsellor or complete a parenting education program, or both, before getting a court date. More on these requirements in the next section about next steps.

In any court registry, if there's been family violence or you have an urgent parenting issue, you can apply to get into court right away.

The paperwork

To start a Family Court matter, you fill out an application about a family law matter ^[11]. You make three copies of the application, and file it with the court registry. There is no fee involved. Depending on what kind of orders you're asking for, other forms and documents may also be required.

You then arrange to have a copy of the filed documents **served** on the other party in the case. There are strict rules about how to give court documents to the other party.

To complete the forms Legal Aid BC's Family Law in BC website has a free step-by-step guide for applying for a family order ^[12] in Provincial Court. For blank court forms, see the BC government website ^[13] or go to your local Family Court registry ^[7].

Next steps

Depending on the court registry location and the type of court order you seek, you'll likely have to complete certain steps before you can get a date to appear before a judge.

In early resolution registries in Surrey and Victoria ^[14], for example, you have to meet with a family justice counsellor, take a parenting course (if applicable), and complete a session of consensual dispute resolution (if appropriate). Only then can you start a matter in Family Court and get a court date.

In family justice registries in Kelowna, Nanaimo and Vancouver ^[15], you start a Family Court matter, meet with a family justice counsellor, and take a parenting education program (if applicable). Then you'll get a court date.

All other Family Court registries are Parenting Education Program registries ^[16]. In these registries, you file an application to start a Family Court matter. Then, you complete a parenting education program (unless you can show you're exempt ^[17]) before getting a court date.

Court appearances You're usually expected to attend a court date in person. But for certain types of family court proceedings like conferences and pre-trial applications, the usual way to attend ^[18] is by phone or Microsoft Teams audio-conference or video-conference.

If you want to attend court in a different way than scheduled, you can make a court application ^[18].

Your first court appearance

Unless you have an urgent family matter, the first time you appear before a judge will usually be at a **family management conference**. This is a 20- to 60-minute meeting with the other party and a judge. The judge will try to help you and the other party reach an agreement. If that's not possible, the judge will help you get organized for a hearing or a trial.

At a family management conference, a judge can make court orders. If you and the other party agree about your family law issues, the judge will make a **consent order**. If you can't agree, the judge may still make important **interim (temporary) orders** that can last at least until you have a hearing. Because of this, you must be prepared to tell the judge what orders you want and why. You can provide spoken and affidavit evidence to support your position.

If issues aren't resolved at the family management conference, the judge can decide on the next steps in your case. This can include participating in mediation, attending a **family settlement conference** (an informal meeting with a judge to try to resolve the dispute), or setting a hearing date.

If a hearing is needed, the judge can make **case management orders** about timing, witnesses, documents, and other evidence to make sure the trial is conducted efficiently.

Preparing for a family management conference The Provincial Court explains what to expect at a family management conference ^[19], and Legal Aid BC has more on how to prepare for one ^[20].

If the case goes to trial

If you can't settle your issues and have to go to a trial, you'll have a **hearing** before a judge.

In your community, the Provincial Court might have a separate courtroom for family law cases. Or family law cases might be heard in one of the regular courtrooms on a particular day of the week. Usually there's one day each week or every other week when the court will hear family law cases.

At the hearing, witnesses give oral testimony (they tell the court their side of the case) and present documents or other evidence. Often, the parties themselves are the only witnesses.

After all of the evidence has been given to the judge, each side will make arguments to the judge. They'll explain why they think the judge should decide in their favor. The judge will then make an order resolving the issues.

Common questions

Do I need a lawyer to appear in Family Court?

You **don't** have to have a lawyer when you go to court. Over a third of people bringing a case in Family Court represent themselves. The rules in Family Court are simpler than in Supreme Court and the atmosphere is more informal.

Consider getting legal advice or unbundling If you're planning to represent yourself in Family Court, consider getting legal advice about your case beforehand. Or you could explore hiring an "unbundled lawyer" to help coach you or help with part of your case. To find a lawyer who offers unbundled services, see unbundlinglaw.ca ^[21].

What if my case started before the new court rules came into effect?

New Provincial Court Family Rules ^[22] came into effect on May 17, 2021. If a family law case you're involved in started before that, the new rules apply and the new court forms ^[23] (with a couple of short-term exceptions) must be used.

Who can help

With your case

To make an appointment with a family justice counsellor, contact the nearest **Family Justice Centre** by calling Service BC.

Call 1-800-663-7867 (toll-free)

Visit website ^[24]

Unbundling allows you to hire a lawyer for specific parts of your case or to coach you through the court process.

Unbundled Legal Services lists family lawyers who offer these services.

Visit website ^[21]

For options for **legal advice**, see our information on free and low-cost legal help ^[25]. It explains options such as legal aid, pro bono services, legal clinics, and advocates.


With more information

The **BC Provincial Court website** provides information about family law, rules, and court processes as well as links to resources.

Visit website ^[3]

Legal Aid BC's **Family Law in BC website** has self-help guides that include step-by-step instructions and blank forms you'll need for going to Provincial (Family) Court.

Visit website ^[26]

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Applying for an Interim Order in a Family Law Case in Supreme Court

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Shelagh Kinney^[1], Watson Goepel in March 2020.

A person involved in a family law case may need to get a temporary court order — known as an **interim order** — to deal with short-term, important, or urgent issues. Learn the process for making an interim application in Supreme Court.



"My kids live with my spouse, Mikki, most of the time. We set it up that way because of my work schedule. But I changed jobs a few months ago. I want to see the kids more. Mikki doesn't agree, so I filled out some paperwork and took it to Supreme Court, where our divorce case is. A friend of mine gave Mikki a copy of the court documents. She filed something in reply, and we're going to court in a month."
— Elias, Langley, BC

What you should know

What an interim order is

Interim orders are **temporary** court orders made after a case has started but before it ends. They last until another interim order is made. Or, they can stay in place until the case is resolved by final agreement or an order made at trial.

Interim orders can also deal with **urgent problems**. They can help with:

- stopping someone from dealing with family property
- preventing the children from being taken out of town
- deciding where the children will live
- deciding if interim support should be paid by one party to help the other with expenses

A summary of the application process

The BC Supreme Court has rules^[2] that set out the process for applying for an interim order.

In a family law case, there are typically two people involved in an application: the person making it (the applicant) and the person replying to it (the respondent). They are the parties in the case.

Let's assume you're the **applicant**. You start the process by filling out a **notice of application**. Then, you **file** this form and some supporting documents in court. After that, you need to arrange to serve the documents on the respondent.

If the respondent doesn't agree with any part of the application, they need to file an **application response** and supporting documents in court. Then they need to serve those materials on you.

One full day before the hearing, you must file some more material in court.

At the hearing, each party will explain why the order they're asking for should or shouldn't be made. The court will consider the evidence and the law and then make a decision. This is recorded in an **interim order**.

The steps in the application process

Step 1. Prepare the notice of application

The applicant — let's say it's you — starts the process by preparing a **notice of application**. The court has a specific form that must be used, form F31. This form tells the court what order you want and sets out the court date for the application hearing. It also explains the facts in support of the application and why the court should make that order.

You also prepare an **affidavit** in form F30 in support of your application. An affidavit is a legal document in which a person makes statements they swear are true. You may also need to prepare other supporting documents depending on the type of order you're seeking.

Tip You can download the notice of application from the BC government website ^[3]. You can also find other court forms there. Completed samples of many forms are available at *JP Boyd on Family Law*.

Picking the hearing date

In the notice of application, you must set out the hearing date for the application. Except for urgent applications, the soonest an application can be heard is **eight full business days** from the date the application materials are sent to the other party. (Business days don't include weekends and holidays, when court is closed.)

You get to pick the date of the hearing — unless the hearing will take two hours or longer. In that case, you must schedule the hearing date with the court registry staff.

Tip In picking the hearing date, you should check with the court registry to find out what days the court hears interim applications in family law cases. Some court registries only hear these types of applications on certain days. It's also a good idea to check dates with the other party or their lawyer. That way you can pick a date you both can attend.

Step 2. File the application in court

You must make three copies of the materials. Then, **file** the notice of application and affidavit in the court registry where your family law case is ongoing. There is a court filing fee.

Tip If you can't afford the Supreme Court filing fees, you can ask the court to waive them. The Family Law website from Legal Aid BC has a free step-by-step guide for getting an order to waive fees in Supreme Court ^[4].

Step 3. Serve the notice on the other party

You have to **serve** the notice of application and supporting documents on the other party. This can be done by **ordinary service**. This means delivering or leaving the documents with the other party. But it might also be possible to mail, fax, or email the documents. It all depends on what the other party put as their "address for service" in earlier documents.

The documents must be served on the other party **at least eight full business days** before the date set for the hearing.

Step 4. Wait for a response

The other party, the respondent, has **five business days** to respond from the time they were served with the notice of application. They can file an **application response** and a supporting affidavit and then serve you with them. The response says whether they agree or disagree with what you're asking for.

You can then fill out a responding affidavit. In it, you reply to any new information in the other party's material.

Step 5. Prepare the application record

Before the hearing, you need to file an **application record** in court. This is a binder with copies of all the documents related to the interim application. There are specific requirements set out in the Supreme Court rules for how this material is organized.

As well, you must send the other party a copy of the **index** (a table of contents) to the application record.

You must complete these two steps (filing the application record and sending the index to the other party) by 4 pm on the day **one full business day before** the hearing. (This means one full business day must pass in between these steps and the hearing day.)

Tip The Family Law website from Legal Aid BC has step-by-step guides on preparing and responding to an interim application. The guides include instructions on how to prepare an application record ^[5].

Step 6. Attend the hearing

The court hearing will take place in Supreme Court **chambers**. This is a public courtroom where all interim applications set for a particular day are heard. The hearing might be before a judge. Or it might be before a **master**, a judicial officer who can decide interim applications.

The parties make their submissions

You tell the judge or master what orders you're asking for. The respondent explains why the court *shouldn't* do as you ask.

Neither party testifies during the hearing, nor can either party ask the other questions. The evidence is given to the court through the affidavits in the application record.

The court's decision

After looking at the documents and listening to both parties' submissions, the judge or master makes a decision. They may make all, some, or none of the orders the applicant is asking for.

Tip The Supreme Court BC Online Help Guide from Justice Education Society has videos on how to present your own case in chambers ^[6].

Step 7. The interim order is filed in court

If either party has a lawyer, the lawyer usually prepares and files the written **interim order** made by the judge or master. If neither party has a lawyer, the successful party prepares and files the written order in court.

The order is in place from the moment the judge or master gives their decision. The order stays in place until the court makes another interim order on the same subject, or until the overall case is resolved by a trial or a settlement.

Who can help

With more information

The **Family Law in BC website** from Legal Aid BC has a step-by-step guide with instructions for preparing and responding to a Supreme Court interim application.

- Visit website ^[7]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, describes how to make an interim application in Supreme Court. It includes sample timelines for filing and serving the court documents.

- Visit website


With your case

Unbundling allows you to hire a lawyer for specific parts of your case or to coach you through the court process.

Unbundled Legal Services lists family lawyers who offer these services.

- Visit website ^[8]

Other options for legal help include legal aid, pro bono services, legal clinics, and advocates. See our information on free and low-cost legal help.

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Part 4. Life

Health

Adults and Consent to Health Care

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Sarah Watson and Karl Maier, Public Guardian and Trustee of British Columbia^[1] in June 2018.

Generally speaking, adults can only be given health care with their **consent**. We explain consent, and the exceptions to this general rule, including what happens when someone is mentally incapable.

What you should know

Adults can only be given health care with their consent

The general rule under the law in BC^[2] is: a doctor (or another health care provider) can treat you only if you **consent**.

For this rule to apply, you must be a **mentally capable adult**. Different rules apply to children; see children and consent to health care. If an adult is unconscious, mentally incapable, or otherwise unable to give consent, the law sets out procedures to follow. We explain those shortly.

For your consent to be valid, it must be **informed**. This means your doctor or health care provider must explain your illness or condition to you and tell you about the proposed treatment, the risks and benefits of it, and any alternative treatments, including no treatment.

Consent to health care may be given “orally or in writing or may be inferred from conduct.” This means there are three ways you can give consent:

1. you can give consent verbally,
2. you can give consent in writing, or
3. a health care provider can decide, based on your conduct, that you consent to health care.

Tip For information on consenting to and refusing psychiatric treatment as an involuntary patient, see our information on hospitalizing a mentally ill person.

You have the right to refuse health care

Every adult who is capable has the right to give consent or to refuse consent to health care for any reason, including moral or religious reasons. You can refuse life support or other health care, such as a blood transfusion, even if it means you will die. You also have the right to change your decision.

To refuse treatment, you must be **mentally capable** of making that decision. The law presumes all adults are capable of giving, refusing, or revoking their consent, unless it's clear they are not capable of making those decisions. If a doctor questions a person's mental capability, the doctor can require the person to have a capacity assessment performed by a medical expert.

Exception in a medical emergency

In a **medical emergency**, a health care provider may not need your consent to provide health care. If you are unconscious or otherwise incapable of giving consent, a health care provider may do whatever is necessary to try to save your life or prevent serious harm.

This medical emergency exception does not apply if a representative who is authorized to consent to health care for you is available.

As well, the medical emergency exception does not apply if the health care provider has reasonable grounds to believe that you, while a capable adult, expressed a wish to refuse health care in a particular situation. For example, if you carry a card saying you refuse to have a blood transfusion, and the health care provider sees that card while treating you in a medical emergency, they must respect your wishes.

An advance directive gives written instructions about health care wishes

If you previously indicated what health care you want (or don't want) in a medical emergency, health care providers must follow your wishes in an emergency. For example, you can make a legal document called an **advance directive**^[3]. This is a written instruction about what health care you want or do not want in the future if a decision needs to be made and you're incapable of making it.

Signing requirements

An advance directive has requirements on how it is signed and witnessed^[3]. It must be signed and dated by the adult making the advance directive, in front of two witnesses. It must also be signed and dated by the two witnesses in front of the adult. (Only one witness is needed if the witness is a notary public or lawyer.) Both witnesses must be capable adults who understand the type of communication the adult uses. They can use an interpreter if necessary.

Certain people are not able to witness an advance directive. For example, a person can't be a witness if they provide personal care, health care, or financial services to the adult for compensation (there is an exception for a lawyer or notary public).

If an adult is not physically capable of signing an advance directive, another person can sign it for them if the adult is physically present and directs the person to sign the directive. Certain people can't sign an advance directive for an adult, including a witness to the signing or someone who can't witness an advance directive.

Even if an advance directive is not properly witnessed, it may still show an adult's wishes when they were capable. So it may still be a guide for the person who must make the health care decision.

Effect of an advance directive

Generally speaking, if an adult needs health care and is incapable of giving or refusing consent to the health care — and the health care provider doesn't know of any representative or committee with authority to make decisions for the adult — then the health care provider must follow any advance directive they are aware of.

But there are exceptions. A health care provider does **not** have to follow the instructions in an advance directive if they reasonably believe any of these things:

- The advance directive does not cover the health care decision to be made.
- The instructions in the directive are so unclear it can't be determined whether the adult has given or refused consent to the health care.
- Since the advance directive was made, the adult's wishes, values or beliefs in relation to the health care decision significantly changed, and the advance directive does not reflect the change.

- Since the advance directive was made, there have been significant changes in medical knowledge, practice or technology that might substantially benefit the adult in relation to health care covered by the directive.

If you're too ill or otherwise unable to make health care decisions

In some cases, another person can make health care decisions for you if you're too ill or otherwise unable to decide.

You may have made a **representation agreement** allowing your **representative** to make health care decisions for you. We have information on representation agreements. If you become mentally incapable, a court may appoint a person as your **committee**, and that person can make health care decisions for you. We explain committeeship.

Under the law in BC ^[4], if you have neither a representative nor a committee, and you are too ill or otherwise unable to make a decision on your health care, your health care provider must choose a **temporary substitute decision-maker** based on a priority order set out in the law.

How a temporary substitute decision-maker is chosen

Under the law in BC ^[4], your health care provider, in choosing a **temporary substitute decision-maker**, must ask people in the following order:

1. your spouse or partner (including a same-sex partner)
2. an adult child
3. a parent
4. a brother or sister
5. a grandparent
6. a grandchild
7. anybody else related by birth or adoption
8. a close friend
9. a person immediately related by marriage
10. the Public Guardian and Trustee

If no one on this list is available or qualifies to be a decision-maker, or if there's a dispute about who the decision-maker should be, the health care provider must choose the Public Guardian and Trustee (or a person it chooses) to be the temporary substitute decision-maker.

A temporary substitute decision-maker must be at least 19 years old, be mentally capable, and have no dispute with you. They must also have been in contact with you in the past 12 months.

The role of a temporary substitute decision-maker

Under the law in BC ^[5], a person chosen to be a temporary substitute decision-maker can make decisions about any kind of health care, except controversial or irreversible treatments such as organ transplants or experimental surgery.

A temporary substitute decision-maker can say no to life-saving treatment if you're terminally ill or critically injured, but only if there is substantial agreement among the health care providers caring for you that the decision is medically appropriate and reflects your wishes or is in your best interests.

A temporary substitute decision-maker must consult with you if possible. If that's not possible, they must follow any directions you gave while you were capable. You should let your family know now what decisions you would like if you can no longer decide for yourself. If your wishes are unknown, a decision-maker must give or refuse consent in your best interests, considering whether:

- your condition will improve with the proposed health care

- the condition will improve without the health care
- the benefit of the health care is greater than the risk of harm
- less restrictive or less intrusive health care would be as helpful as the proposed health care

If someone disagrees with a temporary substitute decision-maker

If a friend, family member, or doctor is concerned about any major health care decision by a temporary substitute decision-maker, they can ask the health authority to review the decision. Each health authority in the province is required to have a dispute resolution process.

Under the law in BC ^[6], certain people can apply to court to challenge a decision by a temporary substitute decision-maker to give or refuse consent to health care. Those who can apply to court include a health care provider or the adult themselves (that is, the person who has been assessed as incapable of giving or refusing consent to health care).


Under this same law, the court can be asked to say who the temporary substitute decision-maker should be.

Who can help

With more information

The **Public Guardian and Trustee's** website provides information about consenting to and refusing health care.

- Call 604-775-1001 (Lower Mainland) or 1-877-511-4111 (toll-free)
- Visit website ^[1]

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Children and Consent to Health Care

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Katherine LeReverend^[1], Ministry of Attorney General, Legal Services Branch in June 2018.

In BC, a child under age 19 may consent to their own health care, if the child is **capable**. Learn what this means and other issues of health care consent.

What you should know

A child may consent to their own health care, if they are capable

Under the law in BC^[2], a child under age 19 may consent to their own health care — if they are **capable**.

The law considers a child capable if they understand the need for the health care, what the care involves, and the consequences (the benefits and risks) of getting the care — or not getting the care.

If a health care provider explains these things to the child and is satisfied the child understands them, and that the health care is in the child's best interests, they can treat the child if the child consents to the care. The provider does not need the consent of the child's parents or guardians. The child might have to sign a consent form.

Generally, if a child is capable of consenting to health care, they are also capable of making a decision to refuse health care.

Determining whether a child is capable

There is no set age when a child becomes capable. Doctors have to use their best judgment in each case to decide if a child is capable. Courts are flexible in deciding if a child is capable. It depends on how mature the child is and how serious the medical treatment is. A very young child may be able to consent to the dressing of a wound. On the other hand, an older child may not be capable of refusing life-saving treatment. Here's an example^[3]: a court ordered a 14-year-old Jehovah's Witness girl to have blood transfusions that she and her parents were refusing. Another example: a mildly developmentally disabled child may be capable of consenting to have a small cut treated, but not capable of consenting to antibiotics for an infection.

Tip For the law that applies for adults, see our information on adults and consent to health care.

A (capable) child does not need their parent to consent to health care

A child who is capable does not need their parent or guardian to consent to their health care. The child can consent to their own health care, without the consent or knowledge of their parents or guardians. A capable child can normally get medical treatment for things like birth control, abortion, mental health problems, sexually transmitted diseases, and alcohol and drug addiction problems.

If a parent or guardian is limiting a child's access to health care, it could amount to abuse or neglect and the child may need protection. Anyone who knows of such a situation must report it to a child welfare worker. You can do so by calling the Ministry of Children and Family Development's screening line at 1-800-663-9122. Here's more information^[4].

The health care has to be in the child's best interests

Under BC law ^[2], for a child's consent to health care to be legally valid, the health care provider must conclude the care is in the child's best interests.

If there is disagreement about what care is in a child's best interests, the child welfare authorities may become involved. If a child or their parent refuses health care that two doctors say is necessary to preserve the child's life or health, the child welfare authorities can ask a court to overrule the refusal. This application is made under section 29 of the *Child, Family and Community Service Act* ^[5].

More information is available from the Ministry of Children and Family Development. See their website ^[6] or call toll-free 1-877-387-7027.

Consent to health care in a medical emergency

In a medical emergency, a health care provider may not need a person's consent to provide health care. It depends on the situation. If a person's life or health is seriously threatened, and it appears the person isn't capable of making health care decisions, health care providers may be able to treat the person without consent. Because they are dealing with a medical emergency, they may be able to do whatever is necessary to try and save the person's life or health.

See our information on adults and consent to health care for the law as it applies to adults in medical emergency situations.

A child's health care is confidential


A child's health care is **confidential**, if the child is capable. A doctor or health care provider can't talk with the parents or guardians about a capable child's health care, unless the child agrees. Just as doctors must keep information about their adult patients confidential, they must also keep information about their capable child patients confidential.

There are exceptions to this confidentiality rule. In some situations, a parent or guardian may be able to get their child's medical information, or a doctor may have to disclose information to the Ministry of Children and Family Development. For example, if there is good reason to believe that a child might harm themselves or others, or there is suspected abuse (physical, sexual or emotional), then the information may not stay private. In that case, the child should be told why their information won't be kept private and who it will be given to.

If a doctor considers a child not capable, they will tell the child's parent or guardian if they treat the child.

For more on patient confidentiality, see our information on getting your medical records.

Tip As a child, if you want your doctor to keep your medical information confidential, talk to the doctor before you get treatment to see if they agree you are capable, and if they will keep your information confidential. If not, you can look for a different doctor.

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Getting Your Medical Records

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Michelle Stimac, College of Physicians and Surgeons of BC in June 2018.

Under BC law, the information in your medical records belongs to you. Learn your rights relating to your medical records, who has access to them, and how to get them.

What you should know

The information in your medical records belongs to you

Many people think their medical records are their own property, and if they want to see them, they just have to ask. That's only partly true. Your medical records actually belong to the doctor, hospital, or other place that made them, not to you. That's also true for dental records and nursing home records.

But the **information** in the medical records belongs to you. You have a right to see that information. The records should include any treatment or procedure that went wrong. Courts have said doctors have a legal duty to give patients that type of information.

Your medical records held by your doctor

The regulatory body for doctors in British Columbia, the College of Physicians and Surgeons of BC, requires all doctors to keep and securely store accurate records for every patient, with the date and type of service provided to the patient. Under the *Personal Information Protection Act* ^[1], doctors must make sure the information in your medical records is accurate and to keep it private.

Under another law in BC ^[2], your doctor must keep your medical records for at least 16 years from the date of the last entry in the record. As well, your doctor must keep any records from when you were a minor (that is, under age 19) until you reach age 35, regardless of when the last entry in the record was made.

To see the medical records held by your doctor

To see your medical records kept by your doctor, ask the doctor to see them. Your doctor's office has a privacy officer — usually the doctor — to deal with the request. Under the *Personal Information Protection Act* ^[1], you have a right to see the information. And the doctor will normally show you the records or give you the information in them.

To get a copy of your medical records

Ask the doctor for a copy of your records. They may charge you a fee to copy them, as the Medical Services Plan does not pay for it. Doctors of BC sets approximate fees in its fee guide ^[3]. Alternatively, you could ask to take a picture of the records with your phone.

If you can't get your medical records from your doctor (for example, if the doctor moved or retired and you can't find them, or if they refuse to give you the information), you can contact the College of Physicians and Surgeons of BC for help. Their phone number is 1-800-461-3008 or you can visit their website ^[4].

You can also contact the Information & Privacy Commissioner for BC. You can reach the Commissioner by calling Enquiry BC at 1-800-663-7867 or visiting the Commissioner's website ^[5].

Fixing a mistake in your records

If you think the doctor made a mistake in your medical records, you can ask them to fix it. The doctor has to make a note of your request. But once medical information is recorded, it is not supposed to be destroyed or changed based on a patient's request.

Your medical records held by hospitals

The *Freedom of Information and Protection of Privacy Act* ^[6] requires hospitals to make sure the information in your medical records is accurate and to keep it private. Under another law in BC ^[7], hospitals have to keep most patient records for at least 10 years from discharge. (Less pertinent patient records have shorter periods they must be kept for.)

To see your hospital records, contact the medical or health records department of the hospital. Ask for their information and privacy officer or the person in charge of giving out information. You can make a written request. The hospital has 30 days to respond. Usually, you can see your hospital records and get a copy.

If a hospital refuses to let you see your records, it must tell you why. If you disagree with the hospital's decision, you can ask the Information and Privacy Commissioner for BC to review it.

Under the *Freedom of Information and Protection of Privacy Act* ^[6], you have the right to ask the hospital to correct any errors or omissions in your records. The hospital has to make a note of your request. But once medical information is recorded, it is not supposed to be destroyed or changed based on a patient's request.

Your medical records are confidential

Health care providers have a duty of **confidentiality** to you. This means they can't share information about you with others without your permission — except in a few specific situations.

One relates to the health care providers who treat you. These providers are said to be in your “circle of care.” They're allowed to share whatever records are relevant to your care and treatment.

As well, the law requires health care providers to disclose information about a patient in certain situations. For example:

- A provider who believes a child is being abused or neglected has a duty to report their concern to a child welfare worker.
- A doctor who has a patient who continues to drive, despite a medical condition that makes it dangerous to do so, must report the patient to the provincial authorities.
- A doctor who believes a patient poses an imminent risk of serious harm to someone has a duty to tell the police.

As well, health care providers may disclose information about a patient in some other situations, such as:

- A court orders that medical records be shown to other parties and lawyers in a lawsuit.
- The police obtain a search warrant to seize a person's medical records.
- Disclosure is necessary for a person's medical treatment but they themselves aren't able to consent (for example, an emergency situation).

If someone asks to see your medical records

There are situations in which someone may ask for your permission to see your medical records. For example:

- If you apply for life or health insurance, the insurance company may ask to see medical information before giving you insurance.
- An employer may ask to see medical information if you apply for a job that's safety-sensitive.
- If you make a complaint about a doctor to the College of Physicians and Surgeons of BC, your medical records may be necessary to investigate your concerns.

You're free to say no to these requests. But there may be consequences. The insurance company can decline your insurance application. The employer can choose not to hire you. You may not be able to proceed with the complaint.

If you want someone to see information in your medical records (for example, you want a family member to help you make health care decisions), talk to your health care provider about letting the person receive your medical records.

If you want your medical records destroyed

The law requires medical records to be kept for the times explained above. Doctors and hospitals cannot destroy your medical records during that time even if you ask them to.

Who can help

With more information


The **College of Physicians and Surgeons of BC** deals with complaints against doctors in BC.

- Call 1-800-461-3008 (toll-free)
- Visit website ^[8]

The **Office of the Information & Privacy Commissioner for BC** deals with complaints against hospitals and other public bodies such as health authorities. It also reviews decisions by health care providers in private practice, including

where and how your medical records are shared.

- Call 1-800-663-7867 (toll-free)
- Visit website ^[9]

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Hospitalizing a Mentally Ill Person

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Diana Juricevic, Mental Health Review Board in October 2017.

Anyone who wants help with a mental illness can ask to be admitted to a facility for treatment. The law also allows people to be involuntarily admitted in certain situations.

What you should know

If someone asks to be admitted to a mental health facility

In BC, the *Mental Health Act* ^[1] is the law that describes what happens when someone who is living with a mental illness needs treatment and protection for themselves or others. Under this law, anyone aged 16 or older can ask to be admitted to a “designated mental health facility.” There are several dozen treatment centres and hospital psychiatric units in the province designated under this law.

If a doctor who examines the person believes they have a mental disorder requiring treatment, the person can be admitted to hospital. People under the age of 16 need a parent or guardian to apply on their behalf.

Treatment of a voluntary patient

Mental health facilities can treat voluntary patients only if the patient consents to the specific treatment. If the patient is incapable of consenting, someone else can act as a **temporary substitute decision maker** (TSDM) to consent for them. In order of priority, a TSDM could be their spouse, child, parent, brother, sister, grandparent, grandchild, any other person related to them by birth or adoption, a close friend, or a person immediately related to them by marriage. The TSDM must be at least 19 years old, must get along with the patient, and must have been in contact with the patient in the past 12 months.

The TSDM could also be the adult's **representative** (appointed under a representation agreement) or **committee** (appointed by the court to make personal, medical, legal and financial decisions). We have information on consent to medical treatment and substitute consent. We also explain what is a representative and a committee.

If a voluntary patient wants to leave the facility

To leave a mental health facility, a voluntary patient need only inform the facility staff they want to be discharged. In most cases the patient will be free to leave. The facility may ask them to sign a **discharge against medical advice** form.

To admit someone to a hospital against their will

The rules for hospitalizing a person against their will are stricter. A person can become an **involuntary patient** through a doctor's certificate or a court order. As well, the police can take a person to hospital in an emergency.

While a voluntary patient may be admitted to any hospital with psychiatric services, involuntary patients can be admitted only to certain hospitals in BC. If a hospital doesn't have a bed available, they may not be able to admit the person. In that case, the person would be sent, under supervision, to another hospital that has room.

Through a doctor's certificate

The most common way people are hospitalized against their will is through a **doctor's certificate**. A doctor who believes a person has a **mental disorder**, as defined in the *Mental Health Act* ^[2], can complete a certificate to admit the person to hospital, even if they don't want to be hospitalized or treated. The doctor must believe the person:

- Is suffering from a mental disorder that seriously impairs their ability to react appropriately to their environment or to associate with others.
- Requires psychiatric treatment in a designated facility.
- Requires care and supervision in a facility to prevent the person's substantial mental or physical deterioration or to protect themselves or others.
- Is not suitable to be a voluntary patient.

The person does not have to be dangerous to others to be admitted involuntarily.

Through a court order

Anyone, including family members and neighbours, who reasonably believes a person has a mental disorder that requires hospitalization for the safety of themselves or others can apply to court for an **order** to have the person hospitalized. Also, the court can issue a warrant allowing the police to take the person to hospital for assessment.

Police action in an emergency

The police can act in an emergency to take a person to a doctor for examination. If the police believe a person has a mental disorder and their behaviour is likely to endanger their own safety or the safety of others, the police can immediately take the person to a doctor — usually at a hospital. If the person needs to be hospitalized, a doctor can complete a certificate to admit them.

How long involuntary patients can be kept in hospital

A doctor's certificate to keep a person with a mental disorder in hospital is valid for up to 14 days before admission. Involuntary patients can be kept in hospital for **only 48 hours** after they are admitted, based on one doctor's certificate.

To keep the patient longer, the hospital must get a second doctor to examine the patient and produce a second doctor's certificate within the 48 hours. The patient can then be kept for up to **one month**.

That term may be renewed for another month, then three months, then six months, and then every six months — each time with a doctor's certificate based on an examination and written report. The examination must conclude that the criteria for involuntary admission continue to be met.

The hospital director must give the patient written and oral notice they are being hospitalized — at the start of the hospitalization and at each renewal of it. If the director believes the patient does not understand the notice, the director must give the notice again as soon as they consider the patient is capable of understanding it. The written notice must also go to the patient's near relative (which includes a representative). If there's no information available on a relative, then the notice must go to the Public Guardian and Trustee.

Involuntary patients can be treated without their consent

If an involuntary patient refuses treatment or is incapable of consenting, the hospital director can consent to treatment for them. The director must complete a consent for treatment form.

The patient (or a family member or someone else acting for them) can ask for a second medical opinion on whether the treatment is appropriate.

Involuntary patients cannot leave the hospital on their own

An involuntary patient cannot leave a hospital unless a doctor discharges them either permanently or on extended leave.

A doctor can change an involuntary patient's status to voluntary, allowing the patient to leave as they please.

If an involuntarily admitted patient wants to leave the hospital and their doctor won't discharge them, the patient (or someone acting for them) can ask for a review of the decision to keep them in hospital. We explain this process next.

Involuntary patients can request a review of their hospitalization

Involuntary patients have the right to have a panel of the Mental Health Review Board **review their hospitalization** after they are involuntarily admitted and after each renewal of their hospitalization. The patient (or someone acting for them) must request the review by completing an application form, available on the Review Board website ^[3], from the Review Board office (phone 604-660-2325), or at the hospital.

The Mental Health Review Board is independent of government in making its decisions. A panel of three people (including a medical doctor, a lawyer, and a person who is not a doctor or lawyer) performs the review. The panel must hold a hearing within 14 to 28 days after the Review Board receives the application, depending on how long the person is being hospitalized for. A patient has the right to have a lawyer, friend, or advocate speak for them. After the hearing, the Review Board panel makes a decision on whether the hospital should keep or release the patient.

Tip An involuntary patient may be discharged from hospital on extended leave on the basis they follow outpatient treatment. These patients have the right to periodic hearings by a Review Board panel — as if they had stayed in the hospital as involuntary patients.

Applying to court to be discharged from a hospital

Under section 33 of the *Mental Health Act* ^[4], a patient or a person acting for them can apply to court for an order that the patient be discharged from a mental health facility. The application is brought to BC Supreme Court. This is a complicated area of law and patients should get legal advice if they want to do this.

Who can help

With your case

The **Community Legal Assistance Society** (CLAS), through their Mental Health Law Program, provides representation to people who have applied to review their involuntary detention under the *Mental Health Act* at a hearing before the Mental Health Review Board.

- Call 604-685-3425 (Lower Mainland) or 1-888-685-6222 (toll-free)
- Visit website ^[5]


More information

The **Mental Health Review Board** conducts reviews of hospitalizations after a person is involuntarily admitted and after each renewal of their hospitalization.

- Call 604-660-2325
- Visit website ^[3]

The **BC government's** website includes information and options for support on mental health issues.

- Visit website ^[6]

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If You Have a Problem with a Doctor

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Michelle Stimac, College of Physicians and Surgeons of BC in March 2019.

If you're concerned with the treatment provided by a doctor or about a doctor's conduct, there are steps you can take. Learn how to make a complaint about a doctor.

What you should know

Depending on the problem, you have options

If you have concerns about a doctor, your options depend on the nature of the problem:

1. If your concerns involve communication or the treatment received, **talk to the doctor** about the problem to see if you can work it out.
2. If you are concerned with the doctor's conduct or the treatment received, you can **make a complaint** to the College of Physicians and Surgeons of BC, the body that licenses doctors in British Columbia. We explain the steps involved shortly.
3. If you think the doctor has broken a criminal law, you can **contact the police** or a lawyer. We explain the process to charge someone with a criminal offence.
4. If a doctor has harmed you and you want compensation, you can **sue the doctor for damages**. We describe what's involved in bringing a medical malpractice claim.

Pursuing multiple options at the same time

If you make a complaint about a doctor to the College of Physicians and Surgeons, you can also contact the police or sue the doctor for damages at the same time. In fact, if a doctor has harmed you and you want compensation, your option is to sue the doctor. The College cannot get money for you — only a court can do that.

Deal with the problem

Step 1. Talk to the doctor

Most doctors are willing to address a patient's concerns directly. If you have a concern about a doctor that involves communication, conduct, or the treatment received, feel free to openly discuss it first with the doctor. If your concern involves a doctor in a hospital setting, you can also raise your concerns with their department head or the hospital's medical director.

Step 2. Make a complaint about the doctor

The regulatory body for doctors in British Columbia, the College of Physicians and Surgeons of BC, works to ensure that patients receive quality medical care and are safe and protected when treated by doctors.

A patient or member of the public may file a complaint with the College about a doctor for:

- inadequate treatment or care of a medical condition
- inappropriate or unprofessional conduct
- concerns of an intimate or sexual nature

How to make a complaint

You can make a complaint about a doctor by:

- completing a complaint form ^[1] (PDF), or
- writing a complaint letter describing what happened (the College explains what information must be in the letter ^[2]).

Send the complaint form or letter to the College by mail or fax. For contact details or more information, call toll-free 1-800-461-3008 or visit the College's website ^[3].

There is no deadline to make a complaint, but it's good to make one as soon as you can.

Tip For complaints of sexual misconduct or inappropriate behaviour by a doctor, you can call the College to speak with an investigator (toll-free at 1-800-461-3008). The investigator will explain the process and help you make a written complaint. You can discuss your concerns, and decide whether to proceed. If you don't proceed, the College may not be able to investigate or take action against the doctor.

Step 3. The College investigates the complaint

The College of Physicians and Surgeons investigates every complaint it receives. It typically reviews the patient's medical records, and asks the doctor and any other health care providers involved to respond to the complaint. It may get more information from the person making the complaint (called the "complainant") and other people, including experts.

A committee of the College, made up of doctors and members of the public, assesses every complaint. The committee provides a written decision on the complaint. They may (among other things):

- suggest ways the doctor can improve their conduct or practice, including by requiring them to take courses,
- warn the doctor about their conduct,
- order a review of the doctor's practice, or
- issue a **citation** for a disciplinary hearing.

A **disciplinary hearing** is a formal process with lawyers for the College, lawyers for the doctor, and evidence provided by witnesses under oath. After the evidence is presented, a committee of the College makes a decision about the doctor's conduct. If they penalize the doctor, they can issue a reprimand or a fine, limit the doctor's practice, suspend the doctor, or prohibit the doctor from practising medicine.

The College cannot pay any money to the complainant or order a doctor to pay any money to the complainant. (If you want compensation from a doctor, you can sue for damages; see our information on medical malpractice.)

Step 4. Apply for a review of the decision

If you disagree with the College's decision on your complaint, you can **apply for a review** of the decision. You apply to the Health Professions Review Board. You have to deliver your application to the Board **within 30 days** of when you receive the College's decision letter. If you apply after 30 days, you must also apply for an extension to file your application, explaining why you missed the deadline. You can contact the Review Board by calling toll-free 1-888-953-4986 or visiting their website ^[4].

Common questions

Can I make a complaint on behalf of someone else?

Yes. The College of Physicians and Surgeons prefers a complaint to come from the patient or someone directly involved with the patient's concern. But a complaint can also be made by a "representative" of the patient. There is a form that must be submitted with the complaint, authorizing the representative. The patient or their legal representative (for example, a parent or an executor named in a will) must sign the authorization form.

What if my concern is with another type of health care provider?

The College of Physicians and Surgeons of BC only reviews complaints about doctors in BC. There are more than 20 regulated health care professions in BC. For complaints about other health care providers, contact the regulatory body for that profession. Registered nurses, psychologists, chiropractors, therapists and other health care professions each have their own process for receiving complaints if standards are not met. The BC Health Regulators website links to the regulatory body for each type of provider ^[5].

How do I complain about a hospital or health authority?

If your concern relates to medical care received at a hospital or from a health authority, first you can complain to the place that provided the care — for example, the hospital. That body will then follow its own complaints process.

If that does not solve the problem, you can file a complaint ^[6] with the Patient Care Quality Office of the health authority. Each health authority in British Columbia has such an office.

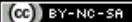
If you disagree with the decision by that office, you can ask for a review ^[7] to be conducted by the Patient Care Quality Review Board. Each health authority has such a board. For more information, call 1-866-952-2448.

Who can help

With more information

The **College of Physicians and Surgeons of BC** website explains the process to make a complaint about a doctor, and has a complaint form you can download.

- Call 1-800-461-3008 (toll-free)
- Visit website ^[2]

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Medical Malpractice

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Lindsay Johnston ^[1], Harper Grey and Dionne Liu ^[2], Harper Grey in June 2018.

Medical malpractice occurs when a health care provider gives substandard treatment that causes harm to a patient. Learn your rights in getting medical care and what can constitute medical malpractice.

What you should know

The legal duty to give proper medical care

All doctors, nurses, hospitals, and other health care providers have a legal duty to provide proper medical care to patients — and to anyone needing emergency medical care. But doctors do not have to accept everyone as a patient. They can refuse to take a person as a patient for legitimate reasons. For example, a doctor may lack medical knowledge and experience in a particular area. Or a doctor and person may disagree on the right medical treatment for the person. But doctors cannot refuse to take a person as a patient because of age, gender, marital status, medical condition, national or ethnic origin, physical or mental disability, political affiliation, race, religion, or socioeconomic status.

If a health care provider fails to provide proper medical care, a person can sue them for damages by bringing a claim for **medical malpractice**. The two main types of medical malpractice are when a health care provider is **negligent** and when a doctor does not get **informed consent** from a patient.

Tip If you are concerned with a doctor's conduct or the treatment you received, you can **make a complaint** to the College of Physicians and Surgeons of BC, the body that licenses doctors in British Columbia. We explain how to make a complaint.

If your doctor or health care provider is negligent

A doctor or health care provider is **negligent** if they fail to provide the **standard of care** a reasonable doctor or health care provider practising in the same area would provide in similar circumstances. If the negligence causes injuries or illness to a person, the doctor or health care provider may be liable to pay **damages** (money to pay for the harm done) to the person.

It's no excuse for a doctor to say, "I did my best. I just didn't know any better." If the doctor should have known better, they may be liable. For example, let's say you see a doctor because you're not feeling well. The doctor prescribes a drug to treat the symptoms you describe. You take the drug and it harms you. It turns out the drug was not appropriate, considering your medical history and the other drugs you were already taking. If other doctors with a similar type of medical practice would not have prescribed the drug, the doctor may be negligent.

Not every mistake or bad result means there was negligence

Doctors and health care providers are not liable for every mistake. The law recognizes that doctors often have to make quick decisions without the best information. The key question is this: did the doctor make a **reasonable** decision that other reasonable doctors would have made in the same situation — even if later it turns out to be the wrong decision that caused a bad result.

For example, you complain to your doctor of severe head pain. They examine you, carefully take your medical history, listen to you describe your symptoms, and order the right tests. Using the results of this examination, they decide you have an ordinary tension headache that will go away. Later, it turns out your doctor was wrong, and the pain was not caused by a tension headache. The doctor's diagnosis was wrong. But your doctor still provided the proper standard of care, the same care that other doctors would have provided in this case. The doctor was not negligent and you probably won't win if you sue the doctor for malpractice.

Your doctor or health care provider must meet a standard of care

The standard of care varies with the level of specialty of the doctor. The standard may be higher for specialists. And it varies with time. Today's standard may not be good enough next year. You can't always expect the best care available at the most sophisticated research hospital. The standard of care may be affected by the level of hospital that treats you.

In summary, not every mistake or bad result automatically means there was negligence. A doctor may take all the right steps and still make a mistake or get a bad result.

If there is a delay in your diagnosis

If a doctor fails to diagnose a medical condition that a reasonable doctor in the same situation would have diagnosed, they would be negligent. The question then becomes whether the failure to diagnose caused any **injury or loss** to the patient. Sometimes, a delay in diagnosis can mean the difference between curing or not curing the condition. Other times, a delay in diagnosis may not have made a difference. In that case, the patient could not recover anything from the doctor.

If you prove negligence, a court may award damages

If you prove there was negligence and the negligence caused your injury or illness, a court may order the doctor, hospital, or health care provider to pay you **damages** for the harm the negligence caused. The damages can include lost earnings, medical and other expenses, pain and suffering, and loss of enjoyment of life. This last category is the court's attempt to compensate you for the effect of the negligence on your life, in general.

The doctor is responsible only for the harm their negligence caused. For example, say you consented to surgery that would require you to take two months off work to recover, if done properly. But the surgeon was negligent and as a result you had to take six months off. In this case, you would be paid for the extra four months of lost earnings caused by the negligence. You would not be compensated for the first two months off, as you had consented to taking that time off already. You still would have had to take the two months off if the surgery had gone as planned.

If others may be responsible

If a doctor delegates work to someone else, the doctor may still be legally responsible for the work. If a doctor leaves a patient in the care of another doctor, both doctors may be responsible. If an inexperienced intern performs the duties of a doctor, the intern has to give the same medical care the doctor would give.

But a doctor can rely on the employees of a medical facility and expect they'll meet the standard of care required in their jobs. So if a doctor leaves proper instructions with a nurse who doesn't follow them, the nurse, not the doctor, may be responsible. Or both may be responsible.

If a person is harmed by the negligence of another health care professional, they can sue that professional. They can also file a complaint with the regulatory body for that profession. For example, a complaint about a nurse can be made to the BC College of Nursing Professionals, the body that licenses nurses in the province.

Hospitals' duties

Hospitals have a duty to exercise a proper standard of care. A hospital's duty is to take reasonable care in running the hospital to avoid harming patients. This includes appointing enough competent staff, ensuring the staff act within their competence level, ensuring timely treatment, and taking the right steps to protect patients from infections from other patients. Hospitals normally have someone to handle complaints about health care they provide.

Complaints that hospitals can't resolve

Each health authority in British Columbia has a Patient Care Quality Office ^[3] to deal with complaints that hospitals cannot resolve. Each health authority also has a Patient Care Quality Review Board ^[4]. They review complaints that the Patient Care Quality Offices have not resolved. For more information, call 1-866-952-2448 or see the Boards' website ^[5].

If a doctor doesn't get your informed consent

Doctors must fully inform their patients about the risks involved in any proposed medical procedure or treatment. In both medical and legal terminology, this is called **informed consent**. If a doctor does not get informed consent from a patient, and the patient is injured, the patient may have grounds to sue the doctor for medical malpractice.

A doctor has to tell you about your condition, the nature of the proposed treatment, the risks of the treatment, and other options you may have. You can't give informed consent to treatment unless the doctor gives you all this information. A doctor does not have to explain every possible risk, just the risks a reasonable patient would want to know before deciding on treatment. This includes explaining what could happen and the likelihood of it happening.

If you suffer an injury or illness after medical treatment, and it was a known risk that your doctor did not tell you about before you agreed to the treatment, it could be malpractice. A court will consider whether a reasonable person would have consented to the treatment if they had been told of the risks. In some cases, the failure to get any consent at all may also be an assault or battery. If you have experienced an assault during medical treatment, you can contact the police.

Your responsibilities as a patient

As a patient, you have the power to manage your health care. You must give the doctor all the important information about your condition, your medical history, and any other relevant information. If you don't, and that leads to an error in diagnosis or treatment, it will be your fault, not the doctor's. As well, a doctor is not responsible for problems if you don't follow the doctor's advice and your failure causes the problem. For example, if you get sick after surgery, it would be hard to prove that a surgeon was negligent in operating on you, if you don't follow the surgeon's instructions for recovery.

Practical considerations

There are time limits to sue for medical malpractice

Generally, you must start a medical malpractice lawsuit within **two years** of when the malpractice occurred. This is called the **limitation period**.

More precisely, it's within two years of when a reasonable person would have realized they suffered an injury from the health care provider's actions and that the court system is an appropriate place to seek a remedy. Even if you're well during this time, you should act quickly — while witnesses are still available and their memories are fresh. This is the general rule, but there are exceptions when the two-year limitation period starts running at a different time. To learn more about how the limitation period might affect your ability to bring a lawsuit, seek legal advice.

Tip If you have questions or concerns about medical treatment you received, talk to your health care provider. Then, if you feel there may have been medical malpractice, get legal advice right away.

The time and cost to bring a lawsuit

Suing for medical malpractice can take a long time — often two to five years or more from start to finish.

Some lawyers will work for a **contingency fee**, meaning the fee depends on the result of the case. If you lose, the lawyer gets nothing. If you win, the lawyer gets part of your compensation award. Win or lose, though, you usually have to pay the expenses of suing, which can be thousands of dollars, especially if you have to hire experts to help prove your case. The Law Society of BC has rules governing contingency fee agreements to ensure they are fair to clients. For more details, see our information on lawyers' fees.

Making a complaint about a doctor at the same time as suing


If you are concerned about a doctor's conduct or the treatment you received, you can make a complaint to the College of Physicians and Surgeons of BC, the governing body for doctors in the province. There is no time limit for complaining to the College. And you can do this at the same time as you sue for malpractice. The College cannot order a doctor to pay you money — only a court can do that. But they can discipline the doctor or have them take remedial steps. We explain how to make a complaint about a doctor.

Who can help

With more information

The **College of Physicians and Surgeons of BC** website explains the process to make a complaint about a doctor, and has a complaint form you can download.

- Call 1-800-461-3008 (toll-free)
- Visit website ^[6]

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Home & Neighbours

Buying a Home

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Nathan Ganapathi ^[1] and Anna Kurt ^[2], Ganapathi Law Group in October 2017.

Buying a home is an exciting life event. Learn the key factors to consider before you make an offer, and the steps involved in buying a home in British Columbia.

What you should know

Using a real estate agent

You may decide to look for a home on your own or you may use a professional to help you. There are advantages to working with a **real estate agent**. Agents can help you clarify the type of home you need and can afford. They are connected to networks of potential sellers and can help arrange appointments to view available properties. And they can help you navigate a complex process by:

- explaining the forms used and helping you make a written offer to purchase
- presenting your written offer to the seller
- explaining the steps to complete the purchase after the seller accepts your offer

As well, keep in mind the seller typically pays both realtors (the seller's realtor and the buyer's realtor) from the sale proceeds after selling their home.

The money you will need

Before you start looking for a new home, it's important to consider how much you can afford to pay. This will allow you to spend your time looking at homes in your price range.

Almost everyone who buys a home borrows some of the money needed to pay for it. The cash you can apply towards buying a home is called the **down payment**.

Obtaining a loan to borrow the rest of the money typically involves signing a document called a **mortgage**. This document sets out the terms and conditions for the loan and its repayment. If you fail to meet your obligations under the mortgage, the lender may have the right to take your home to pay off what you still owe.

The easiest way to learn how much money you will be able to borrow as a mortgage loan is to meet with one or more financial institutions. These lenders will look at your family's current income and debts and do a credit check to decide how much they will lend to you.

For more, see our information on mortgages and financing a home purchase.

The costs of buying a home (other than the purchase price)

A home is often the most expensive thing you'll ever buy. Yet the purchase price is not the end of it. There are many extra costs when you buy a home, in legal fees and other transaction costs, and particularly in **taxes**.

Property transfer tax

When you purchase property in BC that is registered at the land title office, you're responsible for paying **property transfer tax**. You pay the tax based on the purchase price of the property. The tax rate is:

- 1% on the first \$200,000 of the price,
- plus 2% on the rest of the price up to \$2,000,000,
- plus 3% on amounts over \$2,000,000,
- and, for a residential property, another 2% on amounts over \$3,000,000

If you're purchasing your first home, you may qualify to reduce or eliminate the amount of property transfer tax you pay. There are other exemptions as well. For details, see the BC government website ^[3].

Other taxes

Other taxes apply in certain circumstances.

If you are a **foreign national**, you must pay an **additional property transfer tax** of 20% if the property is within specified areas of BC ^[4]. These include Metro Vancouver, Greater Victoria, Fraser Valley, Central Okanagan, and Nanaimo.

Goods and services tax (GST) of 5% applies to the purchase price of all newly-constructed or substantially renovated homes. GST also applies to most legal fees and other costs of buying a home.

Provincial sales tax (PST) of 7% applies to most legal fees and other costs of buying a home.

Making an offer to purchase

If you find a home you want to buy, you must make a written **offer** to buy it. Verbal offers and agreements for land may not be valid. A realtor can provide a form, usually from the local real estate board, called a **contract of purchase and sale**. Read it carefully, as this offer can lead to a legally binding contract. If there's anything in it you don't like or doesn't apply, cross it out with a pen, then initial the change. Get the seller to initial any change as well.

What to include in the offer

Give the seller a **time limit** to accept your offer — normally a day or two. If the seller doesn't accept it by then, your offer expires, allowing you to make an offer to someone else.

When someone sells a home, all the **fixtures** go along with it. Generally, a fixture is anything that's attached to the home to the point where removing it would damage the home or require repair. The bathroom sink is an obvious example. The appliances — such as the washer, dryer, fridge and stove — **are not** fixtures. It's best to specifically list in the offer anything that might be thought to be a fixture, that you want the seller to include in the sale — such as appliances, curtains, mirrors or chandeliers. Add a sentence that the purchase price includes these items and make sure each item is listed.

You might want to make your offer conditional on the home passing an inspection by a professional building inspector. To do this, you can use a **subject to clause**, which spells out a condition that must be met before a sale proceeds. While the seller usually gives you a disclosure statement listing any potential problems the seller knows about, you might still want your own inspector to look at the home.

You can also use a subject to clause if you must sell your own home before you can buy the new one. You can make your offer conditional on selling your current home by a date you set.

If you need a mortgage, you can make your offer subject to getting satisfactory financing. This is wise even if the bank has already pre-approved a mortgage amount, just in case.

You may consider a statement saying the offer is subject to your lawyer's approval, so you can have a lawyer check the offer before it becomes a binding contract.

How much to pay as a deposit

When you make an offer, you'll have to make a **deposit**, which you'll want to keep as low as possible. The normal deposit is 5% to 10% of the purchase price. The deposit should be paid to the realtor in trust, not directly to the seller.

If the seller makes a counteroffer

The seller may accept your offer, or may cross out some of your terms and add new ones. If the seller changes your offer in any way, it becomes a new offer by the seller known as a **counteroffer**. The counteroffer cancels your original offer. You must then decide if you want to accept the counteroffer or make a counteroffer of your own to the buyer. You do not have to accept a counteroffer.

Hiring a lawyer

Buying a home is a major expense and a complicated process. As well, there are risks of very bad things happening when buying real estate, if you're not experienced and watchful. For example, people can:

- use a false identity to pretend they are the true owner of a property and sign documents fraudulently
- sell the same property several times in back-to-back transactions to falsely inflate its asking price

These are two examples of **real estate fraud**. To protect yourself, you should consider using a lawyer to advise you through the process of buying a home.

The process to buy a home

Step 1. Decide if you are hiring a real estate agent

Decide if you are going to look for a home on your own or hire a real estate agent.

If you decide to use a realtor, pick someone you trust and are comfortable with.

If you decide to look for a home on your own, good places to start looking are local newspapers and the internet, where there are various listing websites ^[5].

Tip Under the law in BC ^[6], real estate agents must be licensed. You can use the licensee search from the Real Estate Council of BC ^[7] to see if an agent is currently licensed.

Step 2. Make an offer

When you find a home you want to buy, make an **offer to purchase**. A realtor can help you write up the offer on the local real estate board's **contract of purchase and sale form**. Include any subject to clauses for conditions that are important to you, as discussed above.

Tip If you are making an offer on a condominium (also known as **strata housing**), see our information on buying a condominium.

Step 3. Arrange for financing

Perhaps you got pre-approval for a mortgage before making an offer to purchase. If not, as soon as you and the seller have signed a contract for purchase and sale, you should begin the process to get a mortgage, if you need one.

Shop around to get the best terms, and promptly give the mortgage company any documents and information it needs. Usually, a mortgage company will need an **appraisal** of the home before it promises to give you the mortgage. Often, this appraisal will be done at your own expense.

As well, the mortgage company may require certain documents prior to the **completion date** (the date the property transfers from the seller to you and you become the owner). For example, the mortgage company may require:

- **Proof of insurance**, showing you've organized fire and liability insurance coverage for the home.
- **A survey certificate**, showing the home is within the property boundaries.
- **Title insurance**, which is an insurance policy that protects you and them from problems related to the property's title, such as unpaid liens, an encroachment that isn't discovered until later, or fraud.

Tip Once you've arranged your financing, ask the mortgage company to give you a written commitment letter promising to give you the mortgage. You'll need this letter to complete the sale.

Step 4. Remove any subject to clauses

When you're satisfied with the results of any subject to clauses or conditions (for example, the home inspection is fine), you should give written notice to the seller that you're removing the conditions. Once you do this, the offer or counteroffer becomes a legally binding contract. There is no further cooling-off period to change your mind and cancel the contract.

If you can't meet the conditions and don't remove them, the contract ends and you don't have to buy the home.

Step 5. Prepare the transfer paperwork

Most home buyers hire a **lawyer** or **notary public** to help with the paperwork to transfer legal ownership of the home in exchange for the purchase price of the home.

The lawyer or notary will do a **title search**, which shows the registered owner of the home and any charges registered against the property, such as mortgages, liens, or easements. Any existing mortgages and liens will have to be discharged by the seller as part of the sale.

Before the completion date, your lawyer or notary will prepare a document called the **statement of adjustments**. This document shows all money coming in and going out. It covers things you and the seller share, such as the annual property tax bill (the seller is responsible for the portion of the bill until the sale completes, and you're responsible for the portion for the rest of the year). The most important figure for you is the amount you need by the completion date. This is the money you must pay, in addition to your mortgage.

Your lawyer or notary also prepares the transfer documents and sends them to the seller's lawyer or notary. The seller signs the documents and returns them. Then, when your lawyer or notary has your down payment money and the letter from your financial institution promising the mortgage amount, they register the transfer documents and the mortgage with the land title office.

Step 6. Complete the sale

When the land title office confirms the registration of the transfer documents (and your financing cheque has arrived), your lawyer or notary gives the purchase moneys to the seller.


The realtor is then instructed to give you the keys to the home. Enjoy!

Who can help

With more information

The **Real Estate Council of BC**, the body that licenses real estate agents in the province, offers a guide on “Buying a Home in British Columbia.”

- Visit website ^[8]

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Buying a Condominium

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Lisa Frey ^[1], Lawson Lundell LLP, and Taeya Fitzpatrick ^[2], Sabey Rule in July 2018.

Buying a condominium is a lot like buying a house. But there are also important differences. Learn the key things to consider before making an offer to buy a condo.

What you should know

In BC, a condominium is called a strata

The term **condominium** means a building or complex of buildings containing a number of individually owned units or houses. In British Columbia, the term is used informally. The legal term for a condominium in BC is **strata**. In strata housing, the owners own their individual **strata lots** and together own the common property as a **strata corporation**.

More than high-rise condos

Strata housing is more than just high-rise condos. Strata housing can also include duplexes, townhouses, fractional vacation properties — even single-family homes in bare land strata corporations (called **strata subdivisions**).

It's not the size or shape of a development that makes it a strata. Instead, it's the legal structure used. If a development is legally created by a **strata plan**, it's a strata — whether it's a 300-unit high-rise apartment or a two-unit strata duplex.

The law that applies

In BC, the *Strata Property Act* is the main law governing stratas ^[3]. Under this law, a **strata corporation** is created when a **strata plan** is registered in the land title office. A strata plan is a series of drawings and notations, and shows the boundaries of each strata lot and the common property.

Owners of the individual strata lots are members of the strata corporation. Together, they own the common property, pay for the common expenses of the strata corporation, and vote on matters of common interest.

Not all condo complexes are stratas

Some condominium complexes in BC are not set up as strata corporations. Some apartments, townhouses and duplexes operate under various other legal structures, such as housing co-operatives or privately-owned rental buildings. This also occurs on First Nations reserve lands, where provincial property laws don't apply the way they do elsewhere.

Tip If you're looking to buy a unit in a housing development, getting legal advice will help you understand what legal structure is in play, and what that means for you if you make an offer.

A strata development can be freehold or leasehold

Strata developments can be either freehold or leasehold. In a **freehold development**, people hold **fee simple title** to their strata lots. That means they own their strata lots.

In a **leasehold** development, the landlord owns the property, and people hold a **leasehold interest** in their strata lots, for a specific term. These long-term tenants are registered on title, and are treated as owners under strata property law. They must pay the monthly strata fees and any other contributions, and can sell their leasehold interest in the strata lot to the next leasehold buyer.

Most strata developments are freehold, where people own their strata lots.

Tip Be cautious with leasehold developments. Make sure you understand what you are buying and that the leasehold is being valued correctly. The fair market value of a leasehold strata lot is usually much less than the value of a comparable freehold strata lot. Be sure you understand the remaining term of the head-lease, the term of your own leasehold, and what happens when the terms expire. If you are thinking of buying a leasehold strata lot, you should make any offer subject to reviewing the long-term lease and all related documents with a lawyer.

Key things to consider

Considerations in any home purchase

Our information on buying a home covers key factors to consider when buying any type of home, whether it's a strata, a house, or some other type of legal structure. It covers topics such as what to include in an offer to purchase, subject to clauses, counteroffers, financing, fraud risks, the taxes payable, the statement of adjustments, and more.

Here, we explain considerations specific to buying a unit in a strata complex.

The information certificate and related documents

A prospective buyer of a strata lot should review documents that will help them make an informed decision about whether to buy the strata.

Under the law in BC ^[4], a buyer can request the strata corporation provide an **information certificate** (in Form B). This certificate sets out facts about the current status of the strata corporation and the strata lot being sold. The form should include the financial obligations for that strata lot, any parking and storage facilities assigned to the strata lot, the monthly strata fee and any special levy payments outstanding, and other useful facts. The form should attach documents such as the current budget, rules, any rental disclosures statement, and any depreciation report for the strata corporation.

The information certificate also shows if the strata corporation has adopted any new bylaws which will take effect but haven't yet been filed at the land title office, and whether the strata corporation is involved in any lawsuits or arbitration.

Tip Always review a current **information certificate** before making an offer to buy a strata lot. Or you should make your offer subject to reviewing a current information certificate.

Legal documents for the strata

It is also important to review the legal documents for the strata. The **title** to the strata lot lists any covenants, easements and other encumbrances on title. This can reveal limitations on the use of the strata lot or charges that may affect its value.

The **strata plan** shows the boundaries of the strata lot you are thinking of buying. It shows the **unit entitlement** of the lot, which determines the strata lot's proportionate share of contributions, and the schedule of voting rights for the strata corporation. Compare your obligations to those of other strata lots to ensure they are proportionate.

Tip Check the location, dimensions and area of your strata lot. Balconies, parking stalls, storage units and other non-residential areas you may expect to have access to are sometimes configured in odd ways legally. If the purchase of a strata lot includes the use of parking stalls or storage units, confirm the nature of your right to use these areas.

Bylaws, rules and minutes

Strata lot owners must comply with the bylaws and rules of the strata corporation. Read them carefully before you buy.

The **bylaws** of the strata corporation set out owners' specific rights and obligations and give you a good sense of how rigidly the strata corporation controls owners. Look carefully for any pet, age, or rental restrictions and whether they will be a problem for you.

A strata corporation's **rules** set out how common property and common assets can be used. Look for whether they restrict activities that might be important to you. For example, a rule may limit what size of vehicle can park in a common-property parkade, or restrict the hours when a common-property fitness centre is open.

Past **minutes of meetings** of the strata council, and general meetings of the owners, can give you a sense of how active the strata council is, and recent issues the strata corporation has been dealing with, such as water leaks or expensive repairs coming up. Ask for at least two years of minutes (ideally, more than that), and review them carefully.

For new strata developments

For new developments, the owner-developer must give prospective first buyers a copy of an up-to-date **disclosure statement**. This document discloses the intentions of the owner-developer, and has marketing representations, as well as disclosure of legal encumbrances and other important information.

Financial obligations

Make sure you can afford to be an owner in the strata you're considering. Review the financial statements and budget of the strata corporation to assess its financial situation, where money is being spent, and the balance of the **contingency reserve fund** (a fund to pay for infrequent or unexpected common expenses). Review what special levies and other funds have been assessed and spent on major expenses such as repairs.

Monthly strata fees

All strata lot owners must pay a proportional part of the common expenses of the strata corporation by paying **strata fees** for their strata lot. The strata fees are typically based on the strata corporation's annual budget, divided by the unit entitlement which sets out the share for each strata lot. Check the current budget and the information certificate for the current strata fees. Compare the strata fees to other similar developments.

If the strata fees seem high, check if there are expensive recreational facilities or other features, or budgeted items which you will have to help pay for — whether they benefit you or not.

If the strata fees seem low, consider whether the budget is adequate, and be realistic about likely strata fee increases and large special levies that may be needed for expensive repairs.

Other assessments

Strata lot owners may need to pay other expenses, including:

- **Special levies.** A strata lot owner also needs to pay their share of any special levy for extraordinary expenditures assessed against all strata lot owners.
- **User fees.** There may be user fees to use parking or other facilities.
- **Insurance deductibles.** Many strata corporations will charge an owner for insurance deductibles or other charges arising from sources of damage within a strata lot.

The physical condition of the project

The general rule is that every owner in a strata corporation must contribute to common expenses, such as repairs, unless an exception to the rule applies. If the development is in poor repair, you will have to pay your share of the cost to fix it, even if the repairs do not involve your strata lot or the part of the project where your unit is located. You may have to pay for special levies that have been previously approved, with future installments. Future installments should be disclosed in the Form B information certificate.

Review the minutes of strata meetings to see if any major repairs have recently been made or are planned. Ask for copies of minutes for at least the past two years.

Ask to see the strata corporation's depreciation report, and review it for any expensive replacements, repairs or upgrades which have been recommended.

Whether the community is right for you

Review the minutes of strata meetings carefully for issues which might concern you. If you are on a fixed income, or borrowing heavily to buy a strata lot, watch for discussions that might indicate expenses, such as ongoing or threatened litigation, water leaks, building envelope problems, or structural repair concerns.

A careful review of the minutes can tell a lot about the strata. You might see noise complaints relating to an adjacent strata lot, or very strict enforcement of the bylaws, recurring disputes, the existence of factions or similar trends which may concern you. Is there a licensed strata manager involved in meetings? Do they appear to have difficulty electing a full strata council? Does the council meet monthly or infrequently?

Hiring a lawyer

Before making an offer to buy a condominium, consider having a lawyer review the critical documents, including the contract of purchase and sale, legal title to the strata lot, the strata plan, the information certificate, strata meeting minutes, and the bylaws and rules.

If you can't see a lawyer before you make an offer, consider adding a sentence to your offer saying it is subject to a lawyer's review of the strata documents to confirm that no features reduce the use or value of the strata lot. Then take the offer to your lawyer before you remove any of the subject to clauses or the deadline for doing so expires. Buying a strata lot involves risks and pitfalls that a lawyer can help you avoid.

Tip Be very careful about rent-to-own, time share, and other non-standard ways of buying a strata lot — do not sign any agreement without legal advice.

Who can help


With more information

The **BC government's** strata housing website has extensive information for strata owners and strata council members.

Visit website ^[5]

The **Condominium Home Owners Association of BC** promotes the understanding of strata property living and the interests of strata property owners.

Visit website ^[6]

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Mortgages and Financing a Home Purchase

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Nathan Ganapathi ^[1] and Anna Kurt ^[2], Ganapathi Law Group in October 2017.

Almost everyone who buys a home borrows money to pay for it. Doing so involves giving the lender a **charge** against the home. Learn what's involved in getting a **mortgage**.

What you should know

A mortgage gives the lender an interest in your property

A **mortgage** is a type of loan, often used to buy a home or other property. The lender, such as a bank or trust company, provides part (often most) of the purchase price of the property. The borrower promises to pay the lender back, plus interest.

Under the law in BC ^[3], a mortgage gives the lender a **charge** — meaning an interest or a right — against the property being purchased. That charge gives the lender rights if you **default** on the mortgage. The most common way for a borrower to default is by not making payments under the mortgage as promised.

If you default on your mortgage

If you default on your mortgage, the lender can go to court to take the property or sell it to pay the mortgage debt. This process is called **foreclosure**. In a foreclosure, the lender cares about getting its money back. They don't care about getting fair market value for the property or what might be left over for you. It's important to take quick action if you're having difficulties paying your mortgage. See our information on foreclosure.

When you get a mortgage, you sign a mortgage contract

As the borrower, you will be asked to sign a **mortgage contract**. This document sets out the terms and conditions for the loan and its repayment.

The mortgage contract will include:

- the principal amount lent to you
- the interest rate at which the money is lent
- the payments you must make
- the frequency of the payments, which can be weekly, bi-weekly or monthly

The key promises the borrower makes in any mortgage contract are to:

- make payments under the mortgage on time
- give the property as **security** in case of default

In most mortgages, the borrower also promises to:

- pay the property taxes
- keep the property in good repair
- insure buildings on the property against fire and other risks

Most lenders insist on using their own standard mortgage contract, with few variations. But there are typically a few items that can be negotiated. These include the mortgage term, prepayment rights, and whether the mortgage can be

transferred if you sell the property. More on these in a moment.

The lender must give you a copy of the mortgage contract when the mortgage is signed.

Key things to consider in getting a mortgage

Deciding on the mortgage term

Two time periods are relevant to most mortgages: the amortization period and the term of the mortgage.

The **amortization period** is the total time it would take to pay off the mortgage if you make regular payments at the same interest rate. Most mortgages for a first home are amortized over 25 years, to keep the payments affordable, although this can vary. On the other hand, if you have a three-year amortization period, the monthly payments are likely to be high. The shorter the amortization period, the less total interest you are likely to pay in the long run.

The **mortgage term** is the length of time you commit to a specific lender, interest rate, and terms and conditions. Usually, mortgage terms range between six months and five years. Longer terms often have higher interest rates. At the end of the term, you have to pay the remaining amount of the mortgage to the lender. If there are no problems, you can normally just renew your mortgage for another term, at the current interest rate.

Negotiating the right to prepay the mortgage

Putting extra money toward your mortgage is called making a **prepayment**. Prepayments allow you to pay down your mortgage faster or pay off your mortgage before the end of the term. This can save you money and give you more flexibility.

Prepayment terms vary from lender to lender. One of the most important aspects of getting a mortgage is getting prepayment terms that meet your needs.

In an **open** mortgage, the borrower can make extra payments or pay out the mortgage at any time during the term of the mortgage.

A closed mortgage has restrictions on making extra payments or paying out the mortgage early. Some closed mortgages don't allow any prepayments unless you pay a large penalty. Other closed mortgages allow partial prepayments. For example, the lender may allow you to prepay 10% of the balance owing each year without penalty.

If there are no prepayment rights

If a mortgage does not have prepayment rights, many lenders charge a **prepayment penalty** if you want to fully pay it off before the mortgage term ends. Usually the penalty is three months' interest. This is an extra expense if you want to sell your home before your mortgage term ends. If this is a possibility you can imagine, try to get prepayment rights in the mortgage when you get the mortgage (you can't add it later).

If you negotiate prepayment rights

If your mortgage lets you prepay, it's good to do so if you can. Over the whole term of the mortgage, you'll probably pay several times the principal amount of the mortgage. So anything you prepay to reduce the principal will save you a lot of money eventually. That's especially true if you make prepayments in the first years of the mortgage, when more of each payment goes towards paying interest than to paying off the principal.

Why you might want an assumable mortgage

An **assumable mortgage** means if you sell your home, a buyer can take over your mortgage. If interest rates have gone up since you got your mortgage, the lower interest rate of your assumable mortgage will be a good selling point. If a mortgage can be assumed with qualification, it means your lender must approve the buyer before the buyer can assume the mortgage.

If the buyer can assume your mortgage, it's very important to make sure you won't still be responsible if the buyer later stops paying the mortgage. Your name stays on the mortgage and you are still responsible, unless your mortgage lets you apply to the lender to approve a buyer under section 24 of the *Property Law Act* ^[4]. Once the lender approves the buyer under this section, you are no longer responsible for paying the mortgage.

Why you might want a portable mortgage

A **portable mortgage** is one you can transfer to a new property. It is useful if you get a very good mortgage rate for a long term and you move before the term ends, allowing you to transfer the mortgage to the new property without a penalty. You should clarify with the lender that all parts of the mortgage are transferable with the current amount still owing.

On buying a home

Various financing arrangements can come into play when you buy a home.

Cash to mortgage means you **assume**, or take over, the seller's existing mortgage. You pay the seller the balance of the purchase price in cash, and then make the regular payments on the mortgage.

A **vendor-take-back mortgage** means the seller of the home is willing to lend you some of the purchase price. As security for the loan, you give the seller a mortgage on the property.

An **agreement for sale**, also called a **right to purchase**, means you make a down payment, and then make regular monthly payments to the seller. However, the seller remains the registered owner of the property until you have paid the full purchase price. You protect your interest in the property by registering a right to purchase in the land title office. Sometimes, an agreement for sale may be better than a mortgage, because banks and other mortgage companies use mortgage contracts that are to their advantage. If you want to use an agreement for sale, you can negotiate terms more to your liking.

How to get the best mortgage

Shop around and compare, just as you do for other goods and services. Mortgage brokers and real estate agents can be helpful when you're looking for financing, as they have useful contacts with mortgage companies and know current interest rates and market trends. Banks and other mortgage companies are usually willing to give you a lower rate than they advertise, but you must ask for it — they will rarely offer it automatically. Mortgage brokers can also shop around and negotiate rates for you, but they usually charge a fee for their services.


Tip For expanded coverage of mortgages, including step-by-step guidance on getting a mortgage, see our information at peopleslawschool.ca on getting a mortgage ^[5].

Who can help

With more information

The **Real Estate Council of BC**, the body that licenses real estate agents in the province, offers a guide on “Buying a Home in British Columbia” that covers getting a mortgage.

- Visit website ^[6]

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Selling Your Home

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Nathan Ganapathi ^[1] and Anna Kurt ^[2], Ganapathi Law Group in October 2017.

Selling a home is the biggest financial decision most people make. Learn what to consider before putting up the “For Sale” sign, and the steps involved in selling your home.

Key things to consider

You can go it alone or hire a real estate agent

You can sell your own home yourself. Many do. The costs of hiring a real estate agent can be substantial (as the seller typically absorbs the cost on the sale of a home).

But there are advantages to working with a **real estate agent**. Agents are keenly aware of market trends and can help you get the best possible price for your home. They are connected to networks of potential buyers you would have a hard time reaching on your own. And they can help you navigate a complex process, advising on questions such as:

- What facts must you disclose?
- What paperwork is required?
- What about the existing mortgage?
- Who ensures you will get your money?

Tip Under the law in BC ^[3], real estate agents must be licensed. You can use the licensee search from the Real Estate Council of BC ^[4] to see if an agent is currently licensed.

In signing a listing agreement

If you hire a real estate agent, you will be asked to sign a **listing agreement**. This is a contract between you and your real estate agent, setting out the terms for selling your home.

Most real estate agents use a **multiple listing agreement**. This means your agent can advertise and show your home to agents from other real estate agencies (and not just their own). In this way, many potential buyers can learn about your home.

Most listing agreements are standardized forms from the local real estate board. The agent may not have a lot of room to negotiate terms. But there are a few terms to pay particular attention to:

- **Who the agent is representing.** A real estate agent can be hired as an agent for the seller, as an agent for the buyer, or (as we explain shortly, in very limited circumstances) as an agent for both the seller and the buyer.
- **The length of the agreement.** Many agents prefer that the listing agreement continue for three months, but you can choose to list your home for a shorter period. If your home doesn't sell within that time, you can either extend the term of the listing agreement or change agents.
- **The agent's pay.** The listing agreement sets the amount of the agent's pay, or commission. In BC, commissions can be a flat fee or a percentage of the sale price of the home. We explain these two options shortly.

The real estate agent's duties depend on who they are acting for

All real estate agents must act honestly and with reasonable care and skill in performing their work. They also have other duties that depend on who they are acting for.

A real estate agent can be hired as an agent for the seller, as an agent for the buyer, or (in very limited circumstances) as an agent for both the seller **and** the buyer. Under the law, an agent has to explain how these options change their duties to you.

When an agent is acting only for you, as your **sole agent** in selling your home, the agent has these duties:

- a duty of undivided loyalty to you
- a duty to keep your confidences
- a duty to obey all your lawful instructions
- a duty to account for all the money and property you place in their hands while acting for you

Under the rules in BC ^[5], real estate agents in the province can not practice **dual agency**. This means they can not act for both a buyer and a seller in the same transaction, or for two buyers who have conflicting interests. The sole exception to this rule is for property in a remote location that is under-served by real estate agents and it is "impracticable" for the parties to be represented by separate real estate agents.

Before practicing dual agency under this exception, a real estate agent must make a disclosure to both parties to the transaction. The disclosure must inform them of the duties and responsibilities of the agent to the clients, and the risks associated with a dual agency relationship.

The agent typically gets paid after the sale of your home

In BC, a real estate agent's pay (or **commission**) can be a flat fee or a percentage of the sale price of the home.

A common approach is for an agent to charge 7% on the first \$100,000 of the sale price, plus 2.5% on the rest. For example, if your home sells for \$400,000, the commission under this approach would be \$14,500:

Portion of price Commission

7% of \$100,000 = \$7,000

2.5% of \$300,000 = \$7,500

Total commission = \$14,500

As the seller, you pay this commission to your agent. Your agent then shares it with the buyer's agent. The commission is typically deducted from the sale proceeds of the home at the time the sale is completed.

If you have a mortgage on your home

If you have a **mortgage** on your home, you will need to deal with the mortgage in some way in selling your home.

One option to explore is whether a buyer can **assume** (meaning take over) the mortgage. If a buyer can assume the mortgage, this can save you money, avoiding the costs of paying out the mortgage on the sale.

Another option is paying off the mortgage when you sell your home. Many mortgages have restrictions on paying out the mortgage early. Some have a **prepayment penalty**, such as three months worth of mortgage payments. Sometimes a lender will waive the prepayment penalty if the buyer takes out a new mortgage with them, or if you take out a new mortgage with them when you buy a new home.

To find out if your mortgage can be assumed or includes a prepayment penalty, check your mortgage contract. Or check with your lender.

For more on mortgages, see our information on mortgages and financing a home purchase.

If you get an offer to purchase



"After our kids left for university, we decided to downsize. We got four offers on our home at the first open house. I had no idea there was so much to consider. Between the subject to clauses, the offer prices, the closing dates — it was dizzying. And that was before we even figured out the financing part of it."
- Jasmin, Surrey

If someone offers to buy your home, they will present an **offer to purchase**. This is a contract setting out the terms of the sale of your home. It is usually written on a standard form provided by the local real estate board. Once you and the buyer sign the offer, it is a binding contract of purchase and sale.

Your real estate agent is under an obligation to bring all written offers to you for your consideration. If several offers are brought to you at once, you are under no obligation to accept any one offer over another.

If there is anything you don't like in an offer (including the price or the completion date), you can write in your own terms instead. This becomes your **counteroffer**. This is considered to be a new offer altogether. It becomes a binding contract of purchase and sale if the buyer accepts. If the buyer doesn't accept your counteroffer, there is no agreement.

If the offer includes a subject to clause

Subject to clauses are conditions that must be met before a sale proceeds. Common subject to clauses a buyer may include in their offer are:

- subject to the buyer getting financing (for example, a mortgage)
- subject to the buyer getting a property inspection
- subject to the buyer selling their home

If you get an offer with a subject to clause, make sure the buyer has only a short time to remove the condition. Your home may be off the market for the time it takes the buyer to remove the condition, and you will likely want to keep that period short.

As well, the subject to clause should be specific. Don't accept a general clause, such as "subject to buyer obtaining satisfactory financing." If the buyer changes their mind, all the buyer has to do to get out of the deal is to say they couldn't get satisfactory financing. Instead, put details in the clause about the financing — the interest rate and principal amount the buyer is seeking to finance — as well as a deadline for when the buyer must remove the clause. A lawyer who practises real estate law can be helpful in this process.

You must disclose any defects to a buyer

As a seller, you must disclose any **material latent defects** about your home to a buyer. A material latent defect means a defect that cannot be discerned through a reasonable inspection of the property. This includes a defect that makes the home:

- dangerous or potentially dangerous to the occupants,
- unfit for habitation, or
- unfit for the purpose for which the buyer is acquiring it, if the buyer has made this purpose known to the seller.

Common examples of material latent defects include:

- the basement leaks when it rains
- structural damage to the property
- underground storage tanks are located on the property
- problems with the potability or quantity of drinking water
- damage caused by the illegal use of the property (for example, a marijuana grow operation)

Failure to disclose material latent defects can result in future problems, including legal issues if the new owner discovers problems that you were aware of and did not disclose.

What things in the home are included in the sale

When someone buys your home, all the **fixtures** go along with it, unless you and the buyer agree otherwise. Defining a fixture can be difficult: generally, a fixture is anything that's attached to the home to the point where removing it would damage the home or require repair. The bathroom sink is an obvious example. As objects like chandeliers are sometimes items that homeowners are interested in taking with them after the sale of their home, it is important these fixtures are explicitly excluded from the contract of purchase and sale. Better yet, before you put the home up for sale, replace the chandelier with a simple, inexpensive replacement.

Tip The appliances — such as your washer, dryer, fridge and stove — aren't fixtures. They aren't included in the sale unless you and the buyer agree otherwise. You may be able to use them as bargaining tools if the buyer wants them.

On the completion date

The contract of purchase and sale will state the **completion date** for the sale. On that day, legal ownership will transfer from you to the new owner in exchange for the purchase price of the home.

It is the normal practice for the buyer's lawyer or notary public to prepare the documents needed to transfer the legal ownership. You, as the seller, may want to engage a lawyer or notary to act for you. Among other things, they can protect your interests by:

- checking the documents prepared by the buyer's lawyer and explaining them to you
- ensuring your old mortgage has been properly discharged, if this is required
- ensuring you have no further obligation regarding your old mortgage if it is being assumed by the buyer
- confirming all payments for which you are responsible have been made
- arranging for you to sign the transfer documents

The process to sell your home

Step 1. Get a valuation of your home

You will want to know what your home is worth and what it should sell for in today's market. One way to find out is to get a professional **appraisal**. This will give you a value for your home based on what comparable homes in your area have sold for and what it would cost to replace your home. The charge will vary with the appraiser, but is often between \$200 and \$750.

Another way to learn the value of your home is to contact some **real estate agents** who work in your area. They will look at your home and, for no charge, tell you what price they would list the home for and what they'd expect it to sell for. Keep in mind that realtors are not professional appraisers. You may decide to pay for the greater certainty of a professional appraiser's opinion.

Step 2. Find out the details of your mortgage

If you have a mortgage on your home, find out:

- how much is owing on the mortgage
- whether the buyer can assume the mortgage (as we explained above)
- if the mortgage includes a prepayment penalty (also explained above)

To find out these details, check your mortgage agreement and statements. Or check with your lender. If the mortgage can be assumed, ask your lender if the buyer will need a certain income to qualify.

Step 3. Decide if you are hiring a real estate agent

Decide if you are going to sell your home yourself or hire a real estate agent.

If you decide to use a realtor, pick someone you trust and are comfortable with. Word-of-mouth is a good way to find a realtor you can work with. Ask friends, neighbours and work colleagues who have recently bought or sold a home who they worked with and how that experience went. The internet is a good way to locate realtors who specialize in properties and regions that may be of interest to you.

Tip You can use the licensee search from the Real Estate Council of BC ^[6] to see if an agent is currently licensed.

Step 4. Sign the listing agreement

If you hire a real estate agent, you will be asked to sign a **listing agreement**. We explain what to watch for above, under “What you should know.”

The agent will provide you with a copy of the agreement. Keep it for future reference.

Step 5. Consider any offer to purchase

If you get an offer to purchase, review it carefully. Be sure you understand the effect of any **subject to clauses** (explained above).

Tip You may want to have a lawyer check the offer before you sign it. A lawyer can alert you to problem areas or signs of real estate fraud.

Step 6. Complete the sale

Sign the documents, receive your money and turn over your keys. Your home is sold!

Common questions

Do I have to pay a commission even if the real estate agent doesn't sell my home?

Normally, your real estate agent is entitled to be paid their commission when a buyer signs an offer to purchase, and you accept it. The buyer is someone who is “ready, willing and able to buy your home.” If the transaction later falls through, that doesn't necessarily affect the agent's right to be paid. The terms of the listing agreement will be key.

If you sell the home yourself while the listing agreement is active, you may have to pay the commission. Check the terms of the listing agreement.

You may even have to pay the commission if the home sells after the listing agreement has expired — if the agent had previously shown the home to the buyer or was the “effective cause of the sale.”

Tip A lawyer can help you avoid situations where you have to pay a commission even where the realtor doesn't sell your home.

Do I have to pay capital gains tax?

If your home is your principal residence, you don't have to pay tax on any profit (**capital gain**) you make when you sell it. This is called the principal residence tax exemption on capital gains.


If at any time during the period you owned the home, it was not your principal residence, you might not be able to benefit from this tax exemption. A lawyer can advise on whether the principal residence tax exemption applies to you.

Who can help

With more information

The **Real Estate Council of BC**, the body that licenses real estate agents in the province, offers a guide on “Selling a Home in British Columbia.”

- Visit website ^[7]

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Builders Liens

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Garapathi Law group in July 2018.

Occasionally, those who work or supply materials on a construction project aren't paid for the work or materials supplied. A builders lien can help them collect the money they're owed.

What you should know

A builders lien can help someone get paid for work or materials provided to a construction project

The *Builders Lien Act* ^[2] gives an individual or company a **lien** for money they are owed for work or materials supplied on a construction project. This law gives them a lien on the building, the owner's interest in the building, the land involved, and the materials supplied.

When a builders lien is **filed** in the land title office, it becomes a charge against the title to the land which was improved by the work or materials.

A builders lien can be an effective tool for those who provided work or materials on a construction project to recover money they're owed.

Who can claim a builders lien

An individual or company can claim a builders lien if they are any of the following on a construction project:

- workers on the project
- suppliers of materials (including renters of equipment) used on the project
- contractors hired by the owner to work on the project
- subcontractors hired by the contractor or by other subcontractors to work on the project
- engineers or architects on the project

However, a person who performs work or supplies material to an architect, engineer or material supplier can't claim a builders lien.

Why someone might file a builders lien

A lien claimant can file a builders lien in the land title office to secure payment for work or material supplied to a construction project.

A large construction project is like a pyramid. The owner or developer is at the top. They may hire a general contractor. The general contractor may hire several subcontractors to handle specific parts of the job, such as concrete work, plumbing, electrical work, and so on. Those subcontractors may in turn hire workers and material suppliers. Somewhere in this chain of contracts, someone may not get paid.

The *Builders Lien Act* ^[3] *helps those who have worked on a construction project or supplied material to it, but haven't been paid. Under this law, they can file a charge against the land which was improved by the work or materials, to secure payment of the money owed to them.*

A lien claimant must act quickly to file a lien. If they wait too long, they lose the right to do so. Generally, the deadline to file a lien is **45 days** after the project is substantially completed, abandoned or ended. We explain the process to file and enforce a builders lien shortly.

If someone files a builders lien

Because a builders lien is registered against the land, it can interfere with the landowner's ability to sell the property or maintain mortgage financing for a construction project. This may encourage the landowner to take steps to clear the lien, which may involve paying the lien or providing other security.

That said, a landowner may not want to pay off the lien if there is a dispute about whether the claim is valid. Or the landowner may not be the person in default — for example, the lien claimant may have supplied materials to a subcontractor who has not paid for them.

In situations like these, the landowner may not want the property tied up in a long court battle that interferes with selling or mortgaging it. Under the *Builders Lien Act* ^[4], *a landowner can apply to **pay money into court** — either the full amount of the lien or a smaller amount linked to the amount held back from the person who owes the money (we explain the holdback scheme shortly).*

The court can then order the lien to be removed from the title of the property. Then the lien has no further effect on the property. The money paid into court is held as security for the lien — to be paid to the claimant if the lien is eventually proven.

Tip A land title search will typically show whether a builders lien has been filed against a property.

The owner must hold back 10% of the contract price, in case there are liens

On a construction project, an owner could pay the contractor in full, only to see the contractor default on its payment to a subcontractor. Or a subcontractor might fail to pay its workers or suppliers. If all the unpaid parties filed liens, the owner would potentially have to pay twice — once to the contractor and again to the lien holders.

To avoid this unfairness, the *Builders Lien Act* requires an owner to hold back 10% of each payment to the contractor in a special account so there is money available for payment of liens. This is called the **builders lien holdback**.

The owner must hold back 10% of the contract price until 55 days after the general contract is substantially completed, abandoned, or otherwise ended.

After the 55 days are up, if no liens have been filed within the 45-day limit (and no lawsuit making a lien claim has been started), the owner can pay out the 10% holdback to the contractor. But if any liens have been filed, the holdback may be used to help pay these liens.

Often, the total of all liens filed by all claimants is greater than the holdback. The owner does not have to pay lien claimants more than the holdback amount. So claimants may receive only part of their lien — it depends on the details of the situation. The Act sets out how claimants share the holdback.

Contractors must hold back 10% from any subcontractors they hire

BC has a **multiple holdback system**. So contractors and subcontractors must also hold back 10% from any subcontractors they hire. But no holdback can be kept from workers, material suppliers, architects, or engineers — they must be paid in full. The value of these holdbacks may limit the amount a lien claimant can recover under the *Builders Lien Act*.

A contractor or subcontractor can speed things up

Contractors or subcontractors who have finished their part of a project may not want to wait until the whole project is done to get the 10% held back from them. The Act allows a holdback to be released 55 days after a **certificate of completion** is issued for their work. If the architect issues a certificate of completion for their contract or subcontract, the person can get their holdback 55 days after the certificate is issued — unless any liens have been filed within the 45-day time limit or any lawsuits have been filed against the holdback.

The steps to enforce a builders lien

Step 1. A lien claimant files a builders lien

To file a builders lien, the lien claimant must fill out a **claim of lien** and file it with the land title office. The land title office has an online application ^[5] that can be used to complete and file the form. Note the form must include the legal description of the project site — a street address is not enough. The legal description can be obtained from BC Assessment ^[6].

Generally, the deadline to file a lien is **45 days** after the project is substantially completed, abandoned or ended. One of the events that can start the clock running to file a lien is when a **certificate of completion** is issued for a contract or subcontract. Then the deadline is 45 days from the date the certificate was issued.

Tip Even if a claimant has not filed a lien within the time limit, they may be able to sue in court for a portion of any holdback funds that have not yet been distributed. As builders liens involve legal complexities, tight filing timelines, and detailed paperwork, it's wise to get legal advice.[]

Step 2. The lien claimant sues to prove the builders lien

A lien claimant must sue in court to enforce the lien and prove it is valid.

The lawsuit must be started in a Supreme Court registry near the property. The claimant must also file a **certificate of pending litigation** against the property in the land title office after filing the lawsuit.

A claimant must do both these things (sue in court and file the certificate of pending litigation) within **one year** of filing the builders lien. If they don't, the lien is no longer valid.

A landowner — or others on the project — can speed things up

A landowner, or other people involved in the construction project, can give the lien claimant a written notice to speed up the process. If this happens, the claimant must start the lawsuit and file the certificate of pending litigation within **21 days**, instead of the usual year. If the claimant misses this time limit, the lien is removed.

Step 3. The court decides on the lien's validity

If the lien claimant's lawsuit reaches a court hearing, the court decides whether the lien is valid. If the court finds the lien is valid, the court may order the **sale of the property**, and the use of the sale proceeds to pay the lien. If the court decides the lien is not valid, it will remove the lien.

Sales of property to pay liens are actually quite rare. More often, if liens are proven, the amount of the holdback fund available to satisfy the liens is calculated. Then the parties negotiate and the lien claimants are paid their proportionate share of the available holdback funds.

Common questions

I am buying a new home. Should I be worried about builders liens?


Yes. If you buy the home within 45 days of its completion, there could be lien claims filed after you become the owner. You could be in the position of having to pay the liens, even though you already paid the purchase price in full. The *Builders Lien Act* has provisions that deal with this problem ^[7]. These permit buyers to hold back 10% of the purchase price from the seller until the time for filing liens expired. **But these provisions have not been proclaimed.** As a result, you must ensure your contract permits you to hold back funds if the time for filing liens has not expired by closing.

I'm doing a home renovation. Do I need to arrange for a special holdback account?

The *Builders Lien Act* requires an owner to hold back 10% of each payment to a contractor for a period of time, so there is money available for payment of liens. The holdback must be placed in a special account for each contract. The requirement for a special account does **not** apply where the value of work and material supplied is less than \$100,000. This is often the case with a home renovation. (To be clear: the requirement to hold back 10% does apply; the requirement for a special account does not apply.)

What is meant by the term “trust fund” in the builders lien context?

The *Builders Lien Act* says that money received by a contractor or subcontractor for work done constitutes a **trust fund** for the benefit of people they hire on the project. Trust funds cannot be used to the personal benefit of a contractor or subcontractor until they pay the people they hire on the project. A contractor or subcontractor who does not follow these trust rules may be personally liable for **breach of trust**. This is sometimes a way for lien claimants who are not fully paid using their lien rights to recover further amounts owed to them.

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Owning a Condominium

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Lisa Frey ^[1], Lawson Lundell LLP and Taeya Fitzpatrick ^[2], Sabey Rule in July 2018.

Owning a condominium isn't the same as owning a house. In many ways, it's more complex. Learn the legal framework involved, and common questions for those who own a condo.

What you should know

In BC, a condominium is called a strata

The term **condominium** means a building or complex of buildings containing a number of individually owned units or houses. In British Columbia, the term is used informally. But the legal term for a condominium in BC is **strata**. In strata housing, the owners own their individual strata lots and together own the common property as a **strata corporation**.

In a typical high-rise strata building, each unit is a separate strata lot. But strata housing is more than just high-rise condos. Depending on the development, a strata lot may be an apartment, a half-duplex, a townhouse, a retail store — even a single-family home in what's called a **strata subdivision**.

It's not the size or shape of a development that makes it a strata. Instead, it's the legal structure used. If a development is legally created by a **strata plan**, it's a strata — whether it's a 300-unit high-rise apartment or a two-unit strata duplex.

Property that is not part of a strata lot is common property

Any part of the land and buildings shown on a strata plan that is not part of a strata lot is **common property**. Typical common property includes hallways, elevators, gardens, recreational amenities, garbage facilities, the roof, and exterior walls. In addition, some pipes, wires, cables and similar things that carry water and other services within the development may also be common property — even when they're located in a strata lot.

Strata lot owners own common property together

Strata lot owners automatically own a proportionate interest in the common property, together with the other strata lot owners in the development. Under the *Strata Property Act* ^[3], strata lot owners own the common property in a type of co-ownership called **tenancy-in-common**. Each owner's proportionate interest in the common property is set out in a **schedule of unit entitlement** that is filed with the strata plan in the land title office.

The strata corporation may make **bylaws** and **rules** to govern the use, safety and condition of the common property. Every owner can use the common property. They have to follow the bylaws and rules setting out how they can use it.

Limited common property

Sometimes, common property may be set aside for the use of only certain people. A strata can designate an area of common property for the exclusive use of one or more strata lots. This designation is called **limited common property**. For example, in a high-rise condo building, the strata plan may show that a strata lot's balcony is limited common property for that strata lot. This means the balcony is common property, owned by all the strata lot owners as tenants-in-common. But the balcony is only for the use of that strata lot owner.

An owner must allow the strata corporation reasonable access to common property (including limited common property) if it's accessible only through the owner's strata lot (for instance, a common property balcony). Typically, the strata bylaws set the procedure the strata corporation must follow to access common property through an owner's strata lot and make repairs.

A strata corporation governs the strata

When a strata plan is registered in the land title office, it establishes a **strata corporation**. The owners of the strata lots in the strata plan are members of the strata corporation. The board of directors is called the **strata council**.

The strata corporation enforces the bylaws of the strata. The strata corporation manages and maintains the common property and common assets. When a strata corporation itself owns an item (for example, a lawn mower), that item is a **common asset**.

The strata corporation may buy services or goods, and sue or be sued. In fact, only a strata corporation can sue third parties for defects in or damage to common property.

Under BC law ^[4], there are detailed requirements for meetings of the strata corporation. The strata corporation must hold at least one general meeting once a year, called the **annual general meeting** or AGM. At the AGM, members must approve an annual budget and elect a strata council, among other things. The strata corporation must also keep certain records, such as financial records and correspondence, and make them available to owners and tenants on request.

A strata council manages the strata

A **strata council** is an elected group of strata lot owners. It is the board of directors of the strata corporation. The strata council manages the corporation on a daily basis. In larger developments, the strata council may hire a professional management company to help manage the corporation.

Depending on a strata corporation's bylaws, the strata council usually has three to seven members. In some stratas, the tenants or spouses of strata lot owners can serve as council members.

Strata council meetings

A strata council should meet at least once every year. The strata corporation's bylaws set out how council meetings are called. At council meetings, members decide how to govern the strata corporation, including:

- preparing the budget for the strata corporation and paying strata corporation bills
- arranging insurance for the strata corporation
- enforcing the bylaws and rules of the strata corporation, including fining owners for breaches
- handling owner complaints about bylaw breaches or items that require repair or maintenance
- approving strata lot and common property alterations
- managing the common property

Strata council minutes

At each strata council meeting, **minutes** are prepared to record the decisions made at the meeting. There is no required form for minutes, but they should record all council decisions and include details such as who was at the meeting and the business attended to at the meeting. For example, if the council received a bylaw complaint, the minutes should record the council's decision on how to handle the complaint, such as by sending a notice to the offending owner. Minutes do not need to include the discussions that lead to the council decisions.

If sensitive topics are discussed at a council meeting, the council should hold a private or closed meeting (called in **camera**) for that topic. All observers must leave the meeting for that session. And only the result of the discussion is recorded in the minutes.

The strata corporation must keep certain records

Under the *Strata Property Act* ^[5], the strata corporation must keep certain records. Under a regulation ^[6], how long the records must be kept is set out.

Records that must be kept and **updated** include:

- a list of council members
- a list of owners, with their strata lot addresses, parking stall and storage locker numbers, and unit entitlements
- the names of any tenants
- books of account showing money received and spent, and why
- the bylaws and rules of the strata corporation

The strata corporation must also keep certain documents for at least **six years**. For example:

- minutes of all annual and special general meetings, including the results of any votes
- the annual budget and financial statement
- bank statements, cancelled cheques and certificates of deposit
- information certificates issued

Some records must be kept **permanently**, such as:

resolutions that deal with changes to common property, including the designation of limited common property
any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party
any legal opinions obtained by the strata corporation
any depreciation reports obtained by the strata corporation

Any correspondence sent or received by the strata corporation or its council must be kept for at least **two years**.

Where strata records are kept

The law does not say where strata records must be kept. If the strata has a strata manager, it typically keeps the records at its office or place of business.

If the strata does not have a strata manager, the strata council must arrange to keep the required records where they can be inspected and copied by those with a right to inspect and copy the records.

Who has access to strata records

All owners have the right to inspect and receive copies of the strata records. If an owner has assigned their ownership rights to their tenant, the tenant also has the right to inspect and copy the strata records. The owner or the qualified tenant can also authorize, in writing, someone to inspect and copy the records for them.

The strata corporation can charge strata fees

Each year, a strata corporation creates an annual budget. To pay for expenses, the corporation charges proportionate **strata fees** to each strata lot owner based on the schedule of unit entitlement.

To set aside savings for repairs or long-term improvements in the development (for example, a new roof) the strata fees typically include an amount for the **contingency reserve fund**. This is a strata corporation's mandatory savings account to pay for unusual or extraordinary future expenses. Expenditures out of the reserve fund must be authorized by resolution except in emergencies.

A strata corporation may also raise funds at any time by passing a **special levy** if at least three-quarters of the owners approve it at a general meeting. If a special levy passes, each owner must pay a proportionate share of it.

If an owner does not pay monthly strata fees or special levies on time, the strata corporation may register a **lien** in the land title office against their strata lot. Ultimately, the strata corporation may ask the court for an order to sell the owner's strata lot to pay the amount owing under the lien.

The law and rules that apply to stratas

In BC, the *Strata Property Act* is the main law governing stratas ^[7]. In addition, each strata corporation must have **bylaws**. They set out strata lot owners' rights and responsibilities, and control what the place will be like to live in. For example, bylaws may restrict the rental of strata lots. Bylaws may also restrict pets and certain age groups, such as children. In most stratas, the bylaws require strata lot owners to get permission before making significant changes to their strata lot, such as moving walls or making plumbing or electrical changes.

A strata corporation may also have **rules**. Rules apply only to the use and enjoyment of common property and common assets. For example, a rule may limit the size of vehicles that may park in a common-property parkade, or restrict the hours when residents can use a common-property fitness centre.

A strata corporation may change its bylaws by a 75% vote of the owners at a general meeting.

A strata council may pass rules at any time, but any new rules must be ratified by a majority of the owners before or at the next AGM, otherwise they cease to be effective.

Common questions

Can I rent out my condo unit?

Some stratas have a rental restriction bylaw. A strata corporation may pass a bylaw that prohibits all residential rentals or limits the number or percentage of residential rentals.

Sometimes a document called a **rental disclosure statement** may let an owner rent a residential strata lot despite a rental restriction bylaw. If you plan to rely on a rental disclosure statement, have a lawyer review the document. In some cases, it exempts only the first owner of the strata lot from a rental restriction bylaw.

In some cases, an owner can apply to their strata council for an **exemption** from a rental restriction bylaw, if the bylaw causes them hardship. For example, if an owner gets transferred to another city for work and cannot afford to maintain two residences and doesn't want to sell their strata lot, they can apply for an exemption. If the strata council gives them the exemption, the owner can rent their strata lot out without breaching the bylaw.

If you do rent out your unit, choose your tenant carefully. The strata corporation can hold you responsible if your tenant breaks a bylaw or rule.

Can the strata corporation require strata unit owners to pay for certain repairs?

Yes. Strata corporations may impose a special fee (called a **levy**) to raise money for certain critical repairs to common property. A resolution for a special levy must be developed and submitted for approval at a general meeting by a 3/4 vote.

If the special levy is for repairs that are necessary to ensure safety or prevent significant damage to property, and the resolution receives at least majority support, the strata corporation can apply to court to order the special levy approved.

Does a strata corporation need insurance?

Yes. Under the law ^[8], the strata corporation must insure the common property, common assets, buildings shown on the strata plan, and certain fixtures within the strata lot. The strata corporation must also carry liability insurance for property damage and bodily injury.

Strata lot owners need their own insurance for their personal property, for improvements to their strata lot, and liability to others for injury. Owners should also consider taking out extra insurance to cover the strata corporation's deductibles, which can be large. It is not uncommon that a strata's deductible for water damage is \$25,000 or higher.

I'm in a dispute with my strata. What options do I have to resolve it?

Strata disputes can be resolved within the strata corporation or by using systems set up to resolve strata disputes. The BC government strata housing website explains a number of options for informal meetings with the property manager or strata council ^[9].

Alternatively, strata owners, residents, and strata council members may use the **Civil Resolution Tribunal (CRT)** to resolve many strata disputes. This is an online tribunal that encourages a collaborative approach to resolving disputes. See the CRT website ^[10].

Who can help

With more Information

The **BC government's** strata housing website has extensive information for strata owners and strata council members.


- Visit website ^[11]

The **Condominium Home Owners Association of BC** promotes the understanding of strata property living and the interests of strata property owners.

- Visit website ^[12]

The **Office of the Information & Privacy Commissioner for British Columbia's** website includes privacy guidelines for stratas.

- Visit website ^[13]

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Co-operative Housing: Members' Rights and Duties

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Silvano Todesco ^[1], Citadel Law Corporation and David Kandestin, People's Law School in July 2023.

A housing co-operative provides housing to its members. As a member of a co-op, you have a say in decisions affecting your housing, and rights and duties under the law.

What you should know

A housing co-op provides housing to its members

A housing co-operative, or **co-op**, is an organization incorporated under the *Cooperative Association Act* ^[2] that provides housing to its **members**. Members purchase a share to join and elect directors to govern the co-op.

Most housing co-ops in BC are non-profit co-ops with a **rental** (not equity) model of housing. The members are typically people who want to live in a mixed-income community where they have a voice and a vote in decisions affecting their housing.

The laws and rules that apply to co-ops

Under the *Cooperative Association Act* ^[2], a housing co-op must be organized and operated on a cooperative basis. The Act and the regulation under it ^[3] set out the framework for things like how co-ops are managed, general meetings, voting, and ending membership.

The **rules** adopted by the co-op provide more detail on things like:

- the qualifications of members
- the rights of joint members
- membership obligations to use co-operative services and to pay fees
- the transferability of members' interest in the co-op
- board of director matters

- financial matters (such as distributing surplus earnings)
- conditions and procedures for withdrawing or ending membership

The board of directors can set other rules that are approved by the members at a meeting called to do that.

A co-op's **occupancy agreement** is like a lease. It sets out members' rights and responsibilities as residents.

Rights of co-op members

Together, co-op members own their housing jointly and control the co-op's governance and management.

A co-op member must own at least one common share in the association and live in one of the co-op housing units. Normally, a member must be at least 19 years old (although a co-op may allow members as young as 16).

Members can:

- attend, speak, and vote at general meetings where major decisions are made, such as changing policies and rules, setting housing charges, and electing directors
- elect the directors, or run for election as one of the directors if they want to help govern the co-op
- live permanently in their unit as long as they need the housing the co-op provides and accept membership responsibilities (if a co-op ends a person's membership, the person must leave the co-op — if they don't, the co-op can apply to court for possession of the person's unit)
- use services provided by the co-op, at as close as possible to the actual cost
- withdraw from the co-op or transfer their share in it to another person with the consent of the co-op's directors

Joint members

If two or more people are joint members of a co-op, only one of the joint members can be a director at one time, and only the person whose name appears first on the share certificate can vote — unless the co-op's rules say otherwise. All joint members must pay any assessments, levies, dues, fees, payments, and other charges relating to membership. The co-op can collect that money from any joint member.

Tip Co-op members are not tenants, so the BC *Residential Tenancy Act* ^[4] does not apply to them. If a person paying rent is not a member of the co-op, and the co-op or one of its members is the landlord, the *Residential Tenancy Act* may apply to those rental units. You should get legal advice if it's not clear whether residential tenancy laws apply.

Duties of co-op members

Members must follow the co-op rules, which are made by members. They must:

- follow the rules on parking, maintenance of the housing, and participation in the co-op
- attend general meetings and meetings of any committee they belong to
- make their payments to the co-op, in full and on time

The monthly payments co-op members make towards the mortgage, taxes, and operating expenses of the co-op are called **housing charges**, not rent. Some members pay a housing charge based on their income — usually, about 30% of their gross household income. Others pay a housing charge close to market rates.

All money payable is a debt to the co-op. If a member does not pay, the co-op can put a **lien** (a charge) on the member's shares. The co-op can also end a person's membership for failure to pay.

If members have a dispute

Co-ops govern themselves. The **rules** and **policies** of most co-ops have procedures to solve disputes between members and between the association and members. Members should follow those procedures to solve disputes.

If that doesn't work, members can seek help through arbitration or the court system. Arbitration is like court, but less formal. **Arbitration** decisions are final unless the co-op's rules allow the decision to be appealed in court.

If a co-op ends a person's membership, the person cannot use arbitration to appeal that action — they must go to court, as explained shortly. A person with a dispute who is no longer a member has six months after leaving the co-op to seek arbitration or go to court.

Ending a person's membership

Housing co-op evictions must follow the *Cooperative Association Act* ^[2] and the regulation under it ^[3]. A co-op can end a person's membership in any of the following cases:

- if a person **does not pay rent**, occupancy charges, or other money they owe for using the premises
- if the directors believe a person **violated a material condition** in the occupancy agreement, meaning something fundamental to the agreement
- for **conduct detrimental** to the co-op, meaning seriously harmful behaviour

You should look at a co-op's rules and occupancy agreement to see if they say what behavior will harm the co-op and cause it to end a membership.

A co-op must first give notice of the problem to the person and give them a chance to correct it. A motion to end a person's membership for one of these reasons needs approval by 75% of all directors in a meeting called for this purpose. The co-op must give the person notice of the directors' meeting, and let them appear and speak at the meeting.

A person whose membership is ended has the right to a refund of what they paid for their shares, minus any money they owe to the co-op. When a co-op ends a person's membership, the person's occupancy agreement also ends, so they can no longer live in the co-op.

Tip If you are a member of a housing co-op and you have received a letter saying your membership has been terminated, the Community Legal Assistance Society may be able to help.

If a person disagrees with a decision to end their membership

The person can appeal to the members at the next membership meeting and continue as a member until the appeal is heard. But first, they must notify the directors they plan to appeal. And they must do this within **seven days** of when they are notified of the directors' decision to end their membership.

Tip The above right to appeal to the members does not apply if the reason for eviction is for unpaid housing charges. In that case, the appeal starts at the BC Supreme Court.

The next step in an appeal to the members is a meeting of all the members of the association. There, the members vote on whether to uphold or reject the directors' decision to evict. The threshold for approval is typically 75% (for those serious matters described above), but may be 50%+1 for other matters, as outlined in the *"Cooperative Association Act* ^[2] or the co-op's rules.

If the members confirm the directors' decision, the person can apply to the BC Supreme Court to rule that the termination of their membership wasn't justified — because the co-op violated principles of natural justice or its decision was not reasonably supported by the facts or authorized under the *Cooperative Association Act* ^[2].

Tip There is a 30-day limit to appeal a housing co-op eviction to the Supreme Court. It is advisable to seek a lawyer's help to do this, as the documents and process are complex.

Leaving the co-op and recovering unpaid housing charges

If the person's appeals are unsuccessful, they must then leave the co-op.

If an evicted member does not pay what they owe to the co-op, the co-op can sue them. Claims for \$5,000 or less go to the Civil Resolution Tribunal ^[5]. Claims above \$5,000 and up to \$35,000 go to Small Claims Court ^[6]. Claims above \$35,000 go to BC Supreme Court ^[7].

Who can help

With more information

The **Co-operative Housing Federation of BC** website features model rules ^[8] and information for those living in a housing co-op.


Call 604-879-5111 (Vancouver) or 1-866-879-5111 (toll-free)

Visit website ^[9]

If you are a member of a housing co-op and you have received a letter saying your membership has been terminated, the **Community Legal Assistance Society** may be able to help.

Call 604-685-3425 (Vancouver) or 1-888-685-6222 (toll-free)

Visit website ^[10]

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Residential Tenancy

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in July 2023.

BC's residential tenancy law applies to most types of rental housing situations in the province. Learn key aspects of this law, and answers to common questions raised by tenants and landlords.

What you should know

BC's residential tenancy law

Most rental housing in BC is governed by the *Residential Tenancy Act* ^[2]. This is BC's main law setting out protections for tenants and landlords. It applies to rental apartments and rented houses, including secondary suites. It also applies to rentals in many other types of housing, such as rented strata units and rented co-op units.

But it doesn't cover all types of tenancies. For example, tenancies in manufactured home parks are covered by the *Manufactured Home Park Tenancy Act* ^[3].

The Residential Tenancy Branch is the BC government agency that administers the *Residential Tenancy Act*. Here's the branch's website ^[4]. They help tenants and landlords resolve problems by providing a formal dispute resolution process. We explain this process shortly.

Responsibilities of tenants and landlords

Under BC's residential tenancy law, **tenants** are responsible for:

- paying rent and other fees in the tenancy agreement on time
- keeping the rental unit and common areas clean
- repairing any damage they or their guests cause, as soon as possible (this does not include reasonable wear and tear)
- telling the landlord of any needed repairs or problems, such as mice, cockroaches, or bedbugs
- not disturbing other people living in the building or neighbouring property and not letting guests do so either

Landlords are responsible for:

- making sure the rental unit and the building are reasonably safe, healthy, and suitable to live in
- providing a tenancy agreement, condition inspection reports, and giving receipts for rent or other fees paid in cash
- doing repairs and keeping the rental unit and building in good condition
- ensuring the rental unit and building has proper heating, plumbing, electricity, locks, walls, floors, and ceilings (with no water leaks or holes)
- maintaining anything included in the tenancy agreement, such as the fridge, stove, laundry facilities, garages, and storage sheds
- paying the utility bills if utilities are included in the rent

At the beginning of a tenancy

Tenant must-do's before renting

1. Inspect the rental unit carefully, with the landlord, and make sure it's suitable.
2. Read the [tenancy] agreement before signing it.
3. Know who the landlord is and get their full name, address, and phone number.

The tenancy agreement

Under the Residential Tenancy Act ^[5], a landlord must prepare a written **tenancy agreement** for every tenancy. The tenancy agreement must cover several things, including whether the tenancy is periodic (for example, weekly or monthly) or a fixed term, the amount of the rent, when rent is due, what services are included, and the amount of the security deposit. The Residential Tenancy Branch website has a tenancy agreement template ^[6].

Both the landlord and tenant must sign and date the tenancy agreement. Within **21 days** of entering into the agreement, the landlord must give the tenant a copy of the agreement.

If a landlord doesn't prepare a tenancy agreement, standard terms prescribed under BC's residential tenancy law ^[7] apply to the tenancy.

Condition inspection report

The landlord and tenant together must inspect the condition of the rental unit at the start of the tenancy. The landlord must complete a **condition inspection report**, and both parties must sign it. This is a written record of the condition of the rental unit. The report should show if the rental unit is not in good condition. For example, there may be stains on the rug or holes in the walls. The report can include photographs. This report can be useful if there is a disagreement later.

The landlord must give the tenant a copy of the condition inspection report within **seven days** after the inspection is completed.

Ending a tenancy — by the landlord

A landlord can give a tenant a **notice to end tenancy** for certain reasons. The tenant can dispute the landlord's reasons. The most common reasons are explained here.

Notice must be given using the proper form Landlords must give proper notice to tenants if they plan to end a tenancy. There are different notice forms required for different situations. The forms are on the Residential Tenancy Branch website ^[8]. There are also rules about how and when a landlord can serve notice. The branch explains them here ^[9].

For failing to pay rent

A tenant must pay their rent, in full and on time. If they don't, the landlord can give the tenant a **10-day notice to end tenancy** for non-payment of rent. Then the tenant has five days either to pay all the rent owing — which cancels the notice — or to apply for dispute resolution. Otherwise, the tenant must move out within 10 days after receiving the notice.

If a tenant does neither, the landlord can apply to the Residential Tenancy Branch for an **order of possession**. The branch may issue the order without holding a hearing.

A landlord cannot take a tenant's personal property or lock the tenant out for failing to pay rent. If a landlord takes a tenant's property, the tenant can apply for dispute resolution, asking the branch to order the landlord to return the property or pay the tenant for it.

For cause

The landlord must give the tenant **one month's notice** in this case. The most common cause is repeated late payment of rent. Other common causes are disturbing other occupants, seriously damaging the rental unit or the building, or having too many people living in the rental unit.

Other reasons a landlord may point to as amounting to **cause** include taking part in illegal activity that harms — or is likely to harm — the building or other occupants, or breaking a rule in the tenancy agreement and ignoring a landlord's written notice.

For use by landlord or purchaser or their close family member

A landlord must give a tenant **two months' notice** of this. A tenant has 15 days to dispute it. A tenant is entitled to one month's rent when a landlord issues a two-month notice to end a tenancy.

If a landlord or purchaser ends a tenancy with this notice but then doesn't take steps to follow through with the stated plans within a reasonable time, they must compensate the tenant for 12 months' rent. A tenant must apply to the Residential Tenancy Branch to get this extra compensation.

For demolition or conversion

A landlord may want to tear down the building or convert it to condominiums. They must give a tenant **four months' notice** of this. A tenant has 30 days to dispute it. A tenant is entitled to one month's rent when a landlord issues a four-month notice to end a tenancy.

If a landlord or purchaser ends a tenancy with this notice but then doesn't take steps to follow through with the stated plans within a reasonable time, or use the place for the stated purpose for at least six months, they must compensate the tenant for 12 months' rent. A tenant must apply to the branch to get this extra compensation.

New process for renovictions "Renoviction" is a term used to describe an eviction that is carried out to renovate or repair a rental unit. As of 2021, the process changed to end a tenancy for renovations or repairs. The landlord must apply to the Residential Tenancy Branch, which will schedule a hearing. Learn more ^[10].

Ending a tenancy — by the tenant

A tenant can end a tenancy by giving written notice to the landlord. The notice must include the address of the rental unit and the date the tenant is moving out.

For a month-to-month or **periodic tenancy**, the landlord must receive the tenant's notice at least **one month** before the effective date of the notice and before the final month's rent is due.

For a **fixed-term tenancy** that requires the tenant to move out at the end of the term, the tenant can move then without giving the landlord notice. For a fixed-term tenancy that doesn't require the tenant to move out at the end of the term, the tenant must give written notice to end the tenancy at least **one month** before the effective date of the notice and before the day that rent is due.

A tenant may also be able to end a tenancy if a landlord breaches a **material term**. For example, if the landlord refuses to provide essential services such as heat, electricity or water. The tenant must first give written warning that a term has been breached and ask the landlord to fix the breach. If, after a reasonable time, the landlord has not fixed the breach, the tenant can end the tenancy after the landlord receives notice in writing.

How disputes are resolved

Dispute resolution is the formal process for resolving disputes between landlords and tenants. The process involves a **hearing**, like a court hearing, but less formal. Hearings are usually by phone teleconference. Both landlords and tenants can explain their side of the case and call witnesses to do the same.

The Residential Tenancy Branch website explains how to apply for dispute resolution ^[11]. The site also offers tips on how to prepare for a hearing, and how to ask for review of a decision.

Applying for dispute resolution

A landlord or tenant can apply online ^[12] or at a branch office ^[13], unless there isn't one nearby. Then, apply at a Service BC office ^[14]. There's an application fee. The amount depends on the type of application ^[15].

If you apply for dispute resolution, you will receive an information package you must **serve** on (give to) the other side, in person or by registered mail.

At the hearing

The parties have an opportunity to present evidence related to the claim. An **arbitrator** makes a final and legally-binding decision.

Review of a decision

A party to a dispute resolution proceeding may apply to the Residential Tenancy Branch for a **review** of the arbitrator's decision.

A review may only be considered if:

- a party couldn't attend the hearing due to circumstances they couldn't foresee or control, or
- a party has new evidence not available at the time of the hearing (meaning it did not exist), or
- a party has evidence that the decision was obtained by fraud.

Common questions

Can a landlord ask for a security deposit at the beginning of a tenancy?

Yes. A landlord can require a tenant to pay up to a half-month's rent as a **security deposit**. But they can't require another deposit if the rent goes up during the tenancy. A tenant should pay the deposit when they sign the tenancy agreement. They have to pay it within 30 days of moving in. If they don't, the landlord can give them a **one-month notice** to end the tenancy. A tenant should always get a receipt for the security deposit. A landlord has to give a receipt if the tenant pays with cash.

A landlord can also require a **pet damage deposit** of another half-month's rent — but only one deposit, no matter how many pets a tenant has.

A landlord must pay interest on security and pet damage deposits when returning the deposits to the tenant — at the rate the BC government sets each year. The Residential Tenancy Branch website has a deposits calculator ^[16].

What kinds of fees can a landlord charge?

A landlord can charge a **refundable fee** for keys and other access devices — but not if the key or access device is the tenant's only way to access the property. They must repay the fee when the tenant returns the key or device.

A landlord can charge a **non-refundable fee** for things like additional keys, access devices, and garage door openers, and to replace these things. They can also charge a non-refundable fee for certain other things, such as a service charge from a financial institution if a tenant's cheque is returned.

In all cases, the fees can't be more than the actual cost of the items.

When can a landlord increase rent?

A landlord can increase rent only once in a 12-month period and only by the amount allowed under the *Residential Tenancy Act* ^[17]. *The Residential Tenancy Branch website includes a rent increase calculator* ^[18]. *Before increasing rent, a landlord must give a tenant three full months' notice using the form called **notice of rent increase**. The landlord must also serve the notice on the tenant in the way the Act requires.*

Can a tenant sublet their unit?

A tenant can assign or sublet their tenancy agreement with the **consent** of the landlord. The landlord's consent is always required, but the landlord must not unreasonably withhold consent if the tenant has a fixed-term tenancy of six months or more.

If a tenant gets a roommate who does not have a tenancy agreement with the landlord, the roommate is not covered by residential tenancy laws and does not have any standing with the landlord. Disputes between tenants and roommates are not handled by the Residential Tenancy Branch. Instead, the parties would have to go to the Civil Resolution Tribunal ^[19] (for disputes up to \$5,000) or Small Claims Court ^[20] (for disputes from \$5,000 to \$35,000).

Can a landlord enter a tenant's rental unit?

Under the *Residential Tenancy Act* ^[21], *a landlord can't enter a tenant's unit, except in certain specific situations. A landlord can enter a tenant's unit:*

- In an **emergency**, like a fire or flood.
- If the landlord gives the tenant between 24 hours and 30 days **written notice**, saying what date and time they want to come in, and giving a good reason, such as doing repairs or showing the unit to potential tenants or purchasers.
- If the landlord gets an **order** from the Residential Tenancy Branch to enter the rental unit.
- If the landlord wants to inspect the rental unit. They can do this once a month — if they give proper notice.
- If the landlord has the tenant's **permission**.

Except in an emergency, a landlord can come in only between 8 am and 9 pm — unless the tenant agrees to other times. Neither tenants nor landlords may change locks, except in an emergency or if they both agree in writing.

What if a tenant's right to quiet enjoyment is not respected?

Under the *Residential Tenancy Act* ^[22], *a tenant is entitled to **quiet enjoyment** of their rental unit. This includes the right to reasonable privacy and to be free from unreasonable disturbance. A landlord can't interfere, or let other occupants or employees interfere, with a tenant's right to quiet enjoyment of their unit. Noise, sights, and smells can all interfere with quiet enjoyment. If a tenant has noisy neighbours, they can call the police, as well as the landlord. The outcome in part depends on the municipal noise bylaw where the tenant lives. Some municipalities prohibit noise after a certain time at night.*

A tenant can't withhold rent if their landlord or other tenants interfere with their privacy or quiet enjoyment. However, they can apply for dispute resolution and compensation.

A tenant can have guests — they're not the landlord's business. But if it looks like the guests have moved in, the tenant may be breaking the tenancy agreement. The landlord may increase the rent — but only if the tenancy agreement allows for a rent increase if more people move into the rental unit. Or the landlord may try to end the tenancy because of an unreasonable number of occupants.

What if a landlord won't make a needed repair?

If a landlord won't make a necessary repair, a tenant should first talk to the landlord and then make a written request to the landlord to make the repair. If that doesn't work, the tenant can apply for dispute resolution. A tenant should not hold back rent or pay for the repairs, hoping the landlord will pay them back — unless the landlord has agreed in writing to do so.

Can a landlord take away a service?

A landlord can take away a service (but not an essential service) if they give 30 days' written notice to the tenant and reduce the rent by the value of the cancelled service.

At the end of a tenancy, how can a tenant get their security deposit back?

At the end of the tenancy, the landlord and tenant together must do an inspection of the rental unit. The landlord must complete a **condition inspection report**. The landlord must give the tenant a copy of the inspection report within 15 days after the tenant moves out or when they get the tenant's forwarding address — whichever is later. A landlord who doesn't complete the report may lose the right to claim against the security deposit for any damages to the unit or building. A tenant who doesn't do the inspection may lose the right to get their security deposit back.

After a tenant moves out and gives a landlord a forwarding address in writing, the landlord must do one of the following things within **15 days**:

- return the security deposit and any pet damage deposit with interest
- ask the tenant to agree in writing to any deductions the landlord wants to keep and then return the rest of the deposits
- file a dispute resolution application asking to keep some or all of the deposits

If the landlord does not do any of these things, the tenant may be able to get double the deposit provided. If a tenant gives the landlord their written forwarding address within one year of moving out, but the landlord does not return the deposit, the tenant has two years from the end of the tenancy to apply to the Residential Tenancy Branch for dispute resolution and an order that the landlord return double the deposit.

If the tenant does not give the landlord their forwarding address within one year of moving out, the landlord can keep the security deposit and the pet damage deposit.

Who can help

Helpful agencies

Residential Tenancy Branch

BC government agency that helps tenants and landlords resolve problems.

Call 1-800-665-8779

Visit website ^[23]

Tenant Resource & Advisory Centre (TRAC)

Help and advice for tenants experiencing legal problems.

Call 1-800-665-1185

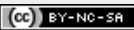
Visit website ^[24]

Landlord BC

Information and advice for landlords and property managers throughout BC.

Call 1-888-330-6707

Visit website ^[25]

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Neighbour Law

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Daniel Sorensen ^[1], Sorensen Smith LLP, Nathan Ganapathi ^[2] and Anna Kurt ^[3], Garapathi Group law in October 2017.

Learn your legal rights and options if you have a problem with a neighbour. Work out problems involving noise, untidiness, dogs, fences, trees, second-hand smoke, water damage, and trespassing.

What you should know

If your neighbour creates noise disturbances

Many of us have had our peace and quiet disturbed by squealing tires, loud stereos, barking dogs, or noisy equipment. What can you do to stop it? First, try talking to the person causing the noise. They may not realize how irritating it is.

Noise bylaws

If that doesn't work, call your city or town hall and ask if there is a **noise bylaw**. If there is one, talk to the person who enforces it. For example, in Vancouver, you would call the environmental health officers. Each municipality's noise bylaw is different, but most are broad. In Vancouver and many other municipalities, the bylaw covers noise from animals including dogs and birds, heavy duty equipment, lawnmowers, loud parties, stereos, and many other things. Usually, the municipality's enforcement officer will try to solve the problem informally. If they can't, they may prosecute the person in court for violating the bylaw.

Causing a disturbance

If the noise is on a weekend or at night and city hall is closed, you can call the police. If a person is screaming, shouting, swearing, or singing to the point they are creating a nuisance for others, they may be **causing a disturbance** — an offence under the *Criminal Code* ^[4]. In all these cases, call the police and report it.

Bringing a lawsuit

You can also **sue** the person causing the noise. You could sue for damages for nuisance or negligence, or ask the court to order the person to stop the noise. But this can be a long, expensive, and stressful process, and there's no guarantee you will win. There may be cases without a solution. For example, a noise or odour may be permitted by zoning or custom (in an industrial or agricultural area). And a court may decide that the noise or odour isn't significant enough to be a nuisance.

If your neighbour keeps untidy premises

Most municipalities have bylaws to control garbage, junk, overgrown yards, or abandoned vehicles. For example, in Vancouver, every property owner must keep their property in neat and tidy condition, consistent with a reasonable standard of maintenance common in the neighbourhood. In these cases, it is best to speak with a neighbour if possible. If this fails or is impossible, your next step is the local government. Explain your situation to the person who enforces bylaws. They may investigate and if your complaint is valid, order the owner to clean up the property. If the owner doesn't, the municipality can clean it up at the owner's expense.

If your neighbour owns dogs

The responsibilities of dog ownership are described in four places: local bylaws, provincial laws, the *Criminal Code*, and the common law.

Local bylaws

Local bylaws cover licensing and may prohibit dogs from being in certain places. You can find a copy of local bylaws at your public library or on your municipality's website. On the website CivicInfo ^[5], you can search across BC local government websites to find local bylaws.

Many local governments have passed bylaws to prohibit dogs running loose. In Vancouver, for example, dogs cannot be on the street or in a public place unless they're on a leash not more than eight feet long (two and a half meters) — except in off-leash parks. As well, female dogs must be kept indoors when they're in heat.

The Vancouver animal control bylaw also requires "aggressive" dogs — those with a known tendency to attack or bite, or dogs that have bitten another domestic animal or person without provocation — to be muzzled or kept indoors or in a pen. The city may seize and impound (for up to three weeks) a dog that has bitten someone. A dog found running loose, or unlicensed, will be taken to the pound and, if it isn't claimed within three days, it may be put up for sale or destroyed. The owner could also be charged fees to cover the cost of impounding the dog, keeping it at the pound, and any veterinary services it needs. The owner may be fined for violating the bylaw.

Health bylaws in Vancouver and elsewhere prohibit dogs in restaurants and other places where food is kept or handled. These bylaws don't apply to private homes, nor do they prohibit seeing-eye or other types of service dogs from entering restaurants or other public establishments.

Vancouver has a bylaw requiring a dog owner to pick up their dog's excrement on property that is not their own. Failure to do so can result in a fine of up to \$2,000. This law does not apply to working seeing-eye dogs or service dogs.

Vancouver's animal control bylaw also regulates the noise of barking or howling dogs. For example, if your neighbour has a dog whose barking unreasonably disturbs the peace and quiet of the neighbourhood, they could be fined up to \$2,000. Other local governments also regulate dog barking in their noise-control bylaws.

Provincial laws

The BC *Livestock Act* ^[6] protects farm animals from attacks by dogs. For example, anyone can harm or kill a dog that is running at large and attacking or viciously pursuing livestock. Livestock includes cattle, goats, horses, sheep, swine, or game.

Under the BC *Community Charter* ^[7], local governments may seize and impound some dangerous dogs. The local government may apply to court for an order to destroy the dog. The local government does not need a specific local bylaw to exercise these powers.

The Criminal Code

It's against the *Criminal Code* to willfully cause unnecessary pain or suffering or injury to any animal or to willfully neglect or fail to provide suitable and adequate food, water, shelter, and care for it. If someone doesn't take reasonable care of their dog, they could face a fine or jail term and a criminal record. Also, if they don't take reasonable care to prevent their dog from harming others, and an attack or injury occurs as a result, they may be charged with criminal negligence.

Under the common law

If someone's dog injures a person, the injured person may sue the dog owner under the common law in civil court. If they succeed, the dog owner has to pay damages for the injuries the dog caused.

A legal concept known as **the doctrine of scienter** applies to dog bites in BC. This doctrine requires the following things to be proven in court for a dog owner to be liable for a dog bite or other attack:

- the person owns and controls the dog,
- the dog has a history or tendency for violence, and
- the owner knew of that history or tendency for violence.

But the court may not follow this doctrine. Or it may apply it in a way that is unexpected. If a dog bites you and you want to know your options, contact a personal injury lawyer. The Lawyer Referral Service can refer you to a lawyer for a free half-hour legal consultation. Call 1-800-663-1919 or visit their website ^[8].

If your neighbour builds a fence

Local bylaws often control how high a fence can be, both natural fences, including hedges, and those built of wood, stone, or other materials. If your neighbour builds a fence higher than the bylaw allows, you can talk to them about it. You can also call the city, which can order the person to obey the law. Without a complaint, your municipality is unlikely to inspect neighbourhood fences to see if they comply with height bylaws.

A fence on a property boundary belongs to both property owners. People often share the cost of a fence, but they don't have to. Both are responsible to keep it in good shape and they must get permission from the other one to take it down. The section below on trespass has more on fences.

If your neighbour has trees or hedges on their property

If your neighbour's tree branches hang over your property, you can cut them, but only up to the property line. You cannot go onto your neighbor's property or destroy the tree. The reverse case is also true.

If a tree on your property somehow damages your neighbour's property (for example, a branch falls on their roof during a storm), you are not responsible for the damage unless it was caused intentionally or through negligence. **Negligence** means you did not take reasonable care or you were warned or knew the tree was damaged or diseased and may fall. But if your tree's roots go under their property and damage their pipes, lawn, or foundation, you may be responsible under the common law principle of **nuisance**. Whether you will be liable for any damages depends on the facts of the case, but normally the courts will not allow use of a property that causes substantial discomfort to others or damages their property.

If your neighbour is a smoker

If your neighbour's smoke comes into your house, you should first speak with the neighbour. If that doesn't work, what to do depends on the situation. Does the smoke come from a tenant? If so, does the lease prohibit smoking? If not, you still have the right to **quiet enjoyment** of your property, and the smoke may violate that right or be a **nuisance** under common law. You can speak to a lawyer if you want to sue because of second-hand smoke.

If your property suffers water damage

Normally, a neighbour is not responsible for damage caused by the natural conditions of land. For example, if rain runs from a neighbour's yard onto your property and makes your lawn soggy and kills the grass, your neighbour is not likely responsible. But if a neighbour changes their property and the change causes more rainwater to run onto your property than before and causes damage, your neighbour may be financially liable to you. Similarly, your neighbour may be liable if they are negligent. An example of **negligence** could include leaving a sprinkler running too long, so that it flooded your property and caused damage.

If your neighbour comes onto your property without your permission


If a neighbour comes onto your property without your permission, they are **trespassing**. If they refuse to leave when asked, you can call the police.

If a neighbour builds a fence or other structure, such as a shed, that **encroaches** on (goes onto) your property, this is also a form of trespass. Often the encroachment is unintentional and can be resolved by getting a land survey. If you have spoken with your neighbour about the matter and have had a survey showing that the structure is encroaching, you can sue your neighbour for trespass. A court can order the neighbour to remove and relocate the fence or structure so it's off your property.

You might consider mediation

If you are unable to resolve the matter directly with your neighbour, you could consider mediation. This involves you and your neighbour meeting with a mediator, who works to help you reach an agreement. Mediation is much less expensive and quicker than taking legal action, and can help preserve a good neighbourly relationship.

Tip On the Mediate BC website, you can search for a mediator ^[9]. You can search based on the community you live in and the type of problem you have (select "Community" under Practice Areas).

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Home Repair Contractors

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in January 2018.

If you own your home, you may want to do some repairs or renovations. Before you hire someone, understand your legal rights and steps you can take to prevent problems.

What you should know

You must hold back 10% of the contract price for a period of time

If you hire a contractor to do improvements on your home, under the *Builders Lien Act* ^[2], you must hold back 10% of each payment to the contractor for a period of time. This is your protection against claims by subcontractors or suppliers who may not have received their share of the payments you made to the contractor. If you hold back 10%, you won't have to pay any more than that to subcontractors and suppliers.

The holdback can be paid out 55 days after the work has been substantially (or mostly) done. This is the time period during which someone can file a **builders lien** for money they are owed for work or materials supplied on the project.

For more on how this builders lien holdback works, see our information on builders liens.

Tip Before you make the final payment to a contractor, do a title search of your property to make sure no builders liens have been filed against it by the contractor or any sub-trade or supplier.

If the contractor charges you more than you expected

If your contractor tries to charge much more than they estimated the work would cost, they may be guilty of a **deceptive practice** under the *Business Practices and Consumer Protection Act* ^[3]. It is deceptive for a business to provide an estimate that is **materially less** than the final price they charge — unless you agree to the higher price before the work is done. If this happens, see our information on if you're not happy with a service. That said, if you keep changing your mind about what you want done or what materials you want, you should expect to pay more than the original estimate.

If you're unhappy with the work

Once repair or renovation work has started, if you don't like what's being done, say so right away. The best way to solve a problem is to talk it over with the contractor first — it could be a simple misunderstanding.

The next step is to put your complaint in writing to the contractor. If the work still isn't satisfactory, you may have to end the contract and order the contractor off the job. If you can't solve the problem by negotiations, you might have to sue. For what's involved in suing, see our information on starting a lawsuit.

Tip For step-by-step guidance on what to do if you're not happy with the work on a home repair or renovation, see our in-depth information on if you're not happy with a service.

Prevent problems

Check on whether you need a building permit

Before you start a home improvement project, check with your city or town hall to see if you need a **building permit**. If you plan to do major work, you may want to hire an architect to supervise the contractor's work and materials. Any work requiring a permit must be inspected by the city when the project is finished, so be sure you understand what standards of construction and safety you must meet.

If you live in a condominium, also check the **bylaws** of the strata corporation to find out if your project is allowed, whether you need the strata corporation's approval, and if there are any restrictions.

Get written estimates for the work

Get more than one estimate, and get them in writing. Most contractors will give a free estimate. You should ask for the estimate to set out clearly the work to be done and the cost of materials and labour, so you know what you're getting for the money. Remember the 5% GST (goods and services tax) and 7% provincial sales tax. Make sure the contractor includes these taxes in the price.

Do research on any contractor you're considering

Cost estimates from potential contractors are one factor in choosing a contractor. But that's not all you should consider. Don't automatically choose the lowest estimate — make sure you get the workmanship and quality of materials you want.

Ask friends if they can recommend a good contractor. Ask contractors for the names and phone numbers of people they've worked for — and check them out.

The Better Business Bureau can tell you if there have been any complaints about a contractor. See their website ^[4]. Also, some trades must be licensed or certified by provincial or municipal authorities; others have voluntary organizations that set standards. Search online to find the appropriate authority or organization to verify the status of the contractor you're considering. You should also ask the contractor to give you the names of any sub-trades they may use on your project — plumbers, electricians, and others — and check them out too. Online searches will often show user reviews of contractors, which may be helpful.

Tip Be careful of home repair contractors who go door-to-door or ask for a lot of money up front. If you think you've been unfairly pressured by a door-to-door salesperson or contractor, you may be able to get out of the contract if you act quickly. To learn more, see our information on door-to-door and direct sales contracts.

Get a written contract

Once you choose a contractor, put your agreement in writing. Don't rely only on a verbal agreement and a handshake. A verbal contract is legal, but it's hard to prove exactly what you both agreed to. A written contract will help you sort out any misunderstandings.

If your contractor makes a promise or a guarantee, include it in your written contract. The law implies certain terms that aren't written — for example, that the work will be done in a proper and workmanlike manner, and that the materials used will be of reasonable quality. But in every case, your best protection is a clear written contract.

Be clear on the contract price and payment terms

One of the terms in your contract will be the contract price and how you are going to pay it. Unless the job is small, you will likely want a definite price based on a written estimate, rather than an hourly rate that may add up to far more than you want to pay.

Also, don't make a large deposit or pay a lot in advance. You don't want to end up paying more than the value of the work and materials you receive. Instead, it's a good idea to pay in **installments**, as the work progresses. The contract should say you will make installment payments, and when you will make them.

As for materials and supplies, remember to put in your contract that you'll pay only for materials used, not for all materials bought — in case the contractor buys too much. The contractor should also agree to give you receipts for all materials bought. And you should verify them.


Be sure to clearly express any **deadlines** your contractor must meet and what happens if they're not met.

Include terms to protect yourself in case someone gets injured

To protect yourself in case someone gets hurt while working on the project, the contract should say that the contractor:

- is bonded and insured to indemnify (pay) you if you are liable for a worker getting hurt on your property
- is registered with Work Safe BC for workers' compensation
- has all required permits and licences (for example, electricians must have a licence to work in BC)

You should also ensure your home insurance covers any damage claims by the contractor.

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Foreclosure

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Nathan Ganapathi ^[1] and Anna Kurt ^[2], Ganapathi Law Group in October 2017.

If you default on your mortgage, the lender can go to court to take the property you mortgaged or sell it to pay the debt. This process is called **foreclosure**.

What you should know

If you default on your mortgage

A **mortgage** is a loan used to buy a home or other property. The lender, such as a bank or trust company, provides part of the purchase price of the property. The borrower promises to pay the lender back, plus interest.

Under the law in BC ^[3], a mortgage gives the lender a **charge** — meaning an interest or a right — against the property being purchased. That charge gives the lender rights if the borrower **defaults** on the mortgage. The most common way for a borrower to default is by not making payments under the mortgage as promised.

If you default on your mortgage, the lender has the right to **accelerate** (speed up) the mortgage. This allows the lender to claim the full balance owed under the mortgage, plus interest and other costs, even though the mortgage term hasn't yet expired.

The lender can start legal proceedings to take the property or sell it to pay the mortgage debt. This legal process is called **foreclosure**.

Tip For more on mortgages, see our information on mortgages and financing a home purchase.

You don't automatically lose your home if you default

Following a missed or late mortgage payment, you don't automatically lose your home. Lenders don't want to foreclose if they don't have to, as it's an expensive process and takes time. A lender will likely not start to foreclose until after two or three months of missed mortgage payments.

If you miss a mortgage payment, the lender will usually send a reminder letter. If they don't hear from you or receive the missed payment, the lender will then follow up with a **demand letter**.

In fact, under the law, the lender *must* send you a demand letter before they can start legal proceedings to take your home.

The demand letter must say exactly what you owe. It must also say that:

- you have to pay a certain amount by a certain date to catch up on what you owe to **reinstate** your mortgage (restore it to good standing), or
- you have to pay the whole amount you borrowed (not just what you owe) plus interest and expenses to **redeem** your mortgage (pay it off).

Exploring options with the lender

If you have a short-term problem, like a temporary layoff from work, you may be able to negotiate with the lender. For example, you might offer to make smaller payments for a time, and add the amounts you fall behind to the total amount of your mortgage. Or, you might offer to make smaller payments for a while and a larger catch-up payment later. Most lenders would rather make some sort of deal and keep the mortgage in good standing, instead of starting foreclosure proceedings in court.

The law tries to help you if you have a good chance of paying what you owe and if you try to get your finances in order. Only in the worst cases are you likely to lose your home and any **equity** you've built up in it. Equity is the amount your home value exceeds your mortgage loan and any other debts registered against your home.

If the lender starts a foreclosure action

After a default, if you don't **reinstate** the mortgage (by paying the amounts you owe) or **redeem** it (by paying the mortgage off fully) within the time set out in the demand letter, the lender can start foreclosure proceedings. Usually, this happens after you've missed three months of payments. But it can happen sooner.

If there's a Supreme Court registry near where your home is located, the lender must start the proceedings there. You will receive a document called a **petition** for foreclosure. This is the lender's notice to you they are bringing a legal action to get back the money they loaned you.

If you receive a petition for foreclosure

Get legal advice right away. If you want to protect yourself and take part in the court proceedings, you must file a **response** to the petition. You have to file this response within **21 days** of getting the petition. You must file the response, together with supporting affidavits, at the court address shown on the petition. You must also deliver two copies of your response to the lender.

Once you take these steps, no one can take any steps in the foreclosure without notifying you. If you don't file a response, the foreclosure will go ahead without you, and you won't be able to protect yourself.

After you file the response, you will get a document called a **notice of hearing**. This sets the date of a court hearing where the lender will ask for an **order nisi**, the initial order in a foreclosure action.

Tip For step-by-step guidance on responding to a foreclosure petition, see our in-depth information on if you're facing foreclosure.

If the lender asks for an order nisi

At the first court hearing in a foreclosure action, the lender asks the court for an **order nisi**. This order sets the length of the **redemption period**, which is the time period during which you can redeem, or pay off, the mortgage. The order nisi also includes a personal judgment against you for the amount you owe.

Under the law in BC ^[4], the default redemption period is **six months**. However, the court can order that it be shortened or extended. One good reason to attend the court hearing is to ask the judge for as much time as possible to get the money to pay off the mortgage or sell the home.

Tip Courts rarely order a redemption period longer than six months. What is more common is to apply later to extend the redemption period beyond six months. You will need to show you have enough equity in the property to pay the lender the amount owed. You also need to show there's a reasonable chance of payment within the added time.

If the lender asks that your home be sold

During the redemption period, the lender (or another creditor) may ask the court for an order for **conduct of sale**. This order gives the creditor control over selling your home to cover what you owe.

You might be able to oppose the order by showing you have equity in the property or you are making efforts to sell the property yourself. You can argue that your efforts to sell the property are preferable, since creditors may be inclined to want to sell the property faster, at a lower price, than you would like.

If the court gives the lender or another creditor conduct of sale, you cannot sell the property yourself. But you may be able to oppose the **approval of the sale**. Court approval must be obtained for any sale. The creditor with conduct of sale presents a buyer's offer at a court hearing. You may be able to argue the offer isn't enough, and that more time should be allowed to get a better price. That said, where there is more than one offer, the property will almost certainly be sold.

Your options during the redemption period

During the redemption period, you have options, depending on your circumstances.

One option is to **redeem the mortgage** (pay it off). To get the money for this, you can try to borrow from another lender or a relative. You might seek a longer repayment period or a lower interest rate. Doing so could allow you to pay off the mortgage and lower your monthly payments. However, getting a loan in the amount needed may be difficult. Most lenders look at your income to decide whether to give you a mortgage and your income may be what caused you to fall behind in your mortgage payments in the first place, resulting in the foreclosure action.

Or you can try to **sell the home**. You could invite several real estate agents in your area to look through your home and tell you what they think it would sell for. Be honest with them about your situation, then choose the realtor you trust the most or feel most comfortable with. If you sell the home, you can use the money from the sale, first to pay any property tax you owe, and then to pay the mortgage and other charges registered against the title, including court costs. If there's any money left over, you keep it. But if the money from selling your home doesn't completely pay off all the lenders, you may have to pay them the difference.

If the lender applies for an order absolute

The final order for foreclosure is called an **order absolute**. It comes after the redemption period ends. If the lender applies for an order absolute and the court grants it, the home then belongs to the lender and you must leave it. You lose all rights to the home.

If the lender gets an order absolute, and registers title in its own name, it cannot make any further claims against you. It can sell the home, but if the sale does not produce enough money to pay off the mortgage, you do not have to pay the difference.

Lenders do not usually ask the court for an order absolute. Instead, they more commonly ask the court for an order for conduct of sale, to sell your home to pay off the loan. If the money from selling your home doesn't completely pay off the mortgage loan, the lender can attempt to collect the difference from you, relying on the personal judgment against you in the **order nisi**.


Common questions

What if I have no equity in my home?

If you owe more than you can sell the home for, you will probably want to get out of the situation with as little expense and trouble as possible. However, you should still take action instead of ignoring the problem. You may want to work with the lender to minimize costs by agreeing to the foreclosure. Normally, you would only do this if the lender will give you a **full release** from your mortgage, meaning you won't owe the lender any more money. If the lender won't agree to this, you can simply let the foreclosure proceedings go ahead and use the time as a rent-free period to get your finances back in order. If any other people or companies with debts registered against your home are not paid from the money from selling your home in the foreclosure, you will still have to deal with them. Otherwise, they can sue you for any money you still owe them.

What if I have a second mortgage registered against my home?

After foreclosure proceedings, any mortgages or charges registered *before* the lender's mortgage continue and are still valid. However, any that were registered *after* the lender's mortgage are cancelled. The holders of those charges lose their security. For example, if you have two mortgages on your home, and the first lender forecloses, the second lender will have to pay off the first lender or lose its security. Then the second lender would have to try to get you to pay its loss.

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Rights & Citizenship

Defamation: Libel and Slander

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Daniel Coles^[1], Owen Bird Law Corporation and Christopher Morcom^[2], Pacific Law Group in February 2022.

The law of defamation protects a person's reputation from unjustified harm. Learn what kinds of communication are considered defamatory, as well as the defences to a defamation action.

Common questions

What is defamation?

Defamation is communication about a person that tends to hurt their reputation. It makes people who read or hear the communication think less of that person.

The communication must be made to other people, not just conveyed privately.

If defamation is spoken, it's called **slander**. If it's written, it's called **libel**.

The law protects you from defamation. If someone defames you, you can sue them for money (called damages) for harming your reputation.

What kinds of communication can amount to defamation?

To establish a defamation claim, you must show that the communication meets three requirements. You have to show that:

- the communication was **defamatory** (that it would tend to lower your reputation in the eyes of a reasonable person),
- it referred to **you**, and
- it was communicated to **at least one other person**.

Personal insults that only injure your pride normally don't satisfy this test. But if someone spreads rumours accusing you of a crime, for example, you'd have a much stronger claim that this harms your reputation.

What kinds of damages might be awarded in a defamation lawsuit?

If the person bringing a defamation lawsuit (the "plaintiff") can prove they were defamed, and the defendant doesn't have a defence to the claim, a court may award **damages** for loss of reputation. These are often called **general damages**.

Awards for general damages vary widely, from a few thousand dollars to tens of thousands of dollars. They depend on several factors, including:

- the plaintiff's position and standing in the community,
- the nature and seriousness of the defamation,
- the mode and extent of publication,
- the absence or refusal of any retraction or apology, and
- the conduct of the defendant from the time of the defamatory statements to judgment.

How widely the remarks were shared is an especially important factor in assessing damages in internet defamation cases. The plaintiff may also be entitled to **special damages**, such as lost earnings, but only if they can prove that the lost earnings resulted from the defamatory statement, and not from other factors.

If someone makes defamatory statements with malice, the plaintiff may also be entitled to **aggravated** or even **punitive damages**.

For more on how damages work, see our in-depth guidance on defamation ^[3].

What's involved in suing someone for defamation?

In BC, you must bring a defamation lawsuit in BC Supreme Court, not Provincial Court. It must be brought within two years of the defamation. This window of time is the **limitation period**. The clock begins when the defamatory statement was made or published. To start the lawsuit, you must file documents in court and deliver them to ("serve" them on) the other party. For details, see our information on starting a lawsuit ^[4].

Consider alternatives to going to court Going to BC Supreme Court is expensive. Even if you win, you may spend more on legal fees than you get in damages. A court can award costs to the winner of a lawsuit, but costs cover only a small portion of your full legal costs. If possible, it's best to resolve the dispute outside of court. See our guidance on alternatives to going to court ^[5].

What if someone accuses me of defamation?

To establish a defamation claim, the person accusing you must show that:

- the communication was **defamatory** (that it would tend to lower their reputation in the eyes of a reasonable person),
- it referred to **them**, and
- it was communicated to **at least one other person**.

If your accuser proves these three elements, the onus shifts to you to put up a defence. The following six defences are available to you:

- **Truth**, also known as justification, if the defamatory statement is substantially true and you can prove it.
- **Absolute privilege**, if the statement is made in certain proceedings (like a lawsuit).
- **Qualified privilege**, if the statement is made in performing a public or private duty.
- **Fair comment**, if it's a statement of opinion, based on stated and true facts, on a matter of public interest.
- **Responsible communication on matters of public interest**, if the statement concerns a matter of public interest and was made responsibly. This includes being diligent in trying to verify the statement and seeking the other party's side of the story before circulating it.
- **Innocent dissemination**, if the person distributed the defamatory statement unknowingly, and wasn't negligent in not knowing. And they must have immediately removed the statement on learning of the defamation.

For more on each of these defences, see our guidance on if you've been accused of defamation ^[6].

What is the effect of an apology?

One factor a judge will look at in deciding on a damages award for defamation is whether the person accused later retracted their statements or offered an apology. If they can show they made an effort to walk back their remarks, it's likely they'll pay less in damages if the matter goes to court.

But an apology or retraction doesn't prevent someone from suing for defamation. It just limits the damages.

Explore further

More questions & answers At a webinar ^[7] in March 2022, lawyer Daniel Coles answered common questions about defamation, including what it is and what you can do about it.

Who can help


Legal advice

Lawyer Referral Service

Helps you connect with a lawyer for a complimentary 15-minute consult to see if you want to hire them.

Call 1-800-663-1919

Visit website ^[8]

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Freedom of Information and Protection of Privacy

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Courtenay Catlin^[1], Alexander Holburn and Christopher Morcom^[2], Pacific Law Group in April 2022.

Increasingly, organizations — both private and public — are collecting your personal information. Learn about the laws allowing you to access this information and limiting how it can be collected, used, and disclosed.

Common questions

What laws govern information and privacy rights in British Columbia?

In BC, your privacy rights are protected by two main laws.

The *Freedom of Information and Protection of Privacy Act*^[3] applies to public organizations, like local governments, schools, and hospitals. It also applies to bodies that govern professions in the province, like the College of Physicians and Surgeons of BC (which governs doctors) and the Law Society of BC (which governs lawyers). Here's a list^[4] of the professional governing bodies this law covers.

The second one, the *Personal Information Protection Act*^[5], covers data about you collected, used, and disclosed by private organizations, unincorporated associations, trade unions, trusts, or non-profits. This includes stores, hotels, banks, and doctors in private practice.

These two laws regulate how your personal information is allowed to be collected, used and disclosed. They also set out your rights around consent to the collection, use, and disclosure of your data, knowing how much of your data is out there, and what's being done with it.

For a closer look, visit the BC privacy commissioner's website^[6].

How do I request access to my personal information?

In some cases, a simple phone call or email directly to the organization that has your information will work.

But if that route proves unsuccessful, you can send a **written request**. The organization will have a department or person that handles such queries. If they don't, you can send your request to the organization's general address. It's their responsibility to have a procedure in place to deal with these requests and make a reasonable effort to assist you.

For example, if you want to see records on an ICBC claim, you could send a written request to the information and privacy branch of ICBC. ICBC offers guidance on how to make such a request^[7].

Here's another example. If you want access to information about how your local gym collects, uses, and discloses your personal information, you can send a written request to the gym's privacy officer, or to the gym's general contact address.

The BC privacy commissioner's website provides template letters you can use^[8]. As well, many organizations have their own templates and internal procedures. If they do, this is a good place to start.

How long does a public body or organization have to respond to my request for access to information?

Under the law, public bodies have **30 business days** to respond to your request for information. They can't charge you for a request that relates to your own personal information. But they *can* charge you fees for finding, copying, retrieving, and producing records about anything not related to your personal information if it takes more than three hours. (You can ask them to waive the fees if you can't afford them, or if the information is in the public interest.)

Private organizations also have **30 business days** to respond to your request. They can't charge you a fee for a request that relates to your "employee personal information." This is personal information collected, used or disclosed to establish, manage or end an employment relationship. But, just like public bodies, they can charge a small fee to access information that isn't employee personal information.

What types of information can't I request access to?

You may not be able to get certain records, such as Cabinet records, someone else's personal information, court files, current work files of the Auditor General or Ombudsperson, or certain information if its disclosure would harm private business interests. You may also not be able to see information if its disclosure would harm a law enforcement matter, or harm people or public safety.

If you're asking for information from a public body, you may ask for certain information to be "severed" from the record. This means you can access the information, but the sections you aren't entitled to see are blacked out (or "redacted").

What can I do if my request for information is refused?

If either a public body or private organization refuses your request for information — or if you're not satisfied with its response — you can ask BC's information and privacy commissioner to **review** the response. You have up to **30 business days** to do this after you receive a response.

The commissioner is independent of the government. They review the decision and can order information to be released — so long as it's information the law gives you the right to see.

See the privacy commissioner's website for how to ask for a review ^[9].

What if someone's information about me is wrong?

An organization must make reasonable efforts to ensure your personal information is accurate and complete.

You can ask a public body to correct any factual error or omission (but not opinions or judgments). If they refuse your request, the law requires them to mark your information with the correction you requested.

You can also ask a private organization to correct any inaccurate personal information. Again, if the organization refuses your request, the law requires them to mark your information with the correction you requested.

If you aren't happy with the decision of the public body or organization upon a correction request, your next step is to ask the privacy commissioner to review the decision.

What if I'm upset with how my personal information is being handled?

If you disagree with how your personal information is being managed, you should first complain directly to the public body or organization. Give them a reasonable amount of time to respond.

If that doesn't resolve the issue, you can file a complaint with BC's privacy commissioner. The commissioner's website explains the process to make a complaint ^[10].

Who can help

With more information


Office of the Information and Privacy Commissioner

Oversees BC's laws relating to privacy and access to information.

Call 1-800-663-7867

Email: info@oipc.bc.ca

Visit website ^[11]

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Human Rights and Discrimination Protection

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Laura Track^[1], Community Legal Assistance Society and Sara Hanson^[2], Moore Edgar Lyster LLP in May 2022.

British Columbia has a human rights law to help protect you from discrimination. Learn what it covers, and steps you can take if someone discriminates against you.

Common questions

What is discrimination?

Discrimination is when someone treats you differently because of who you are in a way that puts you at a disadvantage. BC's human rights law^[3] prohibits discrimination on the basis of certain personal characteristics. They are:

- your race, colour, ancestry, Indigenous identity, or where you're from
- your religion or political beliefs
- your marital or family status (for example, if you have kids)
- any physical or mental disability
- your sex, sexual orientation, or gender identity
- your age

The law calls these **protected grounds**. If you experience negative treatment on the basis of one of these protected grounds, it could be discrimination. For example, it's discrimination if a landlord refuses to rent to you because of your race.

Discrimination can also occur where a policy or practice affects you differently than others because of a protected ground.

For more, see our primer on discrimination^[4].

In what settings is discrimination prohibited?

BC's human rights law^[5] protects you from discrimination in these areas of everyday life:

- **employment**, including hiring, the terms and conditions of your work, and getting let go from a job
- **housing**, including renting a place, living in a strata, and buying a home
- **accessing a service** available to the public, like shopping at a store, eating at a restaurant, or staying at a hotel
- **publications**, like a public notice, sign, flyer, or article

We dig into the specifics in our coverage of discrimination in employment^[6], housing^[7], and accessing a service^[8].

What do I need to show to establish discrimination?

To establish discrimination, you need to show three things:

- You have a personal characteristic protected from discrimination.
- You were treated badly or suffered a negative outcome in a protected area.
- The personal characteristic was a factor in the treatment or outcome.

The protected characteristic doesn't need to be the only or most important factor. It just needs to be a partial factor.

If you can show these three things, then the other party (who your complaint is against) will have an opportunity to try and justify their conduct. If the conduct is justified, it's not discrimination.

What does “duty to accommodate” mean?

Where someone experiences a negative outcome in a protected area due to a protected characteristic, the law imposes an obligation on certain people to take steps to limit the negative impact. This is called the **duty to accommodate**. It requires landlords, employers, and service providers to remove the negative effect, to the best of their ability.

The duty to accommodate extends to the point of **undue hardship**. This recognizes that sometimes accommodation might cost too much, or would have negative consequences for others.

We dive deeper into the duty to accommodate in our guidance on discrimination ^[4].

What are my options if I experience discrimination?

If you're discriminated against, you have options.

You can **make a human rights complaint** to the BC Human Rights Tribunal. The tribunal deals with complaints under BC's human rights law ^[5]. It operates like a court but is less formal. It has staff who can help you settle your dispute directly with the other party. If that's not possible, there's a hearing to decide if there was discrimination. We explain the process to make a human rights complaint ^[9].

If the discrimination is at your place of work and you belong to a union, your union may be able to help you. Or you may be able to complain to the Employment Standards Branch, the government office that administers BC's main employment law ^[10]. Depending on the context, you may be able to sue for wrongful dismissal. See our in-depth info on discrimination at work ^[6] for more.

Who can help

With a human rights complaint

BC Human Rights Clinic

Provides free assistance and representation to those who qualify for help with a discrimination complaint under BC law.

Call 1-855-685-6222


Visit website ^[11]

University of Victoria Law Centre

Provides help with human rights claims for eligible people in Greater Victoria.

Call 1-250-385-1221

Visit website ^[12]

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Charter Rights: Overview

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Brock Martland ^[1], Martland & Saulnier in July 2018.

The *Charter of Rights and Freedoms* is one of Canada's most important laws. Learn the key rights and freedoms protected by the Charter and how to enforce your Charter rights.

What you should know

The Charter protects a broad range of rights and freedoms

The *Charter of Rights and Freedoms* ^[2] is part of Canada's Constitution and protects a broad range of rights and freedoms.

The Charter guarantees certain **fundamental freedoms**:

- freedom of conscience and religion
- freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication
- freedom of peaceful assembly
- freedom of association

The Charter guarantees **democratic rights**. It gives every Canadian citizen the right to vote in federal and provincial elections. It sets the maximum time between elections.

The Charter guarantees **mobility rights**. It gives every citizen the right to enter, remain in, and leave Canada. It gives everyone the right to move to and pursue a living in any province.

The Charter guarantees a number of **legal rights**, including the right to:

- life, liberty and security of the person
- be secure against unreasonable search or seizure
- not be arbitrarily detained or imprisoned

- be informed promptly of the reasons for any arrest or detention
- have a lawyer, if you are arrested
- be presumed innocent until proven guilty in a fair and public hearing by an impartial tribunal, if you are charged with a crime
- not be subjected to cruel and unusual punishment
- not have evidence you give be used against you

The Charter guarantees **equality rights**. It says everyone is equal before the law and has the right to equal protection of the law, without discrimination. It highlights the right to be free of discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The Charter also makes English and French the **official languages of Canada**.

Tip For more detail on legal and equality rights under the Charter, see our information on legal rights and equality rights.

Charter rights and freedoms are not absolute

The Charter itself recognizes that some laws might violate the Charter yet be justifiable in the broader public interest. Where a law violates a Charter right, a government can try to justify the violation as a **reasonable limit** under section 1 of the Charter. Under that section, a reasonable limit needs to be “prescribed by law” and “demonstrably justified in a free and democratic society.”

If a government tries to rely on section 1 to justify a Charter violation, a court can decide if the violation is a reasonable limit. The court will look at whether the law has an important objective, and whether the government chose a proportionate way to meet that objective — a way that interferes as little as possible with Charter rights. For example, could the government achieve its objective in another way, without violating Charter rights? Does the law do more harm than good?

Section 1 applies only to written laws. It does not apply to **government actions**. Examples of government actions would be the actions of a police officer in making an arrest, or a decision by a government department to deny benefits. In these situations, where a government action violates the Charter, section 1 does not let the government try to justify the violation. The action is unconstitutional. Lawyers call this a Charter breach.

The Charter includes a “notwithstanding” clause

If a law cannot be justified as a reasonable limit on a right or freedom, a federal or provincial government can try to declare that the law operates **notwithstanding** the Charter. The Canadian Parliament has never used this notwithstanding clause, but Quebec, Alberta, Saskatchewan, and Yukon have done so.

The Charter applies to government, not the private sector

You can't rely on the Charter to challenge every violation of your rights. The Charter controls **laws** and **government actions**. It doesn't control private citizens, businesses, or organizations. Before you can claim the Charter's protection, you must show that the government, or some agency very closely connected to government, such as a school board or labour relations board, violated your rights.

If a private individual, organization, or company violates your rights, you may be able to assert a claim under human rights law. Depending on the situation, you might be able to rely on the *BC Human Rights Code* or the *Canadian Human Rights Act*. For more, see our information on human rights and discrimination protection, and protection against job discrimination ^[3].

To enforce your Charter rights

Canadian courts interpret and enforce the Charter. Courts have the power to strike down and invalidate laws or government actions. They will do so if necessary to defend a protected right or freedom. If you think a provincial or federal law or action violates your Charter rights, you can ask a court to strike down the law or grant another **remedy**. A remedy is a court order to give someone their legal rights or to compensate them for their rights not being respected.

What a court can do depends on what you ask for. You may ask a court to declare that your personal rights have been violated, or to give you a personal remedy. In criminal cases, for example, an accused person can ask the court to end the trial or to exclude evidence obtained in violation of the Charter.

Or you may ask a court for a general remedy not specific to your case, such as striking down a law entirely.

In considering a Charter challenge, the court will generally assess two questions.

First, were your rights under the Charter violated?

You have to show the court that one of your Charter rights was violated. This usually means persuading the judge that a law or government action violated a specific Charter right. For example, you might complain that a law restricting what signs you can put in your window violates freedom of expression. If you prove a violation, the court will move on to a second question.

Second, can the government justify the law as a reasonable limit?

If a court finds the government violated your rights, the next step depends on what caused the violation: was it a written law, or was it an action by government? If government action caused the violation, the government does not get a chance to justify the violation.

If a written law violated your rights, the court will then consider whether the government can justify the violation as a reasonable limit under section 1 of the Charter. Charter rights are balanced against the rights of others and the interests of society. The court will consider: Is the violation reasonable and justified in a free and democratic society? To decide that, the court looks at several things, including whether the benefits of the law are significant enough to justify violating a Charter right, and whether the government could have achieved its objectives in some other way that did not violate anyone's rights or freedoms.

Typically, the government tries to show the law's objective is important to Canadian society, and the violation of Charter rights is minimal. The more severe the violation, the harder it is for government to justify it. Charter cases can be hard to resolve because courts have to consider and balance many competing interests. The court must go beyond the narrow facts of one case and consider the competing interests in relation to a law and how it operates for society.


Remedies if a Charter right is violated

If you prove a violation of a Charter right, and the government cannot justify the violation as a reasonable limit under section 1, the next question is what kind of remedy or consequence is appropriate. Different kinds of remedies apply to different types of cases.

In some cases, a broad remedy may be necessary, such as declaring that a law is unconstitutional. This is often referred to as "striking down a law." For example, if the government passed a law that discriminated based on gender, the court could strike down the law, giving a remedy that helps everyone affected by the law.

In other cases, an individual (personal) remedy is ordered. Section 24 of the Charter allows a person whose rights have been violated to apply to a court for a remedy the court considers appropriate and just in the circumstances. If a government official took the action — for example, a police officer conducted an unreasonable search — the court will

often give an individual remedy that helps only the person whose rights were violated. The court may say that (for example) drugs found during an illegal search can't be used as evidence in the accused person's criminal trial. This helps the accused person, but it doesn't change the law for anyone else.

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Charter Rights: Legal Rights

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Brock Martland ^[1], Martland & Saulnier in July 2018.

A number of legal rights are enshrined in the *Charter of Rights and Freedoms*. Learn about these rights, and what a court can do if your legal rights are violated.

What you should know

The Charter guarantees a number of legal rights

The *Charter of Rights and Freedoms* ^[2] is part of Canada's Constitution and protects a broad range of rights and freedoms. Among the rights guaranteed by the Charter are a number of **legal rights**. Several are aimed at ensuring anyone accused of a crime is treated in a just and fair manner. Some apply to witnesses who testify in court proceedings.

Some of these rights existed long before the Charter. Some added to or improved the rights Canadians enjoyed before the Charter became law in 1982.

The legal rights in the Charter most often apply in criminal cases. They can also come into play when people deal with government agencies.

Tip For more on your rights under the Charter, see our overview of the Charter and our information on equality rights.

Right to life, liberty and security of the person (section 7)

Everyone has the **right to life, liberty and security of the person**, and the right not to be deprived of these things except in accordance with the "principles of fundamental justice."

Section 7 of the Charter protects more than just the right to physical liberty — the right not to be held against your will without proper process. It also protects the right to be free from physical assault and interference, and the threat of these things. The Charter protects conduct that people are free to pursue. If the government interferes with your liberty or security, it must follow fair laws and procedures.

For example, if a law said you can be sent to jail for six months if your spouse commits robbery, a court could potentially rely on section 7 to strike down this law. The court could say the law takes away your liberty (as you could go to jail) and

does not follow the principles of fundamental justice — one of those principles being that you must be personally responsible for a crime to be convicted; it is not enough just to know someone who did the crime.

The right to remain silent

An important right under section 7 is the **right to remain silent** if you are suspected of a crime. The police cannot force you to answer their questions, but they may continue to ask questions even if you say you do not want to answer.

Although the Charter gives a broad right to remain silent, under some laws, you may be required to identify yourself or give some information — for example, if you are crossing a border into Canada or driving a vehicle stopped by the police.

In some cases, the police may not be clear about a person's obligation to answer questions. If there's uncertainty, you should ask the officer if you must answer the questions. Refusing to identify yourself to the police can sometimes create problems. For example, if you won't identify yourself and do not have identity documents, the police might detain you to learn your true identity. One option is to give your name and date of birth but nothing more, unless the officer says you have a legal duty to give more information.

Right to be secure against unreasonable search or seizure (section 8)

Everyone has the **right to be secure against unreasonable search or seizure**. Section 8 of the Charter controls the laws that allow police to search your home or place of business, your phone or computer, your car, or even you, in certain cases. It also controls the actions of individual police officers.

Before police can search or seize, they must have a good reason to do so. For example, if the police suspect you have stolen cellphones, they cannot just enter your apartment and search you and your rooms. The police can go to court to get a search warrant, explaining their reasons. If the court agrees those reasons are sufficient, they can issue a warrant authorizing the search.

Section 8 does not protect your privacy in all cases. It depends on the context. Courts focus on the person's expectation of privacy in the place, thing, or information at issue. For example, if you leave property at a friend's house or put garbage out on the sidewalk for pickup, you don't have a reasonable expectation of privacy in those places. On the other hand, if you password-protect your personal computer at your home, you have a strong expectation of privacy.

Right not to be arbitrarily detained or imprisoned (section 9)

Everyone has the **right not to be arbitrarily detained or imprisoned**. Something is arbitrary if there is no good reason for it. Being detained is when you are kept somewhere you don't want to be.

The *Criminal Code* and other laws set out when someone can be detained or arrested. Those laws must be consistent with section 9 of the Charter. For example, police can only detain you if there are **reasonable grounds** (good reasons) to suspect you are connected to a crime. If police arrest you, you must be brought before a justice of the peace (a court officer who deals with process matters) as soon as possible — normally within 24 hours — to see if you can be released from custody. The police cannot hold you in custody without justifying this is needed.

Another example: let's say the police stop you as you walk along the sidewalk. If the police reasonably believe you are connected to a crime, they have a legal power to stop (that is, detain) you to ask questions. If the police have reasonable grounds to arrest you for committing a crime, they can arrest you. But if the police are just making conversation, you can ask the police whether you are free to go. If the answer is no, you are being detained, and you could ask the police what legal authority they are relying on to detain you.

Right to know the reasons you're arrested or detained (section 10)

Everyone, if police arrest or detain them, has the **right to be informed promptly of the reasons for the arrest or detention**.

You also have the right to speak to a lawyer immediately — before the police question you — and to be told you have that right. The police must give you privacy and a way to exercise your right to call a lawyer.

Rights if you're charged with a crime (section 11)

Section 11 puts several fundamental principles of Canadian criminal law into the Charter. It controls how a person charged with an offence is treated in a criminal case. Some of these rights, such as the **right to be presumed innocent** until proven guilty, and the **right not to be a witness against yourself**, existed long before the Charter. One important right with a powerful effect under the Charter is the **right to a trial within a reasonable time**. Another is the **right to be informed of the specific offence you are charged with**, without unreasonable delay.

Section 11 also gives a person charged with an offence the **right to reasonable bail** unless there is just cause (a good reason) to deny it. Section 11 provides a **right to trial by jury** if an offence can be punished with jail for five years or more (the *Criminal Code* also gives a right to trial by jury for some other serious offences).

Right not to be subjected to cruel and unusual punishment (section 12)

Everyone has the **right not to be subjected to cruel and unusual treatment or punishment**. When courts decide whether treatment or punishment is cruel and unusual, they often ask if it is so harsh that it shocks the conscience of the Canadian public. Torture is an example of cruel and unusual treatment.

Protection against the use of your own testimony against you (section 13)

At a criminal trial, the accused person can decide whether to **testify** (give evidence under oath) in their own defence. Other people generally cannot refuse to testify: they must do so if they receive a **subpoena** (a document ordering them to come to court and give evidence). If they refuse to testify, they can be charged with contempt of court. And anyone who lies in their testimony (the evidence they give) can be charged with **perjury** (lying under oath).

If a witness at the criminal trial of another person is asked about their own involvement in criminal activity, they must answer honestly. But a prosecutor cannot use their answers against them. Section 13 of the Charter says testimony from a witness showing they committed criminal activity **cannot be used against them** to prove they are guilty of that criminal activity.

That said, a prosecutor can use a witness's answer to show they are lying under oath (committing perjury) in that case, or in a later case if they are charged and deny the criminal activity.

Right to an interpreter (section 14)

Everyone has the right to an interpreter in any legal proceedings if they don't understand or speak the language being used, or if they're deaf.

Charter rights are not absolute

These legal rights are not absolute. The Charter itself recognizes that some laws might violate the Charter yet be justifiable in the broader public interest. Where a law violates a Charter right, a government can try to justify the violation as a reasonable limit under section 1 of the Charter. Under that section, a **reasonable limit** needs to be

“prescribed by law” and “demonstrably justified in a free and democratic society.”

If a government tries to rely on section 1 to justify a Charter violation, a court can decide if the violation is a reasonable limit. The court will look at whether the law has an important objective, and whether the government chose a proportionate way to meet that objective — a way that interferes as little as possible with Charter rights. For example, could the government achieve its objective in another way, without violating Charter rights? Does the law do more harm than good?

Section 1 applies only to written laws. It does not apply to **government actions**. An example of a government action would be the conduct of a police officer in making an arrest. Where a government action violates the Charter, section 1 does not let the government try to justify the violation. The action is unconstitutional. Lawyers call this a **Charter breach**.


Remedies if a Charter right is violated

The Charter gives courts lots of discretion about the **remedy** they can order if a Charter right is violated. A remedy is a court order to give someone their legal rights or to compensate them for their rights not being respected.

Section 24 of the Charter allows a person whose rights have been violated to apply to a court for a remedy the court considers appropriate and just in the circumstances. In some cases, a broad remedy may be necessary, such as **declaring that a law is unconstitutional**. This is often referred to as “striking down a law.” For example, if the government passed a law giving sweeping power for police to search vehicles, the court could decide to strike down the law as violating the Charter right to be secure against unreasonable search. In this way the remedy helps everyone affected by the law.

In other cases, an **individual (personal) remedy** is ordered. For example, if the right to a trial within a reasonable time has been denied, and it is no longer possible for a person to properly defend themselves, the court may “stay” (terminate) the charges against that person. That means the trial won’t proceed and the person won’t be convicted.

A court may exclude (not allow) evidence if it was obtained in a way that interfered with a Charter right. But a court will exclude evidence only if the accused person can show that using the evidence would bring the administration of justice into disrepute.

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Charter Rights: Equality Rights

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Brock Martland^[1], Martland & Saulnier in July 2018.

The idea that all people should be treated equally is a core value in Canadian society. In fact, equality rights are enshrined in the *Canadian Charter of Rights and Freedoms*.

What you should know

The Charter guarantees equality rights

The *Charter of Rights and Freedoms*^[2] is part of Canada's Constitution and protects a broad range of rights and freedoms. Among the rights guaranteed by the Charter are **equality rights**.

Section 15 of the Charter says everyone is equal before the law and has the right to equal protection of the law, without discrimination. The section highlights the right to be free of discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The wording of section 15 gives equality rights to "every individual." As such, the equality rights under the Charter protect **people**, not companies or other artificial persons.

Tip For more on your rights under the Charter, see our overview of the Charter and our information on legal rights.

The Charter applies to government, not the private sector

Section 15 of the Charter does not apply to every possible inequality in life. The Charter controls **laws** and **government actions**. It doesn't control private citizens, businesses, or organizations. Before you can claim the protection of section 15, you must show you are being treated unequally by a law or by the action of government, or some agency very closely connected to government, such as a school board or labour relations board.

If a private individual, organization, or company violates your rights, you may be able to assert a claim under **human rights law**. Depending on the situation, you might be able to rely on the *BC Human Rights Code* or the *Canadian Human Rights Act*. For more, see our information on human rights and discrimination protection, and protection against job discrimination^[3].

To show your equality rights are being violated

To show your equality rights under section 15 of the Charter are being violated, there are three central issues.

First, you must show that a law or government action treats you differently from others.

Second, you must show that one of the grounds of discrimination in section 15 are the basis for the differential treatment. Section 15 prohibits discrimination because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. It also prohibits discrimination on "analogous" grounds — meaning comparable grounds not listed in section 15. The courts have said that something "**analogous**" is a personal characteristic you can't change at all, or you can't change without great personal cost or difficulty — like sexual orientation or citizenship.

Third, you must show the law or government action has a purpose or effect that is discriminatory within the meaning of the equality guarantee. The courts have said a central purpose of section 15 is to promote "**substantive equality**" by fighting discrimination. So the courts focus on whether the law or government action is discriminatory in creating a

disadvantage by prejudice or stereotyping.

Equality does not mean identical treatment for everybody

In certain cases, disadvantaged groups may need more services or programs. For example, courts have ruled that to ensure equal access to medical care, someone born deaf should be provided a sign language interpreter to be able to effectively communicate with their doctor.

Section 15 itself protects **affirmative action programs**. It says that laws or programs designed to improve the conditions of disadvantaged individuals or groups do not violate section 15. So governments can set up programs to help people or groups disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Equality rights under the Charter are not absolute

Charter rights are not absolute. The Charter itself recognizes that some laws might violate the Charter yet be justifiable in the broader public interest. Where a law violates a Charter right, a government can try to justify the violation as a **reasonable limit** under section 1 of the Charter. Under that section, a reasonable limit needs to be “prescribed by law” and “demonstrably justified in a free and democratic society.”

If a government tries to rely on section 1 to justify a Charter violation, a court can decide if the violation is a reasonable limit. The court will look at whether the law has an important objective, and whether the government chose a proportionate way to meet that objective — a way that interferes as little as possible with Charter rights. For example, could the government achieve its objective in another way, without violating equality rights? Does the law do more harm than good?


Section 1 applies only to written laws. It does not apply to **government actions**. An example of a government action is a decision by a government official to deny benefits. Where a government action violates the Charter, section 1 does not let the government try to justify the violation. The action is unconstitutional.

Remedies if a Charter right is violated

If you prove your equality rights under the Charter have been violated, and the government cannot justify the violation as a reasonable limit under section 1, the next question is what kind of **remedy** is appropriate. A remedy is a court order to give someone their legal rights or to compensate them for their rights not being respected.

Section 24 of the Charter allows a person whose rights have been violated to apply to a court for a remedy the court considers appropriate and just in the circumstances. Different kinds of remedies apply to different types of cases. In some cases, a court may decide to **declare that a law is unconstitutional**. This is often referred to as “striking down a law.” For example, if the government passed a law that discriminated based on gender, the court could strike down the law. In this way the remedy helps everyone affected by the law. In such a case, a court may “suspend” its declaration to give the government time to pass a new law that will be valid.

In other cases, the remedy might be to **“read in” wording** to a law that violates equality rights, in order to address the inequality. For example, the phrase “same-sex couples” might be read in to the definition of “spouse” in a law, to clarify that the law does not discriminate based on sex.

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Aboriginal Law

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Rhaea Bailey, Legal Services Society in March 2018.

The legal position of Aboriginal people in British Columbia involves an interplay of federal and provincial law, plus treaty and other rights. Learn the basics of Aboriginal law in BC.

What you should know

Who is an Aboriginal person and why this matters

Section 35 of the *Constitution Act, 1982* ^[1] recognizes three groups of Aboriginal peoples — **Indians**, **Inuit**, and **Métis** peoples.

Indians

Under the *Indian Act* ^[2], the term **Indian** means a person registered with the federal government as an Indian (a “status Indian”) or who is entitled to be registered as an Indian. A person must apply for Indian status and show they have a right to be registered based on the Indian Act. (Apart from this law, the word Indian is no longer used to describe Aboriginal people.)

Inuit

Inuit are Indigenous people of the Arctic. They deal with both the federal government and provincial government (as Indians do), depending on the subject. But the *Indian Act* does not apply to Inuit. Most Inuit are now participants in modern treaty and land claims agreements that govern their unique interests. There are relatively few Inuit in British Columbia, so this information does not cover the specific laws that apply to Inuit people.

Métis

Métis are people of mixed Aboriginal and non-Aboriginal ancestry. Their precise legal definition is not certain. The Supreme Court of Canada, in a case called *R v. Powley*, outlined three broad factors to identify Métis rights-holders:

- self-identification as a Métis person,
- ancestral connection to an historic Métis community, and
- acceptance by a Métis community.

The court said that Métis does not include all people with mixed Indian and European heritage. It refers to people with mixed heritage who have also developed their own customs, way of life, and recognizable group identity separate from their Indian or Inuit and European ancestors.

How the term “First Nations” fits in

First Nations is a term for Indigenous people of Canada who are not Inuit or Métis. The term includes both status and non-status Indians.

Many First Nations are self-governing and control their own affairs. But if a First Nations community is still governed by the *Indian Act*, it is called a **band**. Indian status does not necessarily include band membership. Band membership depends on who controls the band’s membership list: the federal government or the band. Only the federal government can decide on status

What is unique about the legal position of Aboriginal people in BC

Aboriginal people deal with both the federal and provincial governments, depending on the subject. For example, land and criminal law involve the federal government, while health care and family law involve the BC provincial government. Laws on tax and wills and estates involve both governments.

Lands held by the federal government for the use and benefit of Indians are called **reserves**. Status Indians may receive rights and benefits for housing. They may also receive tax exemptions when working on reserves. Other benefits, such as health and education, may be available both on reserve and off reserve.

Most provincial laws apply to Aboriginal people. Some provincial laws do not apply to Aboriginal people or reserve land; others apply through section 88 of the *Indian Act*. As well, some Aboriginal people have signed treaties and land claims agreements that set out rights and responsibilities that may operate independently of the *Indian Act*. In other words, the legal position of Aboriginal people in BC involves a complex interplay of federal and provincial law, plus treaty and other rights.

How criminal law applies to Aboriginal people

Canada’s *Criminal Code* ^[3] applies to all Aboriginal people. The *Criminal Code* tells judges to consider all reasonable alternatives to imprisonment, with particular attention to Aboriginal offenders. This is Parliament’s response to the fact that Aboriginal people are overrepresented in Canadian prisons.

Gladue rights

Aboriginal people often experience disproportionate social problems throughout their lives. Judges must consider what are called **Gladue principles** when they sentence an Aboriginal offender (named after a 1999 Supreme Court of Canada case). Gladue principles apply when an Aboriginal person’s freedom is at risk, including bail and sentencing hearings. Gladue principles also apply to sentencing in appeals, parole hearings, Mental Health Review Board hearings, dangerous and long-term offender hearings, and civil contempt decisions.

Support for Aboriginal people in criminal matters

Some courthouses have a **native courtworker** who can help Aboriginal people understand the court process, find a lawyer, and apply for legal aid. Aboriginal people who are convicted of an offence should ensure their lawyer knows about their ancestry, so they can ensure Gladue factors are raised before sentencing, such as in a Gladue report or Gladue submissions. Many communities have culturally appropriate restorative justice programs. Native courtworkers and lawyers should make best efforts to locate these programs to help their clients. See Gladue principles ^[4] from Legal Aid BC for more information.

First Nations Court

Aboriginal people in BC who plead guilty to a crime and accept responsibility for their actions can apply to have their bail and sentencing hearings in First Nations Court. This is a criminal sentencing court that uses restorative justice and traditional ways to reach balance and healing. There may be limitations on the types of cases heard in **First Nations Court**. First Nations Court sits in selected communities. They are usually held once a month at each location. The Provincial Court of BC website has information about First Nations Courts ^[5].

How family law applies to Aboriginal people

Two BC laws dealing with families and children apply to Aboriginal families on reserve and off reserve. But there are some important exceptions.

Family breakdown

The *Family Law Act* ^[6] deals with parenting arrangements, child and spousal support, and division of property after family breakdown. But the parts of this law dealing with real property do not apply on reserves. So there is a gap in the law dealing with the ownership and division of real property on reserves and what happens when a spousal relationship ends, or a spouse dies.

The federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* ^[7], new in 2013, responds to this gap in two ways. First, it allows individual First Nations to make their own matrimonial real property laws. First Nations that have done this are listed on the federal government website ^[8]. Second, the federal law has provisional (or temporary) rules that apply until First Nations make their own laws. If you live on reserve, and you need an order — especially an emergency order to protect yourself, your property, or your family — get legal advice.

Child protection laws

The *Child, Family and Community Service Act* ^[9] deals with child protection on or off reserve. Some First Nations have their own child protection agencies with authority from the province. They are called Delegated Aboriginal Agencies.

Best interests of the child

The key principles guiding all family laws are the best interests of the child plus protection and safety of the child. To decide on an Aboriginal child's best interests and safety, courts look at the child's community, extended family, and culture, heritage, and tradition. They consider those factors in trying to preserve the cultural identity of Aboriginal children.

How tax law differs for status Indians

Many people mistakenly think status Indians do not pay income tax, GST, or property tax. But most status Indians pay tax unless they are exempt under sections 87 and 90 of the Indian Act. Under these sections, status Indians do not pay federal or provincial taxes on their personal and real property on a reserve. Personal property includes employment income earned on reserve. Income earned by Métis and Inuit is not eligible for this exemption. And income earned by status Indians off reserve is taxable.

Canadian courts have developed a series of "**connecting factors**" that must link a status Indian's employment and investment income to the reserve for the income to be tax exempt. Because of the high levels of unemployment on most Indian reserves, these tax benefits are not as significant as some people think.

Like other levels of government, Indian bands can make property tax bylaws for people and businesses on reserves, under section 83 of the *Indian Act*. Some Indian bands have a First Nations' Tax (FNT) instead of GST. It can apply to

alcohol, fuel and tobacco sold on reserve.

Finally, modern treaties and land claims agreements cover all aspects of taxation.

How living on reserve affects wills and estates

Indigenous Services Canada deals with the wills and estates of status Indians who are “**ordinarily resident**” on reserve when they die. The federal government department is responsible for several things. These include granting probate (deciding if a will is legally valid and then granting approval of it to the executor), appointing an administrator or executor to distribute the estate, and responding to anyone who challenges a will or complains about an administrator or executor.

The *Indian Act* has rules for transferring a person’s reserve property to heirs and beneficiaries. Indigenous Services Canada must approve all transfers of reserve property. A person who is not a member of the dead person’s band may not be able to inherit the person’s house or land on a reserve.

The BC Supreme Court deals with the wills and estates of status Indians not “ordinarily resident” on reserve when they die, and with all non-status Indians and other Aboriginal people. The BC Public Guardian and Trustee is also sometimes involved with these cases.

A will that is valid under the *Indian Act* may not be valid under BC provincial law because some parts, such as the requirement for a witness’s signature, may differ. So even a status Indian ordinarily resident on reserve should make sure a will meets the BC rules and the *Indian Act*. Our information on preparing a will covers the requirements for a will. The Indigenous Services Canada estates program has more information. Call 604-775-5100 in Vancouver and 1-888-917-9977 elsewhere in BC.

The federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* ^[10] also affects wills and estates on reserves. This area of law is complex, so if you are in this situation, get legal advice.

Human rights and Aboriginal people in BC

The Charter and the Constitution

The Charter of Rights and Freedoms ^[11] applies to every person in Canada, including Aboriginal people. The Charter applies to laws and government actions, or the actions of agencies very closely connected to government, such as school boards and labour relations boards. The Charter normally applies to band councils and other Aboriginal governments, but not always. See our information on the Charter for an overview of rights under the Charter.

Section 35 of the *Constitution Act, 1982* ^[1] gives constitutional protection to existing Aboriginal and treaty rights and to rights acquired through treaty and land claim negotiations. Since 1982, there have been extensive developments in the case law on identifying and defining Aboriginal and treaty rights and how they fit with Canadian society. So far, Aboriginal rights relate mainly to the use of natural resources and Aboriginal governance.

Human rights law

The *Canadian Human Rights Act* ^[12] applies to the federal government and businesses that it regulates, such as airlines and banks. The Act applies to federal or band government decisions made under the Indian Act. The Canadian Human Rights Commission ^[13] investigates complaints of discrimination and other violations of this law.

The *BC Human Rights Code* ^[14] applies to the provincial government and businesses it regulates. It prohibits discrimination by schools, stores, restaurants, and rental properties. For more details, see our information on human rights and discrimination protection.

Some Aboriginal people have relied on international human rights law to have their rights recognized, such as the *Universal Declaration of Human Rights* ^[15].

Deciding which human rights laws apply to cases involving Aboriginal people can be a complicated legal question. You should get legal advice about which laws apply to specific situations.

Who can help

With more information

Indigenous Services Canada is the federal government department supporting access to services for First Nations, Inuit and Métis.


- Visit website ^[16]

The **Aboriginal Legal Aid in BC** website from Legal Aid BC provides information and publications on issues important to Aboriginal people, and information about the help that legal aid and other groups can give.

- Visit website ^[17]

Confirm the status of individual First Nations in treaty negotiations with the **BC Treaty Commission**.

- Visit website ^[18]

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Immigrating to British Columbia

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Darren Penner^[1], Larlee Rosenberg, and Gregory Bruce, Barrister & Solicitor in March 2019.

For those thinking of settling permanently in British Columbia, there are several programs for immigrating to Canada. There is also financial and other help available for newcomers to the province.

What you should know

There are several categories or “classes” of immigration

There are dozens of government programs designed to make Canadian immigration successful, both for newcomers and for Canada. These programs fall into three broad categories, or “classes”:

- **Family class.** Programs for families, where Canadian citizens and permanent residents may sponsor family members and loved ones for Canadian immigration.
- **Economic class.** Programs for professionals and workers to apply to become a permanent resident of Canada.
- **Refugee class.** Canada offers refugee protection to people who fear persecution and who are unwilling or unable to return to their home country.

The *Immigration and Refugee Protection Act*^[2] controls immigration to Canada. A federal government department, Immigration, Refugees and Citizenship Canada^[3], facilitates the arrival of immigrants and refugees to Canada.

Immigrating under the “family class”

The goal of family class immigration is to reunite Canadians with their close relatives. A Canadian citizen or permanent resident can sponsor certain relatives to come to Canada. A person can **sponsor**:

- their spouse or common-law partner
- their parents or grandparents
- their dependent children (biological or adopted)
- an unmarried orphaned sibling, nephew, niece or grandchild under 18

The applicant must be able to financially support the person they are sponsoring for a period of between three to 20 years, depending on their relationship with that person.

Processing times

Spouses and dependent children get priority. Usually, these applications take three to 12 months to process. It can take two to six years to process applications of parents and grandparents, depending on the visa office processing the application. Dependent children must either be under 22 years old and unmarried, or unable to support themselves due to a mental or physical condition. The Canadian government website lets you check processing times ^[4] and application status ^[5].

Work permits

Sponsored spouses and common-law partners applying from within Canada may receive a work permit so they can work before becoming permanent residents. But people without this status when they apply may have to wait much longer for a work permit.

Parents and grandparents

The parent and grandparent sponsorship program is by invitation only. A person can submit their interest ^[6] in sponsoring a parent or grandparent to become a permanent resident of Canada, and they may be invited to submit a complete application.

Parents and grandparents can also apply for a long-term “super visa ^[7]” to visit family in Canada for up to two years at a time. Normal visitor visas are for only six months.

Immigrating under the “economic class”

There are dozens of “economic class” programs for professionals and workers to apply to become a permanent resident of Canada.

Federal programs

The **federal skilled workers** program is for skilled workers with foreign work experience ^[8] who want to immigrate to Canada permanently. If an applicant meets the minimum requirements for the program, their application will be assessed on a 100-point grid that considers six factors. In addition to work experience, the grid factors in age, education, language ability, whether the applicant has a valid job offer, and their adaptability (how well they're likely to settle in Canada).

The **federal skilled trades** program is for skilled workers who want to become permanent residents based on being qualified in a skilled trade ^[9]. Applicants must have at least two years of full-time work experience in a skilled trade, and meet minimum requirements for language ability. They must also have either a valid job offer or a certificate of qualification in their skilled trade.

The **Canadian experience class** is for skilled workers who have Canadian work experience ^[10] and want to become permanent residents. It lets people with one year of full-time work in Canada in a skilled occupation immigrate to Canada. Applicants must meet minimum requirements for language ability.

The **start-up visa** program targets immigrant entrepreneurs with an innovative business idea ^[11]. Applicants must show they have the skills and potential to build a business in Canada that is innovative and can create jobs. Successful applicants are granted a permanent residence visa and assistance to become established in Canada.

The **self-employed persons** program allows people to immigrate to Canada permanently as a self-employed person. Applicants must have relevant experience in **cultural activities or athletics**, and be willing and able to make a significant contribution to the cultural or athletic life of Canada.

BC's provincial nominee program

British Columbia and most other provinces have **provincial nominee** programs that fall under the economic class of immigrating to Canada. These programs can speed up, or fast track, an immigration application so it takes less than one year. They can also have a work permit issued in two to three months.

One of the fastest ways to immigrate to BC is under BC's provincial nominee program ^[12], which lets BC select immigrants based on their specific ability to contribute to the BC economy. For example, applicants for jobs in BC where there is a shortage of workers — such as high-tech positions and rural postings — can qualify here. An applicant must first have a job offer to apply under this program. The program has four steps: registration, invitation, application, and nomination.

Immigrating under the “refugee class”

Canada has a long tradition of helping people in need, accepting them as **refugees**. Refugees include people unable or unwilling to return to their home country based on a well-founded fear of being persecuted because of their race, religion, political opinion, nationality, or membership in a particular social group. Refugees also include people who might face risk to their lives, cruel and unusual treatment, punishment, or torture if they went home.

To come to Canada as a refugee, a person must be referred. The United Nations Refugee Agency or a private sponsorship group can refer a refugee. Refugee claimants must prove they meet the definition of a refugee to become a protected person in Canada ^[13]. The Canadian government has designated some countries as “safe” and requires special procedures for refugee claimants from these countries.

Some people are “inadmissible” to Canada

Some people are not allowed to come to Canada. They're “inadmissible” under Canada's immigration law ^[14]. There are different reasons a person may be refused entry to (or removed from) Canada. They include:

- **security reasons**, such as subversion (attempts to overthrow a government) or violence or terrorism
- **human or international rights violations**, including war crimes
- **committing a crime**, including impaired driving
- **medical reasons**, including medical conditions that endanger public health
- **financial reasons** (if you're unable or unwilling to support yourself and your family members)

Normally, if you're inadmissible to Canada, you won't be allowed to enter the country. If you have a valid reason to travel to Canada, you may be issued a temporary resident permit ^[15].

If you do not qualify under the usual immigration rules

Immigration officials can make exceptions to the usual immigration rules in some cases to prevent undeserved or exceptional hardship.

There is help available for new immigrants

Some financial and other help is available to immigrants through various programs and services. These include counseling and cultural orientation, loans to help with transportation to Canada, language training, and job-related services.

Canada has many immigrant-serving organizations to help newcomers settle in Canada. They are excellent sources of information and advice on living in Canada. They also have settlement workers who can provide help to meet settlement needs such as finding a job, finding housing, and improving language skills.

The Legal Services Society may provide a lawyer for free for those who meet the financial guidelines and are facing an immigration proceeding that may remove them from Canada, or they want to claim refugee status. Their website legalaids.bc.ca lists legal aid locations ^[16]. You can also call them at 604-408-2172 in Greater Vancouver or toll-free 1-866-577-2525 elsewhere in BC.

If you're asked to leave Canada

The refusal of a temporary residence application (such as a visitor record, a work permit, or a study permit), will most often come with instructions to leave Canada immediately. But some applicants will get a **90-day restoration period** when they can re-submit an application without having to leave the country. If you stay in Canada without a restoration period, it can cause serious problems for any future application to enter.

In cases where the Canada Border Services Agency takes steps to remove someone from Canada, most people are eligible for a **pre-removal risk assessment** before they are removed from the country. If you have already made a refugee claim that was rejected, the decision on risk will be based only on new evidence.

The Federal Court of Canada can review most decisions of immigration officials and tribunals. But it does so only in very limited cases. You would need legal help in this area.

Who can help

With your situation

The immigration process is very involved and detailed. Getting legal assistance is highly recommended. Many British Columbia lawyers participate in the **Lawyer Referral Service**, which can connect you with a lawyer for a free 15-minute consultation. The lawyer can provide some initial advice on your options. Then, if you and the lawyer agree, you can hire that lawyer at their normal rate.

- Call 604-687-3221 in Greater Vancouver
- Call 1-800-663-1919 (toll-free)
- Visit website ^[17]

Legal Aid BC may provide a lawyer for free if you meet the financial guidelines and are facing an immigration proceeding that may remove you from Canada, or you want to claim refugee status. Their website also has free publications for immigrants and refugees ^[18].

- Call 604-408-2172 in Greater Vancouver

- Call 1-866-577-2525 (toll-free)
- Visit website ^[19]

More information

Immigration, Refugees and Citizenship Canada is the federal government department that facilitates the arrival of immigrants and refugees to Canada. Their website explains federal immigration programs and includes online application forms.

- Call 1-888-242-2100 (toll-free in Canada)
- Visit website ^[3]

WelcomeBC provides newcomers to British Columbia with information on immigrating to BC, getting settled, and finding employment.

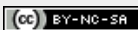
- Visit website ^[20]

The **Immigration and Refugee Board of Canada** has details on refugee claims, admissibility hearings, and immigration appeals.

- Visit website ^[21]

The **Canadian Council for Refugees** has general information on refugees.

- Visit website ^[22]

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Seniors' Rights and Elder Abuse

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Nicole Garton^[1] and Elizabeth Markus^[2], Heritage Law in July 2018.

When someone in a trusted relationship with an older person does something that harms or distresses them, this is **elder abuse**. Learn what options exist if you suspect elder abuse.

What you should know

You have the right to live in the manner you wish and free of elder abuse

Under the law in BC^[3], all adults are entitled to live in the manner they wish as long as they don't harm others and they are capable of making decisions.

Older adults, like everyone, have the right to live in safety and security. When someone in a relationship of trust with an older person does something that causes them harm or distress, this is called **elder abuse**.

Elder abuse takes many forms. It can be **physical abuse**, including striking or pushing an older adult, over- or under-medicating them, or inappropriately restraining them.

It can be **psychological abuse** that decreases their sense of self-worth or dignity. This includes insulting or humiliating an older adult, intimidating or threatening them, treating them like a child, invading their privacy, or isolating them from friends or activities.

It can be **financial abuse**. This can involve misusing or stealing an older adult's assets or money, pressuring them to change a will or sign legal documents they don't fully understand, or sharing their home without paying a fair share of the expenses when asked.

It can take the form of **neglect**. This is a lack of action that harms an older person, such as not providing appropriate food or shelter, medical attention, or assistance with basic necessities.

Often, more than one type of abuse occurs at the same time. Abuse can be a single incident or a repeated pattern of behaviour.

If an older adult is being abused

If you or someone you know is in immediate danger, **dial 9-1-1** or call the emergency number listed in the front of your phone book.

In non-emergency situations, there are many organizations that can help abused or neglected older adults or their friends and family get help and protection. The **BC Association of Community Response Networks** are people working on a local level to help coordinate community response to elder abuse. Their website features a way to search for contacts and supports in your community^[4].

VictimLink BC is a toll-free, confidential, telephone service available 24x7. They provide information and referral services to all victims of crime and immediate crisis support to victims of family and sexual violence. You can contact them at 1-800-563-0808 or online^[5].

If the adult can't seek help on their own

An older adult who is struggling to manage on their own is particularly vulnerable to abuse.

If you have concerns about the health and safety of an adult, or suspect they are being abused or neglected, you may make a confidential report to a **"designated agency."** The designated agencies in BC are the five regional health authorities, Providence Health Care, and Community Living BC (for adults with developmental disabilities). If a designated agency receives a report, it will investigate and offer support and assistance to the adult, or take steps to protect the adult. The Public Guardian and Trustee of BC, a public office that provides services to vulnerable people in the province, has a list of numbers to call for designated agencies in communities across the province on its website ^[6].

You can also seek help from the **Public Guardian and Trustee** if you have concerns about the financial and legal affairs of a vulnerable adult (for example, you suspect there is financial abuse). You can make a report to the Public Guardian and Trustee through its website ^[7] or by calling 604-660-4444. They can help identify options, and investigate if there is an urgent need.

If the adult is in assisted living

The **Assisted Living Registrar** has a mandate to protect the health and safety of assisted living residents. If you are concerned about the health and safety of someone living in an assisted living residence, you can contact the Registrar by calling toll-free 1-866-714-3378.

If you report elder abuse

If you report elder abuse to a designated agency, they must consider your report. An investigator must make reasonable efforts to interview the older adult involved (whether that's you or someone else).

If the problem can't be solved informally, the designated agency may suggest options, including preparing a support and assistance plan, notifying the Public Guardian and Trustee (if there is a concern of financial abuse), and applying for a restraining order to keep the suspected abuser away. The designated agency must involve the older adult, to the greatest extent possible, in decisions about how to seek support and assistance.

If the abuse involves a criminal offence such as threats, assault, forgery or intimidation, the designated agency must report it to the police.

Where there is financial abuse

The Public Guardian and Trustee investigates reports of financial elder abuse when the older adult's assets are at risk and the person is incapable of managing their financial affairs. In some situations, the Public Guardian and Trustee may take steps to become **committee** of the estate, so it can make financial decisions to protect the person's assets. If the Public Guardian and Trustee gets a report involving concerns about physical risk, it will refer the situation to a designated agency.

If you are concerned with the response to a report of abuse

If you are concerned about the response offered by a designated agency to a report of abuse, you have options.

If you reported the abuse to a health authority, you can complain to the health authority's **Patient Care Quality Office**. Each health authority has one. You can make a complaint online ^[8]. If you're still not satisfied with how your complaint was handled or with the response you received, you can request that a Patient Care Quality Review Board look into the matter. Again, each health authority has one ^[9].

Another option if you are concerned with the care or service provided to you or a family member by a health authority, is you can contact the **Office of the Seniors Advocate**. The Seniors Advocate monitors seniors' services and issues in BC, and makes recommendations to government and service providers to address systemic issues. You can call 1-877-952-3181 or visit their website^[10].

Making decisions about your life and your health care

Under the law in BC^[3], all adults are entitled to live in the manner they wish and to accept or refuse support as long as they don't harm others and they are capable of making decisions about those matters. Every adult is presumed to be capable of making decisions about their personal care, health care and financial affairs.

The law presumes all adults are capable of giving, refusing, or revoking their consent to health care, unless it's clear they are not capable of making those decisions. If a doctor questions a person's mental capability, the doctor can require the person to have a capacity assessment performed by a medical expert. Our information on adults and consent to health care explains this more fully.

Common questions

How can I prepare for the possibility of becoming incapable of making my own decisions?

It's a good idea to plan for the possibility you won't be able to make your own decisions. For example, to deal with decisions on your legal and financial affairs, you can make a **power of attorney**. With an "enduring power of attorney" you can appoint another person to make financial and legal decisions for you. It continues — or endures — if you become mentally incapable. The person you appoint is called your attorney.

To deal with personal care and health care decisions, you can make a **representation agreement**. With this document you can appoint someone, called a representative, to help you make, or to make, personal and health care decisions if you cannot make these decisions on your own. For more on these planning documents, see our information on powers of attorney and representation agreements.

If you do not have a representative, and someone needs to make a health care decision for you, a **temporary substitute decision-maker** may need to be appointed. See our information on adults and consent to health care. It explains temporary substitute decision-makers and **advance directives**, which are written instructions about health care wishes.

Should I transfer my home to my child so I can stay in it with them?

It depends. As people age, they often need help with their daily needs, but may not want to leave the comfort of their own homes. Sometimes, family members or friends will suggest they move into your home and have you transfer your home to them in exchange for their looking after you. This can be a good way to get the help you need, while letting the younger family member or friend get a home.

But this arrangement can cause misunderstandings and trouble. As your health changes and your needs increase, the family member or friend may not be able to give you the care you need, without significantly changing their own lives. For example, they may have to quit their job and stay at home with you to care for you. But they may not be willing to do that. At that point, you may need to sell your home to pay for health care and assisted living help.

In most cases, it's not a good idea to transfer your home to your child or to add their name to the title of your home. It opens up the risk that creditors and spouses could make claims against your home. And you could lose the capital gains tax exemption for your principal residence if a child's name is on the title, but it's not their principal residence.

So before you make such an arrangement, it's best to get legal advice. See our information on free and low-cost legal help.

How can I protect myself when lending money to family members?

Older people often help their children or grandchildren by lending them money, co-signing a bank loan, or giving a personal guarantee. You could lose a lot of money if you don't protect yourself by understanding the transaction and getting proper documents signed.

If you lend money to finance a home purchase, make sure you register a **mortgage** on the home to secure your interest. If you don't want to do that, you should at least get the borrower (and their spouse) to sign a **promissory note** with the loan terms.

If you guarantee a family member's bank loan, you are promising to pay the bank in full if the borrower doesn't repay the loan. You're responsible for the full amount of the loan, and the bank can come after you for it. Make sure any guarantee you sign is for a specific amount. See our information on co-signing or guaranteeing a loan.

Before you lend money to a friend or family member, it's best to get legal advice on the best way to protect your loan and your personal liability.

Can I change my will if my circumstances change?

You can always change your will as long as you're mentally capable. Actually, you *should* change your will whenever your financial or personal circumstances change, or if your beneficiaries change (for example, if a beneficiary dies).

You should also review your will if you get married or divorced, or you separate, or you live in a marriage-like relationship for at least two years. Until 2013 (when the law changed), when a person got married, the marriage automatically revoked or cancelled their existing will. Under the current law, that does not happen.

For more, see our information on preparing a will and estate planning.

Can I disinherit a family member?

You can, but it may not work. In general, you are free to leave your estate to whomever you want. However, the law does require that you make adequate provision for the proper maintenance and support of your spouse and children. Your spouse or children can apply to court for a portion of the estate that is "adequate, just and equitable in the circumstances".

For more, see our information on preparing a will and estate planning.

Who can help

With elder abuse

The **Seniors Abuse and Information Line** (SAIL) is a safe, confidential place for older adults and those who care about them to talk to someone about situations where they feel they are being abused or mistreated. This service is operated by Seniors First BC, a non-profit that helps seniors with legal problems.

- Call 604-437-1940 in the Lower Mainland
- Call 1-866-437-1940 (toll-free)
- Visit website ^[11]

VictimLink BC is a toll-free, confidential, telephone service available 24x7. They provide information and referral services to all victims of crime.


- Call 1-800-563-0808 (toll-free)
- Visit website ^[5]

The **BC Association of Community Response Networks** are people working on a local level to help coordinate community response to elder abuse.

- Visit website ^[4]

The **Public Guardian and Trustee of BC**, a public office that provides services to vulnerable people in the province, includes information on its website about elder abuse and adult guardianship.

- Call 604-660-4444 in Vancouver
- Call 1-800-663-7867 (toll-free)
- Visit website ^[12]

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Wills, Planning & Estates

Preparing a Will and Estate Planning

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan^[1], McLellan Herbert in November 2020.

Preparing a will is a key step in planning for what happens when you pass away. Learn the essentials of preparing a will and tips for creating an estate plan.

What you should know

A will is a legal document

A will is a document that says what you want done with your property when you die. It's a map for those you leave behind.

Why prepare a will

Every adult who owns assets or has a spouse or young children should have a will. But surprisingly, many people don't.

Having a clear statement of your wishes gives you some control over who gets what after you're gone. And it helps your loved ones feel confident they're carrying out those wishes. Knowing your intentions will save them time, stress and money at a difficult time.

Preparing a will lets you choose an **executor**. This is a person who carries out the instructions in the will. If you're a parent, you can also appoint a guardian to care for any children under age 19 after your death.

What your will doesn't deal with

A will generally doesn't cover property you don't own exclusively. For example, a joint bank account or a house owned in joint tenancy has a **right of survivorship**. That means they automatically become the property of the joint survivor when you die (we explain some exceptions to this rule shortly).

Tip You can also own property with someone else as a **tenant-in-common**. When you die, your share doesn't automatically go to the other owner.

Say you own a family cottage with your siblings. If owned as tenants-in-common, you can pass your own share to whomever you want, through your will. Your share won't automatically go to your other siblings when you die.

Also, a will doesn't apply to property like life insurance, retirement savings plans and income funds, and tax-free savings accounts if you've already named a beneficiary for them. When you die, the bank or trust company directly transfers the asset, or pays it out, to the person you named.

If you don't prepare a will

If you pass away without having made a will, the law says how your property will get distributed, and who has the right to “administer” your affairs. Our information on when someone dies without a will ^[2] explains how these rules work. Dying without a will can make things more difficult (and more costly) for your loved ones.

A will is only one part of estate planning

With **estate planning**, you may be able to reduce fees and taxes that your estate would otherwise pay. Consider, for example, the following strategies.

Joint assets

Joint assets can include a joint bank account that two or more people own, or a home owned by two or more people as joint tenants. The owners of joint assets have a “right of survivorship.” So if you and another person own a home as joint tenants, the surviving joint owner will get the home when you die. The home is said to **pass outside your will**.

One advantage of owning property this way is that no probate fees have to be paid for the home. Probate fees are paid to the court based on the value of the estate assets.

A joint asset doesn't always pass to the surviving owner. In several recent cases, courts have said that a jointly-owned asset had to be returned to the estate. If your joint asset is with another adult other than your spouse (such as an adult child), then the court may make them return the asset to your estate. It would then be distributed according to your will. If you don't want this to happen, talk to an estates planning lawyer. They may recommend clearly documenting your intention to give the asset to the other joint holder when you die.

Assets with a designated beneficiary

Life insurance policies, registered retirement savings plans, registered retirement income funds, and tax free savings accounts all let you name a **beneficiary** to get the proceeds when you die. If you name a beneficiary and they survive you by at least five days, the proceeds flow outside your will to them. For example, a beneficiary will get the money in a registered retirement savings plan directly from the company holding the plan, and not from the estate.

Trusts

Depending on the size of your estate, you may want to set up a trust (outside of the will) to protect your estate against a wills variation claim. We explain wills variation claims shortly.

Charitable gifts

You can reduce the income tax owing from the sale of your assets on your death by making charitable gifts in your will.

Prepare a will

Step 1. Gather information and prepare well

It helps if you have the following information ready before you prepare your own will or meet with a lawyer or notary public:

- A list of everyone in your immediate family, with their full names and contact information, their relationship to you, and the ages of all your children, including stepchildren.
- The names and addresses of any other people or organizations you want to give gifts to.

- A list of all your **assets** and their values, including your home, car, investments, and any personal items of significant monetary value.
- A description of how you own these assets (for example, alone or with someone else).
- A document that shows whose name is on the title of any real estate you own.
- Details of any insurance policies you own, and, specifically, the **beneficiaries** under the policy.
- Details of any pensions, retirement savings plans or income funds, and tax-free savings accounts, and who the beneficiaries are.
- Information on the structure of any business you operate (for example, a company or partnership).
- Any separation agreements or court orders requiring you to make support payments or dealing with guardianship of any minor children.
- The name, address, and occupation for your **executor** and **guardian**.

Step 2. Choose an executor

The **executor** is the person you name in your will to carry out your instructions. They locate all of your property, pay any debts and funeral costs, prepare the final tax return, and distribute the rest of the estate as the will specifies. Most people ask a family member or close friend to be their executor. You can also ask a lawyer, a notary public, a private trust company, or the Public Guardian and Trustee.

Qualities to look for when choosing an executor

Choose someone you trust and who will likely be alive when you die. They may be a trusted family member or friend. Often, people appoint their spouse, but if you're both old, an adult child or children may be better. It helps if your executor is well organized, good at keeping records, and a good communicator. Most importantly, they must be willing to do the job as executor — so check in with them beforehand!

If you have a complex estate or investments or need someone to take over the operation of a company, consider asking a lawyer, accountant, or trust company to act as your executor. Be aware that your estate will be charged for their services.

Tip You can appoint more than one executor and they can act together as **co-executors**. It's important to appoint an **alternate executor**, too. This is a back-up person who can take over if the first executor can't or won't act.

Step 3. Prepare your will

With good do-it-yourself materials, you can write a simple will. The will can take care of basic concerns, such as leaving a home, investments, and personal items to loved ones. You should be aware there are rules and formalities that must be followed, no matter how simple the will. Otherwise, the will may not be valid.

A will is a legally binding document. Having your will prepared by an experienced estates lawyer or notary public is the safest way to avoid mistakes. Knowing your will is properly drafted can give you peace of mind. The words used must be chosen carefully so that the will is clear.

Notaries can prepare simple wills. Getting advice from a lawyer is particularly important when there are features such as a blended family, a charitable gift, property outside of British Columbia, a family business, a desire to hold property in trust for someone (such as minor children), or a wish to leave certain people out of your will.

Step 4. Make plans for minor children

If you're a parent or guardian of a minor child (under 19 years old), the *Family Law Act* ^[3] lets you appoint someone to be the child's **guardian** in your will.

It's important to name a guardian if you're a single parent. For separated parents, it's best to agree on the choice of a guardian if one or both of you die. If that's not possible, it's important to consider your parenting responsibilities (through a court order or separation agreement) and ensure that you include them as part of appointing a guardian in your will.

Although your choice of guardian is important, the court doesn't have to follow your wishes and may appoint a different guardian if it would be in the child's best interests. The court will consider the wishes of any child 12 or older. So you should check with an older child about their wishes before deciding on who to name as guardian in your will.

Protecting a minor child's inheritance

The personal guardian generally doesn't have any rights to look after a minor child's property — they can only receive and hold a minor child's property or money if it's worth less than \$10,000. If a minor is entitled to a share in an estate, and the will doesn't say that their share is going to be held in **trust** for them, the law ^[4] says their share has to be paid to the **Public Guardian and Trustee**. The money is then held in trust for the minor until they're 19 years old. It's best to speak to a lawyer about drafting a trust so you can choose your own trustee to manage the minor's inheritance. The executor can be the same person as the trustee.

Step 5. File a wills notice

You can file a **wills notice** with the wills registry ^[5] of the Vital Statistics Agency ^[6]. A wills notice says who made the will and where it is kept. This is a voluntary registration and has a small filing fee. Vital Statistics doesn't take a copy of your will. You or your lawyer or notary fill out an information form listing where your will is kept. After a person dies, a search of the wills registry is required for the probate process to make sure the court has the last will.

Step 6. Regularly review your will

It's good to review your will every three to five years. Does it still reflect your current wishes? You should also consider changing your will whenever your financial or personal circumstances change (such as if you get divorced), or if beneficiaries die or reach the age of majority.

Getting married or divorced

Getting married does not cancel a will. The exception is if you married before March 31, 2014, and made a will before you got married. If the exception applies, your will was cancelled when you got married (unless the will said it was made in contemplation of your marriage).

What about divorce or separation? If you had a spouse at the time you made your will, and later separated from them, your will is treated as if your spouse died before you. So your will is still valid, but any gift you left to your former spouse won't be recognized. As well, if you named your former spouse as your executor, the appointment would no longer be effective. The rest of the instructions in your will can be followed.

After you pass away

Your will can be changed after you die

If your will doesn't adequately provide for your spouse and children (including illegitimate and adopted children), they can ask a court to change the will. This is called a **wills variation claim**. Our information on challenging a will explains this in more detail ^[7].

Your estate may have to pay probate fees

With most estates, an executor must apply to court to **probate** the will. The word "probate" means "proof". The process proves the will is legally valid. Our information on the duties of the executor explains the process ^[8]. **Probate fees** must be paid to the court registry. The fees depend on how much the estate is worth:

- less than \$25,000 — no fee
- between \$25,000 and \$50,000 — \$6 per \$1,000 (this amounts to a probate fee of \$150 on an estate valued at \$50,000)
- over \$50,000 — \$150 plus \$14 per \$1,000 of estate value over \$50,000

These fees can change. Details are in the *Probate Fee Act* ^[9] and the Supreme Court Civil Rules ^[10].

Probate fees can often be avoided or reduced by estate planning outside of a will. A lawyer can help with that planning.

Probate fees are usually just a small part of the total cost of the process. There can be legal fees, fees to transfer assets from one name to another, and other costs.

Your estate may have to pay taxes

When a person dies, the law assumes they sold all their assets on the date immediately before their death. If an asset increased in value since it was purchased, a **capital gains tax** will have to be paid for the same year as the person's death (even if the property is not actually sold). There are some exceptions, such as gifts to spouses and principal residences. But if you own assets that will be subject to capital gains tax on your death, you should speak to a lawyer or an accountant to see how to deal with this tax. For example, a recreational property in your name alone will normally be subject to capital gains tax.

Common questions

Where should I keep my will?

If your original will is in paper form, you can keep it with your lawyer or notary, or in a safety deposit box at your bank. That way the will is in a permanent, safe, and fireproof location.

If your original will is in electronic form, there will be multiple true originals. Assemble and store these in the same place, such as with your notary or lawyer or a secure electronic repository.

Your executor will need your original will (not a copy) to give to the probate registry. You should let your executor know where you keep your will and other important documents, so they know where to get it.

How much does it cost to get professional help to make a will?

It depends on how complex your situation is. Most lawyers and notaries charge a fee that reflects the time, skill, and responsibility involved. Discuss the fees with your lawyer or notary when you call to arrange a meeting. You should be able to get free estimates. Feel free to shop around and compare prices.

What if I made a will in another province?

If you made a will in another province and now live in BC, your will may work in BC. You need to see a lawyer to find out.

Who can help

With preparing a will

Society of Notaries Public of BC

A notary public can help you prepare a will. The Society of Notaries Public of BC offers a list of notaries in the province.

Call 604-681-4516

Call 1-800-663-0343 (toll-free)

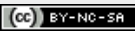
Visit website ^[11]

More information

Nidus Personal Planning Resource Centre & Registry

Has detailed information on all aspects of personal planning, including fact sheets, forms, and videos.

Visit website ^[12]

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Challenging a Will

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan^[1], McLellan Herbert in October 2018.

It could be you're shocked or disappointed by what a will says. Or you might believe the will doesn't represent the true intentions of the deceased. In such cases you may be able to challenge it. There are different ways to do this. Learn about some common grounds for challenging a will, and what's involved.

What you should know

You can challenge the fairness of your spouse or parent's will

If your spouse or parent passed away, and you're unhappy with what they left you in their will, you can challenge it in court. You may feel you didn't receive a fair share. Or maybe they didn't leave you anything at all.

A will-maker is generally allowed to divide their property however they want. However, under the law in BC^[2], a spouse or child of a will-maker who has passed away can challenge the will in court if they feel it doesn't "make adequate provision for the proper maintenance and support" for them. This is called a **wills variation claim**.

If you're a friend or relative (other than a spouse or child), you may be disappointed with what you got or didn't get under a will. You *cannot* make this type of claim. However, there are other ways you can challenge the will, which we'll explore below.

You don't have to be married to be considered a spouse

Under estates law^[3], you are a deceased person's spouse if you:

- were married when they died, or
- lived with them in a marriage-like relationship for at least two years immediately before they died.

Children can be biological or adopted

You're entitled to make a wills variation claim against your parent's estate if you're their biological child (of any age, born either within or outside of marriage). Or if you're legally adopted.

Otherwise you aren't. As their stepchild, for example, you can't make a wills variation claim. Nor can you make a claim if you're a biological child but someone else adopted and raised you. (Unless that person was your parent's spouse.)

There are other ways you can challenge what the will says

Only the spouse or child of the will-maker can challenge an otherwise valid will for being unfair or inadequate with a wills variation claim. But there are other reasons you may want to challenge how the estate should be distributed. If you have an interest in the estate, you can challenge a will because:

- **The will-maker wasn't mentally capable when or they made the will.** We explore this below.
- **Someone unduly pressured or influenced the will-maker.** We also explore this below.
- **There was a mistake in the will.** The will-maker may have gifted something they didn't intend to, because of a mistake by them or their lawyer. The mistake may be due to fraud or it may be accidental. The law gives the court wide powers to rectify (that is, fix) a mistake in a will. (For example, to re-insert a word that was left out).
- **The will-maker revoked (that is, cancelled) their will.**

- **The language used in a will is vague or uncertain.** The executor may have to apply to court to have the will interpreted. For example, the will may make a gift to a charity that doesn't exist.
- **The will-maker failed to provide for an individual in their will.** Consider a spouse who pitched in to help buy property that was registered only in the deceased's name. Or an employee who worked in the will-maker's business for little or no pay. Such people may have expected that their role in "enriching" the will-maker would be reflected in the will. If you want to challenge a will for similar reasons, speak to a lawyer about making **constructive trust** claim or an **unjust enrichment** claim.

If you think the will-maker wasn't capable of making the will

If you think the will-maker didn't have the **mental capacity** to make a will, you can challenge it in court. This type of challenge is common with wills created late in life. Or when the will-maker had an illness that could have affected their judgment.

A person can be eccentric or suffer from a mental disorder and still be able to make a valid will. However, they must have **testamentary capacity**. This means they must be able to:

- understand they're making a will
- understand that the will determines what will happen to their property after they die
- appreciate the nature and value of all of the property they own, including what will pass through and outside of the will
- understand who their next-of-kin are and appreciate that their will should, if possible, provide for their spouse and children and not unfairly exclude them

If someone unduly pressured or influenced the will-maker

Seemingly unreasonable terms in a will can raise the suspicion that the will-maker was pressured, forced or influenced into making them. The court can disallow any gift or inheritance if it was given because of **undue influence** on the will-maker. In these cases, the will is not considered a reflection of the will-maker's true desires.

Most people exert some level of influence over those they love. There's nothing illegal in suggesting to someone that they remember you in their will. But if you threaten to, say, stop taking care of them if they don't leave you a larger share of their estate, that's **undue influence**. Similarly, you can't:

- threaten or use violence
- use heavy persuasion on the will-maker in the final days of their life
- mentally exhaust them to the point they agree with your requests
- isolate them
- continually bad mouth your siblings to get your parent to write them out of the will

Understand the legal process

There are time limits to making challenges

There are deadlines, called **limitation periods**, that must be met if you want to challenge a will. If you miss the deadlines, it may be too late. If you want to make a claim, you should talk to a lawyer immediately.

A **wills variation claim** must be started within **180 days** from the date the grant of probate or administration is issued by the probate registry. (The grant confirms the will is legally valid and can be acted on.) If a wills variation claim is brought more than 180 days after the grant is issued, the opportunity to bring a legal action to change the will is likely lost.

If you're thinking of contesting the validity of a will because of mental incapability or undue influence, there's generally a **two-year limitation period** to bring your claim. This means you must start your legal action within two years from the date you know — or should have reasonably known — that you have a claim.

The court considers several factors when deciding whether a will is fair

If you make a wills variation claim, the court can decide to change the will if they think it's fair to do so in your particular circumstances. The court will consider many things when making this decision, including:

- the will-maker's reasons for distributing their assets as they did
- the value and nature of the will-maker's money and property
- your financial circumstances
- the financial circumstances of the other beneficiaries
- the nature of your relationship with the will-maker
- whether you financially depended on the will-maker and to what extent
- any assets passing outside of the estate to you or to others
- any gifts they made to you or others during their lifetime

The court considers what a reasonable will-maker would have done

If the will reflects irrational anger or favouritism or ignores the genuine needs of the will-maker's spouse or children, without good reason, the court may change the will to make it fairer. The court can order that the estate provide for the spouse or children in a way that is "adequate, just and equitable" in the circumstances.

Adult children

The courts have generally found that there's a moral obligation to provide for **independent adult children** if there are sufficient assets. But sometimes a will-maker's reasons for leaving their adult child out of the will are valid and rational. In that case the court may say there was no such obligation.

If an **adult child with a disability** is left out of the will, the court may find there was a moral and legal obligation to provide for them. Sometimes such children are left out of the estate for well-meaning reasons, such as a fear that the money would reduce or stop the adult child's social-assistance benefits. But that isn't always how things go. It's a good idea to consult a lawyer to ensure your dependent adult child gets the maximum amount of money they can.

The court may find that the will-maker wasn't capable when they made the will

If a court finds that the will-maker was not mentally capable when they made their will, it may decide the will isn't valid. In these circumstances, if the will-maker:

- didn't have a previous will, their estate will be divided according to BC law ^[4], or
- had another will, then their most recent valid will — made when they were mentally capable — applies

If the deceased made a written record of how they wanted their estate to be handled — when they were mentally capable — the court can consider it to help learn the deceased's intentions. This can give documents such as emails, letters, and text messages the same authority as a valid will. The court can then order the estate be distributed based on what they believe the deceased wanted. This part is relatively new to BC's wills and estates law — so far, courts have been conservative in interpreting it.

The court will cancel a will if there was undue influence or coercion

The court will cancel any will it believes was made under undue influence or coercion. If it's shown that a person was in a position where they could have dominated the will-maker or made the will-maker depend on them, then that person will have to prove they didn't unduly influence the will-maker.

Common questions

Do I need to see a lawyer?

If you have a problem like the ones described, you should see a lawyer. These kinds of disputes are typically complex. Your best chance of success is to have an expert take you through the legal process. A lawyer will tell you what steps to take, including what documents you'll need to file with the court.


When trying to find a lawyer to take your case, feel free to shop around. Ask each lawyer how much it'll cost. You should be able to get some free estimates. Some lawyers may agree to take a percentage of any amount you receive from the estate as a result of a successful challenge. This is called a **contingency fee arrangement**. With this type of arrangement, a lawyer will only charge you legal fees if you win the case. Many lawyers will still require you to pay certain expenses called disbursements even if you're not successful.

What if someone dies without a will?

If someone dies without a will, their estate is distributed according to the law ^[4]. Generally, the estate goes to the spouse, children, or descendants (for example, grandchildren) of the deceased. If there's no spouse or descendants, the estate will go to other relatives. Our information on when someone dies without a will explains in more detail how an estate is divided if there is no will.

What if I want to leave my spouse or child out of my will?

If you're thinking of leaving a spouse or child out of your will, or leaving them less than they might reasonably expect, see a lawyer. Our information on making a will and estate planning explains this in more detail.

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Your Duties As Executor

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan^[1], McLellan Herbert in October 2018.

As an executor, you're in charge of looking after the will-maker's affairs after they pass away. Before you accept to act as an executor, you should understand an executor's duties.

What you should know

The role of an executor

An **executor** is a person named in a will to deal with the will-maker's estate after they die. The person who died and wrote the will is called the **will-maker** (also called the **deceased**). An executor gathers up the estate assets, pays the debts of the deceased, and divides what remains of the deceased's estate among the **beneficiaries**. The beneficiaries are the people named in the will to inherit the estate. There can be more than one executor.

You don't have to act as executor

If you've been appointed as an executor under a will, but aren't interested in taking on the job, you don't have to. This is the case only if you haven't already dealt with any of the estate assets. "Dealing with an asset" may mean paying debts or changing the insurance on a home.

Acting as an executor can be challenging, time-consuming, and stressful. You should agree to be executor only if you can take on this responsibility. And you can't assign it to anyone else.

Once you begin dealing with the estate assets, you're legally bound to finish the job

If you start dealing with estate assets, you can be relieved of your responsibility only by a court order. If the executor dies before completing their duties (and there is no alternate executor named in the will who is willing to be executor) then the executor's executor (named in the executor's will) becomes the new executor, in most cases.

If you decide to act, you may need to probate the estate

Probate is the process of applying to court for a ruling that a will is legally valid and confirming that an executor is authorized to deal with the estate. An **estate** consists of any land, house, money, investments, personal items, and other assets that the deceased owned (with some exceptions, explained shortly).

Some estates don't require probate

Estates that involve a small amount of money (**under \$25,000**) may not need to go through probate. It's up to the outside parties who hold the deceased's assets (such as a bank) whether they'll give the executor those assets without a grant of probate.

Certain assets can be dealt with without probate. Land owned in **joint tenancy** with another person doesn't require probate. If the deceased owned land or a home in joint tenancy with another person, you only have to file an application in the Land Title Office along with the death certificate. This will register the land in the name of the surviving joint tenant.

Also, probate is not required for joint bank accounts or vehicles owned jointly. Again, the death certificate is usually sufficient to transfer these to the surviving joint owner.

In addition, registered retirement savings plans and insurance policies, which typically name a **beneficiary** to receive the proceeds when the owner dies, aren't considered part of the estate, and therefore don't require probate. You should give the death certificate to any insurance companies and plan administrators that the deceased had plans with. They'll want the death certificate before paying money to a beneficiary.

Tip If the estate includes securities, such as stocks and bonds, you may have to apply for probate to transfer them. You should check with the financial institution or transfer agent for each security in the estate because they'll have different requirements.

There are some expenses and fees you can claim

You can be paid back for expenses you paid out of your own pocket while serving as executor. You'll have to decide if you also want to claim a fee for acting as executor. This fee can be up to 5% of the estate (under the *Trustee Act*) and is taxable income to you. If you want to claim a fee, include it in the accounting that you send to the beneficiaries. If the executor and beneficiaries can't agree on a fair fee for the executor, the court will set it.

Deal with the estate

Confirm you have the most recent will

People can make multiple wills over their lifetime. You will need to confirm that the will you have is the most recent one. You need to get the original will to check this.

The will-maker or their lawyer may have registered a **wills notice** with BC's Vital Statistics Agency. You should do a search of the wills registry ^[2] of Vital Statistics to ensure you are dealing with the most recent last will. A wills notice will tell you the dates of any wills the will-maker registered with the wills registry.

If you need to find the original will, a wills registry search may help you out. A wills notice will tell you where the will-maker planned to keep the original will. The will might have been moved from the location listed in the wills notice.

You will need to give a copy of the **certificate of wills search** and any wills notices to the probate registry. It's important to note that not all wills are registered with Vital Statistics. For the Vital Statistics Agency office near you, call 1-888-876-1633 or check the Agency's website ^[3].

Confirm you're named as executor

Once you've confirmed you have the most recent will, you'll need to confirm you're named as executor. You need to get the original will to check this. If the will is not at the will-maker's home, it may be in a safety deposit box or at the office of the lawyer who drafted the will.

To look in a **safety deposit box**, phone the bank and make an appointment. Take the key to the safety deposit box, an original death certificate, and your own identification. If you don't have the key, the bank can have the lock drilled open. If the will is there and names you as executor, the bank will let you take it. The bank will not let you take the contents of the safety deposit box until you give them a copy of the grant of probate (explained shortly). You and a bank employee will list the contents of the safety deposit box. You need to keep a copy of that list.

Consider hiring a lawyer

If you agree to be the executor, consider hiring a lawyer to do the paperwork and advise you of your duties. If you do, the lawyer's fees will be paid from the estate's assets. Ask the lawyer how the legal fees will be calculated: a percentage of the estate or an hourly fee. But because unexpected matters often arise in estates, it may not be possible to get an exact estimate of fees. It's a good idea to hire a lawyer for any estate involving the distribution of assets through a will, where a grant of probate is required. For most estates, it's also a good idea to also hire an accountant to help with the several tax returns that need to be filed. Proper filing of returns and payment of taxes is one of the executor's responsibilities.

Make funeral arrangements

The funeral is the executor's responsibility, although you should consider the wishes of the deceased and their relatives. The funeral home will ordinarily order you copies of the death certificate. You may take the funeral bills to the bank where the deceased kept an account. If there's enough money in the account, the bank may give you a bank draft from that account to pay the expenses.

Cancel charge cards and protect the estate

Cancel all the deceased's charge accounts and subscriptions. Also, ensure the estate is protected. Make sure valuables are safe and that sufficient insurance is in place. If the deceased lived alone, immediately change the locks on their home and put anything valuable into storage. Most insurance policies cancel automatically if a home is vacant for more than 30 days, so ask the insurance agent about a **vacancy permit**.

Deal with any pensions

If the deceased paid into the Canada Pension Plan, immediately apply to the local Canada Pension Plan office to inform them of the death and obtain any death, survivor, or orphan benefits. Most funeral directors can give you information and forms on Canada Pension Plan death benefits. You should also check with the deceased's employer and union about any benefits from their work. If the deceased was receiving an Old Age Security pension or other pensions, you also need to inform those pension offices about the death. Any Canada Pension Plan or Old Age Security cheques for the month after the month in which the person died must be returned uncashed.

File certain income tax returns and pay income tax

You must file tax returns for the deceased's year of death and any years the deceased didn't file a return for. If the estate made any income after the date of death (such as rental income or interest on bank accounts or gains from selling assets), then tax returns will have to be filed for the estate for each year after death, until the estate is wound up or paid out.

Get a tax clearance certificate from Canada Revenue Agency

The estate must pay taxes and obtain a **tax clearance certificate** from Canada Revenue Agency before the estate can be distributed to beneficiaries. This certificate confirms that all income taxes and fees of the estate are paid. It's important. Without it, the tax office can impose taxes that you don't know about.

Pay the estate's debts

Depending on the circumstances, you may want to advertise for possible creditors, so you can make sure all legitimate debts are paid. This is to protect yourself against creditor claims that arise after you distribute the estate. As the executor, you could be personally liable if you don't pay the deceased's debts, including any taxes owed, before you distribute the estate. You should talk to a lawyer about this.

Apply for probate (if required)

You need to notify certain people of an application for probate

The Supreme Court Civil Rules ^[4] and the *Wills, Estates and Succession Act* ^[5] require that certain people must be given written notice of the executor's application for a grant of probate. This notice must be delivered, together with a copy of the will, to (among others) the beneficiaries named in the will, and certain family members who would inherit if there was no will or who are eligible to apply to court to change the will.

Prepare and submit the necessary probate documents

The probate documents are submitted to court to get probate. Usually, you must get probate of the will to handle the deceased's estate. If there are co-executors, all of them can apply for probate together or one executor can apply for probate and reserve the right of the others to apply later.

You'll also have to pay the **probate fees** calculated by the court registry. The deceased's bank will usually allow you to take these funds from the deceased's account.

Wait before distributing the estate

The law ^[6] allows any child or spouse of the deceased to apply to the court to vary or change the will. There is a 180-day deadline, starting from the granting of probate, for applications to vary the will, plus 30 days to serve the executor with the claim (that is, give the claim to them). So the law says you must wait at least 210 days from the grant of probate before distributing the assets of the estate. There are some exceptions to this, such as if you get consents and releases from each potential claimant. Pay attention to these rules. You might have to pay out of your own pocket if the assets go to the wrong people.

Our information on challenging a will explains wills variations claims in more detail.

Pay your expenses and fees and distribute the estate to the beneficiaries

Before distributing the assets under the will, submit a full accounting of the estate's financial activities and obtain a release from each beneficiary. If you want to claim a fee, include it in the accounting you send to the beneficiaries. If the executor and beneficiaries can't agree on a fair fee for the executor, the court will set it.

Unless there is only one beneficiary, such as a spouse or child, you may not want to distribute any part of the estate to beneficiaries until you get the Canada Revenue Agency **clearance certificate**. If the whole estate goes to a spouse, and you transfer most of the estate to them before you have the clearance certificate, the spouse will be responsible for any outstanding debts and taxes.

The executor usually has a year (called the **executor's year**) to complete the process, but it can take much longer, especially if the assets or liabilities are complicated, trusts are involved, or you cannot find a beneficiary.

Who can help

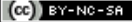
With more information

People's Law School has a publication on *Being an Executor* ^[7] for people who have been appointed as executor in a will.

- Visit website ^[8]

The **BC government** website includes information on wills and estate planning ^[9] and wills and estates ^[10].

- Visit website ^[9]

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When Someone Dies Without a Will

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan^[1], McLellan Herbert in February 2018.

If someone dies without a will, they're said to have died "intestate." The law says how their property will get distributed, and who has the right to "administer" their affairs.

What you should know

The law says how someone's estate is distributed if they die without a will

If someone dies without a will, the law in BC^[2] says how their **estate** will be divided. A person's estate is made up of the property and belongings they own on their death, with some exceptions (as explained in our information on the duties of an executor). The estate will be divided on an intestacy depending on the mix of relatives the deceased person leaves behind.

If the deceased leaves a **spouse and no descendants**, the estate goes to their spouse. A "descendant" means a surviving person of the generation nearest to the deceased. This will almost always be children only. For example, grandchildren would get a share of the estate only if their parent (the deceased's child) died before the deceased.

If the deceased leaves a **spouse and descendants**, the spouse gets at least part of the estate. How much depends on whether the descendants are also the spouse's descendants. If the deceased leaves a spouse and children — all of whom are also their spouse's children — the spouse gets the first \$300,000 of the estate and half of what's left over. The other half is divided equally among the children. If *any* of the deceased's children are not also their spouse's children, the spouse gets the first \$150,000 of the estate and half of what's left over. The other half is divided among the descendants of the deceased (usually their children). In either case, the spouse has the right to acquire the family home from the estate as part of their share.

If the deceased had **more than one spouse** (possible under the law^[3]), they share the spouse's share equally (unless they agree or a court decides differently).

If the deceased had **no spouse**, then the estate is divided among their descendants equally.

If the deceased had **no spouse and no descendants**, then the estate goes to their parents. If their parents aren't alive, it goes to their brothers and sisters, divided among them equally.

There are other rules to figure out which next of kin may receive the estate if the deceased had no spouse or descendants, and their parents and siblings aren't alive or they had no siblings.

If no one qualifies under the rules as the deceased's next of kin, the estate goes to the provincial government.

Tip Every adult who owns assets or has a spouse or young children should have a will. By preparing a will, you have control over who gets how much of your estate and when. You can appoint a guardian for any young children you have. And you can minimize the time and expense for others to deal with your affairs after you die. See our information on preparing a will and estate planning for guidance on preparing a will.

A person doesn't have to be married to be considered a spouse

In this context, a **spouse** includes a person who has lived with the deceased person for at least two years in a marriage-like relationship immediately before their death. Same-sex common-law partners can be spouses.

This means that more than one person could be the deceased's spouse and share in the estate.

The court may need to appoint someone to look after any children

With a will, a person can appoint a **guardian** to look after any young children they leave behind after they die. If someone dies without a will, the court will need to appoint a guardian if the deceased leaves behind children under 19 and the other parent isn't alive.

A minor's share must be paid to the Public Guardian and Trustee

If someone dies without a will, if anyone who is entitled to a share in the estate is not yet 19 years old, the law in BC ^[4] says their share must be paid to the **Public Guardian and Trustee of BC**. This public body ^[5] becomes the trustee and will hold a minor's share in an estate until they're 19 years old. The child's parent or guardian can apply to the Public Guardian and Trustee for any money needed for things like living expenses or education. This can be a hardship if the child is quite young and the parent or guardian needs the money for day-to-day expenses.

When the child turns 19, they can demand all their money — no matter how much it is or whether they are mature or financially responsible.

Tip By preparing a will, a person can create a **trust** for any gifts left to minor children or others who might be under 19 when the will-maker dies. The will-maker can appoint a trustee to manage the minor's share for the minor's benefit until they turn 19 (or a later age if desired). See our information on preparing a will and estate planning for more on the benefits of preparing a will.

The court will appoint someone to deal with the estate

If someone dies without a will, then they haven't appointed an executor to manage their affairs when they die. Someone will need to apply to court so they can legally deal with the deceased person's estate. The person appointed by the court to manage the estate is called an **administrator**.

There are certain people who can apply to administer the estate

The people who can apply to **administer** the estate are listed under the law ^[6] by order of priority. The spouse of the deceased is the first person who can apply or nominate someone else to apply.

If the deceased did not have a spouse or if the spouse is unwilling or unable to be the administrator, then a relative can apply.

If there are no relatives willing or able to do this, then any other eligible person can apply to be the administrator. This may include a friend of the deceased, or a professional such as a lawyer or accountant. The Public Guardian and Trustee — as Official Administrator for the province of BC — might also apply to administer the estate, if no one else is willing to do it.

Certain conditions may apply to appointing an administrator

If the deceased leaves behind debts when they die, the person who applies to be the administrator must get the deceased's creditors to agree to the application. Also, the person who applies may have to get the agreement of other people who could be appointed administrator. And the person may have to secure (deposit) money with the court (called a **bond**), to ensure they do the work honestly and competently.

The duties of an administrator

An administrator must:


- Make funeral arrangements, if required.
- Locate all the estate's **assets** and make sure they're secure; for example, the administrator must ensure that cars or buildings are insured, and that important documents are in a safe place.
- Locate all family members who may be legally entitled to a share of the estate (called an "**heir**" of the estate). This may involve contacting people outside of Canada.
- Advertise in the *BC Gazette* ^[7] for potential creditors.
- Sell assets that need to be sold. This includes listing and selling real estate after having it appraised; selling stocks, bonds, and other securities; and valuing and disposing of other personal belongings. Sometimes, instead of being sold, assets may be given a certain value and transferred to an heir as part of their share of the estate.
- File all necessary income tax returns and obtain an income tax clearance from the Canada Revenue Agency, confirming that all income tax has been paid.
- Put all money in an estate account and use it to pay the estate's debts, income taxes, legal and accounting expenses, and possibly an administration fee.
- Pay any money left over to the heirs of the estate.
- Report to the heirs listing all money received, debts and expenses paid, fees charged, and details of how the estate was distributed.

Who can help

With more information

The **Public Guardian and Trustee of British Columbia** is a government office that may agree to administer an estate when someone dies without a will.

- Call 604-660-4444 in the Lower Mainland and 250-387-6121 in Victoria
- Call 1-800-663-7867 (toll-free)
- Visit website ^[8]

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When Your Common-Law Spouse Dies

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Thomas E. Wallwork, Thomas E. Wallwork Law Corporation in August 2017.

Learn your rights, and what you're entitled to, if your common-law spouse dies. Learn what happens if your spouse left a will, if they didn't, and if you had children.

What you should know

There are different definitions of “spouse” under different laws

If two people live together in a **common-law relationship**, the law treats their relationship like a married relationship in many ways. But there are some differences, especially when it comes to limitation periods, and deadlines for making certain legal claims.

There are also different definitions of “spouse” under different laws. If your rights depend on a particular law, it is important to know exactly how that law defines “spouse”. The provincial *Family Law Act* and many other provincial laws define a “spouse” as someone who is legally married as well as someone who has lived in a “marriage-like relationship” for at least **two years**. The Canada Pension Plan and many other federal laws define a spouse as someone who has lived in a marriage-like relationship for at least **one year**.

You may be entitled to pension and survivor benefits

You may be entitled to **pension and survivor benefits** when your spouse dies. Some pension plans recognize a common-law spouse when it comes to paying out death benefits. Generally, you need to apply to the administrator of a pension plan to receive benefits.

You may be entitled to Canada Pension Plan benefits

You can receive **Canada Pension Plan benefits** if you and your spouse lived together for a year or more before your spouse's death. Canada Pension Plan provides three kinds of survivor benefits:

- a death benefit, which is a one-time payment
- a widow or widower's pension, which is a monthly payment
- an orphan's benefit, which is a monthly benefit paid to biological or adopted children

You have to apply for Canada Pension Plan survivor benefits ^[1]. They will not come automatically. You can pick up an application kit from any Service Canada ^[2] office and at many funeral homes, or you can apply online at servicecanada.gc.ca ^[1]. Call the main federal government Canada Pension Plan office at 1-800-277-9914 if you need help.

If your spouse left a will

In the context of wills and estates, a spouse includes a person who you lived with for at least **two years** in a marriage-like relationship immediately before they died. You must have been living with them at the time of their death to be considered their spouse. A spouse can be someone of the same gender as you.

If your spouse left you a fair share of their estate in their will, you just have to go through the regular legal steps to inherit. To receive your inheritance, the will goes through a procedure called “**probate**” if the value of the estate is more than \$25,000 or contains an interest in real estate. See our information on the duties of an executor to learn more about probating a will.

But if your spouse left you nothing or too little, you should talk to a lawyer right away. Under the *Wills, Estates and Succession Act* ^[3], a court can vary the will to provide something for a common-law spouse. You must make the claim within 180 days of the grant of probate or grant of administration in British Columbia.

There's another situation to consider. A person can have more than one spouse under the *Wills, Estates and Succession Act*. Let's say your spouse made a will and looked after you and your children in it. But let's also say your spouse had another spouse or children from another relationship, and did not leave them very much or anything at all. They too can go to court to have the will changed to better look after them.

For more information on getting a greater share of a deceased person's estate, refer to our information on challenging a will.

If your spouse died without a will

You should consult a lawyer if your common-law spouse has died, leaving children and no will. If your spouse dies without a will and:

- Your spouse left **no descendants**, their estate goes to you. A “descendant” means a surviving person of the nearest generation. This will almost always be children only. It can also include grandchildren.
- Your **spouse had descendants**, then what goes to whom depends on whether the descendants are also your descendants. If your spouse had children — all of whom are **also your children** — you will get the first \$300,000 of the estate and half of what's left over. The other half will be divided equally among the children.
- If *any* of your spouse's children are not also your children, you get the first \$150,000 of the estate. Then one half of what's left over also goes to you. The other half is divided among your spouse's descendants (usually their children).

You have the right to acquire the family home from the estate as part of your share.

Now, if you and your spouse lived separate or apart for at least two years, or one or both of you agreed to separate, or live apart permanently prior to the two year period before their death, you would not inherit the estate. But if you separated only a short time before, you may be able to apply for support from the estate, and you should consult a lawyer immediately.

Our information on when someone dies without a will provides more detail on how an estate is distributed when there is no will.

If you had children with a common-law spouse

A parent is legally and morally obliged to provide for their child. Under the *Wills, Estates and Succession Act*, a child includes the deceased person's biological and adopted children. Step-children are not considered to be children for these purposes.

If a parent says in a will: "I leave all my estate to my children in equal shares," that parent's children share equally, whether they were born while the parent was married or not.

If your spouse's will does not sufficiently take care of the needs of a child you had or adopted together, the child can apply to court to challenge the will. The *Wills, Estates and Succession Act* ^[3] allows a biological or adopted child to apply to the court to change a deceased parent's will. The court may vary the will if it does not adequately provide for the child's financial support.

If your spouse died without making a will, any children you had or adopted with your spouse are entitled to a share of the estate under the *Wills, Estates and Succession Act*. The amount depends on the size of the estate and whether your spouse left behind a married spouse or other children.

Tip If you are the parent of a child born from a different relationship, or the step-parent of a child, you should have your own will prepared. This way you can ensure all of your children would be looked after in the way you would like after your death. See our information on preparing a will and estate planning.

If your spouse appointed a guardian in their will

In a will, a parent or guardian of a child can designate a person who will become the **guardian of a child** upon the death of the parent or guardian. However, if that designated guardian then dies, the child would become a ward of the province, because a guardian appointed under a will can't designate a new guardian under their own will. The Ministry of Child and Family Services would investigate the matter, and would not oppose a suitable person applying to the court for guardianship of a child. A lawyer should be consulted immediately if a guardian appointed under a will has died.

In situations where parents are joint guardians, and they each appoint someone else who is not necessarily the other parent to be the successor guardian in their wills, the law is not clear if guardianship would go to the surviving parent or to the successor guardian named in the deceased parent's will. If your deceased spouse shared joint guardianship with you, but named someone else to be the children's guardian, you should speak with a lawyer.

Custody and guardianship of children you share with your common-law spouse

If both biological parents are living together and no guardian has been designated when one of the parents dies, the **surviving parent** is the guardian of any children, whether they were married or not at the date of the death of the other parent.

If the biological parents are separated, but had lived together in a marriage-like relationship while the mother was pregnant, and the parents lived together in a marriage-like relationship after the child was born, or if both parents cared for the child regularly, then both parents are guardians of the child. If one dies, the other will automatically become the guardian of the child.

If the biological parents are separated, and one of the parents has never regularly cared for or lived with the child after the child was born, then the parent who actually lived with and cared for the child is the child's sole guardian.


For step-children, you will have to apply to the court for guardianship of them, even if they are already living with you, if your spouse did not make a will appointing you as guardian or if they were a joint guardian with the other biological parent. You should speak to a lawyer if you have any questions about guardianship.

Who can help

With more information

Legal Aid BC publishes the booklet “Living Together or Living Apart: Common-Law Relationships, Marriage, Separation, and Divorce”^[4].

- Visit website^[5]

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Powers of Attorney and Representation Agreements

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan^[1], McLellan Herbert and Joanne Taylor^[2], Nidus Personal Planning Resource Centre and Registry in October 2018.

One day, you may need someone to help you make decisions concerning your health care, legal affairs, or finances. A **representation agreement** and **power of attorney** can help you prepare for this possibility.

Power of attorney

With a power of attorney, you can appoint someone to manage your legal and financial affairs

A **power of attorney** is a legal document you can use to appoint someone to make financial and legal decisions for you. The person you appoint is called an **attorney**.

Under the *Power of Attorney Act*^[3], you must be at least 19 years old to appoint an attorney and you must also be mentally capable. Generally, you are considered mentally capable of signing a document if you understand the nature and effect of the document when you sign it. The law presumes you are capable unless it's shown you're not.

A power of attorney that was signed before the law was updated (on September 1, 2011) will generally still be valid. It's still a good idea to have a lawyer review a power of attorney made before this date.

There are different types of powers of attorney

A **general power of attorney** ends automatically if you become mentally incapable or die. An **enduring power of attorney** continues — or endures — if you become mentally incapable.

You can give your attorney broad powers or you can place limits on the power you give them. Many people use a **limited power of attorney** when they can't look after their own affairs because they're travelling or injured. For example, if you're going out of the country for a while and you want someone to deal with your bank accounts, you can prepare a limited power of attorney.

A power of attorney is different from a will

A power of attorney is a way to plan for managing your affairs during your lifetime. A will provides for the distribution of the things you own after your death. To learn more about preparing a will, see our information on preparing a will and estate planning ^[4].

Choosing your attorney

Most people choose a family member or friend to be their attorney. You could also ask a professional, such as your lawyer or accountant or a trust company to be your attorney. The most important thing is to choose someone you trust — you're giving your attorney a lot of power.

If you appoint someone who is not yet 19, they can't act as attorney until they become an adult.

Ending a power of attorney

A power of attorney ends automatically when you die. A general power of attorney ends if you become mentally incapable.

You can end a power of attorney by giving your attorney a written notice saying that their power has ended. This is called a **notice of revocation**. You should destroy all originals and duplicates of the document to prevent misuse by the attorney. Give the notice of revocation to any financial institutions or other third parties where your attorney may have acted for you.

You can also put an end-date in the document, or explain circumstances when it will end — for example, when you return home from a trip.

To end a power of attorney dealing with land, you must file the notice of revocation with the Land Title Office where the land is registered.

Enduring power of attorney

With an enduring power of attorney, you can plan for your future care

An **enduring power of attorney** is a document you can use to appoint another person to make financial and legal decisions for you. It continues — or endures — if you become mentally incapable. The person you appoint is called your **attorney**. In contrast, a **general power of attorney** ends if the adult becomes mentally incapable.

An enduring power of attorney must say that the authority continues despite the adult's incapability. It must also say whether the attorney may exercise authority while the adult is capable, or only while the adult is incapable.

In order to make a power of attorney, you must be an adult (at least 19 years old) and you must be mentally capable. Section 11 of the *Power of Attorney Act* ^[5] says that adults are presumed to be capable of making decisions about their

financial affairs and understanding the nature and consequences of making, changing, or revoking an enduring power of attorney (unless it's shown otherwise).

It also explains that an adult is incapable if they cannot understand the six items listed in section 11.

An enduring power of attorney signed before the law was updated on September 1, 2011 will generally still be valid. It's still a good idea to have a lawyer review it.

Why you should consider an enduring power of attorney

With an enduring power of attorney, you decide who will look after your legal and financial affairs if you become incapable. Without an enduring power of attorney, if you become incapable, someone may have to apply to BC Supreme Court to be appointed your **committee of estate**. A committee of estate has the authority to look after your legal and financial affairs. Usually a spouse or other family member applies. To learn more about this process, see our information on committee^[6].

You have more control if you make an enduring power of attorney. And it costs much less than going to court to appoint a committee.

Choosing your attorney under an enduring power of attorney

You should appoint someone you trust because you're giving them a lot of power. Many people choose their spouse, family member, or friend. You can also ask a professional such as your lawyer or accountant, or a trust company. You can't appoint anyone who is paid to give you personal or health care services or who works at a facility where you receive personal or health care services, unless that person is your child, parent, or spouse.

A person can refuse to act as your attorney. Talk to the person you're thinking of appointing and make sure they're up for the job.

You can appoint more than one attorney

You can appoint more than one attorney, with different, or the same, authority. If they have the same authority, they must act unanimously unless:

- the document says they don't need to,
- the document explains how they must resolve conflicts, or
- one of the attorneys is an alternate, and you explain when they may act.

Signing an enduring power of attorney

Under section 16^[7], **you must sign** the enduring power of attorney in front of one witness if they are a BC lawyer or notary public. Otherwise you need two adult witnesses. The witnesses must sign it in front of you and each other.

Under section 17^[8], **the attorney must sign** the enduring power of attorney in front of one adult witness if they are a BC lawyer or BC notary public. Otherwise the attorney needs two adult witnesses.

Certain people cannot be witnesses. They include your attorney, and the spouse, child, parent, employee, and agent of the attorney.

The attorney has certain duties under an enduring power of attorney

Section 19 sets out the duties of an attorney under an enduring power of attorney^[9]. They include the duty to:

- act honestly and in good faith
- exercise the care, diligence, and skill of a reasonably prudent person
- act within the authority given in the enduring power of attorney
- keep proper records for inspection and copying
- act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney
- give priority when managing the adult's financial affairs to meet the personal care and health care needs of the adult
- invest the adult's property only under the *Trustee Act*, unless otherwise stated
- foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult
- not dispose of any property that the attorney knows is specifically gifted in your will, unless it's necessary to comply with their duties
- keep the adult's assets separate from the attorney's assets

Ending an enduring power of attorney

Under section 28^[10], you can **revoke**, that is cancel, an enduring power of attorney unless you're incapable. When you make the document, you can add other ways to revoke it.

The authority of an attorney is suspended or ends in several cases listed in section 29 of the Act^[11], including if the attorney:

- becomes bankrupt
- is your spouse and your marriage or marriage-like relationship ends (unless the document says that the authority continues regardless of whether your marriage or marriage-like relationship ends)
- is a corporation and the corporation dissolves, winds up, or ceases to carry on business
- is convicted of an offence under the Power of Attorney Act or an offence where you were the victim

Under section 30^[12], an enduring power of attorney is suspended or ends in several cases, including:

- when you die
- if you have a **committee** (when someone is appointed by the court to manage your legal and financial affairs)
- if a BC court declares you to be incapable
- if a BC court terminates the power of power of attorney

To cancel a power of attorney dealing with land, you must file a document called a "notice of revocation" with the Land Title Office where the land is registered.

Representation agreement

A representation agreement is another tool you can use to plan for your future care

A **representation agreement** is a document you can use to appoint someone, called a **representative**, to help you make, or to make, personal and health care decisions if you cannot make these decisions on your own. A representation agreement cannot authorize medical assistance in dying.

An agreement under section 7 of the *Representation Agreement Act* ^[13] can allow a representative to deal with routine management of financial affairs.

You need to be at least 19 years old to make a representation agreement.

Representation agreements signed before the law was updated (on September 1, 2011) will generally still be valid. Any representation agreements signed on or after September 1, 2011 must follow the updated law.

There are two types of representation agreements

Section 7 ^[14] deals with standard provisions for **routine management** of financial affairs and legal affairs, personal care, and minor and major health care. Under section 8 ^[15], an adult can make a representation agreement under section 7 even if they cannot make a contract or make decisions independently.

Section 9 ^[16] deals with non-standard representation agreements for all **personal care and health care matters**. Section 10 ^[17] says that to make this type of agreement, you must understand the nature and consequences of the document when you make it. Under this type of agreement, you can give general or specific powers. A representative with general powers can give or refuse consent to health care, including health care necessary to preserve life.

Why consider a representation agreement

With a representation agreement, you have a say in who will make personal and health care decisions for you if you become incapable. You may be able to reduce the burden on your family and friends. And you can avoid the government being involved in your personal and health care decisions.

If you do not have a representative, and someone needs to make a health care decision for you, a **temporary substitute decision-maker** may need to be appointed. Our information on adults and consent to health care ^[18] explains temporary substitute decision-makers and **advance directives**, which are written instructions about health care wishes.

Choosing a representative

A **representative** is usually a spouse or other family member or friend. Under section 5 ^[19], you can appoint any adult except someone who is:

- paid to give you personal or health care services, or
- an employee of a facility where you live and receive personal or health care services

These exceptions don't apply if your representative is your child, parent or spouse. You cannot appoint a trust company to be your representative for personal and health care decisions.

The person you appoint can refuse to act as your representative. Talk to anyone you're thinking of appointing to make sure they're up for the job.

You can choose more than one representative

Under section 6 ^[20], you can appoint more than one representative and give them the same or different authority. If they have the same authority, they have to act unanimously unless the agreement says otherwise.

You can also appoint an alternate representative. This is someone who can step in if your first representative is no longer willing or able to act for you. If you appoint an alternate representative, you have to say when they can act in place of the representative.

Signing a representation agreement

Under section 13 ^[21], you must sign the representation agreement in front of one adult witness if they are a lawyer or notary public. Otherwise you need two adult witnesses. Each representative must sign the document.

Certain people cannot be witnesses. They include your representative (and alternate representative) and the spouse, child, parent, employee, and agent of your representative (and alternate representative).

A representative has certain duties

Your representative must consult with you, as much as is reasonable, to determine your wishes. Some of the other duties of representatives under section 16 ^[22] include the duty to:

- act honestly and in good faith
- exercise the care, diligence, and skill of a reasonably prudent person
- act within the authority granted by the representation agreement
- keep your assets separate from the representative's assets
- keep proper records including creating and maintaining a list of your property and liabilities

When helping you to make decisions or making decisions for you, a representative must do the following, in the following order:

1. determine and comply with your current wishes
2. comply with the wishes you expressed when you were capable
3. act based on your known beliefs and values if your wishes are not known
4. act in your best interests if your beliefs and values are not known

Sometimes a monitor is required

Under section 12 ^[23], if your representation agreement deals with routine management of your financial affairs, you need an extra safeguard: you must name a **monitor**. You do not need a monitor if your representative is your spouse, the Public Guardian and Trustee, a trust company, or a credit union. You also don't need a monitor if you name two or more representatives to deal with your financial affairs and require them to act unanimously.

A representation agreement may conflict with an enduring power of attorney

If:

- your representation agreement includes routine management of financial affairs, and
- you also have an enduring power of attorney (explained above) dealing with your financial affairs, and
- the two documents conflict,

then the enduring power of attorney takes priority.

Cancelling or changing a representation agreement

Under section 27 ^[24], to cancel a representation agreement, you have to give written notice to the representative and alternate representative and monitor.

Under section 28 ^[25], the parts dealing with routine financial affairs are automatically cancelled if you or the representative become bankrupt or if the representative is convicted of an offence involving dishonesty, and in certain other cases.

Under section 29 ^[26], a representation agreement ends in certain cases, including if you or the representative die, if the representative becomes incapable, or if you are declared incapable by a BC court and the court does not allow the representation agreement to continue.

Common questions

What decisions can an attorney make?

An attorney can make most financial and legal decisions. You can choose to limit the attorney's power.

An attorney cannot make personal care or health care decisions for you. For these decisions, you need a representation agreement.

Can I limit my attorney's powers?

You can give your attorney very limited power. For example, you can give your daughter a power of attorney only to cash your pension cheques for you. Or you can give someone very broad power to deal with all your financial and legal affairs.

What if I want my attorney to deal with my home or other real estate property?

A power of attorney for real estate has to be filed with the Land Title Office. Under Part 6 of the *Land Title Act* ^[27], *it is valid for only three years from the date of signing, unless it says otherwise, or unless it is an enduring power of attorney.*

To cancel a power of attorney dealing with land, you must file a document called a "notice of revocation" in the Land Title Office where the land is registered.

Do you need a lawyer to prepare these documents?

No, but it is advisable to use a lawyer who specializes in this area of law because it's complex.

Can you register these documents somewhere?

At the Nidus Personal Planning Resource Centre & Registry ^[28], you can register enduring powers of attorney and representation agreements. Hospitals, banks, and government services can search there to find out who your attorney or representative is.

Who can help


With more information

The **Nidus Personal Planning Resource Centre & Registry** has detailed information on all aspects of enduring powers of attorney and representation agreements, including fact sheets, forms, and videos.

- Visit website ^[29]

The **Public Guardian and Trustee of British Columbia** provides information on personal planning tools, including enduring powers of attorney and representation agreements.

- Call 604-660-4444 in the Lower Mainland and 250-387-6121 in Victoria
- Call 1-800-663-7867 (toll-free)
- Visit website ^[30]

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Committeeship

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Services to Adults, Public Guardian and Trustee in June 2018.

A **committee** is a last resort option when someone becomes mentally incapable. A committee can make decisions for someone else who can't make decisions for themselves. Learn how committeeship works.

What you should know

A committee is usually appointed by the court

Once an adult becomes mentally incapable, they usually aren't in a position to make important decisions for themselves. A **committee** (pronounced caw-mi-tay, or caw-mi-tee, with emphasis on the end of the word) is a person or body usually appointed by the BC Supreme Court to make personal, medical, legal, or financial decisions for someone in BC who is mentally incapable. The court can appoint more than one person as committee.

Appointing a committee is a serious legal step because it takes away a person's right to decide things for themselves. It is intended to be used as a last resort.

Our information about powers of attorney and representation agreements ^[1] explains how you plan in advance, and avoid committeeship.

A committee can only be appointed for someone who is mentally incapable

Anyone who suffers from a mental illness or handicap, a head injury, a degenerative disease, or some other kind of disability may not be mentally capable to make decisions about their personal, medical, financial, or legal affairs. In the extreme case, a person may be unconscious and completely unable to communicate or decide anything. Someone who is mentally incapable may lose track of bank accounts, forget to pay bills, be unable to decide where and how to live, or be taken advantage of and abused. In these cases, appointing a committee is one possible solution.

There are two types of committee

A **committee of person** can make only personal and medical decisions, including decisions about where the person will live or whether to accept health care treatment. Usually a family member or close friend will fill this role. Only the court can appoint a committee of person.

A **committee of estate** can make only financial and legal decisions. A family member or close friend, a trust company, or the Public Guardian and Trustee of BC can fill this role. A committee of estate can be appointed by the court. The Public Guardian and Trustee can also be appointed as committee of estate by a certificate of incapability under the *Adult Guardianship Act* ^[2]. No one else can be appointed this way.

Often, people lose capacity to manage their financial and legal affairs before they lose capacity to manage themselves, so a committee of estate is more common than a committee of person. For example, a person may know how to cook and

bathe, but not how to handle banking and legal affairs.

Committees appointed by the court are sometimes called private committees

Committees (other than the Public Guardian and Trustee) are sometimes called **private committees** ^[3]. The Public Guardian and Trustee may apply to court to be the committee ^[4] if no suitable person is willing to act.

You can choose your own committee while you're still capable

If you're mentally capable, you can name (nominate) someone you want to be your committee if you ever need one. Then, if you later become mentally incapable, the court will appoint that person unless someone can show there's a good reason not to. It is best to see a lawyer if you want to do this because there are specific legal requirements.

The role of the Public Guardian and Trustee

The Public Guardian and Trustee is an entity independent of the BC government, with offices in Vancouver, Victoria and Kelowna. One of its duties is to be committee when no other suitable person is willing to be committee ^[4]. It charges fees, set by regulation, for this service.

If you think a person needs a committee and you can't do the job, or if there's a family conflict, you should contact the Public Guardian and Trustee. When the Public Guardian and Trustee becomes committee, the court isn't involved. This public body can automatically be appointed after a certificate of incapability is issued. This is a certificate issued by a provincial health authority after a medical and functional assessment finds that an adult is mentally incapable.

The Public Guardian and Trustee also reviews all court applications to appoint a committee and makes recommendations to the court about the applications. The recommendations include whether a committee should post a security bond or have only limited access to the person's assets.

The Public Guardian and Trustee also reviews all committee accounts ^[3], decides on payments to committees, and receives and investigates reports of abuse and mismanagement by committees.

The Public Guardian and Trustee has the necessary forms, samples of accounts committees must keep, and a handbook for private committees ^[5]. For more information, or to ask them to send you these documents, call 604-660-4444 in the Lower Mainland. Elsewhere in BC, call Service BC at 1-800-663-7867 and ask for the Public Guardian and Trustee. You can also email the office at mail@trustee.bc.ca.

What a committee should know

Applying to become a committee

You might want to be a committee if one of your family members or close friends has lost the mental capacity to make important decisions and you want to help.

To become a committee, you must apply to the BC Supreme Court ^[6] to be appointed by an order under the *Patients Property Act* ^[7]. But first, you must confirm that the person is **mentally incapable**. The person's doctor may be able to help you do that. A committee can be appointed only if two doctors say the person is mentally incapable.

A lawyer can help you with the required court documents. If you're applying to be committee of estate, the doctors' statements must say the person is not able to manage their financial and legal affairs and explain why. If you're applying to be committee of person, the doctors' statements must say the person cannot manage their personal and medical decisions and explain why.

The person must be notified of your court application unless the doctors say it would be harmful to them. Sometimes the person will oppose the application. You should also notify the person's family members, and if you can, get their consent to your application.

Give the lawyer as much information as you can about the medical condition and financial affairs of the person. Because of privacy laws, some financial institutions may not want to give you information.

When the paperwork is ready, a lawyer can help you apply to court for an order to appoint you as committee. A lawyer can also advise you on how to act as committee.

Depending on the value of a person's assets and income, and other circumstances, the court may order you, as committee, to post a **security bond**. The security bond and other expenses a committee incurs acting for the person usually comes out of the person's (and not the committee's) pocket.

If the person becomes capable again

They or you can apply to court to end your role as committee. You may have to get court approval of your final accounts for the person's estate — unless the newly capable person agrees you do not have to.

If the person dies

Their committee continues to act for them ^[8] until an executor or administrator is appointed for the deceased person.

The Public Guardian and Trustee reviews all court applications to be appointed committee and monitors committees ^[3].

A committee has broad powers and important duties

Generally, a committee has the same powers to deal with a person's estate (that is, their money and property) and affairs as the person has when they are capable. But there are some things a committee can't do for a person: for example, a committee can't change a person's will, vote in a general election, or consent to marriage.

A committee must act in the person's best interests

A committee has a **fiduciary responsibility**. A committee must put the person's interest ahead of their own. They cannot mix the person's assets with their own. A committee must avoid conflict-of-interest situations. These are important duties and it can be hard to fulfil them.

The court can limit a committee's powers

A court might say a committee can't sell any of the person's real estate without first getting the court's permission or the consent of the Public Guardian and Trustee. Or the court may restrict access to an investment so that the committee can access only the income from the investment, not the investment itself.

A committee has certain duties when investing

A committee must follow the *Trustee Act* ^[9] when they invest for a person. If they invest in things the *Trustee Act* does not allow, they may have to pay the estate for any losses. Unless an estate is small, a committee should get professional investment advice.

Generally, a committee can't get benefit from their appointment

Normally, a committee can't use the person's property or get any benefit from it. There are exceptions to this — for example, if a person's committee is their spouse. An incapable person must still support their spouse and dependent children. So a spouse who is committee can use some of the person's assets and income for their own living expenses. Before a committee uses their spouse's assets or income to support a family member or themselves, they should check with the Public Guardian and Trustee or a lawyer.

Responsibilities of a committee

A **committee of estate** can be responsible for:

- handling the person's property
- doing the person's banking (this could include borrowing money for the person, though there may be restrictions on using property as security to borrow and court permission may be required)
- paying the person's expenses
- budgeting for the person's family
- selling the person's property
- entering into contracts for the person and running the person's business
- dealing with any lawsuits involving the person
- filing the person's income tax returns
- applying for pensions and other benefits for the person

Committees must keep detailed records of all the assets, liabilities, and money coming in and going out of the person's estate. They must give periodic reports (called **accounts**) to the Public Guardian and Trustee.

The Public Guardian and Trustee:

- will review and decide whether to pass (or accept) the accounts
- decide how often a committee must file the accounts — from every six months to every five years
- receives and investigates reports of mismanagement by committees

A **committee of person** is responsible for making medical decisions for the person and deciding where and how the person should live.

Committees can hire professional help for tasks that require expert advice or work, but not for things that an ordinary person could do. Any professional fees paid out of the person's money should be reasonable and necessary.

A committee is usually paid

A committee is paid a reasonable fee for their service. This is paid from the money and property owned by the mentally incapable person. The size of the fee depends on the size of the estate and how much work a committee must do to manage it. The Public Guardian and Trustee decides the fee each time it approves a committee's accounts.

Committees should keep written records of the work they do and the time they spend on the estate to show what they did, why, and how. Careful record-keeping is essential for committees.

Common questions

How is a committee different from a power of attorney?

Preparing a power of attorney is easier than a committee order. The catch is that a person must sign a power of attorney while still mentally capable. So it doesn't work for a person who is already incapable.

As well, a power of attorney ends when the person who gave it becomes mentally incapable, unless it has an **enduring clause**. An enduring clause says that the power of attorney continues if the person becomes mentally incapable.

Finally, a power of attorney deals only with legal and financial affairs, not personal or medical issues.

Are there other laws that promote adults' rights to care for themselves?

BC has the following four laws to promote adults' rights to care for themselves. The laws aim to help people who can't make their own decisions or who could be taken advantage of by dishonest people:

- *Representation Agreement Act* ^[10]
- *Health Care (Consent) and Care Facility (Admission) Act* ^[11]
- *Adult Guardianship Act* ^[2]
- *Public Guardian and Trustee Act* ^[12]

These laws provide other ways, besides a committee order to help a person who is mentally incapable. Our information about powers of attorney and representation agreements explains how you can plan while you are still mentally capable, and avoid committeeship.

What if the adult receives a pension from the federal government?

If a person who becomes mentally incapable has no assets or property but receives a pension from the Canadian government (such as from the Canada Pension Plan or Old Age Security), then a pension trustee is an option. Service Canada has more on this. Call 1-800-277-9914.

Who can help


With more information

The **Public Guardian and Trustee of British Columbia** provides information and forms relating to the committee process.

- Call 604-660-4444 in the Lower Mainland and 250-387-6121 in Victoria
- Call 1-800-663-7867 (toll-free)
- Visit website ^[13]

The **Nidus Personal Planning Resource Centre & Registry** has information about committeeship and personal planning alternatives.

- Visit website ^[14]

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Part 5. Courts & Crime

Courts & Resolving Disputes

Resolving Disputes Without Going to Court

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Steven Gjukich ^[1], Gilchrist & Company in March 2018.

Going to court is one way to resolve a dispute. But there are other ways that can be cheaper, faster, and more effective. Learn about options for **alternative dispute resolution**.

What you should know

There are ways to resolve disputes without going to court

Courts aren't always the best place to resolve a dispute. They are often slow and expensive. Going to court can end up costing more than the dispute is worth. Court may not work if you need a quick solution. And court proceedings are open to the public, and you may prefer to keep the details of your dispute private.

Alternative dispute resolution, or ADR, is an umbrella term to describe alternatives to going to court. The four most common alternative ways to resolve legal disputes are:

- negotiation,
- mediation,
- collaborative practice, and
- arbitration.

These options often work best at an early stage of a dispute. The more time that goes by, the more likely it is that you and the other person will each believe you're right and the other person is wrong. Once you become stuck or entrenched in your positions, and ignore the common interests you may have, it's harder to reach a solution you can both accept.

Negotiation involves discussing issues to try to reach an agreement

Negotiation involves the people in a conflict discussing issues to try to reach an agreement. You work out a solution together that fits both of your interests. Negotiation happens every day. It's probably something you often do, perhaps without even realizing it.

A lawyer can help you negotiate with the other party in a dispute, or you could negotiate on your own. If you negotiate on your own, without a lawyer, you should sign an agreement with the other party saying your negotiations are **without prejudice**. This means neither of you can use your discussions against the other if one of you decides to go to court.

Mediation involves a neutral person helping the parties agree

In **mediation**, the people in a conflict meet with a neutral person (a **mediator**), who helps them find a solution they agree on.

The mediator doesn't work for either party, or favour one party over the other. The mediator manages the process and organizes your discussions, remaining a neutral facilitator throughout the process. They help clear up misunderstandings and reduce tension, so you and the other party feel comfortable sorting out your problems together. While the mediator helps the two of you to come to an agreement, they don't decide for you, or force you to accept a solution.

Mediation works well for most disputes — especially when the facts are clear, the people are in an ongoing relationship, and they want to protect their privacy. For example, mediation can be ideal for resolving family disputes. That is so particularly if there are children, where the parties need to continue working together as parents.

Mediation works only if both people are willing to resolve their dispute. It doesn't work if one person isn't interested in a solution that satisfies both people. In that case, court may be the only solution.

For more, see our information on mediation.

Collaborative practice features negotiating a settlement collaboratively

Collaborative practice is a kind of negotiation where the parties seek an agreement that suits everyone, agree to disclose all relevant information, and commit to keeping their dispute out of the courts.

Collaborative practice is most widely used in family disputes. Each party has their own lawyer, who agrees to only act for them in the collaborative process (and not if the matter ends up in court). The lawyers work to minimize conflict and reach an agreement. Communications are usually open and transparent.

Collaborative negotiation is an effective process for moving past conflict to resolution — even if you've tried other ways to come to an agreement. It also gives you emotional support and legal guidance. And it's more private than going to court (court documents are public, but your collaborative agreement is not).

For more on this approach, see our information on collaborative practice.

Arbitration involves hiring a neutral person to decide the issues

With **arbitration**, the people in a conflict hire a neutral person (an **arbitrator**) to make decisions about their dispute they will be bound by. The arbitrator listens to the evidence each party presents and decides the issues.

Arbitration is less formal and more flexible than court. You and the other party agree in advance on the rules for the arbitration process. You can both agree on a process that will allow the arbitrator to reach a decision on a limited budget.

Arbitration works well for commercial and business disputes. An arbitrator is often experienced with the type of dispute you have. They may be an expert on the subject.

Before arbitration begins, you and the other person must decide if you can still go to court if you don't like the arbitrator's decision. This may depend on the law that applies to your problem. Usually, you cannot go to court later if you're unhappy with the arbitration result.

Common questions

A lawsuit is underway. Can we still try alternative ways to resolve our dispute?

Yes, absolutely. Even if you go to court, you can still try alternative dispute resolution in most cases. After a lawsuit has started, parties often try to **negotiate** settlements so they don't have to go to trial. Or (if both parties agree) you could try **mediation** or **arbitration** before going further with a lawsuit.

Are there situations where ADR is not a good idea?

If the issues are very complex, the dispute might benefit from the processes available in a lawsuit to, at an early stage, examine the documents and question the people involved.

Who can help

Finding a mediator or arbitrator

Professionals who provide alternative dispute resolution include lawyers, social workers, and psychologists. When looking for a mediator or arbitrator, it's important to work with a qualified and skilled professional experienced in the type of dispute resolution process you want to use.

The **ADR Institute of BC** can direct you to a chartered mediator or arbitrator who is a member of the ADR Institute of Canada. Visit adrbc.com ^[2] or call 604-736-6614 in Vancouver and 1-877-332-2264 elsewhere in BC.

The **Mediate BC Society** has a list of mediators. Visit mediatebc.com ^[3] or call 604-684-1300 in Vancouver or 1-877-656-1300 elsewhere in BC.

Call the **Lawyer Referral Service**, operated by Access Pro Bono, for a lawyer experienced in alternative dispute resolution. Call 604-687-3221 in the Lower Mainland or 1-800-663-1919 elsewhere in BC, or visit accessprobono.ca ^[4].

Organizations related to a specific business, product or service may also offer alternative dispute resolution services. For example, the Canadian Motor Vehicle Arbitration Plan ^[5] has an arbitration program for disputes between consumers and vehicle manufacturers about alleged manufacturing defects or new vehicle warranties. If you have a complaint involving a business, the Better Business Bureau ^[6] offers both mediation and arbitration.

Finding a collaborative practitioner

Call the **Lawyer Referral Service** for a lawyer experienced in collaborative practice. Call 604-687-3221 in the Lower Mainland or 1-800-663-1919 elsewhere in BC, or visit accessprobono.ca ^[4].


Visit the **BC Collaborative Roster Society's** website at bccollaborativerostersociety.com ^[7] and search for collaborative lawyers nearby.

Visit **Collaborative Divorce Vancouver's** website at collaborativedivorcebc.org ^[8] for the name of a member lawyer.

The **Collaborative Association's** website at nocourt.net ^[9] features a list of participating professionals.

In Victoria, contact the **Collaborative Family Separation Professionals** for the name of a member lawyer. Visit collaborativefamilylawgroup.com ^[10].

For more options to find a collaborative practitioner, see our information on mediation and collaborative practice.

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Our Court System in a Nutshell

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Steven Gjukich ^[1], Gilchrist & Company in March 2018.

Trial courts hear evidence and decide cases. British Columbia has two levels of trial court, Provincial Court and Supreme Court. Learn which type of cases each of these courts handle.

What you should know

Most cases start in Provincial Court

There are provincial courts in nearly 100 communities in British Columbia. **Provincial Court** has the following four main parts or divisions:

- Criminal Division, known as **Criminal Court**
- Family and Youth Division, sometimes called **Family Court** and **Youth Court**
- Small Claims Division, known as **Small Claims Court**
- Traffic Division, or **Traffic Court**

Criminal Court deals with crime

A person accused of a crime makes a first appearance in **Criminal Court**. If the person is in jail, a judge decides whether to release the person or keep them in jail until their trial. For less serious crimes, the trial is also held in this court. At the trial, evidence is presented and a decision made about whether the accused is guilty of the crime.

For more serious crimes, the accused person may be able to choose a trial in Criminal Court or in BC Supreme Court. The most serious crimes, like murder and treason, *must* be tried in Supreme Court. But even for those cases, a Provincial Court judge will still hold a **preliminary inquiry** to decide if there's enough evidence to have a trial in Supreme Court. For more on the criminal court process, see our information on defending yourself against a criminal charge.

Family and Youth Division handles family and youth cases

Family problems like custody and access, child and spousal support, and family violence cases are dealt with in **Family Court**. For details, see our information on Family Court.

Youth Court handles criminal cases involving young people aged 12 to 17. Our information on youth justice trials explains proceedings in this court.

Civil disputes under \$35,000

In a **civil case**, one party in a conflict says they suffered **damage** as a result of conduct of another party. Examples include a contract dispute, a car accident claim, a claim to recover a debt, or a conflict between family members about who inherits property.

In a civil case, one party files court documents to start the lawsuit. The other party can file documents to put forward their own position. If the parties can't settle their case, it goes to trial, where each side presents evidence and the court decides the outcome of the case.

For civil disputes worth between \$5,000 and \$35,000, the case can be brought in **Small Claims Court**. This court ^[2] is designed for people to act for themselves; for example, all the forms are in plain language. For more, see our information on Small Claims Court ^[3].

Claims of \$5,000 and less are dealt with by the **Civil Resolution Tribunal**. This tribunal ^[4] is an online system people can use without the help of a lawyer.

Traffic Court handles traffic and some other offences

If someone disputes a ticket for a driving offence under provincial laws (such as speeding, distracted driving, or driving without insurance), a hearing will be set in **Traffic Court**.

This court also handles some other offences under provincial laws, such as trespass or liquor offences, as well as bylaw offences like zoning and building code violations.

BC Supreme Court deals with serious criminal and civil trials

BC Supreme Court handles both criminal and civil cases. This court ^[5] is where the most serious criminal trials, for murder and treason, are heard. Other serious criminal cases involving drugs, rape and attempted murder are usually tried here too.

For civil cases, Supreme Court hears claims for more than \$35,000 and some cases for less than that where the law requires the claim to be brought in Supreme Court. For example, the law requires that a builders' lien claim or an order for divorce be sought in Supreme Court.

Trials in Supreme Court can be in front of a judge, or a judge and jury.

BC has several Supreme Court "resident" judges. These judges also travel to other places throughout BC to hold trials. Cases in Supreme Court are usually complicated, so most people use lawyers, but they don't have to.

BC Supreme Court also hears appeals of some Provincial Court decisions.

BC Court of Appeal hears appeals

The **BC Court of Appeal** is the highest court in BC. It doesn't hold trials. Instead, this court ^[6] reviews decisions of trial courts if any of the people in a case disagree with the decision and appeal it. It hears appeals of civil and criminal cases from the BC Supreme Court. The Court of Appeal also hears appeals of some criminal cases from Provincial Court.

The Court of Appeal is in Vancouver, but it also travels to Victoria, Kamloops and Kelowna to hear cases.

Canada's two federal courts

There are two federal courts in Canada: the Federal Court of Canada ^[7] and the Supreme Court of Canada ^[8].

The **Federal Court of Canada** has two parts and deals with federal laws. It consists of the Federal Court, which is a trial court, and the Federal Court of Appeal. The Federal Court holds trials for cases where the federal government is being sued or the dispute deals with federal laws (such as immigration or income tax laws). The Federal Court of Appeal hears appeals of decisions by the Federal Court.

The **Supreme Court of Canada** is the highest appeal court in the country. Based in Ottawa, the Supreme Court of Canada hears appeals from decisions of the BC Court of Appeal, from the appeal courts of other provinces, and from the Federal Court of Appeal. Usually, the Supreme Court must agree to hear an appeal — and it doesn't agree to hear every appeal that people request. In some cases, the right to appeal is automatic. Until recently, people often had to go to the court in Ottawa, but now the court hears some appeals by a live video link to a court in Vancouver.

Common questions

Are courts open to the public?

All courtrooms are normally open to the public, so you can attend and watch. You can walk in and no one will ask you what you're doing, if you're quiet and don't disturb the proceeding. Some high-profile trials (such as high-profile murder trials or gang trials) are not completely open to the public. They have intense screening of anyone who wants to attend.

Are there options other than court to resolve a dispute?

Going to court is one way to resolve a dispute. But there are other ways that can be cheaper, faster, and more effective. Learn about options for “alternative dispute resolution” in our information on resolving disputes without going to court.

Who can help

With more information

The **BC Provincial Court** website features guides on how to handle a case before the court, as well as past court decisions.


- Visit website ^[9]

The **BC Superior Courts** website includes information for BC Supreme Court and BC Court of Appeal, including information for self-represented litigants appearing in those courts.

- Visit website ^[10]

The **Justice Education Society** provides online help guide websites for all levels of court in BC.

- Visit website ^[11]

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Starting a Lawsuit

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in October 2017.

A lawsuit is a way to get money or other relief if something's gone wrong. Learn what to consider and what is involved in starting a lawsuit in British Columbia.

What you should know

Other ways to resolve a dispute can be cheaper and more effective

A **lawsuit** is a way to get money or other relief if something's gone wrong. It might be getting poor service under a contract, being injured in a car accident, getting fired unfairly, or not getting repaid a debt.

The party who feels they were wronged starts a lawsuit by filing documents in court. The other party files documents in response. If the parties can't settle the case, it goes to trial, where each side presents evidence and the court decides the outcome of the case.

Before starting a lawsuit, it's almost always best to try solving the problem another way. Going to court can end up costing more than a dispute is worth. It's rarely quick. Court proceedings are open to the public, and you may prefer to keep the details of your dispute private.

There are other ways to resolve disputes that can be cheaper, faster, and more effective. For example:

- **Negotiation** involves the people in a conflict discussing issues to try to reach an agreement. You work out a solution together that fits both of your interests.
- With **mediation**, the people in a conflict meet with a neutral person (a mediator), who helps them find a solution they agree on. The mediator helps you come to an agreement, but they don't decide for you.
- With **arbitration**, the people in a conflict hire a neutral person (an arbitrator) to make decisions about their dispute they will be bound by. Arbitration is less formal and more flexible than court, and private.

Learn about options for "alternative dispute resolution" in our information on resolving disputes without going to court.

The court you bring a lawsuit in depends on the dollar amount involved

In British Columbia, where you bring a lawsuit depends on the dollar value of the claim and its subject.

Claims for **up to \$5,000** must usually be taken to the online **Civil Resolution Tribunal**. This tribunal ^[2] is an online system people can use without the help of a lawyer. There are some exceptions, such as where the tribunal considers the case to be too complex or if the claim is a certain type of dispute (such as a claim that affects land). We explain this more shortly.

For most disputes worth between \$5,000 and \$35,000, the case can be brought in **Small Claims Court**. This court ^[3] is also designed for people to act for themselves. For more, see our information on Small Claims Court ^[4].

Claims for more than \$35,000 generally go to the **BC Supreme Court**.

The court you sue in also depends on the subject matter of the lawsuit

Where you bring a lawsuit also depends on its subject matter. Certain types of claims must be brought in a specific court. For example, a lawsuit against the federal government must be brought in Federal Court ^[5]. See our information on our court system in a nutshell for a high-level overview.

Certain types of civil claims must be brought in **BC Supreme Court**, regardless of the dollar value involved. For example:

- claims to do with an interest in land or that affect land (such as a builders lien claim)
- claims involving defamation
- claims involving a will or estate
- an application for an order for divorce

As well, there are certain types of claims where a law says the claim must go to a **tribunal**. This is a body similar to a court that hears disputes and makes decisions in a specific area. For example, a claim for workers' compensation benefits after a workplace injury must be brought to a tribunal that specializes in those types of claims.

While for the most part the online **Civil Resolution Tribunal** deals only with claims up to \$5,000, there are two exceptions:

- The tribunal deals with most disputes involving **strata properties** (condos), of any dollar amount.
- For **motor vehicle accidents** taking place in BC after April 1, 2019, injury claims up to \$50,000 must be brought to the tribunal.

There's a time limit to sue

The law in BC ^[6] creates a time window to bring a legal action. Once this window, called a **limitation period**, has passed, it's too late to start a lawsuit.

Most claims have a limitation period of **two years**. But some types of claims have different limitation periods. For example, a lawsuit to enforce a court judgment has a limitation period of 10 years.

The limitation period starts to run once a person "**discovers**" their legal claim. A claim is said to be discovered on the first day you knew, or reasonably ought to have known, all the following:

- an injury, loss or damage occurred,
- it was caused at least partly by an act or **omission** (something neglected or left undone),
- the act or omission was that of the person you're suing, and
- a court proceeding would be an appropriate way to seek a remedy.

For example, let's say you take your car for engine repairs. It's in the shop for a month. When you get it back, you see the car has a new problem — the back bumper has a major dent. The limitation period starts on the day you discovered the car was damaged and realized (or reasonably ought to have realized) it was the repair shop that did the damage.

If you discovered a legal claim before June 1, 2013, an older limitations law ^[7] applies. It had different limitation periods for different types of claims. For example, a claim for breach of contract or repayment of a debt had a six-year limitation period.

Tip The limitation period for suing a municipal government ^[8] is shorter than for most claims: just six months. If you don't know what limitation period applies in your case, seek legal advice. If the limitation period expires before you sue, you are barred from bringing a claim.

Bringing the lawsuit

A lawsuit begins with a document you prepare, file with the court (or tribunal), and deliver to the party you're suing.

This document is called different things depending on the court. In Small Claims Court, it's called a **notice of claim**. Before the Civil Resolution Tribunal, it's called a **dispute application form**.

The details of how you complete the form, file it, and deliver it also vary depending on the court. For the process in **Small Claims Court**, see our information on suing someone in Small Claims Court.

For the process before the **Civil Resolution Tribunal**, see the tribunal's website ^[9].

For the process in **Supreme Court**, see the court's Online Help Guide ^[10].

As you consider your next steps, it's worth asking yourself a few questions.

- **Is it worth it to sue?** Is bringing a lawsuit going to cost you almost as much as you're claiming? Even if you are representing yourself or not paying for legal representation, you'll have to pay fees and expenses to make a claim — the amounts depend on what court you're suing in and what evidence you put forward.
- **Is the emotional toll worth it?** There's also the emotional cost of being in a lawsuit. The conflict you're in might extend for a year or two or even longer. Consider the complicated and personal questions you might have to ask or answer.
- **Will you get paid, even if you win?** If you bring a lawsuit and win, it's up to you to collect the money. If the person or company you're claiming against can't pay, you won't get your money. If you're dealing with a company, check that they're still in business. See our information on getting your judgment paid for options if the person you sue doesn't pay.

Who can help

With your case

You do not need a lawyer to go to Small Claims Court or bring a claim to the Civil Resolution Tribunal. But you'll probably better understand the process, as well as the strength of your case, if you get **legal advice**. If you have limited means, you might be able to get legal help from pro bono services, a student legal clinic, or an advocate. See our information on free and low-cost legal help.

More information

The **Civil Resolution Tribunal's** website explains how to bring a claim to the tribunal and what to expect from each stage of the process.


- Visit website ^[9]

The **BC government** website has how-to guides on Small Claims Court, including making a claim, replying to a claim, serving documents, getting ready for court, and getting results.

- Visit website ^[11]

The **Supreme Court BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a lawsuit before that court.

- Visit website ^[10]

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Suing Someone in Small Claims Court

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt^[1], Ganapathi Law Group in August 2017.

To sue in Small Claims Court, you file a “notice of claim” in court, and then let the party you’re suing know about it. Learn the steps in the process.

What you should know

What claims you can bring in Small Claims Court

Whether you can sue in Small Claims Court depends on the dollar value of the claim and its subject.

The dollar amount

Small Claims Court generally deals with **claims for \$5,000 to \$35,000**.

Claims for up to \$5,000 must usually be taken to the online Civil Resolution Tribunal^[2]. However, Small Claims Court may deal with claims under \$5,000 in certain circumstances, such as where the tribunal considers the case to be too complex.

Claims for more than \$35,000 generally go to the BC Supreme Court^[3]. You can make a claim for more than \$35,000 in Small Claims Court, but if you do you must abandon the amount over \$35,000.

The subject

Claims brought in Small Claims Court must involve:

- debt or damages,
- recovery of personal property, or
- agreements about services or personal property.

Small Claims Court does **not** have the power to deal with several types of claims, including claims to do with an interest in land, defamation, wills and estates, and lawsuits against the federal government.

For more on where certain types of claims can and can't be brought, see our information on starting a lawsuit.

Tip Have a claim arising out of a **motor vehicle accident**? For most vehicle accidents, the claim must be brought to the Civil Resolution Tribunal^[4].

There's a time limit to sue

The law in BC^[5] creates a time window to bring a legal action. For most claims, that window (or **limitation period**) is **two years**. Once two years have passed after a claim is “discovered,” it's too late to start a lawsuit.

The claim is said to be **discovered** on the first day you knew, or reasonably ought to have known, all the following:

- an injury, loss or damage occurred,
- it was caused at least partly by an act or **omission** (something neglected or left undone),
- the act or omission was that of the person you're suing, and
- a court proceeding would be an appropriate way to seek a remedy.

For example, let's say you buy a new high performance bicycle. Three months after you get it, the front brakes fail, and you're in a serious crash. An expert you hire determines the brakes were faulty. The limitation period starts on the day you discovered the brakes were faulty and realized (or reasonably ought to have realized) it was the bike maker that was responsible for the damage.

For more on limitation periods, see our information on starting a lawsuit.

The steps in the process

Step 1. Prepare the notice of claim

A lawsuit in Small Claims Court begins with a **notice of claim**. You must complete the notice form, file it with the court registry, and deliver it to the party you're suing.

You can complete the notice of claim by:

- using the court's online Filing Assistant ^[6], which walks you through the steps of completing the form,
- downloading the notice of claim form (Form 1) from the BC government website at gov.bc.ca/smallclaims ^[7], or
- going to a Small Claims Court registry ^[8] and asking for the notice form.

In the notice of claim, briefly describe what happened that led to your claim. You don't need to tell everything about your case. Later, at a settlement conference or trial, you will have an opportunity to fully explain your side of the story.

Say how much money you're seeking. If you're asking for something besides money (for example, the recovery of property), write that down and include a dollar value.

As the person who is suing, you are called the **claimant**. The person or company you are suing is called the **defendant**.

Take care in naming the defendant. If you name the wrong party, your claim will be dismissed. Make sure to use the defendant's proper name. If you're suing a company, you can get the company's **legal name** by doing a **company search** with BC Registries ^[9]. You can call them at 1-877-526-1526 or visit a Service BC location ^[10] for more information. (Note you will need a copy of the company search when you go to file your notice of claim.)

Step 2. File the notice of claim in court

You must **file the notice of claim** in the Small Claims Court registry ^[8]. You have a choice of which registry to file in. You can file the notice in the registry nearest to where the person you are suing lives or carries on business, or in the registry nearest to where the events you're suing about took place.

For example, say you want to sue a person for injuries you suffered when they punched you at a nightclub. The incident took place at a nightclub in Vancouver. The person lives in Surrey. You can file the notice of claim in either the Vancouver or Surrey court registry.

There is a filing fee, which you may get back from the defendant if you win.

If the defendant is a company, you also need to file a copy of your company search.

Step 3. Serve the notice on the defendant

You must **serve** the notice of claim on the defendant. “Serving” means delivering the notice to them. You must also include a blank reply form for them to fill out. You can get the blank reply form (Form 2) at gov.bc.ca/smallclaims ^[7].

If the defendant is a person aged 19 or over, you can serve them by **personal service** or **registered mail**. To serve a document personally, you or someone acting on your behalf can simply hand the document to the defendant. If the person refuses to take it, you can drop it on the floor at their feet.

If the defendant is a company, you can send the notice by registered mail or personally deliver it to the company’s **registered office**. The address of the registered office is shown on the company search you had to submit with your notice of claim.

After you serve the notice of claim, you must prove it by completing a **certificate of service** (in Form 4).

The BC government website has a guide on serving documents ^[11] that provides more detail, such as options if you can’t find the defendant to serve them or they live out of province.

Step 4. Wait for a reply

After a defendant is served, they have **14 days** to respond. (A defendant who does not live in BC has 30 days to respond.) The defendant responds by filing a **reply**.

In their reply, the defendant may:

- agree to pay all your claim, but not right away
- oppose all or part of the claim
- sue you back, by making a **counterclaim**

The court will send a copy of the reply to you, as the claimant. In most cases, the court will set a date for a **settlement conference**.

Tip If the defendant agrees to pay your claim, you can file a **consent order** or a **payment order**. The forms are available online at gov.bc.ca/smallclaims ^[12]. If the defendant agrees to pay but you can’t agree on a timeframe, you can ask for a **payment hearing**, where the court can set a payment schedule.

Step 5. Attend the settlement conference

Once the defendant files a reply, the registry usually sets a date for a 45 minute meeting called a **settlement conference** with a judge. The purpose is to try to settle the case before a trial. You and the defendant (and your lawyers, if you have them) attend the conference. The judge will give their opinion of the case during the conference.

If you and the defendant do not settle the case, it will go to **trial**. See our information on going to trial in Small Claims Court.

Common questions

How long do I have to serve the notice of claim?

After you file the notice of claim, you have one year to serve it on the defendant. After that time, your notice of claim will expire. If you wanted to continue after that time, you could apply for a renewal.

What happens if the defendant doesn't respond in time?

If the defendant doesn't file a reply within the time limit or contact you to resolve the claim, you can file an **application for default order** (in Form 5). File it at the registry where you filed the notice of claim, along with a copy of the certificate of service (in Form 4).

If the claim is for a debt, a **default order** may be made without you even going to a hearing. If the claim is not for a debt, the court registry must schedule a **default hearing** date so a judge can decide the amount you may get.

The defendant offered to pay the claim directly to me. Can I accept it?

Yes. After receiving your notice of claim, the defendant may contact you directly and offer to pay the claim or try to settle the case in some way. You are free to make whatever arrangements you want at any time. Just because you have filed a notice of claim with the court does not mean you must continue with the lawsuit.

If you are satisfied with what the defendant offers, you can withdraw your claim by filing a **notice of withdrawal** with the court. This form is available online at gov.bc.ca/smallclaims ^[12]. You should put any agreement in writing and have both parties sign it.

If the defendant offers payments, you can prepare a **consent order** or a **payment order**. File the order at the court registry where you filed the notice of claim. The order can be enforced if payment stops.

Who can help

With your case

You do not need a lawyer to go to Small Claims Court. But you'll probably better understand the process, as well as the strength of your case, if you get **legal advice**. If you have limited means, you might be able to get legal help from pro bono services, a student legal clinic, or an advocate. See our information on free and low-cost legal help.

More information

The **BC government** website has how-to guides on Small Claims Court, including making a claim ^[13], replying to a claim, serving documents, getting ready for court, and getting results.

- Visit website ^[14]

The BC government's **Small Claims Court Filing Assistant** walks you through the steps of completing court forms.

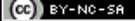
- Visit website ^[15]

The **BC Provincial Court** website features information on Small Claims Court, as well as past court decisions.

- Visit website ^[16]

The **Small Claims BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a small claims case.

- Visit website ^[17]

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Being Sued in Small Claims Court

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in August 2017.

If a notice of claim names you as a defendant in a Small Claims Court lawsuit, learn what options you have, how to act on them, and what happens next.

What you should know

If you receive a notice of claim

If you receive a **notice of claim** in a Small Claims Court lawsuit naming you as a defendant, it means someone is suing you.

A notice of claim may be handed to you personally by the party suing you or by another person, or it can be sent to you by registered mail. If you're hard to find, the court may order that you be notified in some other way, such as by a notice posted on your front door or an ad in the local newspaper.

Once you receive the notice, **don't ignore it**. If you do nothing, the other party can get a judgment against you, just as if there had been a trial.

You must respond to the notice of claim *within 14 days*. (If you live outside BC, you have 30 days to respond.) You can respond by filing a **reply** with the court. We explain how shortly. Or you can contact the other party to make

arrangements you can both live with and the other party can withdraw the claim.

If you admit the claim and intend to pay

If you **admit** the claim, you can contact the other party directly and tell them. You can pay the amount claimed directly to them.

Alternatively, you and the other party might make some arrangements you can both live with. For example, they may agree to accept a reduced amount, or a payment plan. If so, the other party can file a **consent order** or a **payment order** with the court, and the lawsuit will end. (You must also pay their expenses, such as the fees to file the claim and deliver the notice to you.)

If you admit the claim, but can't pay it

If you admit the claim, but can't pay the amount involved, you should file a **reply** to the claim. A blank reply form should have been attached to the notice of claim. If you didn't get a blank reply form with the notice, you can get it online at gov.bc.ca/smallclaims ^[2] or from any Small Claims Court registry ^[3]. On the reply, list the amounts you can pay and when you will pay.

Then, **file your reply** with the Small Claims Court registry shown on the notice of claim. You must pay a filing fee.

The registry will send a copy of your reply to the other party. They will decide whether to accept your proposed payment plan.

If the other party accepts your reply, you will receive a **consent order** to sign. It will end the lawsuit. If the other party doesn't accept, you (or they) can ask for a **payment hearing**, where the court will set a payment schedule.

Tip You must file the reply *within 14 days* of receiving the notice of claim. (If you live outside BC, you have 30 days to file the reply.)

If you deny the claim, or part of it

If you disagree with part of the claim, fill out the **reply** form. You can get it online at gov.bc.ca/smallclaims ^[2] if the notice of claim didn't have a blank reply form attached. Explain on the reply form what parts of the claim you disagree with and what parts you agree with. File the reply with the Small Claims Court registry ^[3]. You must pay a filing fee.

If you deny the whole claim, fill out the **reply** form. List the reasons why you deny the claim. You do not need to describe everything in detail, as you'll get a chance to present your case later. Evidence is not submitted at this stage, and the reply should be brief, factual and specific. File the reply with the Small Claims Court registry ^[3], together with the filing fee.

If you ignore the claim

If you receive a notice of claim and do nothing, the other party can get a judgment against you, just as if there had been a trial. This is called a **default order**.

After the time for you to reply has passed (14 days if you live in BC), the other party can apply to court for the default order. If their claim is for a debt, a default order may be made without a hearing. If the claim is not for a debt, the court will schedule a **default hearing**, where a judge decides the amount you will have to pay.

If you dispute the claim and lose

If the case goes to trial and you lose, you will have to pay the amount of the judgment, plus the other party's fees and costs for getting the court documents to you.

The judge can also order you to pay an additional 10% of the amount claimed if you file a reply and go to trial when you had no reasonable chance of winning. Also, if the other party makes a **settlement offer** that you refuse, and the trial judgment is more than or equal to their offer, you may have to pay a penalty of up to 20% of the offer.

If you have a claim of your own

If you have your own claim against the other party relating to the matters in dispute, you can file a counterclaim. There is space on the reply form for you to describe your **counterclaim**. If your case goes to trial, the judge will decide on both the original claim and your counterclaim.

If you admit the claim, but believe the other party also owes you money for some other reason, you can file a counterclaim claiming a **set-off**. A set-off involves using the money the other party owes you to reduce the amount you owe them.

Each of these options require you to pay another filing fee.

If you think another party is responsible

You may think another person should pay all or part of the claim against you. If so, you can file a **third party notice** to bring that other person into the lawsuit. You can get the third party notice form online at gov.bc.ca/smallclaims ^[2] or from any Small Claims Court registry ^[3].

What happens next

If you admit the claim

If you pay the amount claimed to the other party, you should get a receipt. The other party can end the lawsuit by filing a **notice of withdrawal**.

Alternatively, if you and the other party make arrangements you can both live with (such as you paying a reduced amount or a payment plan), the other party may file a **consent order** or a **payment order**. You will get a copy of the order, which ends the lawsuit.

(These forms are available online at gov.bc.ca/smallclaims ^[2].)

If you file a reply

If you file a reply, the court registry will send a copy of it to the other party. If you file a third party notice, the registry will send it to the third party you added.

For most claims, the court will schedule a **settlement conference**. The registry will tell you the date and time for the conference. You must attend. The judge will give their opinion of the case during the conference. If the claim cannot be settled, it will go to **trial**.

You can try to resolve the claim any time before trial. If the claim is over \$10,000, you or the other party can file a **notice to mediate**, which will result in a **mediation session**. There, a neutral mediator will try to help you both come to an agreement on the issues. See our information on going to trial in Small Claims Court for more on this option, as well as what happens at trial.

Tip You must attend the settlement conference and any mediation session that is set. Otherwise, a **payment order** may be made against you for the amount claimed. If you cannot attend, notify the court immediately and seek an adjournment or postponement of the scheduled date.

Who can help

With your case

You do not need a lawyer to go to Small Claims Court. But you'll probably better understand the process, as well as the strength of your case, if you get **legal advice**. If you have limited means, you might be able to get legal help from pro bono services, a student legal clinic, or an advocate. See our information on free and low-cost legal help.

More information

The **BC government** website has how-to guides on Small Claims Court, including replying to a claim ^[4], serving documents, and getting ready for court.

- Visit website ^[5]

The BC government's **Small Claims Court Filing Assistant** walks you through the steps of completing court forms.

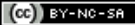
- Visit website ^[6]

The **BC Provincial Court** website features information on Small Claims Court, as well as past court decisions.

- Visit website ^[7]

The **Small Claims BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a small claims case.

- Visit website ^[8]

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Going to Trial in Small Claims Court

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in October 2017.

At a trial, the parties present evidence and a judge decides the case. If you're going to trial in Small Claims Court, learn how to prepare and what to expect.

Before the trial

For claims over \$10,000, either party can request a mediation

In a Small Claims Court lawsuit, if the claim is over \$10,000, either party can compel the other to attend a **mediation session** to attempt to settle the case.

The process is started with a document called a **notice to mediate** (available online at gov.bc.ca/smallclaims ^[2]). Either party can fill out the notice. They file it in the registry where the notice of claim was filed, and deliver it to the other parties in the case.

Together, the parties choose a **mediator**. (If they can't agree on one, a mediator can be appointed.) The mediator organizes a **mediation session**, where they help the parties find a solution that satisfies everyone. Unlike a judge, a mediator does not have the power to decide the case. The case settles only if all parties to the dispute agree to a settlement.

The parties share the cost of the mediation. If an agreement to settle the case is reached, the agreement can be filed with the court.

Most cases have a settlement conference before trial

For most cases in Small Claims Court, the court will schedule a **settlement conference**, where the parties meet with a judge to explore settling the case before a trial.

The registry will tell the parties the date and time for the conference. All parties must attend. The parties must bring any documents they plan to use at trial to prove their case.

The judge who attends the settlement conference isn't necessarily the same judge who will hold the trial, if the case goes that far. The purpose of the conference is to encourage settlement of the case, and if settlement isn't possible, to help the parties prepare for trial. The judge will not make a final decision or settle the case for the parties. The judge guides the discussion and gives their opinion of the case.

If the parties agree to settle the case, the judge can put the agreement into an **order**. That ends the lawsuit.

Either party can make a written offer to settle

Even if the parties don't settle the issues at the settlement conference, it doesn't mean they have to go to trial. Within 30 days after the settlement conference, either party can make a written **offer to settle** to the other party.

To do so, use Form 18 (available online at gov.bc.ca/smallclaims ^[2]). Fill out the form with the details of your settlement offer. File the offer with the court and serve it on the other party, either personally or by registered mail.

The other party has 28 days to accept the offer. If they do not accept it, and the outcome at trial is much the same as the offer, the judge can impose a penalty on the other party of up to 20% of the amount you offered.

Prepare your evidence, and line up any witnesses

Small Claims Court cases are decided on a **balance of probabilities**. You must convince the judge that your version of the events is more likely than not and more likely than the other side's version. You need evidence to do that — including physical evidence, such as invoices or contracts, or evidence given by **witnesses**.

Arrange for your witnesses to attend the trial

You will want to think about what witnesses and other evidence you will need to support your case. At the trial, your witnesses can tell the court (**testify**) about what they saw and heard.

If a witness refuses to come to the trial or you're not sure they'll come, you can file a form called a **summons to witness**. This form is available online at gov.bc.ca/smallclaims ^[2] and at any Small Claims Court registry ^[3]. The form tells you how to deliver the summons to the witness. The witness must receive the summons *at least seven days* before trial.

You can use a **written estimate** for the repair of damage or value of property, without having the person who gave you the estimate come to court. If you are going to use a written estimate, you must serve the other party with a copy of the estimate **at least 14 days** before the trial.

Expert witnesses

Expert witnesses can give evidence about an **opinion**. If you intend to have an expert testify at trial — such as a doctor for an injury claim — you must give the other party a **summary** of the expert's evidence *at least 30 days* before the expert testifies.

If you want to use only a letter or written **report** from an expert, you must give the other side a copy of that report, together with a statement of the expert's qualifications, *at least 30 days* before the trial. Then, if the other side wants to ask the expert questions at trial (**cross-examine** the expert), they must let you know at least 14 days before the trial. If they do, your expert must attend the trial in person.

Witness fees and expenses

You must offer to pay reasonable travel expenses for your witnesses to attend trial. You will also have to pay fees and expenses for any expert witness. You should figure out how much they will be before deciding whether you need the expert at trial. Some experts, especially professionals like doctors and engineers, can charge a lot.

Tip Courts are open to the public. You can go in any day and just sit down and watch. Doing so before your trial can help with putting your own case forward. Try to watch several cases, as each one is different.

What to expect at the trial

Some locations have streamlined trials for certain claims

Some registries in the province have streamlined trial procedures for smaller claims and certain financial claims.

In Vancouver and Richmond, most claims under \$10,000 go straight to a **simplified trial**. This is a one-hour streamlined trial before an experienced lawyer who is a **justice of the peace**. There is no settlement conference.

Also in Vancouver, financial debt claims up to the small claims limit of \$35,000 are decided using a **summary trial** procedure. This is a half-hour streamlined trial before a judge. Financial debt claims are claims made by creditors to collect a debt from a loan or extension of credit.

The BC government website at gov.bc.ca/smallclaims ^[4] has details on these streamlined trial procedures.

When you arrive at court

On your trial date, give yourself plenty of time to arrive early. In the courtroom, everyone stands when the judge enters or leaves the courtroom. You must stand whenever you are speaking to the judge or the judge is speaking to you. The judge is called "Your Honour".

Small Claims Court does not follow the strict rules of evidence used in Supreme Court. The judge will decide what rules and procedures to follow. A lot depends on the personal style of the judge and also on the judge's assessment of what procedure will allow the parties to present their cases easily and fairly.

Tip For any **documents** you plan to use to prove your case, bring the original and at least three copies of the document. The original may be kept by the court as an exhibit. The copies are for the judge, the other party, and yourself.

The claimant goes first

The party bringing the lawsuit, the **claimant**, speaks first. They may start with an **opening statement**, telling the judge briefly what their case is about.

Next, the claimant presents their evidence. They may start by giving their own **testimony**. This is where they tell the judge their story of what happened, and provide any documents that support their case. As with any witness, the claimant must swear an oath or affirm to tell the truth.

After, the defendant can ask the claimant questions (**cross-examine them**) on what they said. The goal of cross-examination is to show weaknesses in the witness' story — that they have a poor memory, they're mistaken, or they're lying.

The claimant then calls any other witnesses to give evidence in support of their case. The witnesses can be asked open-ended questions like "What colour was the traffic light?" A party can't ask their own witness **leading questions**. A leading question suggests the answer the questioner wants the witness to give. For example, "The light was red, wasn't it?" is a leading question.

The defendant can then cross-examine the claimant's witnesses. In cross-examination, leading questions *are* allowed.

All witnesses must speak only to what they have seen or heard directly. They cannot talk about what they heard one person say to another — this is called **hearsay evidence**. Hearsay is not allowed to prove the truth of statements, except in rare cases.

The defendant presents their case

Next, the defendant presents their evidence. They may start by giving their own **testimony**, where they tell the judge their story of what happened, and provide any documents that support their case. The claimant can then ask the defendant questions (**cross-examining** them).

The defendant then calls any other witnesses to give evidence in support of their case. The claimant may cross-examine the witnesses. The judge often asks questions as well.

Tip In cross-examining the other side's witnesses, your aim is to weaken their testimony or get them to admit things that help your case. Don't expect them to admit they are exaggerating or lying — but it's important you put your version to them fully and fairly.

The judge decides the case

When all the evidence has been presented, both parties get a final chance to tell the judge why they should decide for them.

Usually, the judge decides the case after listening to the parties and the evidence. Sometimes, the judge will postpone the decision until later.

If the judge decides the claimant has proven their case on a balance of probabilities, the defendant will have to pay the full amount of the claim. If the judge decides the defendant's evidence is more convincing, then the defendant will not have to pay the claim.

The losing party must usually pay the winning party's costs for things such as court filing fees, delivering documents, and witness costs. If the judge thinks that a party started or defended a claim without a reasonable chance of succeeding, they can order the losing party to pay a penalty of 10% of the claim value. The judge can order the losing party to pay immediately, or over time.

Either party can appeal

Either party can appeal a Small Claims Court judgment. The appeal is brought to the BC Supreme Court, and must be started *within 40 days* after the Small Claims Court order was made. If you are late filing the notice of appeal, you can apply to the Supreme Court to extend the time, but you may not get it.

The appeal is *not* a new trial. The Supreme Court judge will decide only if the Small Claims Court judge made a mistake about the facts or the law.

The Small Claims BC Online Help Guide explains how to appeal ^[5] a Small Claims Court decision.

Who can help

With your case

You do not need a lawyer to go to Small Claims Court. But you'll probably better understand the process, as well as the strength of your case, if you get **legal advice**. If you have limited means, you might be able to get legal help from pro bono services, a student legal clinic, or an advocate. See our information on free and low-cost legal help ^[6].

More information

The **BC government** website has how-to guides on Small Claims Court, including making a claim, replying to a claim, serving documents, getting ready for court, and getting results.

- Visit website ^[7]

The BC government's **Small Claims Court Filing Assistant** walks you through the steps of completing court forms.

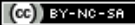
- Visit website ^[8]

The **BC Provincial Court** website features information on Small Claims Court, as well as past court decisions.

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The **Small Claims BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a small claims case.

- Visit website ^[10]

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Appearing in Court by Phone

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Adam Roberts ^[1], Adam J. Roberts in January 2018.

In some situations, parties may be able to attend court by telephone. But they will need to get court approval — in advance. Telephone hearings are more available before tribunals.

What you should know

Normally, parties must attend court in person

In a court proceeding in BC, the people directly involved in the lawsuit (called the **parties**) must usually attend **in person** at any court hearing, or have a lawyer appear on their behalf.

If a party does not show up, a court may rule against them.

This rule applies generally to proceedings in Provincial Court and Supreme Court in BC. There are some exceptions, however, where parties can ask to attend court by phone. We explain these here.

In some situations, parties can ask to attend court by phone

In some situations, parties may be able to attend court by phone. But parties will need to get court approval — in advance.

For example, in BC Supreme Court ^[2], a party in a civil case can apply to court to have an application heard by phone or videoconference.

In Small Claims Court ^[3], certain types of hearings can be held by phone:

- if a party does not live or carry on business within a reasonable distance from the court location, or
- if exceptional circumstances exist.

(The option of a phone hearing in Small Claims Court does **not** apply for a trial or a hearing requiring sworn evidence.)

A party seeking to have a phone hearing in Small Claims Court must apply to court by completing an **application to the registrar** (in Form 16). See the court's Filing Assistant at justice.gov.bc.ca ^[4] for instructions.

Generally speaking, a court may **decline** the request for a party to attend by phone if the court thinks someone needs to appear in person to:

- confirm their identity
- reduce the risk of unseen and improper influences
- make procedures, like viewing of documents, easier
- allow the judge or other decision-maker to see and consider the person's facial expressions and body language

Tip Check with the court. If you want to appear in court by phone, check rules and deadlines with the registry of the court for the case you're involved in.

Rules for tribunals vary, but many offer phone hearings

A **tribunal** is a body that hears disputes and makes decisions in a specific area. It is like a court but less formal. The BC Human Rights Tribunal, which deals with human rights complaints, is an example of a tribunal.

Every tribunal follows its own set of rules and procedures.

Telephone hearings are a common way for tribunals to resolve matters. Some let parties choose the type of hearing they would like to have. The tribunal may post this information on its website or it may contact parties directly to give them this advice.

If a hearing is to take place by telephone, the tribunal will set the date, time and contact information for the hearing and notify the parties. If a party who has been notified does not participate, the tribunal may proceed with the hearing and make a decision without hearing from that party.


Tip Check with the tribunal. Check the tribunal's website or give them a phone call to ask about their support for telephone hearings. The AdminLawBC Online Help Guide at adminlawbc.ca^[5] has a list of tribunals in BC, and tips for participating in telephone hearings.

If you are a witness

If you have information relevant for a court case, you may be called as a **witness** to tell the court (**testify**) about what you know. Under BC law^[6], a witness may be permitted to testify in a court proceeding by **videoconference**.

The party calling the witness must give notice to the court and the other party *at least five days before* the witness is scheduled to testify.

It's open to the other party to object to the witness appearing by videoconference. If they do, the court has to consider whether testifying in this way would be "contrary to the principles of fundamental justice." The court can consider factors such as the location and circumstances of the witness, the costs involved for the witness to be physically present, and the nature of the witness' evidence. The onus is on the party seeking to exclude videoconferencing.

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Getting Your Judgment Paid

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in August 2017.

If you take someone to court and the judge decides in your favour, it's up to you to collect the money. Learn your options for getting your court judgment paid.

What you should know

You have options to get your judgment paid

Winning a lawsuit does not guarantee you will be paid. The person you sued (called the “debtor”, as they owe you a debt) might refuse to pay your judgment. But you have options:

- You can schedule a kind of **enforcement hearing** with the court. There, you can find out the debtor's financial situation and get an order setting up a schedule of payments.
- You can go to the court registry to get an **order for seizure and sale** of the debtor's personal property. You can then hire a court bailiff to carry out the order, taking and selling the debtor's property.
- You can seek another order from the court, called a **garnishing order**. This requires a third party who owes money to the debtor to make payments to you.
- If you have a court order requiring the debtor to make instalment payments, and they don't, you can ask the court for a **default hearing**, where the court can impose penalties.
- You can **register your court judgment** against any land the debtor owns in British Columbia. This will severely restrict the debtor's ability to sell or mortgage the land until they pay the judgment.

We explain each option shortly.

If there's a payment schedule

A judge might make an order that includes a **payment schedule**, setting out how much the debtor must pay and how often they must pay it. If the debtor makes the payments following the schedule, you can't collect the full amount all at once. But if there's no payment schedule or if the debtor doesn't follow the schedule, they will owe you the full amount immediately and you can take steps to collect it.

Options to enforce a court judgment

First, prepare and file your court order

In a lawsuit, after a judge decides in your favour or you settle the case, you need to prepare an **order**. The order records what the judge decided. The order must be filed with the court registry and signed by the court. This must be done before you can take steps to collect on the order. Once you file the order with the court, it becomes an **enforceable** court judgment.

A court judgment lasts for 10 years. After that, you will have to ask the court to extend the order.

Tip A final decision from the Civil Resolution Tribunal, the Residential Tenancy Branch, and many other tribunals can be filed in Provincial Court for enforcement.

Next, write and ask the debtor to pay you

After filing your court order, send a copy of it to the debtor with a letter asking them to pay you. Send the letter by registered mail.

Make the letter short and clear. You can warn them that you will take further action if they don't pay by a certain date. Set a reasonable deadline — for example, 14 days from the date you send your letter. Include the address where they can send the payment.

You can schedule a kind of enforcement hearing with the court

One method to enforce a court judgment, available in both Small Claims Court and Supreme Court, is a kind of **enforcement hearing**. At this hearing, you can find out the debtor's financial situation, ask them questions about their ability to pay, and get an order setting up a schedule of payments.

If your judgment is from Small Claims Court, the hearing is called a **payment hearing**. In Supreme Court, there are two examination processes, a **subpoena to debtor** or an **examination in aid of execution**. In either court, you can file documents with the court to schedule a hearing.

At the hearing, the debtor can be required to produce income tax returns, recent pay stubs, and other documents that show their assets, income and debts. You can ask questions of the debtor about their employment, bank accounts, and other assets and sources of income. The judge considers whether the debtor can pay the court order, and whether to set up a **payment schedule**.

If the debtor doesn't attend the hearing, you can ask the judge to issue an arrest warrant, forcing the debtor to attend. (That's rarely done. Debtors usually get many chances to pay.)

You can use the information you get at the hearing to help collect your judgment. And the costs of your application for the hearing will be added to the amount the debtor must pay you.

You can get an order to seize and sell the debtor's personal property

You can enforce a court judgment by taking action against the **personal property** of the debtor. You can go to the court registry to get an **order for seizure and sale**. You can then hire a court bailiff to carry out the order, taking and selling the debtor's property.

This option, which is available in both Small Claims Court and Supreme Court, can be useful if the debtor has valuable assets, such as a car, a boat, or shares in a profitable company. But you cannot seize everything the debtor owns. Under the *Court Order Enforcement Act* ^[2], a debtor may **exempt** certain things from being seized and sold, such as:

- household furnishings and appliances to a value of \$4,000
- one vehicle up to a value of \$5,000
- \$10,000 worth of tools and other personal property the debtor uses to earn income for work

If you seek an order for seizure and sale, you will need to pay a deposit to cover the bailiff's estimated costs. The bailiff will be paid first from the sale of the goods, so try to find out if the debtor has enough property to make the seizure and sale worthwhile. Check with ICBC to see if the debtor has any motor vehicles registered in their name. You can also search the debtor's name in the BC Manufactured Home Registry ^[3] and the Personal Property Registry ^[4] to see if the debtor owns any personal property worth more than their exemption amounts.

An order for seizure and sale lasts for one year.

You can get a garnishing order

With a court judgment, you can seek another order from the court, called a **garnishing order**, which requires a third party who owes money to the debtor to make payments to you.

For example, you can give the garnishing order to the debtor's employer or to their bank, and the wages owed to the debtor or the money in their bank account will be paid to the court instead. Once the court receives the money, you can apply to have it paid out to you.

Normally, only 30% of a debtor's wages can be garnished. And there are some technical rules and steps you must follow. See our information on garnishment for details of what's involved.

You can ask for a default hearing

If you have a court order requiring the debtor to make instalment payments, and they don't, you can ask for a hearing where the court can impose penalties.

In Small Claims Court, the hearing is called a **default hearing**. In Supreme Court, there are two examination processes, a **subpoena to debtor** or an **examination in aid of execution**. In either court, you can file documents with the court to schedule the hearing.

At this hearing, the court can ask the debtor why they have not made payments under the court order. The judge can either confirm the original payment schedule or change it. If the judge decides the debtor's explanation for not paying shows contempt of court, the judge can send the debtor to jail, and the debtor must still pay the money.

If the debtor does not attend the hearing, you can ask the judge to issue an arrest warrant.

You can register the court judgment against land owned by the debtor

You can **register your court judgment** against any land the debtor owns in British Columbia. This will severely restrict the debtor's ability to sell or mortgage the land until they pay the judgment.

To find out if the debtor owns land in BC, do a name search at the Land Title Office. You can do this through BC OnLine ^[5].

To register your court judgment, you must get a certificate of judgment from the court registry and file it with the Land Title Office ^[6] where the debtor's land is registered.

The registration is good for two years, and can be renewed every two years up to 10 years.

You can also ask the BC Supreme Court to force a **sale of the property**, so you can recover the amount you are owed from the proceeds of the sale. Be aware this process is expensive and involved.

Who can help

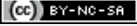
With more information

The **BC government** website has how-to guides on Small Claims Court, including one on getting results, explaining the tools available to help you collect on a judgment.

- Visit website ^[7]

The **Supreme Court BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a lawsuit before that court, including a guide on enforcing court orders.

- Visit website ^[8]

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Class Actions in British Columbia

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jason Murray ^[1], Eyford Macaulay Shaw & Padmanabhan LLP in October 2017.

It's a familiar story: a business makes a defective product or does something that harms a group of people. Such a "mass wrong" can be met with a class action.

What you should know

A class action is brought by an individual acting on behalf of a larger group

A **class action** is a lawsuit that groups people with a common claim together against the same defendant. Otherwise, all the claims would be separate lawsuits. Mass production and marketing of consumer goods and services mean that a single mistake or wrongful act at any stage of design, production or distribution can harm many people in a similar way. A class action is one response to these injuries or losses (also called **mass wrongs**).

Often, injured people won't sue individually because the money they seek is less than their legal costs. And it's often not practical for just one buyer of a defective product to sue a large business. But the total loss or damages suffered by many injured people or buyers may be very large. Class actions make lawsuits more affordable by allowing all the victims of a mass wrong to share the cost of a lawsuit. Class actions are mass-produced lawsuits for mass-produced wrongs.

Some kinds of cases lend themselves to a class action

Class actions work well in "product liability" cases. These cases involve a manufactured item, like a drug or a vehicle, that is defective and injures many people. Class actions are also common against governments (for overpayment of taxes), against financial institutions (for illegal service charges), and against companies trading on the stock market (for misrepresentations). Class actions may also work against businesses for price fixing, monopolizing the market, and misleading advertising. They can work to fight systemic discrimination against governments or businesses. Whenever a mistake or wrongful act affects many people, a class action may be effective. Class actions have been possible in British Columbia since 1996.

Starting a class action

The *Class Proceedings Act* ^[2] lets one person sue in BC Supreme Court for a group of people if they have similar claims against the same wrongdoer. The Federal Court of Canada also allows certain class actions involving federal law and the federal government.

A person who has been hurt or suffered loss can apply to BC Supreme Court to be the **representative plaintiff** in a lawsuit for a group of people. The representative plaintiff must also ask the court to **certify** the lawsuit as a **class proceeding**.

Once the court certifies a lawsuit, it appoints the lawyer for the representative plaintiff as class counsel. This lawyer is then the lawyer for all the class members.

A defendant in two or more cases can also ask the court to convert the cases into a class action.

Many class actions that are certified are eventually settled. If a court doesn't certify a class action, the members of the group can usually sue individually, as if the class action had never started.

What a court needs to certify a class action

The court must certify the lawsuit as a class action if the following five criteria are met:

- The document the plaintiff files in court (called the “notice of claim”) shows a **legally valid claim** based on a mistake or wrongful act.
- The court can identify two or more people as a **class**, who are then the class members. The class is easily defined, so people can easily tell if they fit into the class. (In some cases, classes are again divided into subclasses.)
- There are **common issues** in the claims of the class members.
- A class action is the best way to **fairly and efficiently resolve** the common issues.
- There is a **representative plaintiff** — someone to represent all the members of the class.

A representative plaintiff must meet certain criteria

A representative plaintiff must:

- fairly represent the interests of the class members,
- have a plan to run the class action for the class members and notify them of the lawsuit, and
- not have an interest that conflicts with interests of other class members on the common issues.

In almost all cases, the representative plaintiff must live in BC. If appropriate, the court will appoint a non-BC resident to represent a class of people who do not live in BC.

Class members are identified

Some class members must live in British Columbia, but (in certain cases) not all class members have to live in BC. If there are both resident and non-resident class members, the court will certify a separate class of non-residents.

Non-residents must formally **opt in** to the class action, meaning they must choose to be part of it. That's not true for BC residents — they are automatically in unless they **opt out** (as explained shortly). When the court certifies a class action, it will state how and by when non-residents can opt in to the class action.

Advertising to find potential class members

People can advertise to find potential class members to start a class action. The law does not deal with advertising. But it's usually not necessary because only two or more people are needed to form a class. Any advertising would have to be careful not to promise financial gain for joining the class action.

Class members must be informed of a class action

Many class members wouldn't know if a class action has been started and certified by the court. To protect these people, the representative plaintiff, through the class counsel, must **notify** the class members of the class action in a way the court approves. This notice can be by letter if the class members are known; otherwise, it will most often be done by newspaper or magazine advertising. Class members must also be notified of any decision on the common issues and any settlement.

Class members can drop out (or opt out) of a class action

Class members can choose not to be part of a class action (or **opt out** of it) if they want to sue on their own. The court sets a deadline for people to opt out. To do that, people must usually fill out a form or write a letter to the court or the class counsel. People who don't opt out by the deadline must accept the result of the class action.

A judge supervises the class action for all class members

Even if class members know about a class action, most of them probably won't be in court. To protect them, a judge **supervises** every stage of the class action. The judge looks out for the best interests of the class as a whole, not just the representative plaintiff, to ensure both the process and results are fair.

If the representative plaintiff **settles** the class action, the judge will ensure that a notice to class members is published and that the settlement is fair, reasonable and in the best interests of the class as a whole. That does not mean all class members get the same amount. Different members in different situations may receive different amounts.

A court decides on compensation for class members

The court can decide on compensation for the whole class, without proof of individual claims. It may use statistical evidence to calculate the amount. Then the court can award individual class members compensation as a proportion of the total amount, or it can decide their compensation individually.

Common questions

How do people decide whether to start a class action?

People who are thinking of using a class action should consider the following things:

- Has a class action dealing with the same issues already been started?
- Is a class action a fair and efficient way to resolve the common issues?
- Are the common issues more important than the individual issues?
- Is a lawsuit the best way to resolve the claims? Has the defendant come up with other ways to compensate class members?
- What type of lawsuit is best for the case — class action or individual?
- Is a class action too complicated?

For example, a class action is not appropriate if individual issues would overwhelm any benefit from settling the common issues. In these cases, there is a risk of long and complex individual trials after the common issues are settled.

Does an unsuccessful representative plaintiff need to pay the defendant's legal costs?

In class actions, an unsuccessful representative plaintiff in BC doesn't usually have to pay part of the defendant's legal costs (which can happen in individual lawsuits). So starting a class action is not as risky as starting an individual lawsuit. This "**no costs**" system tries to increase people's access to justice. Not all Canadian provinces operate on a "no costs" basis.

Can a class action decision be appealed?

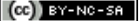
Yes, any member of the class may appeal an order that certifies a lawsuit as a class action, a refusal to certify a lawsuit, or a judgment on a common issue. And defendants can also appeal an order that certifies a class action or a judgment on a common issue.

Who can help

With more information

The trend towards more frequent class actions will probably continue as every Canadian jurisdiction now has class action laws. The **Canadian Bar Association** offers a searchable **National Class Action Database**. It gives lawyers and the public easy access to court documents for class action lawsuits across the country.

- Visit website ^[3]

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Crime

If You Receive an Appearance Notice or Summons

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jordan Allingham ^[1], Ferguson Allingham and Paul Briggs ^[2], Paul Briggs Law in March 2018.

An **appearance notice** and a **summons** tell a person they must appear in court to respond to a criminal charge. Learn what to do on getting an appearance notice or summons.

What you should know

Both documents tell someone they must appear in court

Both an appearance notice and a summons are official notices telling a person they have to appear in court at a specific time and place to respond to a criminal charge.

If someone is not yet charged with a crime, they might be given an **appearance notice**.

If someone is charged with a crime, they might be given a **summons**.

Both documents say what offence the person has to respond to, and the time and place of their **first appearance** in court.

If the person does not go to court when the document says they should, a warrant may be issued for their arrest, and they could be charged with an offence (failing to appear in court).

The difference between an appearance notice and a summons

If someone is not yet charged with a crime, they might be given an **appearance notice**.

For example, say a security guard in a store believes a person shoplifted something. The security guard calls the police. The police might give the person an appearance notice requiring them to appear in court to answer to a charge of theft. But there is not yet a criminal charge. A **prosecutor** (also called **Crown counsel**) has to first approve the charge. The person will learn when they get to court whether the charge was in fact approved, or **laid**.

A **summons** is given to a person once they have been charged with an offence.

Let's say a person while driving home one night hits a parked car, and just keeps on going. A witness sees them and reports the accident to the police. The police investigate and recommend Crown counsel charge the driver with an offence. The police might have a summons delivered to the driver saying they've been charged and when they have to appear in court.

How the documents are delivered

A summons is typically given to someone personally (**served** on them). If a person can't be conveniently found, a summons can be left at their usual or latest place of residence with a person there who appears to be at least 16 years old.

Usually, a police officer gives someone an appearance notice.

If you receive an appearance notice or summons

Read the document carefully

Whether you received an appearance notice or a summons, the document will tell you three important things:

- the time and place when you have to go to court,
- the type of offence you have to answer to, and
- whether you must go to the local police station to be fingerprinted and photographed.

The court date

The document will tell you the date of your **first appearance** in court. You must go to court at that time and date. If you don't, a warrant may be issued for your arrest, and you could be charged with an offence (failing to appear in court).

The first appearance is not a trial. It's the first step to find out more about the charge against you. The prosecutor will give information (called the **particulars** or **disclosure**) about the charge. They may also give you their **initial sentencing position**, which is the sentence (or penalty) they think the judge should give you.

At the first appearance, you can tell the court what you plan to do about the charge. Usually, the court will set another date a couple of weeks later, so you have time to review the information and consider your options.

The offence

The document will tell you the offence you have to answer to. There are two types of offences. **Summary conviction** offences are considered less serious, such as shoplifting or causing a disturbance. **Indictable** offences are more serious. Examples are breaking and entering, sexual assault, and murder.

Fingerprinting

The document will usually have a paragraph filled out saying you must go to the local police station on a certain date to have your **fingerprints and photograph** taken. That date will be before your first court appearance. No discussion of the offence takes place at this time, and you don't need a lawyer.

If you don't go for fingerprinting, you can be arrested and charged with the offence of failing to appear (as long as a charge has been laid on the original offence).

If the document has a mistake

A mistake in an appearance notice or a summons can make the document invalid. It depends on how serious the mistake is. For example, if the document has the wrong date, it would have to be fixed and given to you again. But if the mistake is just a small typo, it may not have any effect. If you see a mistake in the document, you should still go to court at the required time.

Work out the problem

Step 1. Get legal advice

If you receive an appearance notice or a summons, **speak with a lawyer** before you do anything else. A lawyer can tell you about your legal rights, your options, and the process involved. We suggest options below for finding a lawyer.

Step 2. Go for fingerprinting (if required)

If the appearance notice or summons has the paragraph filled out saying you must go to the local police station to be fingerprinted and photographed, **go at the required time**.

If you don't go for fingerprinting, you can be arrested and charged with the offence of failing to appear (as long as a charge has been laid on the original offence).

Step 3. Go to your first court appearance

he appearance notice or summons will tell you the date of the first appearance in court. **Go to court at the required time**. If you don't go (or have a representative go on your behalf), a warrant may be issued for your arrest, and you could be charged with failing to appear in court.

If you can't get a lawyer in advance, most courthouses have lawyers called **duty counsel**. They give free legal advice to people who have a case in the courthouse on that day. Duty counsel might be able to help you.

Tip If you have received an appearance notice, when you arrive at the court, check with the court registry or look for the court list to see if you have been charged. Crown counsel may have decided not to approve a criminal charge against you.

Who can help

Finding a lawyer

Contact **Legal Aid BC** to find out if you qualify for a free lawyer under legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[3]

Call the **Lawyer Referral Service** to get the name of a lawyer. The lawyer will meet with you for a free consultation for up to 30 minutes to discuss your case, to help decide whether you would want to hire them.

- Call 604-687-3221 (Greater Vancouver) or 1-800-663-1919 (toll-free)
- Visit website ^[4]


If you can't find a lawyer

At **student legal clinics** in the Lower Mainland and Victoria, law students can help if you're charged with a summary conviction offence (a less serious crime) and likely won't get a jail sentence if you're convicted.

- Call 250-385-1221 (Victoria) or 604-822-5791 (Lower Mainland)
- Visit The Law Centre ^[5] (Victoria) or LSLAP ^[6] (Lower Mainland)

You can talk to **duty counsel** at the courthouse where your case is if they're available on your court day. They can give you brief advice and speak for you the first time you appear in court.

- Visit website ^[7]

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Defending Yourself Against a Criminal Charge

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jordan Allingham ^[1], Ferguson Allingham and Paul Briggs ^[2], Paul Briggs Law in March 2018.

If you are charged with a criminal offence and you cannot afford a lawyer or get legal aid, you may have to defend yourself. Learn your rights and what's involved.

What you should know

You are presumed innocent

If you are charged with a criminal offence, the law **presumes you are innocent**. As you walk into the court, the judge should be thinking, "I presume this person is innocent."

The prosecutor must prove your guilt beyond a reasonable doubt

The **prosecutor**, also called Crown counsel, is the lawyer making the case against you. They must prove you are guilty of the offence. Generally, you don't have to prove anything.

If the prosecutor doesn't prove your guilt, the judge will **acquit** you (make a legal decision that you're not guilty).

The prosecutor must prove your guilt **beyond a reasonable doubt**. If the judge has any reasonable doubt about whether you are guilty, they cannot **convict** you (find you guilty). If, in considering all the evidence, the judge can't decide who to believe, they must acquit you.

You have the right to a fair trial

If your criminal charge goes to a trial, listen carefully and ask the judge to explain anything you don't understand. The judge has a duty to help you understand the process to ensure a fair trial, but the judge can't be your lawyer.

The steps in the process

The process in Provincial Court

This information describes the process of defending yourself against a criminal charge in Provincial Court. If you are charged with a serious criminal offence, you may have a choice of which level of court will hold your trial, Supreme Court or Provincial Court. If so, you should contact legal aid to find out if you qualify for a free lawyer. Call 604-408-2172 in Greater Vancouver or toll-free 1-866-577-2525 elsewhere in BC, or visit legalaids.bc.ca ^[3].

Step 1. First appearance

You will have been given a document telling you the date of your **first appearance** in court. You must go to court at that time and date. If you don't, a warrant may be issued for your arrest, and you could be charged with an offence (failing to appear in court).

What happens at the first appearance

The first appearance date is not a trial. It's the first step to find out more about the charge against you. The prosecutor will give information about the charge, in a **particulars** or **disclosure** document. It lists the allegations against you, and what the prosecutor will rely on to prove you are guilty.

The prosecutor may also give you their **initial sentencing position**, which is the **sentence** (or penalty) they think the judge should give you.

When you arrive at court

Make sure you arrive at court on time. If you do not have a lawyer, tell the sheriff you are present. When your name is called, stand up in front of the judge or justice of the peace and introduce yourself. Ask the prosecutor for the disclosure and initial sentencing position.

At this point, ask to **adjourn** your case (put it on hold) for as long as you need (or the court will allow) to read the material, talk with a lawyer, and decide on how to proceed.

Read the material carefully

There may be a difference between what the disclosure says (what the police say you did) and what you believe happened. There may be things missing from the disclosure you believe are important to your case. If so, you can ask the prosecutor to give them to you.

Step 2. Talk with a lawyer

At this point, **speak with a lawyer** before you do anything else. A lawyer can tell you about your legal rights and options, how strong the Crown's case is against you, and what kind of sentence you might get if the judge convicts you (finds you guilty).

Tip Most courthouses have lawyers called **duty counsel**. They give free legal advice to people who have a case in the courthouse on that day. Duty counsel might be able to help you.

Step 3. Decide how to proceed

You need to decide how to **plead** (respond to the charge against you). In deciding how to proceed, you have three choices.

You can plead not guilty

Pleading **not guilty** means you are making the prosecutor prove the case against you. (It does not mean you deny you committed the offence.) The law presumes you are innocent, and the prosecutor must prove you are guilty. If you decide to plead not guilty, the court will set a date for your trial.

You can plead guilty

A **guilty plea** means you accept responsibility for the offence. If you decide to plead guilty, you will go before a judge for sentencing. For more details, see our information on pleading guilty to a criminal charge ^[4].

You can ask for more time

You can ask for more time to decide how to plead. The court can give you an **adjournment**. The court will set a date for your next court appearance, where you have to decide how you want to plead.

Step 4. Arraignment hearing

The court appearance where you tell the court how you will plead is called an **arraignment hearing**. At this hearing, you **enter** your plea, telling the court whether you plead not guilty or guilty.

If you plead not guilty, the court will give you a trial date. It can be anywhere from a few months to over a year away, depending on the type of charge and the caseload in your local court.

Step 5. Prepare for the trial

When you prepare your defence, think about what **evidence** (information about the crime) you can use. Evidence includes documents, witnesses, or your own personal **testimony** (telling your story).

It is extremely important to bring to the trial any documents or physical evidence you plan to use at the trial.

Tip Make sure the prosecutor has given you all the evidence they'll use (called the **disclosure**), such as any documents or witness statements. The prosecutor should also tell you who they'll call as a witness. You can send the prosecutor a letter or email asking for this information.

Step 6. The trial

At your trial in front of a judge, the prosecutor (and you if you choose to) call witnesses and present evidence. The judge decides if you're not guilty or guilty.

The Crown must prove its case

Before you can present your defence, the prosecutor will present the case against you. The prosecutor must **prove beyond a reasonable doubt** that you're guilty of all the parts (the **elements**) that make up the crime. To do this, they present evidence to the court, using witnesses or documents. The witnesses will **testify** (tell the court) about what they saw or heard. You have the right to **cross-examine** (question) each witness. Your questions might try to show weak spots, points they're not sure of, or that they're lying.

You might make a no-evidence motion

For a judge to find you guilty, the prosecutor must prove all the parts of the offence. When the prosecutor finishes presenting their case, if you feel they haven't proven all the parts, you can make a **no-evidence motion**. If the judge agrees there is no evidence of an element of the offence, the charge is dismissed.

For example, if you are charged with shoplifting, the prosecutor must prove several things:

- you're the person charged,
- you committed the offence,
- you intended to do it, and
- the offence took place within the court's jurisdiction.

Perhaps the prosecutor's evidence does not show your intent to take the item without paying for it. Instead, the evidence makes it appear you simply forgot to pay for the item. In this case, you might make a no-evidence motion. You would stand up and tell the judge there is no evidence of your intent to commit the crime. If the judge agrees, the charge would be dismissed.

Presenting your defence

If you don't make a no-evidence motion (or you do but the judge doesn't agree with you), you can present your defence. You can use documents, call witnesses, and, if you like, give your own personal **testimony**.

If you call witnesses, you question them first, and then the prosecutor may **cross-examine** (question) them. If you want to use a document, it usually has to be presented to court by a witness to confirm that it's real.

You can testify yourself, but you don't have to. You have a right to remain silent. If you choose to testify, you must speak under oath. The prosecutor can cross-examine you.

Closing your case

After you've finished presenting your defence, you'll close your case. Tell the judge why you think the prosecutor didn't prove that you're guilty beyond a reasonable doubt. This summary is called your **submission**.

Step 7. The judge's decision

After the prosecutor and you finish your submissions, the judge gives their decision, or **verdict**.

If you are found not guilty, you are **acquitted**. The charge is dismissed, and you are free to go.

If you are found guilty, you are **convicted**. The judge will penalize (sentence) you. The judge may sentence you then, or later.

Step 8. Sentencing

If you are convicted of the criminal charge, the judge will **sentence** you. Depending on the offence and your background, the sentence could be a discharge, a fine, probation, or jail. We explain the possible sentences.

The judge will want to know something about you before deciding what sentence to give you. Key information includes your age, whether you are married, how many people you support, if you are working, your income, your plans, and why you committed the offence. So be prepared with this information in case the judge asks for it.

If you can get letters about your character from people, such as an employer, clergyman, or doctor, or even from your family and friends, ask the judge for an adjournment for time to get these letters. Then give them to the judge before you receive your sentence.

Who can help

With your case

If you haven't done so, contact **Legal Aid BC** to find out if you qualify for a free lawyer under legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[3]

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- Visit website ^[5]


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Call 250-385-1221 (Victoria) or 604-822-5791 (Lower Mainland) Visit The Law Centre ^[6] (Victoria) or LSLAP ^[7] (Lower Mainland)

With more information

Legal Services Society, the legal aid provider in BC, has a number of criminal law publications. They explain how to represent yourself in a criminal trial, and what to do if you're charged with specific offences, including assault, theft and mischief.

Web: legalaids.bc.ca ^[8]

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Pleading Guilty to a Criminal Charge

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jordan Allingham ^[1], Ferguson Allingham and Paul Briggs ^[2], Paul Briggs Law in March 2018.

A criminal conviction can seriously affect the rest of your life. Understand what it means to **plead guilty** to a criminal charge, and learn the steps involved in the process.

What you should know

A criminal conviction can seriously affect you

No one likes going to court. Some people are terrified at the thought of it. And if charged with a crime, they plan to go in, plead guilty, and get out as fast as possible. That's a normal reaction. But it may also be a big mistake, because a criminal conviction can seriously affect the rest of your life.

Pleading guilty means you accept responsibility for the crime. A judge will penalize (**sentence**) you. You may have to pay a fine, be put on probation, or go to jail. You could get a criminal record.

These things can seriously affect you. A criminal record can prevent you from travelling to other countries, getting certain jobs, and applying for citizenship. You may lose your fishing, hunting, or driver's licence for months, years, or the rest of your life. Having a criminal record could also affect your child custody rights in a family dispute. For more, see our information on criminal records and record suspensions.

You may be eligible for diversion

You can avoid a criminal record in certain circumstances. Your case may be eligible to be dealt with through **alternative measures** (also called **diversion**) if:

- the charge against you is minor,
- you have no criminal history,
- you accept responsibility for the crime, and
- you feel sorry about what you've done.

If your case is diverted, the court won't sentence you. Instead, you report to a probation office and follow a program set out for you. The program may include community service work or counselling. The prosecutor has to agree to the program, and the probation office has to accept you.

If you complete the diversion program set out for you, the criminal charge is **stayed** (meaning the Crown won't go ahead with the charge against you). This means you won't get a criminal record.

The steps in the process

Step 1. Find out if you qualify for legal aid

After being charged with an offence, contact Legal Aid BC to find out if you qualify for a free lawyer under legal aid. Call 604-408-2172 in Greater Vancouver or toll-free 1-866-577-2525 elsewhere in BC, or visit legalaids.bc.ca ^[3].

If you are under age 18

People under age 18 who have been charged with a crime are automatically entitled to a lawyer at no cost. They also need a parent or guardian to be with them in court at their first court appearance. For more, see our information on young people and criminal law and youth justice court trials.

Step 2. First appearance in court

You will have been given a document telling you the date of your **first appearance** in court. You must go to court at that time and date. If you don't, a warrant may be issued for your arrest, and you could be charged with an offence (failing to appear in court).

What happens at the first appearance

The first appearance date is not a trial. It's the first step to find out more about the charge against you. The **prosecutor** (also known as Crown counsel) will give information about the charge, called **particulars** or **disclosure**. This information lists the allegations against you, and what the prosecutor will rely on to prove you are guilty.

The prosecutor may also give you their **initial sentencing position**, which is the **sentence** (or penalty) they think the judge should give you.

When you arrive at court

Make sure you arrive at court on time. If you do not have a lawyer, tell the sheriff you are present. When your name is called, stand up in front of the judge or justice of the peace and introduce yourself. Ask the prosecutor for the disclosure and initial sentencing position.

At this point, ask to **adjourn** your case (put it on hold) for as long as you need (or the court will allow) to read the material, talk with a lawyer, and decide on how to proceed.

Read the material carefully

Review the disclosure and initial sentencing position. There may be a difference between what the disclosure says (what the police say you did) and what you believe happened. There may be things missing from the disclosure you believe are important to your case. If so, you can ask the prosecutor to give them to you.

Step 3. Talk with a lawyer

At this point, **speak with a lawyer** before you do anything else. A lawyer can tell you about your legal rights and options, how strong the Crown's case is against you, and what kind of sentence you might get if you plead guilty.

Most courthouses have lawyers called **duty counsel**. They give free legal advice to people who have a case in the courthouse on that day. Duty counsel might be able to help you.

Tip If the prosecutor is asking for jail in the initial sentencing position, and you have a low income, find out if you qualify for a free lawyer under legal aid ^[3].

Step 4. Decide how to proceed

In responding to the charge against you, you must decide how to **plead**. You can plead guilty or not guilty.

A **guilty plea** means you accept responsibility for the offence. If you decide to plead guilty, you will go before a judge for sentencing.

Pleading **not guilty** means you are making the prosecutor prove the case against you. (It does not mean you deny you committed the offence.) The law presumes you are innocent, and the Crown must prove you are guilty. If you decide to plead not guilty, the court will set a date for your trial. For more details, see our information on defending yourself against a criminal charge.

In deciding how to proceed, you can ask for more time (an **adjournment**) to decide how to plead.

Or you can talk to the prosecutor about whether they would recommend you for **diversion**. As we explained earlier, this program may be available to you if the charge against you is minor and your first offence, you accept responsibility for the crime, and you feel sorry about what you've done. If you carry out the diversion program, the criminal charge is stayed and you don't get a criminal record.

Tip It is very important to review the disclosure with a lawyer to help you decide what to do. There may be a legal defence to the charge you don't know about. A lawyer can also help you understand what kind of sentence you might get if you plead guilty. For example, if you have a previous criminal record, even for an unrelated type of offence, you may be facing a stiffer penalty, possibly jail.

Step 5. Prepare for the sentencing hearing

If you decide to plead guilty, your case will go before a judge for **sentencing**.

To prepare for the sentencing hearing, gather any reference letters, school records, or other documents that might help you.

Try to get a letter from your employer or a family friend that knows about your situation. If they can say something good about you, it may help the judge have a good opinion of you. For example, if you were unemployed when you committed the offence and that was partly why you did it, but you now have a steady job, a letter from your new employer will show the court you are working to improve your situation.

If alcohol or drugs contributed to your actions, a letter from the local Alcoholic Anonymous or Narcotics Anonymous group saying you have been attending regular sessions can help when the judge decides what penalty to give you.

Step 6. The sentencing hearing

After saying you intend to plead guilty, you will get an official document telling you when you have to appear in court for sentencing.

On that date, dress neatly and go to court at least 30 minutes early. Find the prosecutor and tell them what you want to do.

You may want to speak to duty counsel before you plead guilty. **Duty counsel** can speak on your behalf during the sentencing if you wish.

The prosecutor's submissions

During the sentencing hearing, the prosecutor will tell the judge about the facts of the offence, usually reading from the police report and witness statements. Listen carefully. If you disagree with anything, you can say so later.

The prosecutor will suggest to the judge which type of sentence they think is appropriate. For example, the prosecutor may suggest a **conditional** sentence, where you must meet certain conditions, such as attending counselling or not having contact with someone.

You don't have to agree, and the judge does not have to follow the prosecutor's suggestions — even if *you* agree with them. The judge can give you a different sentence.

Once the prosecutor is finished making their submissions, it is your turn to speak to the judge.

Your submission

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.

The judge may ask you questions, such as whether you disagree with anything the prosecutor said. You might agree you are guilty but disagree with some of the circumstances. If that's the case, say so. If you feel bad about what you did, tell the judge, even though you might be embarrassed. If the judge believes you are sincere, and remorseful, that will help.

The judge will want to know some things about you, such as your age, your marital status, how many people you support, if you are working, and your plans. Give the judge any important information about these things. For example, if you don't have any money to pay a fine, or if a criminal record would ruin your plans for joining the armed forces, explain those things to the judge.

The judge may ask and you may discuss whether there were any problems that contributed to your actions, such as addictions, anger problems, or financial problems. The judge may ask whether these things are still a problem and

whether counselling or treatment is necessary.

The sentence

After everything is said, the judge will give you a **sentence**, or penalty. Depending on the offence and your background, it could be a discharge, a fine, probation, or jail. We have more on possible sentences.

If you are fined, you may ask for time to pay. Depending on the amount of the fine, the judge may give you a long time to pay.

Tip If you do not understand something, ask the judge to explain it to you.

Who can help

With your case

If you haven't done so, contact **Legal Aid BC** to find out if you qualify for a free lawyer under legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[3]

If you cannot afford a lawyer or get legal aid, try to talk with a lawyer before your trial. Some legal help is better than none. On your first appearance in court or when you enter your plea, you can talk to **duty counsel** at the courthouse. They can give you brief advice and speak for you the first time you appear in court.

- Visit website ^[4]


At **student legal clinics** in the Lower Mainland and Victoria, law students can help if you're charged with a summary conviction offence (a less serious crime) and likely won't get a jail sentence if you're convicted.

- Call 250-385-1221 (Victoria) or 604-822-5791 (Lower Mainland)
- Visit The Law Centre ^[5] (Victoria) or LSLAP ^[6] (Lower Mainland)

With more information

Legal Aid BC has a number of criminal law publications. They explain your options if you're charged with a crime, how to represent yourself in a criminal trial, and speaking to the judge before you're sentenced.

- Visit website ^[7]

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Outstanding Warrants and Welfare

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by People's Law School in August 2017.

If there is a **warrant** for your arrest, you may not be able to get welfare benefits. Learn when this rule applies, and options to deal with an outstanding warrant.

What you should know

If you have an outstanding warrant for your arrest

Under the law in BC ^[1], if there is a **warrant** for your arrest anywhere in Canada, you may not be able to get welfare in BC. It depends on the type of offence involved.

You aren't eligible for welfare if there is an arrest warrant issued:

1. under the *Immigration and Refugee Protection Act* ^[2], or
2. under any other Canadian law in relation to an **indictable** offence.

Indictable offences are the more serious ones, usually under the *Criminal Code* ^[3] or the law on illegal drugs ^[4]. They include aggravated assault, theft over \$5,000, drug trafficking, and murder.

If an arrest warrant for you is outstanding and falls in one of these categories, you can be cut off from (and ineligible for) welfare benefits until you take steps to deal with the warrant. The welfare benefits affected include income assistance, disability assistance, hardship assistance, and supplements.

There are exceptions

Some people can still get welfare even if they have an outstanding warrant falling in one of the named categories. The warrant provision in the welfare law ^[5] doesn't apply to:

- pregnant women,
- people in the end stage of a terminal illness, or
- someone under age 18.

The family of a person with an outstanding warrant is still eligible for welfare.

When you apply for welfare

When you apply for welfare, you have to say if there is an outstanding warrant for your arrest issued under:

- Canada's immigration law, or
- another Canadian law in relation to an **indictable** offence.

If you don't tell the truth, you may have to repay any welfare benefits you receive, and you could face criminal charges. You also have to agree that the government can check the information you report.

But you may not know if you have an outstanding warrant. For example, perhaps there *was* a warrant for your arrest. But sometimes charges are **stayed**, with the prosecutor deciding not to proceed with the charges. When that happens, warrants are cancelled. A warrant can be cancelled without you knowing about it. As a result, you can't assume you still have an active warrant.

Or you may know there's a warrant, but not know if it's in relation to an indictable offence. (Less serious offences are called **summary conviction** offences. Some offences are **hybrid** offences, meaning the prosecutor can choose to proceed either summarily or by indictment.)

So the most accurate answer may be that **you don't know** if there's an outstanding arrest warrant falling in one of the named categories. The government can then check for any outstanding warrants for your arrest and what type of offence they are for.

Dealing with an outstanding warrant

How you deal with an outstanding warrant depends on the facts of the case and the offence you are charged with. You have various options.

You can call the prosecutor in the location where the warrant was issued to see if they might drop the underlying criminal charges (which would cancel the warrant).

Or you can go back to that place to deal with the warrant.

Or if you have a relevant warrant in another province, you can **waive in** your charges to BC so you can attend court here to clear the warrant and deal with the charges. (You can only waive charges into BC if you intend to plead guilty to them.)

You should get legal advice before you decide what to do. See below for options for legal help.

If you can't get welfare because of an outstanding warrant

You can challenge the government's decision

If the government says you can't get welfare or it cuts you off from welfare, you have the right to challenge their decision. See our information on reconsiderations and appeals of income assistance.

Short-term financial help

You may be able to get two kinds of financial supplements if you show **undue hardship**.

You can apply for a repayable monthly supplement, if you can show that without financial help you will experience undue hardship. This assistance can be provided for three months, with the possibility of three additional months in exceptional circumstances.

You may also be able to get a repayable transportation supplement so you can go back to the place where the warrant is outstanding and deal with it.

Common questions

Do I have to consent to a warrant check by the welfare Ministry?

Yes. The application for welfare asks you to provide the welfare Ministry with written consent to check if you have any relevant warrants. If you do not consent, you will not be eligible for welfare.

Who can help

With legal advice

You can apply to the **Legal Aid BC** to see if you qualify under legal aid for a criminal lawyer to take your case or give you some advice about a warrant.

Call 1-866-577-2525 (toll-free)

Visit website ^[6]

With a welfare appeal

For help in challenging a decision about your eligibility for welfare, you could seek out an **advocate**. Advocates are community workers trained to help people, including with the paperwork involved. PovNet has a Find an Advocate tool ^[7]. Clicklaw's HelpMap lists dozens of advocates in BC ^[8].

The **Community Legal Assistance Society** (CLAS) may be able to help you if you have been denied welfare due to a warrant and you have lost your welfare appeal.

Visit website ^[9]

With more information

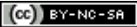
The **Community Legal Assistance Society** publishes a factsheet on "Welfare and Outstanding Warrants" ^[10].

Visit website ^[11]

The **Ministry of Social Development and Poverty Reduction** is responsible for welfare in BC.

Call Enquiry BC at 1-800-663-7867 (toll-free)

Visit website ^[12]

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Possession of Marijuana

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Paul Briggs^[1], Paul Briggs Law in July 2020.

Marijuana possession is now legal in British Columbia — within limits. There are still restrictions around how much you're allowed, where you can use it, and how you can buy it.

What you should know

It's legal to possess marijuana — in small quantities

New marijuana laws came into effect in BC in 2018. If you're 19 or older, you can carry **up to 30 grams of cannabis in public**. Privately, you can have up to 1,000 grams — four plants' worth — in your home.

These maximum amounts apply only to **dried cannabis**. The limits are different for other forms, such as fresh cannabis or cannabis oil. They're also different for medical marijuana. (We'll explain shortly.)

Using marijuana in public

Wherever tobacco smoking is allowed, you can generally smoke or vape cannabis as well. (Again, that's assuming you're an adult.)

Under BC law^[2], using cannabis is **not allowed** in the following **public places**:

- Playgrounds, sports fields, skate parks, swimming pools — or any deck, seating or viewing areas *in* these places.
- Public buildings, workplaces, or common areas of apartments or condos — or within six metres of their doorways, windows, or air intakes.
- Within six metres of bus stops, train stations, ferry docks, or other transit hubs.
- Regional, provincial, and municipal parks — except in designated areas.
- Public patios. Some restaurants and bars in BC have a tobacco-smoking area on their patio. But you still **can't** smoke (or vape) cannabis there.

Using cannabis is **not allowed on school property or even on the adjacent streets**.

Local governments can also restrict the public use of cannabis.

Tip You can't smoke or vape cannabis inside a bar or restaurant in BC. It's not allowed in an "enclosed workplace."

Using marijuana in a vehicle

Under BC law ^[3], no one can use cannabis in a **vehicle**. Not even passengers.

The only exception is if you're parked in a legal camping spot.

Using marijuana for medical purposes

You're allowed more marijuana if your health requires it. You can legally have **up to 150 grams of dried cannabis**, or a 30-day supply, whichever is lower. And you can use it in public.

But you must *prove* you need it. You have to get a note from your doctor. (That is, a medical document recommending cannabis to treat your symptoms ^[4].) Or else be legally registered to either grow your own plants ^[5] or have someone grow them for you ^[6].

Under BC law ^[7], medical marijuana is allowed on school property, and on transit. But you must meet specific requirements, such as carrying proof that you need it.

Buying marijuana

Cannabis is legally sold at licensed retailers and the BC government's online store ^[8]. These places must prominently display their licence. All legal (non-medical) cannabis has an **excise stamp**. If you don't see the distinctive British Columbia stamp on the package, the cannabis is illegal.



Tip The sale of cannabis edibles and concentrates became legal in 2019 ^[9], from the BC government's online store and licensed retailers.

If you have more than the legal limit

Under BC law ^[10], it's illegal to possess **more than 30 grams** of dried cannabis in public. (For medical marijuana, it's 150 grams or a 30-day supply, whichever is lower.) Breaking this law is **not** a criminal offence. Instead, it's like breaking the *Liquor Control and Licensing Act*. The police can give you a **ticket**, which can land you a fine and possible jail time. But you won't get a criminal record as long as you pay the fine. For a first offence, the fine can be up to \$5,000, the jail time up to three months.

If you're found with **more than 50 grams** of dried cannabis, you can be charged under the *Controlled Drugs and Substances Act* ^[11]. This *is* a criminal offence, and *can* result in a criminal record.

If you are charged with possession over the legal limit

Facing a cannabis possession charge, you must decide how to **plead**. Pleading guilty means you accept responsibility for the offence ^[12]. Pleading not guilty means the court will set a **trial**.

At the trial, the **prosecutor** (also called Crown counsel), must prove three things beyond a reasonable doubt: **knowledge**, **consent**, and **control**. The prosecutor will argue that:

- you had **control** of the marijuana — for example, the police found it on you or your property (such as in your car, suitcase, or bedroom), and
- you **knew** it was there, and
- you **consented** to having it there.

If the prosecutor proves all these things, the judge will convict you. To make their case, the prosecutor will call witnesses. They'll tell the court (**testify**) what they know. You can question (**cross-examine**) any of them.

After that, you get to give your side of the story. There are a couple of ways to do this. You might testify (give evidence) yourself. You don't have to. If you do, you take an oath promising to tell the truth. If you have any witnesses who saw what happened and can support your version, you can call them to testify. The prosecutor can cross-examine them.

You and the prosecutor then summarize your positions by making **submissions** to the court.

For more on the process, see our information on defending yourself against a criminal charge.

If you are convicted of possession over the legal limit

Penalties for possession of marijuana over the legal limit depend on the amount of marijuana involved. The court typically gives fines for smaller quantities and up to five years in jail for larger quantities.

Penalties also depend on how the Crown proceeds in the case. Possession over the legal limit is a **hybrid** offence, meaning the prosecutor can treat it as a less serious (**summary**) offence or a more serious (**indictable**) offence. If the prosecutor treats it as an indictable offence, the penalties are higher: up to five years in jail.

Tip If it's your first offence, you can ask the prosecutor to consider diversion ^[13]. This program routes you out of the court system. Instead you complete a probation period. This may include counselling or community service work. Another option: if you go before a judge for sentencing, you can ask for a discharge ^[14]. Like diversion, a discharge lets you avoid getting a criminal record ^[15]. (A criminal record is really worth avoiding. It can prevent you from travelling to other countries, getting certain jobs, and applying for citizenship.)

Common questions

What's the legal limit for other forms of cannabis?

The law defines "cannabis" as the plant itself or anything you consume that's made from it. The legal limit of **30 grams is for dried cannabis**. One (1) gram of dried cannabis is equal to:

- 5 grams of fresh cannabis
- 15 grams of edible product
- 70 grams of liquid product
- 0.25 grams of concentrates (solid or liquid)
- 1 cannabis plant seed

This means you can legally possess, for example, **150 grams of fresh cannabis**.

If I'm charged with possession over the legal limit, is the amount of marijuana important?

Yes — a small amount is less serious. The more you have, the greater your chance of being charged with **possession for the purpose of trafficking**. That's a more serious offence with more serious penalties.

Can I bring marijuana across the border?

No. It's illegal to transport cannabis across the Canadian border. It doesn't matter whether you're leaving or entering Canada. It doesn't matter what the laws of your destination are. It doesn't even matter if you're authorized to use cannabis for medical purposes. Or how much you have with you. The upshot: it's against the law.

What are the rules for young people?

If you're under 19, you can't possess or use cannabis. It's illegal. (There's an exemption for medical marijuana ^[16].)

If you're under 19 and found with **more than five grams of cannabis**, the police can give you a ticket. The penalty is a \$200 fine. If you pay it, you won't get a criminal record.

It's an offence to sell or supply cannabis to someone under age 19.

Who can help

Finding a lawyer

The legal issues for possession of marijuana over the legal limit can be complex. And a conviction can seriously harm you. You can call the **Lawyer Referral Service** to get the name of a lawyer. You can speak to the lawyer for a free half-hour legal consultation about your case, to help decide whether you would want to hire them.

- Call 604-687-3221 (Greater Vancouver) or 1-800-663-1919 (toll-free)
- Visit website ^[17]

You can contact **Legal Aid BC** to find out if you qualify for a free lawyer under legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[18]

If you can't afford to hire a lawyer and you don't qualify for legal aid, try to at least talk to a lawyer. They'll help you decide how to respond to any charge against you. On your first appearance in court or when you enter your plea, you can talk to **duty counsel** at the courthouse. These are lawyers who give free legal advice to people who have a case in the courthouse on that day.

- Visit website ^[19]


With more information

The BC government's **Get Cannabis Clarity** website explains cannabis laws, including where you can buy, use or grow marijuana.

- Visit website ^[20]

The federal government's **Cannabis in Canada** website summarizes cannabis laws.

- Visit website ^[21]

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Shoplifting

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jordan Allingham ^[1], Ferguson Allingham, and Paul Briggs ^[2], Paul Briggs Law in July 2017.

Shoplifting is taking (or trying to take) something from a store without paying for it, with the intention of stealing. Learn what to expect if you've been charged with shoplifting.

What you should know

Shoplifting is a criminal offence

Shoplifting is stealing (or trying to steal) something from a store. You shoplift if you intend to take something that doesn't belong to you from a store without paying for it, and you do so (or try to). Shoplifting is a criminal offence.

If you shoplift, a store security officer may stop you and call the police. You may be arrested and charged with a crime.

The actual **criminal charge** depends on the value of what you stole. If it's \$5,000 or less, the charge is "theft under \$5,000." If the value is over \$5,000, the charge is "theft over \$5,000."

In responding to the charge against you, you must decide how to **plead**. Pleading guilty means you accept responsibility for the crime. Pleading not guilty means the court will set a trial.

If you plead guilty or you are convicted at trial, a judge will penalize (**sentence**) you. You may be put on probation or have to pay a fine (among various possibilities). You could get a criminal record.

Through diversion, you can avoid a criminal record

If it is your first offence and the value of the item is small, you might be able to avoid a criminal record. Your case may be eligible to be dealt with through **alternative measures** (also called **diversion**) if:

- you have no criminal history,
- you accept responsibility for the crime, and
- you feel sorry about what you've done.

If your case is diverted, the court won't sentence you. Instead, you report to a probation office and follow a program set out for you. The program may include community service work or writing letters of apology. If you complete the diversion program, the criminal charge is **stayed** (meaning the prosecutor won't go ahead with the charge against you). This means you won't get a criminal record.

Learn more about diversion in our information on pleading guilty to a criminal charge.

If you decide to plead not guilty

If you plead not guilty to the charge, the court will set a date for your **trial**.

At the trial, the **prosecutor** (also called Crown counsel), must prove you are guilty of the offence beyond a reasonable doubt. The prosecutor must prove where and when the shoplifting happened. The prosecutor must also prove that you:

- are the person who committed the crime,
- intended to take the item without paying for it, and
- took the item, or tried to take it. If the prosecutor proves all these things, the judge will convict you.

To prove the charge, the prosecutor will have witnesses — normally the store security officer and the police officer that arrested you — tell the court (**testify**) about what they saw. The witnesses must testify under oath, which means they promise to tell the truth. You can question each witness. This is called **cross-examining** the witness.

After the prosecutor finishes, you have the opportunity to tell the court what happened. To do this, you might testify (give evidence) yourself. You don't have to. But it may help you make your case. Let's say you paid for the item and the store security officer didn't see you pay. In giving your evidence, you could show the court your receipt. Or perhaps you got distracted and forgot you had the item when you left the store. You could explain this to the judge. When you finish giving evidence, the prosecutor can question (cross-examine) you.

If you have any **witnesses** who saw what happened and who can support your story, you can call them to testify. You ask them questions so they can tell what they know. When your witnesses finish giving evidence, the prosecutor can cross-examine them.

You and the prosecutor then summarize your positions by making **submissions** to the court.

For more on the process, see our information on defending yourself against a criminal charge.

If you are convicted of shoplifting

If a judge **convicts** you, the penalties for shoplifting can include one or more of the following things:

- **A discharge.** The judge finds you guilty, but then discharges you instead of convicting you. Your discharge can be **absolute** (you won't get a criminal record) or **conditional** (you won't get a criminal record if you meet conditions the judge sets).
- **A suspended sentence.** The judge convicts you but suspends sentencing you, and instead releases you on conditions set out in a probation order.
- **A conditional sentence.** The judge gives you a jail term, but allows you to serve it in the community as long as you follow certain conditions.
- **A fine.** The judge sets an amount of money you must pay to the court.
- **A restitution order.** The judge orders you to pay for the item you stole.
- **A jail term.** The maximum jail term for theft under \$5,000 is two years.

For a first shoplifting conviction, a judge will usually put you on a form of probation (a conditional discharge or a suspended sentence) that forbids you from going back to the same store for a year. The judge may also fine you several hundred dollars.

If you are convicted or discharged, you must also pay a **victim surcharge**. The surcharge is 30% of any fine you got, or if you didn't get a fine, \$100 for a summary (minor) offence. If you do not have money to pay the surcharge, you can ask the judge to find you **in default**. The judge can then give you a one-day jail sentence. But you may not have to go to jail, as the judge can find that the time you are in court counts as the day in jail.

For more on possible sentences, see our information on conditional sentences, probation, and discharges ^[3].

Tip If it is your first offence and the value of the item is small, ask the judge for a **discharge**. A discharge allows you to avoid getting a **criminal record**, which can prevent you from travelling to other countries, getting certain jobs, and applying for citizenship.

If you receive a shoplifting notice or letter

Shoplifting is a civil offence as well as a crime. Stores are open to the public, but they are also private businesses. Store owners can stop anyone they want from entering their store (as long as they don't violate the *BC Human Rights Code*). For example, a store owner can prohibit people who have stolen from the store from entering the store again.

If store security catches you shoplifting, they may give you a **notice prohibiting entry**, and make you sign this notice. Then they will release you. They may also tell the police what happened.

The notice typically says you cannot enter the store for a certain time (usually a year). It warns that if you do enter the store, you may be arrested without warrant, charged with an offence, and fined under the *Trespass Act*. That's not likely to actually happen. Typically, security will just stop you from entering the store or remove you from the store. Still, if you get this type of notice, you should stay away from the store for the time the notice says.

Store security may also give you a **notice of intended legal action**. It might say the store will sue you for various expenses. You may also get a demand letter in the mail, saying you must pay a certain amount, perhaps \$500, for the store's investigative and administrative costs. Sometimes this comes after the criminal court case is finished.

A store can also **sue** a shoplifter, but the amount of money a court would order in most cases is so low it would almost never make sense for a store to sue. It would cost the store more to sue than it could recover.

You can normally ignore these notices and demand letters. However, whether or not you pay the amount the store demands does not affect whether the prosecutor charges you with shoplifting. Payment may also not affect your sentence (penalty) upon being convicted of a criminal charge, although a judge could consider it.

Who can help

Help for women


The **Elizabeth Fry Society** has counsellors who can help women with support, education and referrals. Counsellors can also provide written reports for courts.

- Call 604-520-1166 (Lower Mainland) or 1-888-879-9593 (toll-free)
- Visit website ^[4]

More information

Legal Services Society, the legal aid provider in BC, has publications on how to defend yourself on shoplifting charges and how to represent yourself in a criminal trial.

- Visit website ^[5]

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Impaired Driving

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Paul Doroshenko KC ^[1], Acumen Law Corporation in February 2019.

Impaired driving is a serious offence with complex legal and technical issues, as well as significant penalties if you're convicted. Learn what to expect if you're charged with impaired driving.

What you should know

BC and Canada both have impaired driving laws

Both BC and Canada have laws against driving while impaired by alcohol or drugs. Often, only the BC law ^[2] applies. Sometimes, federal law (the *Criminal Code* ^[3]) applies instead of — or in addition to — BC law.

It's not a crime to drive with some alcohol or drugs in your body. But it is a criminal offence to drive if your ability to drive is even slightly impaired due to alcohol or drugs.

This information focuses on drinking and driving.

Tip In BC, if your blood-alcohol level is over .05, there are legal consequences. (This level means you have 50 milligrams of alcohol in 100 millilitres of blood.) If you have been drinking, don't drive — take a taxi or bus or call a friend for a ride.

If you are stopped by the police

If the police lawfully pull you over, they can require you to take the following tests. They can require these tests even if you aren't driving but have **care or control** of a vehicle. You can have care or control of a vehicle even if you were parked — if you were in the driver's seat and had access to the ignition key.

Police can require you to blow into a roadside screening device

If the police lawfully stop you, they may demand you give a breath sample by blowing into a hand-held **approved screening device** (or ASD). The police can use your test results to issue a driving prohibition or hold you for further investigation.

The screening device tests for alcohol in your breath. Under BC law ^[4], a **warn** result means a blood-alcohol level over 50 milligrams of alcohol in 100 milliliters of blood (over .05). A fail result means a blood-alcohol level over .08.

If the screening device shows a warn result, the police will probably give you an **immediate roadside prohibition**. (We explain these below, under "Common questions".)

If the screening device shows a fail, the police may give you an immediate roadside prohibition or they may demand you take a **breathalyzer test** as part of a criminal investigation.

You don't have the right to speak to a lawyer before you decide whether to blow into a roadside screening device — you have to decide right away whether to blow. Refusing to blow or to provide a sample suitable for the screening device can lead to a driving prohibition or a criminal charge. It is highly advisable to make your best attempt to blow.

Tip Under the law, a **warn** result means a blood-alcohol level over .05. A **fail** result means a blood-alcohol level over .08. In BC, roadside screening devices are set to show warn for blood-alcohol readings between .06 and .10, and fail for readings over .10. (The roadside screening devices allow more than the legal limits to avoid penalizing drivers who are at or near the limits and to account for the screening device's margin of error.) If the roadside screening device shows a blood-alcohol reading below .06, the police will probably let you leave.

Police can require you to take a breathalyzer test

Under the *Criminal Code* ^[5], the police may demand you take a **breathalyzer test** if they have reasonable and probable grounds to believe you are committing the offence of impaired driving or have a blood alcohol level at or over .08 within two hours after driving. The police may use a fail reading from a roadside screening test to form their grounds to demand a breathalyzer test.

If the police demand you take a breathalyzer test

A **breathalyzer** is an instrument that measures the alcohol in your breath to see if you have more than 80 milligrams of alcohol in 100 millilitres of blood. If you do, you are **at or over .08**. This amount is the legal limit under the *Criminal Code* ^[3].

If the police demand you take a breathalyzer test, you must go with the police to where the breathalyzer instrument is located (usually, the local police station). As well, you must give breath samples (at least two for legally valid tests) so your blood-alcohol level can be analyzed.

Your rights when detained

When police make this demand, you are legally held, or **detained**. The police must tell you of your **right to a lawyer** and your **other rights under the Charter of Rights and Freedoms** before you provide breath samples. They must also give you a chance to contact a lawyer you choose before you give breath samples. This could be a private lawyer or a duty counsel provided by legal aid. The police must stop trying to get samples or other evidence from you until you have the chance to talk with a lawyer in private.

If you cannot give a breath sample because of your physical condition, the police may require you to let a qualified medical practitioner or designated police officer take samples of your blood for analysis. You have the right to speak to a lawyer before giving a blood sample.

If you are unconscious, you can't agree to give a sample. The police must get a **warrant** to take samples, which they can get by phoning a judicial justice or judge.

You have the right to remain silent

You don't have to tell the police whether you drank or how much you drank. You should not discuss with the police what you were doing before they stopped you. You should not speak to the police about your case. If your case goes to a trial, the court cannot use your refusal to speak with the police as evidence against you. You have a right to be silent.

If you refuse to blow (give a breath or blood sample)

If the police demand it, you must blow into a roadside screening device, and take a breathalyzer test. You must do these things unless you have a **reasonable excuse** not to. If you refuse to do them, you are committing an offence.

Generally, it is best to genuinely try to provide proper breath samples if the police demand you do so. You have a legal duty to make genuine attempts to provide suitable breath samples. Making genuine attempts to blow that do not work is not an offence.

Courts are strict about what a reasonable excuse is. For example, you may have a reasonable excuse to refuse a breathalyzer demand if the police don't let you speak privately to a lawyer first. But you must assert or claim your right to a lawyer. This means that when the police tell you your rights under the Charter, you must say you want to use, or **exercise**, those rights and speak to a lawyer.

The legal issues are complex and the best suggestion is this: if the police demand you take a breathalyzer test, talk to a lawyer before doing so. Then, follow the lawyer's advice.

If you are charged with a criminal offence

Police can charge you with any of three impaired driving-related offences under the *Criminal Code* ^[3]:

- **impaired driving** (driving while your ability to operate a vehicle is impaired by alcohol or a drug)
- having a blood-alcohol concentration at or over 80 milligrams of alcohol in 100 milliliters of blood within two hours after driving (**at or over .08**)
- failing or refusing to provide breath or blood samples on demand (**refusing to blow**)

These charges can apply if you're driving a vehicle, a boat, a plane, or other vessel. The charges can apply even if you weren't driving and didn't move the vehicle — as long as you had **care or control** of it. You can have care or control of a vehicle even if you were parked — if you were in the driver's seat and had access to the ignition key.

If your breathalyzer results were at or over .08, you will typically be charged with being at or over .08 within two hours of driving. If you failed to give a breath or blood sample, you will be charged with refusing to blow. In either case, you will also typically be charged with impaired driving.

Driving prohibition

If the police charge you with one or more of these three offences, the investigating police officer will typically issue you with a **24-hour roadside prohibition**. This takes effect immediately. They also typically issue a **90-day administrative driving prohibition**. This driving prohibition starts 21 days after the police give you a copy of the notice of prohibition. (You can ask for a review of this prohibition, but you must do so within seven days. We explain how below.)

Going to court

If you are charged with any of the three *Criminal Code* offences, you will have to go to court (or have an agent go on your behalf). As there are a number of complex technical and legal issues, it is highly advisable to get help from a lawyer. We suggest options shortly for finding a lawyer.

If you fight the criminal charges in court

In responding to impaired driving-related charges under the Criminal Code, you must decide how to **plead**. Pleading guilty means you accept responsibility for the offence. Pleading “not guilty” means the court will set a **trial**.

At the trial, the prosecutor must prove beyond a reasonable doubt that you committed the offence.

For **impaired driving**, the prosecutor must prove your ability to drive a motor vehicle was impaired by alcohol or a drug. The prosecutor does not have to prove you were drunk.

For **at or over .08**, the prosecutor must prove your blood-alcohol concentration was at or over 80 milligrams of alcohol in 100 milliliters of blood within two hours after you drove. The prosecutor must show the evidence of your blood-alcohol concentration was legally obtained.

For **failing to blow**, the prosecutor must prove you failed to give samples — without a reasonable excuse.

The prosecutor normally calls as witnesses the police officer who stopped you, and any other people who saw you. The witnesses tell the judge how you acted, whether you refused to give samples, and what signs of impairment they noticed. Common signs of impairment include bad driving, the smell of liquor on the breath or body, bloodshot eyes, poor balance, slurred speech, flushed face, and any other abnormal behaviour.

You have the right to **testify** (tell the court your story). You don’t have to. But you may want to if you can counter what the witnesses said and raise a reasonable doubt as to whether you were impaired. For example, perhaps you had an ear infection that affected your balance, or some physical problem that caused you to slur your speech. Whether to testify is a decision you ideally make with the help of a lawyer.

If you are convicted of criminal charges

For a first offence of at or over .08 or impaired driving, the **mandatory minimum sentence** is a \$1,000 fine and a driving prohibition of at least one year and up to three years. That is the usual sentence, unless the judge considers your case more serious because of aggravating facts such as high breathalyzer readings or an accident. For a first offence of refusing to blow, the mandatory minimum sentence is a \$2,000 fine and a driving prohibition of at least one year and up to three years. Any conviction under these sections of the *Criminal Code* means you get a **criminal record**. A judge cannot give you a discharge.

Previous drinking and driving convictions mean higher penalties — usually at least 30 days in jail for a second offence, and at least 120 days in jail for each offence after that. Plus, driving prohibitions are longer: between three and five years for a second conviction and a lifetime prohibition for a third or later conviction.

If there was an accident

If you were in an accident, you may be personally responsible for all the costs ICBC pays. And if you kill or injure someone while driving impaired, you risk being sued for a lot of money and having your insurance company deny coverage. The penalty for killing someone while impaired or at or over .08 is always a jail term. It’s the same for refusing to blow if it was reasonable to assume that the driving caused death or bodily harm.

Insurance premiums

An impaired driving-related conviction under the Criminal Code means you will pay more in vehicle insurance premiums, under an ICBC program called **driver risk premiums**. This program applies to more serious driving offences. For more, see our information on the points system and ICBC.

Criminal record

A conviction under the *Criminal Code* stays on your criminal record and driving record forever. After some time, you can usually ask for a record suspension ^[6], which limits access to your criminal record, but even that won't erase the conviction from your record.

Common questions

Can the police prohibit me from driving based on my roadside screening test results?

Yes. Police can issue an **immediate roadside prohibition** if your breath sample on a roadside screening device shows a warn or fail result, and police have reasonable grounds to believe your ability to drive is affected by alcohol.

Under BC law ^[4], a **warn** result means a blood-alcohol level over 50 milligrams of alcohol in 100 milliliters of blood (over .05). A **fail** result means a blood-alcohol level over .08.

If you get a **warn** result, the driving prohibition police can issue will vary depending on whether you have previous roadside prohibitions. If it is your first prohibition, you'll get a **3-day driving prohibition**. You'll get a 7-day driving prohibition for a second prohibition, and a 30-day driving prohibition for any subsequent prohibition.

If you get a **fail** result, the driving prohibition police can issue will be for **90 days**.

If police give you an immediate roadside prohibition, they will also **impound** your vehicle (have it towed). You will be required to pay for the towing and storage. You must also pay penalties and fees, and participate in driver safety programs. As well, your vehicle insurance premiums may increase.

Tip Under BC law ^[7], if your breath sample on a roadside screening device shows a warn or fail result, you have the right to request a second test using a different roadside screening device. You get the benefit of the lower of the two readings. The police have to inform you of this right before giving you a driving prohibition.

Can the police prohibit me from driving even if they don't give me a breath test?

Yes. Under BC's driving laws ^[8], police can issue a **24-hour roadside prohibition** if they have reasonable grounds to believe a driver's ability to drive is affected by alcohol or a drug. They do not have to test your blood-alcohol level. If you disagree, you can ask for a breath test on a roadside screening device. But if you get a warn or fail result on the screening device, police can use it to issue an immediate roadside prohibition or to hold you for a criminal investigation.

Can I challenge a driving prohibition issued by the police?

Yes. Police send a copy of any driving prohibition notice they issue to ICBC to be placed on your driver's record. You can ask RoadSafetyBC for a **review** of a driving prohibition. You must apply **within seven days** of when you get the notice of prohibition.

To ask for the review, you can fill in an application form available at any ICBC driver licensing office ^[9] or apply online ^[10]. You must also pay a fee that depends on whether you make your case in writing or orally. A decision will usually be made within 21 days of when you got the prohibition notice. The grounds to dispute the prohibition vary depending on the type of prohibition ^[11]. The possible defences are not limited to the grounds to dispute. An expert on police procedure may be available through a lawyer to provide evidence in your case. Close to a quarter of immediate roadside prohibitions are **revoked** (cancelled) on review.

During the review process, you are still prohibited from driving.

Are the rules different for new drivers?

A new driver participating in BC's graduated licensing program (a learner or novice driver) can be given a **12-hour roadside suspension of their driver's licence** if a breath test on an approved screening device shows they have any alcohol in their body. There is no review available of this suspension.

As well, they have to start their current stage of the licensing program over again (for example, novice drivers will start over at the beginning of their 24-month N licensing period).

If a new driver gets a result over .05 on a screening device, they also face the regular consequences fully-licensed drivers face.

How does a breathalyzer instrument work?

Breathalyzer instruments are designed to obtain scientifically and legally valid breath tests. Approved breathalyzer instruments used in Canada test themselves before and after each breath test. They produce a printout of the estimated blood-alcohol concentration. The printout can be used as evidence in court. In BC, breathalyzer instruments are usually located only in designated rooms in police stations.

A breathalyzer instrument captures a tiny bit of breath toward the end of the blowing sequence to measure the **concentration of alcohol in your breath**. Alcohol in the breath sample condenses on a small metal surface. The alcohol generates an electrical current, which a computer in the breathalyzer measures. The computer calculates an estimated blood-alcohol concentration based on the estimated breath-alcohol concentration. It reports the results in milligrams per 100 milliliters. A reading of at or over 80 milligrams (called "at or over .08") means you can be convicted of a criminal offence for having a prohibited blood-alcohol content within two hours after driving.

The technician who operates the approved instrument will ask you to blow into a plastic mouthpiece connected to the breath tube attached to the side of the instrument. It can take several minutes to analyze the sample. The technician will wait at least 15 minutes and then usually ask you to do it again. When the test is finished, a police officer will give you a **certificate** describing the test results. Keep this document in its original condition. Don't write on it or damage it.

What if I lend my car to someone who drinks and drives?

Several penalties from drinking and driving apply only to the driver — any driving prohibition, fines or jail sentences, increased vehicle insurance premiums, and driver safety programs. But other consequences apply to the vehicle owner. For example, if your car was impounded, you must pay towing and impoundment fees. If there was an accident, you can be exposed to significant costs. You probably don't want to lend your car to someone who may drink and drive.

Who can help

Finding a lawyer

The legal issues for impaired driving can be complex and a conviction can seriously harm you. There are lawyers who specialize in drinking and driving cases. You can call the **Lawyer Referral Service** to get the name of a lawyer. You can speak to the lawyer for a free half-hour legal consultation about your case, to help decide whether you would want to hire them.

- Call 604-687-3221 (Greater Vancouver) or 1-800-663-1919 (toll-free)
- Visit website ^[12]

You can contact **Legal Aid BC** to find out if you qualify for a free lawyer under legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[13]

If you can't afford to hire a lawyer and you don't qualify for legal aid, try to talk with a lawyer before deciding how to respond to any charge against you. On your first appearance in court or when you enter your plea, you can talk to **duty counsel** at the courthouse. These are lawyers who give free legal advice to people who have a case in the courthouse on that day.

- Visit website ^[14]


With more information

The **BC government** website includes information on driving prohibitions, suspensions, and impaired driving.

- Visit website

ICBC has information on the driver risk premium.

- Call 1-800-663-3051 (toll-free)
- Visit website ^[15]

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Driving While Prohibited

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jeremy Carr^[1], Jeremy Carr & Associates in May 2018.

There are several ways you can be prohibited from driving: by the province, by the police, or by a driving conviction. It is a driving offence to **drive while prohibited**.

What you should know

The province can prohibit you from driving

A BC government office monitors driving records and can issue a driving prohibition. The **Superintendent of Motor Vehicles**, through its Driver Improvement Program^[2], looks at things like the number of **penalty points** you have accumulated on your driving record within a two-year period (many driving offences automatically result in penalty points). The Superintendent's office can prohibit you from driving in any of these cases:

- The Superintendent considers it in the public interest — for example, if you have a bad driving record or you were involved in a high-risk driving incident.
- Your driver's licence was suspended in another province or state.
- You haven't paid money owing under a court order relating to a vehicle accident you were involved in.
- You haven't taken a medical exam required by the Superintendent.

The police can prohibit you from driving

Police have the discretion to issue various driving prohibitions.

24-hour roadside prohibition

Under BC's driving laws^[3], police can issue a **24-hour roadside prohibition** if they have reasonable grounds to believe a driver's ability to drive is affected by alcohol or a drug.

If you are given a 24-hour prohibition, police send a copy of the prohibition notice to ICBC to be placed on your driver's record. Police can also **impound** your vehicle (have it towed) to prevent you from driving.

Tip If police give you a 24-hour roadside prohibition, believing you've been drinking, you can ask the police to test your breath. If your blood-alcohol level is below 50 milligrams of alcohol in 100 millilitres of blood ("below .05"), the police have to cancel the prohibition. But if your blood-alcohol level is over .05, you face more than a 24-hour prohibition — see our information on impaired driving.

Immediate roadside prohibition

Under another provision of BC's driving laws ^[4], police can issue an **immediate roadside prohibition** if you provide a breath sample and an **approved screening device** shows a warn or fail reading, and police have reasonable grounds to believe your ability to drive is affected by alcohol.

A **fail** reading (of over .08) results in a 90-day driving prohibition. A **warn** reading (of over .05) results in a 3-day driving prohibition for a first prohibition, a 7-day driving prohibition for a second prohibition, and a 30-day driving prohibition for any subsequent prohibition.

Administrative driving prohibition

Under another provision ^[5], if the police, suspecting you of drinking and driving, test your blood-alcohol level and it's over .08, they can give you a 90-day **administrative driving prohibition**. They can also charge you under the *Criminal Code* with impaired driving. (For more, see our information on impaired driving.)

A criminal conviction can prohibit you from driving

If you are convicted of a driving-related offence under the *Criminal Code*, you receive an automatic driving prohibition (in addition to other penalties). For example, if you are convicted of impaired driving, dangerous driving, or hit and run, you are automatically prohibited from driving for **one year**. The judge can order a longer driving prohibition, depending on the facts of the case and your overall driving record.

If you are charged with driving while prohibited

Driving while prohibited from driving is an offence under the *Motor Vehicle Act* ^[6]. If you are charged with driving while prohibited, the prosecutor must usually prove that:

- you were driving, and
- you were prohibited from driving, and
- you *knew* you were prohibited from driving.

The prosecutor must prove each of these elements beyond a reasonable doubt. The prosecutor will normally use several documents to show these things, in addition to other evidence. You should carefully review these documents, ideally with a lawyer, before deciding how to proceed.

For a description of what to expect from the process, see our information on traffic tickets.

If you're sentenced for driving while prohibited

If you plead guilty or are found guilty on a charge of driving while prohibited, you will be **sentenced**.

If it is your first conviction for driving while prohibited, a judge must **fine** you at least \$500 and up to \$2,000. The judge can also send you to jail for up to six months, but usually won't for a first offence.

As well, you will be **prohibited from driving** for at least 12 months. The judge can consider your driving record and impose a longer driving prohibition.

In addition, a driving while prohibited conviction automatically results in **10 penalty points** against your driver's licence. (For how penalty points affect the premiums you pay for car insurance, see our information on the points system and ICBC.)

For a second or further offence, a judge must send you to **jail** for at least 14 days and up to one year — in addition to ordering a fine of between \$500 and \$2,000, and a driving prohibition of at least a year.

Common questions

Can I challenge a driving prohibition issued by the police?

Yes. Police send a copy of any driving prohibition notice they issue to ICBC to be placed on your driver's record. You can ask Road Safety BC for a **review** of a driving prohibition. You must ask **within seven days** of when you get the notice of prohibition.

To ask for the review, you fill in an application form available at any ICBC driver licensing office^[7]. You must also pay a fee that depends on whether you make your case in writing or orally. A decision will usually be made within 21 days of when you got the prohibition notice. The grounds to dispute the prohibition vary depending on the type of prohibition^[8]. The reality is most prohibitions are upheld. During the review process, you are still prohibited from driving.

Who can help

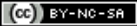
With more information

The **BC government** website includes information on driving prohibitions and suspensions.

- Visit website^[9]

With its **Driver Improvement Program**, the Superintendent of Motor Vehicles identifies high-risk drivers and encourages them to improve their driving habits.

- Visit website^[2]

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Driving Without Insurance

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jeremy Carr^[1], Jeremy Carr & Associates in May 2018.

Everyone who drives a vehicle in BC must have insurance. If you don't, you can be charged with **driving without insurance**. Learn your rights and the steps you can take.

What you should know

The offences you may be charged with

Driving without valid insurance is an offence under the *Motor Vehicle Act*^[2]. If you're unable to show your vehicle insurance paperwork to a police officer when asked, you may be charged with any (or all) of the following three offences:

- **Driving without insurance.** This is the most serious of the three offences, with a usual penalty of a \$598 fine.
- **Failing to produce an insurance document.** Less serious, with a usual penalty of an \$81 fine.
- **Failing to display a decal on your licence plate.** The usual penalty is a fine of \$109.

The ICBC website shows the current fine amounts for these offences^[3].

You don't receive penalty points against your driver's licence if you drive without insurance.

The ticket or notice will say what you are charged with

If you are charged with driving without insurance, you will get a piece of paper saying what you've been charged with. You will get one of:

- a violation ticket,
- an appearance notice, or
- a summons.

Usually, police give you a **violation ticket**. But if you have a bad driving record or previous driving offences, the police may give you an **appearance notice**, or you may get a **summons** to court at a later date — normally within six months of the incident.

The paperwork tells you exactly what offences you're charged with, the penalties for them, and whether you must appear in court. For a violation ticket, you don't *have* to appear in court — if you don't want to fight the ticket, you can **pay the fine** shown on the ticket. We explain your options shortly.

But for an appearance notice or a summons, **you must go to court** on the date shown on the notice or summons. If you don't go to court, a warrant can be issued for your arrest. For more details, see our information on if you receive an appearance notice or summons.

If you had insurance when you were stopped

You may have had vehicle insurance when the police stopped you, but you didn't have your insurance documents with you or you didn't have a decal on your licence plate. If so, you should take the insurance documents and decal to the Provincial Court registry in your community ^[4]. Explain that you want to plead **not guilty** to the charge of driving without insurance.

In most cases, if you can prove the vehicle was insured, the charge of driving without insurance will be withdrawn. But if you were also charged with failing to produce the insurance document or failing to display the insurance decal, you will still have to deal with those charges. The fact that the vehicle was actually insured doesn't matter for these charges. You'll have to decide whether to plead guilty to these charges and pay the fines, or whether to fight the charges.

If you don't want to fight the charge

If you don't want to fight the charge, you can **plead guilty**. This means you admit you committed the offence.

If you received an appearance notice or summons, see our information on pleading guilty to a criminal charge.

If you received a violation ticket, you can plead guilty by **paying the fine**. If you do, you don't have to go to court. There are many ways to pay ticket fines: see the ICBC website for details ^[5]. The fine is reduced by \$25 if you pay it within 30 days.

You won't be able to renew your car insurance or your driver's licence until you pay the fine or otherwise deal with the ticket.

If you ignore or forget a violation ticket

If you ignore a violation ticket and don't pay the fine or dispute the ticket within 30 days, you will be automatically convicted. If you had planned to dispute the ticket, but could not do so (and it wasn't your fault), you can go to the Provincial Court registry ^[4] and ask to have your case go ahead.

If you want to fight the charge

If you want to fight the charge and you received an appearance notice or summons, see our information on defending yourself against a criminal charge.

If you received a violation ticket, you can **dispute the ticket**. You have 30 days from the date of the offence to dispute the ticket.

You can dispute the ticket in person or by mail. We explain the details in our information on traffic tickets.

A **hearing date** will be set. At your hearing, the police officer who stopped you will **testify** (tell the court what happened). You will get a chance to question the officer. After, you can choose to testify yourself. You may also call other witnesses. A judicial justice will decide whether you're guilty or not guilty. Our information on traffic tickets explains the process more fully.

If you're found guilty of driving without insurance

After a hearing or trial on a charge of driving without insurance, if you are found guilty, the court can fine you any amount from \$300 to \$2,000 (instead of the usual \$598 fine). The court can prohibit you from driving for a certain time.

Although the court could send you to jail for up to six months, it would be extremely rare and only if you had many convictions for the same offence.

If you have a good driving record, tell the court, because this may help you get a lesser penalty.

Get help


With more information

The **Provincial Court of BC** website includes a "Guide to Disputing a Ticket".

- Visit website ^[6]

The **ICBC** website explains how to dispute a ticket and pay fines.

- Visit website ^[7]

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Traffic Tickets

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jeremy Carr^[1], Jeremy Carr & Associates in May 2018.

The police give out a **violation ticket** for less serious driving offences. Learn the options available if you get a traffic ticket, and the steps involved in disputing the ticket.

What you should know

If you are charged with a more serious driving offence

If you are charged with a more serious driving offence, such as careless driving or hit and run, you will get written notice in the form of an **appearance notice** or a **summons**. An appearance notice is given to you by a police officer at the time of the offence. A summons is mailed to you or personally delivered to you. These documents describe the offence you are charged with. They also tell you when you have to appear in court.

At your first appearance in court, you are asked how you **plead** (respond to the charge against you). If you plead not guilty, a **trial** date is set. At the trial, the police and possibly other witnesses tell the judge what they think happened, and you get a chance to do the same. The judge then decides whether you are guilty.

For details on each step in the process, see our information on if you receive an appearance notice or summons and defending yourself against a criminal charge.

If you are charged with a less serious driving offence

The police will give you a **violation ticket** (an ordinary traffic ticket) for less serious driving offences. It is used for many offences under provincial laws such as the *Motor Vehicle Act*^[2], including speeding, distracted driving, and running a red light.

Read the ticket carefully, because it should show the offence you are charged with. The ticket will normally show a penalty beside each offence. Most driving offences are penalized with a **fine**. Depending on the offence, you may also receive **penalty points** against your driver's licence or not be allowed to drive for a certain time. (For how penalty points can affect the premiums you pay for car insurance, see our information on the points system and ICBC.)

You won't be able to renew your car insurance or your driver's licence until you pay the fine or otherwise deal with the ticket.

If you don't want to fight the ticket

If you don't want to fight the violation ticket, you can **pay the fine**. If you pay it, you don't have to go to court, but a **conviction** is entered against you.

There are many ways to pay traffic ticket fines: by phone, by mail, through your financial institution, at most Autoplan brokers and driver licensing offices, at government agent offices and court registries. See the ICBC website for details [3].

If you don't fight the ticket within 30 days, you will be automatically convicted.

If you don't pay the fine

If you don't pay a fine, money to pay the fine can be taken out of your paycheck or bank account through a process called garnishment. You won't be able to renew your driver's licence or car insurance until you pay the fine. The government might get a collection agency involved. Steps they take could hurt your credit rating.

Tip Most traffic tickets over \$58 are reduced by \$25 if you pay them within 30 days.

If you want to fight the ticket

You can **dispute the ticket** if you believe it was issued unfairly. You have **30 days** from the violation date to dispute a ticket.

If you dispute the ticket, a **hearing** date will be set. The hearing is conducted by a **judicial justice** in what is often called **Traffic Court**. We explain the steps involved in disputing a ticket shortly.

If the justice finds you guilty at the hearing, they will normally fine you the same amount that is shown on the ticket. In some cases, they may increase the fine — for example, if you have a poor driving record. If you can show real financial hardship, they may reduce the fine unless the law sets a minimum fine for that offence.

You might also receive penalty points against your driver's licence. If you are guilty, penalty points are automatic — you can't fight them in court. You may also not be allowed to drive for a certain time.

If you want to fight just the amount of the fine, or ask for time to pay

You can dispute the amount of the fine, or ask for time to pay the fine, without going to court. You do so by filling out two forms available on the BC government website [4] or at any court registry:

- a **violation ticket notice of dispute** form
- a **violation ticket statement and written reasons**

On the second form, explain the reasons you're asking for a lower fine or more time to pay.

File both forms at the court registry [5]. By doing this, you admit you are guilty of the offence on the violation ticket.

A judicial justice will look at your forms and make one of the following decisions, which is mailed to you:

- **Not approve your request.** Then you must pay the fine immediately.
- **Reduce your fine.** Then you must pay the reduced fine immediately.
- **Give you time to pay.** The decision will set out when you have to pay by.
- **Reduce your fine and give you time to pay.** The decision will set out the reduced amount and when you have to pay by.

The steps in the process

Step 1. Dispute the ticket

Check the ticket for instructions on how to dispute it. You must register your dispute within **30 days** of getting the ticket.

You can dispute the ticket in person or by mail.

You or someone on your behalf can dispute **in person**. Bring the ticket to any driver licensing office ^[6] or provincial court registry ^[5].

Or you can register your dispute **by mail**. You can use the notice of dispute form ^[7] available on the BC government website ^[4]. Or you can write a letter saying you are disputing the offence and attaching a copy of the violation ticket.

Mail the material to:

Ticket Dispute Processing

Bag #3510

Victoria, BC, V8W 3P7

A **notice of hearing** will be mailed to you with the date and location of your hearing. It may be several months before you receive the notice of hearing.

Tip You have **30 days** to dispute a traffic ticket. Your letter disputing the ticket must be postmarked within 30 days from the date you received the ticket.

Step 2. Prepare for the hearing

If you haven't already done so, write notes about what happened. Make copies of any photos, maps or other documents you wish the court to consider.

Send the police a **written request** for a copy of all the information they have about the incident that resulted in the ticket, and the witnesses they intend to present in court ("the witnesses they intend to call").

Prepare questions you may want to ask the police officer.

Tip The violation ticket will show the officer's name, number, organization and location. Send your request for information to the officer right after you send in your notice of dispute.

Step 3. Attend the hearing

You must appear in person in court on the **hearing date** or have someone appear on your behalf.

At the hearing, the police officer and possibly other witnesses will tell the judicial justice what they think happened. You can do the same, by giving **evidence**.

The officer goes first because you are **presumed to be innocent**. The police must prove their case beyond a reasonable doubt. If they provide no evidence or not enough evidence in the hearing, you will be found not guilty.

After you give your evidence, each of you and the officer have an opportunity to summarize your case. The justice then decides whether you are guilty.

If the justice finds you guilty, they decide on the appropriate **penalty**. You may ask for a lower fine (there are some fines a justice cannot reduce because a minimum fine is set by law). You may ask for time to pay. A justice cannot reduce any penalty points. In more serious cases, the justice may order you not to drive for a period of time.

Tip You can have a family member or friend appear as your agent, or a lawyer appear on your behalf. Your agent or lawyer cannot give evidence on your behalf. But, with the justice's permission, they can ask questions of witnesses and make submissions on your behalf.

Who can help


With more information

The **Provincial Court of BC** website includes a "Guide to Disputing a Ticket".

- Visit website ^[8]

The **ICBC** website explains how to dispute a ticket and pay fines. It also has a chart showing fines and penalty points for different offences.

- Visit website ^[9]

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Conditional Sentences, Probation, and Discharges

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jordan Allingham^[1], Ferguson Allingham and Paul Briggs^[2], Paul Briggs Law in March 2018.

If you are guilty of a criminal offence, a judge will decide your sentence. Learn about some of the possible sentences: a **discharge**, a **suspended sentence**, and a **conditional sentence**.

What you should know

Possible sentences for a crime

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:

- **A discharge.** The judge finds you guilty, but then discharges you instead of convicting you. Your discharge can be **absolute** (you won't get a criminal record) or **conditional** (you won't get a criminal record if you meet conditions the judge sets).
- **A suspended sentence.** The judge convicts you but suspends sentencing you, and instead releases you on conditions set out in a **probation order**.
- **A conditional sentence.** The judge gives you a jail term, but allows you to serve it in the community as long as you follow certain conditions. The conditions can include restrictions on your freedom (often called "house arrest").
- **A fine.** The judge sets an amount of money you must pay to the court.
- **A restitution order.** The judge orders you to pay money to someone, usually the victim.
- **A jail term.** The judge sets a period of time you must spend in jail. This information explains a discharge, a suspended sentence, and a conditional sentence.

A discharge means your record won't show a conviction

A **discharge** means the judge finds you guilty, but then discharges you instead of convicting you.

There are two types of discharge.

An **absolute discharge** means your record won't show a conviction. You will not be on probation.

A **conditional discharge** means your record won't show a conviction if you meet conditions the judge sets. The conditions come in a **probation order** that can last from one to three years. The conditions can include that you:

- "keep the peace and be of good behaviour"
- stay in the province
- notify a probation officer of any changes in your job or address
- not contact certain people or go to certain places
- not drink alcohol or use (non-prescription) drugs

You may have to perform community service, give money back to a victim, or report to a probation officer periodically.

If you obey the conditions until the end of the probation period, your record won't show a conviction. But if you don't follow the conditions of your probation, your conditional discharge can be taken back by the court and replaced with a conviction.

A discharge is usually available only for more minor offences and if you have no history of similar offences. You must convince the judge that a discharge is appropriate. The judge considers your character and whether a discharge is against public policy.

A record of a discharge is temporarily on your record

The police and courts keep records of discharges for a period of time. If the police check your record during this period, they might see your discharge. If you're convicted of a criminal offence during this period, the court can consider your earlier discharge.

If you get an **absolute discharge**, the record of your discharge will be kept on file for one year.

If you get a **conditional discharge**, the record of your discharge will be kept on file for **three years** after the probation period is completed.

After the one- or three-year period, the RCMP must delete any record of your discharge from their records. No record of your discharge can be disclosed to anyone except in specific circumstances, such as if your fingerprints were found at the scene of a crime.

With a suspended sentence, you are convicted but released on probation

With a **suspended sentence**, a judge convicts you but suspends sentencing you, and instead releases you on conditions set out in a **probation order**.

Like with a conditional discharge, the probation order can last for one to three years. During that time, you must follow the conditions in the probation order. As explained earlier, the conditions can include that you "be of good behaviour," stay in the province, and not contact certain people or go to certain places. You may have to perform community service, give money back to a victim, attend counselling, or report to a probation officer periodically.

You will have a criminal record

The main difference between a suspended sentence and a conditional discharge is if you get a suspended sentence, you have a **conviction** registered against you. This means you will have a criminal record. After some time, you can usually ask for a record suspension, which limits access to your criminal record, but even that won't erase the conviction from your record.

The judge can give you other penalties

With a suspended sentence, probation may be the only penalty, or it can be combined with other penalties, including a fine or a jail term of less than two years. But a judge can't give all three of jail, a fine, *and* probation. You could get the following combinations: a fine and probation, or jail and probation, or jail and a fine.

If you don't follow a probation order

If you don't follow the terms of your probation, several things can happen.

If you were given a conditional discharge, your discharge can be taken back by the court and replaced with a conviction. This means you would have a criminal record.

If you were given a suspended sentence, the court can bring you back to sentence you for the original offence.

As well, you can be charged with the criminal offence of "failing to comply with a probation order," also called **breach of probation**. For example, if your probation order requires that you attend counselling, and you don't, you can be charged with breach of probation.

If you're convicted of breach of probation, the court can sentence you for the breach. Depending on the details of the breach and your criminal record, the **prosecutor** (the lawyer who presents the case against you) can choose to charge you with either a **summary** or **indictable** offence. There's often a jail sentence for either type of offence. Judges view a breach of a court order as a serious matter.

A conditional sentence is a jail sentence served in the community

A **conditional sentence** is a jail sentence you serve in the community, instead of in jail. You have to follow certain conditions, the same types as are used with probation orders. As well, a conditional sentence usually has conditions that restrict your freedom. For example, you might have to spend all or part of the sentence in your home (under "house arrest") or have to obey a curfew. If you don't follow the conditions, a judge can send you to jail for the rest of the time left on your sentence.

Judges use a conditional sentence only if they are satisfied you won't be a danger to the community and you don't have a history of failing to obey court orders. A judge **can't** give you a conditional sentence if:

- the sentence is longer than two years,
- the law sets a minimum jail term, or
- the *Criminal Code* says the crime is not eligible for a conditional sentence ^[3].

Other orders the judge can make

If you get a conditional discharge, a suspended sentence, or a conditional sentence, the judge can also make other orders. The judge can:

- Make a **no go order** (or **no contact order**) to ensure you have no contact with a particular person or place.
- Prohibit you from having any firearms or other weapons, like knives.
- Order you to give a sample of your DNA for the DNA National Data Bank if the prosecutor asks for this.
- Make a **compensation order** allowing a person whose property you damaged to sue you in civil court.

A conviction or discharge involves paying a victim surcharge

A person convicted or discharged of a crime must pay a **victim surcharge**. The surcharge is:

- 30% of any fine you got, or
- if you didn't get a fine, \$100 for a **summary** (minor) offence or \$200 for an **indictable** (more serious) offence.

The judge can also give you a higher surcharge. This surcharge is in addition to any other fine you get.

Even if you do not have money to pay the surcharge, the judge must still order it. But the judge can give you a long time (many years) to pay it. Or the judge can immediately find you in default for not paying the surcharge and give you a one-day jail sentence. But you may not have to go to jail, as the judge can find that you already served the jail time.

Common questions

Will my criminal record show I've been discharged?

Under the *Criminal Records Act* ^[4], the RCMP must remove any record of a discharge from their records after a certain period of time.

The time period for an absolute discharge is **one year** from the sentencing date. For a conditional discharge, the time period is **three years** from when the probation period is completed.


After these time periods, the RCMP must remove the discharge from their records. (For discharges before 1992, you must make a written request to remove the discharge.)

If your discharge is still on your criminal record after it should be, visit rcmp.gc.ca for a form ^[5] to request the discharge be purged from RCMP records.

Will a discharge affect my ability to travel to the United States?

Every country has its own rules about who it will allow to enter. US customs officers may turn away someone at the border due to a discharge or a probation order. If you receive a discharge, you may not want to try crossing the US border until your discharge record has been removed from police records.

Frustratingly, even though an absolute discharge must be deleted from RCMP records after one year has passed, it often shows on records accessed by US customs officers for up to three years.

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Criminal Records & Record Suspensions

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jordan Allingham ^[1], Ferguson Allingham and Paul Briggs ^[2], Paul Briggs Law in March 2022.

Information about a person found guilty of a crime is kept in their **criminal record**. Learn about criminal records, including how to apply for a **record suspension** (formerly a pardon).

What you should know

Your criminal record contains information about crimes

Information about a person found guilty of a crime is kept in a computerized file by the RCMP. The file is called a **criminal record**.

Your criminal record shows any criminal **convictions** against you. It also contains information about your identity, such as **fingerprints** or **DNA**.

You'll have a criminal record only if, at age 18 or older, you've been accused of a crime and your fingerprints were taken. A crime is breaking a law of Canada such as the *Criminal Code* ^[3] or the law on illegal drugs ^[4].

Breaking a provincial law doesn't lead to a criminal record. For example, you won't have a criminal record because you were found guilty of an offence under BC's highway safety law ^[5] or a local bylaw.

Your criminal record is not public, but police, prosecutors, customs officers, and other officials can still see it.

Avoiding a criminal record

If you've been charged with a crime, you can avoid a criminal record by having your case dealt with through **alternative measures** (also called **diversion**). You might be eligible for diversion if the charge against you is minor, you have no criminal history, you accept responsibility for the crime, and you feel sorry about what you've done.

If you are accepted into diversion, you follow a program set out for you that may include community service work or counselling. If you complete the diversion program, the criminal charge is **stayed** (meaning the Crown won't go ahead with the charge against you). This means you won't get a criminal record. For more, see our information on pleading guilty to a criminal charge ^[6].

A record of a discharge is temporarily on your record

A judge may find you guilty of a crime but **discharge** you instead of convicting you. An **absolute discharge** means your criminal record won't show a conviction. A **conditional discharge** means your record won't show a conviction if you meet conditions the judge sets.

In either case, a record of the discharge is kept on your criminal record for a period of time.

If you get an absolute discharge, the record of your discharge will be kept on file for **one year**.

If you get a conditional discharge, the record of your discharge will be kept on file for **three years** after the probation period is completed.

After the one- or three-year period, the RCMP must delete any record of your discharge from their records. Under the law in Canada ^[7], no record of your discharge can be disclosed to anyone except in specific circumstances, such as if your fingerprints were found at the scene of a crime.

For discharges before 1992, you must make a written request to remove the discharge. Visit the RCMP website ^[8] for a form to request a discharge be purged from RCMP records.

A record suspension limits access to your criminal record

If you're found guilty of a crime, your criminal record doesn't disappear, even after many years.

But after some time, you can usually ask for a **suspension of your record** (previously called a pardon) to have your criminal record set apart from other criminal records by the RCMP. The information in your record is not accessible except in rare situations.

Record suspensions are intended to help people access job and educational opportunities and to reintegrate into society.

To get a record suspension, you must ask the Parole Board of Canada ^[9]. We explain how shortly.

Effect of a criminal record suspension

Suspension of your criminal record doesn't erase the fact you were found guilty of a crime. If anyone asks whether you've been found guilty or convicted of a crime or a similar question, you must answer yes. But you can say your criminal record was suspended to show good behaviour and respect for the law.

If you get a record suspension, your criminal record will be kept separate from other criminal records by the RCMP. No one regulated by federal law can give out information about your criminal record or record suspension. But others who are not regulated by federal law — like local police or private citizens — can still give out this information. A record suspension does not cancel your conviction.

Importantly, a criminal record suspension **doesn't guarantee you can travel to other countries**. For example, a criminal record suspension in Canada is not recognized in the United States and doesn't erase information in American databases. So entry to the US is not guaranteed.

A record suspension can reduce the impact of having a criminal record when it comes to jobs. It can also help you immigrate to Canada.

Who can apply for a record suspension (and when)

You **must wait five or 10 years** after completing your sentence (punishment) before asking for a suspension of your criminal record. The waiting period depends on how serious the crime was.

The waiting period starts running only once you finish serving your sentence. That means you must have:

- paid all fines, costs, and orders for restitution or compensation,
- served any jail time, and
- satisfied any probation order.

People found guilty of a **crime involving a child** (for example, sexual touching of a child or child pornography) usually can't get their criminal records suspended. Nor can people who have been convicted more than three times with sentences of two years or more.

Applying for a record suspension

To get a record suspension, you must ask the Parole Board of Canada ^[9]. Visit their website ^[10] for the application form and a step-by-step guide. You can also call the Parole Board for information at 1-800-874-2652.

There is an application fee of \$50. You must also pay to have your fingerprints taken, get a copy of your criminal record, and get other documents from the court and local police.

The process involves many documents and several stages. It can take six months to two years before getting an answer from the Parole Board.

In considering your application

To suspend your criminal record, the Parole Board must be satisfied you were of **good conduct**. They will be looking for behaviour that demonstrates a law-abiding lifestyle.

If the Board is going to deny your application, it must first tell you that you can make a submission about your conduct and ask for an oral hearing. The Board must then consider your submission before it decides.

If your application is denied

You cannot appeal a Parole Board decision to deny your application for a record suspension. However, you can reapply after one year.

Common questions


Do I need a lawyer or company to apply for a record suspension?

No. You can apply directly to the Parole Board for a record suspension. The Parole Board won't give you preferred treatment if you use a lawyer or specialized company. If you hire a lawyer or specialized company, you'll have to pay for their services.

Can the Parole Board cancel a record suspension?

Yes. The Parole Board can cancel a criminal record suspension in these situations:

- The person was convicted of a new crime.
- The person is "no longer of good conduct."
- The person lied or hid information when applying for the record suspension.

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Being a Witness

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Andrew MacDonald ^[1], Crown Counsel in October 2018.

If you see someone commit a crime or you have information relevant for a court case, you may be called as a **witness**. Learn your rights and what to expect.

What you should know

Your role as a witness

A **witness** helps our legal system by giving important information (called **evidence**) to a court. A witness **testifies**, telling the court what the witness knows. Information from witnesses helps the court make the right decision. If you receive a document that says you have to be a witness in a trial, it's because you have important information about a case.

Either side in a court case can ask you to be a witness. If they do, you will receive a document called a **subpoena** or **summons to witness**. Read it carefully. It may require you to bring documents with you to court.

If you can't go to court when the trial takes place

On the subpoena or summons to witness is the name of the lawyer who is calling you to court. Phone the lawyer to find out why they want you as a witness and what documents you have to bring to court. Ask exactly when you have to go to court, and if necessary, try to arrange a better time.

If you are unable to personally attend court and you have a valid reason for it, you may seek permission to give evidence by **video**. When you receive notice of the court date, you have to immediately speak with the lawyer who is calling you to court to make this arrangement. It is up to the judge hearing the case to decide whether to permit a witness to give evidence by video.

If you think you should not be a witness

If you have a good reason not to be a witness, you can ask a judge to **cancel the subpoena or summons**. For example, if you have been called to Small Claims Court, a judge can cancel the summons if you are not really needed as a witness or if it would be a hardship to you to go to court. For other courts, you can call the court registry and explain that you want to ask a judge to cancel a subpoena.

If the subpoena or summons is not cancelled and you do not make other arrangements with the lawyer on when to give your testimony, then you must go to court. If you don't go, the lawyer can ask the judge to have you arrested and brought to court. A court can issue a **material witness warrant** for your arrest.

If you refuse to answer a question

Many people don't want to be a witness because they are afraid to answer certain questions. They think, based on American TV shows, they can refuse to answer by "pleading the fifth amendment." That's wrong. Witnesses have to testify (tell the court what they know) by answering questions from either side or the judge. If a witness refuses to answer a question, the judge can find them in **contempt of court** and jail them.

That said, there are limits on how the information provided by a witness can be used. Generally, it cannot be used against the witness at a later hearing if they are charged with a crime.

You may want to get independent legal advice before going to court if you are worried about testifying about certain things.

Understand the process

The people involved in court cases

A case in civil court usually involves the private interests of a person or company — such as property or money claims — or family issues such as guardianship, parenting arrangements, or support of children. The side making the claim, or suing, is the **claimant**. The side responding to the claim, or defending, is the **respondent** or **defendant**. The notice you receive to be a witness in a civil case will show the names of both sides: the claimant and the respondent or defendant.

In a criminal case, the notice will list **Regina** and the name of the accused person. Regina means Queen in Latin. Because the Queen of England is Canada's head of state, her name represents the community in a criminal trial. The **prosecutor**, called **Crown counsel**, is the lawyer acting for the community to make — or prosecute — the case against the accused person. **Defense counsel** is the lawyer for the accused person.

Preparing for court

Being a witness involves some preparation.

Think about the event or events you saw. What happened first? What happened next? Try to remember details like dates, times, descriptions, actions, persons involved, and exact words. Keep any notes, photographs, and documents you have about the case. Bring this material with you if you speak to a lawyer before the court date, and when you go to court. The judge may let you look at your notes during the trial.

If you can, before your court date go to the courthouse to watch what happens in court. Most trials are open to the public. As a witness, you have a right to speak in a language you know well. If you find it hard to speak or understand English, tell the lawyer calling you as a witness or court staff ahead of time so there is enough time to arrange for an interpreter.

On the day of the trial

On the day of the trial, dress neatly.

When you arrive at the courthouse, check the list of trials to find your courtroom.

If you are a witness in a criminal trial, go to the Crown counsel's office to tell them you are there. The subpoena will usually tell you to go to the Crown counsel's office 30 minutes before the trial starts.

Wait outside the courtroom until you are called to go in. Do not discuss your evidence with other witnesses. Be prepared to wait a while. A long wait can be inconvenient, but delays happen. You may want to ask a friend or relative to wait with you, or bring some reading material.

What happens in the courtroom

Someone will call you when it is your turn to **testify** (give your evidence). You then go to the witness box at the front of the courtroom.

The court clerk will ask you if you wish to swear a religious oath on the Bible or to affirm to tell the truth. Both options bind your conscience and require you to promise to tell the truth. Both place the same obligation on you to tell the truth, with the same consequences for failing to do so.

Next, you will be asked to say your full name and spell your last name. Witnesses are not usually asked to state their addresses, but it can happen. If you are asked but don't want to give your address in public, tell the judge.

You may sit down while giving your evidence.

The lawyer who called you as a witness will be the first to question you. Then the lawyer for the other side will **cross-examine** you by asking more questions. The judge may also ask you questions. You have to answer the questions.

Tip Treat everyone in the courtroom respectfully. You can call the judge "Sir" or "Madam." "My Lord" or "My Lady" are the formal titles in Supreme Court. "Your Honour" is the formal title in Provincial Court.

When you actually give evidence (or testify)

In **testifying** (giving your evidence), explain what you yourself directly observed, or what you did or said. You can show the judge any photographs that support your observations. However, do not talk about events you did not directly witness. Do not repeat the words someone else told you about events at which you were not present, unless you are asked to tell what you heard. Do not give your opinion.

After you give your evidence and the court excuses you, you can leave. You can also stay in the court and listen to the case if you like. If you remain in the courtroom, be respectful and remain quiet.

Some tips:

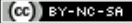
- When you answer, speak to the judge, not to the person who asked the question.
- Think about each question before you answer. Wait until the end of the question before starting to answer.
- Take your time so you can give a complete answer.
- Do not guess. If you are not sure about an answer, just say so. It's okay to say: "I don't know" or "I don't remember."
- If you do not understand a question, ask the person to repeat or explain it.
- Do not speak at the same time as anyone else or interrupt the judge or lawyers.
- Speak clearly and loudly, so that people in court can hear you and write down what you say. The microphone in front of you usually only records your voice — it does not make it louder.

Who can help

With more information

Justice Education Society offers tips and videos on appearing in court as a witness.

Visit website ^[2]

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Complaints Against the RCMP

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Civilian Review and Complaints Commission for the RCMP ^[1] in March 2019.

If you have concerns about the on-duty conduct of an RCMP officer, you have options, which can include filing a complaint and suing. The options vary depending on the situation.

What you should know

The RCMP polices most communities in BC, but not all of them

Most of rural BC and many municipalities are policed by the Royal Canadian Mounted Police (the RCMP). A full list of communities in BC policed by the RCMP is available on their website ^[2].

Some municipalities in BC are policed by their own police force, including several in the Vancouver and Victoria areas. If you have a complaint about a local police force, see our information on complaints against the municipal police.

If you are concerned with an RCMP officer's on-duty conduct

You may be concerned with the on-duty conduct of an RCMP officer. You may feel they used excessive force in the course of an arrest or investigation. Or you were offended by something an officer said or did to you. Or the RCMP damaged your property.

You have at least four options, depending on the situation:

1. filing a police complaint,
2. suing the police,
3. filing a human rights complaint, and
4. pursuing criminal charges.

Each option is designed for a different purpose, and each leads to a different outcome. If possible, you should speak to a lawyer before deciding which option to pursue. In some cases, it might be appropriate to pursue two or more options.

Filing a police complaint

If you have concerns with an RCMP officer's conduct, you can **make a complaint**. You can submit a complaint at an RCMP office ^[2] or with an independent agency that reviews complaints made against RCMP officers ^[3].

Filing a police complaint might result in a recommendation for discipline of the officer involved. It will not result in the payment of money for any injuries or harm you have suffered.

We explain the steps in making a complaint shortly.

Suing the RCMP

If an RCMP officer injured you, damaged your property, or violated your rights, you may be able to **sue** the officer and the RCMP in civil court.

Suing the police might lead to a settlement or judgment involving the payment of money.

A lawsuit is filed in either Small Claims Court or the Supreme Court of BC, depending on the amount of money sought. There are rules and processes that must be followed. Lawsuits must normally be filed within **two years** of the incident. See our information on starting a lawsuit.

Filing a human rights complaint

If you believe you have been discriminated against by the RCMP, you can consider **filing a human rights complaint**.

A human rights complaint might lead to a settlement or judgment involving the payment of money.

A human rights complaint against the RCMP is filed with the Canadian Human Rights Commission ^[4]. The complaint must normally be filed within **12 months** of the incident.

Pursuing criminal charges

If you believe an RCMP officer committed a crime, you can pursue having **criminal charges** brought against the officer.

If charges are laid, the officer would face criminal proceedings.

The process starts with you raising your concerns with the RCMP. They may investigate. Their investigation could result in a **report to Crown counsel** (the prosecution office in BC) recommending criminal charges against the officer. A senior Crown prosecutor would decide whether to approve the charges.

If the RCMP doesn't recommend charges, or the prosecutor decides not to charge the officer, you can go before a **justice of the peace** to ask that the officer be charged. For more on this process, see our information on charging someone with a criminal offence.

If a police incident results in death or serious harm

If an incident involving a police officer results in death or serious harm, an independent body automatically investigates the incident. The *Police Act* ^[5] requires the **Independent Investigation Office** to investigate to determine whether or not an officer may have committed an offence. An investigation is required whether the police officer was on-duty or off-duty at the time of the incident, and whether the officer works for the RCMP or a municipal police force.

If the investigation concludes that an officer may have committed an offence, the Independent Investigation Office prepares a report to Crown counsel. For more on this process, see the office's website ^[6].

The steps in filing a police complaint

Who can make a complaint

Anyone with some **connection to the on-duty conduct** of an RCMP officer can make a complaint against the officer. A connection means the officer's on-duty conduct affected you directly or someone you're acting for. Or you were present when the conduct occurred, or you suffered some harm or loss from it.

Step 1. Make a complaint

You **make a complaint** to the Civilian Review and Complaints Commission for the RCMP^[3], or at an RCMP office^[2].

The Commission is an independent agency that ensures that public complaints made about the conduct of RCMP members are examined fairly and impartially. The Commission receives complaints from the public and conducts reviews when complainants are not satisfied with the RCMP's handling of their complaints. The Commission is not part of the RCMP. The Commission has interpretation services for various languages.

You can make a complaint to the Commission:

- Using the online complaint form on the Commission website^[7].
- By phone by calling the Commission toll-free at 1-800-665-6878.
- By fax or mail, using the fillable complaint form on the Commission website^[8].

Make your complaint as soon as possible after an incident, while memories are fresh and evidence is still available. The deadline to complain is **one year** from the date of an incident. The Commission can extend the deadline if it decides there's a good reason.

Step 2. The complaint is investigated

The Commission usually sends the complaint to the RCMP to **investigate**. (Sometimes the Commission will investigate a complaint itself.)

The RCMP investigates your complaint and then reports to you in writing. If you are satisfied with the report, that's the end of the complaint.

Step 3. Request a review

If you are not satisfied with the RCMP report on your complaint, you can ask the Commission to **review your complaint**. You can request a review online^[9] or by phone, fax or mail. The Commission website explains the process^[10].

You have 60 days from when you receive the RCMP report to request a review. The Commission can extend that time if it decides there is a good reason.

The Commission will get the necessary information from the RCMP and review the RCMP report. During its review, the Commission can:


- review the complaint without investigating further
- ask the RCMP to investigate further
- do its own investigation
- hold a public hearing

If the Commission is satisfied with the RCMP report, it will send you a final report with its reasons. It also sends its report to the RCMP Commissioner, the federal Minister responsible for the RCMP, and the officer you complained

about. That's the end of the process.

Step 4. The Commission issues a report

If the Commission is not satisfied with the RCMP report, it sends an **interim report** to the RCMP Commissioner and the federal Minister responsible for the RCMP. The RCMP Commissioner will reply to it, explaining what the RCMP will do, if anything. The Commission then sends a **final report** to you, the RCMP Commissioner, the Minister, and the RCMP officer.

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Complaints Against the Municipal Police

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Yulina Wang in August 2017.

If you are concerned about a police officer's conduct, you have options, from filing a complaint to suing. Learn how the options differ, and the steps in filing a complaint.

What you should know

Some communities in BC are policed by a local police force

Eleven municipalities in BC are policed by their own police force. Most are in the Lower Mainland (Vancouver, New Westminster, Delta, Port Moody, West Vancouver, and Abbotsford), and Greater Victoria (Victoria, Saanich, Central Saanich, and Oak Bay). Nelson also has their own police force.

This information deals with concerns relating to a member of a municipal police force.

Other communities in BC are policed by the Royal Canadian Mounted Police. If you have a complaint about the RCMP, see our information on complaints against the RCMP.

If you are concerned with a police officer's conduct

You may be concerned with the conduct of a police officer. You may feel they used excessive force in the course of an arrest or investigation. Or you were offended by something an officer said or did to you. Or the police damaged your property.

You have at least four options, depending on the situation:

1. filing a police complaint,
2. suing the police,
3. filing a human rights complaint, and
4. pursuing criminal charges.

Each option is designed for a different purpose, and each leads to a different outcome. If possible, you should speak to a lawyer before deciding which option to pursue. In some cases, it might be appropriate to pursue two or more options.

Filing a police complaint

If you have concerns with a police officer's conduct, you can **make a complaint**. You can file a complaint with an independent agency that reviews complaints made against local police forces in BC.

Filing a police complaint might result in a recommendation for discipline of the officer involved. It will not result in the payment of money for any injuries or harm you have suffered.

We explain the steps in making a complaint shortly.

Suing the police

If a police officer injured you, damaged your property, or violated your rights, you may be able to **sue** the officer and the police force in civil court.

Suing the police might lead to a settlement or judgment involving the payment of money.

A lawsuit is filed in either Small Claims Court or the Supreme Court of BC, depending on the amount of money sought. There are rules and processes that must be followed. Lawsuits must normally be filed within **two years** of the incident. See our information on suing in Small Claims Court.

Filing a human rights complaint

If you believe you have been discriminated against by a police officer, you can consider **filing a human rights complaint**.

A human rights complaint might lead to a settlement or judgment involving the payment of money.

A human rights complaint against a member of a municipal police force is filed with the BC Human Rights Tribunal ^[1]. The complaint must normally be filed within **12 months** of the incident.

Pursuing criminal charges

If you believe a police officer committed a crime, you can pursue having **criminal charges** brought against the officer.

If charges are laid, the officer would face criminal proceedings.

The process starts with you raising your concerns with the police force involved. They will investigate. Their investigation could result in a **report to Crown counsel** (the prosecution office in BC) recommending criminal charges against the officer. A senior Crown prosecutor would decide whether to approve the charges.

If the police don't recommend charges, or the prosecutor decides not to charge the officer, you can go before a **justice of the peace** to ask that the officer be charged. For more on this process, see our information on charging someone with a criminal offence.

If a police incident results in death or serious harm

If an incident involving a police officer results in death or serious harm, an independent body automatically investigates the incident. The *Police Act* ^[2] requires the **Independent Investigation Office** to investigate to determine whether or not an officer may have committed an offence. An investigation is required whether the police officer was on-duty or off-duty at the time of the incident, and whether the officer works for the RCMP or a municipal police force.

If the investigation concludes that an officer may have committed an offence, the Independent Investigation Office prepares a report to Crown counsel. For more on this process, see the office's website ^[3].

The steps in filing a police complaint

Step 1. Make a complaint

If you have a complaint against a member of a municipal police force, you file it with BC's **Office of the Police Complaint Commissioner**. The Commissioner is independent of government and the police. This office also accepts complaints relating to the transit police and the Stl'atl'imx Tribal Police. Complaints may be about an individual officer's conduct or more general policing policies.

You can make a complaint:

- By filling out a complaint form on the Commissioner's website ^[4].
- By calling the Commissioner's office toll-free at 1-877-999-8707.
- By fax or mail, using the PDF complaint form on the Commissioner's website ^[5].

You can also get the complaint form from any of the municipal police forces in BC.

You have **one year** after the incident to file a complaint. You can hire a lawyer to represent you, but you don't have to.

Step 2. Take part in complaint resolution

The Office of the Police Complaint Commissioner reviews the complaint. They first decide if it is **admissible**. The complaint must describe conduct that is defined as misconduct under the *Police Act* ^[6] and occurred in the last 12 months.

If the Commissioner finds the complaint is not admissible, it will close the file and tell you why. That decision is final — you cannot appeal it.

If the complaint is admissible

The Commissioner's office then decides how to handle the complaint. The options include:

- **Informal resolution.** For less serious complaints, a **facilitator** can help resolve the conflict. This process is available only if both you and the police officer agree to it.
- **Mediation.** In some cases, a trained **mediator** can meet with you and the police officer to help settle the complaint.


For more serious complaints, the Commissioner's office oversees a **formal investigation** by the police department involved (or another police department). If the investigation results in a finding of misconduct, they may recommend disciplinary measures.

Step 3. Request a review

If you're not satisfied with the result of the complaint resolution process or investigation, you can ask the Police Complaint Commissioner to do a **further review**. The Commissioner can appoint a retired judge to review the matter or arrange for a public hearing before a retired judge.

In deciding on their approach to the review, the Commissioner considers the seriousness of the complaint, the harm suffered, and whether a public hearing is in the public interest.

If a review or public hearing is conducted, the retired judge will deliver a **decision** on whether there was misconduct, and if so, the disciplinary measures imposed.

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Firearms and the Firearms Act

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ling Wong, Fasken Martineau DuMoulin LLP in July 2018.

Canada's gun laws require gun owners to be licensed and certain guns to be registered. Learn how these laws work, and how to get a licence or register a firearm.

What you should know

You need a licence to have a firearm

Canada's main gun control law is the *Firearms Act* ^[1]. It applies to everyone who possesses, uses or acquires guns. It is administered by the Canadian Firearms Program ^[2], which is run by the RCMP.

To have a firearm, you must have a **licence**. Your licence says what class of firearm you can have: non-restricted, restricted or prohibited.

To have a restricted or prohibited firearm, you must **register** the firearm.

In other words, gun laws require **owners to be licensed** and (certain) **guns to be registered**, similar to how driving laws require drivers to be licensed and cars to be registered.

How you get a firearms licence

If you are 18 or older, you can apply for a **possession and acquisition licence (PAL)**. The licence enables you to possess or acquire firearms of the class listed on your licence, and to get ammunition.

You must first take the Canadian Firearms Safety Course ^[3] and pass a test. (To have a restricted firearm, you must also take the Canadian Restricted Firearms Safety Course ^[4].)

Then you must apply for the PAL licence ^[5] and pay a fee. The licence fee is based on the class of firearms you intend to acquire: for non-restricted firearms, the fee is \$61.32; for restricted or prohibited firearms, the fee is \$81.76

There is a minimum 28-day waiting period. The RCMP conduct various background checks. They may contact your partner, former partners, and references listed in your application, to see if they have any safety concerns about you owning a firearm.

The licence is renewable every five years.

Minor's licence

A young person between age 12 and 17 can apply for a **minor's licence**. This licence allows them to borrow non-restricted firearms for hunting, target shooting, organized shooting competitions, and instructions in firearms use. But someone under 18 cannot own or acquire firearms.

Firearms business licence

All businesses and organizations that produce, sell, possess, handle, display or store firearms or ammunition must have a valid **firearms business licence**.

You must register any restricted or prohibited firearm

The *Criminal Code* lists three classes of firearms ^[6]: non-restricted, restricted, and prohibited. You must **register** any restricted or prohibited firearm.

- **Non-restricted firearms** include ordinary shotguns and rifles, such as those commonly used for hunting. (But some military-type rifles and shotguns are prohibited.)
- **Restricted firearms** include certain handguns and some semi-automatic long guns. Rifles that can be fired when telescoped or folded to shorter than 660 millimeters, or 26 inches, are also restricted.
- **Prohibited firearms** include most 32 and 25 calibre handguns, and handguns with a barrel length of 105 millimeters or shorter. Fully automatic firearms, converted automatics, firearms with a sawed-off barrel, and some military rifles like the AK-47 are also prohibited.

To possess restricted firearms

You can only have restricted firearms for a purpose the *Firearms Act* allows, such as gun collecting or target shooting. You must also pass a restricted firearms safety course.

“Grandfather” status for certain prohibited firearms

You are allowed to possess certain prohibited firearms if you had a firearm in the same category registered in your name when it became prohibited, and you have continuously held a valid registration certificate for that type of prohibited firearm from December 1, 1998, onward. The *Firearms Act* refers to this as being "grandfathered."

How you register a firearm

To register a restricted or prohibited firearm, you must be at least 18 years old and have a licence authorizing you to have that class of firearm.

You can register a restricted or prohibited firearm in one of two ways:

1. Online on the Canadian Firearms Program website ^[7].
2. By mailing a printed application form to the RCMP. You can download the form from the program website ^[8] or call 1-800-731-4000.

There is no fee to register a firearm.

Restricted and prohibited firearms being registered for the first time in Canada need to be verified by an approved verifier ^[9]. Call the program at 1-800-731-4000 for information on having a firearm verified.

Transferring a firearm, and its registration, to a new owner

Any time a **restricted or prohibited firearm** is sold or given to someone, it must be deregistered from the current owner and registered to the new owner. This is called a **transfer**. Transferring and registering a firearm to a new owner is a different process from registering a firearm for the first time.

There are two ways to do a transfer:

1. Call the Canadian Firearms Program at 1-800-731-4000 to obtain a printed transfer form or to complete the transfer process by phone.
2. If either the buyer or the seller is a licensed business, the transfer can be done online. The business will need to start the process on the program website ^[10].

To transfer an **unrestricted firearm** to a new owner, the person transferring the firearm must verify that the new owner has a valid firearms licence. To do that, they can call the Canadian Firearms Program at 1-800-731-4000. There is no paperwork required for the transfer, as unrestricted firearms do not need to be registered.

Storing firearms

When storing firearms, **unload and lock your firearms**, for safety.

Store the **ammunition** separately or lock it up.

Disposing of firearms

If you have firearms you no longer want, or can no longer legally own, you can dispose of them in any of the following ways:

- Sell or give them to a person or business licensed to acquire them, including a museum.
- Have them permanently deactivated in an approved way.
- Export them to a country that allows them.
- Turn them in to police or a firearms officer for disposal.

When you dispose of a registered firearm, you must tell the Canadian Firearms Program. You may have to provide proof you disposed of the firearm, such as a receipt from police if you turn it in, an import or shipping document if you send it to another country, or a completed deactivation notice.

Keeping your firearms licence up to date

If you change your address

If you have a firearms licence and you move, you must notify the Canadian Firearms Program of your new address within 30 days. You can change your address through the program's website ^[11] or by calling 1-800-731-4000. Keeping your address current ensures you get important information, such as notices reminding you to renew your licence. But even if you don't get a notice to renew, you are still responsible to renew your licence before it expires.

Renewing a firearms licence

Firearms licences are generally valid for five years, and must be renewed **before** they expire. You can renew your licence online ^[12].

If you want to continue having firearms, you need to renew your licence. If your licence expires and you have any restricted or prohibited firearms, their registration could be cancelled. As well, you could face penalties for illegal possession of a firearm, as you need a licence in order to possess firearms legally.

If you have a firearm without a licence

Under the *Criminal Code*, it is an offence to possess a firearm without a valid licence ^[13]. It is also an offence to possess a prohibited or restricted firearm without a registration certificate for it.


You risk penalties if police find you in possession of a firearm without a valid licence or registration certificate. To minimize that risk, if you have a firearm, you should apply for a licence and (if needed) register the firearm as quickly as possible.

Who can help

With more information

The **Canadian Firearms Program**, run by the RCMP, administers Canada's gun control laws. The program's website features fact sheets as well as licence and registration application forms.

- Call 1-800-731-4000 (toll-free)
- Visit website ^[2]

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Charging Someone with a Criminal Offence

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Maurizio Datitlo in August 2017.

Typically, for someone to be charged with a crime, the police must recommend charges and a prosecutor (called Crown counsel) must approve the charge. Learn what's involved in the process.

What you should know

The process to charge someone varies across BC

The process to have someone charged with a criminal offence varies somewhat from place to place in British Columbia. This information describes the process in Vancouver. If you live elsewhere in BC, contact your local courthouse or police for the process in your community.

The purpose of the criminal justice system

The main purpose of the criminal justice system is to bring to justice a person who has committed a criminal offence. It is not to compensate people financially for something wrong done to them. If someone owes you money but has not committed a crime, you can consider suing that person in civil court. See our information on suing someone in Small Claims Court.

The process in a nutshell

You've seen someone commit a crime, or have other evidence they committed a crime. The first step to have someone charged with a criminal offence is to **report a crime to police**. The police will investigate.

The police consider if there is enough evidence of a crime for them to recommend the person be charged. If so, the police send a report and witness statements to the **prosecutor's** office (called Crown counsel).

The prosecutor reviews the material and decides whether to approve (or **lay**) charges against the person.

If the police don't recommend a criminal charge or the prosecutor decides not to lay charges, there is another process available. Any person who has reasonable grounds to believe another person has committed a criminal offence may provide that information to a **justice of the peace** in order to have the person brought to court. This is called laying a **private information**.

The steps in the process

Step 1. Reporting a crime to police

The first step to have someone charged with a criminal offence is to **report a crime to police**.

To report a crime in progress, **dial 9-1-1**. Otherwise, phone the local police non-emergency line to see if you can make a report by phone, or whether you have to go to the police station. It normally depends on the crime.

In either case, the police will ask you to describe what happened and to tell them any other information you know. You may be asked to **make a statement**. This is a written or recorded version of what you say happened. If you make a written statement, you will be asked to sign your statement. Read it carefully and make sure it is correct before you sign. An officer will investigate your report. This may involve, for example, examining the place where the crime occurred and talking to victims and witnesses.

Tip Make a note of the name of any police officer you talk with, and the police case or file number. This information will help you follow up to learn the status of your report.

Step 2. The police decide whether to recommend charges

Once the police complete their investigation, they decide if there is enough evidence to recommend to **Crown counsel** that the person be charged. Crown counsel are lawyers employed by the government to **prosecute** (bring) criminal cases in court.

If the police decide to recommend charges, an officer will write a **report to Crown counsel**. The report will suggest criminal charges the police think are appropriate.

If the police decide not to recommend charges

If the police decide the person should not be charged, they will tell you so, and they will not send a report to Crown counsel. If this happens and you disagree with the officer's decision, you can ask to speak to the officer's supervisor. Also, you can file a complaint with the body that oversees the police. See our information on complaints against the RCMP or complaints against the municipal police.

Alternatively, you can take steps to charge the person yourself. We explain how shortly.

Step 3. The Crown decides whether to approve charges

If the police recommend charges, **Crown counsel** will review the report from the police. The Crown will decide whether to approve (or **lay**) charges against the person.

In making their decision, a Crown prosecutor will consider:

- Is there is a **substantial likelihood of conviction** based on the evidence in the report from the police? In other words, is there a strong, solid case to present in court?
- If yes, is a prosecution required in the public interest? Crown counsel consider many factors in deciding this, including how serious the allegations are.

If Crown counsel decides to lay charges, the charges are set out in a document called an **information**.

If the prosecutor decides not to charge the person

If Crown counsel decides not to charge the person, you can contact the prosecutor's office to discuss their decision. Under the law in BC ^[1], a victim of crime has the right to know the reasons for a decision about charges. As well, under Canadian law ^[2] a victim of crime has the right, if they ask, to information about the status and outcome of the investigation into the crime.

Listen carefully to the prosecutor. If you have new information, tell them. The prosecutor may send you back to the police.

Tip After reporting a crime, if you don't hear whether the person has been charged, you can follow up by contacting the police officer who took your report.

Step 4. Laying a "private information" to charge the person yourself

If the police don't recommend a criminal charge or the Crown decides not to lay charges, there is another process available.

Any person who has reasonable grounds to believe another person has committed a criminal offence may provide that information to a **justice of the peace** in order to have the person brought to court. This is called laying a **private information**.

The justice of the peace is a court officer who deals with process matters. They will ask you to swear an oath or affirm the truth of the contents of the information.

If the offence is an **indictable** (serious) offence under the *Criminal Code* ^[3], the justice of the peace has to refer the information to a judge to consider whether to have the person brought to court.

The Crown considers the charges

The Crown reviews any private information received by a justice of the peace. The Crown considers whether their charge assessment standard has been met. They may refer the matter to police. If the Crown concludes there is not a **substantial likelihood of conviction**, they will direct a **stay of proceedings** (meaning the Crown won't go ahead with prosecuting the charge).

Appearing before a judge at a process hearing

If the prosecutor does not stay the charge, the next step involves appearing before a judge at a **process hearing**. You must convince the judge to order the person charged to attend court. The judge can issue an arrest warrant or a summons to do this. You must show the judge there is some evidence the person committed each part of the crime (this is called a **prima facie case**). If you do that, the prosecutor may ask the judge to **adjourn** (postpone) the case so the police can investigate.

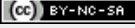
After the police investigate, if the prosecutor concludes there is a strong, solid case to present in court, the prosecutor will take over.

If the prosecutor decides the case isn't strong enough and directs a stay of proceedings, you can call the Crown counsel office and ask to speak to the prosecutor's supervisor to discuss their decision.

Common questions

What happens if the person is charged with a crime?

If a criminal charge is approved, and the case goes to a trial, you may have to testify as a witness, where you will tell the court what you know. See our information on being a witness. If you suffered financial loss, you may be able to get compensation if the accused is found guilty. The judge can make a **restitution order**, requiring the accused to pay money to someone who suffered a loss.

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Peace Bonds and Assault Charges

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Paul Briggs ^[1], Paul Briggs Law and Jordan Allingham ^[2], Ferguson Allingham in June 2018.

If someone threatens to hurt you or damage your property, a **peace bond** can offer protection. Learn how they work, and the steps involved in applying for a peace bond.

What you should know

With a peace bond, a person promises to keep the peace

A **peace bond** is a court order designed to keep someone from committing a crime. The person signs (or **enters into**) the peace bond, agreeing to “keep the peace and be of good behaviour” and obey certain conditions — for example, to not contact someone or visit certain places. Not following the conditions in a peace bond is a crime.

In a criminal case, the **prosecutor** may offer a peace bond to deal with criminal charges against someone.

As well, **anyone** can apply for a peace bond against another person. If you are afraid a person will hurt you or your family or damage your property, you can go to court to ask for a peace bond.

You can apply for a peace bond against anyone

Under section 810 of the *Criminal Code* ^[3], you can apply for a peace bond against anyone. It could be a partner or family member. But it doesn't have to be someone you were in a relationship with. For example, you could apply for a peace bond against a neighbour or co-worker.

To get a peace bond, you must prove you have a **reasonable fear** the other person will:

- hurt you or someone in your family,
- damage your property, or
- share an intimate image or video of you without your consent.

If the court agrees there is enough evidence, they will **summons** the person to come to court for a **peace bond hearing**.

Applying for a peace bond

With the help of the police

If you are afraid a person will hurt you or your family or damage your property, you can **contact the police**.

The police can gather information from you and others. This will help them assess whether to recommend a peace bond or criminal charges.

Give the police as many details as possible of why you are afraid. Give them any records that show your fear is reasonable — any concerning voicemails, emails, text messages, or social media posts from the person, or any notes you made of interactions with the person. Give police the names of any witnesses who have seen the threatening behaviour.

If the police agree that your fears are reasonable, they will **draft a peace bond** with a list of conditions. They will contact the person to ask if they are willing to agree to the peace bond. In most cases, people agree to sign the peace bond. If the person does not agree, a **peace bond hearing** can be set, where a judge decides whether the peace bond is appropriate.

Applying on your own

Any person may apply to court themselves for a peace bond against another person. We explain the steps in the process shortly.

Tip Obtaining a peace bond may take several weeks or even months, so peace bonds do not deal with emergencies. In an emergency, **call 9-1-1**.

Pursuing assault charges

If a person hurts you or threatens to hurt you, you can also ask the police to charge the person with **assault**.

Assault is when one person applies force to another person, or attempts or threatens to apply force to them without their consent. Assault is a crime even if you're not hurt, and sometimes even if you were not actually touched.

Depending on the situation, a person can be charged with "assault," "assault with a weapon," "assault causing bodily harm," or "aggravated assault." A charge of assault causing bodily harm, for example, might be laid if you need medical treatment for your injuries.

See our information on charging someone with a criminal offence for the steps involved in pursuing an assault charge.

If a person disobeys a peace bond

If the person who enters into a peace bond disobeys the conditions in the peace bond, **call the police**. Police can arrest the person and charge them with a criminal offence. That could lead to a jail term of up to four years. As well, it could lead to a criminal record. (A peace bond itself is not a criminal conviction.)

A peace bond can be enforced anywhere in Canada.

Tip Ask for a **certified copy** of the peace bond. Keep it with you at all times. If the other person doesn't follow the conditions in the peace bond, the police need to see the order before they can do anything. If the peace bond says the person can't contact your child, give a copy to your child's teacher or principal. They can show it to the police if the person tries to pick up your child from school.

Ending a peace bond

A peace bond will have an end date on it. Most peace bonds last for one year. Police cannot enforce a peace bond after it has ended.

When a peace bond ends, you need to go back to court if you want a new peace bond. You do not need to wait for the peace bond to end before applying again.

A peace bond can't be cancelled.

The steps in applying for a peace bond

Step 1. Laying an “information”

Any person may apply to court themselves for a peace bond against another person. The process begins at your local Provincial Court registry ^[4]. You complete a document, called an **information**, saying why you need the peace bond. The information is a sworn statement you complete in front of a **justice of the peace**. This is a court officer who deals with process matters.

In the information, you need to show why you have a **reasonable fear** the other person will hurt you or your family, damage your property, or share an intimate image or video of you without your consent.

Step 2. The person is summoned to court

If the justice of the peace agrees there is enough evidence to support a peace bond, they will **summons** the person to come to court.

Depending on the details you give the justice of the peace, they may issue a **warrant** so the police can arrest the person. If they do, the court may decide to release the person on conditions, such as they not contact you or go to your home or work.

When the person comes to court, they are asked to **sign the peace bond**, agreeing to a list of conditions. The conditions can include staying away from particular people or places, not using drugs or alcohol, and not having weapons.

Step 3. The peace bond hearing

If the person refuses to sign the peace bond, there will be a **peace bond hearing** before a judge. At the hearing, you will need to **testify** (tell your story), indicating the reasons for your fear. You can have a lawyer represent you during the hearing, but you don't have to.

At the end of the hearing, the judge will:

- dismiss the application if they think your fear is unreasonable, or
- order the person to sign a peace bond.

Who can help


With more information

The federal **Department of Justice** website includes information on victim's rights, including a fact sheet on applying for a peace bond.

- Visit website ^[5]

The **Legal Services Society** website includes the publication "For Your Protection: Peace Bonds and Family Law Protection Orders".

- Visit website ^[6]

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Stalking, Criminal Harassment, and Cyberbullying

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Maurizio Datitlo, Crown Counsel in August 2017.

It is **criminal harassment** for someone to repeatedly follow or contact you or engage in threatening behaviour, so as to make you afraid. Also capable of being criminal harassment: **cyberbullying**.

What you should know

Stalking can amount to criminal harassment

Stalking may start with conduct that seems more annoying than dangerous. Receiving flowers or a letter from “an admirer” (for example) can be off-putting but innocuous. But when it’s repeated, it can be frightening. In some cases, it can amount to **criminal harassment**. This is a crime under section 264 of the *Criminal Code* ^[1].

For stalking to be criminal harassment, here’s what’s required:

1. **The person engages in harassing behaviour.** This can include repeatedly following someone, repeatedly communicating with them, watching their home or workplace, or engaging in threatening conduct directed at someone or their family.
2. **The person knows (or is “reckless”) that the victim is harassed by their conduct.** The person knows their conduct is harassing the victim, or is reckless about whether it’s harassing them. “Reckless” means they know their conduct may harass the victim, but they don’t care.
3. **The conduct scares the victim.** The person’s conduct causes the victim to reasonably fear for their safety or the safety of someone they know. The victim’s fear has to be reasonable.

The person does not have to *realize* their conduct is scaring the victim for it to be criminal harassment. Stalking can be criminal harassment even if the person doesn’t physically hurt anyone or damage any property. The law is designed to protect psychological, emotional, and physical safety.

Cyberbullying can involve multiple crimes

Cyberbullying is a type of harassment using new technology. Cyberbullies use social media (such as Facebook, Twitter, Instagram, Snapchat and YouTube), blogs, texting, instant messaging, and other communication platforms to engage in conduct intended to harm or embarrass someone. Although their work is public, cyberbullies are often anonymous and it is often harder to identify and stop them.

In some cases, cyberbullying can amount to **criminal harassment**. This is a crime under section 264 of the *Criminal Code* ^[1]. See above (under stalking) for a description of the elements required.

Another *Criminal Code* provision outlaws a specific type of cyberbullying. Under section 162.1, it’s a crime to share an **intimate image** of someone without their consent ^[2]. Someone who is **reckless** about whether the person gave their consent can be charged with this crime. “Reckless” means they knew the person may not have consented, but they didn’t care.

Cyberbullying may also be **defamation**. Under section 300 of the *Criminal Code*, it’s a crime to publish a **defamatory libel** ^[3]. This is something published, without lawful justification or excuse, that is likely to injure a person’s reputation by exposing them to hatred, contempt or ridicule, or that is designed to insult the person.

But the reality is that criminal defamation is rare. More common is **civil defamation** — communication about a person that tends to hurt their reputation. See our information on defamation for more ^[4].

If a person is charged with a crime

If a person is charged with criminal harassment or sharing an intimate image without consent, the **prosecutor** (called Crown counsel) makes the case against them.

The first stage is generally an application by the accused person to be released (on **bail**) pending the trial. If the court grants bail, it would usually attach **conditions** such as that the person not contact the victim or go near the victim's home or place of work. It could also ban the person from using the internet, depending on the details of the crime they're charged with.

If the person disobeys those terms, the court may cancel their bail and charge them with a separate offence of breaching their bail conditions.

If a court finds the person **guilty** of the crime, it will give a **sentence**. The sentence is based on the severity of the crime and the person's criminal record. If the person is not sent to jail, they will usually be ordered to obey conditions similar to those imposed at the bail stage. For example, a court will typically order a person convicted of criminal harassment to have no contact with the victim directly or indirectly, to stay away from their home and workplace, and to not own or carry any weapons. A court may also ban a convicted person from using the internet. And a court may order a convicted person to take counselling, if it might help.

Deal with the problem

Step 1. Call the police

If someone is stalking, harassing or cyberbullying you, **call the police** to report the problem. Record the details of every incident, including time, date, place, who was involved, and what was said and done. Keep letters, notes, voicemail messages, emails, texts, instant messages, and social media and internet posts. Give them to the police.

Tip Never reply to harassing messages — except to **tell the person to stop**. Telling the person to stop gives them no excuse to say they didn't realize they were harassing you.

Step 2. Report the behaviour to others in authority

If the harassment happens at work, report it to your boss (as well as to the police). If your boss is the one harassing you, report it to a co-worker.

If the harassment happens at school, report it to the school authorities (in addition to the police).

Step 3. Report cyberbullying to your internet or phone provider

Report cyberbullying or other harassing communication to your internet or phone provider. Most companies have policies on acceptable use of their services, and can cancel the service of a customer who violates those policies. The company can also help police find a cyberbully who is using their network.

Tip If you get a harassing phone call, dial *57 immediately when the call ends. The phone company will record the phone number that made the call, so the police can get it. (This technique doesn't work on all phones. For how call tracking works for your phone, contact your phone provider.)

Step 4. Seek a court order to protect you

You can seek a **court order** to protect you from a person who is harassing or stalking you. Depending on the circumstances, you could seek a **peace bond** under the *Criminal Code* or a **protection order** under the *Family Law Act*.

These kinds of orders include conditions set by a judge that a person must follow — such as having no contact with you or not going near your home or workplace.

For more on these options, see our information on peace bonds and family violence.

Who can help

Support for victims

For support and services for victims of crime, call the 24-hour helpline at **Victim Link BC**.

- Call 1-800-563-0808 (toll-free)
- Visit website ^[5]

The **BC government's** Victim Services and Violence Against Women Program Directory ^[6] provides contact information for service providers across the province that assist women impacted by violence.

- Visit website ^[7]


With more information

The website of **MediaSmarts**, a non-profit organization for digital and media literacy, features information on cyberbullying and the law.

- Visit website ^[8]

The **BC government** website includes information for victims, staying safe, and getting help.

- Visit website ^[9]

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Young People and Criminal Law

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Yulina Wang, Barrister & Solicitor, and James Henry and Lindsay Wold, Crown Counsel in August 2017.

Learn the rights a young person has in dealing with the police or if they're charged with a crime. Also, some key options for young people in getting legal help.

What you should know

The legal framework

There are two main laws that come into play when talking about young people and criminal law.

The most important is the federal criminal law called the *Criminal Code* ^[1]. It covers common crimes like shoplifting, breaking and entering, car theft, and assault. It also covers the most serious crimes, like murder. (Another federal law covers illegal drugs ^[2].)

The second key law is the *Youth Criminal Justice Act* ^[3], which controls how federal criminal laws (such as the *Criminal Code*) apply to young people between ages 12 and 17.

There are also provincial laws that cover many other offences, such as drinking under age, trespassing, and breaking traffic laws.

If the police stop you and question you

The *Charter of Rights and Freedoms* guarantees basic rights to everyone in Canada ^[4] — including young people.

On arrest or detention

One important protection is the **right to legal advice** if police **arrest or detain you**. Being detained is when you are kept somewhere you don't want to be. You have the right to call a lawyer as soon as possible if the police arrest or detain you. Below, we suggest options to find a lawyer.

Police can only detain you if there are **reasonable grounds** (good reasons) to suspect you are connected to a crime. You have the right to know why you are being detained.

The right to remain silent

You also have the **right to remain silent**. If the police question you, you don't have to say anything. Anything you do say can be used against you as evidence in court.

You don't even have to tell police your name, but it may make the interaction end more quickly or go more smoothly if you give them your name and address. (The exception to this is if you're driving. When you're driving, you must identify yourself to the police.)

In other situations, if the police are just making conversation, you can politely ask them, "Am I free to go?" If the answer is yes, you can leave. If the answer is no, you are being detained.

If you are arrested

If the police arrest you, they must tell you what offence they think you committed. They can't take you into custody unless they arrest you. The police must give you a chance to call a lawyer as soon as reasonably possible after they arrest you.

If the police arrest you, they must immediately tell you that:

- you do not have to say anything or answer any questions
- anything you do say can be used against you as evidence in court
- you have the right to speak to a lawyer and a parent or other adult before you say anything
- a lawyer or an adult must be with you when you make a statement to police, unless you choose not to have that adult with you

Tip If you are arrested, you should speak to a lawyer before deciding whether to give a statement to the police. Below, we suggest options to find a lawyer.

If you are charged with an offence but not arrested

The police can recommend you be charged with an offence and not arrest you. In that case, they give you an **appearance notice** that says when you must go to court. Or, the police can get the court to issue a **summons**, and have it delivered to you at home. Like an appearance notice, a summons will tell you when and where you have to go to court.

You may also have to go to the police station at a specific time to get fingerprinted and photographed. The police have the right to take pictures and fingerprints only for certain offences. Talk to a lawyer before you go to the police station for pictures and fingerprints, to see if you must go.

For more, see our information on if you receive an appearance notice or summons.

Tip If the police charge you with an offence, you must give them your name and address, but that's all. If you're a young person charged with a federal offence, you have a right to legal representation. Below, we suggest options to find a lawyer.

Who can help

Finding a lawyer

If you're a young person charged with a federal offence, you have a right to legal representation. Contact **Legal Services Society** to see if you qualify for a free lawyer through legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[5]

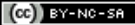
You can also find a lawyer through the **Lawyer Referral Service**.

- Call 604-687-3221 (Greater Vancouver) or 1-800-663-1919 (toll-free)
- Visit website ^[6]

If you are in police custody

If you are arrested and in police custody, you can call the **Brydges Line** to speak with a lawyer. This is a free 24-hour emergency number for legal advice.

- Call 1-866-458-5500 (toll-free)

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Youth Justice Court Trials

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Yulina Wang, Barrister & Solicitor, and James Henry and Lindsay Wold, Crown Counsel in August 2017.

If you are a young person facing a criminal trial, learn your rights and what to expect, from alternatives to trial to possible sentences if a judge finds you guilty.

What you should know

The legal framework

There are two main laws that come into play when talking about young people and criminal law.

The most important is the federal criminal law called the *Criminal Code* ^[1]. It covers common crimes like shoplifting, breaking and entering, car theft, and assault. It also covers the most serious crimes, like murder. (Another federal law covers illegal drugs ^[2].)

The second key law is the *Youth Criminal Justice Act* ^[3], which controls how federal criminal laws (such as the Criminal Code) apply to young people between ages 12 and 17.

If you appear in court on a criminal charge

If you're a young person charged under a federal criminal law (such as the Criminal Code), you have the **right to a lawyer** to represent you. Anytime you are in court without a lawyer, you can tell the judge you want a lawyer. If you cannot afford a lawyer, the judge will refer you to **legal aid**. It is best to speak with a lawyer before you go to court the first time. Below, we suggest options to find a lawyer.

The identity of a young person in youth court proceedings is normally protected. Information that identifies you can be published only in limited cases. This is called a **publication ban**. A judge can decide to lift a publication ban at the sentencing stage in more serious cases.

There are alternatives to trial

For some types of offences, the *Youth Criminal Justice Act* has a procedure called **extrajudicial measures** ^[4] (also known as **diversion**) for young people who take responsibility for their actions. Instead of having a trial where a judge decides if you are guilty, you can be diverted (or taken) out of the court system.

Usually, you must admit your guilt in writing and take responsibility for your actions by doing community service and apologizing to the victim. Often, you apologize by writing a letter to the victim. The program can include counselling and restorative justice, where you meet with the victim.

Your lawyer can ask the **prosecutor** (the lawyer bringing the case against you) to consider you for a diversion program.

When you may be held in custody

Young people may be held in custody before a trial where they have been charged with a **serious offence**, or have a **history** of charges or convictions.

A serious offence is any **indictable** offence with a maximum punishment (for an adult) of five or more years in jail. It includes violent offences, some property offences (for example, theft over \$5,000 or auto theft), and offences that significantly endanger others (for example, dangerous driving or unauthorized possession of a firearm).

If there is a trial

A **trial** of a young person is open to the public unless the judge decides it should be private. Then the judge can order that only certain people can be in the court. They would usually be the young person, their parents, their lawyer, the prosecutor, and the youth worker.

When you are charged with a crime, the law **presumes you are innocent**. At the trial, the **prosecutor** (called "Crown counsel") must prove you are guilty of the offence. They must prove your guilt **beyond a reasonable doubt**.

If the judge finds you guilty

If you are found guilty, the penalty you get is called a **sentence**. The judge may ask a youth court worker to prepare a **pre-sentence report**. The report will tell the judge about you, including whether you've been in trouble before.

Here are some of the sentences a judge can give, alone or in combination:

- **An absolute discharge.** The judge finds you guilty but then discharges you instead of convicting you. A record of your discharge will be kept on file for one year and then deleted.
- **A probation order.** The judge places you on probation for up to two years. You must report regularly to a probation officer.
- **A community service order.** The judge orders you to perform up to 240 hours of community service.

- **A fine.** The judge sets an amount up to \$1,000 you must pay to the court.
- **A restitution order.** The judge orders you to pay money to the victim for their loss or return property to them.
- **A custody order.** The judge sets a period of time you must spend in a youth custody facility. For most offences, the maximum time in custody is 16 months, plus eight months of supervision after release from the facility.

A judge can consider your pattern of criminal activity — not just whether you are guilty in the case — in deciding whether to put you in custody.

In some cases, a judge can give a young person an adult sentence

A judge can give a young person the same sentence an adult would get if:

- the offence has a sentence (for adults) of more than two years in jail, and
- the offence was committed after the young person turned 14.

A young person must serve their sentence in a youth facility until they turn 18 — even if they receive an adult sentence.

A young person can remain in a youth facility until age 20.

Criminal and youth records

Both the police and the court keep records of convictions of young persons. This information is part of a person's **youth record**. This is not the same as a criminal record. (An exception is where a young person under age 18 gets an **adult sentence**. In that case, the young person will have a criminal record.)

Youth records are usually kept private and deleted after a certain time. Until then, the judge can look at them when sentencing a young person.

Sometimes, for the safety of others, the law allows the records to be seen by certain people, like a victim, police officer, or director of a corrections institution.

The *Youth Criminal Justice Act* requires police to keep records of any **extrajudicial measures** ^[5] they use to deal with young persons. In addition to diversion programs, extrajudicial measures include warnings, cautions, and referrals to community agencies. The purpose of this requirement is to help police identify patterns of criminal activity.

Who can help

Finding a lawyer

If you're a young person charged with a federal offence, you have a right to legal representation. Contact **Legal Aid BC** to see if you qualify for a free lawyer through legal aid.

- Call 604-408-2172 (Greater Vancouver) or 1-866-577-2525 (toll-free)
- Visit website ^[6]


You can also find a lawyer through the **Lawyer Referral Service**.

- Call 604-687-3221 (Greater Vancouver) or 1-800-663-1919 (toll-free)
- Visit website ^[7]

If you are in police custody

If you are arrested and in police custody, you can call the **Brydges Line** to speak with a lawyer. This is a free 24-hour emergency number for legal advice.

- Call 1-866-458-5500 (toll-free)

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Legal Help & Lawyers

Free and Low-Cost Legal Help

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by People's Law School ^[1] in February 2023.

Options for free or low-cost legal help include legal aid, pro bono services, legal clinics, and advocates. As well, learn the best sources of legal information for resolving legal problems.

What you should know

Legal aid covers some types of criminal, family, and immigration problems

If you have a low income, and are facing some types of criminal, family, or immigration problems, you may be able to get a lawyer for free from **legal aid**. Contact Legal Aid BC by visiting legalaid.bc.ca ^[2] or calling 604-408-2172 in Greater Vancouver or toll-free 1-866-577-2525 elsewhere in BC. Their website lists legal aid service locations ^[3] across the province.

If you don't qualify for representation by a legal aid lawyer, you may still be eligible for other legal aid services. These include duty counsel and lawyers who provide telephone advice.

Duty counsel

Most courthouses have lawyers called **duty counsel**. They give free legal advice to people of limited means who have a case in the courthouse on that day. If you are in court on a criminal or family matter, they can give you brief advice. They may be able to speak for you in court on simple matters. For duty counsel hours in the courthouse in your community, visit legalaid.bc.ca ^[4] or contact your local legal aid office.

Telephone advice

If you have a low income and are experiencing a family law issue, you may be eligible for free legal advice over the telephone from a family lawyer. **Family LawLINE** lawyers give brief "next step" advice about family law issues. Call Legal Aid BC at 604-408-2172 in Greater Vancouver or toll-free 1-866-577-2525 elsewhere in BC.

If you are arrested or detained and in police custody, you can call the **Brydges Line** to speak with a lawyer. This is a free 24-hour emergency number for legal advice. Call toll-free 1-866-458-5500.

If you are in police custody awaiting a bail hearing, you can get legal advice over the phone during the evenings and on weekends and holidays. You can reach Legal Aid BC's **advice counsel lawyers** by calling toll-free 1-888-595-5677.

Justice Access Centres provide free help on a range of problems

Justice Access Centres in Vancouver, Victoria, Surrey, Nanaimo, and Abbotsford provide help with family issues and everyday problems such as work, housing or debt problems. The Justice Access Centres offer free mediation services and limited legal advice services. Many of these services are available to everyone. Some services (such as **family advice lawyers**) are available to those on a low income. For more information, call Service BC toll-free at 1-800-663-7867 or visit the BC government website ^[5].

With pro bono services, lawyers volunteer to help people of limited means

“Pro bono” means “for the public good.” With **pro bono legal services**, lawyers volunteer to provide free legal advice and assistance to those who can’t afford a lawyer or get legal aid. Through **Access Pro Bono**, volunteer lawyers provide summary legal advice at a network of legal clinics around British Columbia. Other Access Pro Bono programs provide representation services in limited situations. Call 604-878-7400 in Greater Vancouver or toll-free 1-877-762-6664 from elsewhere in the province, or visit their website at accessprobono.ca ^[6].

Specialized legal assistance for disadvantaged people

Dozens of agencies provide legal assistance in specific areas to people who are disadvantaged or of limited means.

Community Legal Assistance Society (CLAS) provides legal advice and assistance to people who are disadvantaged or whose human rights need protection. Visit clasbc.net ^[7] or call 604-685-3425 in Vancouver or toll-free 1-888-685-6222.

Native Courtworker and Counselling Association of BC provides culturally appropriate services to Indigenous people in communities across BC. Courtworkers help Indigenous people charged with a crime understand their rights and options, and navigate the court system. For more information, visit nccabc.ca ^[8] or call toll-free 1-877-811-1190.

The **Tenant Resource & Advisory Centre (TRAC)** offers a telephone infoline to help tenants experiencing legal problems. They also provide free representation to tenants at dispute resolution hearings in limited situations. Call 604-255-0546 in Vancouver or toll-free 1-800-665-1185 or visit tenants.bc.ca ^[9].

MOSAIC provides legal advice and representation to low-income immigrants and refugees. They help newcomers navigate the Canadian legal system. Call 604-254-9626 in Vancouver or visit mosaicbc.org ^[10].

In communities across the province, **advocates** provide free support and advocacy to low-income and marginalized people experiencing legal problems. Advocates help with legal problems such as tenancy or work problems, family violence, accessing government benefits, and immigration issues. Advocates work mostly out of community agencies, such as community service centres, churches or women's centres. Advocates are trained to help people assert their rights, including with the paperwork involved. PovNet has a **Find an Advocate Map** at povnet.org ^[11]. **Clicklaw’s HelpMap** at clicklaw.bc.ca/helpmap ^[12] lists dozens of advocates in BC.

Student legal clinics provide assistance in some communities

At **student legal clinics** in the Lower Mainland and Victoria, law students can help those who would otherwise be unable to afford legal assistance. The students help with legal problems such as tenancy or work problems, accessing government benefits, (less serious) criminal charges, and small claims cases. In the Lower Mainland, call 604-822-5791 or visit lslap.bc.ca ^[13]. In the Victoria area, call 250-385-1221 or visit thelawcentre.ca ^[14].

You can get a low-cost consultation with a private lawyer

Lawyers across BC participate in the **Lawyer Referral Service**, which can connect you with a lawyer for a free 15-minute consultation. The service is operated by Access Pro Bono. Call 604-687-3221 in the Lower Mainland or 1-800-663-1919 toll-free elsewhere in BC, or visit accessprobono.ca ^[15]. After you explain your problem, the service will give you the name of a lawyer who does that type of law in your area of the province. You contact the lawyer to make an appointment. The lawyer will meet with you for a free consultation for up to 15 minutes. The lawyer can provide some initial advice on your options. Then, if you and the lawyer agree, you can hire that lawyer at their regular rates.

More generally, if you want to talk to a lawyer, but are afraid of what it might cost, call the lawyer. Ask what they charge for an initial consultation. Some lawyers don't charge for the first interview and others charge very little.

You can hire a lawyer to handle parts of your legal matter

Instead of hiring a lawyer to handle your entire legal matter, you can hire a lawyer to handle specific parts. Doing so “unbundles” these tasks from the parts you can do yourself. With **unbundled legal services**, you get assistance where you need it most, at a cost you can manage. You pay only for the tasks the lawyer works on.

For example, if you're going to court, you can hire a lawyer to help you prepare documents or to coach you on how to present your case.

Unbundling works well for many people and many types of legal matters — but not for all. To learn about unbundled legal services and whether it might be a good fit for your situation, see unbundlinglaw.ca ^[16].

Top sources of free legal information

There is a wealth of free legal information available online. Here are some of the best sources for British Columbians.

Clicklaw is a website operated by Courthouse Libraries BC to provide access to legal information for the layperson. It covers dozens of topics, and features problem-solving information. Visit clicklaw.bc.ca ^[17].

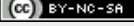
Courthouse Libraries BC also provides **Clicklaw Wikibooks**, plain language legal publications that are born-wiki and can also be printed. See wiki.clicklaw.bc.ca ^[18].

People's Law School is a non-profit society dedicated to making the law accessible to everyone. Their website at peopleslawschool.ca ^[19] provides free education and information to help people deal with the legal problems of daily life. Featured topics include consumer and debt problems, problems at work, and wills and estates.

Legal Aid BC, the legal aid provider in the province, provides free legal information on family law, criminal law, immigration, and Aboriginal legal issues. Their main website legalaid.bc.ca ^[2] includes many publications in languages other than English. Their **Family Law in BC** website at family.legalaid.bc.ca ^[20] features self-help information for people in family disputes. Information for Aboriginal people is available on their **Aboriginal Legal Aid in BC** website at aboriginal.legalaid.bc.ca ^[21].

Justice Education Society improves the legal capability of people through education programs and resources to strengthen legal knowledge, skills and confidence. Visit justiceeducation.ca ^[22].

In communities across BC, **public libraries** provide access to books and resources about the law aimed at non-lawyers. Librarians can help in finding what you need. Visit newtobc.ca/bc-libraries ^[23] for a map of public libraries across the province.

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Choosing a Lawyer

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Steven Gjukich ^[1], Gilchrist & Company in March 2018.

A lawyer can help you understand how the law applies to your situation and help with any type of legal matter. Learn the steps involved in choosing a lawyer.

What you should know

Why you might need a lawyer

If you have a legal problem, a lawyer can help you figure out what to do. They can tell you how the law applies to your situation and what your options are. They can tell you what they think will happen based on other cases they have worked on, and help you get the best result possible.

If you have been seriously injured or mistreated, a lawyer can help you seek compensation. If you are facing criminal charges or a lawsuit, a lawyer can help you understand your rights, and the strengths and weaknesses of your case. A lawyer knows the rules and procedures for arguing the case in court. A lawyer can make a big difference in whether or not your side of the story is successfully presented to a judge or jury.

A lawyer can help you prepare a will, plan for your future care, or buy a new home. They can advise you on starting a small business or negotiate an employment contract. They can ease the pain of a family breakup, helping you negotiate a separation agreement, resolve any issues with children, or get a divorce order.

Lawyers can provide a full range of legal services

Lawyers are able to assist clients with all legal matters. This includes real estate, wills and estates, family law, criminal law, employment law, and advising businesses. Some lawyers choose to focus on certain areas of law — for example, courtroom work (also called **litigation**) or transactional work (also called **solicitor's practice**).

Lawyers have extensive training in the law. They are licensed by a regulator (the Law Society of BC ^[2]) that sets standards for practice and requires ongoing professional development. Lawyers are **insured** against malpractice, which means that if they do something wrong that hurts you, they have an insurance policy that can compensate you.

Notaries offer some legal services

In British Columbia, **notaries** are able to assist clients with certain types of transactional matters. For example, a notary (also called a “notary public”) can prepare the paperwork to buy or sell a home or business. They can prepare most types of wills, as well as personal planning documents such as a power of attorney or a representation agreement.

They also notarize documents, such as affidavits and documents that must be certified, and prepare travel paperwork, such as passport applications and proof of identity documents for travelling.

Notaries do not represent clients in court. For example, they don't assist clients with criminal matters, family matters, or disputes that can end up in court. If a real estate transaction collapses, for instance, and the parties are fighting about who is responsible, a notary can't help. You can seek the help of a lawyer.

You can hire a lawyer to just handle parts of your legal matter

Instead of hiring a lawyer to handle your entire legal matter, you can hire a lawyer to handle specific parts. Doing so “unbundles” these tasks from the parts you can do yourself. With **unbundled legal services**, you get assistance where you need it most, at a cost you can manage. You pay only for the tasks the lawyer works on.

For example, if you’re going to court, you can hire a lawyer to help you prepare documents or to coach you on how to present your case.

Unbundling works well for many people and many types of legal matters — but not for all. To learn about unbundled legal services and whether it might be a good fit for your situation, see unbundlinglaw.ca^[3].

Steps to choose a lawyer

Step 1. Think about what you need

Think about the type of lawyer you want to work with. For example, find out if they:

- offer services in the legal area you need
- have experience dealing with cases like yours
- offer “unbundled” services, where (as explained above) you hire them to help with part of your legal matter

Step 2. Find a lawyer

If you used a lawyer before

You may have used a lawyer for something in the past. They may not be the right fit for your current need, but they may be able to suggest options for you. For example, if you are getting divorced and the lawyer you used before did your will, and does only wills, that lawyer may not be the best one to handle your divorce. But if you were happy with your will, you can ask the lawyer for names of lawyers who specialize in family law. Try to get two or three names, so you can shop around and compare.

Ask friends and colleagues for recommendations

If you’ve never used a lawyer, ask **friends and colleagues** to recommend a lawyer they used for similar needs. Ask them if they were happy with the lawyer and why. You could also ask your doctor, accountant, or financial advisor. Often, they know lawyers who specialize in certain areas.

Consider legal aid

If you have a low income, and are facing some types of criminal, family, or immigration problems, you may be able to get a lawyer for free from **legal aid**. Contact the Legal Aid BC by visiting legalaids.bc.ca^[4] or calling 1-866-577-2525.

Call the Lawyer Referral Service

If you've never used a lawyer and you can't get a recommendation, try the **Lawyer Referral Service**. Lawyers across BC participate in this service, operated by Access Pro Bono. Visit accessprobono.ca ^[5] or call 604-687-3221 in the Lower Mainland and 1-800-663-1919 elsewhere in BC.

After you explain your problem, the service will give you the name of a lawyer who does that type of law in your area of the province. You contact the lawyer to make an appointment. The lawyer will meet with you for a free consultation for up to 15 minutes. Then, if you and the lawyer agree, you can hire that lawyer at their regular rates. You do not have to use that lawyer. You may decide you do not need a lawyer for your issue, or you may decide to shop around and find another lawyer.

Step 3. Prepare for the first interview

Once you find a lawyer, arrange a time to meet with them. At this first interview, they will want information about you and your situation, in order to provide you with the best advice.

Collect and organize your information

Your lawyer can best serve you if they have a clear picture of your problem and goal. Make notes of all the facts of your case, in an organized way — usually chronologically (by time) is best. Gather and organize all the documents on your case. Bring the notes and documents to the interview.

For example, if you had a car accident, write everything you remember about how the accident happened and your injuries. Draw a diagram of the accident scene. List all your expenses. Bring all your receipts and paperwork, like accident and insurance reports. This lets the lawyer advise you properly and quickly.

Ask lots of questions

At the first interview with a lawyer, they are getting information about you. As well, you are deciding if you want to hire them to help you with your legal matter. Use this opportunity to get as much information as you can. Ask questions, such as:

- Does the lawyer have experience in your type of matter?
- How long will your matter probably take?
- Can the lawyer work on your matter right away?
- What steps will resolve your matter and how much time will each step likely take?
- How will the lawyer keep in touch with you?

Ask about fees and expenses

Always ask about fees and expenses in the first interview. Ask the lawyer to estimate about how much it will cost to fully deal with your legal matter — including fees and expenses (called **disbursements**). Ask the lawyer:

- How they charge — a flat rate, by the hour, or a percentage of what you win?
- How much is their **retainer**? (A retainer is the amount to pay before the lawyer starts work.)
- How they will bill you: monthly or at the end?

See our information on lawyers' fees for more on this topic.


Ask if you have a strong case

If you are in a dispute, ask the lawyer for a realistic opinion of your case and your chance of winning. Should you settle the case instead of suing? Can you do anything to reduce the lawyer's time on your case, and to reduce your costs?

Step 4. Decide on how to proceed

In your meeting with the lawyer, they will provide you with their **retainer agreement** (a type of contract). It outlines how you would work together and how the lawyer's fee would be calculated and paid. If both you and the lawyer decide to proceed, you would sign the retainer agreement.

Tip Problems between lawyers and clients often result from poor communication. Once you hire a lawyer, tell them you want to be informed of all developments. A good way to do this is having the lawyer automatically send you a copy of all correspondence on your matter. If problems come up, start by discussing your concerns directly with the lawyer. For more, see our information on if you have a problem with your lawyer.

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- [1] <https://www.gilchristlaw.com/team/>
- [2] <https://www.lawsociety.bc.ca/>
- [3] <http://unbundlinglaw.ca/>
- [4] <https://legaid.bc.ca/>
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- [6] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Lawyers' Fees

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Alison Ward in August 2018.

There are a number of alternatives for a client who is having **fee problems with a lawyer**.

Client problems

- Client asks how much lawyers charge or how much a particular service costs.
- Client is unhappy with the fees charged by a lawyer and wants to know if there is anything that can be done.
- Client wants to know if there is a defence to a lawyer suing the client for fees.

Summary of the law

Lawyers have three main ways of charging for their services:

- **Hourly rate:** Rates vary considerably depending on factors such as level of lawyer experience and complexity of a case.
- **Flat rate:** Lawyers may quote a flat rate for a particular service, such as a will or conveyance.
- **Contingency fees:** This is when the lawyer's fee is based on a percentage of the money recovered in a legal action. Percentages vary, depending on several factors, but may range anywhere between 15% and 40%.

Fee payment arrangements vary, depending on factors such as the type of case. In many instances, a lawyer asks for a **retainer** — a sum of money up front to cover fees for services as they are performed. The lawyer must keep that money in a separate bank account, called a “trust account”, until the services have been performed and a bill has been sent to the client.

In addition to fees, lawyers charge clients for any **disbursements** incurred. Disbursements are payments made on behalf of the client and can range from court filing fees to medical reports.



Image via www.istockphoto.com

Solving the problem

The Law Society of BC emphasizes that lawyers must communicate properly with clients about fees. Lawyers should be clear about fees when they agree to act for a client, and should keep the client informed of both file and fee developments.

Advocates can propose a number of alternatives to a client who is having fee problems with a lawyer.

Direct communication

The first is simply to have the client contact the lawyer to discuss the fee. There may have been a misunderstanding between the parties that direct communication can clear up. The lawyer may be unaware that the client is unhappy with a fee. It is preferable for the client to discuss the fee directly with the lawyer after receiving advice from an advocate. However, advocates may wish to approach the lawyer directly, with the client's permission, to at least promote a direct discussion about the fee.

Mediation

There are also more formal mechanisms to resolve fee disputes. Either the lawyer or the client can ask the Law Society to appoint a fee mediator under the Fee Mediation Program ^[1]. If both sides agree, the mediator will meet with the parties or may deal with the matter in writing. Note that a mediator's role is to help both parties come to an agreement — they have no power to make a decision.

Court

The parties may also opt to resolve the matter in court. Usually the lawyer begins the action to collect an unpaid fee. If the fee is less than \$35,000, the lawyer will probably sue in Small Claims Court. Larger amounts are handled in Supreme Court.

There is a special mechanism for resolving lawyers' bills under the *Legal Profession Act* ^[2]. Under section 70 ^[3], the lawyer or client can apply to a Supreme Court registrar to have the bill (or a fee) "**reviewed**". The *Legal Profession Act* sets out the procedure for bringing about a review, as well as the factors a registrar will consider when reviewing a bill, including:

- its complexity,
- the amount involved, and
- the amount of time reasonably spent on the file.

There is a deadline to apply for fee review. If the client has already paid the lawyer's bill, an application for a fee review must be filed within three months of payment. If the bill has not yet been paid, the deadline to apply for a fee review is within 12 months of the delivery of the lawyer's bill. An application cannot be filed after those dates unless the registrar agrees there are "special circumstances" in the case.

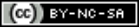
Related topics and materials

See the other sections on buying services:

- Travel Services
- Repairers' Liens
- Warehouse Liens

See related topics:

- Contracts Overview
- Misleading Advertising
- Unfair or Deceptive Practices

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- [1] <https://www.lawsociety.bc.ca/complaints-lawyer-discipline-and-public-hearings/complaints/complaints-about-lawyers-fees/>
[2] <http://canlii.ca/t/84jt>
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If You Have a Problem with a Lawyer

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Steven Gjukich ^[1], Gilchrist & Company in March 2018.

If you have concerns about a lawyer, you can make a complaint to the BC Law Society. Learn how to make a complaint and what to expect from the process.

What you should know

You can complain about a lawyer's conduct

The **Law Society of BC** regulates lawyers in British Columbia. Under the *Legal Profession Act* ^[2], its duty is to protect the public interest. It does this by making sure lawyers:

- are licensed and insured to practice law
- meet standards of competence to help clients with their legal issues
- follow rules of conduct set by the Law Society ^[3] about how to behave professionally

The Law Society also protects the public interest by responding to **complaints** about lawyers.

The Law Society is not able to help with every type of complaint. They usually deal with complaints about a lawyer who didn't do their job properly or behaved unprofessionally. The Law Society cannot (for example) control what a lawyer does in your case or change the decision of a court.

If the Law Society investigates and finds conduct that was concerning or improper, they can order the lawyer to take remedial steps, fine the lawyer, or suspend them from practising law. The Law Society cannot pay you money or order a lawyer to pay you money.

We explain the steps in making a complaint shortly.

If you have a problem with your lawyer's bill

The Law Society of BC does not regulate lawyers' fees. If you have a disagreement with your lawyer over the amount of their fees, filing a complaint with the Law Society will not resolve that dispute. There are other steps you can take, however. You can try a free **mediation program** offered by the Law Society to help you and your lawyer reach a settlement. Or you can ask the court to **review** your lawyer's bill to ensure the fees are reasonable. We explain these options in our information on lawyers' fees.

Work out the problem

Step 1. Discuss the problem with your lawyer

When clients have problems with their lawyer, it often involves a lack of communication. If the problem is with your lawyer, start by **discussing your concerns** directly with the lawyer. You may be able to solve the problem by talking things through. If you have trouble talking about the problem, put it in writing, and send an email or letter. If you don't understand the lawyer's response, ask for them to explain in simpler language.

Step 2. Make a complaint to the Law Society of BC

If talking with your lawyer doesn't solve the problem, or you are concerned about the conduct of a lawyer acting for someone else, you can **make a complaint** to the Law Society of BC.

You can submit your complaint online at lawsociety.bc.ca ^[4], or print off a complaint form and mail, fax or email it to the Law Society. There is no fee to make a complaint.

In your complaint, describe your connection with the lawyer. Give a brief description of the problem and provide copies of any relevant documents.

The complaint is assessed

The Law Society first **assesses** whether to investigate the complaint. For example, they look at whether they have the authority to do something, and whether the information provided is substantial enough.

If the Law Society **investigates**, the lawyer may be required to provide a response to the concerns, or the lawyer's file may be reviewed. The Law Society may conduct interviews.

The result of an investigation

After investigating, the Law Society can:

- **close** the complaint, if they find it is not supported or serious enough,
- if there are concerns about the lawyer's competency, refer the lawyer to a standards committee for **remedial measures** to improve their practice, or
- if there are concerns the lawyer broke rules, refer the lawyer to a **discipline committee**.

If the complaint is referred to a discipline committee, they will consider the complaint. They can send the lawyer a warning (called a "conduct letter"), hold a "conduct meeting" or "conduct review" to discuss the lawyer's conduct, or issue a **citation**. A citation is issued in serious cases, and results in a **public hearing**. A citation may result in the lawyer being fined, suspended or **disbarred** (meaning the lawyer cannot work as a lawyer).

If there is a discipline hearing, it is between the Law Society and the lawyer. You are not a party.

Step 3. Seek a review

If you are unhappy with a Law Society decision about your complaint or if you think the Law Society's process was unfair, you have options. You may be able to seek a **review** of the decision or, if you think the process was unfair, you can seek assistance from the provincial **ombudsperson**.

Review of the decision

If your complaint against a lawyer was dismissed, you can ask for a review of the decision by the Law Society's **Complainants' Review Committee**. You must complete a request form and send it to the Law Society within 30 days after receiving the decision on your complaint. For details, see the Law Society's website at lawsociety.bc.ca ^[5].

Unfair process

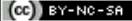
If you feel the Law Society's process was unfair, you can contact the **Office of the Ombudsperson**, an independent body that handles complaints about provincial public authorities. Visit bcombudsperson.ca ^[6].

Who can help

With more information

The **Law Society of BC** provides information on making a complaint about a lawyer.

- Call 604-669-2533 in the Lower Mainland
- Call 1-800-903-5300 (toll-free)
- Visit website ^[7]

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The Law Society, Bar Associations, and Law Foundation

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Steven Gjukich^[1], Gilchrist & Company in March 2018.

Several organizations play roles overseeing and supporting the legal profession in British Columbia. Learn how between them, they regulate lawyers, promote the interests of lawyers, and support access to justice.

What you should know

The Law Society of BC regulates lawyers

The **Law Society of BC** is the governing body for the legal profession in British Columbia. Under the *Legal Profession Act*^[2], its duty is to protect the public interest in the administration of justice. A board of directors, called **benchers**, governs the Law Society. The board consists of 25 elected lawyers and six appointed non-lawyers (called lay benchers). The lawyer benchers are elected to represent districts across BC.

Protecting the public

The Law Society works to ensure that lawyers do their work properly and that the public is well served by lawyers who are honourable, competent and independent. It sets and enforces standards for licensing, competence, education, ethics, and professional conduct. The Law Society also sets the qualifications to become a lawyer and to practise law in BC.

The Law Society requires lawyers to carry **liability insurance** to protect clients who suffer financial loss because of their lawyer's negligence. It also has a fund to pay clients who lose money because their lawyer steals trust money.

Dealing with complaints

The Law Society deals with complaints from the public about lawyers' conduct. In some cases, the Law Society holds a hearing into a lawyer's conduct. All Law Society hearings are open to the public. If the hearing finds the lawyer guilty of professional misconduct or a breach of the rules or laws governing lawyers, the Law Society may reprimand, fine or suspend the lawyer. It can also put conditions on the lawyer. And for serious misconduct, the Law Society can **disbar** a lawyer, meaning that the lawyer can't practise law.

To contact the Law Society, visit lawsociety.bc.ca^[3], or call 604-669-2533 in the Lower Mainland or 1-800-903-5300 elsewhere in BC.

The Canadian Bar Association promotes the interests of lawyers

The **Canadian Bar Association**, or CBA, is a voluntary national organization that promotes the interests of the legal profession and promotes law reform. The **British Columbia Branch** of the CBA helps its lawyer members in BC stay current in their areas of practice. Lawyers with similar professional interests meet regularly and exchange information and ideas. Unlike the Law Society, the CBA does not license or regulate lawyers. To contact the BC Branch of the CBA, visit cbabc.org^[4], or call 604-687-3404 in the Lower Mainland or 1-888-687-3404 elsewhere in BC.


Local bar associations

There are also local bar associations in most cities and towns in British Columbia. They are voluntary organizations concerned with local matters affecting their lawyer members.

The Law Foundation of BC advances access to justice

The **Law Foundation of BC** is a non-profit organization, created by law in 1969. It receives and distributes the interest on clients' funds held in lawyers' pooled trust accounts. The Foundation uses this money to fund programs and projects throughout BC that benefit the public in the areas of legal education, legal research, legal aid, law reform, and law libraries. These initiatives advance a just society and the public's access to justice. Dial-A-Law is one of the legal education programs that the Foundation funds.

To contact the Law Foundation of BC, visit lawfoundationbc.org ^[5] or call 604-688-2337.

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