

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 (no. 430).

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.



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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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Part 1. Consumer & Money

Cars & Getting Around

Buying a Used Car (No. 197)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ian Christman, Vehicle Sales Authority of BC in June 2018.

Buying a **used vehicle** can be risky. The vehicle might have hidden problems or the seller might be dishonest. Learn what to watch for and how to deal with any problems.

Understand your legal rights

Who you buy a used vehicle from affects your rights

You can buy a used vehicle from a **dealer** or a private seller. A dealer is anyone who sells or exchanges motor vehicles to try to earn income. Dealers must be licensed by the Vehicle Sales Authority of BC ^[1] and follow certain laws.

Be on the lookout for **curbers**. A curber is someone who sells vehicles to earn income, but has not been licensed as a dealer. Many curbers misrepresent the real condition of the vehicle, hide major issues, or fail to disclose **liens**. The section below on “Prevent problems” explains these risks and how to minimize them.

A dealer must give you certain information

Under the law in BC ^[2], a vehicle for sale must meet minimum safety requirements. Dealers have to say on the purchase agreement whether a vehicle meets these safety requirements. And dealers must mark vehicles for sale that do not meet minimum safety requirements as “not suitable for transportation”. Private sellers don’t have to do these two things.

As well, under BC law ^[3], a dealer must give you the following information about the vehicle, in writing:

- Whether the vehicle has sustained damage requiring repairs costing more than \$2,000.
- Whether the vehicle has been brought into BC just to be sold here (in which case it may have salt damage, for example), or if it has been registered outside BC, and where, if known.
- Whether the vehicle has been used as a taxi, police or emergency vehicle, a lease or rental vehicle, or in organized racing.
- Whether the odometer accurately records the true distance the vehicle has traveled.
- The mileage and model year of the vehicle.

A dealer must detail all charges connected with the sale

A dealer must also give you the following information, in writing, about all charges connected with buying a used vehicle:

- dealer preparation costs
- documentation and administrative fees
- sales tax
- license and insurance fees (separate from ICBC charges)
- interest costs if the dealer arranges financing for you
- costs of any repairs
- costs of any options
- your total cost

Tip If you're buying from a dealer, ask about their return policies. There's no automatic right to return a motor vehicle. Many people assume there is, as they're used to generous return policies of some retail stores.

You are 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 (that is, it has to function as a vehicle)
- of "merchantable" quality (it has to work)
- durable for a reasonable period of time
- "as described" (it has to match the dealer's advertising and any statements or representations made by the dealer at the time of the sale)

These conditions are sometimes referred to as the "**legal warranty**", as they are established by a law called the *Sale of Goods Act* ^[4]. This legal warranty applies regardless of whether the dealer mentions it. It is in addition to any warranty the dealer or manufacturer provide.

If the car is faulty or not as described, the legal warranty can give you the right to get it repaired or replaced, or to cancel the contract and get a full refund.

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. If you buy a used car from an individual, it has to be durable for a reasonable period of time and match the description. The conditions that a used car be fit for the purpose you bought it for and of "merchantable" quality apply only when you buy from a car dealer.

When a car is sold "as is"

Sometimes, a seller will say a car is sold "as is". This suggests you won't be able to expect help with any repairs or service if there are problems. In fact, the legal warranty applies to all new products, no matter what a seller says. However, the legal warranty **can** be waived for a used vehicle. Be cautious if you are asked to waive it.

Prevent problems

Avoid curbers

Curbers are people who sell vehicles to earn income, but without a motor dealer licence. By law, anyone selling motor vehicles to earn income in BC must have a dealer licence from the Vehicle Sales Authority of BC ^[1].

Curbers operate illegally and cheat buyers. They do things such as turning back the odometer to make it look like a vehicle has lower mileage than it really has. Many curbers get vehicles from elsewhere in Canada and the US. They may hide damage and lie about a vehicle's history, including its mileage and where it came from. They may charge extremely high and illegal interest rates or ask you to lie about the sale price for tax purposes.

There are many types of curbers. Some are mechanics who have repair facilities and also sell vehicles. Some curbers have several cars parked on their front lawn with "for sale" signs.

A common myth is that you can sell up to five vehicles a year privately without registering as a motor dealer. That's not true. If you sell even one vehicle to try to earn income, then you must register as a motor dealer.

It's risky to buy from a curber. You may lose your money and get an unsafe vehicle. You can sue, but that's expensive and often futile. The Vehicle Sales Authority of BC can investigate the curber, but it won't help you get your money back.

To learn more, see [How To Spot A Curber](#) ^[5] and [Buying Privately](#) ^[6] on the Vehicle Sales Authority website.

Tip To see if a person or business is a licensed dealer, do an online licensee search ^[7] on the Vehicle Sales Authority of BC website. You can search by a dealership or a salesperson.

Get an inspection

Have a licensed mechanic check the vehicle to see if it's in good shape and if it needs any work. The BC Automobile Association ^[8] (BCAA) provides Vehicle Inspection Services ^[9]. They include pre-purchase inspections, safety inspections, and out-of-province-vehicle inspections.

Get a vehicle history report

See if the vehicle has been in an accident — that can reduce its value and safety. You can buy a **vehicle history report** from ICBC or from CARFAX Canada. See the ICBC website ^[10], or call them at 604-661-2233 in Vancouver and 1-800-464-5050 elsewhere in BC.

You'll need the vehicle identification number (VIN), the make, model and year. Many vehicles are in the ICBC database, but not all of them. If a vehicle was ever insured and registered outside of BC, the ICBC report will not show the vehicle history outside of BC.

Consider getting a comprehensive vehicle history report such as from CARFAX Canada ^[11].

Do a lien search

Check if there are any **liens** on the vehicle. A lien is a legal claim made on property to make sure money is paid back. Liens are attached to a vehicle, not to its owner. If you buy a vehicle with a lien on it, the lien holder can take the vehicle from you as payment for the debt.

To search for liens, check the vehicle's serial number with the BC Personal Property Registry ^[12]. You can also do a Canada-wide lien search with CARFAX Canada ^[11]. Both searches involve a fee.

Get your agreement in writing

Get a written agreement whether you're buying from a dealer or a private seller. Put in the terms that you want.

Tip If you are buying from a private seller, you can use People's Law School's document template ^[13] to create a draft agreement.

Deal with any problems

Step 1. Contact the seller

If you have a problem as you are buying a used vehicle, try to solve it with the seller first. If you are buying 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.

Tip See People's Law School information on problems with a used car ^[14] for tips on how to explain your problem to the seller, as well as a template letter you can use.

Step 2. If you are buying from a dealer, file a complaint

If you are buying the vehicle from a dealer, you can file a complaint with the Vehicle Sales Authority of BC ^[15]. You can also email the Vehicle Sales Authority at consumer.services@mvsabc.com ^[16] or phone them toll-free at 1-877-294-9889.

The Vehicle Sales Authority also runs the Motor Dealer Customer Compensation Fund ^[17]. It reimburses people who have lost money because a dealer has gone out of business or failed to meet its legal obligations. The money in the fund comes from contributions from all licensed dealers in BC. The authority's website explains who can apply for compensation, what losses the fund covers, and how to file a claim.

Step 3. Contact a consumer agency or industry association

Contact the Better Business Bureau ^[18], which receives complaints about local businesses.

Contact the Automotive Retailers Association ^[19] at 604-432-7987. Only some dealers belong to this voluntary organization.

If you bought a recreational vehicle, you can contact the Recreation Vehicle Dealers Association of Canada, a national, voluntary organization.

If you bought a used vehicle from a franchise dealer, contact the New Car Dealers Association of BC ^[20].

Step 4. Consider legal action

If you can't solve the problem with the above steps, your next step may be to take legal action. If you don't have a lawyer, there are options for free or low-cost legal help.


Get help

If you buy from a dealer

The **Vehicle Sales Authority of BC** helps resolve complaints with licensed car dealers.

Toll-free: 1-877-294-9889

Web: mvsabc.com ^[21]

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Leasing a Car (No. 196)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ian Christman, Vehicle Sales Authority of BC in February 2019.

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.

Understand your legal rights

How leasing differs from buying

A **lease** is an agreement to rent and use someone else's property, in this case, a vehicle. A lease can last from several months to several years. At the start of a lease, you make a first (initial) payment. You may also have to pay a security deposit. After that, you make monthly payments.

Leasing is an alternative to buying — both have advantages and disadvantages. If you lease, you don't own the vehicle. And you have different rights and responsibilities than if you buy.

Advantages of leasing

On the surface, leasing can be more appealing than buying. You typically get a newer vehicle. Your monthly lease payments can be much lower than the monthly payments on a car loan. Taxes may be lower because they are based on monthly payments (as opposed to the purchase price).

Many find they can afford a more expensive vehicle, or one with more options, if they lease.

Disadvantages of leasing

But there are disadvantages to leasing a vehicle.

One is the dealer owns the vehicle, not you. This means the dealer may place restrictions on who may drive it. You may also have to follow — and pay for — a set maintenance schedule.

And at the end of the lease, you haven't built up **equity** in the vehicle the way you would have if you had bought. At the end of paying off a car loan, you own the vehicle. At the end of a lease, you own nothing.

The result is that leasing typically costs you more than borrowing money to buy a vehicle. For more on buying a vehicle, see our information on buying a used car (no. 197).

Types of vehicle leases

There are two types of vehicle lease.

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

Second, a **lease with an option to purchase**. This comes in two forms — open and closed. 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, you may have to pay an extra amount at the end of the lease. How much more you have to pay is explained in the lease agreement. At the beginning of the lease, a dealer estimates what a vehicle will be worth at the end of the lease (the **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 ^[1], the lease agreement must include:

- a summary of costs and credits for any extended warranty
- all express warranties and guarantees made by the manufacturer or dealer
- who is responsible for maintaining and servicing the vehicle
- a description of any insurance, including types and amounts of coverage, that you must provide and pay for
- any limit on your use and enjoyment of the vehicle, including any restriction on who can drive it and any requirement for permission to take the vehicle outside of BC
- the amount of tax in each periodic payment you must make under the agreement
- the cooling-off period (described below)

The dealer must give you a disclosure statement

As well, another law in BC ^[2] requires the dealer to give you a **disclosure statement** before you sign the lease. Read it carefully. It has all the key terms and details of the lease.

The dealer must tell you if there is a lien on the vehicle

Another BC law ^[3] requires a person leasing goods to tell you if there is any **lien** or charge on the goods in favour of a third party. A lien is a legal claim made on property — such as a vehicle — 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 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**. During this time, the law requires the vehicle to stay with the leasing company. 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 do not count in the cooling-off period. Statutory holidays, Sundays, and any day the dealership is closed do not count. So if you sign a lease on a Saturday, and the dealership is closed on Sunday, Monday is the cooling-off day when you can cancel the contract.

You can **waive** (give up) the cooling-off period. If you want to do that, you must do it in writing. Read the lease documents carefully because they may include a waiver.

Common questions

What can happen if I have trouble paying under a lease?

If you fail to make a payment under a lease, this is called a **default**. If you default under the lease, the leasing company may be able to take the vehicle back (**seize** it) or sue you for all remaining lease payments. Depending on the lease agreement and the use you put the vehicle to, they may be able to do both.

Key is whether the lease is viewed under the law as a “true lease” or a “secured lease”. Generally, a **true lease** is one where at the end of the lease, the cost to buy the vehicle is an amount close to the vehicle’s market value. A **secured lease**, generally speaking, is one where at the end of the lease, the cost to buy the vehicle is very little. Put another way, under a secured lease, you will have paid almost the entire value of the vehicle by the end of the lease. (There are other factors that go in to determining whether a lease is a true lease or a secured lease. It is best to get legal advice on how your lease might be characterized.)

If the lease is a secured lease and for personal use

Under the law in BC ^[4], 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”. If you default on the lease, the leasing company can seize the vehicle. Or they can sue you for the amount owing on the lease. But they can’t do both. This is called the “**seize or sue rule**”.

The “**two-thirds rule**” comes into play if you’ve paid back at least two-thirds of what you owe under a secured lease for personal use. In this case, the creditor needs a court order before seizing the vehicle. If you’ve paid back less than two-thirds, the creditor can seize the vehicle without going to court.

If the lease is a true lease or for business use

If the lease is a true lease, things are different. They’re also different if the vehicle is used primarily for business purposes. In either case, if you default on the lease, a creditor may be able to sue you **and** seize the vehicle. For more on the law relating to secured debts, see our information on buying on credit (no. 246).

Are there other ways the law is different for a business lease?

When you lease a vehicle for business purposes, you can deduct the lease payments from the business’ income for tax purposes. You don’t typically get a tax deduction for a consumer lease. Check with Canada Revenue Agency ^[5] for details.

Several BC laws offer protection when you lease goods for personal use, but not when you lease goods for business use. For example, under the *Sale of Goods Act* ^[6], if you lease a new car, a term in the lease agreement waiving the legal warranty implied by law is void — if the lease is for personal use. If the lease is for business purposes, such a waiver is not void.

Tip If you want to lease a vehicle for business purposes, you should get legal and accounting advice — before you lease.

What happens when a lease ends?

There are several possible outcomes when a lease ends. You should discuss them before you sign the lease. You may still owe money when the lease ends. The lease may say the vehicle goes back to the dealer, or you may have an option to buy it for a certain price. Whether you owe money depends on the type of lease you signed.

With a **straight lease**, you return the vehicle and owe nothing more. With a **closed lease with an option to purchase**, you pay an agreed-on amount if you decide to buy the vehicle. With an **open lease** with an option to purchase, you may have to pay an extra amount.

You may also have to pay extra if you drove more than the lease allowed or if the vehicle has more than normal wear. Some dealers may also want to charge other fees at the buy-out time. Before you sign a lease, ask about any fees the dealer will charge at the time of buy-out. Discuss these fees with the dealer and get them in writing — before you sign the lease agreement.

The dealer can use your security deposit to pay for kilometer overages or damage to the vehicle that must be repaired. The lease agreement should address when you get your security deposit back and when the dealer can keep it.

What if I decide to buy the vehicle at the end of the lease?

If you buy a vehicle at the end of the lease, it's a new transaction. The dealer must make all the required declarations about the vehicle as they would on any sale, including the declaration that the vehicle meets the safety requirements of the *Motor Vehicle Act* ^[7] when they sell it. For details of the required declarations, see People's Law School's information on buying a used car ^[8].

How a dealer ensures a vehicle meets the *Motor Vehicle Act* is a business decision — the Act does not say how. Generally, a dealer will do an inspection to ensure a vehicle meets the Act. Depending on the original lease, the dealer may charge you for the inspection. Discuss it with the dealer before you agree to lease a vehicle.


Get help

If you're concerned about a dealer

The **Vehicle Sales Authority of BC** helps resolve complaints with licensed car dealers. Their website includes a vehicle buying guide ^[9] and information about a compensation fund ^[10] if you lease from a dealer that goes out of business.

Toll-free: 1-877-294-9889

Web: mvsabc.com ^[11]

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Car Repairs (No. 198)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Emma Naismith, Consumer Protection BC in June 2018.

Vehicle repairs can be complex and expensive. And the vehicle repair business isn't tightly regulated by government. You can avoid or minimize problems with vehicle repairs if you follow these tips.

Prevent problems

Shop around

Shop around for a reliable mechanic. Ask friends for names of reliable mechanics they've used. Compare price estimates from various repair shops. Ask to see a mechanic's licence — to ensure they passed the exam to be a licensed mechanic. Check any repair shops you are considering with the Better Business Bureau ^[1] to see if there have been any complaints against them.

The BC Automobile Association ^[2] (BCAA) has an Approved Auto Repair Services program ^[3] 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.

Let the repairer diagnose the problem

When you decide on a repair shop, let the mechanic figure out what to repair. Describe the problem as clearly as possible, but don't try to guess what's wrong. If you do, you may end up getting work you don't need. Go for a road test with the mechanic to point out the problem.

Get a written estimate

Ask for a written estimate of the repair cost and the time that repairs will take. Tell the mechanic not to proceed if the repair is going to cost more than the estimate unless they call you and you approve the higher cost.

Let the repairer complete the work

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

Give the mechanic a phone number to reach you in case of problems or questions.

Tip Remove all valuables from your vehicle and leave only the ignition key with the mechanic. You don't know who works at the repair shop — protect yourself against theft or someone copying or losing your keys.

Get the 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). That is because manufacturers put “core” charges or deposits on some parts. The repair shop has to return the old part to the manufacturer or pay the core charge. If you want to keep these types of parts, you may have to pay that core charge to the repair shop.

Deal with any problems

Step 1. Report any problems right away

Report unsolved or new problems to the mechanic right away. For example, if you got a tune-up, but the vehicle still doesn't run well, tell the mechanic immediately.

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.

Step 2. Pay the repair bill

If you can't solve the problem, pay for the repair work. If you don't, the repair shop can register a **lien** (claim) against the vehicle and eventually seize 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 mechanic approved by BCAA, you can ask BCAA for help if you have a problem. Visit bcaa.com ^[2].

Contact the **Better Business Bureau**, which receives complaints about local businesses. They may be able to help even if the repair shop is not a member. Visit bbb.org/ca/bc ^[4].

Contact the **Automotive Retailers Association** at 604-432-7987 or ara.bc.ca ^[5]. Only some repair shops and dealers belong to this voluntary organization.

Contact **Consumer Protection BC**, a not-for-profit organization independent of government. It administers the *Business Practices and Consumer Protection Act* ^[6]. This law covers some aspects of consumer transactions, including contract requirements and deceptive acts and practices. Its website at consumerprotectionbc.ca ^[7] has more information ^[8], including how to file a complaint ^[9]. But Consumer Protection BC cannot sue a repair shop for you. You can call Consumer Protection BC at 1-888-564-9963.


Step 4. Consider legal action

If you can't solve the problem with the above steps, your next step may be to take legal action. You can bring a claim:

- in the Civil Resolution Tribunal ^[10], for up to \$5,000
- in Small Claims Court ^[11], for over \$5,000 and up to \$35,000
- in Supreme Court ^[12], for over \$35,000

See our information on Small Claims Court (no. 166 to 168).

If you don't have a lawyer, there are options for free and low-cost legal help (no. 430).

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Insurance Benefits and Compensation for Accident Victims (No. 185)

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

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

Understand your legal rights

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 ^[1] 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 ^[2] 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 (no. 188).

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 ^[3] for updated information on benefit amounts.

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, 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. You can appeal ^[4] ICBC's decision to deny your claim ^[5] and its decisions on how much to offer you ^[6], who is at fault ^[7], and how to handle your claim ^[8].

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Making a Personal Injury Claim (No. 188)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Janet Mackinnon and Krista Prockiw of 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 claim for **“personal injury”**.

Understand your legal rights

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 ^[1], 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. For more details, see our information on insurance benefits and compensation for accident victims (no. 185).

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.

Deal with 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 ^[2].

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 ^[3]. 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 ^[4] 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 ^[5] 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 ^[6]. 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 ^[7]. Many people represent themselves in this court. It’s less expensive and less risky than going to Supreme Court. See our information on Small Claims Court (no. 166 to 168).

For amounts **over \$35,000**, you would sue in BC Supreme Court ^[8].

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 ^[9].

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 (No. 186)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Janet Mackinnon and Krista Prockiw 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**.

Understand your legal rights

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 ^[1] from ICBC 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.

Deal with 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 ^[2].

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 ^[3] for a vehicle damage estimate, 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 ^[4], known as a CAR. You have 60 days after ICBC tells you its decision to apply for a review.
3. **Appeal using ICBC's internal appeal process.** You can appeal ^[5] ICBC's decisions to deny your claim ^[6] and its decisions on how much to offer you ^[7], who is at fault ^[8], and how to handle your claim ^[9].

Step 4. Use arbitration for your dispute

If you're still not satisfied, the Insurance (Vehicle) Regulation ^[10] 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 ^[11] can appoint an arbitrator.

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. The Civil Resolution Tribunal ^[12] is for claims of \$5,000 and less, Small Claims Court ^[13] is for claims over \$5,000 and up to \$35,000. Supreme Court ^[14] is for claims over \$35,000.

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 ^[15]. 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 ^[16] of \$1,000. 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 impaired driving (no. 190).

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 ^[17].

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The Points System and ICBC (No. 187)

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.

Understand your legal rights

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 (no. 194) 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 (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 \$210. It's \$276 for five points, \$360 for six points, and so on. If you have 50 points or more, you get the maximum driver penalty point premium of \$28,800. ICBC's website lists all the premiums [1].

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 \$1,086. The premium for two *Criminal Code* convictions is \$4,512.

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.


For help

With more information

ICBC has information on the driver penalty point premium ^[1] and the driver risk premium ^[2].

Toll-free: 1-800-663-3051

Web: icbc.com ^[3]

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Consumer

Buying Defective Goods (No. 257)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mona Muker ^[1], Maple Law Group, and Dean Davison ^[2], Davison Law Group in October 2017.

We've all been there. You purchase a product, take it home, try it out, and it doesn't work. Fortunately, the law offers protections if you buy **goods that are defective**.

Understand your legal rights

When you buy goods, you are making a contract

Your contract is with the person or company who provides the goods. (If a person is an employee of a company, your contract is with the company only.) Your rights and obligations depend on the terms of the contract and who you bought from.

A contract does not need to be in writing. It can be a verbal agreement.

The terms of a contract can be express or implied. An **express term** is one you and the seller agreed on — either verbally or in writing, or both.

An **implied term** is one the law says is part of a contract, even though you and the seller haven't discussed it or agreed to it.

If the contract includes a warranty or guarantee

Look carefully at any **warranty** or a **guarantee** in the sale contract. A warranty or a guarantee is a promise about the quality of goods sold and what will be done if there are problems.

Warranties and guarantees are often so vague, or buried in so many qualifications, that they may not be of any value to you. Often, you must follow certain operating or cleaning instructions for a warranty or guarantee to be valid. For example, if you buy a car, the warranty may require you to get the car regularly serviced at an authorized dealer.

Some goods are sold for certain purposes or uses only. Using the goods for other purposes can cancel the warranty.

The law implies a legal warranty when you buy goods

Under the law in BC ^[3], a level of quality, performance and durability is implied into every contract for the sale of goods. The goods must be:

- reasonably fit for the purpose you bought them for,
- of “merchantable” quality (the item has to work),
- durable for a reasonable period of time, and
- “as described”.

These conditions are sometimes referred to as the “**legal warranty**”. This legal warranty applies regardless of whether the seller mentions it. It is in addition to any warranty the seller or manufacturer provide.

If any of these conditions are not met, you (as the buyer) can reject or return the goods and cancel the contract. You are entitled to get back the money you paid, plus payment for any extra expenses the defective goods caused.

The goods must be fit for your purpose for them

An item you buy must be “**reasonably fit for the purpose**” you bought it for. This means it must function the way it’s supposed to function. For example, a bicycle is “fit for the purpose” if it is functional as a bicycle and can be operated in safety.

There are two catches with this condition.

First, this condition applies only if it’s the seller’s **business to sell things**, and the goods are things they usually sell. So this condition doesn’t apply in a private sale between two people.

Second, this condition may only apply where you tell the seller **how you plan to use the goods**. For example, if you go to a hardware store and tell the salesperson you want a saw to cut metal pipes, and they sell you a saw that cuts only wood, the condition clearly applies. The saw isn’t reasonably fit for the purpose you bought it for, and you clearly explained that purpose to the salesperson. But if you just picked up the saw yourself, without any discussion with the salesperson, you would likely not be able to rely on this condition.

The goods must be of merchantable quality

An item you buy is of “**merchantable quality**” if it can be reasonably used and is not damaged or broken. In other words, it has to work. This is protection against a product that is substantially defective, or a “lemon”.

This condition does not apply if you examined the goods before buying, at least for any defects your examination ought to have revealed.

This condition does not apply in a private sale.

The goods must be reasonably durable

An item you buy must **last a reasonable period of time**. The length of time considered “reasonable” will vary depending on factors such as the type of product, the price paid, the use the product would normally be put to, and the circumstances of the sale.

This condition doesn’t apply if you use the item for a purpose it wasn’t made for. For example, if you use an ordinary vacuum cleaner to clean up heavy construction debris, and the vacuum breaks down, the condition of reasonable durability doesn’t apply.

This condition applies whether you buy from a business or from a private seller.

The goods must match the description or sample

An item you buy must **match any description** or sample provided. The item must reflect:

- the seller's advertising
- a description of the item in a contract, catalogue or website
- any statements or representations made by the seller verbally or in writing at the time of the sale

For example, if the seller showed you a sample of some carpeting, the carpeting you get must match the sample. If the carpet delivered to you isn't the same as the sample in the showroom, you don't have to accept it.

Catalogue sales are a good example of a sale by description. If you ordered something from a catalogue, you can send it back if it doesn't meet the description.

Common questions

What can I do if an item I bought is defective?

Immediately return the defective item to the seller. Ask the seller to replace it. If a replacement isn't available, ask for a refund. If the item isn't suitable for its use, then ask for a refund. Don't keep using the defective item. If you keep using it, you could (and probably will) lose the right to return it.

What if I can't return the item?

Tell the seller in writing that you're rejecting the defective item. Act fast. If the seller won't give you a replacement or refund, leave the defective item with the seller, and get a dated receipt for them. Then make your complaint to the seller's customer complaint department. If you still don't get a solution, make a written complaint to a person in authority, such as a manager.

When should I consider suing?

You can consider suing for defective goods if you can't get a refund. If your claim is for \$5,000 or less, you can go to the Civil Resolution Tribunal ^[4]. If your claim is between \$5,000 and \$35,000, you can sue in Small Claims Court ^[5]. See our information on suing in Small Claims Court (no. 166 to 168).

To sue for more than \$35,000, you must go to BC Supreme Court ^[6]. There are fast track options in BC Supreme Court: a summary trial or "fast track litigation". It's wise to get legal advice before suing in Supreme Court, as the rules are more complex and the process is more expensive.

The house I bought is unlivable. Is there a legal remedy?

The law implies a warranty that a building bought to live in will be **habitable**. That means it will be free of "latent defects", built in a good and workmanlike manner, built with suitable materials, and fit to live in. Examples of defects that would make a building hard to live in and breach the warranty include a plumbing problem that floods a house, or a roof that leaks and causes water damage.

This warranty applies only to buildings that were not complete when bought. It does not last indefinitely. Courts have suggested it will apply for at least a couple of years after the building is completed. The buyer and seller can contract out of this implied warranty, but they must be clear and specific to do that. A broad exclusion clause is not good enough.

If there's a breach of this warranty, the buyer is entitled to get back any money they paid to repair defects and make the home habitable.

Get help

Agencies that can help


The **Better Business Bureau** assists people in finding businesses they can trust.

Web: bbb.org/ca/bc ^[7]

Consumer Protection BC provides assistance relating to certain types of consumer problems and contracts in BC.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[8]

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Dishonest Business Practices and Schemes (No. 260)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by People's Law School ^[1] in June 2017.

We hope the businesses we deal with have our best interests in mind. Unfortunately, that's not always the case. Learn about the laws protecting you from **dishonest business practices and schemes**.

Understand your legal rights

BC law protects consumers against dishonest business practices

BC's *Business Practices and Consumer Protection Act* ^[2] protects consumers against dishonest or misleading business practices.

This law applies to transactions between “consumers” and “suppliers”

A **consumer** is a person who buys or leases something for personal, family or household purposes.

A **“supplier”** is a person who in the course of business participates in a consumer transaction. Participating includes advertising or promoting a consumer transaction. This definition covers businesses from your local retailer to the national big box store, but not your neighbour who has a garage sale once a year.

This law applies to sales, transactions or advertisements involving goods, real estate, services or credit, but it doesn't cover securities or insurance.

“Deceptive acts or practices” are prohibited

Under BC law ^[3], a supplier must not engage in a **“deceptive act or practice”**. This includes any oral or written statements, visual or descriptive representations, or conduct by a supplier that can deceive or mislead a consumer.

For example, it's deceptive for someone selling roofing products to say your house needs a new roof when it doesn't. It's deceptive for a car dealership to tell you a car you're interested in was previously owned by a senior citizen when, in fact, it used to be a taxi.

“Unconscionable acts or practices” are prohibited

“Unconscionable acts or practices” are also prohibited. Unconscionable includes unscrupulous or dishonest practices such as high-pressure sales tactics. For example, was a lot of undue pressure put on you to persuade you to enter into the consumer transaction? Were you taken advantage of because of your age or inability to understand the nature of the deal? Was the price much more than the price for similar products sold elsewhere?

If a business does something deceptive or unconscionable

If a business does something deceptive or unconscionable, you have options.

Complaining to Consumer Protection BC

You can complain to Consumer Protection BC ^[4]. They investigate situations where a supplier may have done something deceptive or knowingly took advantage of you. They can issue a **“compliance order”** forcing a supplier to comply with the law and possibly reimburse any money that consumers have lost.

In extreme (and rare) cases involving many consumers who have lost a lot of money, Consumer Protection BC can freeze the supplier's bank account and sue the supplier. In serious cases, the supplier can also be charged with an offence under the law and fined.

Suing the supplier

You can bring a legal action against the supplier. You can use Small Claims Court if your claim is for less than \$35,000. If your claim is for less than \$5,000, you can bring your claim to the Civil Resolution Tribunal ^[5].

If your action goes to trial and you win, the court can order compensation for your financial loss. The court can also award **“punitive damages”**, which are designed to punish the supplier.

Federal law prohibits false or misleading advertising

There are also federal laws ^[6] that prohibit sellers from advertising or saying anything that is false or misleading.

One example is **“bait and switch”** tactics. They are against the law. In general, if a business advertises a sale, it must stock sufficient items at the bargain price or give you a rain check, rather than try to get you to buy a different, more

expensive item.

Also, if there's more than one price tag on an item, the store must charge you the lowest price, unless the lower price has been crossed out or covered up.

Deceptive telemarketing is prohibited

Some companies use deceptive practices when trying to sell you something over the phone. They call saying you've won a prize, and all you have to do is pay for the shipping and handling fees or give your credit card number for verification purposes. Or they offer to sell you something that sounds like a really good deal, but you end up with a cheap plastic watch instead of the expensive watch you expected. This is deceptive telemarketing. Deceptive telemarketing is prohibited by the *Competition Act* ^[6] and is a criminal offence.

Telemarketers must follow certain rules

BC's Telemarketer Licensing Regulation ^[7] applies to telemarketers operating in BC who contact consumers to buy something over the phone. This regulation also applies to third-party fundraisers. The regulation helps protect consumers by licensing and regulating telemarketers, and imposing penalties for violations of the regulation. For example, a licensed telemarketer may contact you only on weekdays between 9 am and 9:30 pm and weekends between 10 am and 6 pm, and they can't communicate with you on statutory holidays.

If you're getting fed up with telemarketers

If you get an unsolicited phone call to buy something, don't give out information about your bank account or credit card, and don't be afraid to hang up. Telemarketers who phone you offering prizes or products for sale must tell you who they work for. To reduce the number of unsolicited calls, register your phone number with the National Do Not Call List ^[8].

Federal law protects against spam and online threats

Canada has a law ^[9] that aims to protect people from **spam** (junk email and text messages) and online threats (spyware, malware, phishing scams, and so on). Unfortunately, the law cannot control businesses and people outside Canada, and they produce huge amounts of spam and online threats.

Consent is required

A key section of Canada's anti-spam law requires senders of commercial emails and text messages to have the consent of the person they're sending the message to (the recipient). The law also prohibits installation of computer programs and collection of electronic addresses without consent, as well as false and misleading representations.

There are two types of consent

There is **implied consent** if there is already a relationship between the sender and recipient of a commercial message. It lasts for two years. Recipients can cancel implied consent any time. Senders of commercial messages can ask recipients for **express consent** (the recipient agrees to receive messages) to send commercial messages. It does not expire.

Senders of commercial messages must keep records to show they obtained the recipient's consent. The Canadian government's anti-spam website further explains implied and express consent ^[10].

Senders must identify themselves and let recipients unsubscribe

In addition to getting consent from recipients, senders of commercial messages must identify themselves and include an unsubscribe option in the message so recipients can stop receiving messages.

Three federal government agencies enforce the anti-spam law: the CRTC ^[11], the Competition Bureau ^[12], and the Office of the Privacy Commissioner of Canada ^[13].

For more information on the law, see the Canadian government's anti-spam website, fightspam.gc.ca ^[14].

Common questions

Are pyramid schemes legal?

No. With a **pyramid scheme**, you're typically promised that by participating, you can make money by recruiting other people to participate. If those new participants recruit others, everyone up the pyramid will get a share of the new recruitment fees. In other words, pyramid schemes make money by recruiting people rather than by selling a legitimate product or providing a service. In Canada, it's a crime to promote a pyramid scheme or even to participate in one.

By contrast, multi-level marketing is legal

Pyramid schemes can look a lot like "**multi-level marketing**", which **is** legal in Canada. Under "multi-level marketing", people sell consumer goods — such as cosmetics, jewelry or cleaning products — usually in customers' homes. The products are supplied by a multi-level marketing company. While a pyramid scheme focuses on recruiting more people, multi-level marketing focuses on selling products or services.

Promoters asking you to get involved in a multi-level marketing scheme are not allowed to make exaggerated claims. Any claims made about expected earnings must be fair and reasonable and include the average compensation earned by the typical distributor in that business, and the time and effort needed to reach specific levels of income.

If you're a victim of a pyramid scheme

Contact the Competition Bureau ^[12]. The toll-free phone number is 1-800-348-5358. A person convicted of promoting a pyramid scheme can be sentenced to a fine or up to five years in jail, or both.

How can I protect against dishonest franchises?

A **franchise** involves the **franchisor** granting the **franchisee** the right to use a particular system of carrying on business or the right to sell a certain product or service. In return, the franchisee typically pays a fee and ongoing royalties to the franchisor.

Be cautious of franchises that consist of selling a product through automatic vending machines or on display racks. You may be promised lucrative high-volume locations and told that all you have to do is keep the machines or racks stocked — and collect the money. But, in fact, the locations are often poor and the sales figures only a small fraction of those promised. After paying thousands of dollars, you may be stuck with some greatly overpriced vending machines and unsellable products.

Tip A well-researched franchise may be an effective business. But if you are considering buying a franchise, it's wise to have a properly prepared franchise agreement. A lawyer can help with that.

How can I protect against other types of scams?

Work-at-home schemes urge you to send away money to learn how you can make good money working from your home. But these schemes are misleading.

Chain letters inviting you to send and receive money are illegal under the *Criminal Code*.

Watch out for scams involving the sale of office supplies, listings in directories, and phony invoices. In the **office supply scam**, for example, a business gets an unsolicited call implying the business previously agreed to accept shipment of paper and office supplies, when in fact the business hadn't ordered the supplies. When the supplies arrive, they cost way more than the going rate and are inferior.

Get help

Agencies that can help

Consumer Protection BC provides assistance relating to certain types of consumer problems and contracts in BC.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[15]

The **Better Business Bureau** assists people in finding businesses they can trust.

Telephone: 604-682-2711 for Mainland BC and 250-386-6348 for Vancouver Island

Web: bbb.org/ca/bc ^[16]

For inquiries on the *Competition Act*, call the **Competition Bureau**.


Toll-free: 1-800-348-5358

Web: competitionbureau.gc.ca ^[17]

For inquiries relating specifically to dishonest selling practices with vehicles, contact the **Vehicle Sales Authority of BC**. They have information on consumer complaints and on advertising rules for motor vehicle dealers.

Toll-free: 1-877-294-9889

Web: mvsabc.com ^[18]

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Shopping Online, by Phone, or by Mail (No. 256)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by People's Law School ^[1] in June 2017.

Buying goods or services over the **internet** or by **phone** or **mail order** can be convenient. But shopping this way has its dangers. Learn your rights and what to watch for.

Understand your legal rights

You may be making a “distance sales contract”

When you buy something over the internet or by phone or mail order, you may be making a “**distance sales contract**”. This is a contract for goods or services that is not entered into in person and where (in the case of goods) you don't have the opportunity to inspect the goods before buying.

Under the law in BC ^[2], before you enter into a distance sales contract, the seller must clearly disclose the following things:

- the seller's name, address and telephone number
- the seller's email address, if available
- a description of the goods or services
- the total price and a detailed statement of the terms of payment
- the currency under which amounts owing are payable
- an explanation of how the goods will be shipped to you
- the seller's return or exchange policy, if any

You must receive a copy of the contract

For the contract to be legally binding, you must receive a copy of it **within 15 days** after making it. An email copy is sufficient. The contract must contain the information the seller was required to disclose to you before you bought the goods or services, along with:

- your name as the consumer, and
- the date of the contract.

You can cancel a distance sales contract

You may **cancel** a distance sales contract in the following circumstances:

- If the seller doesn't disclose the required information or the contract doesn't contain it, you have up to seven days after receiving the contract to cancel it.
- If you don't get a copy of the contract within 15 days after making it, as required, then you have up to 30 days to cancel it.
- If you don't receive what you ordered within 30 days of the supply date, you may cancel the contract anytime before the goods or services are delivered.
- If you don't receive what you ordered within 30 days of the date of the contract, and a supply date wasn't provided, you may cancel the contract anytime before the goods or services are delivered.

Common questions

How do I cancel?

If you want to cancel the contract, it's best to do so in writing. You can cancel by email, fax or registered mail. Doing so gives you proof the seller received your cancellation notice within the required time.

Consumer Protection BC's website includes cancellation forms ^[3] you can use to send to the seller.

Keep a copy of your cancellation notice so you can prove you cancelled.

Will I get a refund?

If you cancel because the seller didn't disclose the required information or the contract doesn't contain it, the seller must refund your money within 15 days after you give notice of cancellation. You have to return the unused goods within 15 days after getting them or within 15 days after giving notice of cancellation, whichever is later. The seller is responsible for the reasonable cost of returning the goods.

What should I do if I have a complaint?

If you have a complaint about delays in delivery, an error on your bill, or the quality of the goods you bought, write to the seller. (Don't phone, as you won't end up with a written record of your complaint.) State the nature of the problem and what you want done.

Keep a copy of all your correspondence, as well as a copy of the original advertisement for the item you purchased.

If you don't receive a reply to your complaint, send another. Send this follow-up by registered mail. In it, refer to your initial correspondence. Keep a copy of this correspondence as well.

What can I do if I receive goods or services I never ordered?

Under the law in BC ^[4], you do not have to pay for “**unsolicited goods or services**” unless you expressly tell the supplier in writing you intend to accept the goods or services. If you get something out of the blue you never asked for, you don’t have to pay for it. But to protect yourself, you may want to return the item and keep copies of all correspondence.

What can I do to protect myself when shopping online or by phone?

To protect yourself:

- check the reputation of the seller and their goods or services
- pay with a credit card
- if you pay online, make sure the website is secure

How can I check the reputation of a seller and what they’re selling?

Contact the Better Business Bureau to see if there have been any recent complaints, and if so, whether the complaints were resolved to everyone’s satisfaction. Their phone number is:

- 604-682-2711 for Mainland British Columbia
- 1-888-803-1222 toll-free for the interior
- 250-386-6348 for Vancouver Island

For an online business, look for a reliability seal from a reputable consumer protection program. For example, check to see if the company has a BBB Accredited Business Seal for the Web ^[5]. Or see if the business displays the Canadian Marketing Association member logo ^[6], meaning that the business follows a code of ethics.

How is paying with a credit card safer?

When ordering goods, paying by **credit card** (such as Visa or Mastercard) can actually be safer than sending a cheque or money order. If you cancel a distance sales contract, you can ask your credit card issuer to cancel or reverse the credit card charge and any associated interest or other charges.

The credit card issuer must acknowledge your request within 30 days of receiving it. Then if your request meets legal requirements ^[7], the credit card issuer must cancel or reverse the charge within two complete billing cycles or 90 days, whichever is earlier.

So, let’s say you don’t get what you bought within 30 days and you cancel the contract before the goods arrive. If you paid by credit card, you can ask your credit card issuer to cancel or reverse the charges. If you paid by money order or cheque, you’re left to fight it out with the seller.

How can I ensure a website is secure for online payments?

In the website address bar on your screen, look for an unbroken lock icon. The icon is usually in the far left part of the address bar. Also look for the letter “s” in the prefix “**https**” of the website address.

Never send financial information by email. It’s not secure.

What can I do to prevent unsolicited emails, phone calls, faxes and mail?

Sometimes after making an online purchase, or placing a phone or mail order, you may find yourself on various mailing and phone lists. You may end up receiving piles of emails, advertisements and sample products, or endless phone calls from telemarketers and others.

Beware! The emails may be **phishing scams** — fake emails trying to trick you into handing over personal information. Or they may include **spyware** or **malware** — software used to steal your personal information or disrupt your device. To avoid these emails or calls, and the dangers they pose, here's what you can do.

Contact the Canadian Marketing Association

On the Canadian Marketing Association website, see the consumers section ^[8] to find their voluntary Do Not Mail Service ^[9]. Follow the registration instructions to have your name deleted from mailing marketing lists used by companies who belong to the Association. This won't eliminate the problem but it can reduce the amount of unsolicited mail you receive.

Register with the National Do Not Call List

To help reduce the number of unwanted calls you receive, you can register your phone number on the National Do Not Call List ^[10]. This is a free service from the Canadian Radio-Television and Telecommunications Commission (or CRTC).

When you register your phone number on the list, Canadian companies making unsolicited calls can no longer contact you. (Some callers are exempt, such as charities and political candidates.)

Note the CRTC has no control of businesses and people outside Canada, who may ignore the list and continue to call.

Block unwanted calls

If you have a call blocking feature on your phone, use it to block a number that continues to call you. Note some telemarketers constantly change their calling number, so even if you block them, they may keep getting through.

Are there laws protecting me from spam?

Yes. Canada has a law ^[11] that aims to protect people from **spam** (junk email and text messages) and online threats (spyware, malware, phishing scams, and so on). Unfortunately, the law cannot control businesses and people outside Canada, and they produce huge amounts of spam and online threats.

Your consent is required

A key section of Canada's anti-spam law requires senders of commercial emails and text messages to have the **consent** of the person they're sending the message to (the recipient). The law also prohibits installation of computer programs and collection of electronic addresses without consent, as well as false and misleading representations.

There are two types of consent

There is **implied consent** if there is already a relationship between the sender and recipient of a commercial message. It lasts for two years. Recipients can cancel implied consent any time. Senders of commercial messages can ask recipients for **express consent** (the recipient agrees to receive messages) to send commercial messages. It does not expire.

Senders of commercial messages must keep records to show they obtained the recipient's consent. The Canadian government's anti-spam website further explains implied and express consent ^[12].

Senders must identify themselves and let recipients unsubscribe

In addition to getting consent from recipients, senders of commercial messages must identify themselves and include an unsubscribe option in the message so recipients can stop receiving messages.

Three federal government agencies enforce the anti-spam law: the CRTC ^[13], the Competition Bureau ^[14], and the Office of the Privacy Commissioner of Canada ^[15].

For more information on the law, see the Canadian government's anti-spam website, fightspam.gc.ca ^[16].

Get help

Agencies that can help

If you make a complaint but don't get a satisfactory response within three weeks, contact the **Canadian Marketing Association**.

Web: the-cma.org ^[17]

Check the Consumer Tips Directory ^[18] of the **Better Business Bureau**.

Web: bbb.org/ca/bc ^[19]


To learn more about how to prevent and handle consumer problems when they arise, contact **Consumer Protection BC**.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[20]

Check also the publications section of the federal government's **Competition Bureau**.

Web: competitionbureau.gc.ca ^[21]

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Receiving Unsatisfactory Services (No. 258)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mona Muker ^[1], Maple Law Group, and Dean Davison ^[2], Davison Law Group in October 2017.

You hire a roofer to install a new roof on your home. A week later, the new shingles begin to fall off. Learn your rights if you receive **unsatisfactory services**.

Understand your legal rights

When you buy and receive a service, you are making a contract

Your contract is with the person or company who provides the service. (If a person is an employee of a company, your contract is with the company only.) Your rights and obligations depend on BC law and the terms of the contract. A contract does not need to be in writing. It can be a verbal agreement.

The terms of a contract can be express or implied

An **express term** is one you and the service provider agreed on — either verbally or in writing, or both. A term is binding only if you have a contract.

An **implied term** is one the law says is part of a contract, even though you haven't discussed it with the service provider.

Guarantees and warranties are common express terms

Look carefully at **guarantees** and **warranties** in your purchase contract. For example, a painter might guarantee your house won't need repainting for five years. But guarantees and warranties are often so vague, or buried in so many qualifications, that they may not be worth anything to you.

If the service provider makes any promises or guarantees, get them in writing — before you sign the contract — and make sure you understand any limits on them. If your painter, for example, has a standard guarantee that excludes brickwork, and you don't like that, discuss it. If the painter says, "Oh, don't worry, I'll guarantee your brickwork too", don't just accept that. Change the term in the contract to say the guarantee includes brickwork, and get the painter to initial the change.

Certain implied terms apply to all service contracts in BC

Under the law, certain terms are implied into all service contracts. The service provider must:

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

So, if you hire someone to perform a service for you, and the person performs the service poorly, you can sue the person for breaking an implied term of the contract, even if you had no written agreement and didn't talk about the quality of service.

Express terms are best

To avoid misunderstandings and arguments, it's best to include **express terms** in your contract. Implied terms are broad, and different people can interpret them to mean different things. So if it's important that the job be done by a certain date, set the date. If you don't, the service provider only has to get the job done within a reasonable time. And that may be longer than you want. Also, include in the contract what will happen if the service provider doesn't live up to the contract.

If the service is unsatisfactory

If you buy a service that turns out to be unsatisfactory, complain about it promptly. Keep records of what you say. Correspond in writing, so you have a clear record of what was said.

Tip If you're not happy with the work done by someone you've hired, see People's Law School's information at peopleslawschool.ca^[3], which includes tips and a template letter to send to the service provider.

Common questions

Do I need a written contract?

It's always best to have a written contract, especially if a lot of money is involved. Even though a verbal agreement is a legal contract, it can be much harder to enforce than a written agreement. It can also lead to misunderstandings about what you and the other side expect.

Make sure the written contract has all the terms that are important to you. Don't leave terms in the contract just because they are "standard terms". If a term doesn't apply to you, cross it out, initial the change and get the other side to initial the change too.

Emails can help to prove the terms of a contract. For example, if you said in an email something like, "As we discussed..." and if you can prove the other side received the email, and didn't dispute it, it might help a court decide on the terms of the contract.

Tip Don't pay in cash for services. If you pay cash, you'll have no evidence you paid the service provider, and no recourse if there's a problem.

What if I received poor service from a professional?

If you received poor service from a professional — such as a doctor, lawyer, architect, accountant or dentist — first try solving the problem by talking with them directly.

Complain to the professional body

If talking with the professional doesn't work, go to the organization that oversees that profession. For example, for lawyers, go to the Law Society of British Columbia^[4]. For doctors, go to the College of Physicians and Surgeons of British Columbia^[5]. Professional organizations have discipline committees that review complaints from the public, and they may be able to help you.

Other occupations also have organizations you can complain to

Real estate agents, travel agents, and car dealers must be licensed or certified by provincial authorities. Other occupations have voluntary organizations — the Canadian Association of Movers ^[6], for example. If you aren't satisfied after complaining to the service provider, you should contact these authorities or organizations. For example, to complain about a car dealer, contact the Vehicle Sales Authority of BC ^[7]. To complain about a realtor, contact the Real Estate Council of BC ^[8].

If you don't know the name of the organization or where to locate it, ask another member of the same profession.

In some cases, you may be able to sue

If you've been the victim of professional malpractice or poor workmanship and have suffered some loss or injury, you may want to sue for **negligence** or **breach of contract**. For more information on professional malpractice, see our information on medical malpractice (no. 420) or if you have a problem with your lawyer (no. 436). If you're thinking of suing, it's a good idea to speak with a lawyer.

Can I rely on an estimate from a service provider?

An **estimate** is a business' best guess as to how much certain work will cost. There's no guarantee a final price for services will be the same as the price in an estimate. The estimated and final prices can differ, but the difference should be fair and reasonable. Courts have found differences of 5% to 20% from an estimate to be reasonable.

If you want to rely on an estimate, it must be part of the service contract. An estimate is less likely to apply if there were significant changes or increases to the work and you agreed to them. An estimate won't apply if you did not rely on it before proceeding, or if there were unforeseen circumstances beyond the estimator's control. On the other hand, an estimate is more likely to apply if you relied on it before deciding to proceed or if it was undervalued to get your business.

If you are getting repair work done, a repair person cannot charge for work the estimate does not include, unless you consent to it. If you have a dispute with the repair person, you may have to pay the bill first and go to court later. That's because some repair people can put a "**repairer's lien**" on the item they repaired and keep the item until you pay the bill. Or, the repair person can sell the item to pay for the repairs.

What about charges for unnecessary services?

Sometimes a service provider may charge you for services that weren't necessary. Under BC law ^[9], a business is not allowed to use "**unfair practices**". Unfair practices include when a business does something that is not right or reasonable (this is called "unconscionable"). An example would be if a business takes advantage of any vulnerabilities you may have that affect your ability to protect your own interests, such as any disability or language difficulties. If a business does something "unconscionable", any agreement you signed is not binding on you.

If you suspect this, contact Consumer Protection BC ^[10] at 1-888-564-9963 (toll-free).

Get help

Agencies that can help


Consumer Protection BC provides assistance relating to certain types of consumer problems and contracts in BC, including future performance contracts and direct sales contracts (such as door-to-door contracts).

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[10]

The **Better Business Bureau** assists people in finding businesses they can trust.

Web: bbb.org/ca/bc ^[11]

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Door-to-Door Sales, Time Shares, and Other Contracts You Can Cancel (No. 255)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Wendy Andersen ^[1], Digby Leigh & Company in October 2017.

Under the law in BC, not all contracts are alike. If you enter into a contract, your **cancellation rights** depend on the type of agreement you made and the circumstances.

Understand your legal rights

In a future performance contract

Under the law in BC ^[2], an agreement where you don't receive the goods or services immediately, or you don't pay in full upfront, is a **future performance contract**. Examples include a contract for home repairs or a contract to join a fitness club. Special rules apply to these contracts. (A contract under \$50 is not covered by these rules.)

Requirements for the contract

Under BC ^[3] law ^[4], a future performance contract must include this information:

- the supply date (the date the goods or services will begin to be supplied)
- the date when the supply of the goods or services will be complete
- the name, address and telephone number of the seller
- a description of the goods or services
- an itemized purchase price for the goods or services, including taxes and shipping charges, plus the total price under the contract
- a detailed statement of the payment terms

A future performance contract must be in writing and you must have signed it.

Cancelling the contract

You must be given a copy of a future performance contract within 15 days after you sign it.

If the contract you get doesn't have all the information the law requires, you have up to a year to cancel it. Consumer Protection BC ^[5]'s website includes cancellation forms ^[6] to complete and send to the business.

In a continuing services contract

Under the law in BC ^[2], a **continuing services contract** is a type of future performance contract where you receive services over a period of time, rather than all at once. The specific types of contracts falling within this definition are spelled out in a regulation ^[7]: fitness facilities such as gyms and yoga studios, self-defence studios, personal trainers, dance lessons, and travel club memberships.

Requirements for the contract

A continuing services contract cannot be for more than 24 months.

The contract must include all the information required in a future performance contract (explained above). The contract also must state you have the right to cancel any time within the first 10 days.

Cancelling the contract

You may cancel a continuing services contract anytime within 10 days of receiving a copy of the contract. This is called the “**cooling-off period**”.

As well, you can cancel a continuing services contract at any time if there is a **material change** (meaning significant change) in the services provided or in your circumstances.

For example, if you sign up for tango dancing lessons and the dance studio switches to offering only tap dancing classes, that is a material change in the services provided. You could cancel the contract.

Or if you break your leg or you move more than 30 kilometers away from the dance studio, either is a material change in your circumstances. You could cancel the contract.

In each case, you would have to prove the material change. For example, you would have to provide medical documentation showing why you can no longer participate in the activity, or show proof of your new address.

If you cancel because of a change in your circumstances, you can get a prorated refund based on how much of the service you’ve used, minus 30% to cover the business’ costs. If you cancel because of a change in the services provided, you can get a prorated refund without any deduction.

Consumer Protection BC ^[5]s website includes cancellation forms ^[6] to complete and send to the business. (You can use the cancellation forms for a future performance contract, as a continuing services contract is a type of future performance contract.)

In a direct sales contract

Under the law in BC ^[2], a **direct sales contract** is one signed at a place other than the seller’s permanent place of business. This could be at your home, buying from a door-to-door salesperson. (Though note that if you, a relative or friend invite a supplier into your home more than 24 hours in advance, any contract you sign is not considered a direct sales contract.)

Requirements for the contract

Under BC law ^[3], a direct sales contract must include this information:

- the supply date
- the place where the contract was signed
- the name, address and telephone number of the seller
- a description of the goods or services
- an itemized purchase price for the goods or services, including taxes and shipping charges, plus the total price under the contract
- a detailed statement of the payment terms

The contract must state you have the right to cancel any time within the first 10 days.

The contract must be in writing and must be signed by you.

There is a limit to the down payment a seller can require in a direct sales contract. The down payment can not be more than \$100 or 10% of the total price, whichever is less. For example, if a door-to-door salesperson comes to your home and sells you a vacuum cleaner, the salesperson cannot ask for a down payment of more than \$100 or 10% of the total price, whichever is less.

Cancelling the contract

You may cancel a direct sales contract any time within 10 days of receiving a copy of the contract. This is called the “cooling-off period”.

If the direct sales contract does not include the information required under the law, you have up to one year to cancel it.

If you don't receive the goods or services within 30 days of signing the contract, you have up to one year to cancel. For example, if you don't receive within 30 days a vacuum cleaner you paid for, you have up to one year to cancel. If the vacuum cleaner arrives after 30 days and you accept it, you lose your right to cancel the contract.

Consumer Protection BC ^[5]'s website includes cancellation forms ^[8] to complete and send to the business.

If you buy a time share

A **time share** is a legitimate form of owning an interest in property. Often, the time share is for one week per year at a vacation resort. Typically, you go to a presentation, tour a condo unit, and then sign a contract. Before you sign anything, however, make sure the deal is right for you. Never sign a contract unless you understand it completely.

Cancelling a time share contract

Under the law in BC ^[9], if you sign the time share contract in BC, you can cancel it within seven days. This applies whether the time share relates to property in or outside of BC. But — and this is very important — if you sign a contract outside of BC, for example in Mexico, for a Mexican time share, BC's time share law **does not apply**. Instead, the contract will be controlled by the law of the country or province where you signed the contract.

Common questions

Will I get my money back if I cancel?

If you cancel a continuing services contract or a direct sales contract within 10 days, you have the right to get a full refund within 15 days after cancelling — even if you've already received the goods or started using the service. Once you've received your money back, you must return the goods. And you must take reasonable care of the goods while you have them because you are responsible for any damage to them while you have them.

What happens if the seller doesn't give me a refund?

If you try to cancel a future performance contract, continuing services contract, or direct sales contract, and you don't get a refund, check with Consumer Protection BC ^[5] for more information ^[6] and possible options.

Get help

Agencies that can help


Consumer Protection BC provides assistance relating to certain types of consumer contracts in BC, including future performance contracts, continuing services contracts, and direct sales contracts.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[5]

The **Better Business Bureau** assists people in finding businesses they can trust.

Web: bbb.org/ca/bc ^[10]

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Money & Debt

Buying on Credit (No. 246)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Wendy Andersen ^[1], Digby Leigh & Company, and Laura Cox ^[2], Consumer Protection BC in October 2017.

When you buy “**on credit**”, you buy now and pay later. This can range from taking out a loan for a new car to using a credit card to buy groceries. Your rights can differ in important ways depending on how you buy on credit.

Understand your legal rights

Your rights to what you buy can vary

Buying on credit means you get something now in exchange for a promise to pay later. Your rights to the item you buy can vary depending on the terms of the promise.

In some cases, you might not own the item until you finish paying for it. Say you want to buy a piano. You might agree with the seller to pay for it over two years, with interest. You get the piano immediately. But the seller might have you sign an agreement saying the seller still owns the piano until you make all the payments.

In other cases, you might own the item right away, but the seller or lender gets special rights to it. Say you want to buy a new car. You might get a loan from your bank, and agree to pay the loan back (plus interest) over a certain time period. The bank might have you sign an agreement saying if you default on the loan (such as by missing a payment), the bank can take the car to cover what you owe.

When you buy with a credit card

When you buy something with a **credit card**, you similarly buy now and pay later. But when you buy with a credit card, you own the item right away. And the credit card company can't take the item if you don't make a credit card payment.

So if you buy that piano (or that new car) with your credit card, you own it right away. You have to pay the purchase price to the credit card company (plus interest if you don't pay off your purchase with your next payment). But the credit card company can't take the piano if you fail to make your payments. (They can collect the debt in other ways, however.) For more on your rights relating to credit cards, see our information on credit cards (no. 247).

If you sign a security agreement

When you buy something on credit, you typically sign a **security agreement**. This agreement may be called various names (such as a “conditional sales agreement” or a “lease with an option to purchase”). But they all work in a similar way. Basically, it will say you give the other party a **security interest**. This is a property interest you give them to ensure you pay the money you owe them. The property is called **collateral**. The debt becomes a “secured debt” and the other party becomes a “secured creditor”.

If you default

If you default on a secured debt (such as by missing a payment), a secured creditor can take the collateral and sell it. This is also called “seizing” or “repossessing” the collateral. They can also sue you for the amount owing on the debt.

If the collateral is “consumer goods”

Under the law in BC ^[3], two rules kick in to protect you if the property you put up as collateral is “**consumer goods**”. This is property that’s “used or acquired for use primarily for personal, family or household purposes”.

For this type of collateral, if you default, the secured creditor can seize the property. Or they can sue you for the amount owing on the debt. But they can’t do both. This is called the “**seize or sue rule**”. It means the creditor has to decide whether to seize the collateral or take you to court.

The “**two-thirds rule**” comes into play if you’ve paid back at least two-thirds of what you owe on a secured debt relating to consumer goods. In this case, the secured creditor needs a court order before seizing the collateral. If you’ve paid back less than two-thirds, the creditor can seize the collateral without going to court.

If a secured creditor seizes goods

If a secured creditor seizes collateral under a security agreement, they must follow a procedure set out under the law ^[4].

If the creditor wants to sell the collateral

The secured creditor must give you at least 20 days’ written notice before selling the collateral. The notice must include the amount required to pay off the debt, as well as the amount in “arrear”. Arrears are payments that were due but have not yet been paid.

If the collateral was “consumer goods”, the notice must spell out that as long as you pay off the arrears plus the creditor’s expenses of seizing the property, you may **reinstate** the security agreement. The creditor must then return the seized property.

If you don’t pay the amounts set out in the creditor’s notice, the creditor can proceed to sell the collateral. If they do, they must use commercially reasonable means to get a reasonable price for it. This doesn’t mean they must advertise in every paper from here to Calgary, but they must use reasonable efforts to get a fair market price.

After the sale, the creditor must pay you any amount left over after they are fully paid.

If the creditor wants to keep the collateral

A creditor who plans to keep collateral they seized must give you written notice of their proposal to do so. You then have 15 days to give them a “notice of objection” if you don’t want them to keep the property. If you do so, the creditor must then sell the collateral, following the rules described above.

Common questions

What happens if I make a late payment?

Credit agreements must say what fees and interest charges you will have to pay if you make a late payment or a partial payment. If a creditor accepts a late or partial payment, it doesn’t change your obligations for future payments.

Get help

If you're concerned with the cost of buying on credit

When you borrow money to buy something, there are laws requiring creditors to disclose ^[5] all borrowing costs.

Consumer Protection BC oversees these laws.

Toll-free: 1-888-564-9963


Web: consumerprotectionbc.ca ^[2]

If you're struggling with debt

The **Credit Counselling Society** is a non-profit society that helps people better manage their money and debt.

Toll-free: 1-888-527-8999

Web: nomoredebts.org ^[6]

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[7] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Credit Cards (No. 247)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Wendy Andersen ^[1], Digby Leigh & Company in October 2017.

We use them all the time — to make purchases, shop online, and collect points. **Credit cards** are practical and convenient. Knowing your rights relating to credit cards can limit problems.

Understand your legal rights

Your rights are set out in a “cardholder agreement”

With a credit card, you get to buy things now in exchange for a promise to pay later. The credit card issuer (such as Visa or Mastercard) allows you to spend up to a certain amount. This is called the **credit limit**.

If you don't pay within a certain period of time, the card issuer will charge you **interest**.

The card issuer sets the credit limit, rate of interest, and other terms of the credit card in a contract, called the “**cardholder agreement**”.

You must accept the terms of the cardholder agreement before using the card.

If there's a change to your agreement

Under Canadian law ^[2], the card issuer can't raise the credit limit on your credit card without your permission — you have to authorize the increase. It's not enough that you tell a representative you want a higher credit limit. They need to confirm your consent in writing.

For other changes to your cardholder agreement, the card issuer must inform you of the changes.

For a select few changes, they can inform you in your next monthly statement. For example, if the card issuer is decreasing the interest rate or any other charge.

For all other changes to your cardholder agreement, the card issuer must tell you about the change **at least 30 days before** the change takes effect.

If you lose your credit card or it's stolen

Under the law in BC ^[3], your liability for a lost or stolen credit card is limited. Once you report a missing card to your credit card issuer, you don't have to pay for anything bought with your card after you told them.

If someone uses your card **before** you report it as missing, the law **limits your liability to \$50** — even if your agreement with the credit card issuer says differently. There is one exception to this rule — where your credit card is used at an automated teller machine (ATM) with your personal identification number (PIN). (Although it may seem convenient, giving away or sharing your PIN is never a good idea.)

You can report the missing card to your issuer by phone or in writing.

If you receive a credit card you didn't ask for

Under the law in BC ^[4], if you get a credit card you didn't ask for, you don't have to accept it. If you don't accept it, you aren't responsible for it. However, if you use an unsolicited credit card, you are telling the sender you're accepting it, and you're then responsible for what you buy with it.

Common questions

What if I let someone use my credit card, and they misuse it?

As explained earlier, your liability for a lost or stolen credit card is limited ^[3] — except where your credit card is used at an automated teller machine (ATM) with your personal identification number (PIN). So let's say you give your credit card and PIN to a friend to buy something at the store. Later, without your authorization, that person uses your credit card and PIN to get cash advances from an ATM. You're responsible for this debt.

Are bank and debit cards treated the same as credit cards?

Bank and debit cards aren't covered by the BC law that limits credit card liability ^[3]. So you're not protected by the \$50 limit on liability if someone steals your bank or debit card and PIN and uses them to get money from your account.

Get help

If you think you've been scammed

If you think someone may have stolen your credit card information through a scam, contact the **Canadian Anti-Fraud Centre**.

Toll-free: 1-888-495-8501


Web: antifraudcentre-centreantifraude.ca ^[5]

If you're struggling with debt

The **Credit Counselling Society** is a non-profit society that helps people better manage their money and debt.

Toll-free: 1-888-527-8999

Web: nomoredebts.org ^[6]

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Credit Reports (No. 249)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Wendy Andersen ^[1], Digby Leigh & Company in October 2017.

A **credit report** shows your history of paying bills and borrowing money. Banks and others considering doing business with you look at your credit report to decide whether you're trustworthy.

Understand your legal rights

You have the right to see your credit report for free

A credit report contains details of a person's history of paying bills and borrowing money, and other information about them. Credit reports are prepared by **credit reporting agencies**, also called credit bureaus. The two main ones in Canada are Equifax ^[2] and TransUnion ^[3]. These agencies collect information from banks and businesses, and from public documents like court and marriage records.

Under the law in BC ^[4], you have the right to see your credit report. The credit reporting agencies must mail you a free copy if you ask. You can call Equifax toll-free at 1-800-465-7166 or TransUnion at 1-800-663-9980.

Your credit score is not part of your credit report

Credit reporting agencies use a formula to turn the credit information they have about you into a **credit score**. Your score, also called your credit rating, can range from 300 to 900. A high score is good.

You won't see your credit score on your credit report. But for a fee, you can get your credit score from Equifax ^[2] or TransUnion ^[3].

Tip For more information on credit scores, see People's Law School's tips on improving your credit score ^[5].

Your consent is needed (with some exceptions) for someone to see your credit report

Under the law in BC ^[6], a credit reporting agency can't share your credit report without your permission. (There are three exceptions to this rule, which we will explain.)

When someone asks to see your credit report

Banks and other lenders, potential employers and landlords might want to see your credit report to see if you are trustworthy. This is called a **credit check**. It helps them decide whether to lend you money, hire you, or rent to you.

You don't **have** to consent to a credit check. If you refuse, the bank or other party requesting the credit check can also refuse to do business with you.

Your consent to a credit check is sometimes folded into an application for credit, employment, or tenancy. By signing the application, you agree to the check. But by law, the consent must be prominently displayed and easy to understand.

Situations where your consent is not required

Under the law in BC ^[7], there are certain situations where credit reporting agencies **don't** need your consent to share a copy of your credit report. You have no choice when the credit report is requested by:

- the federal, provincial, or municipal government
- the police, for the purposes of an investigation
- anyone with a court order authorizing access to your credit report

Information that cannot be in your credit report

Under the law in BC ^[8], some information **can't** be part of your credit report:

- information about any member of your family other than your spouse
- your race, religious beliefs, skin colour, sexual orientation, ethnic background or political views
- criminal convictions that have been discharged or pardoned
- criminal charges that were withdrawn or dismissed

There's also information that **can't** be part of your credit report **if it is more than six years old**:

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

You have the right to dispute anything on your credit report

Under BC law ^[9], you have the right to ask a credit reporting agency to fix any mistake you find in your credit report. You can send a letter about the error, and the credit reporting agency must take reasonable steps to check the information and respond to you within 30 working days.

If the credit reporting agency agrees to make the correction, it must do so promptly. It must also send the new correct information to anyone who received your credit report in the last year. If the agency doesn't make the correction you asked for, it must make a note in your file that you asked for the information to be corrected.

Also, if there's anything in your file you think should be explained, you have the right to add an explanation of up to 100 words. The credit reporting agency attaches it to your report and anyone who orders a copy sees it.

Get help

Accessing your credit report

The **Office of the Information & Privacy Commissioner** oversees BC's laws relating to privacy and access to information. If a credit reporting agency refuses your request for a copy of your credit report, you can ask the Privacy Commissioner to review the decision. If someone gets their hands on your credit report improperly, the Commissioner has the power to investigate.

Toll-free: 1-800-663-7867

Web: oipc.bc.ca ^[10]

Fixing a mistake on your credit report

Consumer Protection BC can help with certain problems with credit reports. For example, where information on your credit report is over six years old, or where you were denied the opportunity to provide an explanation on your credit report.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[11]

The **Office of the Information & Privacy Commissioner** oversees BC's laws relating to privacy and access to information. If a credit reporting agency refuses your request to fix a mistake, you can ask the Privacy Commissioner to review the decision.

Toll-free: 1-800-663-7867


Web: oipc.bc.ca ^[10]

Improving your credit score

The **Credit Counselling Society of BC** is a non-profit society that helps people better manage their money and debt.

Toll-free: 1-888-527-8999

Web: nomoredebts.org ^[12]

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Co-Signing or Guaranteeing a Loan (No. 248)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Stan Osobik ^[1], ICBC, and Adam Roberts ^[2], Barrister & Solicitor in October 2017.

Before lending money to someone, a lender may ask for someone else to “**co-sign**” or “**guarantee**” the loan. Learn what to consider if you’re asked to co-sign or guarantee a loan.

Understand your legal rights

How guaranteeing and co-signing are different

When you **guarantee** a loan, you promise to pay the debt of the borrower if they don’t pay. The lender must first demand payment from the borrower before going after you.

When you **co-sign** for a loan, you and the borrower agree to be jointly responsible for the debt. Each of you is independently on the hook for the loan. If the borrower doesn’t pay, the lender can demand payment from you before — or instead of — demanding payment from the borrower.

In both cases — guaranteeing a loan or co-signing for one — the lender can come after you if the borrower doesn’t pay. But if you co-sign for a loan, the **lender can come directly to you** for payment.

It’s important to review the guarantee or co-signing documents carefully before signing, so you know what you are committing to.

If you guarantee a loan

A lender who’s nervous about loaning someone money may ask for a guarantee. A guarantee is a promise by another person to pay the debt if the borrower doesn’t pay. The person guaranteeing the debt is the “guarantor”.

The guarantor’s responsibility for the debt

As guarantor, you are the backstop. You’re responsible for the debt only if the borrower defaults on an obligation, such as missing a loan payment. The lender must ask for payment from the borrower before coming to you.

The extent of your responsibility depends on the type of guarantee

Your responsibilities as a guarantor depend on what type of guarantee you give. There are three types of guarantee:

- specific or limited guarantee
- continuing guarantee
- all-accounts guarantee

In a **specific or limited guarantee**, you agree to be responsible for a certain amount for a specific thing. For example, if you guarantee your brother’s \$10,000 car loan, you’re responsible for up to \$10,000 if your brother defaults on the loan.

In a **continuing guarantee**, you agree to be responsible for a loan for as long as the guarantee lasts. For example, you might guarantee a line of credit for your spouse’s business. The amount owing at any time will depend on the business’ need for money. If your spouse defaults on the loan, the line of credit could be at zero, or at its limit, or anywhere in between. You’re responsible for whatever is owing on the line of credit at the time of the default.

In an **all-accounts guarantee**, you agree to pay whatever the borrower owes to the lender. This could include debts you don’t know about. It could include obligations created after the guarantee is signed.

Tip Before you sign a guarantee, find out what type of guarantee it is. A guarantee document may have one or more of these types of guarantee.

If you co-sign for a loan

When you **co-sign** for a loan, you and the borrower are now equal owners of the debt. You are “joint debtors”. Each of you is independently responsible for paying back the loan. If one of you fails to make payments, the lender can expect money from the other. The lender needn’t even ask the borrower. They can come directly to you.

For example, say you co-sign a \$5,000 loan with your daughter. You and she are each responsible for paying back the lender, until the full \$5,000 debt is retired. If your daughter misses a payment after paying back \$1,000, the lender can ask you for the outstanding payments. The lender doesn’t have to ask your daughter for payment first.

If the loan has an acceleration clause

Most loan agreements have an **acceleration clause**. It lets the lender demand immediate payment of the whole loan — not just the “arrears” (or missed payments) — if the borrower defaults on an obligation. So just one missed payment could mean the whole loan amount is due immediately.

Prevent problems

Questions to ask before guaranteeing or co-signing a loan

Sometimes you want (or have) to co-sign or guarantee a loan. It may be a good business deal, or it may help a family member. Before you put yourself at risk, look at the situation carefully. Ask questions like:

- Why does the lender require a co-signer or guarantor?
- How high is the risk the borrower will have trouble and you’ll have to pay the loan?
- What will happen if you don’t sign?
- Most importantly, can you afford to pay off the loan if the borrower can’t?

Before you co-sign or guarantee a loan, consider getting legal advice to protect yourself.

You should also get a copy of every document you sign.

Ask the lender to keep you informed

If you decide to co-sign or guarantee a loan, ask the lender, in writing, to keep you informed in writing of all activity on the loan. This can help you see a problem developing and correct it before it’s too late.

When the loan is paid off

After the loan is fully repaid, take steps to ensure your responsibility is ended. For example, ask the lender to return the original guarantee or loan document to you. Or ask for a document clearing you of any liability for the loan or guarantee. This document could be a letter of acknowledgement, a copy of the borrower’s discharge, or a release.

Common questions

What if the borrower (or I) gave security for the loan?

The lender may have asked the borrower to give a **security interest** for the loan you guaranteed or co-signed. For example, if the loan was to help a relative buy a car, the lender may have asked for a security interest in the car. If so, and the borrower fails to make a loan payment, the lender could take (“seize”) the car. If the lender does that, the borrower is not responsible for anything more. As long as the car was used primarily for personal purposes, the lender can’t sue them after seizing the car, even if the car is worth less than the amount of the loan they still owe.

Meanwhile, if you gave a security interest for the borrower’s loan, the lender can seize what you put up as security. They can do so instead of going after the borrower or seizing what the borrower offered as security.

Will I be liable for any future borrowing?

A major risk if you co-sign or guarantee a loan is you may be responsible for additional money the borrower later borrows. Standard loan forms often make you responsible for the loan in question, as well as any other amounts the borrower borrows from the same lender in the future. This is even if you don’t know anything about the later borrowing. So if you co-sign or guarantee a loan, consider asking that an upper limit be included in the loan agreement, limiting how much you could be responsible for.

Does co-signing or guaranteeing a loan affect my credit score?

If you co-sign a loan, your credit rating may be harmed if the borrower defaults on the loan. As a co-signer, you are jointly responsible for the debt. Any default on the debt can immediately harm your credit rating.

Guaranteeing a loan won’t expose your credit rating to as much risk. A default by the borrower alone won’t affect your credit rating. Your credit rating **will** be harmed if the lender demands repayment from you and you don’t repay the debt.

Can I become a guarantor without signing anything?

Guaranteeing a loan or other debt doesn’t always need your signature on a guarantee agreement. One example is a secondary credit card. This is where someone gets their own credit card on a primary cardholder’s account. The contract with the credit card issuer might say that by using the card, the secondary cardholder is guaranteeing all further debts on the credit card.

Another example is a small business loan. The loan agreement might say the person making the agreement for the company is also personally guaranteeing the debt. No separate signature or acknowledgement is required — the one signature you make for your company also binds you personally.

Can I stop being liable before a loan is repaid?

You can always try to negotiate with the lender so you are no longer liable for a loan you guaranteed or co-signed. For example, someone else may be willing to replace you as the guarantor or co-signer. Or the borrower may have repaid most of the loan — enough to satisfy the lender to let you off the hook.


Get help

In dealing with a debt collector

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]

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Collecting a Debt (No. 250)

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 October 2017.

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 the situation.

Understand your legal options

What is a debt

A **debt** is something, typically money, that is owed or due. It may arise from a promise to repay an amount of money (for example, a loan), or an agreement to pay for goods or services. This information deals with these kinds of debts. It doesn't deal with debts relating to rent, mortgages, or family law situations.

If someone owes you money, that person is called a **debtor**. You are called the **creditor**.

You have options to collect on a debt

To collect on a debt, you can:

- try to collect yourself,
- hire a collection agency, or
- 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 typically charge between \$200 and \$400 an hour, plus expenses. Some lawyers will work for a **contingency fee** — a percentage of what they recover. So if they don't recover anything, you don't have to pay for their services, but you may still have to pay expenses. If you hire a lawyer on a contingency fee, you should get a written contract outlining what you will have to pay, and when.

Neither collection agencies nor lawyers can guarantee they will recover anything from the debtor.

You can't take the debtor's property

Whatever approach you decide on, you can't take the debtor's property — except through taking legal action (this is explained below). Nor can you harass the debtor; see our information on harassment by debt collectors (no. 252) for more on this topic.

There is a time limit to sue to collect a debt

The law in BC ^[3] creates a basic **limitation period** of two years for starting a legal action. A lawsuit cannot be brought more than two years after the "claim is discovered". In the case of a debt, if a debtor hasn't made a payment — or acknowledged they owe a debt — in more than two years, the creditor may be barred from bringing legal action to collect.

If the time limit is coming up soon for a debt owed to you, and you want to keep your right to collect, you should start legal action as soon as possible. If you are not sure about the time limit, get legal advice before you sue. If you start a lawsuit after the deadline, you may have to pay the debtor's legal costs.

Deal with the problem

Step 1. Decide on a course of action

No one enjoys collecting debts. First, you should decide whether to proceed at all. If the debt is small, or if the debtor is bankrupt or unlikely to repay anything, 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 why 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 phoning, emailing or texting them. Remind the debtor of the debt and ask what they can do to pay the debt. 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 demanding payment of the debt. You may want to offer practical payment options that are acceptable to you, including payment by credit card or post-dated cheques.

The letter can't threaten to take improper action to collect the debt. It is perfectly appropriate to say you are considering legal action. You might end your letter saying something like:

“I intend to take legal action to collect the debt, plus interest and costs of the legal proceedings, if you don't make satisfactory payment arrangements within [a certain window of time].”

A common window of time to give the debtor to make payment arrangements is seven to 30 days.

Step 5. Consider legal action

If the debtor does not 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 money from the debtor's employer and others who owe money to the debtor. See our information on garnishment (no. 251).

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 ^[4]. 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 ^[5]. Many people represent themselves in this court. It's less expensive and less risky than going to Supreme Court. If the debtor owes you more than \$35,000, you can sue in Small Claims Court for up to \$35,000 and forget the rest. See our information on Small Claims Court (no. 166 to 168).

For amounts **over \$35,000**, you would sue in BC Supreme Court ^[6].


Common questions

What happens if I get a court judgment?

If you win in court and get a judgment for the debtor to pay you, you may have several ways to collect the money:

- You can question the debtor under oath about their income, assets and ability to pay.
- You can seize (that is, take) the debtor's assets with a court order using a bailiff.
- You can register the judgment against land the debtor owns.
- You can garnish the debtor's wages or other money owed to the debtor.

See our information on getting your judgment paid (no. 169).

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Garnishment (No. 251)

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

When a debtor doesn't pay a debt, a creditor may try to access money owed to the debtor by someone else. The creditor can do this through a process called **garnishment**.

Understand your legal rights

Garnishment is a way to collect a debt

Under the law in BC^[2], if a debtor doesn't pay a debt, a creditor can tap into money the debtor is owed by someone else (that is, a third party).

The creditor must go to court to do this. They can ask the court to "attach" (or "**garnish**") money owed to the debtor and redirect it to the creditor.

The most common moneys attached are wages and bank accounts. Other sources of money owed to a debtor can also be targets, such as retirement savings funds, estate proceeds (inheritances), or insurance settlements.

For example, say you don't pay back a loan. The creditor can seek a court order to get your employer to redirect a portion of your wages to the creditor. This process is called **garnishment**.

If a creditor wants to take some of a debtor's wages

Several steps are involved if a creditor seeks to garnish a debtor's wages.

The creditor needs to get two court orders

A creditor must first get a court judgment against the debtor. The judgment confirms the debtor owes the debt.

The creditor must then seek a second court order, called a **garnishing order**. This is an order requiring a third party who owes money to the debtor (in this case, an employer) to make payments to the creditor.

The creditor serves the garnishing order on the employer. The employer must then send a portion of the debtor's wages to the court. The employer only has to send wages owing within seven days, up to the amount of the debt.

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

There are laws to protect the debtor

There's a limit to how much of a debtor's wages a creditor can garnish. Usually, that limit is 30% of the debtor's net income. If the creditor is claiming spousal or child support payments, the limit goes up to 50%.

If garnishing a debtor's wages causes serious financial hardship, the debtor can apply to court for relief.

Under the law in BC ^[3], an employer is not allowed to dismiss or demote an employee just because the employer receives a garnishing order. If that has happened to you, you should seek legal advice.

If a creditor wants to draw money from a debtor's bank account

To recover a debt, a creditor may seek to garnish money from the debtor's bank account.

To do so involves several steps. To begin, the creditor brings a legal action for the debt. At the same time as they start this lawsuit, the creditor can seek a garnishing order for the debtor's bank account. No court hearing is required, and no notice is owed the debtor. For this reason, these types of garnishing orders often take debtors by surprise.

Money that's garnished from a bank account is paid into court. The creditor can't access it until they get a judgment against the debtor in their action on the debt.

Unlike wage garnishments, 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 creditor's judgment — can be taken.

A creditor **can not** garnish money from a joint bank account unless they have a court judgment against both account holders.

Some types of benefits are protected

Under the law in BC ^[4], income assistance received by a debtor cannot be garnished (except where spousal or child support payments are involved; see below).

Other types of government benefits are also exempt from garnishment by **non-government** creditors, including:

- Canada Pension Plan benefits
- Old Age Security benefits
- Guaranteed Income Supplement payments

However, most government benefits **can** be garnished by government bodies such as the Canada Revenue Agency. Money garnished by the government doesn't get paid into court. Instead, it goes directly to the government body.

If spousal or child support payments are involved

Special rules apply if the creditor seeking a garnishing order is owed spousal or child support payments. For example, income assistance received by a debtor cannot be garnished — except by the Family Maintenance Enforcement Program ^[5], a government program that enforces court orders for support.

As well, if support payments are involved, a garnishing order for wages does not need to be renewed each pay period. (In other cases, a garnishing order applies only to wages owing within seven days of the order.)

A debtor can apply to court to set aside a garnishing order

If a creditor obtains a garnishing order, a debtor can apply to court to set aside (or “release”) the order. The debtor might do this arguing that the order causes them serious financial hardship. Or that the order isn’t necessary to ensure they pay the creditor’s judgment for the debt.

In applying to release a garnishing order, the material must explain why it would be “just in all the circumstances” to release the order. For example, if you’re claiming a garnishing order causes you serious financial hardship, provide a snapshot of your financial situation. Include a statement of finances and any other information that backs up your position.

Tip People’s Law School’s information on garnishment ^[6] provides step-by-step guidance on applying to set aside a garnishing order.

Common questions

I owe money to a creditor. Can they take my entire pay cheque to satisfy the debt?

No. The law in BC ^[7] says a creditor can garnish up to 30% of a debtor’s net income — that is, after statutory deductions for things like income tax, Canada Pension Plan, and Employment Insurance. This means you’d keep at least 70% of your pay cheque.

Note a garnishing order applies only to wages owing within seven days of the order. A new garnishing order must be issued and given to your employer every pay period.

(Special rules apply if a creditor’s claim is for spousal or child support payments; see above.)

What happens to money paid into court?

A creditor must apply to court to get access to any money that has been paid into court under a garnishing order.

I’ve been served with a garnishing order. What should I do?

Never ignore a garnishing order served on you. There are serious consequences for not complying with a court order.

You have two options.

1. You could pay into court whatever amount you owe the debtor (up to the amount claimed in the garnishing order). Whatever amount you pay into court you don’t have to pay to the debtor.
2. Your second option, if you believe you don’t owe the debtor anything, is to file a “dispute note” in court. This note explains why you don’t owe the debtor anything. It doesn’t have to be on a particular form; it can be on your letterhead. If the creditor disagrees with you, then a judge will decide the matter.


Get help

With managing your finances

The **Credit Counselling Society of BC** is a non-profit society that helps people better manage their money and debt.

Toll-free: 1-888-527-8999

Web: nomoredebts.org ^[8]

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When You Can't Pay Your Debts (No. 253)

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. Falling behind in your payments can seriously affect your daily life. The good news is there are a number of options for **getting out of debt**.

Understand your legal options

Option 1. Budgeting out of debt

A little organization goes a long way in solving money problems. A key to getting out of debt is to fully assess your current financial situation. Your first step should be to list your **assets** (what you own) and **debts** (what you owe).

Your next step should be to make a **budget**. A budget is a plan for how you will spend money over a period of time, such as a month. It lists all the money you expect to get (your **income**) and to spend (your **expenses**) during that period.

Once you have a budget, you can better see where you're spending on things that aren't truly essential. This can help you decide what you can do without, and direct that extra money to reduce your debts.

You can also try to increase your income. Maybe you can get a second or part-time job. Or your relatives may be able to help with a gift or loan.

Tip Credit counsellors such as the Credit Counselling Society ^[2] and Credit Canada ^[3] can help you review your finances and make a budget. They also offer useful tools ^[4] such as budget worksheets to help you get a handle on your spending.

Option 2. Negotiate with your creditors

If you're having trouble making payments, contacting your creditors to explore options together can help turn things around. Describe your financial situation and explain why you can't stick to your original agreement. 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. For example, they may:

- extend the time you have to repay
- charge you a lower interest rate
- reduce the amount of your payments

Tip Before you contact a creditor, find out when the **limitation period** expires. This is a time period set by law ^[5] for how long someone has to bring a legal action. If it's been more than two years since you made a payment on a debt or the creditor demanded payment, the creditor may have lost their legal right to enforce the debt.

Option 3. Consolidate your debts

Consolidating your debts means combining them into a single payment. This can be done in a number of ways, such as through a consolidation loan, a line of credit, or a debt repayment plan.

A consolidation loan

A consolidation loan is a single, new loan used to pay off multiple debts. Usually, the consolidation loan has a lower interest rate than the average rate on your other debts. Making a single monthly payment is also simpler than having to keep track of multiple payments.

Your ability to qualify for a consolidation loan will depend on your income and your credit score.

A line of credit

Opening a line of credit for the total amount you owe is another way to consolidate your debts. A line of credit allows you to borrow funds from an account up to a certain credit limit. You only pay interest on the borrowed funds. Lines of credit can have lower interest rates than most loans.

A debt repayment plan

A debt repayment plan is another way to consolidate your monthly debt payments into one. You set up an account with a credit counselling agency such as the Credit Counselling Society ^[6]. You deposit a monthly amount into the account. The credit counsellor uses this amount to pay your creditors until your debts are erased.

To develop the debt repayment plan, the credit counsellor contacts your creditors on your behalf and proposes a payment schedule based on your ability to pay. Usually, your monthly payments are then reduced, and extended over a longer period.

Option 4. Negotiate a debt settlement

In some situations, your creditors may be open to negotiating a **debt settlement**. This option involves paying them a lump sum amount that's less than the full value of the debt you currently owe. Debt settlements can range between 20% and 80% of the debt owed. (Settlements at the lower end of this range are extremely rare and would require exceptional circumstances.)

A debt settlement only works when you have a convincing reason you can't pay the full amount you owe. It could be you've had a major setback, such as a health problem or you lost your job. You'll need to persuade your creditors that it's in their interests to get paid (for example) 75% of what they're owed rather than a small fraction (if you have to declare bankruptcy).

You can get help with negotiating a debt settlement. Non-profit credit counselling agencies offer debt-settlement services. So do for-profit companies. Some are shady, so you need to be alert in hiring a debt settlement company.

Tip Under the law in BC ^[7], anyone who represents you in negotiations with your creditors must be licensed as a "debt repayment agent". People's Law School's page on negotiating a debt settlement ^[8] includes tips on protecting yourself if you are thinking of hiring a debt repayment agent.

Option 5. Make a consumer proposal

A **consumer proposal** is an offer you make to your creditors to settle your debts. If your creditors accept the 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. This is a professional licensed by the federal government to advise people with debt problems.

For the arrangement to be legally binding, the creditors who hold a majority of your debt must accept the consumer proposal. Once the proposal is accepted, you repay the agreed amount over a maximum of five years.

Here are some considerations to be aware of before going this route:

- Making a consumer proposal costs more in fees than declaring bankruptcy.
- Some of your assets may need to be sold (but you get to keep more of your property than if you go bankrupt).
- A consumer proposal will hurt your credit score, but not for as long as declaring bankruptcy will.

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, so it represents the most drastic option for getting out of debt.

The bankruptcy process begins with filing an application for bankruptcy with a government office ^[9]. Under the law in Canada ^[10], a licensed insolvency trustee must file the application for you.

The trustee guides you through the bankruptcy process. They sell your assets (except for a few that are exempt from the process) to pay off your creditors. Once the process is complete, you're "discharged" from bankruptcy. This releases you from your debts — except for a few types of debt, such as support payments, which under the law cannot be discharged.

Get help

With managing your finances

The **Credit Counselling Society of BC** is a non-profit society that helps people better manage their money and debt. Contact them to book a free consultation with a credit counsellor.

Toll-free: 1-888-527-8999

Web: nomoredebts.org ^[6]

With debt repayment agents

Consumer Protection BC regulates “debt repayment agents”. Contact them to make a complaint about a debt settlement company.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[11]

With formal legal processes

The **Office of the Superintendent of Bankruptcy** oversees consumer proposals and bankruptcies, and investigates complaints against licensed insolvency trustees.

Toll-free: 1-877-376-9902


Web: ic.gc.ca ^[9]

The **Canadian Association of Insolvency and Restructuring Professionals** represents licensed insolvency trustees in Canada.

Telephone: 647-695-3090

Web: cairp.ca ^[12]

Tip You must see a licensed insolvency trustee to make a consumer proposal or declare bankruptcy. To find a licensed insolvency trustee in your area, you can search the government of Canada’s database at ic.gc.ca ^[13].

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Harassment by Debt Collectors (No. 252)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Bruce Hallsor QC ^[1], Crease Harman in July 2018.

If you're behind on debt payments, there are laws to protect you from **harassment** by collectors. For example, collectors can't use threatening language or contact you during certain times of day.

Understand your legal rights

The difference between a collector and a collection agent (and why this matters)

Under the law in BC ^[2], a **collector** is a person who is collecting or attempting to collect a debt. BC debt collection laws apply to any person or business that fits this description. It could be a retail business you bought furniture from, a cellphone company you signed a contract with, or a collection agency that has taken over your overdue credit card debt.

A **collection agent**, meanwhile, is someone who in the course of business collects debt for other parties. A party who is owed money (a creditor) might decide to "sell" the debt to a collection agent. In exchange, the collection agent typically promises to give the creditor a portion of the debt the agent is able to recover.

Why this matters

Collection agents have no special legal powers to collect from a debtor. They are like any other creditor. That said, collection agents are known for their aggressive tactics. (Agents make money only if they recover some of the debt, which can lead to more aggressive tactics.) Some collection agents contact debtors often and use intimidation to scare debtors into paying. Many of the laws we explain here are designed to protect debtors from these types of tactics.

Collection agents must be licensed

As well, collection agents must be licensed by Consumer Protection BC ^[3]. If a collection agent is treating you badly, Consumer Protection BC has more scope to penalize them.

A collector can't harass you

Under the law in BC ^[4], a collector (including a collection agent) can't communicate with a debtor in a way that amounts to **harassment**. Examples of harassment include:

- using threatening, profane or intimidating language
- exerting excessive or unreasonable pressure
- publishing or threatening to publish a debtor's failure to pay

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

This rule also covers a member of the debtor's family or household, a relative, neighbour, friend or acquaintance, or the debtor's employer.

As well, under Canada's criminal laws ^[5], a collector mustn't:

- threaten to harm a debtor or their property
- abuse its authority to get money from a debtor
- convey false information with the intent to alarm a debtor

A collector can't be deceptive. For example, they can't send you letters that look like they come from the government when they don't. That's considered false information designed to scare you.

How a collector can contact you

The collector must first send you written notice

Under the law in BC ^[6], a collector can't try to collect payment of a debt until they've sent the debtor written notice. This notice must include:

- The name of the creditor (both the original creditor and the current one if it's different).
- The amount of the debt (both on the date it was first due and the amount currently owing).
- The collector's identity, and its authority for collecting the debt.

However, a collector can call a debtor before sending the notice if the collector is only trying to find out the debtor's home address or email.

What time of day a collector can contact you

Under BC law ^[7], a collector must **not communicate** by telephone or in person with a debtor:

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

This rule also applies to:

- a member of a debtor's family or household
- a relative, neighbour, friend or acquaintance of the debtor
- the debtor's employer
- any guarantor of the debt

When a collector can contact you at work

Under BC law ^[8], a collector can only contact a debtor at work in one of the following situations:

- The collector doesn't have the debtor's home address, phone number or email, and is only trying to get that information.
- The debtor permits the collector to contact them at work.
- The collector has attempted to contact the debtor at home, by phone or by email, but has failed to connect. In this case, the collector must not make more than one verbal attempt to contact the debtor at work.

You can request a collector contact you only in writing

Under BC law ^[8], a debtor can request that a collector communicate with them only in writing. (The debtor must provide their mailing address.)

Alternatively, you can request that a collector communicate directly with your lawyer.

Consumer Protection BC ^[3] provides forms you can fill out and give to a collector to request communication in writing ^[9] or through a lawyer ^[10].

You can dispute the debt

Under the law in BC ^[10], you can **dispute a debt**, inviting the creditor to take the matter to court. You might dispute a debt where:

- the debt was already paid
- it's someone else's debt
- the collector is asking for more than what's owed

Once you notify the collector and the creditor that you dispute the debt, a collector must stop communicating with you.

To dispute a debt, you must contact the collector and the creditor in writing. Consumer Protection BC offers a form you can use to dispute a debt ^[11].

Common questions

Can a collector contact my family and friends?

Only in very limited circumstances. Under the law in BC ^[12], a collector can contact a debtor's friends or family members only to request the debtor's home address, phone number or email. Two exceptions to this rule are when:

1. The person being contacted has guaranteed the debt, and is being contacted about the guarantee.
2. The debtor has given permission to the collector to contact the person about the debt.

It's illegal for a collector to harass a debtor's friends or family members. See above for a description of what amounts to harassment.

Can a collector contact my boss?

Only in two circumstances:

1. For the purpose of confirming your employment, work title and work address. In this case, the collector must first give you notice they intend to bring legal action to recover the debt.
2. If you authorize (in writing) the collector to contact your employer.

Otherwise, a collector must not communicate with your employer.

As well, it's illegal for a collector to harass a debtor's employer. For example, a collector can't repeatedly call your boss to try to get you fired over an unpaid debt.

My child owes money, and the collector is coming to me for payment. Can they do that?

No. A collector cannot try to collect a debt from someone who doesn't owe the money. Consumer Protection BC offers a form to advise a collector you are not the debtor ^[13].

If you *are* responsible for the debt, things are different. For example, if you guaranteed or co-signed a loan, a collector can come to you for payment. In such a case, the collector would still need to follow the rules explained here.

Get help

With an unreasonable collector

Consumer Protection BC licenses collection agents in the province and oversees debt collection practices. They can help if you have a complaint about debt collection.

Toll-free: 1-888-564-9963

Web: consumerprotectionbc.ca ^[14]

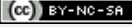
Tip People's Law School's information on dealing with debt collectors ^[15] includes step-by-step guidance on making a complaint about a collector.

With managing your finances

The **Credit Counselling Society of BC** is a non-profit society that helps people better manage their money and debt.

Toll-free: 1-888-527-8999

Web: nomoredebts.org ^[16]

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Warehouse Liens (No. 254)

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.

Understand your legal rights

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

Warenhouses 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 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 (No. 289)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by David Butcher QC ^[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.

Understand your legal options

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:

1. You must be under age 65.
2. 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).
3. 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, no. 288.

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, no. 204.

Get 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^[19]. Clicklaw's HelpMap^[20] 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^[21]. In the Lower Mainland, call 604-822-5791 or visit lslap.bc.ca^[22].

More information

Disability Alliance BC has help sheets on BC disability benefits^[23] and Canada Pension Plan disability benefits^[24].

Toll-free: 1-800-663-1278


Web: disabilityalliancebc.org^[25]

Legal Services Society offers free booklets on "How to Apply for Welfare^[26]" and "Welfare Benefits^[27]" that explain disability assistance from the BC government.

Toll-free: 1-866-577-2525

Web: legalaids.bc.ca^[28]

The **Canadian government** offers a Benefits Finder at canadabenefits.gc.ca^[29] 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 (No. 288)

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.

Understand your legal rights

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:

1. If you disagree with a Ministry decision, you can ask for a **reconsideration**. This is an internal review by the Ministry.
2. 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.
3. 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.

Deal with 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 ^[5] 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 ^[6] and the BC Public Interest Advocacy Centre ^[7] 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 ^[8], 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 ^[9] or contact the ombudsperson by toll-free phone at 1-800-567-3247.

Get 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 ^[10]. Clicklaw's HelpMap ^[11] lists dozens of legal advocates in BC.

Understanding your welfare rights

Legal Services Society offers free booklets on "How to Apply for Welfare ^[12]" and "Welfare Benefits ^[13]".

Toll-free: 1-866-577-2525

Web: legalaid.bc.ca ^[14]

Disability Alliance BC offers help sheets ^[15] and tools ^[16] on applying for disability benefits.

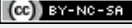
Toll-free: 1-800-663-1278

Web: disabilityalliancebc.org ^[17]

The **Ministry of Social Development and Poverty Reduction** is responsible for welfare in BC.

Toll-free: Call Enquiry BC at 1-800-663-7867

Web: gov.bc.ca/sdpr ^[3]

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Your Bank Account (No. 245)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Bruce Hallsor QC ^[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.

Understand your legal rights

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 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 (no. 247).

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.

Prevent problems

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* ^[2], 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 ^[3]. For more information on unclaimed balances, call 1-800-303-1282 or visit bankofcanada.ca ^[4].

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 ^[5] 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 ^[6] at 1-888-451-4519.

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Part 2. Work & Business

Work

Protection Against Job Discrimination (No. 270)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Bradley Martyniuk, Lindsay Kenney, and Katherine Hardie, BC Human Rights Tribunal in June 2018.

Being treated differently than others based on personal characteristics is called **discrimination**. The law protects you from discrimination at work. Learn your rights and options if someone discriminates against you.

Understand your legal rights

You are protected against discrimination in your job

If you're treated differently than others based on personal characteristics such as the colour of your skin or your sex, it's called **discrimination**. Discrimination can take many forms. Harassment (conduct a reasonable person would consider objectionable or unwelcome), negative differential treatment, or getting unequal pay for similar work are all examples of discrimination.

There are federal and provincial human rights laws that protect workers from discrimination in the workplace. Most employers in BC are covered by the province's *Human Rights Code* ^[1]. But BC employers in certain industries that are federally regulated, such as banks and airlines, are covered by the *Canadian Human Rights Act* ^[2]. This law applies throughout the country. The federal law also applies to employers in the federal public service.

The guidance below focuses on your rights under BC's law. However, many of the same rules apply to workers covered by the federal law.

Tip If your situation involves federal law, contact the Canadian Human Rights Commission ^[3] at 1-888-214-1090. If you don't know whether federal or provincial law applies, you can contact the Commission or the BC Human Rights Tribunal, which deals with complaints under the BC *Human Rights Code*. Either agency can tell you which one can handle your complaint.

Employers must not discriminate based on protected grounds

Under the BC *Human Rights Code* ^[4], an employer must not discriminate against a worker based on these personal characteristics:

- their race, colour, ancestry, or place of origin
- their age (as long as they are age 19 or older)
- their sex (including pregnancy), sexual orientation, or gender identity or expression
- their marital or family status (including family obligations of one person to another, not just parent–child)
- their political belief or religion
- any physical disability (including HIV and AIDS) or mental disability
- any criminal convictions that are unrelated to the job

These are called **protected grounds**. You can not be treated differently than others in the workplace based on a protected ground.

This protection applies in all aspects of employment

The protection against discrimination applies in hiring, firing, wages, benefits, hours, and other terms and conditions of work. This means an employer cannot factor a protected ground into:

- not hiring you,
- not promoting you,
- firing you, or
- discriminating in some other way against you in your job.

The protected ground does not need to be the only or main reason for a decision or action by an employer. It is discrimination if the ground is a factor in the decision or action. For example, if you weren't hired in part because of your religion or sex, that's discrimination.

The protection includes the workplace environment. Employers must provide a discrimination-free workplace. They may be liable for discrimination, including harassment, by their workers in the workplace.

Examples of job discrimination

Examples of job discrimination include an employer:

- turning down a woman for a job featuring physical labour, believing only men are qualified for that type of work
- changing a term of the job to interfere with a worker's parental or family duty
- changing a term of the job to interfere with a worker's religious beliefs
- harassing (or letting other workers harass) a worker over their race, religion, sex or other protected ground
- requiring a worker with a drug addiction to undergo drug testing (unless the employer can justify the testing)
- failing to take reasonable steps to accommodate a deaf employee
- firing a worker because of a mental or physical disability

The employer's duty to accommodate

Employers must also **accommodate** workers to ensure they are treated fairly. Employers must take all reasonable steps to avoid a negative effect on a worker based on a protected characteristic. For example, a job requirement to work on a certain day may hurt someone whose religion prevents them from working on that day. Or, a person with a disability may not be able to perform a certain part of their job because of their disability. In these cases, the employer must make adjustments to accommodate these differences. They must take reasonable steps to remove the harm and support the worker to do the job.

To the point of undue hardship

The employer's duty to accommodate isn't limitless. It extends only to the point where the accommodation starts causing the employer "**undue hardship**".

Many human rights cases involve complaints that an employer has not accommodated a worker's disability. The *Human Rights Code* does not define disability. Cases have said a disability is involuntary, is somewhat permanent, and impairs a person's ability to carry out the normal functions of life. Accommodation requires an employer and a worker (*and* a worker's union, if they are in one) to find a practical solution to accommodate the worker's disability but not create an undue hardship on the employer. An employer may have to accept some hardship. That hardship might involve expense, inconvenience, or disruption — as long as it does not unduly interfere with the business.

An exception for a “bona fide occupational requirement”

An employer may be able to make a decision (such as refusing to hire or promote you) that appears to be discriminatory if they can show the decision was based on a **bona fide occupational requirement**. Such a requirement is a legitimate job-related qualification where the employer cannot accommodate the protected ground without facing undue hardship. For example, a women’s health club could probably limit work cleaning a women’s locker room while women are present to a female cleaner, but if the job involved cleaning after hours, it probably could not limit the job to women.

The protection extends to union membership, employment agencies, and job ads

A **trade union, employers' organization or occupational association** can’t discriminate against you. For example, a union can’t use any of the protected grounds in the *Human Rights Code* ^[5] to stop you from joining the union, to expel or suspend you, or otherwise discriminate against you.

An **employment agency** can’t refuse to refer you for employment based on a protected ground.

As well, under the Code ^[6], the protection extends to **job ads**. Employers cannot advertise in connection with a job a limitation, specification, or preference based on a protected ground. The exception is if the limitation, specification, or preference is based on a bona fide job requirement. Job ads should describe the job and the necessary skills and training, not a certain type of person.

If someone discriminates against you

If someone discriminates against you in the workplace, you have options.

Option 1. Make a human rights complaint

You can **make a complaint** to the BC Human Rights Tribunal. The tribunal deals with complaints under the *Human Rights Code* ^[1]. 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.

You must file a complaint with the tribunal within **one year** of when the discrimination happened. You can get a complaint form from the tribunal’s website at bchrt.bc.ca ^[7] or by calling 604-775-2000 in Vancouver or 1-888-440-8844 elsewhere in BC. Our information on human rights and discrimination protection (no. 236) explains the steps in making a human rights complaint. We explain what to expect from the process shortly.

Option 2. Complain to the Employment Standards Branch

If your employer didn’t follow the *Employment Standards Act* ^[8], you can **make a complaint** to the Employment Standards Branch, the government office that administers that Act. It covers some situations that can also bring the *Human Rights Code* into play. For example, under the *Employment Standards Act*, an employer cannot fire you because you are pregnant. The Employment Standards Branch has different powers than does the Human Rights Tribunal. See our information on if you are fired (no. 241) for more details on making a complaint to the Branch.

Option 3. Sue for wrongful dismissal

If you lose your job because of discrimination, you may decide to sue in court for **wrongful dismissal**. You may be able to recover more in damages than in a human rights complaint. On the other hand, bringing a lawsuit is an involved and expensive process. See our information on if you are fired (no. 241) and starting a lawsuit (no. 165) for more details.

Option 4. 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.

Tip If you complain to the Human Rights Tribunal and also pursue another option (by filing a union grievance, making a complaint under the *Employment Standards Act*, or suing the employer for wrongful dismissal), the tribunal can wait until the other process is finished before dealing with your complaint. It is a good idea to seek **legal advice** on your options. See our information on free and low-cost legal help (no. 430).

If you make a human rights complaint

If you make a complaint to the BC Human Rights Tribunal, you must show that the employer's conduct (or the conduct of another person) had an **adverse impact** on you and that one of the protected grounds was at least a factor in the adverse impact.

If you show that, the employer can try to prove their conduct was **justified** (a bona fide occupational requirement).

The tribunal considers your complaint

If it finds the complaint may involve a violation of the *Human Rights Code*, the tribunal will ask the employer to reply to your complaint. The tribunal can try to help you and the employer settle the complaint. If that is not possible, the tribunal may hold a hearing.

Possible awards

If the tribunal decides your complaint is justified, it can order the employer or other person to stop discriminating and give you your job back. Or it can order them to give you the right to compete for a job.

The tribunal can also order the employer or other person to pay you money (**compensation**) for lost income (including wages and disability and other benefits) and expenses. The tribunal can also order the employer or other person to pay you compensation for injury to your dignity, feelings, and self-respect. In most cases, these damages are under \$10,000, but some damage awards have been much higher, up to \$75,000.

Tip Write down anything the employer says or does that may be discriminatory. Keep your written record — it may be useful evidence later.

Common questions

In a job interview, I was asked about my religious beliefs. Is that allowed?

In a job interview, you can be asked about “protected ground” characteristics as long as the questions aren’t discriminatory. This will depend on the context. For example, you may be asked, as a casual icebreaker, where you’re from. But this question can’t be part of the formal interview.

Are men and women supposed to get the same pay for similar work?

Yes. Generally, employers must not pay a man more than a woman for similar, or substantially similar, work. The reverse of this is also true: employers must not pay a woman more than a man for similar or substantially similar work. Whether work is similar, or substantially similar, depends on many things, including the skill, effort, and responsibility a job requires. Employers can pay different wages to different people based on seniority, merit, and productivity.

If there a mandatory retirement age in BC?

No. The *Human Rights Code* protects all people 19 and over from discrimination because of their age. Among other things, this means you cannot be forced to retire because of your age. The exception is where an employer can show that an age limit is a bona fide occupational requirement, because of the duties or needs of the work or because of safety issues or dangers.

Can an employer make me give up my rights under the *Human Rights Code*?

No. The Code does not let people agree to give up their rights. An employer cannot ask you to sign a contract that says the employer can discriminate against you.

Are there time limits for filing a human rights complaint or suing?

Yes, there are time limits in both cases. You have one year from when the discrimination occurs to file a complaint with the Human Rights Tribunal. If you wait longer than one year, your complaint may still be accepted if the tribunal believes it is in the public interest to accept it and no party will be prejudiced because of the delay. There are also time limits for suing in court — see our information on starting a lawsuit (no. 165) for details.

Get help

With a discrimination complaint

The **BC Human Rights Clinic** may be able to help you file a complaint with the Human Rights Tribunal and help you at a hearing. The clinic is operated by the Community Legal Assistance Society (CLAS).

Telephone: 604-622-1100 in Vancouver

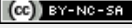
Toll-free: 1-855-685-6222

Web: bchrc.net ^[9]

In the Greater Victoria area, the **University of Victoria Law Centre** provides help for eligible human rights complainants and respondents.

Telephone: 250-385-1221

Web: thelawcentre.ca ^[10]

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Sexual Harassment (No. 271)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Laura Track ^[1], Community Legal Assistance Society, and Katherine Hardie ^[2], BC Human Rights Tribunal in February 2018.

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.

Understand your legal rights

Sexual harassment is unwelcome conduct of a sexual nature

Sexual harassment can take many forms. It can be physical conduct such as grabbing, kissing or other unwelcome touching that has a sexual connotation. It can be verbal conduct such as making derogatory comments about a person's appearance, telling crude jokes, or making sexual propositions, including by email or online. It can be something in the environment such as displaying offensive pictures at work.

Sexual harassment can occur in many different settings. It can occur in the workplace, interfering with a worker's ability to do their job, or creating a hostile or offensive work environment. It can affect a tenant's rental housing situation. It can impact a student's education.

Examples of sexual harassment

Sexual harassment can include the following conduct:

- sexual behaviour you feel you must accept to keep your job, get a promotion, get a good grade, keep your apartment, or get repairs done
- unwanted touching, patting, or grabbing
- the unwanted display or sharing of pornography or suggestive pictures
- sexual leering, teasing, or telling obscene jokes (this could include sharing obscene jokes by email or other electronic means)

- making rude comments about someone's gender presentation or treating someone badly because they don't fit with sex-role stereotypes
- an invitation to dinner or some other social activity, from a supervisor, teacher, or landlord who implies you must accept it or face trouble in your job, school, or apartment
- an unwanted invitation from a supervisor, co-worker, teacher, or landlord that is continually repeated

Not all invitations are sexual harassment. An invitation can be an innocent, one-time request that you can accept or reject without any trouble.

Several laws protect people from sexual harassment

The BC *Human Rights Code* ^[3] protects people from sexual harassment and other forms of discrimination in a number of areas. Our information on human rights and discrimination protection (no. 236) explains that when someone is treated differently than others based on personal characteristics such as the colour of their skin or their age, it's called **discrimination**. The *Human Rights Code* protects people from being treated differently based on their sex, sexual orientation, or gender identity or expression in several areas: in the workplace, in rental housing, by service providers, and in publications. This includes the right to be free from sexual harassment in these contexts.

The *Workers' Compensation Act* ^[4] deals with harassment, which includes sexual harassment. A worker who is sexually harassed at work and suffers a mental disorder from it, may be able to get **workers' compensation**. Employers must have policies to prevent and respond to harassment and bullying in the workplace.

If sexual harassment is serious enough, it may be a crime under the *Criminal Code* ^[5]. The offence of **criminal harassment** prohibits harassing behaviour that a person knows (or is reckless) is harassing the victim and causes them to reasonably fear for their safety. See our information on criminal harassment (no. 206) for details.

A target of sexual harassment may also be able to sue the person harassing them for damages to compensate them.

Sexual harassment in the workplace

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.

"Gender-based" refers to comments or behaviour that relate specifically to gender. The offensive behaviour may reference gender (for example, use of gender-based insults or slurs) or the behaviour may occur because of gender (for example, an offensive joke does not refer to sex, but the joke is played to embarrass the person because she is a woman).

Employers may be responsible for the harassment if they allow some workers to sexually harass others, instead of stopping the harassment.

If you are sexually harassed

React immediately and directly, if possible. Sometimes you can talk to the person harassing you. The best response may be to tell the person you don't welcome or accept the behaviour, and if they repeat it, you will report it. But sometimes, talking to the harasser won't work.

Talk to your employer

If the harassment takes place at work, **talk to your supervisor or human resources person**. Find out your employer's policy on human rights complaints. If you belong to a union, talk to the union steward. You have a right under the collective agreement between the union and employer to complain to the union about sexual harassment by the employer, a supervisor, a co-worker, or a customer.

Make a human rights complaint

If the harassment continues, you can **make a human rights complaint** to the BC Human Rights Tribunal ^[6]. The tribunal deals with complaints under the *Human Rights Code* ^[3]. It operates like a court but is less formal.

You must file a complaint with the tribunal within **one year** of when the harassment happened. Our information on human rights and discrimination protection (no. 236) explains the steps in making a human rights complaint.

If the *Human Rights Code* covers your complaint, the tribunal will ask the other person to reply to your complaint. The tribunal will try to help you and the other person resolve the complaint. If that's not possible, the tribunal may hold a hearing. If your complaint is justified, the tribunal can make orders to stop the harassment and pay you money for lost income (including wages and disability and other benefits) and expenses. The tribunal can also order the person who harassed you to compensate you for injury to your dignity, feelings, and self-respect.

The *Human Rights Code* prohibits anyone from threatening you or retaliating against you for filing a complaint.

Sue for wrongful dismissal

If you leave your job because of the harassment, you may also be able to sue in court for **wrongful dismissal**. You may be able to recover more in damages than in a human rights complaint. On the other hand, bringing a lawsuit is an involved and expensive process. See our information on if you are fired (no. 241) and starting a lawsuit (no. 165) for more details.

Tip Make and keep a written record of every incident of harassment — when it occurs. Include the date and location, who else was present, and the details of the harassment. Tell someone else, like a trusted co-worker, friend, or family member that you are being harassed. Your written record, and the fact you told someone, may be important evidence if you file a complaint or sue.

Get help

With a harassment complaint

The **BC Human Rights Clinic** may be able to help you file a complaint with the Human Rights Tribunal and help you at a hearing. The clinic is operated by the Community Legal Assistance Society (CLAS).

Telephone: 604-622-1100 in Vancouver


Toll-free: 1-855-685-6222

Web: bchrc.net^[7]

In the Greater Victoria area, the **University of Victoria Law Centre** provides help for eligible human rights complainants and respondents.

Telephone: 250-385-1221

Web: thelawcentre.ca^[8]

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Farm Workers' Wages (No. 273)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jennifer Hagen ^[1], Employment Standards Branch in January 2018.

Farm workers are covered by most sections of the main provincial law that protects workers in BC. But there are exceptions. Some of them involve how **farm workers are paid**.

Understand the legal framework

Who is considered a farm worker under the law

Under the law in BC ^[2], a **farm worker** is a person who works in a farming, ranching, orchard, or agricultural operation, and whose main responsibilities are:

- growing or picking crops, or raising or slaughtering animals,
- cultivating land,
- using farm equipment,
- cleaning, sorting, or packing crops, or
- selling farm products on site.

A farm worker does not include a worker who processes the products of an operation, works in aquaculture or a retail nursery, or works as a landscape gardener.

Farm workers are covered by most sections of the *Employment Standards Act* ^[3], the main provincial law that protects workers in BC and sets minimum standards employers must meet. See our information on farm workers' rights (no. 274) for more on their rights under this and other laws.

Minimum wage for farm workers

Minimum wage is the lowest wage an employer can pay a worker. The minimum wage for farm workers depends on the way in which they are paid.

Farm workers who harvest specific crops by hand may be paid by **piece rate**. The minimum piece rate is set by the BC government and varies depending on the crop. For example, the minimum piece rate is different for harvesting a pound of raspberries than for a pound of beans. A bin of apples and a bin of grapes have different rates.

All other farm workers, whether they are paid hourly, by salary, or by any other method must be paid at least the **general minimum wage**. As of June 1, 2019, the general minimum wage is \$13.85 per hour.

The Employment Standards Branch website lists the current minimums; visit gov.bc.ca/employmentstandards ^[4].

How often workers must be paid

An employer cannot wait until the end of the harvest season to pay farm workers. An employer must pay workers at least **twice a month**. A pay period cannot be longer than 16 days.

Hourly and salaried farm workers must be paid all wages within eight days of the end of the pay period.

Farm workers paid by piece rate may be paid at least 80% of total estimated wages owing at the middle of each month. All remaining wages must be paid within eight days of the end of the month.

If a farm worker loses or leaves their job

If an employer fires a farm worker or lays them off, the employer must pay the worker all wages owing within **48 hours** of letting them go.

If a worker quits, the employer must pay them all wages owing within **six days** of when they quit.

Vacation pay and statutory holiday pay

Most workers in BC are entitled to **vacation pay**. This is an extra 4% or 6% of a worker's earnings, to provide them with pay while absent during vacation. (The percentage depends on how many years they've worked.)

Farm workers paid by piece rate are **not** entitled to vacation pay, as it's included in the piece rate. The exception is for farm workers harvesting daffodils — the piece rate for them does not include vacation pay.

Farm workers paid by the hour or by a salary (or who pick daffodils) are entitled to vacation pay, as well as vacation leave. They're entitled to two weeks' vacation after working for 12 consecutive months, and three weeks' vacation after five years of employment.

All farm workers are excluded from **statutory holiday** entitlements.

Wage statements on paydays

On paydays, an employer must give each farm worker a written wage statement that includes this information:

- the employer's name and address
- the number of hours worked
- the worker's wage rate, whether hourly, salary, flat rate, piece rate, commission or other incentive basis
- any money, allowance or other payment the worker is entitled to
- the amount and purpose of each deduction
- how the worker's earnings are calculated if they are paid other than by the hour or by salary
- the worker's gross and net wages, and any vacation days taken and how much vacation entitlement remains

As well, the employer must keep detailed, written payroll records for each worker. The records must be in English and kept at the employer's principal place of business. The records must be kept for two years after a worker's employment ends.

Tip Keep your own records of the hours you work and the wages you get. If you think you were not paid enough, your own records will help prove the hours you worked and wages you got.

If you work for a farm labour contractor

A **farm labour contractor** provides workers to agricultural producers. The workers might work on a variety of farms owned by different producers.

If a farm labour contractor hires you, the contractor — not the farmer — is your employer. Farm labour contractors must have a licence from the BC government and follow certain rules. They must deposit money with the government to ensure they will follow the rules. The government can use the deposit to pay farm workers who are not paid by a contractor for work they've done.

A farm labour contractor must clearly display the wages being paid to farm workers, in multiple places — at all work sites and in all vehicles used to transport workers. The contractor must pay a worker's wages directly to their bank account by direct deposit. The contractor must also keep a record showing the dates worked by each worker, the crop picked each day, and the volume or weight of crop picked each day by each worker.

All vehicles used by farm labour contractors to take farm workers to a job site must be maintained to certain safety levels, and have a **vehicle safety notice** posted in them. The notice says all passengers must be seated and, in vehicles requiring seatbelts, all passengers must each wear one seatbelt.

Common questions

Am I entitled to overtime pay?

No, farm workers do not get overtime pay. The law does not limit the hours that farm workers can work, but it does say an employer cannot let a worker work excessive hours or hours that could harm their health or safety.

Do I get 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 (or departure) point to the worksite and back to the starting point (or to another place no further than the starting point and acceptable to you).

If work is not available because of bad weather or another cause beyond the control of the farm labour contractor, you do not get any minimum daily pay.

Can a contractor deduct money from my wages for hiring me or finding me work?

No. A farm labour contractor must not charge a person for hiring or obtaining work for that person.

Can a contractor charge me for gas, travel costs, or GST?

No. An employer cannot require a worker to pay any portion of an employer's cost of doing business. As well, an employer cannot deduct or offset a worker's earnings except for statutory deductions required by law (that is, income tax, Canada Pension Plan contributions, and Employment Insurance contributions), or with the written authorization of the worker.

Are there different minimum wage rates for children?

No. The minimum wage for workers is the same for everyone, regardless of age. An employer who wishes to hire a young person aged 12 to 14 years old must get written consent from the young person's parent or guardian. Children under 12 can work only if they get permission from the Director of Employment Standards.


Get help

With more information

The **Employment Standards Branch** is the provincial government office that administers the BC law that sets minimum standards for workers. The Branch website includes fact sheets on farm labour contractors ^[5] and farm workers ^[6], in several languages other than English. You can also call the Branch's **Agricultural Compliance Hotline** at 604-513-4604.

Toll-free: 1-800-663-3316

Web: gov.bc.ca/employmentstandards ^[4]

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Farm Workers' Rights (No. 274)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jennifer Hagen ^[1], Employment Standards Branch in January 2018.

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**.

Understand the legal framework

Who is considered a farm worker under the law

Under the law in BC ^[2], a **farm worker** is a person who works in a farming, ranching, orchard, or agricultural operation, and whose main responsibilities are:

- growing or picking crops, or raising or slaughtering animals,
- cultivating land,
- using farm equipment,
- cleaning, sorting, or packing crops, or
- selling farm products on site.

A farm worker does not include a worker who processes the products of an operation, works in aquaculture or a retail nursery, or works as a landscape gardener.

Farm workers' rights under BC's main employment law

Farm workers are covered by most sections of the *Employment Standards Act* ^[3], the main provincial law that protects workers in BC and sets minimum standards employers must meet. But there are exceptions.

For example, farm workers are excluded from **statutory holiday** entitlements. They don't get statutory holiday pay or time off with pay for the 10 statutory holidays in BC.

Another, more nuanced example deals with **vacation pay**. Most workers in BC are entitled to an extra 4% or 6% of earnings, to provide them with pay while absent during vacation. (The percentage depends on how many years they've worked.)

Farm workers paid by the hour or by a salary are entitled to vacation pay, as well as vacation leave. They're entitled to two weeks' vacation per year after working for 12 consecutive months, and three weeks' vacation per year after five years of employment.

Meanwhile, farm workers who harvest specific crops by hand may be paid by the **piece**. Farm workers paid by piece rate are not entitled to vacation pay, as it's included in the piece rate. (The exception is for farm workers harvesting daffodils — the piece rate for them does not include vacation pay.)

Tip Our information on farm workers' wages (no. 273) provides more detail on wages, including minimum wage, how often wages must be paid, and overtime pay.

If an employer doesn't follow the minimum standards

If an employer doesn't follow the rules in the *Employment Standards Act* ^[3], a worker can **complain** to the Employment Standards Branch. The Branch is the government office that enforces the Act.

There's no charge to make a complaint. But first, a worker must try to resolve the problem directly with their employer by using the Branch's self-help kit ^[4]. If they can't solve the problem with their employer, they can file a complaint with the Branch in any of the following ways:

- By filling out the online complaint form ^[5].
- By printing the complaint form ^[6] from the Branch website, filling it out, and mailing or faxing it, or dropping it off at a Branch office.
- By filling out the complaint form at a Branch office ^[7].

To contact the Branch, call 1-800-663-3316 or visit gov.bc.ca/employmentstandards ^[8].

Tip You have six months to file a complaint from the time the problem took place or your employment ended. If you miss the six-month time limit for filing with the Branch, and it does not accept your late complaint, you may be able to sue in court — but only for unpaid wages and severance pay.

Farm workers are eligible for workers' compensation benefits

Workers' compensation is a BC government program that pays workers who are hurt on the job or get sick because of something that happened at work. The program is run by Work Safe BC ^[9]. Employers, including farmers and farm labour contractors, must pay into the program for all their workers.

If a farm worker is hurt on the job, or gets sick because of their job, they should immediately:

- report the injury or illness to their employer or someone in charge,
- tell their employer and doctor (if they need a doctor) that they will be applying for workers' compensation benefits, and
- apply for benefits to Work Safe BC ^[10].

There are time limits to apply for benefits — see our information on workers' compensation (no. 285) for details.

The employer must send a report to Work Safe BC to say a worker has been hurt on the job or gotten sick on the job because of their work. Work Safe BC's number is 1-888-621-7233.

WorkSafe BC also has rules on occupational health and safety. For more information, see the Work Safe BC website at worksafebc.com ^[9].

Farm workers may be eligible for Employment Insurance benefits

Farm workers may be able to get **Employment Insurance** benefits if they can't find work or if they are sick or pregnant. Workers contribute to Employment Insurance with money deducted from their paycheque.

Farm workers often have trouble getting Employment Insurance benefits because they may not work enough hours in a year to be eligible. The number of hours needed to make a claim varies, depending on where a worker lives.

When you leave a job, ask your employer for your **Record of Employment**, also known as a "separation slip". You can apply for Employment Insurance even if you don't have your records of employment, but it makes things much easier if you do. The Canada Employment Centre may be able to help you if you can't get your Record of Employment.

See our information on applying for Employment Insurance benefits (no. 282) for more information on EI.

Tip Keep your own, up-to-date records of the hours you work — these records will help in applying for Employment Insurance benefits if your employer hasn't kept good records.

Farm workers may be eligible for Canada Pension Plan disability benefits

If a farm worker paid into the **Canada Pension Plan** and develops a severe and long-term **disability** that prevents them from working, the plan pays them and their dependent children a monthly pension.

You can get these benefits until you are age 65. Normally, you must have contributed to the Canada Pension Plan for four of the past six years, but there are exceptions and you may qualify even if you haven't done this.

Call Employment and Social Development Canada at 1-800-277-9914 or visit canada.ca/cpp^[11] for more information on Canada Pension Plan disability benefits.

If a worker is subjected to discrimination or sexual harassment

All workers have the right to be treated fairly and not be **discriminated** against.

As well, all workers have the right to work free from **sexual harassment**. Sexual harassment means any unwelcome sexual behavior that affects your working conditions.

For more details, see our information on protection against job discrimination (no. 270), and sexual harassment (no. 271).

If you have a complaint about discrimination or sexual harassment, you can call the BC Human Rights Tribunal^[12] at 604-775-2000 in the Lower Mainland or 1-888-440-8844 elsewhere in BC.

Get help

With appeals

You can appeal most government decisions, such as a decision to deny benefits. 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^[13]. Clicklaw's HelpMap^[14] lists dozens of legal advocates in BC.


At **student legal clinics** in the Lower Mainland and Victoria, law students help people who cannot afford a lawyer. In Victoria, call 250-385-1221 or visit uvic.ca/law/about/centre^[15]. In the Lower Mainland, call 604-822-5791 or visit lslap.bc.ca^[16].

More information

The **Employment Standards Branch** is the provincial government office that administers the BC law that sets minimum standards for workers. The Branch website includes fact sheets on farm labour contractors^[17] and farm workers^[17], in several languages other than English. You can also call the Branch's **Agricultural Compliance Hotline** at 604-513-4604.

Toll-free: 1-800-663-3316

Web: gov.bc.ca/employmentstandards^[8]

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Workers' Compensation (No. 285)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Tim Martiniuk ^[1], Workers' Compensation Appeal Tribunal (WCAT) in January 2018.

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.

Understand the legal framework

Workers' compensation pays injured workers and promotes workplace safety

Workers' compensation is a BC government program under the *Workers Compensation Act* ^[2]. It is run by Work Safe BC ^[3] and is paid for by employers. The program pays workers for some of their lost income and certain expenses if they suffer a workplace injury or disease — regardless of who was at fault. The program pays a worker's family if the worker dies from the injury or disease.

The program also helps injured workers get back to work. As well, it promotes health and safety in the workplace, including preventing and responding to workplace bullying and harassment (including sexual harassment).

Who can get workers' compensation

The workers' compensation program covers almost all workers in British Columbia, both full- and part-time, including office workers, farm workers, performers, and domestic workers.

Unregistered labour contractors may also be entitled to benefits. Independent contractors can register with the program for personal optional protection. If they don't do this, they are not entitled to compensation for workplace injuries or diseases.

If you suffer a workplace injury or disease, you may be able to get a range of disability benefits, health care benefits, and vocational rehabilitation benefits. We explain the various types of benefits shortly.

A workplace injury or disease can include a mental disorder. For example, a worker who is sexually harassed at work and suffers a mental disorder from it, may be able to get compensation (even if the harassment did not involve a physical injury).

Benefits if you suffer a temporary disability

If you suffer a temporary disability, you can qualify for **short-term disability benefits** and **wage loss benefits**.

These benefits pay you, at least partly, for income you lose because of a workplace injury or disease. If you are injured and unable to work, the benefits are usually 90% of your net wages at the time of your injury or disease. These benefits pay you for lost income, up to a maximum wage (adjusted each year). If you remain disabled after 10 weeks, Work Safe BC may recalculate your benefits based on your net income in the 12 months before your injury or disease.

Wage loss benefits continue until you are no longer temporarily disabled or your condition becomes stable.

Benefits if you are permanently disabled

If you are permanently disabled, totally or partly, you may be able to get **permanent disability benefits** and **retirement benefits**.

Work Safe BC won't decide about any permanent disability until your condition becomes stable. "Stable" means your condition stays the same and the medical evidence indicates it will probably not get any better or worse over the next 12 months.

The focus is on whether and how your condition impairs your future earning capacity. If Work Safe BC finds it does, they look at providing a permanent disability award.

How the benefits are calculated

Permanent disability benefits are paid in one of two ways: a "permanent functional impairment" award (called a PFI award) or a "loss of earnings" award (called an LOE award). Usually, Work Safe BC pays a PFI award, to compensate you based on the kind of injury you have. But if Work Safe BC finds that a PFI award does not properly compensate you — because your disability reduces your ability to continue working in your occupation to an exceptional extent — it may pay an LOE award.

How the benefits are paid

Normally, if long-term benefits are more than \$200 a month, they are paid monthly. If benefits are less than \$200 a month, you will probably get a lump-sum payout. Even if Work Safe BC plans to pay your benefits monthly, you can apply for a lump-sum payout of all or part of your award.

Health care and vocational rehabilitation benefits

Health care benefits pay for doctors, hospitals, nursing care, home care, prescription drugs, and other health care professionals like physiotherapists, dentists, and chiropractors. They also cover other expenses, including medical supplies, appliances like crutches, hearing aids, dentures, and eyeglasses, as well as modifications to your home, vehicles, and workplace.

If Work Safe BC decides you cannot return to your pre-injury job because of your injury and your employer cannot offer a modified job, you may be entitled to **vocational rehabilitation services**. These benefits are for vocational retraining, workplace redesign or job modification, training on the job, and job search activity.

Tip If you suffer a workplace injury or disease that eventually forces you to change your occupation, you should think about your future educational and vocational needs. You should ask Work Safe BC for rehabilitation guidance to help you plan your future. You have to take charge of your own rehabilitation. If you have a good idea of what you want, you explain it, and it is appropriate, the more likely you are to get it.

Benefits for families of workers

Families of workers who are killed on the job or die from a workplace injury or disease, may qualify for benefits.

The possible benefits include:

- A monthly pension benefit for the surviving spouse, based on the worker's earnings. This benefit continues for the spouse's lifetime.
- A monthly benefit for a dependent child up to the age of 19. Benefits may continue to age 25 if the child regularly attends post-secondary school.
- Grief and vocational counselling for the surviving spouse, and grief counselling for any dependent children.
- Funeral benefits.

How to apply for benefits

Step 1. Report the injury or illness immediately

If you suffer a workplace injury or illness, report it immediately to your employer, your doctor and Work Safe BC. You can report the injury to Work Safe BC:

- By phone by calling Teleclaim at 1-888-967-5377.
- Online at worksafebc.com ^[4], by selecting "Report a workplace injury or disease" to input your information.
- By completing the print **application for compensation and report of injury** form, and mailing or faxing it to Work Safe BC. You can get the print form from your employer, your union, or Work Safe BC ^[5].

Your employer and your doctor must report your injury or disease to Work Safe BC within three days of when you tell them about it.

Step 2. Apply for benefits

You must apply to Work Safe BC if you want benefits. Just reporting an injury to your employer and doctor is not enough. You can apply for benefits on the Work Safe BC website ^[4], or by completing the **application for compensation and report of injury** form, and mailing or faxing it to Work Safe BC.

You have **one year** from your accident or disease to apply for compensation. After that, you may lose your right to benefits unless special circumstances stopped you from applying on time.

What happens when you apply

A Work Safe BC officer will examine your claim and decide if you get benefits, and if so, the type and amount.

A decision on whether you get benefits can be complicated. You can discuss your case with your union, a lawyer, or the **Workers' Advisers Office**. Workers' advisers work for the Ministry of Labour to help workers with their claims. They are separate from Work Safe BC and there's no charge for their services. To reach the Workers' Advisers Office, visit gov.bc.ca/workersadvisers ^[6] or call 604-713-0360 in Vancouver and 1-800-663-4261 elsewhere in BC.

Step 3. Ask for a review

If Work Safe BC decides you are not eligible for benefits, or if you don't understand its decision, ask the Work Safe BC officer handling your claim for an explanation. Ask for a decision letter if you didn't already get one. If you're still not satisfied, you can ask Work Safe BC for a **review of the decision**.

In a few scenarios, you can't ask for a review but need to appeal directly to the Workers' Compensation Appeal Tribunal. For example, if you are challenging a decision to reopen (or not reopen) a matter, or challenging a decision on a discriminatory action complaint (where an employer punished you for raising safety concerns at work). Appeals are explained shortly.

Time limit to ask for review

You must ask for a review within **90 days** of the date of Work Safe BC's decision letter or, in some cases, within 90 days of the date when Work Safe BC told you its decision orally or stopped paying you.

The review process

When you ask for a review, Work Safe BC should automatically give you a copy of your claim file and you can use the information in it for your review. After you request a review, you will receive a letter setting a time to make written submissions. The review division does not normally hold oral hearings.

The review division considers the written submissions and Work Safe BC's file and gives its decision, usually within 150 days. The Work Safe BC website ^[7] has more information on reviews. The phone numbers for the review division are 604-214-5411 in the Lower Mainland and 1-888-922-8804 elsewhere in BC.

Tip While your review is being considered, if you feel that Work Safe BC has treated you unfairly, you can also complain to Work Safe BC's Fair Practices Office and to the Ombudsperson of BC ^[8] (who can be reached at 1-800-567-3247).

Step 4. Appeal the review decision

If you disagree with the decision on the review, you can usually **appeal** to the Workers' Compensation Appeal Tribunal^[9]. You cannot appeal review decisions on some issues, such as vocational rehabilitation benefits, certain types of disability awards, and whether benefits are paid as a lump sum.

If you decide to appeal, you must do so within **30 days** of the decision of the review division. For details on the process, see our information on appealing a workers' compensation decision (no. 286).

Get help

With a claim

The **Work Safe BC** website includes extensive information on workers' compensation benefits, how to apply for benefits, and the process to review or appeal a decision.

Telephone: 604-231-8888 in the Lower Mainland

Toll-free: 1-888-967-5377

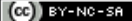
Web: worksafebc.com^[3]

The **Workers' Advisers Office** is a government office that helps workers with claims for workers' compensation benefits. They are separate from Work Safe BC and there's no charge for their services.

Telephone: 604-713-0360 in Vancouver

Toll-free: 1-800-663-4261

Web: gov.bc.ca/workersadvisers^[6]

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Appealing a Workers' Compensation Decision (No. 286)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Tim Martiniuk ^[1], Workers' Compensation Appeal Tribunal (WCAT) in January 2018.

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.

Understand your legal rights

Challenging a decision of Work Safe BC

Workers' compensation is a BC government program run by Work Safe BC ^[2]. It pays benefits to workers if they suffer a workplace injury or disease, and promotes health and safety in the workplace. (We explain the workers' compensation program in no. 285.)

If you disagree with a decision Work Safe BC makes on claims, assessments, or health and safety matters, you can request a **review** of the decision. If you're still not satisfied, you can appeal to a tribunal. We explain the process shortly.

You can get help or advice

You can challenge a Work Safe BC decision on your own. Or you might want to ask for assistance from someone familiar with the workers' compensation system, such as a union representative, a lawyer, or a workers' adviser.

If you are a union member, discuss your case with the union. They may have a representative who can help you, or they may hire a lawyer for you in a serious case. You may want to hire your own lawyer anyway. Make sure the lawyer has experience in workers' compensation.

If you don't get help from a union or a lawyer, you should contact the **Workers' Advisers Office** of the BC Ministry of Labour. Workers' advisers are separate from Work Safe BC and there's no charge for their services. They help workers apply for reviews and appeals, and they have detailed information on their website. Visit gov.bc.ca/workersadvisers ^[3] or call 604-713-0360 in Vancouver and 1-800-663-4261 elsewhere in BC.

For employers, the Employers' Advisers Office ^[4] provides independent advice, assistance, and representation to employers concerning workers' compensation issues. There is no charge for their services.

The steps in the process

Step 1. Ask for a review

The first step in challenging a Work Safe BC decision is to ask for a **review** of the decision. The Work Safe BC website at worksafebc.com ^[5] explains how to ask for a review. The phone numbers for the review division are 604-214-5411 in the Lower Mainland and 1-888-922-8804 elsewhere in BC.

In a few scenarios, you can't ask for a review but need to appeal directly to the Workers' Compensation Appeal Tribunal. For example, if you are challenging a decision to reopen (or not reopen) a matter, or challenging a decision on a discriminatory action complaint (where an employer punished you for raising safety concerns at work). Appeals are explained shortly.

Because Work Safe BC routinely issues some decisions orally, the review division accepts review requests from oral decisions.

Time limit to ask for a review

A worker must ask for a review within **90 days** of the date of Work Safe BC's decision letter or, in some cases, within 90 days of the date that Work Safe BC told the worker its decision orally or stopped paying them.

An employer who wants to ask for a review of a decision or an order issued by Work Safe BC on an occupational health and safety matter, has **45 days** to ask for a review.

Tip While your review is being considered, if you feel that Work Safe BC has treated you unfairly, you can also complain to Work Safe BC's Fair Practices Office and to the Ombudsperson of BC ^[6] (who can be reached at 1-800-567-3247).

Step 2. Prepare your case

After you request a review, you will receive a letter setting a time to make **written submissions**. Work Safe BC's review division does not normally hold oral hearings.

To prepare your case, carefully review your Work Safe BC file. You have the right to see it and you should automatically get it when you ask for a review.

What you need to show

Reviews and appeals are serious. In bringing a review or appeal of a Work Safe BC decision, you need to show clearly what's wrong with the decision. You may need new evidence to support your appeal. You may need more evidence than you had when you first made your claim, such as medical evidence from doctors and specialists. It's important to get all the evidence you need, as soon as you can.

Step 3. Appeal the review decision

The review decision is usually made within 150 days. If you disagree with the review decision, you can usually **appeal** to the Workers' Compensation Appeal Tribunal. You cannot appeal review decisions on some issues, such as vocational rehabilitation benefits, certain types of disability awards, and whether benefits are paid as a lump sum.

Time limit to appeal

If you decide to appeal, you must do so within **30 days** of the decision by the review division. (For cases that go directly to the tribunal, the time limit is 90 days.)

The tribunal's website at wcat.bc.ca ^[7] has information guides on how to appeal and how to prepare for an appeal hearing.

You can appeal by phone or letter, or you can use the **notice of appeal** form on the tribunal's website. If you appeal by phone, you must follow it up with the form within 21 days. The tribunal's phone numbers are 604-664-7800 in the Lower Mainland and toll-free 1-800-663-2782 elsewhere in BC.

The tribunal will follow up with you

The tribunal will send you a letter to confirm it received your appeal and give you an appeal number. You should always include this appeal number, and your Work Safe BC file number, in any material you submit. The tribunal will ask you to make your submissions in writing or tell you the date for your oral hearing. Normally, the tribunal decides a case within 180 days of when it receives your claim file from Work Safe BC.

The tribunal must apply the law and the policies of Work Safe BC that apply to your appeal. You should find out what policies apply to your case. You can see previous tribunal decisions ^[8] on its website.

Common questions

How can I get a copy of my claims file?

Through the Work Safe BC website, workers can view all the information associated with their claim. You will need your claim number and your personal access number. You can also request a copy of your claim file from Work Safe BC. You can send a written **request for disclosure** form, available on the Work Safe BC website ^[9], to:

Disclosure Department
Work Safe BC
PO Box 4700 Stn Terminal
Vancouver BC V6B 1J1
Fax: 604-233-9777

All your personal information is usually in your claim file, but sometimes other Work Safe BC records also have personal information. To see these records, send a written request to:

Freedom of Information and Protection of Privacy Office
Work Safe BC
PO Box 2310 Stn Terminal
Vancouver, BC V6B 3W5
Phone: 1-866-266-9405
Fax: 604-279-7401

Get help

With more information

The **Work Safe BC** website includes extensive information on workers' compensation benefits, how to apply for benefits, and the process to review or appeal a decision.


Telephone: 604-231-8888 in the Lower Mainland
Toll-free: 1-888-967-5377
Web: worksafebc.com ^[2]

The **Workers' Advisers Office** is a government office that helps workers with claims for workers' compensation benefits. They are separate from Work Safe BC and there's no charge for their services.

Telephone: 604-713-0360 in Vancouver

Toll-free: 1-800-663-4261

Web: gov.bc.ca/workersadvisers ^[3]

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If You Are Fired: Wrongful Dismissal (No. 241)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jennifer Hagen ^[1], Employment Standards Branch in October 2017.

Generally, your employer can **fire** you whenever they want. But they need to give you notice, or pay you instead. Among the exceptions: if they fire you for “just cause”.

Understand your legal rights

Other laws apply if you quit or were laid off

This information applies if you were fired (dismissed) from your job, not if you quit (voluntarily resigned). If you quit, see our information on if you quit your job (no. 280). If you’ve been temporarily let go from your work, see our information on getting temporarily laid off (no. 281).

Your legal rights depend on the type of worker you are

Your rights when you lose a job depend in part on the type of worker you are seen to be under the law.

Rights under provincial law

A BC law, the *Employment Standards Act* ^[2], sets minimum standards for employers in letting workers go. This law applies to “employees” — which covers most but not all workers in the province.

For example, it doesn’t apply to workers in **industries regulated by the federal government**, such as banks and airlines. Federal laws apply to them.

Nor does it apply to **union workers**. If you belong to a union, the collective agreement between your union and the employer has rules about how workers can be let go.

As well, this provincial law doesn't apply to **independent contractors**. These are people who are self-employed, who run their own business. If you're an independent contractor, your contracts with the people you work for control the situation.

Tip Many factors go in to deciding whether someone is an **independent contractor** or an **"employee"**. Calling a person an independent contractor does not decide the issue. Factors that come into play include who is directing the work, who has a chance of profit or risk of loss, who provides the tools needed to do the work, and whether there is an ongoing relationship.

Rights under your employment contract

Your employment contract gives you certain rights. (Note there's **always** a contract between a worker and an employer, even if nothing is in writing.)

Your contract rights may be greater than your rights under the provincial employment law (if that law applies to you, that is). But your contract rights to certain things, such as pay and notice, cannot be **less** than the minimum standards the law sets. If they are, you are still entitled to the minimum protections of the provincial law. More on this shortly.

You can be fired for "just cause"

Under the law, an employer has the right to fire a worker who does something seriously wrong. This is called being fired for **"just cause"**. If you are fired for just cause, the employer doesn't have to give you notice of the dismissal (or pay instead of notice).

What is just cause?

"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
- put yourself into a conflict of interest (for example, setting up a business to compete with your employer)
- use drugs or alcohol in a way that interferes with your job performance
- intentionally disobey your boss
- repeatedly breach a clear workplace policy or rule

Unsatisfactory performance is not just cause

Generally, if the employer is simply dissatisfied with a worker's job performance, that doesn't constitute just cause. To let a worker go for poor performance, an employer must show they established a reasonable performance standard, communicated that to the worker, and offered the worker reasonable time and training to meet the standard.

Look carefully to see if there is just cause

Some employers may try to avoid giving a worker notice of dismissal (or pay instead of notice) by saying there is just cause to fire them, even if there isn't. If you are fired and the employer says there is just cause, look carefully at the employer's reasons for firing you to see if there really is just cause. For example, if you are fired because your employer is losing money, going out of business, or reorganizing, or because your job becomes redundant or is eliminated by technological change, those things are not just cause. A personality conflict between you and your boss may not be just cause — it depends on the facts. In all these cases, the employer must give you notice of your dismissal (or pay instead

of notice). We explain the notice requirements shortly.

Tip If your employer fires you for just cause, they have to tell you what the reason is. For more on what amounts to just cause, see People’s Law School’s information on if you are fired ^[3].

You can’t be fired for doing something you have the legal right to do

Your employer can’t fire you for doing something that’s permitted under the *Employment Standards Act* ^[2]. For example, you can’t be fired for any of the following:

- Taking pregnancy or parental leave, and returning to work at the end of your leave.
- Refusing to sign an agreement that will affect your rights (for example, an agreement about how you’ll be paid for overtime).
- Filing a complaint against your employer with the Employment Standards Branch (the government office that administers the Act).
- Taking an annual vacation if you’re entitled to it.

Nor can your employer fire you for raising safety issues or refusing unsafe work. If they do, you can file a claim with Work Safe BC ^[4].

You can’t be fired for a reason that violates your human rights

Your employer is breaking BC’s human rights law ^[5] 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 that you have (including addiction)
- the fact that you have children, plan to have children, or are pregnant
- your marital status (for example, married, divorced or single)
- your gender
- your sexual identity, gender identity, or gender expression

If you’re let go, and you believe it’s for one of these reasons, you can start a claim with the BC Human Rights Tribunal ^[6]. Another option is to start a claim for wrongful dismissal. We explain these options in our information on protection against job discrimination (no. 270).

If you’re fired and you’ve done nothing wrong

Your employer can fire you **without** having a reason. But they then need to give you **notice of termination**. There are two ways they can do this:

1. They can warn you in advance they plan to let you go. This advance warning is called the “**notice period**”.
2. They can let you go right away. But then they have to pay you out. That is, they have to give you the money you would have earned during the notice period. This money is called “**severance pay**”.

Under the *Employment Standards Act* ^[7], there is a minimum notice (or pay) your employer must give you depending on how long you’ve been in the job. You may be entitled to more, as — unless you have an employment contract that says differently — the notice you get must be “reasonable”. We explain what this means shortly.

The law sets out the minimum notice required

The *Employment Standards Act* ^[7] sets the minimum notice period (or severance pay) depending on how long you've been in the job:

- If you've worked for **less than three months in a row**, your employer doesn't need to give you any notice or severance pay.
- After working **three months in a row**, you're owed at least one week's notice (or one week's severance pay).
- After working **12 months in a row**, you're owed at least two weeks' notice or pay.
- After working **three years in a row**, you're owed at least three weeks' notice or pay.

Beyond three years, the rule is: three weeks' notice or pay plus a week for each additional year of service. The minimum notice period maxes out at **eight weeks**. So no matter how many more than eight years of service you've given your employer, the minimum required under the law is eight weeks' worth of notice or pay.

Tip If you were fired without just cause, you may be entitled to more than the minimum notice periods described above. For example, if you worked six years, you are entitled a minimum of six weeks' notice or pay. But if you bring a lawsuit against your employer for "wrongful dismissal", a court may order your employer to pay you more.

You may be entitled to more than the legal minimum

Your employment contract may say how much notice you get. Whatever your contract says, it can't be any less than the minimum notice required by law.

The notice must be "reasonable"

If your contract doesn't say anything about notice, the law implies a term that your employer give you **reasonable notice** of dismissal. How much notice is reasonable? It depends on several factors, including:

- how long you've been in the job
- your age
- the type of job
- and the availability of similar jobs when you're dismissed

Past decisions of BC courts help shape what is considered reasonable notice. Courts have awarded notice periods between several months and 18 months in many cases. They have generally recognized an upper limit for the notice period of 24 months for very senior and long-serving executives.

Tip The notice periods under the *Employment Standards Act* ^[7] are the legal minimum. You may be entitled to more notice or severance pay. For more on the factors that go into deciding what is reasonable notice, see People's Law School's information on how much notice an employer needs to give you ^[8].

Your employer might offer you severance pay

Your employer can let you go right away, without providing notice, if they give you **severance pay**. This is money to compensate you for lost earnings during the notice period.

It should take into account all the compensation you're losing, including wages, vacation pay, benefits, bonuses and other incentives.

If your employer gives you pay instead of notice, the pay must be based on your average weekly wages during your last eight weeks of normal work. Part-time workers are entitled to compensation based on the same formula.

An employer can give you a combination of notice and severance pay, as long as you get the right amount in total.

Tip If you are fired, your employer must pay all your outstanding wages and vacation pay within 48 hours of firing you — no matter why you are fired.

Situations where your employer doesn't need to give you any notice

There are exceptions to these rules. As explained above, if you are fired for just cause, the employer doesn't have to give you notice of the dismissal (or pay instead of notice).

Notice (or pay) is also not required if:

- you quit or retire
- you work on an on-call basis doing temporary assignments that you can accept or reject
- you're employed for an agreed-upon length of time
- you're hired for specific work to be completed in 12 months or less
- it's impossible to perform your work because of some unforeseen event (other than bankruptcy)
- you work at a construction site, and your employer's principal business is construction
- you refuse to accept another similar job
- you're a teacher employed by a board of school trustees

If you are fired indirectly

Under the law in BC ^[9], it's possible to be fired indirectly. Instead of saying "you're fired!", an employer might do something more subtle that is effectively like firing you. It may be an unexpected demotion. Or it may be a significant reduction in your hours or your pay. If your employer changes your work situation in a fundamental way, and you don't accept that change, you may have the same legal rights as someone who is fired.

What happened to you is the legal equivalent of being dismissed. The law calls it "**constructive dismissal**". This applies when your employer does something that:

- changes a key aspect of your employment in a major way, **and**
- is not something you should have expected, **and**
- you don't agree to or accept.

If you've been constructively dismissed, you have the same rights as someone who was fired without cause. That includes the right to notice or severance pay from your employer.

Tip For more on constructive dismissal, and steps to take if you think you've been fired indirectly, see People's Law School's information on if your employer has made big changes to your job ^[10].

During the notice period

An employer gives notice by telling you that your job will end on a particular date. Until that date, the employment contract continues — and so do your and your employer's obligations under the contract. Your employer can't change your conditions of work or your pay without your written consent.

You have a duty during the notice period to look for another job. You must make **reasonable efforts** to seek comparable work.

The employer may have a duty during the notice period, to let you look for another job, so you won't be unemployed when your current job ends.

Deal with the problem

Step 1. Ask your employer why you've been fired

Legally speaking, your employer doesn't need to give a reason for firing you — unless they are firing you for just cause. But you should ask anyway.

If they do give you a reason, this can help you decide what to do next. If you disagree with the reason, consider getting legal advice. If you don't have a lawyer, there are options for free or low-cost legal help.

Tip If your employer offers you severance pay and you think you're entitled to more, consider getting legal advice. You can take a reasonable time to think things over and get advice. If you sign a settlement document, a court may say you gave up your right to sue.

Step 2. Start looking for work

Start looking for another job right away. You have a duty to seek new and comparable work, even during the notice period.

Keep detailed records of your job search, including copies of your application letters and emails, as well as any replies you get.

Step 3. Consider your legal options

If you think your employer breached your legal rights by firing you, it's a good idea to get legal advice. A lawyer with employment law experience will be able to advise you on your options to take action. Depending on the situation, you may have as many as three options.

Making a complaint to the Employment Standards Branch

If you think your employer has breached the *Employment Standards Act* ^[2], you can make a complaint to the **Employment Standards Branch**. This is the government office that administers the Act.

To start the process, download the Branch's self-help kit ^[11]. It contains a step-by-step guide on how to bring a claim against your employer. It includes a request for payment form together with a letter you submit to your employer.

If you aren't able to solve the problem using the self-help kit, you can file a complaint with the Branch. You must file your complaint within **six months** of the day your employment ended. For more on the process, you can call the Branch toll-free at 1-800-663-3316, or visit gov.bc.ca/employmentstandards ^[12].

Filing a claim with the Human Rights Tribunal

If your employer fired you for a reason that violates your human rights, you can file a claim with the BC Human Rights Tribunal ^[6]. You may be able to recover any lost wages, or compensation for injury to your dignity or self-respect. See our information on protection against job discrimination (no. 270).

Starting legal action against your employer

If your employer clearly breached your rights by firing you, you may want to consider suing them for "**wrongful dismissal**".

If your claim is for less than \$35,000, you can sue in Small Claims Court ^[13]. If your claim is for less than \$5,000, you can bring it to the Civil Resolution Tribunal ^[14]. This is an online tribunal that encourages a collaborative approach to resolving disputes.

If you do decide to sue, there are time limitations on filing lawsuits (usually **two years** from when you were fired).

Tip For step-by-step guidance on these options, see People's Law School's information on if you are fired ^[15].

Common questions

Under a fixed-term contract, how much notice am I entitled to?

If you have a fixed-term employment contract — for example, a two-year term — the contract controls how much notice you get. The contract may say the notice period goes to the end of the term. Or it could set a shorter notice period. If the contract says nothing about notice of termination, and the employer lets you go, they must pay the balance of the wages and benefits owed for the remainder of the fixed term. (You have a duty to look for other comparable work during that period.)

Once your fixed-term contract is finished, your employer doesn't have to give you notice or pay.

My employer gave me notice while I was on vacation. Is that legal?

No. If your employer gives you notice of termination during your annual vacation, while you are on a leave, or during a strike or lockout, the notice is not legally valid. Your employer must wait until you return to work before giving you notice of termination.

My employer sold the business. What are my rights if the new owner fires me?

If your employer sells the business, they can give you written notice of termination. Then, if you work for the new employer that bought the business, you start as a new employee.

But when they sell the business, if your employer does not give you written notice, and you work for the buyer, you have the same length of service as if the business had not been sold. If the buyer then wants to terminate your employment, they must give you written notice based on your total length of service with both employers, the seller and the buyer.

My company is firing 100 workers at the same time. What are my rights?

If an employer fires 50 or more workers at a single location within a two-month period, special rules apply, unless the terminations are part of a normal seasonal reduction in staff. Where the terminations are not part of a normal seasonal reduction, the workers are entitled to more lead-time than usual. The amount of notice required depends on the total number of workers who are being let go.

Your employer must give notice with the following lead-times:

- If 50 to 100 workers will be fired, at least eight weeks before the first worker is fired.
- If 101 to 300 workers will be fired, at least 12 weeks before the first worker is fired.
- If 301 or more workers will be fired, at least 16 weeks before the first worker is fired.

If your employer fails to give you notice as required, they must pay you instead. Or, they can choose to give you a combination of notice and pay.

My employer offered my old job back. Do I have to take it?

After letting you go, an employer might offer you your old job back, or a similar job at the same pay. If you refuse that offer, you have to have a very good reason. If not, you may not get severance pay after the date you refuse.

Get help

If you are fired

The **Employment Standards Branch** deals with complaints if you've been fired and didn't get the amount of notice or severance pay you're entitled to.

Toll-free: 1-800-663-3316

Web: gov.bc.ca/employmentstandards ^[12]

Employment and Social Development Canada can help you bring a claim against your employer if you work in a federally-regulated industry.

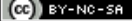
Toll-free: 1-800-641-4049

Web: esdc.gc.ca ^[16]

The **BC Human Rights Tribunal** deals with claims that an employer breached your human rights.

Toll-free: 1-888-440-8844

Web: bchrt.bc.ca ^[6]

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- [16] <http://www.esdc.gc.ca/>
- [17] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Getting Temporarily Laid Off (No. 281)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jennifer Hagen ^[1], Employment Standards Branch in October 2017.

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 **temporarily laid off** from work.

Understand your legal rights

Your legal rights depend on the type of worker you are

Your rights if you are temporarily laid off from work depend in part on the type of worker you are seen to be under the law.

A BC law, the *Employment Standards Act* ^[2], 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.

For example, it doesn't apply to workers in **industries regulated by the federal government**, such as banks and airlines. Federal laws apply to them.

Nor does it apply to **union workers**. If you belong to a union, the collective agreement between your union and the employer has rules about how workers can be laid off or let go.

As well, this provincial law doesn't apply to **independent contractors**. These are people who are self-employed, who run their own business. If you're an independent contractor, your contracts with the people you work for control the situation.

Your employer can only lay you off in limited circumstances

A **layoff** is when your employer tells you that you must take an unpaid leave from work. An employer might lay you off because there is no work for you to do or not enough money to pay you.

Under the *Employment Standards Act* ^[2], employers do not have a general right to temporarily lay off employees. Temporary lay-offs 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 (for example, the logging industry).
- You consent to the layoff.

Your employer must prove they had the right to lay you off for one of these reasons. Even then, the law limits the length of the layoff. We explain this shortly.

Outside of the situations above, if your employer lets you go temporarily, you have the same rights as someone who gets fired without just cause. That means your employer must give you **notice** or **severance pay**. See our guidance on if you are fired (no. 241).

The law limits the length of any layoff

If a temporary layoff is permitted under the law, an employer may temporarily lay you off for **up to 13 weeks** in a consecutive 20-week period.

If the layoff lasts more than 13 weeks in a 20-week period, it can no longer be called “temporary”. At that point, it’s as if you were fired without just cause on the first day of the layoff.

The 20-week period begins on the first day of the layoff. The 13-week period is exceeded on the first day of the 14th week of layoff. If your employer misses the deadline to recall you to work, you now have the same rights as someone who was fired without just cause. In particular, you have the right to notice, severance pay, or some combination of the two. See our guidance on if you are fired.

(Your employer can apply to Employment Standards BC to extend the 13-week period.)

If your employer reduces your hours

Under the *Employment Standards Act* ^[2], if your employer lowers your weekly hours so that 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.

Common questions

My employer laid me off. What should I do?

If your contract doesn’t provide for temporary layoffs — and you don’t work in an industry where they’re standard practice — your employer can’t temporarily lay you off. It’s against the law. Let your employer know right away (in writing) that you don’t consent to being laid off.

If your employer follows through with the layoff, your rights are affected. You’re now being fired without just cause. (See our guidance on if you are fired.) That means you can start a claim against your employer to collect **severance pay**.

Download the self-help kit ^[3] from the BC Employment Standards Branch ^[1]. It contains a step-by-step guide on how to bring a claim against your employer. It includes a request for payment form together with a letter you submit to your employer.

If you aren't able to solve the problem using the self-help kit, you can file a complaint with the Employment Standards Branch. You must file your complaint **within six months** of the day your employment ended. For more on the process, you can call the Branch toll-free at 1-800-663-3316, or visit gov.bc.ca/employmentstandards ^[4].

What if my contract says I can be laid off?

In this case your employer is legally allowed to lay you off or reduce your hours of work. However, unless your contract says otherwise, the law ^[2] sets a limit on how long your layoff can be, as explained above.

There may be other terms and conditions attached. For example, your contract may state that your employer has to pay you a certain percentage of your regular wage while you're laid off. It may also say you're allowed to look for other work in your down time. However, you should always be ready to return to work during the layoff period. If you refuse work, you weaken your claim. The employer may claim that you quit.

Get help

If you're laid off

The **Employment Standards Branch** deals with claims against an employer relating to temporary layoffs.


Toll-free: 1-800-663-3316

Web: gov.bc.ca/employmentstandards ^[4]

Employment and Social Development Canada can help you bring a claim against your employer if you work in a federally-regulated industry.

Toll-free: 1-800-641-4049

Web: esdc.gc.ca ^[5]

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[4] <http://gov.bc.ca/employmentstandards>

[5] <http://www.esdc.gc.ca/>

[6] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

If You Quit Your Job (No. 280)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Jennifer Hagen ^[1], Employment Standards Branch in October 2017.

If you **quit a job** voluntarily, this affects your legal rights to things like Employment Insurance benefits and compensation you are owed. Learn your rights if you quit your job.

Understand your legal rights

Your rights depend on the type of worker you are

Your rights if you quit your job depend in part on the type of worker you are seen to be under the law.

A BC law, the *Employment Standards Act* ^[2], 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.

For example, it doesn’t apply to workers in **industries regulated by the federal government**, such as banks and airlines. Federal laws apply to them.

Nor does it apply to **union workers**. If you belong to a union, the collective agreement between your union and the employer governs your rights at work.

As well, this provincial law doesn’t apply to **independent contractors**. These are people who are self-employed, who run their own business. If you’re an independent contractor, your contracts with the people you work for control the situation.

Giving your employer notice

If you quit your job, the *Employment Standards Act* ^[2] does not require you to tell your employer ahead of time. However, your employment contract may require you to do so. (There’s always a contract between a worker and an employer. Even if nothing is in writing, an employment contract ^[3] still exists.)

Workers with a lot of responsibility may have to give notice and can be legally liable if they do not. But these positions are uncommon and the circumstances are generally known to the worker when they take the position.

Even if you don’t have to give notice, it is usually a good idea to do so. Letting your employer know in advance gives them time to find someone to replace you. The amount of notice you give depends on several factors, including the type of job, how long you have had the job, and the general market conditions. Two weeks’ notice is common.

Giving your employer plenty of notice is recommended if you want your employer to give a good reference for you when you apply for a new job.

If you give your employer notice

If you do give notice, the employer may accept or refuse the notice.

If they accept your notice, you are not entitled to compensation for length of service. (See our information on if you are fired, no. 241, for the minimum standards for notice or compensation if the employer is the one ending the work relationship.)

If the employer refuses the notice, or terminates you during the notice period, the employer must pay you compensation. They must pay you the lesser of the remaining amount of notice you have given, or the minimum notice period you are entitled to under the law (see our information on if you are fired for details).

Your employer must pay any outstanding wages within six days

Regardless of whether you notify your employer ahead of time that you're quitting, they have **six days** from your last day of work to pay you all wages and pay owing. This includes any annual vacation pay, statutory holiday pay, and overtime either worked or in a time bank.

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 experienced discrimination
- your working conditions were unsafe
- your employer was not paying you the wages that were legally owed to you
- your employer made major changes to your work duties

When you apply for EI, you will probably have to describe your situation and explain what steps you took to fix the problem before you quit. If you convince EI you had no other reasonable choice but to quit, you may be eligible to receive EI benefits. For more on eligibility for Employment Insurance benefits, visit canada.ca/ei ^[4] or call 1-800-206-7218.

If you didn't quit voluntarily, but were "constructively dismissed"

Sometimes a worker who quits their job doesn't truly leave the job voluntarily. They may be reacting to a form of veiled dismissal. Instead of saying "you're fired!", an employer might do something more subtle that causes the worker to feel like they have no reasonable choice but to quit. It might be an unexpected demotion. Or a significant reduction in hours or pay.

If your employer changes your work situation in a fundamental way, and you don't accept that change, you may have the same legal rights as someone who is fired. What happened to you is the legal equivalent of being dismissed. The law calls it "**constructive dismissal**". This applies when your employer does something that:

- changes a key aspect of your employment in a major way, **and**
- is not something you should have expected, **and**
- you don't agree to or accept.

If you've been constructively dismissed, you have the same rights as someone who was fired without cause. That includes the right to "notice" or "severance pay" from your employer. Severance pay is money you're given in exchange for being let go without notice. See our guidance on if you are fired (no. 241) for details.

Tip For more on constructive dismissal, see People's Law School's information on if your employer has made big changes to your job ^[5]. Get legal advice before accepting a demotion or transfer you think is not fair.

Looking for another job

You can look for another job before you quit. If you don't want your current employer to be contacted, indicate on your résumé and application that you are applying "in confidence". This way you can still list your current job as part of your employment history.

Before making a final decision, an employer may ask for a current job reference. You can give the name of a co-worker if you don't want your supervisor or employer to know.

Get help

With more information

The **Employment Standards Branch** administers the law in BC that sets minimum standards for workers.


Toll-free: 1-800-663-3316

Web: gov.bc.ca/employmentstandards ^[6]

Contact **Employment and Social Development Canada** if you work in a federally-regulated industry.

Toll-free: 1-800-641-4049

Web: esdc.gc.ca ^[7]

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[7] <http://www.esdc.gc.ca/>

[8] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Applying for Employment Insurance Benefits (No. 282)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Mark Hundleby ^[1], ERA Law in June 2018.

In Canada, the government offers financial support to people who are without work. Learn whether you are eligible for **Employment Insurance benefits**, and the steps to **apply for benefits**.

Understand your legal rights

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 to have a baby or care for family members who are ill or injured.

The EI program is run by the federal government department Employment and Social Development Canada ^[2]. For detailed information on EI, including eligibility for various types of benefits and how to apply, see canada.ca/ei ^[3] or call Service Canada at 1-800-206-7218.

There are various types of benefits available

EI regular benefits are for people who lose their job through no fault of their own — for example, they were laid off. They must be available and able to work but unable to find a job.

In addition, there are other types of EI benefits available, including:

- **Maternity and parental benefits** are for people who can't work because they are 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 are sick, injured, or quarantined.
- **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.
- **Fishing benefits** are for self-employed fishers who are actively seeking work.

Qualifying for Employment Insurance benefits

Under the law in Canada ^[4], you may qualify for “regular benefits” under Employment Insurance if all of the following apply to you:

- You paid into Employment Insurance as a worker.
- You worked for the minimum number of hours during the “qualifying period”. The qualifying period is the last 52 weeks or since the start of your last EI claim, whichever is shorter. The minimum number of hours is between 420 and 700 hours ^[5], depending on where you live.
- You lost your job through no fault of your own. (You will not qualify for EI benefits if you quit your last job, unless you can prove you quit for a good reason.)
- You’ve been without work and pay for at least seven consecutive days in the last 52 weeks.
- You’ve run out of any vacation or severance pay you received.
- You are ready, willing and capable of working, and are actively looking for work.

The qualifying period can be extended up to 104 weeks if you couldn’t work because you were ill, injured, or pregnant (among other reasons). A longer qualifying period helps if you haven’t worked enough hours in the normal qualifying period. You have to ask for an extension.

The Service Canada website at canada.ca/ei ^[3] explains who qualifies for the various other types of EI benefits, and how to apply.

How much you might get

The amount of Employment Insurance you receive is determined by how much you’ve been earning and where you live. For most people, the basic rate for calculating EI benefits is 55% of your average insurable weekly earnings, up to a maximum amount. The maximum amount changes over time. Check the Service Canada website ^[6] for the current figure.

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.

EI benefits are based on your highest weeks of earnings over the qualifying period (usually 52 weeks). Your benefits are calculated over a set number of weeks. That number can range from 14 to 22 weeks, depending on the unemployment rate in your region ^[7].

You can get more if you are in a low-income family or otherwise qualify for a **family supplement**.

Your benefits may be reduced if you earn certain income

Your EI benefits may be reduced if you earn other types of income during your benefit period. These include:

- Pension income from the Canada Pension Plan or a provincial pension plan.
- Pension income from employment (unless you’ve worked at another job long enough, after the pension starts, to qualify for EI).
- Money awarded by a court for wrongful dismissal.
- Severance pay.
- “Callback pay”, which is money your employer pays you to come back to work for a short period after your employment has ended.
- Self-employment income.

Other types of income won't lower your EI benefits

You can earn other types of income without having your EI benefits reduced. These include pension income from an RRSP or RRIF, the Old Age Security pension, or disability benefits.

Apply for EI benefits

Step 1. Gather your information

Before applying for Employment Insurance benefits, collect all the documents and information you'll need. These include:

- your Social Insurance Number
- your personal identification (for example, your driver's licence or passport)
- your bank information for direct deposit
- details of your most recent employment (including your salary and other benefits)
- your detailed version of the circumstances of your leaving your job
- your Record of Employment (ROE), a document that proves you were employed (you will need an ROE from each employer you worked for in the previous 52 weeks)

If you are claiming sickness benefits or benefits to allow you to care for someone, you'll need to obtain a medical certificate in support.

Step 2. Submit the application

You should apply for EI benefits as soon as you stop working. You can apply for benefits even if you receive money when you leave your job, and even if you have not yet received your Record of Employment. If you delay applying for more than four weeks after your last day of work, you may lose benefits.

You must apply for EI using an online application form. You can fill it out:

- online at canada.ca/ei ^[8]
- at a Service Canada office ^[9]

Step 3. After you apply

If your application for EI benefits is approved, there may be a one-week "waiting period" for which you will not be paid.

If your application is denied, Service Canada will contact you by letter or phone to explain why. If you disagree with the decision, you have the right to ask for a reconsideration.

Step 4. Request a reconsideration

If your application for EI benefits is denied, your first step to challenge the decision is to request a **reconsideration**. There is no cost to do this. You must submit your request to Service Canada within 30 days from when the decision was sent to you. If you miss the deadline, you must provide a reason why.

To request a reconsideration, fill out the online request for reconsideration form ^[10]. Once you've filled it out, print, sign and mail the form to your regional Service Canada office noted on the form.

Step 5. Appeal to the Social Security Tribunal

If you disagree with the decision made on your request for reconsideration, you can appeal to the Social Security Tribunal ^[11]. This is a body similar to a court that hears appeals on pensions and benefits provided by the federal government.

You must submit your appeal within 30 days of receiving the reconsideration decision. The appeal must be in the prescribed form ^[12]. Service Canada has more information about how to appeal on its website ^[13].

The tribunal will consider your appeal. They may hold a hearing, which could happen by teleconference, in person, or in writing. The tribunal will make a decision on your appeal and send you the decision in writing.

If you disagree with the tribunal's decision on your appeal, you can ask for "leave" (permission) to make a further appeal to the Appeal Division of the Social Security Tribunal.

Common questions

Can I work part-time and still get EI?

Yes, up to a point. If you earn money while receiving EI benefits, you can keep 50 cents of your benefits for every dollar you earn, up to 90% of your previous weekly earnings (roughly four and a half days of work). Above this cap, your EI benefits are deducted dollar-for-dollar.

You must report any income you earn while you're receiving EI. You need to submit your report and declare your earnings online ^[14] each week.

You are not eligible to receive EI benefits if you work a full week, regardless of the amount you earn.

Can I get EI if I'm self-employed?

Yes. Under the law in Canada ^[15], self-employed workers can get special benefits in some cases. To be eligible, you must:

- be a Canadian citizen or permanent resident,
- register with the government (by signing an agreement),
- operate your own business, or work for a corporation but control more than 40% of the voting shares, and
- wait 12 months after registering.

There are six types of EI special benefits available to self-employed workers. The Service Canada website ^[16] describes them in detail, and has instructions on how to apply.

What must I do while receiving EI benefits?

While you are receiving EI benefits, you must submit a report every two weeks to show you're still eligible to receive benefits. You can submit your report:

- online, using the federal government's Internet Reporting Service ^[14]
- by phone, using the Telephone Reporting Service ^[17] at 1-800-531-7555
- by filling out and submitting a paper copy ^[18]

How long can I collect EI?

You can get regular EI benefits for a period ranging from 14 to 45 weeks. The exact period depends on the unemployment rate in your region ^[19], and the number of insurable hours you worked in the qualifying period.

This chart ^[20] can help you figure out how long you're eligible to collect.

Might I have to repay some EI?

Yes. After you file your income tax return, you may have to repay part of the EI benefits you received. It depends on your net income and the amount of EI benefits you received.

Can I leave Canada temporarily and still get EI benefits?

In some circumstances, you can leave Canada and still receive Employment Insurance benefits.

While traveling abroad, your EI benefits won't be interrupted if you're outside of Canada for **up to seven consecutive days** to do one of the following:

- Attend the funeral of a member of your immediate family or a close relative.
- Accompany a member of your immediate family to a medical facility, if the treatment isn't available where they live in Canada.
- Visit a member of your immediate family who is seriously ill or injured.
- Attend a job interview.

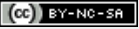
You can also be outside of Canada for up to 14 days in a row if you're looking for a job.

Can I work or live outside Canada and still get EI?

Typically, if you work outside of Canada for a Canadian company or the Canadian government, you're eligible for EI benefits. However, you can't collect EI benefits if your job is covered by a similar program in the country you're working in.

If you live outside Canada, you may be eligible for some types of EI in certain cases. As well, you may be eligible if you live in Canada or the US and regularly cross the Canada/US border between your home and workplace.

The Service Canada website ^[21] has more information about EI for workers and residents outside of Canada.

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Business

Starting a Small Business (No. 265)

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 (no. 266) 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 incorporating a company (no. 267).

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.

Get 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 website ^[8] 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 (No. 267)

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**.

Understand the legal issues

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 (no. 265).

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* ^[2], 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 ^[3] 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* ^[4]. 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 ^[5] 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 ^[3]. 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 ^[6] 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 ^[7] of the *Business Corporations Act* 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 ^[3]. 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 ^[8] under the *Business Corporations Act*, 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 ^[3]. 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, copyright and other intellectual property (no. 231).

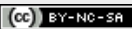
Get help

With more information

Check the Corporate Registry website ^[9].

Small Business BC ^[10] 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 (No. 266)

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.

Understand the legal issues

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, no. 267). 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 form ^[3] 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.


Get help

With more information

Small Business BC ^[4] 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 ^[5].

Also see the provincial government's Resource Centre for Small Business ^[6].

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Trademarks, Copyright and Other Intellectual Property (No. 231)

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.

Overview

Intellectual property in a nutshell

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 at cipo.gc.ca^[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 ^[6] to the Canadian Intellectual Property Office for an **industrial design** registration.

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 ^[6] 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.

Get help

The **Canadian Intellectual Property Office** (CIPO) is the federal government agency responsible for administering intellectual property in Canada.


Toll-free: 1-866-997-1936

Web: cipo.gc.ca ^[1]

The **Intellectual Property Institute of Canada** (IPIC) is the professional association of patent agents, trademark agents, and lawyers practising intellectual property law.

Telephone: 1-613-234-0516

Web: ipic.ca ^[10]

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Music Law (No. 264)

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 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**.

Understand your legal rights

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 of the copyright holder, 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, no. 231.

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 ^[11] does.

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.

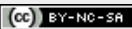
Get help

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 (No. 114)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Renée Aldana ^[1], South Coast Law Group in October 2018.

Family law deals with legal issues that impact families. Family breakups, divorce, getting married, adoption, and family violence all fall within this area of law. Learn the **basics of family law**.

Understand the legal framework

Family law deals with family issues

Often, these issues involve couples that have been in a relationship and have now separated. But family issues can also involve people who have never been in a long-term relationship, like a couple who never dated but have a child together. They can involve people who have never been in a romantic relationship at all, like a grandparent who would like to spend time with or care for a grandchild.

In BC, family law applies to people in same-sex relationships exactly as it does to people in opposite-sex relationships. There is no legal difference between heterosexual relationships and gay and lesbian relationships.

This information provides an introduction to family law and the courts that deal with family law issues. It also defines some common 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 spouse need financial support from the other spouse? Can the other spouse afford to pay it, and if so, how much and for how long?
- Who will stay in the family home? Can everybody still live together, or does someone need to move out?
- How will property be divided? How will debts be shared?
- If there are children, where will they live? How will decisions about their care be made? How will the parents share time with the children?
- Are the children entitled to ongoing financial support from a parent? If so, which parent should pay child support and what amount?

Different rules for different relationships

Family law deals with all of these decisions and more. But not all couples need to deal with all these issues. The decisions a couple must make and the law that applies change depending on the type of relationship the couple is in.

Family law involves four types of relationship:

- **Married spouses:** Married couples are legally married and require a divorce to end their legal relationship.
- **Unmarried spouses:** Unmarried spouses, also called **common-law spouses**, have lived together in a “marriage-like relationship” for at least two years. For spousal support claims, it includes people who have lived together for less than two years and have had a child together. Unmarried spouses don’t require a divorce to end their legal relationship. Their relationship ends when they separate.
- **Parents:** Parents have had a child together and can be married spouses, unmarried spouses, in a dating relationship, or not in a relationship with each other at all. Parents can also be people who have had a child by adoption or assisted reproduction, or people who have helped a couple 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

Family law involves two different laws that apply depending on the type of relationship in play.

Divorce Act

As a federal law, the *Divorce Act* ^[2] applies throughout Canada. The *Divorce Act* only applies to people who are married to each other or who used to be married to each other.

Family Law Act

The *Family Law Act* ^[3] is a BC law that applies to married spouses, unmarried spouses, parents, and a child’s caregivers. Not all of the *Family Law Act* applies to all of these relationships.

- The parts that talk about child support and the care of the child apply to everyone.
- The parts that talk about spousal support apply only to married spouses and to unmarried spouses who claim spousal support within two years of the date they separate.
- The parts that talk about dividing property and debt only apply to married spouses and to unmarried spouses who have lived together in a marriage-like relationship for at least two years.

This chart shows which law applies to whom and for what purpose:

	Married Spouses	Unmarried Spouses	Parents	Child's Caregivers
Divorce	X			
Custody (<i>Divorce Act</i>)	X			
Access (<i>Divorce Act</i>)	X			
Guardianship (<i>Family Law Act</i>)	X	X	X	X
Parental responsibilities and parenting time (<i>Family Law Act</i>)	X	X	X	X
Contact with a child (<i>Family Law Act</i>)	X	X	X	X
Child support (<i>Divorce Act</i>)	X			
Child support (<i>Family Law Act</i>)	X	X	X	X

Spousal support (<i>Divorce Act</i>)	X			
Spousal support (<i>Family Law Act</i>)	X	X		
Property and debt (<i>Family Law Act</i>)	X	X		
Protection orders (<i>Family Law Act</i>)	X	X	X	X

Resolving family law issues

Family law issues can be resolved in ways that don't involve going to court. Options include:

- **Negotiation:** Where the parties discuss the issues to try to reach an agreement.
- **Mediation:** Where the parties meet with a neutral person (a mediator), who helps them find a solution they agree on.
- **Collaborative practice:** A kind of negotiation where each party has their own lawyer and agree they will do everything possible to reach a settlement without going to court.
- **Arbitration:** Where the parties hire an arbitrator to act as their personal judge to make decisions about their dispute they will be bound by.

For more on alternatives to court, see our information on mediation and collaborative practice (no. 111).

If parties can't resolve their problems using these approaches, they may have to go to court to have a judge resolve their problems.

Going to court

There are two courts that deal with family law issues, Family Court and Supreme Court.

Family Court is a division of the BC Provincial Court. It doesn't charge court filing fees and its rules and forms are simplified for people who use the court. Family Court can deal only with issues under the *Family Law Act*, such as guardianship, child care, child support, and spousal support. For more on this court, see our information on Family Court (no. 110).

Supreme Court rules are more complicated and the court charges fees to file certain documents and schedule certain hearings. But Supreme Court can deal with issues under both the *Divorce Act* and the *Family Law Act*. So Supreme Court can deal with all the same issues as Family Court, plus divorce and the division of property and debt.

	Supreme Court	Family Court
<i>Family Law Act</i>	X	X
<i>Divorce Act</i>	X	
Divorce	X	
Custody (<i>Divorce Act</i>)	X	
Guardianship (<i>Family Law Act</i>)	X	X
Access (<i>Divorce Act</i>)	X	X
Parental responsibility and parenting time (<i>Family Law Act</i>)	X	X
Contact with a child (<i>Family Law Act</i>)	X	X
Child support	X	X
Spousal support	X	X
Property and debt	X	

Protection orders	X	X
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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 a couple have moved out and are living apart from each other, but it is possible to be separated while continuing to live under the same roof. See our information on separation and separation agreements (no. 115) and deciding who will move out (no. 116).

Divorce is the legal end of a marriage by a court order. We explain the requirements for divorce in no. 120.

Child is any person under the age of 19, the age of majority in British Columbia. It may include an adult child for the purposes of child support. The *Divorce Act* uses the term “child of the marriage”.

Parent is someone who is the birth parent of a child, the adopted parent of a child, a parent by assisted reproduction, or, in some cases, a donor of eggs or sperm and a surrogate mother.

Several terms are involved when talking of who the children should live with and how decisions about their care will be made. Under the *Divorce Act*, this is called **custody**. Under the *Family Law Act*, this is called **parenting arrangements**, which includes guardianship, parental responsibilities, and parenting time.

Guardianship is the right of a parent (or a person appointed by the court) to care for a child and have parental responsibilities. **Parental responsibilities** are decisions about the upbringing and care of a child made by the child’s guardians. **Parenting time** is a guardian’s time with a child, usually fixed by a schedule.

The time a person who is not a guardian has with a child is called **contact** under *Family Law Act* and **access** under the *Divorce Act*.

For more on these concepts involving care of the children, see our information on custody, guardianship and parenting arrangements and contact (no. 142).

Child support is money paid by one parent to the other for the financial support of their child. We explain child support in no. 117.

Spousal support is money one spouse pays to the other to help with expenses. We explain spousal support in no. 123.

Get help

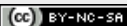
With more information

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.

Web: wiki.clicklaw.bc.ca^[4]

The Legal Services Society’s **Family Law in BC website** features self-help information for people in family disputes.

Web: familylaw.lss.bc.ca^[5]

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- [5] <http://www.familylaw.lss.bc.ca/>
- [6] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Getting Married in British Columbia (No. 160)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Thomas E. Wallwork in August 2017.

You've decided to tie the knot. Congratulations! Learn the **legal requirements to marry** in British Columbia, as well as the steps involved (hint: you need a licence to get married).

Understand your legal rights

Who can get married in BC

Before you can get married in British Columbia, you must meet these qualifications:

- Each of you has to be **unmarried**; in other words, you can't be in a marriage with someone else.
- You must **not be too closely related** to each other: you cannot marry anyone in your immediate family or any near relation.
- 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 the agreement of both your parents or of your guardians. If you're under 16, you need a court order to get married.

In BC, and in the rest of Canada, opposite- as well as same-sex couples can marry. The rules that apply to same-sex couples are exactly the same as the rules that apply to opposite-sex couples.

To get married, you need a licence

You need a **marriage licence** to get married. At some time in the three months before your wedding date, you will need to buy a marriage licence.

To get a marriage licence, at least one of you has to go **in person** to a marriage licence issuer. There's a fee of \$100 for the licence. You need to show primary identification for both of you. Examples of primary identification are a birth certificate or citizenship card.

If one or both of you was previously married, you must provide proof of the divorce before you can get the marriage licence. This is usually done by providing a copy of your divorce order or certificate of divorce.

Marriage licence issuers include Service BC locations, many insurance agents, and many notaries public. The BC government website has a search form ^[1] to lookup the location of the marriage licence issuer closest to you. Or you can contact the Vital Statistics Agency ^[2], the government office that registers all marriages that occur in BC. They can be reached toll-free at 1-888-876-1633.

The marriage licence expires if you don't get married within three months.

You can get married in a religious or civil ceremony

In either case, the person performing the ceremony must be licensed under the provincial *Marriage Act* ^[3] to perform marriages. Not all religious officials are licensed under the Act. For civil ceremonies, this person is known as a **marriage commissioner**.

The marriage ceremony must be held in the presence of at least two witnesses, in addition to the marriage commissioner or religious official.

If you wish, you can be married in a civil ceremony and then have a religious ceremony afterwards as well. If you have your religious ceremony second, it doesn't matter whether the religious official is licensed to perform marriages, since you will have been legally married at the civil ceremony.

It is not necessary that "banns of marriage" or some other public announcement of the marriage be published before the marriage ceremony takes place.

Your marriage will be registered

The marriage commissioner or religious official who conducts the ceremony will help you register your marriage. At any wedding in BC, the couple, two witnesses and the official marrying them must sign the marriage licence and a **registration of marriage** form after the ceremony has been performed.

The marriage registration form must be sent, within 48 hours of the ceremony, to the Vital Statistics Agency for registration. The person who conducts your ceremony will normally take care of this for you.

The Vital Statistics Agency will send you a **certificate of marriage**.

The person who conducts your ceremony may provide you with a document confirming your marriage. This can be used to prove you are married before your marriage is registered with the Vital Statistics Agency and you receive your government-issued marriage certificate.

If someone objects to the marriage

Any person who believes there is some reason why two people should not marry can file a **caveat** with the Vital Statistics Agency. If this happens, a marriage licence will not be issued until the agency is satisfied the issuing of the licence shouldn't be prevented or the caveat is withdrawn by the person who filed it. If a caveat has been filed, you should speak to a lawyer.

Get help

With more information

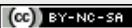
The **Vital Statistics Agency** is the government office that registers all marriages that occur in BC.

Toll-free: 1-888-876-1633

Web: gov.bc.ca/vitalstatistics ^[4]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, includes information on marriage.

Web: wiki.clicklaw.bc.ca ^[5]

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- [6] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Marriage Agreements and Cohabitation Agreements (No. 162)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Renée Aldana ^[1], South Coast Law Group, and Zahra H. Jimale ^[2], Jimale Law Corporation in October 2018.

Not all relationships last forever. With a **marriage agreement** or **cohabitation agreement**, couples can plan for if their relationship ends, as well as how to handle things while they are together.

Understand your legal rights

The purpose of a marriage or cohabitation agreement

Marriage and cohabitation agreements are **contracts**. As with a contract you might have with a landlord or an employer, each party promises to do something in exchange for something the other party promises to do.

A **marriage agreement** can be between spouses who are already married, or people who are planning to marry.

A **cohabitation agreement** can be between people who are already living together or people who are planning to live together.

(Under the BC *Family Law Act* ^[3], couples are “spouses” if they are married or have lived together in a marriage-like relationship for at least two years. Couples who have 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.)

Marriage and cohabitation agreements set out promises each person makes to the other, usually about what will happen if the relationship ends, but sometimes also what will happen during the relationship. The main goal is to avoid future conflict.

These types of agreements are often used at the start of second relationships, especially when there are children from a previous relationship. They are also often used when one party is bringing more money or debt into the relationship.

The legal requirements for an agreement

A marriage or cohabitation agreement must be in **writing**. Both parties must **sign** the agreement, and their signatures must be **witnessed** by at least one other person. The witnesses are not bound by the agreement — they are just saying they saw the parties sign the agreement.

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, and 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. It might also say in the event you separate, one of you will have the right to stay in the family home (at least temporarily) and perhaps receive support from the other for a certain time as well as a certain portion of the property you acquire during the relationship. It may also say that each of you will get an increasing share of the other's own "excluded property" the longer the relationship lasts. 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 during the relationship.

Issues a marriage or cohabitation agreement can't deal with

The law imposes certain obligations on married and unmarried spouses that they cannot contract out of with an agreement — such as the legal duty of each parent to provide support for their child.

Under the *Family Law Act* ^[4], any agreement about **parenting arrangements** or the payment of **child support** is only binding if it is made after separation or when the parties are about to separate.

The enforceability of an agreement

A court can overturn a marriage or cohabitation agreement where a party behaved **unfairly** or took advantage of the other party. For example, an agreement may be set aside where a party failed to disclose significant property or debts. Or 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, fairness in the way it is drafted, and fairness in the way it is signed.

A key way to achieve fairness is to have each party get **independent legal advice** before signing the agreement. This involves each party meeting 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. An agreement can be changed by making a second written agreement, called an “addendum agreement” or an “amending agreement”, to change some parts of the first agreement or to cancel and replace it. Like the first agreement, the parties must sign the new agreement and their signatures must be witnessed.

Common questions

My fiance is pressuring me to sign a marriage agreement. Do I have to?

No. There is no legal requirement that you must 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.

Should I see a lawyer to prepare an agreement?

If you want to make a marriage or cohabitation agreement, you can write down some general ideas and expectations with your partner and either prepare a written agreement based on these notes or have a lawyer draft the agreement.

Whether you have a lawyer write the agreement or not, it is highly advisable to meet with a family law lawyer for advice about how the agreement affects your rights and obligations, before you sign it.

Should my spouse and I use separate lawyers?

This may seem unnecessary when the two of you have an agreement. But as a general rule, each person who enters 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 ensures the parties know exactly what their rights and obligations are, and it makes the agreement stronger by preventing a party from claiming later on they didn't fully understand what the agreement meant or how it would impact them.

Get help

With more information

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has indepth information on marriage agreements and cohabitation agreements, including drafting tips.

Web: wiki.clicklaw.bc.ca ^[5]

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Couples Who Are Not Spouses: Your Income, Support and Property Rights (No. 148)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Thomas E. Wallwork in August 2017.

Not all couples who live together meet the definition of “**spouse**” under BC’s family law. For these couples, learn your entitlement to benefits and what happens if you split up.

Understand your legal rights

The law defines who is a “spouse”

BC’s *Family Law Act* ^[1] defines the term “**spouse**” as including married spouses as well as:

- 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, you aren’t considered a spouse when it comes to property, debt or pensions; we explain what this means shortly).

A couple is seen as living in a “**marriage-like relationship**” if they present themselves as a family unit to family and friends, and conduct 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).

Getting income assistance

The BC government provides **welfare benefits** such as income assistance to those in financial need.

As soon as you start to live together with someone else, the welfare office may treat you like spouses. When you apply for welfare, your caseworker will look at the income and assets for both of you. Under BC’s welfare law ^[2], “spouse” includes people living together for **three months** if the welfare caseworker believes their relationship demonstrates “financial dependence or interdependence, and social and familial interdependence, consistent with a marriage-like relationship”.

If you fall within this definition and you qualify for income assistance, you would get it at the rate for a couple or family, and not as two single people.

You have the right to challenge the welfare office’s decision. For step-by-step guidance, see our information on income assistance reconsiderations and appeals (no. 288).

If you claim welfare as a single person when you're actually living with someone else as a couple, and your relationship is discovered, you may be required to repay any benefits you have received. You may also face a civil court case or even criminal charges, and you could be refused future services by the welfare Ministry.

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**.

For more information on Old Age Security benefits, see our information on the laws affecting older adults (no. 239).

Private pension plans generally do not provide benefits for people who are not spouses.

Getting Employment Insurance benefits

The federal government provides **Employment Insurance benefits** to workers who lose their job. You may be eligible for EI benefits if you leave a job to accompany your partner to another place of residence. Employment Insurance defines a couple as spouses if they have lived together in a "conjugal relationship" for at least **one year**.

You can also get EI benefits if you leave your job to follow your partner if you are expecting the birth of a child or caring for an immediate family member.

Note you won't qualify for benefits if Employment Insurance concludes you had reasonable alternatives to keep your job, such as requesting a transfer or commuting from the new place of residence.

Coverage under your partner's medical and dental plans

The BC Medical Service Plan covers people who live together. There's no requirement about how long you must have been living together.

Medical or dental plans or extended health plans from an employer generally do not provide benefits for people who are not spouses.

Responsibility for your partner's 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.

If you both sign for a loan, however, you are both responsible to repay the debt. As well, if you **guarantee** your partner's loan, and your partner is unable or refuses to make the payments, you'll be responsible. That is so even though you may not have had any benefit from the loan. If you end up paying some or all of the loan, you can pursue your partner to pay you back.

If you separate, your rights to spousal support

When a couple breaks up, support is money one person pays another to help with expenses. To be eligible to receive **spousal support** from your partner, you must have either:

- lived in a marriage-like relationship with your partner for two years or more, or
- lived in a marriage-like relationship with your partner and had a child with them.

See our information on spousal support (no. 123) for the factors that go into a support award.

Your rights to property acquired during the relationship

Rights to property is one of the key areas in which being a spouse under the *Family Law Act* ^[3] makes a difference. Under the Act, spouses are presumed to keep the property each of them brought into their relationship and to share in the things they acquired during their relationship (called “**family property**”). Only spouses who are **married** or lived together in a marriage-like relationship **for at least two years** share an interest in family property.

If you do not meet this definition of spouse, the only property you are presumed to keep is the property you brought into the relationship. As well, if you own property together (jointly) — such as a house, a car, or bank accounts — you are each presumed to have an equal interest in the 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 will have to prove your contributions to the purchase and that you didn’t mean your extra contributions to be a gift.

The law in this area is complex and it is highly advisable to seek 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 of some sort as a result of making those contributions, and
- there is 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 make an order requiring your partner to compensate you. If your partner can’t afford to make the payment, the court may impose a trust, called a “**constructive trust**”, on your partner’s property so you can be paid the compensation you are owed.

The law in this area is complex and it is highly advisable to seek legal advice.

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 rights and perhaps your property rights. Family Court is a part of the BC Provincial Court, where you can settle many questions dealing with support for you and your children, plus guardianship, parenting arrangements, and contact. Family Court **can't** deal with property issues and it can't make orders about who will live in the family home. For this, you'll have to go to BC Supreme Court.

For more on going to court, see our information on Family Court (no. 110).

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 your will, you can say who you want your property to go to. You can also name a guardian who'll be legally responsible for your children after you and your partner die.

For more, see our information on preparing a will (no. 176) and what happens when you die without a will (no. 177).

Get help


With more information

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has information on unmarried relationships.

Web: wiki.clicklaw.bc.ca^[4]

Legal Services Society, the legal aid provider in BC, publishes the booklet "Living Together or Living Apart: Common-Law Relationships, Marriage, Separation, and Divorce"^[5].

Web: legaid.bc.ca^[6]

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- [7] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

Family Violence (No. 155)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Michael Butterfield ^[1], Butterfield Law, and Erin Bowman ^[2], Bowman Law Centre in October 2018.

If you or someone you know is experiencing **family violence**, you have options. Help is available from the police, community workers, and the court system. Learn the steps you can take.

Understand your legal rights

Family violence is the abuse of power

Family violence is the abuse of power to harm or control a family member. It includes real or attempted physical abuse. And it includes more than hitting a partner or child. Family violence also includes:

- sexual abuse or attempted sexual abuse
- psychological or emotional abuse
- harassment, intimidation or coercion
- threats, including threats to other people or pets
- stalking or following
- restricting a person's independence, including their financial independence
- damaging property

In the case of children, family violence includes being exposed to family violence, including seeing violence between family members.

Family violence can occur once or often. Sometimes men are the abusers, sometimes women are. Anyone can be abused.

If you're in immediate danger

It's against the law for anyone to physically abuse, harass or stalk another person, or to threaten to hurt them physically. A person who does any of these things to you or your children can be charged with **assault**.

Call the police

If you're afraid and think you, your children or others are in immediate danger from your partner, call the police right away by **dialling 9-1-1**.

The police will take steps to ensure your safety and the safety of others. As well, the police can gather evidence from you and others. This will help them assess whether to recommend criminal charges or a **peace bond**, or that you seek a **protection order**, which is a court order to protect one person from another. These possibilities are discussed shortly.

Tap into community services

The police can also connect you to community services, which might include helping you find emergency shelter. You and your children might be able to stay in a nearby **transition house** for up to several weeks. This will help give you time to find a new place to live.

Going to a transition house, or some other place, does not change your rights to the family home. The immediate priority is your and your children's safety.

If you aren't in immediate danger, but still fear for your safety

If it's not an emergency and you want to stay in your relationship, you could get help from a counsellor or victim support worker. They can meet with you, or with you and your partner, to help address the issues underlying the family violence, with emotional support, or with developing a safety plan.

Some people have insurance for counselling through their extended health benefit plans or employee assistance programs. But some services are free and you don't have to pay. If going to counselling with your partner isn't an option, you may benefit from speaking with a counsellor on your own to decide the next steps for yourself and your children.

Community services are available to help

These community and healthcare services can help with counselling and support.

- Victim Link BC ^[3] is a 24-hour victim information and helpline. Call toll-free 1-800-563-0808 from anywhere in BC. Operators provide immediate crisis support to victims of family violence.
- Battered Women's Support Services ^[4] offers crisis support and counselling for women who have experienced abuse in an intimate relationship. The intake and counselling line is 604-687-1867 in the Lower Mainland and toll-free 1-855-867-1868.
- Vancouver & Lower Mainland Multicultural Family Support Services ^[5] offers counselling for victims of family violence and children who witness abuse. They can provide a translator for police or court interviews. Their toll-free phone number is 1-888-436-1025.
- Family Services of Greater Vancouver ^[6] offers counselling and other services for victims of family violence, including programs relating to abuse prevention and trauma. Call 604-731-4951.
- BC Society of Transition Houses ^[7] offers safe temporary shelter for up to 30 days for women and children experiencing family violence. They also offer group and individual counselling for children and youth who witness family conflicts and violence. Contact them at 604-669-6943 in Vancouver or 1-800-661-1040 elsewhere in BC.
- Vancouver Rape Relief & Women's Shelter ^[8] operates a transition house for women and their children and a 24-hour crisis line for women who are trying to prevent or escape family violence. Call 604-872-8212.
- Vancouver General Hospital operates a 24-hour domestic violence service that offers clinical counselling services to victims of family violence. Call 604-875-5458.

If criminal charges are laid

If you contact the police, they will investigate by taking a statement from you, your partner and any witnesses. If the police believe that criminal charges are appropriate, they'll prepare a report for the **prosecutor**, called Crown counsel. Crown counsel will review the report and decide whether to lay a criminal charge.

If Crown counsel charges your partner with a criminal offence such as assault, the police will arrest your partner.

Most people charged are released on bail

Most people charged with a criminal offence aren't kept in police custody, but are released on **bail** on conditions ordered by a judge. For example, your partner may be released on conditions they not have any contact with you or come to your home, work or school.

If your partner doesn't obey the conditions, you can tell the police. Your partner may be arrested and charged with breaking the bail order.

If such conditions are ordered, but you and your children want to have contact with your partner, you'll need to talk to Crown counsel about changing the bail order.

If your partner pressures you to drop criminal charges

If your partner is charged, they may pressure you to get the charge dropped. This may not be possible, because it is Crown counsel who lays the charge against your partner, not you. You should report any pressure or contact from your partner to the police.

If there is a criminal trial

If your partner is charged with a criminal offence, they might decide to **plead guilty** to the charge. A guilty plea means they accept responsibility for the offence. If they choose not to plead guilty, a **trial** will be held.

Your role in the trial

You'll tell the judge what happened. Although Crown Counsel is the government's lawyer, they will help you prepare to testify. If you're in Vancouver, you can also get help with the criminal court process and getting ready for trial by contacting the Vancouver Police Department Victim Services Unit at 604-717-2737. For more information on the court process, see the Provincial Court website ^[9].

If your partner is convicted

If your partner is convicted of assaulting or threatening you, they would usually be ordered to pay a fine or placed on probation with conditions. The conditions might include not contacting you or attending counselling or an anger management program. The judge is unlikely to send your partner to jail unless your partner was previously convicted of assault or the incident was extremely violent.

Your partner may enter into a “peace bond”

You may think the criminal court process isn't the best way for you and your partner to deal with violence in your relationship. Crown counsel may be willing to drop the criminal charge against your partner if your partner enters into a **peace bond** under section 810 of the *Criminal Code* ^[10].

This involves your partner agreeing to keep the peace and obey certain conditions — for example, not contacting you for a certain time. If your partner obeys the conditions, they won't have a criminal record. If your partner doesn't obey the conditions, they can be sent to trial on the original criminal charge plus a new charge for breaching the peace bond. See our information on peace bonds (no. 217) for more on this process.

You may seek a protection order in family court

Another option to protect you from family violence is for you to apply to family court for a **protection order** under the *BC Family Law Act* ^[11]. A protection order can restrain your partner:

- in how they communicate with you
- from going to your home, school or work
- from stalking you
- from possessing weapons

A protection order can also require the police:

- to remove your partner from the home
- to escort your partner while your partner removes their personal property from the home
- to seize your partner's weapons

A protection order can also require your partner to report to the court.

Applying for a protection order

You can apply yourself for a protection order under the *Family Law Act*, or you can get help from a lawyer. You can apply in either the Supreme Court or the Provincial Court. You may find the paperwork easier in Provincial Court.

In the Supreme Court, you will need to prepare a **notice of claim** and a **notice of application** (or just a notice of application if there is already a court proceeding between you and your partner), plus an **affidavit** describing what happened and what your concerns are. An affidavit is a legal document where you make statements about facts you say are true.

In the Provincial Court, you will need to prepare an **application for an order** and a **“notice of motion”** (or just a notice of motion if there is already a court proceeding), and you will need to either prepare an affidavit or testify in court about your concerns.

You might be able to get help from a family justice counsellor ^[12] (government workers who help with the court process) or legal aid duty counsel ^[13] (lawyers present at the court who provide free advice). Depending on the court's location, a protection order can often be obtained quickly — even on the same day in some circumstances.

Common questions

What if I am concerned about someone else's safety?

Anyone can apply for a protection order under the BC *Family Law Act* ^[11], if they are doing it on behalf of someone who is at risk of family violence.

What if a protection order conflicts with another order?

The *Family Law Act* says that if a protection order conflicts with another order made under the *Family Law Act*, the parts of the other order that conflict with the protection order are suspended. This might happen, for example, if there is an older order for parenting time and a newer protection order says the restrained person cannot communicate with the children. In such a case, the parts of the older order about parenting time would be suspended.

This rule also covers orders that are like protection orders made in another province or under the *Criminal Code*.

What if my partner ignores a protection order?

If your partner continues to harass you, they can be arrested. Your partner can be charged with a criminal offence for breaching the protection order and can be brought before the court. Your partner will be released if the judge is satisfied they are not a danger to your safety.

Get help

If you can't afford a lawyer

Legal aid is available to some people who cannot afford a lawyer. The **Legal Services Society** website lists legal aid office locations elsewhere in BC. When applying for legal aid, mention you fear continued violence from your partner.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaid.bc.ca ^[14]

Justice Access Centers offer a range of services designed to help people solve family legal problems.

Telephone: 604-660-2084 in Vancouver, 250-356-7012 in Victoria, and 1-800-578-8511 in Nanaimo

Web: ag.gov.bc.ca/justice-access-centre ^[15]

At **Access Pro Bono** clinics throughout BC, volunteer lawyers provide free legal advice to people with limited means.

Telephone: 604-878-7400 in the Lower Mainland

Toll-free: 1-877-762-6664

Web: accessprobono.ca ^[16]

More information


See our information on peace bonds (no. 217) for more on the process to get a peace bond under section 810 of the *Criminal Code* ^[10].

The Legal Services Society's **Family Law in BC website** includes extensive information on family violence.

Web: familylaw.lss.bc.ca ^[17]

The **BC government's** Victim Services and Violence Against Women Program Directory ^[18] provides contact information for service providers across the province that assist women and children impacted by violence.

Web: gov.bc.ca/victimservices ^[19]

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Changing Your Name (No. 161)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Thomas E. Wallwork in August 2017.

You may want to change your legal name because you're getting married, because you're getting divorced, or just because you feel like it. Learn what's involved in **changing your name**.

Understand your legal rights

What name you use

Government identification, such as passports and driver's licences, are only issued in your legal name. Under the law in BC ^[1], anyone age 19 or over can apply to change their legal name. They can change their name to any name they choose, as long as the change isn't likely to cause embarrassment or confusion to anyone or isn't for an improper purpose or otherwise objectionable — such as changing your name to avoid 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 use their spouse's last name. Under BC law ^[2], when you marry, you have a number of choices for your last name:

- 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.

You can choose any of these options without completing a legal change of name.

You can also apply for a legal change of name:

- You (and your new spouse) can apply for an entirely new last name. For example, Mary Smith and Robert Jones can apply to have their names legally changed to Mary and Robert Black. Or to Cecilia and Walter Black, if they wish.
- You can apply to have a combined or hyphenated last name of both your spouse's and your own last name, such as Smith-Jones.

You don't have to change your name if you don't want to.

If you change your name on getting married

For name changes that don't require applying for a legal change of name, you can start getting identification and other documents (like credit cards, business cards and so forth) in your new name as soon as you like. You'll need to provide a copy of your government-issued marriage certificate.

For name changes that require a legal change of name, you'll need to provide a copy of your change of name certificate.

If you divorce

If you get divorced, 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

If you want to change your name to a name you've never used before, there's a special procedure at the time of a divorce. You can file the appropriate forms with your application for the final divorce order, but you must have asked for this order in your notice of claim or counterclaim. By using this procedure you can avoid a criminal record check, which is a required step in applying for a legal change of name.

Applying for a legal change of name

You must be at least 19 years old and have lived in BC (or had a permanent residence in BC) for three months, before making your application.

Making the application

You must submit a change of name application ^[3], together with certain supporting documents and the required fee. The supporting documents vary depending on your situation:

- If you were born in Canada, you must submit an **original*** Canadian birth certificate.
- If you were born outside Canada, you must submit certified copies of immigration and citizenship documents.
- If you were married in BC, you must submit an original BC marriage certificate.
- If you were married outside of BC or Canada, you must submit a photocopy of your marriage certificate.

You also must get a **criminal record check**. Within 30 days of applying for the name change, you must start the criminal record check process by having your fingerprints taken. Contact your local police or the RCMP at rcmp.gc.ca ^[4] for information on getting a criminal record check.

For the application kit

For the change of name application form and information on the process, contact the Vital Statistics Agency. Call 250-952-2681 in Victoria or toll-free 1-888-876-1633 elsewhere in BC, or visit their website at gov.bc.ca/vitalstatistics ^[5].

If your name change is granted

After your legal change of name application has been processed and the name change registered, a copy of your **change of name certificate** will be sent to you. This will allow you to 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, and any later copies will be issued in your new name.

Get help

With more information

The **Vital Statistics Agency** is the government office that deals with change of name applications.

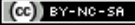
Tel: 250-952-2681 in Victoria

Toll-free: 1-888-876-1633

Web: gov.bc.ca/vitalstatistics ^[5]

The wikibook ***JP Boyd on Family Law***, hosted by Courthouse Libraries BC, has information on naming and changes of name.

Web: wiki.clicklaw.bc.ca ^[6]

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Divorce & Separation

Separation and Separation Agreements (No. 115)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit ^[1], Brown Henderson Melbye and Zahra H. Jimale ^[2], Jimale Law Corporation in October 2018.

The end of a relationship is a particularly difficult time. There are so many decisions and issues to sort through. A **separation agreement** that records the arrangements can make things easier.

Understand your legal rights

What amounts to separation

Couples have **separated** when one or both of them decide their relationship is over and inform the other of their decision. People do not need to agree to separate; only one person needs to decide the relationship is over and communicate that decision to the other person for a couple to be separated.

Separation usually involves the end of the couple's life together as a couple. Most people stop eating together, stop doing chores for each other, stop going out together, and stop sleeping together.

Separation does not require that the couple move into separate homes. People sometimes stay living together under the same roof, although often in separate beds, because it's cheaper to live together while they are figuring out how to deal with their property, children and any potential support claims.

Separation does not always mean a relationship is over for good. Some people go to counselling and use their time apart to rebuild their relationship, with the hope of eventually reconciling and resuming life as a couple. For others, reconciliation is impossible, and separation ends their relationship.

There is no “legal separation” in BC

There is no such thing as a “legal separation” in British Columbia. There are no papers to sign to separate. You don't need to see a judge or a lawyer to separate. Couples can separate anytime.

That said, it's important to note the **date you separate**. It will 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 when one person informs the other they want to end their relationship, or the couple jointly decide to end their relationship.

Only married spouses need to divorce to end their legal relationship

Under the law in BC ^[3], spouses can be married or they can live together in a “marriage-like relationship”.

For unmarried spouses and other unmarried couples, their relationship is over the moment they separate.

For a marriage to end, however, married spouses must **divorce**. That means they must get a court order saying they are divorced.

A married spouse will need to get a divorce if they ever want to remarry.

If you're married and have just separated, you don't have to worry about divorce yet. Divorce generally will not be granted until all other issues have been resolved, including parenting arrangements, child and spousal support, and the division of property and debt.

When you can get a divorce

Married spouses may apply to court for a divorce order after they have been **separated for one full year**.

Married spouses can live together to try to reconcile for up to 90 days without interrupting the one-year period of separation. If the spouses live together for more than 90 days trying to reconcile, the one-year period starts again on the date of their last separation.

Married spouses can also apply for divorce sooner than one year if:

- one of them has committed **adultery**, which has not been accepted or approved by the other spouse, or
- if one of them has been **physically or mentally cruel** so that living together is no longer tolerable.

Most married spouses apply for a divorce after the one-year separation, rather than because of adultery or cruelty. It's harder to prove adultery or cruelty. The person alleging adultery or cruelty must prove it. The only thing you get for basing a divorce on adultery or cruelty may be a quicker divorce. There are no other benefits to this route.

A divorce order starts a two-year “limitation period” running. Within that two years, a spouse can sue the other for the division of property, debt, pension and spousal support.

For more information on the grounds for divorce, see our information on requirements for divorce and annulment (no. 120).

A separation agreement documents how you settled the issues

A **separation agreement** is the written and signed record of how a couple has settled the issues arising from the end of their relationship.

For married and unmarried spouses, these issues usually include:

- Whether a spouse is entitled to financial help with their expenses, and, if so, who should provide that help and in what amount. This is called **spousal support**.
- How **family property** will be divided and how responsibility for **family debts** will be shared. The *Family Law Act* ^[3] provides guidelines on what assets are considered family property and what debts are considered family debt, as well as what assets are excluded from family property and division. This can be complicated — you should get help from a lawyer if you have a lot of assets.

For parents, including married and unmarried spouses, there could be additional issues including:

- Whom the children should live with and how decisions about the care of the children will be made? Under the *Divorce Act* ^[4] this is called **custody**. Under the *Family Law Act* this is called **parenting arrangements**, which includes guardianship, parental responsibilities, and parenting time.

- How the parents will share the children's time. Under the *Divorce Act* this is called **access**; under the *Family Law Act* this is called **parenting time** and **contact**.
- How the parents will cover the children's financial needs. This is called **child support**.

If you can settle these issues, you should consider making a separation agreement for two reasons. First, separation agreements are legal contracts recording the terms of your agreement and they can be enforced by the court. Second, it's much cheaper and often quicker to resolve these issues by an agreement than going to court. You avoid confusion by recording your agreement in writing and having both spouses sign it.

What happens to the family home

A separation agreement can say what happens with the **family home**, including whether one spouse will get to keep it, whether it will be sold, or whether some other arrangement will be made. Even if the home is in one spouse's name, the other spouse is almost always entitled to some share in it.

Some spouses think it's best to let the parent who usually has the children stay in the home so the children could continue to live in the family home until they finish high school.

Others think it may be best for the children to stay in the home while the parents move in and out when it's their time with them; this is called **nesting**.

There are many choices, including both people staying in the home until a date they agree on or until one of them wants to sell it.

Other property you own together

When a couple separates, each spouse has a right to a share in the property that accumulated during the relationship, as well as the increase in value of any property brought into the relationship. This is called **family property** under the *Family Law Act* ^[5]. 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 (no. 124) for more on this topic.

Who is responsible for debts

When a couple separates, each spouse is usually responsible for one half of the debt incurred during the relationship. This is called **family debt** under the *Family Law Act* ^[6]. Each spouse may also be responsible for one half of debt incurred after separation, if it was used to maintain family property.

If one spouse does not have the credit to take on their one half of the debt, they have to make other arrangements. For example, the other spouse could take on more debt and get more of the family property in exchange. Or other family members could co-sign a loan.

The division of debt can be covered in a separation agreement. Until then, decisions must be made about paying the family bills. Does the spouse who gets the use of the house have to pay the mortgage? Who will pay for the credit cards and utilities? Our information on dividing property and debts (no. 124) has more on this topic.

Common questions

Do I need a separation agreement to get divorced?

You do not need a separation agreement to get divorced. But before granting your divorce order, the court will want to see evidence that parenting, support and property division have been dealt with. It helps to have a separation agreement or court order setting out the arrangements that have been agreed to.

If there is no property or debt to divide, no children who need parenting and support, and no claim by either party for spousal support, then a separation agreement may not be necessary. Before deciding whether you need a separation agreement or whether to sign one, it's wise to get independent legal advice from a family law lawyer.

What are our options for the care of our children?

A couple might agree that the children will live mainly with one parent, and the other parent can have time with the children on certain times and days. Or, a couple may agree to share responsibility for looking after the children and have them live partly with each parent. There are many different types of parenting plans that can be agreed to in a separation agreement or a court order.

You may want to get some guidance from a counsellor or a parenting coach to decide what is best for your children. You may also want to get legal advice from a family law lawyer.

What if we run a family business together?

If you run a business together, you may not want to be business partners any longer. It is important to resolve all of the financial issues relating to your business. How to do this depends on whether the business is incorporated. These business issues can also be dealt with in a separation agreement.

Are mediation or collaborative practice helpful?

Mediation can help if you and your partner want to make decisions in the most cooperative way but are having trouble negotiating with each other. A trained family law mediator can work with you to develop a parenting plan for the children and help you make other decisions.

A **collaborative practice** approach may also be used to settle things. In this approach, the couple and their lawyers agree to cooperate and work together to negotiate an agreement resolving the issues arising from the separation. The couple and their lawyers sign a collaborative participation agreement saying no one will go to court or use threats of going to court. If the collaborative process breaks down, the spouses must hire new lawyers if they want to go to court.

For more information on these options, see our information on mediation and collaborative practice (no. 111).

Should we hire a lawyer to prepare our separation agreement?

Separation agreements can have a serious and long-lasting impact on your legal rights and obligations. As a result, it's always a good idea to have a lawyer prepare your separation agreement. Both people can't use the same lawyer. To save on legal fees, one of the spouses' lawyers could prepare the agreement while the other could provide independent legal advice to the other spouse.

What does a separation agreement cost?

The cost of a separation agreement depends on the lawyers you pick and how complicated your situation is. Ask your lawyer at the beginning for an idea of what it will cost. To save time and money, take as much information with you as you can when you see your lawyer. Take things like:

- income tax returns
- paystubs for you and your partner
- documents about the home and any mortgage
- papers about other assets such as pensions, retirement savings plans, 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 what your financial needs are and 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.

How long does a separation agreement last?

Most separation agreements last until one or both people die; most are meant to be permanent. Agreements that end sooner will say so. However, agreements about children and support may be changed if there is a material change in circumstances.

What happens if one spouse dies during negotiations?

The death of one spouse before the couple have signed a separation agreement or the court has made a final order can seriously affect how property and debts are divided. It can get complicated, so you should get legal advice about how best to protect yourself if your partner may die before things are resolved or if your partner died after separation but before you finalized the separation.

What happens if one spouse refuses to work on a separation agreement?

You can't force someone to sign a separation agreement. If you are wanting to resolve things but the other doesn't, you have a few options.

First, you can get a lawyer.

Second, you can suggest **mediation** (either with or without lawyers), or a **collaborative practice** approach.

Third, you can suggest **arbitration**. Arbitration involves hiring an arbitrator to act as a neutral third party to make decisions about your dispute. You and your spouse agree to be bound by these decisions.

Lastly, you can go to court.

Get help

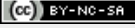
With a separation agreement

The **Family Law in BC website** from Legal Services Society (the legal aid provider in BC) includes a step-by-step guide to draft a separation agreement.

Web: familylaw.lss.bc.ca ^[7]

The wikibook ***JP Boyd on Family Law*** explains separation agreements in detail.

Web: wiki.clicklaw.bc.ca ^[8]

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Deciding Who Will Move Out (No. 116)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit ^[1], Brown Henderson Melbye and Zahra H. Jimale ^[2], Jimale Law Corporation in October 2018.

When a couple separates, a question arises: who's going to move out? Learn your rights when it comes to **deciding who moves out**, and the steps to enforce them.

Understand your legal rights

Who should move out

Some couples keep living together after they separate; it's cheaper to live in one place with one set of household bills than in two places with two sets of bills. But this isn't possible for everyone, particularly if there is a risk of family violence, or there is conflict in the relationship and children who live at home.

Several considerations go into deciding who will stay in the home and who will move out:

- Do the two of you get along well enough to stay in the home together?
- Will either one of you be keeping the home after separation?
- Can either of you afford to keep it?

If you have children, there are more considerations:

- Where are the children likely to stay after the separation, and who will be mostly responsible for looking after them?

- Where do the children go to school or daycare? Where are their extracurricular activities located?
- Can you afford to get a second home big enough for you and the children?
- If you're thinking of staying in the home together for the time being, how much are the children exposed to your conflict?

It often makes sense for the person who will be primarily caring for the children or keeping the home (after buying out the other party's interest in the home) to stay in the home, and the other person to move out.

When you move out

There's no rule that says when you can and can't move out, or that you must tell your partner ahead of time that you're moving out. If it's a very emotional separation or there has been violence between the two of you, or there is risk of violence, you might want to move out when your partner isn't home.

Tip You should seek legal advice if you're unsure about whether to move out, particularly if you're worried how it will affect who gets the home or how parenting arrangements will be decided.

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 you should let your partner know about your plans first. You may want to think twice about moving back in if there's a risk it will escalate conflict. Also, if you can't get along, you may need a court order to move back in or force your partner to move out. Get legal advice in this case.

If you move out, you do not risk losing a share of the home

You may be worried that if you move out of the family home, this will affect who gets what. Don't worry. If you have a right to a share in the family home, you will not lose that right by moving out. However, if you move out of the home while your partner remains, it might be difficult later to convince the court you should be allowed to move back in while you work out the issues flowing from your breakup.

If the family home is in only your partner's name, you can make a court filing to protect your interest in the property. (You need to be a "spouse", which includes living 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] to prevent your spouse from selling it without notice to you. If a court case has started, you can file a **certificate of pending litigation** against the property under the *Land Title Act*^[4] to protect your interest in the family home. The certificate means the property can't be refinanced or sold without you knowing. If you have a choice, a certificate will better protect you.

If you live together in rented accommodation

If you and your partner live in rented accommodation, then it often comes down to whose name is on the lease or rental agreement. That person is legally responsible for paying the rent.

If the party planning to remain in the rented accommodation and take over the related expenses is not on the lease or rental agreement, arrangements need to be made with the landlord to transfer the agreement into that party's name.

If the lease or rental agreement is in both of your names, arrangements need to be made to transfer it into the name of the party remaining in the accommodation.

If both parties want to move out, then arrangements need to be made with the landlord to end the agreement or 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 ^[5] (which includes living together in a “marriage-like relationship” for at least two years), are presumed to share in the things they acquired during the relationship. This is called family property ^[6].

If you're moving out

If you're the one who is moving out and you're taking the children with you, you'll need to consider their needs when deciding what to take and what to leave behind. 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 are the one remaining in the home and your partner has taken no steps to remove their belongings, you should take the following steps before getting rid of those belongings.

If the property is in your name alone (owned or rented) and your partner's financial interest in it is small, you can give your partner a deadline — in writing — to remove their belongings and tell them what you will do if they miss that deadline. That may motivate them to move.

If the property is in joint names (owned or rented), then your partner may have a legitimate claim to leave their possessions in the home until the claim is resolved.

Next steps

Step 1. Make sure you're safe

If you are concerned for your physical safety, you should call the police right away.

If you are being harassed by your partner but there is not a 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 certain time. You could apply to Family Court for a “protection order”, which can put limits on how your partner communicates or contacts you. As well, there are community and healthcare services that can help with counselling and support.

For more on these options, see our information on family violence (no. 155).

Step 2. If you are moving out, decide what to take with you

If you have children and want them to live with you, you may want to take them with you when you move out. If you can't take your children with you and they are safe in the home with your partner, then you may leave them at home. Moving out without your children does not mean you have abandoned them. (If, after you move out, your partner tries to prevent you from seeing your children or spending time with them, you should see a lawyer.)

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.

Take any medications and prescriptions with you when you leave.

Also take 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. Suspend joint credit cards and accounts

If you have any joint credit cards with your partner, consider calling the credit card issuer to tell them you are separating and 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 avoid it.

If you have a line of credit or an open mortgage with your partner and you worry your partner might withdraw more money, consider calling the lender and asking 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 doing anything that might look unfair. And you should let your partner know if you take any of these steps.

Common questions

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 any more than half. If you have an income and your partner does not, or if payments for important family expenses like the mortgage come from the joint account, consider not taking anything.

Tip If you do take money from a joint account, consider letting your partner know, so they are not surprised when they access the account.

Can I get a court order to make my partner leave the family home?

The *Family Law Act* allows the court to make an order giving a spouse “**exclusive occupancy**” of the family home. This rule applies to property that is owned and property that is 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.

If there has been family violence or there's a risk of it, the court can make an order that only one person be allowed to live in the home. It can also set conditions for contact and communication.

Can I lock my partner out?

Usually each person 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. But if you fear 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, then locking out your partner could backfire and your partner could complain you have treated them unfairly. If possible, get legal advice before locking out your partner.

Where a party is the sole owner of property, that does not necessarily mean they can demand the other party move out or force the other party out. Whether a party has the legal right to demand this will depend on the facts of each case. The police will often assist when it comes to third party disputes over property, but when it comes to separations, they are reluctant to interfere and will tell you to see a lawyer.

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, such as the rent or mortgage, utilities and taxes. If you qualify under the law as a "spouse", you can apply for support from your partner to help you pay 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 on title of your 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, and you should speak to a lawyer before deciding what to do.

What if my partner does not want to sell the home?

If you are joint owners of your family home and your partner refuses to sell the home, you will likely need to sue to force the sale of the home. The court can make orders about selling the home and how it is to be sold, including 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 what is required to force the sale of the home and whether a court will make that order.

Should I get a separation agreement?

The best solution when a couple separates is to get an agreement, as long as the couple can get along well enough to negotiate a settlement or negotiate an agreement through their 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, how the children will be cared for, and whether support will be paid. See our information on separation and separation agreements (no. 115).


Tip Get a lawyer's advice before you sign a separation agreement, even one negotiated by a mediator, to fully understand what the agreement means and how it affects your legal rights and obligations.

Get help

With more information

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, provides comprehensive information on separation and other aspects of family law.

Web: wiki.clicklaw.bc.ca ^[7]

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Requirements for Divorce and Annulment (No. 120)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit ^[1], Brown Henderson Melbye and Zahra H. Jimale ^[2], Jimale Law Corporation in October 2018.

A **divorce** is a court order ending a valid marriage. **Annulment** is a court order declaring a marriage to be invalid. Each order is granted only if certain requirements are met.

Understand your legal rights

Married spouses need to divorce to end their legal relationship

A **divorce** is a court order under the *Divorce Act* ^[3] that ends a valid marriage. Only married spouses can get a divorce; unmarried spouses cannot and do not need to divorce. Their relationships end when they separate.

Some religions allow for religious or ritual divorces. These divorces do not legally end a marriage. In law, you and your spouse remain married until a court makes a divorce order.

A married spouse will need to get a divorce order if they ever want to remarry.

The grounds for getting a divorce

The *Divorce Act* applies to all divorces in Canada, whether you were married in Canada or elsewhere. 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** which the other spouse did not approve of or accept
- one spouse has been mentally or physically abusive to the other spouse, called "**cruelty**" in the *Divorce Act*, which has made living together intolerable

Most people ask for a divorce order based on having lived separate and apart for at least one year. To claim a divorce based on adultery or cruelty, you must be able to prove the adultery or cruelty occurred. That can be difficult if the other spouse does not agree.

Living separate and apart

Separation usually means living in separate places. However, some couples can be separated yet still live in the same home, as long as the marriage-like quality and intimacy of their relationship has ended. For example, they no longer sleep together, do chores for each other, eat meals together, or go to family events as a couple.

When separation starts

Separation starts when one spouse tells the other they want to separate. The decision to separate can be made by one or both spouses. It is not necessary for both spouses to agree to the separation.

If you reconcile for a short time

Spouses that are separated can get back together and 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 date of separation. If they live together for more than 90 days, the one-year period of separation starts over if they later break up again. For more details, see our information on separation and separation agreements (no. 115).

Starting divorce proceedings

When you can start divorce proceedings

You can sue for divorce any time after you have separated. (To bring divorce proceedings in BC, you do need to have lived in the province for at least one year.)

Which court you sue in

Two courts deal with family law in BC, Provincial Court (also called Family Court) and Supreme Court. But only Supreme Court can make divorce orders under the *Divorce Act*. If you want a divorce, you must sue in Supreme Court.

A desk-order divorce allows you to avoid going to court

A **desk-order divorce** is a process that lets you get a divorce order without going to court. Once you and your spouse have agreed on the various issues that need to be resolved, you can apply for the divorce order by filing several court forms. These forms include:

- a **requisition** for the order (this is a document asking for the divorce order)
- an **affidavit of service** saying your spouse was personally served with the documents beginning the court case (an affidavit is a legal document where a witness makes statements about facts they say are true)
- your affidavit giving the court your evidence in support of the divorce order
- a draft of the **divorce order**

If you have children, you will also have to file an affidavit dealing with child support. This affidavit gives the court more information about your income and your spouse's income, and the arrangements for child support.

If you and your spouse agree, you can also seek a divorce jointly, which requires you to file documents together in support of the divorce.

We explain the desk-order process in more detail in our information on desk-order divorce (no. 121).

Situations where the court will not grant a divorce

The court will not grant a divorce in certain situations.

Collusion or connivance

If you try to deceive the court, the court will not grant a divorce. **Collusion** is when spouses plan to lie to the court to get a divorce order. It can be either in an affidavit or through testimony. For example, if a couple agree they will lie about the date of separation in order 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. **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 appropriate arrangements have been made for the financial support of the children. Most of the time, this means that child support is being paid in the amount required by the Federal Child Support Guidelines, either under a court order or a separation agreement. Our information on child support (no. 117) has more on this.

Annulment is a court order declaring a marriage invalid

An **annulment** means that, according to the law, you and your partner were not actually married. If the court declares an annulment, then it is unnecessary to get a divorce. A divorce is a court order which ends a valid marriage.

Circumstances that can make for an invalid marriage include:

- if one spouse was already married when they married the other person
- if one of the spouses was under age 16 at the time of the marriage ceremony
- if a spouse married someone other than the person they intended to marry

Effect of annulment

If the court annuls a marriage, it is 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 *Family Law Act*.

Foreign marriages

The law about the annulment of foreign marriages is complicated. You should speak to a lawyer who deals with annulments in the country you are dealing with if you want to annul a foreign marriage.

Some religions allow for religious annulments. These annulments do not legally annul a marriage or divorce people. The people remain married until a court declares an annulment.

Common questions

How is adultery proven in a divorce proceeding?

Adultery is when a spouse has sex with someone who isn't their spouse. Adultery is usually proved by having the spouse who committed adultery admit it in an affidavit. If your spouse won't admit to adultery, then you will have to prove it some other way — for example, by having your spouse or another witness testify in court about the adultery. This does not require the other party in the adultery to be a party to the court case, but you may want them to give evidence of the adultery.

What kind of behaviour does cruelty include?

You can establish the breakdown of a marriage by showing **cruelty** that makes living together intolerable. Cruelty can be either physical or mental. You have to prove your spouse's behaviour toward you made it impossible for you to go on living together. Mental cruelty is harder to prove than physical cruelty. You should speak to a lawyer to see if you have enough evidence to prove cruelty.

Is there an advantage to basing a divorce on adultery or cruelty?

Establishing the breakdown of a marriage by showing adultery or cruelty means the court can make the divorce order sooner. The court doesn't have to wait until you've lived separate and apart for one year.

The court does not consider adultery or cruelty when it divides property or awards support. It will consider adultery or cruelty when deciding about children if the behaviour affects 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) if you can prove an assault occurred. This is 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 are thinking about claiming damages caused by your spouse's cruelty.

How long does it take to get a divorce?

The time to get a divorce varies. It depends on how long it takes to settle the various issues that need to be resolved: 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 the various issues are resolved, a divorce can take three to six months to finalize, depending on what steps have already been taken and how busy the court registry is. 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 are getting remarried — you should speak with a lawyer.

Get help

With more information

The wikibook *JP Boyd on Family Law* explains the requirements for divorce in detail.

Web: wiki.clicklaw.bc.ca ^[4]

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Desk Order Divorce: The Do-It-Yourself Divorce Process (No. 121)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha De Wit ^[1], Brown Henderson Melbye, and Zahra H. Jimale ^[2], Jimale Law Corporation in October 2018.

If you and your spouse agree on the issues of parenting, support and property, there is a fast-track way to get a divorce. You can apply for a “**desk-order divorce**”.

Understand your legal rights

You need a divorce order to end a marriage

To get divorced, you need to get a **divorce order** under the *Divorce Act* ^[3]. In BC, only the Supreme Court can grant this order. To get a divorce order, you have to start a court case. This is so even if you and your spouse agree on everything and don't need the court to make an order about anything other than the divorce.

To get a divorce, you must prove your marriage has broken down. You can show **marriage breakdown** in three ways. We explain these ways in our information on the requirements for divorce (no. 120).

A desk-order divorce allows you to avoid going to court

A **desk-order divorce** is a process that lets you get a divorce order without going to court. It's also called an “**undefended**” or “**uncontested divorce**”.

Here's how it works. One spouse starts a court case against the other spouse, who doesn't oppose the divorce order. Once the deadline for a response passes, the spouse bringing the lawsuit can apply for the divorce order. This application involves completing several court forms and filing them in court. No one has to appear before a judge.

You can file jointly

Alternatively, both spouses can start the court case together using special court forms. This is a bit cheaper and faster than if only one spouse starts the court case, because there's no need to serve a spouse with the court forms and there's no need to wait for the response deadline.

The process when one spouse starts the court case is called a **sole divorce proceeding**. The process when the spouses start the court case together is called a **joint divorce proceeding**.

This information describes the process for the sole divorce proceeding.

You give evidence without going to court

The evidence the court needs to make an order will be given in **affidavits** you file in court. An affidavit is a legal document where a witness makes statements about facts they say are true.

Unless the court decides that further evidence or a full hearing is required, it will usually make the divorce order without requiring anyone to attend a court hearing.

If you have children together

The court will need 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 financial arrangements for the children are appropriate. It needs evidence about your income and your spouse's income, the children's living arrangements, and the amount of child support being paid (or an explanation why child support is not being paid). Without this information, the court will not make an order for divorce.

When the divorce takes effect

You are not divorced on the day the divorce order is made. Unless there are special circumstances, the divorce will take effect **31 days after the divorce order is granted**. You should not plan on remarrying within that 31-day period.

Once the 31 days have passed, if your spouse hasn't filed an appeal of the divorce order, you can ask the court to issue a **certificate of divorce** confirming that the divorce order has taken effect. Once the 31 days have passed, you will be divorced whether you get the certificate of divorce 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 divorce proceeding**.

Service is not required in a joint divorce proceeding. Depending on whether the one-year period of separation has passed, you may be able to apply for the divorce order on the same day you file your joint claim. Both of you will sign the notice of joint claim. Both of you will file **affidavits** giving the court the information it needs to decide if the divorce order is justified. If you have children, you will also both have to file an affidavit dealing with child support. This affidavit gives the court more information about your income and the arrangements for child support.

The steps in the process

Step 1. Get your marriage certificate

If you don't have an original, government-issued **marriage certificate**, you have to get one. Photocopies 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 is certified to be a true copy of the original by a lawyer, notary public, or a government official.

If you were married in British Columbia, you can get an original marriage certificate from the Vital Statistics Agency ^[4]. Call 604-660-2937 in the Lower Mainland, 250-952-2681 in Greater Victoria, 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 where you were married to get an original marriage certificate or a certified 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 not in English, you will 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 desk-order divorce. Instead, you will need to apply to court to do away with the need for a marriage certificate.

Step 2. Complete the form to start the court case

A document called a **notice** starts the court case. Supreme Court Form F3 is the notice form for a sole divorce proceeding. The notice states the basis for the divorce and gives information about you, your spouse and any children, as well as the details of your marriage and separation. You can download the notice and other divorce forms from the BC government website ^[5].

The notice form also allows you to ask for other orders along with a divorce order. Other orders might be about the parenting arrangements for your children, child support, spousal support, or the division of property and debt.

If your spouse doesn't agree to the claims you are making, they can file a **response**. If they do so, you can't get a desk-order divorce.

Step 3. File your documents in court

Once you have filled out and signed the notice form, you must **file** it in court, along with your marriage certificate. 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 your spouse with the notice

Someone who is being sued, even in an undefended divorce proceeding, must be given formal notice about the court case. Your spouse must be served by **personal service**, which means arranging for the filed notice to be physically delivered to your spouse. You cannot serve the document yourself. You must get someone else, who is at least 19 years old, to leave the filed notice form with your spouse.

You must prove the service

Your server must swear an affidavit of service in Form F15 describing 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 — other ways are available 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

Your spouse has 30 days to defend the court case by filing a **response** in Form F4. If your spouse files a response, you can't get a desk-order divorce.

In addition to responding to your claim, your spouse may also file a **counterclaim** and make claims against you.

Tip If you have been served with divorce papers, see our information on responding to divorce proceedings (no. 122).

Step 6. If your spouse does nothing, apply for a divorce order

After the 30 days has run out, you can apply for the divorce order by filing in court:

- a **requisition** in Form F35; this is a document asking for the divorce order
- the **affidavit of service** saying your spouse was personally served with the notice that started the court case
- your **affidavit** in Form F38 giving the court your evidence in support of the divorce order
- a draft of the **divorce order** in Form F52

If you have children, you will also have to file an affidavit dealing with child support in Form F37. This affidavit gives the court more information about your income and your spouse's income, and the arrangements for child support.

If you are asking for a divorce based on separation, you can apply for the divorce order only after you and your spouse have lived separately and apart for one year. If you are asking for a divorce based on your spouse's adultery or cruelty toward you, you must provide proof of the adultery or cruelty in your affidavit, plus supporting evidence from your spouse or a witness to the adultery or cruelty.

If you are asking for an order dividing family property and family debt other than equally, your affidavit should explain why the unequal division is fair (for more on this topic, see our information on dividing property and debts, no. 124).

Get help

With your divorce

The Legal Services Society **Family LawLINE** provides free legal advice over the telephone to people on a low income experiencing a family law issue.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaidsbc.ca^[6]

The **BC Family Law Unbundling Roster** features family lawyers and paralegals who offer "unbundled legal services", where you hire them to help with part of a legal matter.

Web: unbundlinglaw.ca^[7]

More information

The Legal Services Society's **Family Law in BC website** features uncontested divorce guides that include step-by-step instructions and blank forms you'll need.


Web: familylaw.lss.bc.ca ^[8]

The wikibook *JP Boyd on Family Law* includes how-to information on starting a divorce action together with sample forms.

Web: wiki.clicklaw.bc.ca ^[9]

The **Online Divorce Assistant** is a free online tool from the BC government that can help you fill out the forms for a joint divorce under certain circumstances.

Web: justice.gov.bc.ca/divorce ^[10]

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Responding to Divorce Proceedings (No. 122)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Samantha de Wit ^[1], Brown Henderson Melbye, and Zahra H. Jimale ^[2], Jimale Law Corporation in October 2018.

If a divorce proceeding has been started against you, you have two choices: do nothing or respond to the proceeding. Learn what's involved in **responding to divorce proceedings** in BC.

Understand your legal rights

A divorce proceeding begins with a notice of claim

When your spouse begins divorce proceedings, they file **notice of claim** in court. Your spouse is the **claimant**. You are called the **respondent**.

The notice of claim must be served on you

The claimant must arrange for the notice of claim to be **personally served** on the respondent. This means the notice of claim must be given to you in person by someone other than your spouse.

If you're not available to receive the papers or the claimant has trouble serving you personally, they can seek the court's permission to serve you **substitutionally**. This might involve, for example, leaving the papers at your last known address, with your close relatives, or in your mailbox.

Read the notice of claim

Read the notice of claim carefully. It states the orders the claimant wants the court to make. Whether and how you respond to the notice of claim depends on the orders the claimant is asking for and whether you agree with the claims or not.

Tip Because the claims in a divorce proceeding could significantly affect your rights, you should consider asking a lawyer to review the notice of claim with you and explain what it means.

There are time limits to respond

You must respond to the notice of claim **within 30 days of the date you were served**. You respond by filing a **response** in court and serving the filed response on the claimant.

It is very important to respond if you disagree with any of the orders the claimant is asking for. If you don't respond, the court can make the orders your spouse is asking for without any further notice to you.

You can serve the response on the claimant by **ordinary service**. This involves mailing or faxing (or sometimes emailing) the document to the claimant's "address for service". The claimant's address for service will be set out in their notice of claim.

The notice of claim can include several claims

The notice of claim gives the court basic information about you and your spouse, and information about your marriage and separation. It describes the orders your spouse is asking the court to make. At a minimum, this will be an order for divorce.

The grounds for divorce

To get a divorce, your spouse must show your marriage has broken down. They can do this in three ways: by showing you have lived separate and apart for at least one year, by showing you committed adultery, or by showing you treated them with cruelty that makes living together intolerable.

The notice of claim will state the way your spouse plans to show **marriage breakdown**, such as a one-year separation. If you don't dispute the reason, you might not object. On the other hand, if your spouse is claiming adultery or cruelty and those claims aren't true, you will probably want to object. For information on the legal basis for divorce, see our information on the requirements for divorce (no. 120).

Other claims

In the notice of claim your spouse can also ask for orders about the parenting and support of your children, spousal support, the division of family property, and other matters.

Carefully consider what your spouse is asking for. If you have children and your spouse is seeking sole custody of the children under the *Divorce Act*, do you feel that joint custody would be better, or that you should have sole custody? If your spouse is seeking a 50/50 division of family property, do you feel entitled to more than half?

If you don't agree with what the notice of claim seeks

If you dispute any of the claims in the notice of claim, you must respond. You respond by filing a **response** in court and serving the filed response on the claimant.

You must respond to the notice of claim **within 30 days of the date you were served** with the notice.

Filing a response makes the proceeding a **contested divorce**. A trial may be necessary if you can't settle the dispute.

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. As with the response, you must file and serve the counterclaim on the claimant within 30 days of the date you were served with the notice of claim.

Common questions

When will the divorce be granted?

If the claim for divorce is based on a one-year separation, the 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. No matter what the claim is based on, the court must be satisfied that adequate arrangements have been made for the financial support of any children before it can make the divorce order.

Although the divorce order can be made before all the issues are resolved, the court will usually be hesitant to make a divorce order before everything is resolved, without a very good reason for doing so.

What if there are matters needing to be dealt with right away?

From when a notice of claim is filed, it can take a year or more to have a trial, if a case cannot be settled. 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, or who will live in the family home. These are called **interim orders**. They are made if one or both of you apply to the court. Doing so is an **interim application**. Interim orders last until another interim order is made or until the final order ending the case is made at trial or by agreement.

Interim applications are made by filing a **notice of application** (a court form describing the orders you want the court to make) and a supporting **affidavit** (a sworn statement describing the basis for the application). The other spouse will have the opportunity to respond. Typically, interim application hearings take anywhere from 15 minutes to three hours or more, depending on the circumstances.

Interim applications should be taken very seriously as interim orders are often influential in the final outcome of the case. See our information on applying for an interim order (no. 112).

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 it will be for each of you.

Can I object to a divorce?

You can object to a divorce, but you're not likely to succeed. Most of the time, the judge will make a divorce order as long as the basis for the divorce is proven, whether you want it or not. In some rare situations a judge may refuse a divorce — for example, if adequate arrangements have not been made for the support of any children, or if the divorce means the end of pension benefits a spouse is receiving.

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. The conference is held in private and **without prejudice**. This means each of you can make settlement proposals at the meeting without being held to your proposal later on, if you don't reach a settlement.

A judicial case conference is a great chance to tell the judge and the claimant what you really want. Everything you say at the meeting is confidential. It can't be repeated outside the meeting room or used later. Speak your mind and explain what orders you're looking for and why. The judge will not make any decisions, unless you and your spouse both agree. (Note the judge can make orders about procedure, such as when financial documents should be exchanged and the dates for the trial.)

When does the divorce order take effect?

Divorce orders take effect 31 days after the date the order is made, unless 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*, no matter how long they have been divorced.


Divorced spouses can always make a claim about children — such as claims for custody, guardianship, or child support — as long as the children qualify as “children of the marriage” under the *Divorce Act* or as “children” under the *Family Law Act*.

Get help

With more information

The wikibook *JP Boyd on Family Law* includes information on replying to a court proceeding in a family matter.

Web: wiki.clicklaw.bc.ca^[3]

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Custody and Access, Guardianship, Parenting Arrangements, and Contact (No. 142)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale ^[1], Jimale Law Corporation in May 2017.

When a couple separates, they must decide on the **care of their children**. There are two laws and a host of legal concepts that deal with the issues in play.

Understand the legal framework

Two laws deal with the care of children

When a couple separates, they must decide where the children will live, how parenting decisions will be made, and how often each person will see the children.

There are two laws that deal with these issues, the federal *Divorce Act* ^[2] and BC's *Family Law Act* ^[3]. The *Divorce Act* applies to parents who were married to each other. The *Family Law Act* applies to all parents, whether they were in a married or unmarried spousal relationship, were in a dating relationship, or were not in any relationship.

Under both laws, if the couple cannot agree about where the children will live or how much time each will have with the children, the couple can ask a court to decide. Whenever a court considers issues like these, the court's primary concern is the **best interests of the children**.

Custody and access

The *Divorce Act* ^[4] talks about the care of children in terms of custody and access.

Custody means the right to have a child with you and the right to make decisions about how the child is cared for and raised.

Parents can share custody of a child after they separate; this is called "**joint custody**". When only one parent has custody of a child, it is called "**sole custody**".

Most of the time, parents have joint custody of their child. Joint custody does not mean the child's time is divided equally between the parents (although that is a common way of distributing children's time between parents), but it does mean the parents have to work together when making decisions about the child.

Sole custody might be awarded to a parent in situations where there has been family violence, the other parent has drug or alcohol problems, or the other parent has been absent from the child's life.

Access is about the child's schedule of time with their parents. It often refers to the visitation schedule of the parent with the least amount of time with the children.

Where there is a serious risk to the safety of the child, a parent's access can be subject to the requirement that the access occur in the presence of another adult. This is called "**supervised access**".

A parent who has access but doesn't have custody is still entitled to have information about the health, education and well-being of the child.

Guardians and guardianship

The *Family Law Act* ^[5] talks about people who are **guardians**. Guardians are usually, but not always, the parents of a child. Guardians generally, but not always, have **parental responsibilities** for a child, which means they can make decisions for and about a child.

Who can be a guardian

Under the *Family Law Act* ^[5], while a child's parents are living together and after they separate, each parent is presumed to be 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,
- the parent and all of the child's guardians make an agreement providing 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.

Someone can also become a guardian through a guardian's will or an appointment when a guardian dies or becomes incapacitated. Or someone can apply to court to become a guardian.

Applying to become a guardian

If you apply to court to become a guardian, the law in BC ^[6] requires you to provide certain information about why the order would be in the best interests of the child. You must complete a special **affidavit** (a legal document where you make statements about facts you say are true), get a criminal records check, a records check from the child welfare authorities, and provide certain information about any children that are and have been in your care.

Guardians generally have parental responsibilities

Guardians generally, but not always, have **parental responsibilities** for a child. This means they have the responsibility to decide how to raise the child, based on the child's best interests. Parental responsibilities include deciding where the child lives and goes to school, how the child gets treated when sick, and giving or withholding permission on behalf of the child.

Parental responsibilities can be shared

Parental responsibilities can be shared between two or more guardians, which usually means they are all responsible for making decisions about the child and must make those decisions in consultation with one another. Parental responsibilities also can be allocated among guardians, so that a guardian has sole responsibility for certain kinds of decisions, like about health care or schooling, and can make those decisions without having to consult the other guardians.

Parenting time and contact

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.

Contact is the time that someone who is not a guardian has with a child. Parents who are not guardians may have contact, as might grandparents, aunts and uncles, other family members or any one else who has an important relationship with a child.

How parental responsibilities and parenting time are decided

After they separate, a child's guardians may be able to reach an agreement about parental responsibilities and parenting time. They may decide to make this agreement formal. This is called a **separation agreement**.

If they can't agree, the guardians can ask a court to decide. The court will make a decision based on what's best for the child. The court's only concern is the best interests of the child.

The arrangements made in an agreement or court order for parental responsibilities and parenting time are known as "**parenting arrangements**".

Common questions

Can a child decide whom to live with?

The *Family Law Act* ^[7] requires that a child's views be considered, unless it would be inappropriate to do so.

If a child is old enough and mature enough, the judge will consider the child's wishes when determining arrangements for custody, parenting time and contact. The importance given to the child's views will depend on the age and maturity of the child, the reason why the child wishes to live with a particular person, and how strongly the child feels about wanting to live with that person.

There is no particular age at which children have the right to decide who they will live with. In general, the older the child is, the more weight the court will give to the child's wishes. Usually, the wishes of a child over age 12 are taken into consideration, and an older teenager's wishes are likely to be decisive.

How are a child's wishes considered?

If issues about the care of a child who is at least six years old are disputed, a judge may ask a professional with special training to prepare a report on the child's wishes. These professionals may be a family justice counsellor, parenting coordinator, social worker, psychologist, 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:

- A "**hear the child report**" describes what a child says during an interview with the professional. It does not evaluate the child's wishes or provide opinions about the accuracy of those wishes.
- A "**views of the child report**" includes some evaluation. It often gives an opinion on the reliability of the child's statements. For example, does the child understand the implication of their wishes, or have they been coached? A views of the child report may also include recommendations.

Costs range from \$1,000 for a hear the child report to \$3,500 for a views of the child report. The judge can order a free report be prepared by a family justice counsellor, but they can take up to six months.

What is a “needs of the child assessment” report?

If arrangements about the care of a child are disputed, the judge may ask a family justice counsellor or another person, like a social worker, a psychologist or a counsellor, to prepare a “needs of the child assessment”. These are also called “section 211 reports” (they are written under section 211 ^[8] of the *Family Law Act*).

The assessor will write a report about the needs of the child, the views of the child if the child is old enough, and the ability of the parties to meet the child’s needs. These reports often describe the parenting arrangements the assessor believes are in the best interests of the child.

Because of high demand, reports prepared by family justice counsellors can take months to complete. Psychologists and other counsellors can write a private report faster, though the fees are in the thousands of dollars. Some insurance plans will pay some of the fees.

Are orders and agreements about these matters final?

No order or agreement about these issues is ever absolutely final. Orders and agreements about custody and access, and parenting arrangements and contact, may be changed whenever there is a significant change in circumstances affecting the child, including because of a change in circumstances of another person, providing the change affects the child’s best interests and justifies changing the order or setting aside the agreement.

Do I need a lawyer?

You are not required to retain a lawyer. It is highly advisable to obtain legal advice and representation where possible. If you go to Provincial Court, most court registries require you to take a free government-sponsored “Parenting After Separation” course before you can be heard by the court. Many people find the course to be very helpful in learning about the issues involved in a family dispute. For more on Provincial Court, see our information on Family Court (no. 110).

Are there options to avoid going to court?

Yes, there are excellent options to help parents reach an agreement on custody and access, and parenting arrangements and contact.

Mediation can help you avoid going to court. Mediation is a process where the people in a conflict meet with a neutral person (a **mediator**), who helps them find a solution they agree on. The provincial government offers couples the services of trained mediators, called family justice counsellors, free of charge. Call Service BC at 604-660-2421 in the Lower Mainland, 250-387-6121 in Victoria, or 1-800-663-7867 elsewhere in BC. You can also engage a private mediator.

Collaborative practice is a kind of negotiation where you and the other party, along with your lawyers, agree to work together to resolve the problems arising from your separation without going to court. Collaborative practice often involves specialists who advise the parties about the child’s needs and how the child is experiencing their separation.

For more on these options, see our information on mediation and collaborative practice (no. 111).

What can I do if the other parent won't follow a court order?

The *Family Law Act* ^[9] has special provisions for the enforcement of orders and agreements for parenting time and contact. In special circumstances, the court can also require police to help enforce these orders and agreements, though this should be a last resort only.


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 provisions in the *Family Law Act* that can help with this too.

Get help

With more information

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has extensive coverage of custody and access, guardianship, parenting arrangements, and contact.

Web: wiki.clicklaw.bc.ca ^[10]

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Child Support (No. 117)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale ^[1], Jimale Law Corporation in May 2017.

Parents have a legal duty to support their children, even if one parent doesn't see or take care of the children. Learn about **child support** and how to get it.

Understand the legal framework

Child support helps cover the costs of raising a child

Child support is money paid by one parent to the other to help cover the expenses associated with raising the children.

Child support is paid when the relationship between the parents has ended. The parent who the child lives with most of the time is entitled to child support from the other parent. If a child spends equal (or almost equal) time with both parents, the parent with the higher income will usually have to pay child support.

Payments of child support can be set out in a written agreement between the parents or in an order made by a court.

It is important to know that after parents separate, child support is the legal right of the child, whether or not there is an agreement or a court order in place.

Who has to pay child support

Parents are under a legal duty to provide child support. This includes biological parents, parents who have had a child through assisted reproduction, and adoptive parents. It includes unmarried parents and married parents.

When a child was conceived with assisted reproduction, a **surrogate mother** can be a parent obliged to pay child support unless the people who wanted to have the child have an agreement with the surrogate mother that says otherwise.

A **donor** of egg or sperm is not a parent who is required to pay child support unless the people who wanted to have the child have an agreement with the donor that says otherwise.

A **stepparent** can be required to pay child support. This can happen under the *Divorce Act* ^[2] if the couple was married and the stepparent had a parent-like relationship with the child. It can also happen under the *Family Law Act* ^[3] where:

- 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 contribution.

A stepparent can be obliged to pay child support even when the other biological parent is already paying child support.

The amount of child support

The amount of child support is determined under a law called the Federal Child Support Guidelines ^[4]. The Guidelines specify the amount of support based on the paying parent's income, the province or territory of residence, and the number of children child support is being paid for. There are some exceptions to this general approach, which we explain below.

Tip You can calculate the support amount under the Guidelines using the Child Support Table Look-up ^[5] on the federal Department of Justice website at justice.gc.ca ^[6].

This basic child support amount is a contribution to the child's basic expenses and to the cost of raising the child. This includes the child's share of the rent or mortgage, phone bill, utility bills, cable bill, grocery costs, clothing, haircuts,

basic school supplies, toiletries, and so forth.

Where there are “special or extraordinary” expenses

In some cases, both parents may be obliged to contribute to certain expenses for the child on top of the basic amount of child support. These are four types of expenses that normally qualify as **special or extraordinary expenses** (there can be others as well):

- 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 or extraordinary” expenses. To qualify, the expenses have to be reasonable in light of the parents' financial circumstances and the child's needs. As a result, piano lessons might qualify as a special or extraordinary expense for one family but not for another.

How “special or extraordinary” expenses are paid

If an expense qualifies as a “special or extraordinary” expense, both parents must contribute to the cost of the expense in proportion to their incomes.

If both parents have the same income, they would each pay for one-half of the cost of the expense. If parents have different incomes, they pay in the proportion of their individual incomes to the total income of both parents. For example, say a father has an income of \$20,000 and a mother has an income of \$30,000. Together, their incomes total \$50,000. Of this total amount, the father's income is 40%, and the mother's is 60%. So the father would pay for 40% of the cost of a qualifying special or extraordinary expense and the mother would pay for 60% of the cost.

The cost of special expenses that parents share is the cost left over after any tax benefits or subsidies are taken into account (such as the federal tax deduction available for child care expenses).

If parents share the care of the child

If the parent paying child support looks after the child for at least 40% of the time over the course of a year, this is called “**shared custody**”. In this case, the parent may be able to pay a lower amount of child support than what the Federal Child Support Guidelines normally require.

In a shared custody arrangement, each parent pays child support to the other, as the child lives with each parent equally or close to equal time. In cases like these, a court will look at each parent's income, household financial circumstances, and the financial needs of the child to determine the appropriate child support amount payable by the parent with greater income.

If each parent has a child in their care

When each parent has one or more children in their care, this is called “**split custody**”. In this case, each parent is supposed to pay the full amount of child support to the other parent for the child in that parent’s care. The amount that changes hands is the difference between the higher amount and the lower amount.

For example, say a father would have to pay a mother \$400 per month for the child in her care, and the mother would have to pay the father \$250 per month for the child in his care. The father would pay the mother \$150: the difference between what he owes her and what she owes him.

If the amount set by the Guidelines is too high or too low

In certain circumstances, a court can order that more or less child support be paid than what the Federal Child Support Guidelines require. For this to happen, a parent must show the payments required by the Guidelines would cause “**undue hardship**”. Undue hardship means the required payments would be very unfair and cause a very significant financial problem for either the parent receiving support or the parent paying it.

When a claim of undue hardship is made, the court will look at the standard of living of each parent’s household, including the income from a new spouse or live-in boyfriend or girlfriend, and compare each household’s standard of living against the other. Proving undue hardship is complicated, and it is advisable to speak with a lawyer.

How to get child support

Child support can be agreed to in a **separation agreement**. If parents cannot agree, one of them can start a court case and ask the court for an order that child support be paid.

Which court to apply to

An application for a child support order can be made to either the British Columbia Provincial Court (in Family Court) or the Supreme Court. Each court has its own set of forms and rules. Usually, it’s simpler and less expensive to obtain a child support order in Family Court. For more on this option, see our information on Family Court (no. 110).

However, Family Court cannot grant a divorce order, divide property or debts, or make orders about family property. If the parties are asking for orders like these, it may be better to proceed in Supreme Court, where everything can be dealt with in one court case.

Financial disclosure

To obtain an order for child support, financial disclosure must be made. The paying parent must provide proof of their income, which usually includes paystubs, recent income tax returns, and other financial documents. In some cases, such as where the parents are sharing “special or extraordinary” expenses or share the child’s time, the receiving parent will also be required to make financial disclosure.

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 the case is settled or goes to trial, and can usually be obtained relatively quickly.

The amount of interim support a court awards may be different than it decides after a trial, when the best information about the parents’ incomes and financial circumstances is usually available. For more on interim orders, see our information on applying for an interim order in a family law case in Supreme Court (no. 112).

Common questions

How long is child support paid for?

Child support is paid for as long as the child continues to be a “child” as defined by the *Divorce Act* or the *Family Law Act*. In British Columbia, a child is someone under the age of 19, the provincial age of majority, or who is 19 or older but is financially dependent on a parent. For example, a student taking post-secondary studies or an adult child with serious health problems may continue to qualify as a child even though they are over the age of 19.

Does a stepparent pay the same amount of child support as a parent?

Not necessarily. If the person paying child support is a stepparent, they may pay less child support than what the Federal Child Support Guidelines would normally require. There is no formula to do this calculation; often the court treats the stepparent’s obligation as a top up to the amount that should be paid by the child’s birth parent.

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 ^[7] to the Ministry of Social Development and Poverty Reduction and the Ministry will help get a child support order or agreement.

Can a child support order cover the past?

Child support orders can be made to start at an earlier date than the date when an agreement is reached or a court order is made. These are called “**retroactive**” orders. In general, the court will make a retroactive order when there is an obligation to pay child support that was not met, or an obligation to pay a higher amount of support than what was paid, but usually for no more than three years before the date of the application for retroactive child support.

What if circumstances change and child support needs to change?

Either parent can apply to have an order or agreement about child support changed if there is a change in circumstances. Examples include where there is an increase or decrease in one parent’s income, or a change in the child’s living arrangements. To ensure the appropriate child support amount is being paid, parents should review child support payments annually by exchanging updated financial information. If there has been a change, the Federal Child Support Guidelines should be consulted to determine what new amount of child support should be paid.

What can I do if child support isn't paid?

If a parent doesn't pay the child support owing under an order or an agreement, the **Family Maintenance Enforcement Program** can help. This BC government program can help you collect support payments that are owed and monitor a support order or an agreement to make sure payments continue to be made. For more details, see our information on enforcing support orders and agreements (no. 132).

Get help

With child support

Family justice counsellors in **Family Justice Centres** throughout British Columbia can help parents with understanding the Child Support Guidelines, preparing a separation agreement, and obtaining a support order in Provincial Court. Their services are free.

Telephone: 604-660-2421 in the Lower Mainland and 250-387-6121 in Greater Victoria

Toll-free: 1-800-663-7867

Web: justicebc.ca/en/fam ^[8]

For more information about the Federal Child Support Guidelines, **Child Support Officers** are available in Vancouver, Surrey, Kelowna and Nanaimo.

Telephone: 604-660-2084 and 604-501-3100 in the Lower Mainland

Toll-free: 1-800-578-8511 and 1-888-227-7734


More information

The Legal Services Society's **Family Law in BC website** features information on child support and step-by-step guides on going to court in family matters.

Web: familylaw.lss.bc.ca ^[9]

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has indepth information on child support.

Web: wiki.clicklaw.bc.ca ^[10]

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Spousal Support (No. 123)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale ^[1], Jimale Law Corporation in May 2017.

When a relationship ends, one spouse may seek help from the other with living expenses or to compensate for choices the spouses made during the relationship. Learn about **spousal support**.

Understand your legal rights

Spousal support helps a former spouse with living expenses

Spousal support is money paid to a former spouse to help with living expenses. The money is paid under an agreement or court order after a relationship ends.

Although anyone who was in a married or unmarried spousal relationship can **apply** for spousal support, there is no automatic right to receive support just because of the relationship. Whether spousal support will be paid, and, if so, how much, depends on the particular circumstances of each couple.

Who can claim spousal support

Everyone who qualifies as a “**spouse**” can claim spousal support after separation.

Under the federal *Divorce Act* ^[2], spouses are people who are married to each other.

Under BC’s *Family Law Act* ^[3], 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.

When a spouse is entitled to spousal support

Spousal support is intended to do four things:

- recognize any financial advantages or disadvantages a spouse may face because of the relationship or the breakup
- make both spouses share any financial consequences arising from the care of their children during the relationship
- make sure neither spouse faces economic hardship as a result of the breakup
- if possible, help each spouse become financially independent within a reasonable amount of time

A spouse’s entitlement to spousal support depends on several factors, including:

- **The length of the relationship:** The longer the relationship, the more likely spousal support will be awarded.
- **Difference in incomes:** The greater the difference in income between the spouses at the end of a relationship, the more likely spousal support will be awarded.
- **Economic disadvantage:** The more economically disadvantaged a spouse is as a result of the relationship (due, for example, to leaving the workforce to raise a child, and therefore missing out on developing job skills and on getting raises), the more likely spousal support will be awarded.
- **Earning capacity:** The more one spouse’s earning capacity is reduced because of family obligations like child care or a serious illness the more likely spousal support will be awarded.

Generally, if one spouse supported the other during their relationship, that spouse will be expected to continue to contribute to the support of the other spouse after the relationship breaks down. On the other hand, if both spouses were financially independent during the relationship, then in general, neither will be entitled to receive financial support after separation.

The effect of a spouse's behaviour on support

The conduct of the spouses is usually irrelevant when deciding spousal support. For example, a spouse will not be denied support because they had an affair or because they were violent or suffered violence.

Under the *Family Law Act*, however, a court can consider conduct that:

- unreasonably causes or prolongs a need for spousal support, or
- unreasonably affects a spouse's ability to pay spousal support.

The amount of spousal support

Where a spouse is entitled to receive spousal support, the amount of spousal support is usually determined using the Spousal Support Advisory Guidelines^[4]. These Guidelines are used whether the amount is being determined by a court or negotiated by the parties.

The Guidelines use a number of mathematical formulas to calculate spousal support ranges and the length of time for which support should be paid.

The formulas used to determine these ranges can be complicated, especially if a child is involved. Software programs make some of the more difficult calculations easier. Some companies in the private sector sell software for this purpose — for example, DivorceMate. There are also free online calculators such as mysupportcalculator.ca^[5] that can do simple calculations.

How long spousal support is paid for

Once a spouse's entitlement to spousal support is established and the amount of support payments fixed, the next step is to look at how long the support payments will be paid for.

The law expects each spouse to make reasonable efforts to become self-supporting if at all possible. To encourage this, support payments may be limited to a certain length of time. For example, if a spouse needs to get job training before returning to work, payments may be limited to the period of time needed to complete that training.

The length of the spouses' relationship is often a significant factor in determining how long spousal support will be paid. For people leaving long relationships, spousal support might be paid permanently or until retirement. The courts recognize that the older a person is, the harder it generally is to return to the workforce or retrain.

For people in shorter relationships, particularly where the person receiving support payments is either working outside the home or capable of working outside the home, support might only be payable for a fixed length of time.

How to get spousal support

Arrangements for spousal support can be made in a **separation agreement**. If spouses cannot agree on the payment of spousal support, one of them can apply to court for an order that spousal support be paid.

Married spouses can seek spousal support under either the federal *Divorce Act* or the provincial *Family Law Act*. Unmarried spouses can only ask for spousal support under the *Family Law Act*.

Which court to go to

To apply for spousal support under the *Divorce Act*, or under both laws, the claim must be made in BC Supreme Court. To apply for support under the *Family Law Act*, the claim can be made in either the Supreme Court or the Provincial Court. Each court has its own forms and rules. For Provincial Court, see our information on Family Court (no. 110).

Getting “interim” support

While the court case is in progress, 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, see our information on applying for an interim order in a family law case in Supreme Court (no. 112).

Both spouses must provide full financial disclosure

Full financial disclosure is required of both spouses when making decisions about spousal support, whether the spouses are in court or are trying to negotiate a resolution outside 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 to give the spouses a complete picture of their property and debts, income and liabilities, and are usually provided along with important documents like income tax returns and tax assessments.

Common questions

What are the tax consequences of spousal support?

Spousal support is **taxable income** in the hands of the spouse who receives it, and **deductible** from the taxable income of the spouse who pays it. The person receiving support payments must report the income to Canada Revenue Agency and pay tax on it, just like employment income. The person paying support is allowed to 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,
- paid on a periodic basis, such as once a month or once every two weeks, and
- actually paid.

Other kinds of support payments — such as payments made in a lump sum or payments made by providing services — are not taxable or deductible. It may be necessary to speak to a lawyer to confirm the tax status of spousal support payments.

The tax consequences of support payments should be taken into account when determining the amount of support that should be paid. For more on this, see our information on the tax implications of support payments (no. 133).

What if I'm on income assistance?

After a couple separates, if one spouse applies for or is receiving income assistance, the BC government may ask them to assign their rights to spousal support ^[6] to the Ministry of Social Development and Poverty Reduction. This allows the Ministry to take steps to collect spousal support on their behalf, and to keep some or all of the support it collects.

What happens if circumstances change?

If there's a significant change in the financial circumstances of either spouse after spousal support has been ordered or agreed to, it is almost always possible to apply to change the support order or to renegotiate a separation agreement. Examples include if either spouse's financial situation unexpectedly worsens, or the paying spouse gets better paying work. Generally, the change must be significant and must not have been foreseeable when the support order or agreement was made.

What can I do if my spouse won't pay the support?

If your spouse does not pay spousal support as ordered or agreed, the **Family Maintenance Enforcement Program** can help free of charge. This BC government program can help you collect support payments that are owed and monitor a support order to make sure payments continue to be made. For more details, see our information on enforcing support orders and agreements (no. 132).

Get help

With spousal support

Family justice counsellors in **Family Justice Centres** throughout BC can help couples with understanding spousal support, preparing a separation agreement, and obtaining a support order in Provincial Court. Their services are free.

Telephone: 604-660-2421 in the Lower Mainland and 250-387-6121 in Greater Victoria

Toll-free: 1-800-663-7867

Web: justicebc.ca/en/fam ^[7]


More information

The Legal Services Society's **Family Law in BC website** features information on spousal support and step-by-step guides on going to court in family matters.

Web: familylaw.lss.bc.ca ^[8]

The wikibook ***JP Boyd on Family Law***, hosted by Courthouse Libraries BC, has indepth information on spousal support.

Web: wiki.clicklaw.bc.ca ^[9]

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Enforcing Support Orders and Agreements (No. 132)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Maintenance Enforcement & Locate Services ^[1], Ministry of Attorney General in March 2018.

Unfortunately, some parties who owe child support or spousal support fail to make their payments. Learn the steps to take to **enforce payments owed under a support order or agreement**.

Understand your legal rights

If spousal support or child support is not paid

After a couple separates, one of the parties may pay **spousal support** to the other to help with living expenses. If they had children, one parent may pay **child support** to the other to help cover the expenses associated with raising the children.

Spousal support or child support payments can be set out in a court order or a separation agreement.

If the party who has to pay support does not do so, the money they owe is called “**arrears**” or “arrears of support”.

There are two ways a party who is entitled to support can collect arrears:

1. they can take steps themselves to enforce the support order or agreement in court, or
2. they can get help from a free government program, the Family Maintenance Enforcement Program.

Court orders differ from separation agreements

A **court order** for the payment of support is a mandatory direction of the court. The party who is owed support can take steps to enforce a court order right away.

A **separation agreement**, on the other hand, is a private contract between a couple who has separated. Like any contract, 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 the agreement to be enforced as if it was a court order.

Enforcement steps you can take on your own

If support payments are missed, the person owed support has several options to enforce payment. Where you have a support order or a separation agreement filed in court, you can (among other steps):

- Apply to **garnish the wages** of the person who owes support. This means their employer must send a portion of their wages to the court (up to 50%). That money can then be paid to you to cover the support arrears.
- Apply for an order that some of their **property be sold** to pay the arrears.
- Apply for an order to **seize** (take money from) certain kinds of bank accounts and retirement savings accounts.

There are also a number of ways you can force the other party to provide information about their finances. Doing so can help you figure out how to best collect the arrears. For example, you can require the other party to:

- Attend a **default hearing**. This is a court hearing where the other party will be required to produce a statement of their finances.
- Attend an **examination hearing**. This is a court hearing where you can question the other party under oath about their finances.

For any of these steps, you must apply to court and explain to a judge why they should grant the order you are requesting. The process of applying to court can be complicated. It's a good idea to speak with a lawyer first.

How the Family Maintenance Enforcement Program works

The **Family Maintenance Enforcement Program** (FMEP) is a free service provided by the provincial government. The program enforces support orders and agreements on behalf of the person who is owed support.

Enrolling in the program

Anyone with a support order or separation agreement filed in court can enroll in the Family Maintenance Enforcement Program. The application form is available online at fmep.gov.bc.ca ^[2]. You can also call the program at 604-678-5670 in the Lower Mainland, 250-220-4040 in Greater Victoria, or 250-434-6020 in Northern and Interior BC.

On being enrolled in the program

Once someone is enrolled in the Family Maintenance Enforcement Program, all support payments must be sent to the program. The program processes the payments and sends them on to the person owed support. The program tracks when payments are due, and when and how much gets paid. If payments are missed and arrears accumulate, there are several steps the program can take, explained shortly.

Default fee

Whenever a person who owes support misses or is late with two payments within the same calendar year, the program will automatically charge them a **default fee**. The fee goes to the BC government, not to the support recipient, to help the government cover the costs of operating the program.

Steps the Family Maintenance Enforcement Program 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. The program can also take other steps the recipient cannot, like restricting the driver's licence of the person who owes support (the "payor") or taking away their passport.

If support payments are missed and arrears are owed, the enforcement steps the program takes depend on how much arrears are owed, the current situation of the payor, and the actions the program thinks have the best chance of success in the circumstances.

Garnishment

If a support payment isn't made, the program can intercept a portion of the wages owed to the payor, to cover the support owed.

Notice of attachment

The program can issue a **notice of attachment** against any person or institution that owes money to the payor. The notice requires that money owed to the payor be redirected to the program (and then sent to the recipient). Institutions that can be attached include employers, banks, and WorkSafeBC. Payments from the federal government, like income tax refunds and Employment Insurance benefits, can also be attached.

Lien against property

The program can file the support order against any property owned by the payor. Doing so means the property cannot be sold or re-mortgaged without the support arrears being dealt with first.

Restricting the payor's passport or driver's licence

When a payor has fallen \$3,000 or more behind in support payments and all attempts to collect the support in other ways have been unsuccessful, the program can advise the federal government to suspend or deny a payor's **passport**. It can also instruct ICBC to refuse to renew a payor's **driver's licence**.

Court enforcement

Ultimately, if the payor still doesn't pay, the Family Maintenance Enforcement Program can bring the case to court. In court, the payor will be required to explain to the judge why payments are in arrears, and the judge can decide to take additional action to enforce payment of the arrears — including putting the payor in jail.

Common questions

How successful is the Family Maintenance Enforcement Program in collecting arrears?

In the vast majority of cases, support recipients enrolled in the Family Maintenance Enforcement Program receive some or all of the support that is due each year. However, some payors make it very difficult for the program to collect — even going to the extent of leaving the country to avoid paying support. Others may have no income or assets, or may be receiving income assistance, which means it can take a long time to collect what is owed to recipients. But the Family Maintenance Enforcement Program will continue to pursue payments as long as the support recipient is enrolled with them.

How quickly should I act?

It is always a good idea to be proactive and enroll in the Family Maintenance Enforcement Program if there are problems around support payments. If you are owed support and the party owing you support misses a payment, you should enroll immediately.

Can I take steps on my own while I'm enrolled with the Family Maintenance Enforcement Program?


If you are enrolled with the program, you must contact the program to get permission before taking enforcement action on your own.

Get help

With more information

For more information about the **Family Maintenance Enforcement Program**, visit their website at fmep.gov.bc.ca ^[2]. Or call 604-678-5670 in the Lower Mainland, 250-220-4040 in Victoria, or toll-free 1-800-663-3455 elsewhere in BC.

The wikibook *JP Boyd on Family Law*, hosted by Courthouse Libraries BC, has information on arrears of child support ^[3] and arrears of spousal support ^[4].

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Tax Implications of Support Payments (No. 133)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale ^[1], Jimale Law Corporation in May 2017.

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.

Understand your legal rights

Different tax rules apply to spousal support and child support

After a couple separates, one of the parties may pay **spousal support** to the other to help with living expenses. If they had children, one parent may pay **child support** to the other to help cover the expenses associated with raising the children.

Different tax rules apply to each type of support payments.

Spousal support is **taxable income** in the hands of the spouse who receives it, and **deductible** from the taxable income of the spouse who pays it.

Child support is generally not taxable or deductible.

We explain what these terms mean below.

Spousal support is usually taxable and deductible

The general rule is this: spousal support is taxable income for the spouse receiving it and a tax deduction for the spouse paying it.

Here's what this means. The spouse receiving support must report the support payments as **taxable income**, in the same way they must report wages from a job as taxable income. They must pay **income tax** on the support payments they receive.

The spouse who pays the support can claim it as a **deduction** from their taxable income, in the same way they can deduct contributions to Registered Retirement Savings Plans (RRSPs) or child care expenses. These deductions reduce the amount of income they pay tax on, so they reduce the income tax they owe.

For spousal support payments to be taxable and deductible, the payments must be:

- paid because of a written agreement or a court order,
- paid on a periodic basis, such as once a month or once every two weeks, and
- actually paid.

Spousal support made as a lump sum payment is generally **not** taxable or deductible.

Spousal support that is paid indirectly, such as by paying the mortgage or by providing services in kind, may not be taxable or deductible.

Tip Deciding how spousal support will be paid has serious tax consequences for both spouses. It's highly advisable to consult with a lawyer or tax advisor before signing an agreement involving spousal support.

The spousal support must actually be paid

For spousal support payments to be taxable and deductible, the payments must be **actually paid**.

Proving the payments were made

Problems can arise when support payments are made 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 in a way that proves you paid, such as by cheque, electronic money transfer, bank draft, or money order. If payment is made in cash, it's important to get a signed receipt from the spouse clearly stating the amount, the date, and the purpose of the payment.

Tip Keep a record of every spousal support payment, such as by keeping copies of cancelled cheques or receipts of electronic money transfers. Make a note on each cheque or receipt what time period the payment covered.

The problem with offsetting support payments

It might be convenient to offset support payments if they are flowing in different directions. But it's best not to, as doing so can jeopardize the ability of the spouse paying spousal support to deduct the payments from their taxable income.

Say, for example, that spouse A must pay spouse B \$600 a month in spousal support. Meanwhile, spouse B must pay spouse A \$100 a month for child support. While it would be easier to have spouse A just pay \$500 a month, it can be difficult to prove to the Canada Revenue Agency that \$600 in spousal support was really paid, and the tax authorities may only allow a \$500 deduction. It's best for spouse A to pay the whole \$600 and actually get the \$100 back.

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 agreement or court order** for the payment of spousal support. If a couple simply agree between themselves that spousal support will be paid, the support may be paid but the spouse paying support will not be able to claim a deduction on their taxable income.

If the parties have a written separation agreement, the agreement must state the date of separation, as well as the terms of spousal support payments to be made, such as the date the support payments begin, when the payments are due, and the amount payable.

Tip Because spousal support payments are tax deductible and child support payments are not, an agreement or order must be clear about what kind of support is being paid and in what amount. If it sets out a single sum to be paid for both spousal support and child support, the Canada Revenue Agency will treat the whole amount as child support. The spouse paying support will get no 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 are made by a spouse to a spouse or former spouse.

The spouse paying spousal support should not have someone else make the support payments on their behalf or pay them out of a joint account.

Support payments are not usually deductible if they're paid to someone else. A spouse might, for example, agree to pay a smaller amount of spousal support but also pay the mortgage on the family home. Before agreeing to this kind of payment arrangement, it is important to get the advice of a lawyer or accountant to be sure the payments will be treated by the Canada Revenue Agency in the way that works best for your overall financial situation.

Child support is usually not taxable or deductible

Child support, meanwhile, is **not** generally taxable or deductible. The parent receiving child support does not pay income tax on the child support payments. The parent paying child support can't deduct child support payments from their taxable income.

An exception is where child support is being paid under a written agreement or court order made before 1997. In that case, older rules apply. Child support is taxable income for the receiving spouse, and deductible from the taxable income of the spouse who pays it.

Parents with an order or agreement made before 1997

Parents with an agreement or order made before 1997 can agree between themselves that child support payments will follow the current tax rules. To do so, they file a form with the Canada Revenue Agency. Once they do this, they cannot go back to the old rules.

Some legal fees and expenses are tax deductible

For the person receiving spousal support or child support, the cost of obtaining or enforcing support is deductible from their income. Legal fees can be deducted — though only the fees relating to the support claim.

The cost of defending a claim for support or payment of support is not deductible.


Tip To help you in deducting legal fees relating to making a spousal support or child support claim, ask your lawyer for a letter estimating how much of their time went towards the support claim.

Get help

With more information

Canada Revenue Agency has information on their website about the tax implications of support payments.

Web: cra-arc.gc.ca ^[2]

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Dividing Property and Debts (No. 124)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale ^[1], Jimale Law Corporation in May 2017.

When a relationship ends, spouses are presumed to keep **property** they brought into the relationship and to share in property they acquired during their relationship. The same goes for **debt**.

Understand your legal rights

The rules around property division apply to “spouses”

In BC, the *Family Law Act* ^[2] deals with the division of property and debt when a couple separates. This law applies to people who are **spouses**. A spouse is defined as:

- people who are married, or
- people who have lived together in a “marriage-like relationship” for at least two years.

Spouses are presumed to keep the property each of them brought into the relationship and to share in the things they acquired during their relationship. The same rules apply about debt. Spouses are presumed to share responsibility for the debts that accumulated during their relationship.

If you don’t qualify as a spouse, the laws that apply to your situation are different. See our information for couples who are not spouses (no. 148).

Each spouse is presumed to keep certain “excluded” property

Under BC law ^[3], certain property is defined as “**excluded property**”. Property a spouse brought into the relationship is excluded property. So is certain kinds of property a spouse received during the relationship, such as a gift from someone else, an inheritance, or a court award. Property bought with excluded property is excluded property.

Excluded property is presumed to remain the property of the spouse who brought it into the relationship or received it. (However, any increase in value of excluded property during the relationship becomes family property and is shared.)

Tip Courts have frequently grappled with what property qualifies as excluded property. If you have property that may be excluded property, it is highly advisable to get legal advice from a family law lawyer.

Each spouse is presumed to share equally in “family property”

All property owned by either or both spouses at the date of separation is **family property** unless it is excluded property. Family property is presumed to be **shared equally** between the spouses, regardless of their use of or contribution to that property.

Family property can include real property, interests in companies or businesses, money a spouse is owed (such as an income tax refund), bank accounts, retirement savings accounts, and pensions. Family property also includes any increase in the value of excluded property during the relationship.

Each spouse is presumed to have a one-half interest in all family property, regardless of their use of or contribution to that property.

Each spouse is presumed to share equally in “family debt”

All debt incurred by either or both spouses during their relationship is **family debt**. Responsibility for family debt is presumed to be **shared equally** between spouses, regardless of their use of or contribution to that debt.

Family debt includes debt run up after separation if the debt was incurred to pay for or maintain family property.

There are exceptions to the equal division rule

Under BC law ^[4], if it would be **significantly unfair** to equally divide family property or family debt, a court may order an unequal division. The presumption of an equal division of family property and family debt is very strong. The unfairness must be "weighty, meaningful or compelling".

In considering whether an equal division would be significantly unfair, a court will look at factors such as:

- the length of the spouses' relationship
- whether the debt was incurred in the normal course of the spouses' relationship
- if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt
- whether a spouse, after separation, caused a significant increase or decrease in the value of debt or property
- whether a spouse may have to pay taxes as a result of a transfer of property

Common questions

Are RRSPs and pensions family property?

Yes. The amount of any Registered Retirement Savings Plans (RRSPs) or pensions that each spouse accumulated during the relationship is family property. There are special rules in the *Family Law Act* for dividing most kinds of pension plans. There are separate rules for dividing other pensions and Canada Pension Plan credits that are not found in the *Family Law Act*. A lawyer can help with this.

Are shares in a company family property?

Yes. A spouse's shares in a company are family property. This can be a complicated issue and it is highly advisable to speak to a lawyer if you or your spouse has an interest in a company.

Is an inheritance family property?

Generally speaking, no. An inheritance that a spouse receives before, during or after a relationship is part of that spouse's excluded property. In some unique circumstances, an inheritance can lose its excluded status. If an inheritance is in play, it is advisable to get legal advice from a family law lawyer. As well, note that any amount an inheritance increased in value during the relationship is family property.

What happens if a spouse tries to hide or sell property?

A court can prevent the transfer of property to a third person if the court believes the transfer is being made to limit or interfere with the other spouse's interest in the property. The court can also reverse a transfer that's already occurred, whether before or after separation, and make a "compensation order" to repay a spouse for property transferred to frustrate the spouse's interest in the property.

Can spouses agree to an unequal division of family property and family debt?

Yes. Spouses can agree to an unequal division of property and debt in a **separation agreement** or by a court order called a “**consent order**”. Also, they might have made a **marriage agreement** when they got married (or cohabitation agreement when they began to live together) sorting out their interests in excluded property or family property.

Courts respect agreements about property and debt division and will uphold them as long as the agreements are fair. For more on family law agreements, see our information on separation agreements (no. 115) and marriage and cohabitation agreements (no. 162).

Can a court divide excluded property?

Yes, in some cases. The presumption that a spouse should be entitled to keep their excluded property is very strong. But a court can divide excluded property if:

- family property or family debt outside British Columbia cannot be divided, or
- it would be significantly unfair not to divide excluded property, considering the length of the spouses' relationship and the non-owning spouse's direct contribution to the excluded property.

Can spouses agree to divide excluded property?

Yes. Spouses can make an agreement at the start, during or end of their relationship that excluded property will be treated like family property and be divided between them.

On what date does family property and family debt get divided?

On the date the spouses separate, each spouse becomes a one-half owner of all family property as a tenant-in-common, and each spouse becomes responsible for one-half of the family debt.

Do I need to go to court?

It is not necessary to start a court case to divide property or debt, and (if you're married) you do not need to get a divorce order first. You can make an agreement to divide property and debt.


However, if you and your spouse can't agree on how to divide property and debt, you will need to apply to court for an order dividing property and debt. A claim to divide property and debt must be brought within two years of the date of divorce (for married spouses) or date of separation (for unmarried spouses).

Get help

With more information

The wikibook ***JP Boyd on Family Law***, hosted by Courthouse Libraries BC, has indepth coverage of family property, excluded property, and family debt.

Web: wiki.clicklaw.bc.ca ^[5]

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Children

Children's Rights (No. 238)

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 (no. 422).

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 (no. 425).

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 (no. 225) and trials involving young people (no. 226).

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 trustee.bc.ca ^[12] or call 604-660-4444.

Get 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.

Toll-free: 310-1234

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].

Web: gov.bc.ca/mcf ^[14]

The **Provincial Ombudsperson** responds to complaints about ministries, schools and other provincial authorities that affect children and youth.


Toll-free: 1-800-567-3247

Web: bcombudsperson.ca^[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.

Toll-free: 1-800-476-3933

Web: rcybc.ca^[16]

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Children Born Outside Marriage (No. 140)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Renée Aldana ^[1], South Coast Law Group in October 2018.

Under the law, a **child born outside marriage** is treated the same as a child born to married parents. However, there are some implications for parents and other practical considerations.

Understand the legal framework

The legal status of a child born outside of marriage

There is no legal difference in the status of a child born to someone who is married, 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. A child born outside marriage is treated in exactly the same way as a child born to married parents.

Registering the birth of a child born outside of marriage

Under the law in BC ^[2], a child born in British Columbia must be registered with the government within 30 days after the birth. Birth registration can be done online at gov.bc.ca/vitalstatistics ^[3], unless additional parents (other than the mother and father) are being recorded. You can request a paper birth registration form by calling the Vital Statistics Agency ^[3], 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 father is unknown or doesn't acknowledge he is the father, the child's mother can sign the birth registration alone.

Choosing the child's last name

The parents may choose any last name they like for a child, if they agree. If the parents do not agree on a last name for a child, the child's last name will consist of the parents' surnames hyphenated or combined in alphabetical order.

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 ^[4], a parent or guardian of a child may place the child for adoption. This starts a process to legally transfer parental responsibilities for the child to another family.

A **birth mother's** consent to an adoption is required unless the child is in the permanent care of the child welfare authorities. A birth mother's consent to the adoption of her child is valid only if the child is at least 10 days old when the consent is given. The consent must be in a specific written form, and 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 located or if to do so is in the child's best interests.

For more on adoption, see our information on adoption (no. 145) and adoption registries (no. 146).

Parents are generally guardians of their child

Under the law in BC ^[5], while a child's parents are living together, each parent is the child's **guardian**.

Guardians generally, but not always, have **parental responsibilities** for a child. This means they can make decisions for and about a child. We explain this shortly.

A parent who never lives with their child is not the child's guardian unless one of the following applies:

- they are a parent under a written agreement providing for the child's birth through assisted reproduction,
- the parent and all of the child's guardians make an agreement that the parent is also a guardian, or
- the parent regularly cares for the child.

If a parent isn't a guardian, the parent can apply to the court to be appointed as the guardian of their child. We explain this shortly.

Guardians generally have parental responsibilities for a child

Parental responsibilities means having the responsibility to decide how to raise the child, based on the child's best interests. Parental responsibilities include deciding where the child lives and goes to school, how the child gets treated when sick, and giving or withholding permission on behalf of the child.

Parental responsibilities can be shared between two or more guardians, meaning that all the guardians are responsible for making decisions about the child and must consult each other before making decisions. Parental responsibilities can be allocated among guardians, so that a guardian has sole responsibility for certain kinds of decisions, and can make those decisions without having to consult the other guardians. The allocation of parental responsibilities can be done through a separation agreement or parenting plan agreement signed by all the guardians. The allocation can also be done by a court order, if an agreement cannot be reached.

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 decision making about day-to-day matters involving the child.

If a parent isn't a guardian

A parent who is not a guardian of a child does not have parental responsibilities for the child. They are not entitled to be consulted when decisions are being made about the child.

The time someone who is not a guardian has with a child is called **contact**.

Common questions

How can I become a child's guardian?

If you are not a guardian of a child and you want to become a guardian, your choices depend on your relationship to the child and the views of the child's other guardians:

- If you are a parent, you can become a guardian by an agreement with the child's guardians.
- If you are not a parent or if the other guardians don't agree with you becoming a guardian, you can apply to court to be made a guardian.
- You can also become a guardian, whether you're a parent or not, through a guardian's will or an appointment when a guardian dies or becomes incapacitated.

If you **apply to court** to become a guardian, the law in BC ^[6] requires you to provide certain information about why the order would be in the best interests of the child. You must complete a special **affidavit** (a legal document where you

make statements about facts you say are true), get a criminal records check, a records check from the child welfare authorities, and provide certain information about any children that are and have been in your care.

Can I get child support for a child born outside marriage?

Child support is a right of the child. Each parent is legally responsible for the financial support of their children, whether the parents are married to each other or not. For more on these responsibilities, see our information on child support (no. 117).

What are the inheritance rights of a child born outside of marriage?

The right of any child to an inheritance depends on 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 ^[7], if a person dies without a will and has a spouse, the spouse is entitled to a certain share of the deceased's estate. The deceased's children split what's left, whether they're born outside marriage or to married parents.

If a person dies without a will and doesn't have a spouse, the deceased's children are entitled to share in the estate, whether they're born outside 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 vary the will if they feel their portion of the estate is not "adequate, just and equitable in the circumstances". BC law ^[8] requires a person in their will to make adequate provision for the proper maintenance and support of their spouse and children.

For more on inheritance rights, see our information on Challenging a Will (no. 179) and When Someone Dies Without a Will (No. 177).

Can a child's birth certificate be changed later to show the other parent?

If the parents agree, they can change a child's birth registration 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 other parent may apply to court to establish the child's parentage and ask for a change to the child's birth certificate, including a change to the child's last name.


Before making name changes, however, the court must consider the change to be in the best interests of the child. The court must also consider the wishes of any child over age seven and have the written consent of children over age 12 to the change in last name. If these conditions are satisfied, the court may order the last name to be the last name of either parent or a hyphenated combination of their last names.

Get help

With more information

The wikibook *JP Boyd on Family Law* explains the legal issues affecting children.

Web: wiki.clicklaw.bc.ca^[9]

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Children Born to Unmarried Spouses (No. 147)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale^[1], Jimale Law Corporation in May 2017.

A couple who lives together in a marriage-like relationship and has a child together are “**spouses**” under the law. Learn how this impacts child support and other family law issues.

Understand the legal framework

A child born to unmarried spouses

BC's *Family Law Act*^[2] defines the term “**spouse**” as including married spouses as well as:

- People who have lived together in a marriage-like relationship for at least two years.
- People who have lived together in a marriage-like relationship for less than two years and have had a child together.
(In this case, you aren't considered a spouse when it comes to property, debt or pensions.)

A couple is seen as living in a “**marriage-like relationship**” if they present themselves as a family unit to family and friends, and conduct their financial and household affairs as a couple.

There is no legal difference in the status of a child born to someone who is a married spouse, an unmarried spouse, or not considered a spouse under the law.

Tip “Common-law relationship” is the term many people use to describe unmarried couples who live together in a marriage-like relationship. But it's not a term used in the *Family Law Act* or the *Divorce Act*. These laws just say **spouse**.

The child's last name

The parents may choose any last name they like for a child, if they agree. Under BC law ^[3], if the parents do not agree on a last name for a child, the child's last name will consist of the parents' surnames hyphenated or combined in alphabetical order.

A parent can apply to legally change their child's last name. They need the consent of all guardians of the child. If the parent wants to change the child's name to their spouse's last name, the spouse must also consent.

A child who is age 12 or over has to agree in writing to the legal change of their name.

An applicant for a name change can proceed without a required consent with the approval of the Vital Statistics Agency. For more on the name change process, see the Vital Statistics Agency's website at gov.bc.ca/vitalstatistics ^[4], or call 250-952-2681 in Victoria, or toll-free 1-888-876-1633 elsewhere in BC.

An unmarried spouse's obligation to pay child support

Child support is a right of the child. Each parent has a legal duty to provide support for their child. That is so whether the parents are married spouses, unmarried spouses, or not considered spouses.

The obligation to support a child lasts until the child reaches the age of majority, 19 in BC. The obligation may continue after the child reaches 19 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 on these responsibilities, see our information on child support (no. 117).

Tip Even if you never lived with your child or child's other parent, you still have a legal responsibility to contribute to your child's support.

A stepparent's obligation to pay child support for a stepchild

Under the law in BC ^[5], a **stepparent** is a person who is a spouse of the child's parent and lives with the child's parent and the child.

A stepparent may have a duty to provide support for a stepchild 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 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 they lived together. A number of factors come into play, and it is a good idea to consult a lawyer if a stepparent is involved.

To find out more about child support on separation, see our information on child support (no. 117).

How the child is cared for if you break up

If you and your child's other parent break up, you need to figure out how you will make decisions about the child, where the child is going to live, and how much time the child will spend with each parent.

If you can't agree on these issues, you might consider **mediation**. Mediation is a process where the people in a conflict meet with a neutral person (a mediator), who helps them find a solution they agree on.

If you still can't come to an agreement, one of you may decide to bring a court action. A judge will make a decision according to what's in 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 about the child will be made (called **parental responsibilities**). For more, see our information on custody and access, guardianship, parenting arrangements, and contact (no. 142).

Adoption and unmarried spouses

Unmarried spouses have the same rights as married spouses to **adopt a child**. For more on the adoption process, see our information on adoption (no. 145).

If you want to adopt your spouse's child

You can adopt your spouse's child from another relationship if the child's other parent agrees.

When you adopt a child, you get all of the obligations of a parent of the child, including the obligation to pay child support and contribute to the cost of the child's expenses.

A child who is age 12 or over must consent to being adopted.

Placing your child for adoption

Usually both birth parents have to agree to place a child for adoption. A birth mother's consent to an adoption is required unless the child is in the permanent care of the child welfare 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 located or if to do so is in the child's best interests.

For more on the adoption process, see our information on adoption (no. 145).

Common questions

Can I use my spouse's last name?

Yes. In fact, you can call yourself any name you choose, so long as you don't do it to break the law or to cheat anyone. However you won't be able to get government identification documents in any name other than your legal name. You can apply for a legal name change if you wish. For more on this process, see our information on changing your name (no. 161).

My ex-spouse is abusive. What if I am concerned for my child's safety?

If you or your children are being threatened by a former spouse, you can apply for a **protection order** under the *Family Law Act* ^[6]. This is a court order to protect one person from another.

A protection order can say your spouse must stay away from you and your children. It can restrain how your spouse communicates with you. If your spouse breaks this order, they can face criminal charges. For more on this process and

other ways to stay safe, see our information on family violence (no. 155) and peace bonds (no. 217).

Get help

With custody

Family justice counsellors in **Family Justice Centres** throughout BC can help you with custody, child support, and related issues. Their services are free.

Telephone: 604-660-2421 in the Lower Mainland and 250-387-6121 in Victoria

Toll-free: 1-800-663-7867

Web: gov.bc.ca/familyjusticecentres ^[7]

More information

Legal Services Society, the legal aid provider in BC, publishes the booklet “Living Together or Living Apart: Common-Law Relationships, Marriage, Separation, and Divorce” ^[8].


Web: legalaidsbc.ca ^[9]

The Legal Services Society’s **Family Law in BC website** has information on common-law relationships.

Web: familylaw.lss.bc.ca ^[10]

The wikibook ***JP Boyd on Family Law***, hosted by Courthouse Libraries BC, has information for unmarried spouses.

Web: wiki.clicklaw.bc.ca ^[11]

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Adoption of a Child (No. 145)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Adoption Branch ^[1], Ministry of Children & Family Development in February 2019.

Adoption is the process to legally transfer parental responsibilities for a child from one family to another. Learn what's involved in adopting a child or placing a child for adoption.

Understand the legal framework

How a child becomes available for adoption

Children become available for adoption in different ways.

Under the law in BC ^[2], a parent or guardian of a child may place the child for adoption. They can place the child with an **adoption agency** to seek an adoptive family. Or they can 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**.

The adoption process can also start with a child being placed into the permanent **care of the provincial government**. When a child enters foster care, the goal is to reunite them with their birth family. In some circumstances, this is not possible or in the child's best interest. These children are placed in the Adopt BC Kids program ^[3].

BC's licensed adoption agencies also facilitate **international adoptions**. These feature adopting a child from another country.

A family may become interested in adopting a **relative or partner's child**. For instance, someone may wish to adopt a sibling's child, or to adopt 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 government and licensed adoption agencies handle 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] facilitates the adoption of BC children living in foster care.

The adoption agencies ^[5] licensed by the BC government handle various types of adoptions. Even with a direct placement, where the birth parents choose the adoptive parents, a licensed adoption agency must be involved before the adoptive parents receive the child.

It's illegal to be paid for placing a child for adoption

Birth parents cannot be paid for placing a child for adoption. Under BC law ^[6], it's illegal (with a few specific exceptions) to pay or accept money for placing a child for adoption.

The exceptions under this law are:

- A parent or guardian can receive money from a prospective adoptive parent to cover certain expenses. For example, the birth mother can be paid for medical services related to the birth of the child, and accommodation and transportation related to the transfer 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 legal services provided in connection with an adoption.

- A health care provider can receive reasonable fees and expenses for medical services provided to a child being adopted or to the birth mother in connection with the pregnancy or birth.

The Ministry of Children & Family Development does not charge fees to people who adopt a child in care.

Who must consent to an adoption

A **birth mother's** consent to an adoption is required unless the child is in the permanent care of the child welfare authorities. A birth mother's consent is valid only if the child is at least 10 days old when the consent is given. The consent must be in a specific written form, and 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 located or if to do so is in the child's best interests.

Any other **parent or guardian** of the child must also consent to an adoption.

If a **child is age 12 or older**, the child must consent to their adoption.

If the mother or father change 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 within 30 days of the child's birth — 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.

The revocation must be in writing and delivered to the adoption agency or the BC director of adoptions.

The child's perspective

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, and if the child is mature enough, the child must receive counselling about the effects of adoption.

Who can adopt a child

An adult (someone age 19 or older) who lives in BC can adopt a child. A child may be placed for adoption with one adult or two adults jointly.

Factors considered in placing a child for adoption

Under BC law, the most important consideration in placing a child for adoption is determining the **best interests of the child**. The relevant factors that go into determining the child's best interests 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 importance to the child's development of having a positive relationship with a parent and a secure place as a member of a family
- the quality of the relationship the child has 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 there is delay in making a decision

The process to adopt a child

The adoption process starts with an application to adopt ^[9]. The adoption representative will review the application. They check references, conduct a criminal record check, and complete a prior contact search through the Ministry of Children and Family Development (including equivalent searches in any other jurisdiction the applicant has lived in). A medical check is also required.

A homestudy is conducted

An adoption worker will conduct a **homestudy**. This involves six to eight visits to the home of the prospective adoptive parents. The parents also participate in mandatory adoption training.

Proposal and placement

The adoption representative calls the prospective adoptive parents with a potential placement. If after careful consideration a prospective family is chosen as meeting the best interests of a child, a transition plan is created to place the child in the adoptive home.

After the child is placed in the adoptive home

For the first six months, the adoption 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 adoption worker makes the court application for the parents.

If the court is satisfied the proposed adoption is in the child's best interests, it makes the adoption order.

Relative or stepparent adoption of a child not in government care

Someone may become interested in adopting a **relative or partner's child**. For instance, someone may wish to adopt a grandchild, or to adopt 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 ^[10]. 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 with an adoption worker to make sure they understand the meaning of adoption, and get their views on potential placement. Children aged 12 and over must consent to their adoption.

Anyone who has a court order or enforceable agreement for contact with the child will be notified about the adoption application.

Common questions

What if the child is Indigenous?

Under BC's adoption law ^[7], special emphasis is placed on Aboriginal heritage. If the child is Aboriginal, 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 or adoption agency will notify the child's Aboriginal community and consult with them about planning for the adoption.

Under the federal *Indian Act* ^[11], an Aboriginal 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 mother choose an open adoption?

Yes, the birth parents and adoptive parents can choose to communicate 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 after the adoption. If an agreement isn't made before the adoption order, they can register with the post-adoption openness registry. Our information on adoption registries (no. 146) 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. Like domestic adoptions, an international adoption requires a homestudy to assess the adoptive parents' suitability to adopt. If you want to adopt a child from another province or country, you should tell the adoption agency you plan to work with early in the planning process.

What information is given to the birth and adoptive parents?

Before a child is placed with their adoptive parents, the Ministry or the adoption agency must tell the birth parents about the adoption process and its alternatives. They also gather as much information as possible about the medical and social history of the child's birth family, preserve this information for the child, and give a copy to the adoptive parents.

Get help

With more information

The **Ministry of Children & Family Development** has information about adoption on its website.

Web: gov.bc.ca/mcfd ^[12]


There are children in BC waiting for an adoptive family right now. **Adopt BC Kids** features information on applying for a waiting child.

Web: adopt.gov.bc.ca ^[13]

The **Adoptive Families Association of BC** supports the adoption community at all ages and stages through education, counselling and advocacy.

Toll-free: 1-877-236-7807

Web: bcadoption.com ^[14]

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Adoption Registries (No. 146)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Adoption Branch ^[1], Ministry of Children & Family Development in March 2018.

People who have been adopted and their relatives can use **adoption registries** and reunion services to find one another and exchange information. Learn how British Columbia's three adoption registries work.

Understand the legal framework

There are registries to help connect people who have been adopted and their relatives

Society's attitudes toward adoption have changed over the years. Many adopted people want to know about their birth parents. Many 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 connect people who have been adopted and their relatives.

Parents Registry

Birth parents of a child placed for adoption can register with the Parents Registry ^[2] to receive notice of adoption details and 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 is no fee to register.

Post-Adoption Openness Registry

Adoptive parents, birth parents or relatives of an adopted person can register for the opportunity to share information after an adoption order is granted for a child who is under 19 years old. By registering in the Post-Adoption Openness Registry ^[3], they can exchange information and communicate with each other after the adoption. There are no fees to register.

Adoption Reunion Registry

The Adoption Reunion Registry ^[4] connects people who have been adopted with their relatives for adoptions that took place in BC. 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 is age 19.

How the Post-Adoption Openness Registry works

Registering in the Post-Adoption Openness Registry gives adoptive parents, birth parents and other relatives the option of exchanging information after an adoption order is granted for a child who is under 19 years old. The information exchange may range from medical information, letters, cards and pictures, to the full exchange of names and addresses for direct contact.

A successful match

When you apply to register ^[3], the registry checks if there's a match with anyone else involved in the adoption. For example, if the adoptive parents and the birth mother register, there's a match. The registry will only contact parties if a match occurs.

Reaching an openness agreement

If there is a match, the registry will contact the parties to discuss the level of contact they want. The parties can opt for full disclosure and direct contact, or a non-identifying exchange of information. If one or both want a non-identifying exchange, a social worker will help them make an **openness agreement**.

Any decision to enter into an openness agreement should be based on what is in the best interests of the adopted child. An openness agreement cannot be forced — it's based on voluntary cooperation of everyone involved.

How long registration lasts

An application to the Post-Adoption Openness Registry lasts until the adopted child reaches 19 years of age. Then, if no match has been made, an application can be made to the Adoption Reunion Registry.

How the Adoption Reunion Registry works

The Adoption Reunion Registry ^[4] connects people who have been adopted with their relatives for adoptions that took place in BC. Everyone involved must be age 19 or over when the connection is made.

The registry operates a passive registry and in some cases can help with an active search.

Passive registry

For adoptions that happened in BC, people who have been adopted, birth parents, siblings and other relatives can register to connect with their birth relatives.

The **passive registry** requires two parties looking for each other to register — a match is only made if both parties register. If there is a match, the registry will contact both parties and help them contact each other.

Active search

The registry can help with an **active search** for a relative. They will first check if the relative is registered. If not, they will search for the person. If they find the person, the registry will contact them to discuss next steps. If the person also wants a reunion, the registry will discuss with both parties the options for communicating, such as letters, phone calls, a meeting, or visits in person.

Tip The Adoption Reunion Registry can provide 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 be registered with the Adoption Reunion Registry by:

- completing and mailing the application form ^[4] to the registry
- paying the \$25 fee to register (you can ask for it to be waived)

As well, you must submit additional documents that vary depending 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).

Siblings searching for an adult sibling who was adopted need to provide the birth parent's birth and death certificates.

If you are requesting an active search, there is an additional \$250 fee. You also need to send a copy of the adopted person's original birth registration document and the adoption order.

You can get these documents from the Vital Statistics Agency. See its website at gov.bc.ca/vitalstatistics ^[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

People who want to remain unknown can have a disclosure veto or no-contact declaration placed on their records in the Vital Statistics Agency.

A **disclosure veto** prevents the release of any information on the birth registration or adoption order identifying the person who placed the veto. A disclosure veto also prevents the Adoption Reunion Registry from helping to locate the person who filed the veto. You can place a disclosure veto on your record if you're a birth parent or adopted person involved in an adoption that occurred before 1996.

A **no-contact declaration** allows information to be released, but prohibits any contact with the person who placed the no-contact declaration. 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 and perhaps the reason 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.

Get help

With more information


The **Ministry of Children & Family Development** has information on its website about adoption reunions and registries.

Web: gov.bc.ca/mcfd ^[6]

The **Adoptive Families Association of BC** supports the adoption community at all ages and stages through education, counselling and advocacy.

Toll-free: 1-877-236-7807

Web: bcadoption.com ^[7]

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Reporting Suspected Child Abuse (No. 156)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Thomas E. Wallwork in July 2017.

The law protects children from **sexual and physical abuse** and from **neglect**. Learn how child protection laws work, and what to do if you think a child is being abused.

Understand the legal framework

How abuse and the neglect of children is defined

The protection of children is one of society's greatest obligations. In addition to the criminal and civil laws that apply to everyone, there is also a specific provincial law ^[1] intended to protect children from sexual and physical abuse and from neglect. This law defines a "child" as any person under 19 years of age.

Here are definitions of key concepts:

- **Physical abuse** means any physical force or action by a parent or adult which could injure a child and exceeds "reasonable discipline".
- **Sexual abuse** means any sexual touching or intercourse between a child and an older person, or using a child for sexual purposes.
- **Sexual exploitation** is a form of sexual abuse that occurs when a child engages in sexual activity, usually through manipulation or coercion, in exchange for money, drugs, food, shelter or other things.
- **Emotional harm** is when a child has serious anxiety, depression, withdrawal or self-destructive or aggressive behaviors due to persistent emotional abuse by a parent. This can include scapegoating, blaming, rejection, threats, insults or humiliation. Emotional harm can also happen to children who witness violence in their homes.
- *Neglect* is when a parent fails to look after the physical, emotional or medical needs of a child, endangering the child's health, development or safety.

If you have reason to believe a child is being abused

If you have reason to believe a child has been or is likely to be abused or neglected, the law in BC ^[2] requires you to report your concerns to a child welfare worker. "**Reason to believe**" means you suspect a child could be at risk, based on what you have seen or information you have. You do not need proof. Just report what you know.

It doesn't matter if you think someone else is reporting the situation or if a child welfare worker is already involved with the child — you must still make a report. It also doesn't matter who the suspected abuser is. They could be a family member, your neighbour, or a 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.

It is an offence not to report suspicions of abuse or neglect. The only exception is for a lawyer who may have concerns that involve their client.

Tip The law ^[2] protects you from being sued or prosecuted for reporting a suspected abuser. The exception is if you knowingly report false information.

How you make a report of child abuse

If a child is in immediate danger, call the police by **dialing 9-1-1**. A child welfare worker will determine whether the child is in need of protection.

If there is no immediate danger, you can report child abuse in one of two ways:

1. Phone the Ministry of Children and Family Development's screening 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 service across the province, 24 hours a day.
2. Call a Ministry of Children and Family Development office in your area. The Ministry's offices are listed in the provincial government blue pages of the phone book. The Ministry's offices are also listed on the Ministry website at gov.bc.ca/mcfd ^[3].

If you make a report of child abuse

The report you make to the Ministry of Children and Family Development will be taken by a child welfare worker. The worker will want as much information as possible from you, including the name and address of the child, the parents, anyone else involved, and the reasons why you think the child has been or is likely to be abused or neglected.

You do not need to identify yourself

But it is helpful for the child welfare worker to have your name. Unless a criminal court hearing results from criminal charges being laid by police and you're needed as a witness, your name will remain confidential. (However, it is always possible your identity may become known as a result of the details of the information you provide.)

Child welfare's response

The child welfare worker will assess the information you provide. They will decide on the best way to keep the child safe. They may decide to:

- take no further action
- refer the family to support services
- use a "family development response"
- conduct an investigation

In a **family development response**, child welfare works out a plan with the family to strengthen the family's ability to help keep the child safe. It may be used for less serious allegations of abuse or neglect. It is an intensive, time-limited, supportive approach. It involves an assessment of the family's strengths and problem areas, and providing support services to help the family while monitoring the child's safety.

Child welfare may decide to conduct an investigation

If you report allegations of serious abuse or neglect, the child welfare worker may decide to conduct a **child abuse investigation**. This involves seeing and talking to the child and people who know the child, such as parents, extended family, a teacher, doctor or child-care provider. If the child is Aboriginal, their band or community may also be involved.

If the allegations involve physical or sexual abuse, the child welfare worker will also advise the police, who may conduct their own investigation as well.

The investigation of abuse cases is sensitive to the feelings of children. 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?

Children can only be removed from their homes if nothing less disruptive will protect them. If a child is in danger of continued abuse or neglect and there are no other ways of keeping the child safe, the child may be taken into the care of the Ministry of Children and Family Development. Alternatively, the child may be placed with a relative or other person who has a significant relationship with the child. If a child is removed from their home, a court process starts. For more detail, see our information on child protection and removal (no. 141).

What about criminal charges?

If the police determine that a criminal offence has been committed, they may decide to recommend criminal charges against the abuser that will result in criminal court hearings. The prosecutor works with the police and the Ministry of Children and Family Development in alleged child abuse cases to make the court experience less upsetting for a child.

What if there is a family court proceeding?

Under the provincial *Family Law Act*, family violence, which includes child abuse, is a factor the court must consider when making decisions about children. The court must also consider whether the child was directly or indirectly exposed to other family violence in the home.

The presence of family violence may result in the suspected abuser having limited or no time with a child, or having time with the child on conditions such as supervision. It is also possible to ask the court for a **protection order** to protect the well being of the child and limit the child's time with or exposure to the suspected abuser. Anyone can apply for a protection order on behalf of someone they believe is at risk of family violence. For more on protection orders, see our information on family violence (no. 155).

Get help

As a victim of abuse

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.

Toll-free: 310-1234

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 **Victim Link BC**.

Toll-free: 1-800-563-0808

Web: victimlinkbc.ca^[4]

With more information


See the Ministry of Children and Family Development's booklet "Responding to Child Welfare Concerns: Your Role in Knowing When and What to Report ^[5]".

Web: gov.bc.ca/mcfd ^[6]

The **Representative for Children and Youth** advocates for and supports children and youth, seeking to protect their rights and make the child protection system more responsive.

Toll-free: 1-800-476-3933

Web: rcybc.ca ^[7]

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Child Protection and Removal (No. 141)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Michael Butterfield ^[1], Butterfield Law, and Viba Panchmatia ^[2], Viba Panchmatia Law Corporation in October 2018.

If someone reports that a child has been abused (or is likely to be), it starts a legal process designed to keep the child safe. Learn about **child protection law**.

Understand your legal rights

Getting legal advice

The government has the power to **remove** (take) children from their home. They don't need a court order to do that. If the child welfare authorities contact you or visit your home, you have the right to get legal advice.

If you cannot afford a lawyer, you may qualify for a free lawyer from legal aid. The Legal Services Society website lists legal aid service locations ^[3]. Visit legalaidservice.bc.ca ^[4]. You can also call legal aid at 604-408-2172 in Greater 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* ^[5] protects children. This law includes these **principles** 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 best place for children to live is usually with their families.
- Parents are mainly responsible for protecting their children.
- If parents need help to care for their children, child welfare authorities should provide support services.

The legal duty to report child abuse

Under this BC law ^[6], a person who believes a child has been abused, or is likely to be abused, **must** report it to the child welfare authorities. The law sets out circumstances ^[5] of when a child needs protection due to abuse. They include:

- a child has been physically harmed, sexually abused or sexually exploited by the child's parent
- a child has been physically harmed because of neglect by the parent
- a child is emotionally harmed by conduct of the parent
- a child is deprived of necessary health care
- a child's parent is unable or unwilling to care for a child and has not made adequate provision for the child's care

Reporting 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 (no. 156).

When a report of suspected child abuse is made

A report of suspected child abuse made to the Ministry of Children and Family Development is taken by a child welfare worker. The worker assesses the information provided. This means they ask questions, gather information, and decide if they need to keep looking into the report. They will decide on the best way to keep the child safe.

If the child welfare worker determines the child may be at risk, they must consider less intrusive means of protecting the child. Examples include in-home supervision, coming up with plans to better care for the child, or suggesting an agreement between the parents and the child to better care for the child.

If the child is in imminent risk of harm, the Ministry can remove the child from the parents' care. In a home of more than one child, the Ministry may remove one or more of the children. The Ministry will consider the wishes of older children. It will also look at temporary placements with family or friends.

Child welfare authorities may conduct an investigation

Where there are more serious concerns about the child's safety, the child welfare authorities may decide to conduct a **child protection investigation**. This involves a more detailed enquiry to determine if the child needs protection, and the sort of protection that is best in the circumstances.

Each child protection investigation includes:

- seeing and interviewing the child as soon as possible
- checking out the child's living conditions
- interviewing the parents
- reviewing whatever documents and reports are available and relevant to the report of child abuse
- getting information from people who know the family and the child

It is important to cooperate with the Ministry. Otherwise, things can escalate and lead to removal. The child may be interviewed by the Ministry at their school or daycare without the parent's knowledge. This is often very upsetting for parents and their children, but it is important to remain calm when dealing with the Ministry.

After a child protection investigation

When an investigation is done, there are two possible outcomes: either the child needs protection or does not.

When the child does not need protection

If the child welfare worker decides the child isn't at risk, the parents will be informed and no further action will be taken. If the parents ask for voluntary help or the child welfare worker suggests it, the worker can refer the parents to services available in the community.

When the child needs protection

If the child welfare worker finds the child needs protection, but isn't in immediate danger, a plan is developed with the family to keep the child safe. This might include:

- providing voluntary services to help the parents to care safely 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 welfare worker to supervise the child

Removing a child from the home

Children can only be removed from their home if nothing less disruptive will protect them. If a child is in danger of continued abuse or neglect and there are no other ways of keeping the child safe, the child may be removed from the home.

As much as possible, the decision about where the child should stay will be made in consultation with the child, family, extended family like aunts and uncles and grandparents, and other adults who have significant relationships with the child. The child welfare worker will try to place the child with a family member, but if this isn't possible the child will be placed in a Ministry-approved foster home.

After the child is removed

Within seven days of a child being removed from the home, a **presentation hearing** must be held in Family Court. At this short hearing, the Ministry must report to the court the circumstances leading to the removal and any less disruptive measures the Ministry considered before removing the child.

At this hearing, the court decides whether the child should be returned to home or remain in the care of the Ministry until another hearing, called the **protection hearing**, is held to decide whether the child needs protection.

If a protection hearing is arranged

At the presentation hearing, the court may decide the Ministry should have custody of the child until the **protection hearing**. At the protection hearing, the court decides if the child needs protection or not, and who will care for the child 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 welfare worker must give the parents a document saying what kind of order they'll ask the court for and a plan of care saying how the child will be looked after.

If, at the beginning of the protection hearing, the parents and child welfare 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 welfare worker, their lawyers, and a judge to discuss the case and see if an agreement can be worked out. The judge may also adjourn the hearing to allow a **mediation** to take place. Mediation is a process where the people in a conflict meet with a neutral person (a mediator), who helps them find a solution they agree on. Mediation is often faster than a case conference.

How you deal with a protection hearing will often depend on what order the Ministry is asking for. Often, the Ministry asks for three-month orders. This can be a problem because it often takes more than three months for a case conference to be held.

Common questions

What are the rights of parents after a child abuse report is made?

The child welfare worker must make sure the parents know the details of a child abuse report. The parents may also be told the child will be interviewed. However, the parents might not be told about this interview beforehand if the child welfare worker and their supervisor believe this might put the child at risk.

The parents have the right to tell their side of the story and to ask questions. They also have the right to have a lawyer or someone else with them at meetings with the child welfare worker. The family must be given as much information as possible about the progress of 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 the youth develop supports and life skills. A child protection investigation is generally not the best response for a youth.

Will the police be informed?

Child welfare authorities will inform the police if a report of suspected abuse suggests a child may have been physically harmed or sexually abused, or that a criminal act may have occurred which affects the safety of a child.

Child welfare workers will often have police accompany them to the family home if they suspect the parents may not cooperate or may be a threat.

What if I think my child has been wrongfully removed?

In some custody cases, one parent makes false reports to the Ministry alleging their child has been physically or sexually harmed by their partner. Once a report of physical or sexual abuse is made to the Ministry, the Ministry often reports it to the police or has the child undergo a medical examination to see if there is 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 no right to see the child or will have only supervised contact with the child.

If you believe you have been wrongfully accused of abusing your child and have little or no contact with them as a result, you can take the following steps:

- You can go to court to ask for an order to see all medical files relating to the child, including results of physical examinations.
- You can ask for a court order for the police and the Ministry to produce their investigation records to see what reports your spouse has made and how the investigation was done.
- You can ask the court to order a section 211 report^[7] under the *Family Law Act* to be conducted by a psychologist into the emotional state of your spouse.
- You can ask the court to set down a hearing to determine whether you abused your child.

Get help

With more information

Legal Services Society, the legal aid provider in BC, publishes a booklet “Parents’ Rights, Kids’ Rights: A Parent’s Guide to Child Protection Law in BC ^[8]” and a brochure “If Your Child is Taken: Your Rights As a Parent ^[9]”.


Web: legalaid.bc.ca ^[4]

Legal Services Society’s **Family Law in BC website** includes detailed information on child protection and removal.

Web: familylaw.lss.bc.ca ^[10]

The **Ministry of Children and Family Development website** includes information on child protection services in BC.

Web: gov.bc.ca/mcfd ^[11]

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Resolving Family Disputes

Mediation and Collaborative Practice (No. 111)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Zahra H. Jimale ^[1], Jimale Law Corporation in May 2017.

Going to court to resolve a family law dispute can be stressful and expensive. Learn how **mediation** or **collaborative practice** can be used to resolve issues without going to court.

Understand the legal framework

In a family law dispute, you don't have to go to court

Most family law disputes involve separating couples. When a couple splits up, they have to sort out how to divide property and debts, who should stay in the family home, and whether one of them will pay support. If there are children, more issues need to be worked out, including where the children will live, how decisions about their care will be made, and how to share time with the children.

Many people think going to court is the only way to resolve these issues. Going to court is sometimes unavoidable — for example, where someone is violent, is threatening to take the children out of town, or is hiding significant property.

But most family law issues can be resolved outside the courtroom. If a couple can work together, they may be able to avoid court proceedings altogether. Two common options that let you avoid court are **mediation** and **collaborative practice**.

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 will listen to what's important to each party, ask for their opinions on the issues, and help them to come to their own solutions for the future. If parties have a child, the mediator will help them to make decisions that are in the child's best interest. The mediator won't make decisions for the parties; the mediator helps them make their own decisions.

Usually the mediator is a lawyer or other trained professional. A lawyer mediator, called a **family law mediator**, can facilitate the settlement process and provide both parties general information about family law.

What to expect with mediation

Mediation is usually **less expensive** than going to court. When parties first contact a mediator, the mediator will discuss the costs and the process. Mediators usually charge an hourly rate and people usually split the mediator's costs between them.

How long a mediation takes

Mediation meetings are normally two to six hours long. There is usually more than one meeting, depending on how many issues need to be resolved and how complicated those issues are. Sometimes the mediator will meet with one or each party separately. The mediator may also give parties extra tasks to perform between meetings, usually to gather additional documents and information.

A settlement agreement

When the mediator is a lawyer, the mediator will usually prepare a written **settlement agreement** describing how the parties settled the issues through mediation. The written document can be a written agreement or minutes of settlement.

When the mediator is not a lawyer, a party's lawyer will usually prepare the agreement. Regardless of who writes the agreement, each party should get **independent legal advice** from a lawyer before they sign the agreement. This involves each party meeting 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.

Collaborative practice features negotiating a settlement collaboratively

Collaborative practice, also known as "collaborative family law", is a kind of negotiation where each party has their own lawyer and agree they will do everything possible to reach a settlement without going to court.

In fact, the parties typically agree that if either one starts contested court proceedings, their lawyers are disqualified from continuing to act for the parties.

Collaborative practice is centered on the needs of the parties and their children. Communications are usually open and transparent. The approach emphasizes full disclosure, communication, and a safe and respectful environment to help the parties negotiate a settlement collaboratively.

What to expect with collaborative practice

In collaborative practice each party has their own lawyer who is their advocate and supports them through the negotiations.

The parties meet, together with their lawyers, to work towards settling the issues. 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 like counsellors, child psychologists, and financial experts may be used to help reach a settlement.

When the parties agree on the issues, the agreement is put into writing by the lawyers. The agreement is signed by the parties and witnessed by someone other than the parties or their lawyers. It is a binding legal contract and can be enforced by the court.

Common questions

When is mediation or collaborative practice not appropriate?

While both approaches are very good ways of resolving family law issues, mediation or collaborative practice aren't appropriate in all cases. For example, they won't work well if there has been family violence or child abuse, or if one party won't participate fairly during the process.

How can I find a mediator?

To find a family law mediator, phone the **Lawyer Referral Service** at 604-687-3221 in Vancouver or toll-free 1-800-663-1919 elsewhere in BC. A family law mediator is especially useful where the issues to be resolved include how to divide up property and debts.

Family Mediation Canada has a director of family mediators. Call toll-free 1-877-362-2005, or visit their website at www.fmc.ca ^[2].

Mediate BC maintains a list of family mediators in British Columbia. Visit mediatebc.com ^[3] or call toll-free 1-877-656-1300.

Family justice counsellors may be able to help at no cost. Family justice counsellors help people with parenting arrangements or child support disputes in Provincial Court. Phone 604-660-2421 in the Lower Mainland, 250-387-6121 in Victoria or toll-free 1-800-663-7867 elsewhere in BC, and ask to speak with a family justice counsellor in the nearest Family Justice Centre. You can also visit the BC government's Family Justice website at www.justicebc.ca/en/fam/ ^[4].

How can I find a lawyer trained in collaborative practice?

Phone the **Lawyer Referral Service** at 604-687-3221 in the Lower Mainland or 1-800-663-1919 elsewhere in BC.

Visit the **BC Collaborative Roster Society's** website at bccollaborativerostersociety.com ^[5] and search for collaborative lawyers nearby.

Visit **Collaborative Divorce Vancouver's** website at collaborativedivorcebc.org ^[6] for the name of a member lawyer. All members of the association receive both collaborative practice and mediation training.

In the Lower Mainland, visit the **Collaborative Association's** website at nocourt.net ^[7] for a list of participating professionals.

In Victoria, contact the **Collaborative Family Separation Professionals** for the name of a member lawyer. Call 250-704-2600 or visit collaborativefamilylawgroup.com ^[8]

In Kelowna and the Okanagan, contact the **Okanagan Collaborative Family Law Group** at collaborativefamilylaw.ca ^[9].

In the West Kootenays, call 1-866-926-1881 and visit www.resolutionplace.ca ^[10] or www.nocourt.ca ^[11] for more information on contact **Resolution Place** at resolutionplace.ca ^[10] or the **Collaborative Law Group of Nelson** at nocourt.ca ^[11].

Also check the **BC Family Law Unbundling Roster** at unbundling.ca ^[12] for family lawyers and paralegals open to being hired for discrete tasks on a family law matter.

What questions should I ask the mediator or collaborative lawyer?

To help decide on a mediator or collaborative lawyer, you may want to meet with a few and ask some questions. For example:

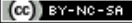
- Do they belong to any professional organizations for mediators or collaborative family lawyers?
- What kind of training have they received, and how long have they practiced as a mediator or collaborative lawyer?
- What kinds of family law issues do they handle? (Some mediators, for example, may only deal with child custody and access disputes. Other only deal with financial or property issues.)
- How much will it cost?

Can the agreement be changed?

An agreement made after a mediation or collaborative process can be changed in two ways:

- if both parties agree to change it, or
- if a court sets the agreement aside.

If the parties want to change the agreement, they can go back to mediation or a collaborative process to discuss the potential changes. Alternatively, they can go to court. Although a court will generally be reluctant to change an agreement that was fairly negotiated, the court may make an order on different terms if there was an important change in circumstances after the agreement was signed that was not expected when the agreement was negotiated.

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Family Court (No. 110)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Ling Wong, Fasken Martineau DuMoulin LLP in July 2018.

If you're dealing with a family law issue, you may end up in **Family Court**. (There are advantages to this court over Supreme Court.) Learn what's involved at each stage.

Understand the legal framework

Family Court is one of two courts that deal with family issues

Family Court is a division of the British Columbia Provincial Court ^[1]. Other divisions of the Provincial Court deal with criminal, traffic, and small claims cases.

Family Court deals with most legal issues that impact families, but not all of them. It deals with these issues under the *BC Family Law Act* ^[2]:

- 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**:

- grant a divorce
- divide property or debts, or make orders about family property
- change an order that was made under the *Divorce Act* ^[3]
- make adoption orders

To deal with these issues, you have to go to British Columbia Supreme Court ^[4].

Advantages of Family Court

The Supreme Court can deal with all family law issues, including all of the issues the Provincial Court deals with.

Given that, why would you want to go to Family Court?

Family Court has some advantages over Supreme Court:

- The court forms are easier to fill out than Supreme Court forms.
- No court fees are charged.
- The rules of court are simpler than the rules of the Supreme Court.
- The atmosphere of Family Court is more informal.
- Family Courts have **family justice counsellors** available. These are specially trained government workers who can help people resolve some family law issues, including through mediation. Their services are free.
- Family Courts sometimes 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.

Starting a case in Family Court

Family Court is available to everyone who has family law issues, including couples who are married, couples who aren't married, people who have had a child together, and anyone (such as a relative) who has an interest in a child.

A case is started in Family Court by **filing an application** with the court. Depending on what kind of orders are being sought, other documents may also be required.

The applicant makes three copies of the documents, and files the documents at a Family Court registry. There's no fee for filing the documents.

The applicant then **serves** a copy of the filed documents on the other party. There are strict rules about how to give court documents to the other party.

Tip Blank Family Court forms are on the BC government website ^[5]. You can also get free printed forms from the Family Court registry ^[6] in the town or city where you live.

After the case is started

Different registries of the Family Court have different rules about what happens next. Some registries require that parties meet with a **family justice counsellor** before they can see a judge. Family justice counsellors can help families resolve issues relating to the care and support of children, including through providing mediation.

Other registries require parties to take a **"Parenting After Separation" course** before they can see a judge. This free course helps parents with how to make decisions in the best interests of their child. It's a good idea to take the course whether the court requires it or not.

The parties may be asked to attend a **family case conference** to see if the dispute can be resolved without a hearing. This is an informal meeting with a judge to talk about the claims each party has made, see what can be agreed to, and talk about how the claims will be resolved. Family law cases are often resolved at these conferences. When the parties can agree, the judge will make a **consent order** at the conference.

Options to resolve a case outside the courtroom

Once a family law case has been started, the parties can try to resolve their issues without going to a hearing before a Family Court judge.

The parties might try **negotiating** with each other. This involves discussing the issues to try to reach an agreement. They could negotiate with the help of lawyers or without lawyers. They could also get help from other family members, elders or other community members.

The parties could try **mediation**. This involves meeting with a neutral person (a mediator), who helps them find a solution they agree on. The mediator doesn't make decisions, but rather helps the parties make decisions for themselves. Parties can use a family justice counsellor as their mediator (their services are free) or they can hire a private mediator.

Or the parties could try **collaborative practice**. Also known as "collaborative family law", this is a kind of negotiation where each party has their own lawyer and agree they will 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 and collaborative practice (no. 111).

If the parties can agree on the issues

If the parties can work out their issues, their agreement can be recorded in writing. Or it might be recorded in an order the parties agree the judge will make, 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 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.

Going to Family Court

If the parties cannot settle their issues and have to go to a trial, they will have a **hearing** before a Family Court judge.

In your community, 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 is a 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 and explain why the judge should make a particular order. The judge will then make an order resolving the issues.

Common questions

Do I need a lawyer to appear in Family Court?

There is no rule that people have a lawyer when they are going to court. The rules and forms in Family Court are simpler than in Supreme Court, and the atmosphere is more informal in Family Court. If you are planning to represent yourself in Family Court, consider getting legal advice 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^[7].

What to do in an emergency?

After a case is started in Family Court, there is a waiting time for an appointment to see a family justice counsellor or take the “Parenting After Separation” course. If you’re experiencing family violence, tell the court clerk. The clerk can explain how the Family Court can make a **protection order** in an emergency. This is a court order to protect one person from another. For more on this option, see our information on family violence (no. 155).

Get help

With your case

To make an appointment with a family justice counsellor, contact the nearest **Family Justice Centre** by calling Service BC.

Telephone: 604-660-2421 in Metro Vancouver or 250-387-6121 in Victoria

Toll-free: 1-800-663-7867

Web: justicebc.ca/en/fam ^[8]

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.

Web: unbundlinglaw.ca ^[7]


More information

The Legal Services Society's **Family Law in BC website** features guides that include step-by-step instructions and blank forms you'll need for going to Family Court.

Web: familylaw.lss.bc.ca ^[9]

The "**Parenting After Separation**" course is provided by Justice Education Society of BC and can be done online or in-person.

Web: parenting.familieschange.ca ^[10]

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Applying for an Interim Order in a Family Law Case in Supreme Court (No. 112)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Greta Airhart ^[1], Findlay Gunnell Sandor in October 2018.

While a family law case is in progress, the parties may need to get an “**interim order**” to deal with important or urgent issues. Learn the process for Supreme Court.

Understand the legal framework

The purpose of an interim order in a family law case

The parties involved in a family law case will often need an interim order after the case has begun but before it ends. Interim orders are temporary orders that last only until another interim order is made, or until the case is fully resolved.

Interim orders can deal with urgent problems that can't wait, such as stopping someone from disposing of property or stopping the children from being taken out of town. Interim orders can also deal with questions about how the family will function until the case is resolved, such as where the children will live and whether interim support should be paid by one party to help the other with expenses.

The process involved

The British Columbia Supreme Court has rules ^[2] that set out the details of the court's process. Family Rule 10-6 sets out how to make an **interim application** in a family law case.

One person (the **applicant**) starts the process by preparing a **notice of application**. They file this form and some supporting documents in the court, and then serve the documents on the other party. The material sets out the order the applicant is looking for, explains why the court should make that order, and gives the day the application will be heard.

If the other party wants to object to any part of the application, they must file a **response** in the court and serve those materials on the applicant.

One full day before the hearing, the applicant must file some additional material in court.

At the hearing, each party will explain why the order the applicant seeks should or shouldn't be made. The court will make a decision. The decision is recorded in an **interim order** that remains in force until another interim order is made or until the overall case is resolved.

The steps in the process

Step 1. Prepare the notice of application

One person (the **applicant**) starts the process by preparing a **notice of application**. The court has its own form that must be used, Supreme Court Form F31. This form sets out the order the applicant is looking for, explains why the court should make that order, and gives the day the application will be heard.

The applicant also prepares an **affidavit**, using Form F30. An affidavit is a legal document where a witness makes statements about facts they say are true. Depending on the type of order they're seeking, the applicant may also need to prepare other supporting documents.

Tip You can download the notice of application and affidavit forms, as well as other court forms, from the BC government website ^[3].

Picking the hearing date

In the notice of application, the applicant must set the date when the application will be heard. Except for urgent applications, the soonest an application can be heard is **eight business days** from the date the application materials are sent to the other party. (Business days are days the court is open for business; they don't include weekends and holidays.)

The applicant gets to pick the date of the hearing unless the hearing will take two hours or longer, in which case the applicant must schedule the hearing date with the court registry staff.

Tip In picking the hearing date, the applicant 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.

Step 2. File the application in court

The applicant files the notice of application and affidavit in the court registry where their family law case is ongoing. The applicant must make three copies of the material. There is a court filing fee.

Step 3. Serve the notice on the other party

The applicant must **serve** the notice of application and supporting documents on the other party.

"Serving" means delivering or leaving the documents with them. This can be done by **ordinary service**, which means the documents can be dropped off with the other party or sent by mail, fax or email, depending on what the other party put as their "address for service" in earlier documents filed in the court case.

The documents must be served on the other party at least **eight business days** before the date set for the hearing.

Step 4. Wait for a response

The other party has **five business days** from the time they were served with the application to respond. They do this by filing a **response** and an affidavit in support in court and serving those materials on the applicant. The response says whether they agree or disagree with what the applicant is seeking.

The applicant can complete a responding affidavit, responding to any new information in the other party's material.

Step 5. Prepare the application record

Before the hearing, the applicant must 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 for how this material is organized.

As well, the applicant must send the other party a copy of the **index** to the application record.

The applicant 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 in BC website from Legal Services Society, the legal aid provider in BC, includes guides with step-by-step instructions on preparing and responding to an interim application. The instructions include how to prepare an application record ^[4]. Visit familylaw.lss.bc.ca ^[5].

Step 6. Attend the hearing

The hearing will take place in **chambers**, a public courtroom where all interim applications set for a particular day are heard. The hearing might be before a judge or a **master**, a judicial officer who can decide interim applications.

On the day of the hearing, the parties go to the chambers courtroom at 9:45 am and check in with the court clerk to say they are present in court. When the court clerk calls the name of the case, the parties (or their lawyers) approach the judge or master and introduce themselves.

The parties make their submissions

The applicant describes the orders they are asking for (listed in the notice of application), and outlines the facts (stated in their affidavit) that explain why the court should make those orders.

The other party outlines the facts (stated in their affidavit) that explain why the court shouldn't do as the applicant asks.

Neither party testifies during the hearing, and neither can ask each other questions. All of the evidence is provided through the affidavits in the application record.

The court's decision

After reviewing the documents and listening to the parties' arguments, the judge or master makes a decision. They may make all, some or none of the orders the applicant is asking for.

Step 7. The interim order is filed in court

If a lawyer is representing either party, the lawyer usually prepares the written **interim order** from the decision of the judge or master, and files it in court. If neither party has a lawyer, the successful party prepares and files the written order.

The order is in force from the moment the judge or master gives their decision. The order remains in force until the court makes another interim order on the same subject or until the overall case is resolved by a trial or a settlement.

Get help

With more information

The **Family Law in BC website** from Legal Services Society, the legal aid provider in BC, includes guides with step-by-step instructions on preparing and responding to an interim application.

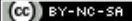
Web: familylaw.lss.bc.ca ^[5]

The **Supreme Court BC Online Help Guide** from Justice Education Society has videos on how to present your own case in chambers.

Web: supremecourtbc.ca/family/tips-for-parents ^[6]

The wikibook ***JP Boyd on Family Law***, hosted by Courthouse Libraries BC, describes the interim application process.

Web: wiki.clicklaw.bc.ca ^[7]

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Part 4. Life

Health

Adults and Consent to Health Care (No. 428)

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.

Understand the legal framework

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; we explain these in our information on children and consent to health care (no. 422). 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 (no. 425).

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 ^[3] called an **advance directive**. 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 ^[3] on how it is signed and witnessed. 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. Our information on powers of attorney and representation agreements (no. 180) explains 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. Our information on committees (no. 426) has more on committees.

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.

Get help


With more information

The **Public Guardian and Trustee's** website provides information about consenting to and refusing health care.

Telephone: 604-775-1001 in the Lower Mainland

Toll-free: 1-877-511-4111

Web: trustee.bc.ca ^[1]

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Children and Consent to Health Care (No. 422)

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**.

Understand the legal framework

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.

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. For example, a court ordered ^[3] 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 (no. 428).

A (capable) child does not need their parent to consent to their 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 ^[4]’s screening line at 1-800-663-9122.

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 ^[5] of the *Child, Family and Community Service Act*.

More information is available from the Ministry of Children and Family Development. See their website at gov.bc.ca/mcf ^[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 (no. 428) 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 (no. 421).

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 (No. 421)

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.

Understand your legal rights

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. The BC Medical Association ^[3] sets approximate fees in its fee guide. 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 and their website is cpsbc.ca ^[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 oipc.bc.ca ^[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.

Get help

With more information

The **College of Physicians and Surgeons of BC** deals with complaints against doctors in BC.


Toll-free: 1-800-461-3008

Web: cpsbc.ca ^[4]

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.

Toll-free: 1-800-663-7867

Web: oipc.bc.ca ^[5]

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Hospitalizing a Mentally Ill Person (No. 425)

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.

Understand the legal framework

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). Our information on adults and consent to medical care (no. 428) has details on consenting to medical treatment and substitute consent. We explain what is a representative (in no. 180) and committee (in no. 426).

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 (at bcmhrb.ca ^[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^[4] of the *Mental Health Act*, 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.

Get 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.

Telephone: 604-685-3425 in the Lower Mainland

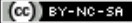
Toll-free: 1-888-685-6222

Web: clasbc.net^[5]

More information

The **BC government's** website includes information and options for support on mental health issues.

Web: gov.bc.ca/mentalhealth^[6]

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[1] https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-288/latest/rsbc-1996-c-288.html#sec20_smooth

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[6] <http://gov.bc.ca/mentalhealth>

[7] <https://creativecommons.org/licenses/by-nc-sa/4.0/>

If You Have a Problem with a Doctor (No. 423)

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**.

Understand your legal rights

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. Our information on charging someone with a criminal offence (no. 215) explains the process.
4. If a doctor has harmed you and you want compensation, you can **sue the doctor for damages**. Our information on medical malpractice (no. 420) describes what's involved.

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 available on the College's website at cpsbc.ca ^[1], or
- writing a complaint letter describing what happened (see the College's website for details of what information must be in the letter).

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.

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, no. 420.)

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 hprb.gov.bc.ca ^[2].

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 ^[3] links to the regulatory body for each type of provider.

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 with the Patient Care Quality Office ^[4] 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 the Patient Care Quality Review Board ^[5] to review it. Each health authority has such a board. For more information, call 1-866-952-2448.


Get 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.

Toll-free: 1-800-461-3008

Web: cpsbc.ca ^[1]

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- [1] <https://www.cpsbc.ca/for-public/file-complaint>
- [2] <http://www.hprb.gov.bc.ca/>
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- [4] <http://www.patientcarequalityreviewboard.ca/makecomplaint.html>
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Medical Malpractice (No. 420)

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.

Understand your legal rights

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. Our information on if you have a problem with a doctor (no. 423) explains how to make a complaint about a doctor.

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 ^[4].

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 (no. 438).

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. Our information on if you have a problem with a doctor (no. 423) explains how to make a complaint.


Get 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.

Toll-free: 1-800-461-3008

Web: cpsbc.ca ^[5]

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Home & Neighbours

Buying a Home (No. 406)

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.

Key things to consider

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 (no. 408).

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 at gov.bc.ca/propertytransfertax ^[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 ^[5] listing ^[6] websites ^[7].

Tip Under the law in BC ^[8], real estate agents must be licensed. You can use the licensee search ^[9] from the Real Estate Council of BC 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.

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!

Get 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”.

Web: recbc.ca ^[10]

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Buying a Condominium (No. 407)

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.

Understand the legal framework

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*^[3] is the main law governing stratas. 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 (no. 406) 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.

Get help


With more information

The **BC government's** strata housing website has extensive information for strata owners and strata council members.

Web: gov.bc.ca/strata ^[5]

The **Condominium Home Owners Association of BC** promotes the understanding of strata property living and the interests of strata property owners.

Web: choa.bc.ca ^[6]

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Mortgages and Financing a Home Purchase (No. 408)

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**.

Understand your legal rights

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 (no. 415).

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^[4] of the *Property Law Act*. 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 People's Law School's information on getting a mortgage at peopleslawschool.ca^[5].

Get 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.

Web: recbc.ca ^[6]

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Selling Your Home (No. 405)

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 ^[4] from the Real Estate Council of BC to see if an agent is currently licensed.

What to consider 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:

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 (no. 408).

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 should it 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 ^[4] from the Real Estate Council of BC 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 “Understand your legal rights”.

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.

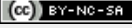
If at any time during the period you owned the home, it was *not* your principal residence, you might not be able to benefit from this tax exemption. A lawyer can advise on whether the principal residence tax exemption applies to you.

Get 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”.

Web: recbc.ca ^[6]

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Builders Liens (No. 268)

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.

Understand the legal framework

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. The *Builders Lien Act* ^[4] lets a landowner apply to court 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 case. 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** (in Form 5 ^[5]). The claimant must file this form in the Land Title Office where the land involved is registered. The form must include the legal description of the project site — a street address is not enough. You can get the legal description 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?

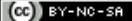
Yes. If you buy the home within 45 days of its completion, there could be lien claims filed after you become the owner. You could be in the position of having to pay the liens, even though you already paid the purchase price in full. The *Builders Lien Act* ^[7] has provisions that deal with this problem by permitting 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 (No. 401)

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.

Understand the legal framework

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

The *Strata Property Act* ^[5] lists the records a strata corporation must keep. A regulation ^[6] sets out how long the records must be kept.

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* ^[3] is the main law governing stratas. 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 ^[7], 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 ^[8] with the property manager or strata council.

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 at civilresolutionbc.ca ^[9].

Get help

With more Information

The **BC government's** strata housing website has extensive information for strata owners and strata council members.


Web: gov.bc.ca/strata ^[10]

The **Condominium Home Owners Association of BC** promotes the understanding of strata property living and the interests of strata property owners.

Web: choa.bc.ca ^[11]

The **Office of the Information & Privacy Commissioner for British Columbia's** website includes privacy guidelines for stratas.

Web: oipc.bc.ca ^[12]

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Co-operative Housing: Members' Rights and Duties (No. 402)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Silvano Todesco ^[1], Citadel Law Corporation in February 2018.

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.

Understand the legal framework

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.

A co-op is governed by its members

Members of co-ops work together to govern and manage the co-op through an elected board of directors and various committees. The members themselves, as well as the committees and the board of directors, all hold meetings to deal with things like admitting new members, finance, policy-making, and major decisions for members. Co-ops also hire professional management providers and contract for other services like bookkeeping and maintenance.

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 ^[5] 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.

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.

Ending a person's occupancy agreement

A co-op can end a person's occupancy agreement for any breach of the occupancy agreement. The most common reason is non-payment of housing charges. The co-op's board of directors must first demand in writing that the person correct the problem. If the person doesn't correct it, the board can pass a resolution by a simple majority (more than 50%) to end the occupancy agreement.

When the occupancy agreement ends, the person's membership also ends. They must then leave the co-op. But they can appeal, as described earlier.

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 ^[6]. Claims above \$5,000 and up to \$35,000 go to Small Claims Court ^[7]. Claims above \$35,000 go to BC Supreme Court ^[8].

Get help

With more information

The **Co-operative Housing Federation of BC** website features model rules ^[9] and information for those living in a housing co-op.

Telephone: 604-879-5111 in Vancouver

Toll-free: 1-866-879-5111


Web: chf.bc.ca ^[10]

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.

Telephone: 604-685-3425 in Vancouver

Toll-free: 1-888-685-6222

Web: clasbc.net ^[5]

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Residential Tenancy (No. 410)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Anna Kurt ^[1], Ganapathi Law Group in July 2018.

BC's **residential tenancy law** applies to most types of **rental housing** in the province. Learn key aspects of this law, and answers to common questions raised by tenants and landlords.

Understand the legal framework

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 ^[4] is the BC government agency that administers the *Residential Tenancy Act*. 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

Tip Before renting a unit, a tenant should:

- inspect the rental unit carefully, with the landlord, and make sure it's suitable
- read the tenancy agreement before signing it
- know who the landlord is and get the landlord's 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 ^[7] prescribed under BC's residential tenancy law 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.

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 demolition, renovation or repair, or conversion

A landlord must give a tenant **four months' notice** of this. A tenant has 30 days to dispute it. A landlord may want to renovate or tear down the building or convert it to condominiums. 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.

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 Branch to get this extra compensation.

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 ^[8] explains how to apply for dispute resolution, how to tell the other side of the hearing, 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 for dispute resolution online ^[9] or at a Branch office ^[10], unless there isn't one nearby. Then, apply at a Service BC office ^[11]. There's an application fee ^[12] that depends on the type of application.

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 ^[13].

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* ^[14]. The Residential Tenancy Branch website includes a rent increase calculator ^[15]. 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 ^[16] (for disputes up to \$5,000) or Small Claims Court ^[17] (for disputes from \$5,000 to \$35,000).

Can a landlord enter a tenant’s rental unit?

Under the *Residential Tenancy Act* ^[18], 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* ^[19], 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.

Get help

With more information

The **Residential Tenancy Branch** is the BC government agency that administers the *Residential Tenancy Act*. They help tenants and landlords resolve problems by providing a formal dispute resolution process.

Telephone: 604-660-1020 in the Lower Mainland and 250-387-1602 in Victoria

Toll-free: 1-800-665-8779

Web: gov.bc.ca/landlordtenant ^[20]

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.

Telephone: 604-255-0546 in the Lower Mainland

Toll-free: 1-800-665-1185


Web: tenants.bc.ca ^[21]

Landlord BC represents landlords and property managers throughout BC, providing advice and answers to legal questions.

Telephone: 250-382-6324 in Victoria

Toll-free: 1-888-330-6707

Web: landlordbc.ca ^[22]

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Neighbour Law (No. 400)

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**. This information covers problems involving noise, untidiness, dogs, fences, trees, second-hand smoke, water damage, and trespassing.

Understand your legal rights

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 ^[8] can refer you to a lawyer for an initial consultation. Call 1-800-663-1919.

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] based on the community you live in and the type of problem you have. Selecting "Community/Neighbourhood" under Practice Areas can help narrow your search.

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Home Repair Contractors (No. 409)

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.

Understand your legal rights

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 (no. 268).

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 dishonest business practices (no. 260). 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 (no. 165).

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 People's Law School's information on if you're not happy with a service ^[4].

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 ^[5] can tell you if there have been any complaints about a contractor. 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 sales and other contracts you can cancel (no. 255).

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 (No. 415)

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**”.

Understand your legal rights

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 (no. 408).

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 People's Law School's information on if you're facing foreclosure, at peopleslawschool.ca ^[4].

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 ^[5], 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 (No. 240)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Karen Zimmer ^[1], Alexander Holburn Beaudin + Lang LLP in February 2018.

The law of **defamation** protects a person's reputation from harm that is unjustified. Learn what kinds of communication are considered defamatory, as well as the defences to a defamation action.

Understand your legal rights

The law of defamation protects a person's reputation

A good reputation is core to a person's sense of self-worth and dignity. Once harmed, a good reputation is hard to regain, with sometimes devastating consequences, especially professionally. The law of **defamation** protects a person's reputation from harm that is unjustified.

Defamation is communication about a person that tends to hurt their reputation. It causes people who read or hear the communication to think less of the person.

However, protecting someone's reputation can restrict other rights, such as the guarantee of freedom of expression under the *Charter of Rights and Freedoms*.

The law tries to balance these competing rights. Sometimes, even though someone makes a defamatory statement that harms a person's reputation, the law considers freedom of expression more important.

Defamation can also be a crime under the *Criminal Code* ^[2], but this is rarely prosecuted. This information is about civil, not criminal, defamation.

If someone defames you

If someone defames you, you can sue them for money (called **damages**) for harming your reputation.

To show that someone defamed you, you must show that:

1. the communication was **defamatory** (that it would tend to lower your reputation in the eyes of a reasonable person),
2. it referred to **you**, and
3. it was communicated by the defendant to **at least one other person**.

The law doesn't protect you from a personal insult or a remark that injures only your pride. It protects your reputation, not your feelings. If someone in a public meeting calls you a nasty word, your feelings might be hurt, but you would have a difficult time showing the communication lowered your reputation in the minds of others.

If someone tells others you cheat in your business dealings, then you would have a much stronger claim that this harms your reputation and is defamatory.

You are not required to show the defendant *intended* to do harm, or even that the defendant was careless. If you prove the required elements, the onus then shifts to the defendant to put forward a **defence** in order to escape liability.

Tip If someone publishes a statement that violates your reasonable expectation of privacy, they may have breached your **privacy rights** under the *BC Privacy Act* ^[3].

If someone publishes a statement that discriminates against you or is likely to expose you to hatred, they may have violated your **human rights**. See our information on human rights and discrimination protection (no. 236).

Defamation can take different forms

If defamation is written or otherwise recorded, it is called **libel**. Libel is defamation that leaves a permanent record. Examples would be statements on social media or other online platforms, in newspapers, letters, or emails, or on radio or TV broadcasts. Libel can also be a picture.

If the defamation leaves no permanent record, it is called **slander**. Mostly this involves spoken statements. It can also be a hand gesture or something similar.

The law treats slander differently from libel. With slander, you have to show you suffered a **financial loss** to get compensation, unless the communication:

- accuses you of a crime and is to someone other than the police
- accuses you of having a contagious disease
- makes negative remarks about you in your work, profession, trade, or business
- accuses you of adultery

If the words spoken don't do any of these things, then you would have to show the words caused you a financial loss to establish slander.

Defences to a claim of defamation

The law protects a person's reputation, but this protection can clash with other rights, such as the right to free expression. The law tries to balance these competing rights. Sometimes, even though someone makes a defamatory statement that harms a person's reputation, the law considers freedom of expression to be more worthy of protection.

The following are defences to an action for defamation.

Truth or justification

A statement may hurt your reputation, but if the statement is true, that is a complete defence to an action for defamation. The person who made the statement can defend their statement by proving it is more likely true than not.

Absolute privilege

Freedom of speech without fear of consequences is considered critical for the effective administration of justice. A statement made in judicial proceedings is protected by a defence of **absolute privilege**. This is a complete and unqualified defence to an action for defamation.

This defence protects defamatory statements made in a civil lawsuit. It covers statements made in court, as well as all preparatory steps, including court filings and examinations for discovery.

Absolute privilege also protects defamatory statements made in all stages of a criminal case. For example, a complaint to the police is protected by absolute privilege — as long as the complaint is not repeated to others.

Absolute privilege also protects a person who makes a defamatory statement in a quasi-judicial proceeding, like a hearing before a professional regulatory body such as the Law Society of BC.

And absolute privilege protects statements in Parliament.

But absolute privilege does not protect a person who repeats their statement outside of the court or judicial process.

Qualified privilege

A defamatory statement made in performing a public or private duty can be protected by **qualified privilege**. The protection only applies to statements made to people with a corresponding interest in receiving the statement.

An example of qualified privilege is when a previous employer provides a bad reference to a potential employer. If the previous employer honestly believes what they are saying in providing the bad reference, then qualified privilege may protect them in giving the bad reference.

The duty can be legal, social, or moral. The test is whether a person of ordinary intelligence would think a duty existed to communicate the information to the audience it was made to.

There are no exact rules on when qualified privilege arises. It depends on the facts of a case. If the communication is made under qualified privilege, the defence applies even when very strong language is used, or the statement is false.

It is hard to rely on this defence for statements made on the internet because the defence protects a person only if they limit their defamatory statements to people who have an interest in hearing the communication. Defamatory statements on the internet are not limited this way. Instead, they go to the public at large. So they do not meet this test unless it is a matter the public would be interested in, or the communication is on a members-only site or service and not open to the public.

Fair comment

We all are free to **comment** — even harshly — about issues of **public interest**, as long as we are clear that our comments are:

- expressed in a way that shows they are **opinion**, not fact,
- based on facts that can be proven and those facts are either stated or otherwise known to readers or listeners, and
- not made maliciously.

For example, a newspaper columnist may write about a politician who says they support equality and equal rights, but are opposed to same-sex marriages. The columnist may write that the politician is hypocritical. If the politician sues the columnist for defamation, the columnist may put forward the defence of fair comment.

Responsible communication on matters of public interest

A more recent defence to libel claims deals with reporting on matters of public interest. Journalists should be able to report statements and allegations — even if not true — if there's a **public interest** in distributing the information to a wide audience. This defence, which looks at the whole context of a situation, can apply if:

- the news was urgent, serious, and of public importance, and
- the journalist used reliable sources, and tried to get and report the other side of the story.

The courts have defined the term “journalist” widely to include bloggers and others publishing material of public interest in any medium.

Innocent dissemination

The defence of **innocent dissemination** is important in the internet era. Generally, a person who takes part in publishing a defamatory statement is responsible for its publication. This includes a writer, editor, printer, and distributor. But a person who acts only as a distributor may be able to rely on the defence of innocent dissemination if they:

- did not know they were distributing a defamatory statement, and
- were not negligent in not knowing, and
- immediately removed the statement from their website or from distribution when they learned of the defamatory statement.

Common questions

What's involved in suing someone for defamation?

A defamation lawsuit in British Columbia must be brought in 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 starts running 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 (no. 165).

Tip 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. For alternatives to bringing a lawsuit, see our information on resolving disputes without going to court (no. 429).

What kinds of damages might be awarded in a defamation lawsuit?

If the person bringing a defamation lawsuit (the "plaintiff") can prove that someone defamed them, and the defendant does not have a defence to the claim, then a court may award **general damages** for loss of reputation. General damages can range from small to large amounts. It depends 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.

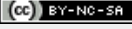
The mode and extent of publication is a particularly significant consideration in assessing damages in internet defamation cases.

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**.

What is the effect of an apology?

A newspaper or a TV or radio station that publishes or broadcasts a libel can limit the amount of the damages they may have to pay by publishing or broadcasting an apology right away. But an apology or retraction does not prevent someone from suing for defamation. It just limits the damages.

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Freedom of Information and Protection of Privacy (No. 235)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Office of the Information and Privacy Commissioner for BC ^[1] in February 2019.

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 used.

Understand your legal rights

You have a right to certain information

In British Columbia, your information and privacy rights are protected by two main laws.

The *Freedom of Information and Protection of Privacy Act* ^[2] (called FIPPA) gives you the right to see many records kept by the provincial government and other public bodies — including records of your personal information. Public bodies include provincial government ministries, local governments, public schools, hospitals and health authorities, local police forces, and colleges and universities. They also include bodies that govern professions in the province, such as the College of Physicians and Surgeons of BC (which governs doctors) and the Law Society of BC (which governs lawyers).

In addition, the *Personal Information Protection Act* ^[3] (called PIPA) gives you the right to see your personal information held by organizations in the private sector in BC. This includes stores, hotels and restaurants, doctors in private practice, unions, not-for-profit agencies, credit unions (but not chartered banks), professional associations, and many others. Under PIPA, you can ask an organization for access to your personal information that it has, or explain how it has used your personal information and who the organization has given your information to. You can also ask for information on the organization's privacy policy.

You have a right to privacy

Both FIPPA and PIPA protect your right to privacy by regulating how public bodies and private organizations collect, use, and give out (or disclose) personal information. Public bodies and organizations can use personal information only for the purposes they collect it for, unless they get your consent to use it for another reason. Organizations and public bodies must ensure they don't give out personal information without proper authorization.

Common questions

How do I request access to information?

In some cases, it may be quick and easy to access records held by provincial government ministries or other public bodies, or to access your personal information held by a private organization. An email or a phone call may be enough to get the information.

But if there's no other way of getting the information you want, you can send a **written request** to the organization. The organization might have a department or person that handles information requests. If they do, you can address your request to them. If not, you can just send your request to the organization. It is the responsibility of the organization to have procedures and training in place to handle information requests.

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. If you want access to information about your gym's privacy policy, or your personal information it has on file, you could send a written request to the gym's privacy officer, or just to the gym's general contact address.

How long does a public body or an organization have to respond?

FIPPA gives public bodies **30 business days** to respond to your request for information. They can't charge you any fees for your own personal information, but they can charge you fees for finding, copying, retrieving, and producing records not related to your personal information. 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 your own "employee personal information". This is personal information collected, used or disclosed for the purposes reasonably required to establish, manage or end an employment relationship. But they can charge a small fee to access your other personal information — information that is not employee personal information.

What kind of information isn't available?

Under FIPPA, 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 Ombudsman, or certain information if its release or 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.

What can I do if my request for information is refused?

If a public body or private organization refuses your request, or if you're not satisfied with its response, you can ask BC's Information and Privacy Commissioner to **review** the response. There's a time limit of **30 business days** to make this request to the Commissioner.

The Commissioner is independent of government. The Commissioner reviews the decision and can order a public body or private organization to release information that FIPPA or PIPA gives you the right to see. See the Information and Privacy Commissioner's website at oipc.bc.ca ^[4] for how to ask for a review.

What if an organization'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) in your personal information. If the public body refuses your request, FIPPA requires them to mark your information with the correction you requested. You can also ask a private organization to correct any inaccurate personal information. If you are not happy with the decision of the public body or organization, you can ask the Information and 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 about how it collects, uses, or discloses your personal information. You should give the public body or organization a reasonable amount of time to respond.

If that doesn't help, you can file a complaint with the Information and Privacy Commissioner. The Commissioner's website at oipc.bc.ca ^[5] explains the process to make a complaint.

Get help

With more information

The **Office of the Information & Privacy Commissioner** for BC oversees and enforces British Columbia's access to information and privacy laws.

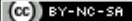
Telephone: 250-387-5629 in Victoria

Toll-free: Call Enquiry BC at 1-800-663-7867

Web: oipc.bc.ca ^[1]

The **BC Freedom of Information and Privacy Association** (FIPA) is a non-profit organization dedicated to promoting and defending freedom of information and privacy rights.

Web: fipa.bc.ca ^[6]

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Human Rights and Discrimination Protection (No. 236)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Laura Track ^[1] of the Community Legal Assistance Society and Katherine Hardie of the BC Human Rights Tribunal in February 2018.

British Columbia has a law to help protect you from **discrimination** and **harassment**. Learn what it covers, and what's involved in making a complaint that someone has discriminated against you.

Understand your legal rights

You are protected against discrimination under BC law

If you're treated differently than others based on personal characteristics such as the colour of your skin or your sex, it's called **discrimination**. Discrimination can take many forms. Harassment (conduct a reasonable person would consider objectionable or unwelcome), unequal pay for similar work, publications that discriminate or spread hatred, or negative differential treatment are all examples of discrimination.

In BC, the *Human Rights Code* ^[2] prohibits discrimination based on various personal characteristics. These are called **protected grounds**. They include:

- your race, colour, ancestry, or place of origin
- your age (if you're 19 and above)
- your sex, sexual orientation, or gender identity or expression
- your marital or family status
- your religion or political belief
- any physical or mental disability

The Code prohibits discrimination in these **areas**:

- employment (including membership in a trade union, employers' organization or professional association)
- renting or purchasing property
- services and facilities open to the public
- publications

Some protected grounds apply only in certain areas. For example:

- your (lawful) source of income can't be a factor in how someone treats you in renting you property
- any criminal convictions can't be a factor in how an employer treats you in the workplace (as long as the conviction is unrelated to the job)

The BC Human Rights Clinic provides a chart of protected grounds and protected areas ^[3].

You are protected from discrimination in the workplace

Everyone has a right to be free from discrimination in their work. This includes hiring, firing, wages, benefits, hours, and other terms and conditions of work. It also includes the workplace environment. Treating someone badly based on one of the protected grounds in section 13 of the *Human Rights Code* ^[4] is prohibited. Employers must provide a discrimination-free workplace, and they may be liable for discrimination, including harassment, by their workers. (For more on harassment in the workplace, see our information on sexual harassment, no. 271.)

The employer's duty to accommodate

Employers must also **accommodate** workers to ensure they are treated fairly. Employers must take all reasonable steps to avoid a negative effect on a worker based on a protected characteristic. For example, a job requirement to work on a certain day may hurt someone whose religion prevents them from working on that day. Or, a person with a disability may not be able to perform a certain part of their job because of their disability. In these cases, the employer must make adjustments to accommodate these differences. They must take reasonable steps to remove the harm and support the worker to do the job.

To the point of undue hardship

The employer's duty to accommodate isn't limitless. It extends only to the point where the accommodation starts causing the employer "**undue hardship**". Accommodation requires an employer and a worker to find a practical solution to accommodate the worker's differences but not create an undue hardship on the employer. An employer may have to accept some hardship. That hardship might involve expense, inconvenience, or disruption — as long as it does not unduly interfere with the business.

Employers may be able to justify discrimination if it is based on a **bona fide occupational requirement**. For example, a pilot must have 20/20 vision.

See our information on protection against job discrimination (no. 270) for more on discrimination in the workplace.

You are protected from discrimination when renting property

No person can refuse to rent a space (for example, an apartment or an office) based on the protected grounds in section 10 of the *Human Rights Code* ^[5]. Nor can they discriminate against a person regarding a term or condition of the tenancy, such as the amount of the security deposit, use of common spaces, or provision of repairs. They can't charge a higher rent or evict someone based on a protected ground.

There are some exceptions under the law:

- A person looking for a roommate to share their own place can restrict the rental to people based on any ground if they will be sharing a bathroom or kitchen.
- Rental buildings can be restricted to people age 55 and over, or couples or families with one member 55 or over.
- In some cases, rentals may also be restricted to people with mental or physical disabilities if the residence is designed for people with disabilities.

You are protected from discrimination by service providers

Restaurants, hotels, shops, and other service providers that offer services to the public can't refuse service, charge higher rates, or discriminate in any other way based on the protected characteristics in section 8 of the *Human Rights Code* ^[6]. Governments and educational institutions also cannot discriminate in providing accommodations, services, and facilities. Service providers must take all reasonable and practical steps to accommodate someone's personal characteristics if necessary to provide equal benefit of the service.

There are two exceptions under the law:

- Public facilities, like washrooms or change rooms, can be restricted by sex.
- Insurance companies can factor someone's sex, age, and any disability into determining their premiums or benefits under life or health insurance policies.

You are protected from discrimination in publications

The *Human Rights Code* ^[7] prohibits publications that indicate discrimination or an intention to discriminate, or that are likely to expose a person or group to hatred or contempt. This includes any published statement, notice, sign, or other representation that is not private. This protection does not cover publications that express offensive or hurtful ideas yet fall short of discriminating or promoting hatred.

There are some exceptions to human rights laws in BC

A charitable, philanthropic, religious, educational, or social organization that is not operated for profit may be able to give a preference to members of an identifiable group. The organization's primary purpose must be to promote the interests and welfare of a group of persons identified by a physical or mental disability, or a common race, religion, age, sex, sexual orientation, gender identity or expression, marital status, political belief, colour, ancestry, or place of origin.

In addition, organizations can ask the Human Rights Tribunal to approve a specific program or activity as a **special program** under the *Human Rights Code* ^[8]. The purpose of the program or activity must be to improve conditions for a person or group disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, sex, sexual orientation, or gender identity or expression. For example, in the past the tribunal approved a school district hiring a member of a protected group to provide services to students and families who are members of that same group.

More on the “duty to accommodate”

The *Human Rights Code* prohibits acts or omissions that have a discriminatory effect. Protecting human rights may require an employer, landlord, or service provider to take reasonable steps to remove the discriminatory effect, to the best of their ability. This **duty to accommodate** might apply, for example, to a restaurant or apartment building requiring them to provide a ramp for people who use wheelchairs.

Accommodating differences may cause some hardship, as (for example) the wheelchair ramp costs money to build. The duty to accommodate extends only to the point where the accommodation starts causing **undue hardship**. Hardship becomes undue if it would be unfair to expect the accommodating party to take action, given their size, profits, or other factors.

The duty to accommodate requires all parties to take part in a process to try to accommodate. Failure to take part in the process can violate the *Human Rights Code*. A person requesting accommodation is entitled only to reasonable — not perfect — accommodation. Both parties may have to compromise.

Tip Identifying a duty to accommodate and determining what amounts to undue hardship can vary from case to case. If you think a duty to accommodate may apply to your situation, you can seek legal advice. See our information on free and low-cost legal help (no. 430).

If someone discriminates against you

If you think someone has violated your human rights under the *Human Rights Code* ^[2], you have options.

You can **make a human rights complaint** to the Human Rights Tribunal. The tribunal deals with complaints under the *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. We explain the process to make a complaint to the tribunal shortly.

If the discrimination is at your **place of work** and you belong to a union, the union may be able to help you. Or you may be able to make a complaint to the Employment Standards Branch, the government office that administers the *Employment Standards Act*. Depending on the circumstances, you might be able to sue in court for wrongful dismissal. See our information on protection against job discrimination (no. 270) for more on these options.

Tip If you complain to the Human Rights Tribunal, and also pursue another option (by filing a union grievance, making a complaint under the Employment Standards Act, or suing the employer for wrongful dismissal), the tribunal can wait until the other process is finished before dealing with your complaint. It is a good idea to seek legal advice on your options. See our information on free and low-cost legal help (no. 430).

To make a human rights complaint

Step 1. Make a complaint to the Human Rights Tribunal

Get a **complaint form** from the Human Rights Tribunal, fill it in, and file it with the tribunal within **one year** of when the discrimination happened. If you wait longer than one year, your complaint may still be accepted if the tribunal believes it is in the public interest to accept it and no party will be prejudiced because of the delay.

You can get a complaint form from the tribunal's website at bchrt.bc.ca ^[9], from the tribunal office, or at government agent offices. The tribunal can handle complaints only if the *Human Rights Code* covers them. It is important to give all the information that supports your complaint. You can file the complaint in person, by mail, fax, courier, or email.

The tribunal has information sheets on the *Human Rights Code*, the complaint process, and many other topics. To get this material, see the tribunal website ^[10] or call 604-775-2000 in Vancouver or toll-free 1-888-440-8844 elsewhere in BC.

Step 2. The tribunal considers your complaint

The Human Rights Tribunal reviews your complaint to see if it is covered by the *Human Rights Code* and if what happened could violate the Code. If the tribunal decides it can handle your complaint, it will notify the person or business you complained about, called the **respondent**.

You and the respondent can try to settle the complaint. The tribunal offers mediators who help the parties to resolve the complaint on their own.

If that doesn't work, the respondent must reply to your complaint. The respondent can also ask the tribunal to dismiss your complaint without a hearing.

Step 3. Attend a tribunal hearing

If you don't settle your complaint and it's not dismissed without a **hearing**, the tribunal will hold a hearing. A tribunal member will decide if the complaint is justified. If it is, the tribunal will order a **remedy**. Remedies are designed to reverse the effects of discrimination, not to punish the person or business that discriminated. They can include an order that the respondent:

- stop discriminating
- make available the right or opportunity you didn't get because of the discrimination (for example, give you your job back, or the right to compete for a job)
- pay you money for lost wages, benefits, or expenses

The tribunal can also order the person or business that discriminated to pay you for injury to your dignity, feelings, and self-respect. There are no limits to the amount of this type of award, but the average is around \$5,000.

Step 4. Ask for a reconsideration

If you disagree with the tribunal's decision, you can ask the tribunal to **reconsider its decision**. But it will do so only rarely. You must show that fairness and justice require a reconsideration. The tribunal website ^[11] explains what factors it will consider and gives examples of when it will and won't reconsider its decision.

Step 5. Seek a judicial review

You can apply to the BC Supreme Court for judicial review ^[12] of the tribunal's decision. There are time limits for suing in court, and the process is very involved. You probably need legal help to apply for judicial review.

Get help

With a human rights complaint

The **BC Human Rights Clinic** may be able to help you file a complaint with the Human Rights Tribunal and help you at a hearing. The clinic is operated by the Community Legal Assistance Society (CLAS).

Telephone: 604-622-1100 in Vancouver

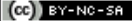
Toll-free: 1-855-685-6222

Web: bchrc.net ^[13]

In the Greater Victoria area, the **University of Victoria Law Centre** provides help for eligible human rights complainants and respondents.

Telephone: 250-385-1221

Web: thelawcentre.ca ^[14]

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Charter Rights: Overview (No. 230)

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**.

Understand your legal rights

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 (no. 200) and equality rights (no. 232).

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 (no. 236), and protection against job discrimination (no. 270).

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 (No. 200)

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.

Understand your legal rights

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 (no. 230) and our information on equality rights (no. 232).

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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References

- [1] <https://www.vancrimlaw.com/Lawyers/Brock-Martland-QC.shtml>
- [2] <http://canlii.ca/t/8q71>
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Charter Rights: Equality Rights (No. 232)

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*.

Understand your legal rights

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 (no. 230) and our information on legal rights (no. 200).

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 (no. 236), and protection against job discrimination (no. 270).

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?

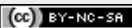
Section 1 applies only to written laws. It does not apply to **government actions**. An example of a government action is a decision by a government official to deny benefits. Where a government action violates the Charter, section 1 does not let the government try to justify the violation. The action 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 (No. 237)

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.

Understand the legal framework

Who is an Aboriginal person and why this matters

Section 35 of the *Constitution Act* ^[1], 1982 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 the publications *Your Gladue Rights* ^[4] and *Gladue Rights at Bail and Sentencing* ^[5] from the Legal Services Society 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 Court ^[6]. The Legal Services Society factsheet "What's First Nations Court?" ^[7] also has more information.

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* ^[8] 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* ^[9], 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 ^[10]. 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* ^[11] 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 ^[12].

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 (no. 176) 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* ^[9] 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* ^[13] 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 (no. 230) 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* ^[14] 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 ^[15] investigates complaints of discrimination and other violations of this law.

The *BC Human Rights Code* ^[16] 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 (no. 236).

Some Aboriginal people have relied on international human rights law to have their rights recognized, such as the *Universal Declaration of Human Rights* ^[17].

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.

Get help

With more information

Indigenous Services Canada is the federal government department supporting access to services for First Nations, Inuit and Métis.


Web: canada.ca/indigenous ^[18]

The **Aboriginal Legal Aid in BC** website from Legal Services Society provides information and publications ^[19] on issues important to Aboriginal people, and information about the help that legal aid and other groups can give.

Web: aboriginal.legalaid.bc.ca ^[20]

Confirm the status of individual First Nations in treaty negotiations with the **BC Treaty Commission**.

Web: bctreaty.ca ^[21]

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Immigrating to British Columbia (No. 290)

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.

Understand the legal framework

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”:

1. **Family class.** Programs for families, where Canadian citizens and permanent residents may sponsor family members and loved ones for Canadian immigration.
2. **Economic class.** Programs for professionals and workers to apply to become a permanent resident of Canada.
3. **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 legalaid.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.

Get 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 half-hour consultation for \$25 plus taxes. 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.

Telephone: 604-687-3221 in the Lower Mainland

Toll-free: 1-800-663-1919

Web: lrsbc.org ^[17]

The **Legal Services Society** 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].

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaid.bc.ca ^[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.

Toll-free (in Canada): 1-888-242-2100

Web: canada.ca/immigration ^[3]

WelcomeBC provides newcomers to British Columbia with information on immigrating to BC, getting settled, and finding employment.


Web: welcomebc.ca ^[20]

The **Immigration and Refugee Board of Canada** has details on refugee claims, admissibility hearings, and immigration appeals.

Web: irb-cisr.gc.ca ^[21]

The **Canadian Council for Refugees** has general information on refugees.

Web: ccrweb.ca ^[22]

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Seniors' Rights and Elder Abuse (No. 239)

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.

Understand your legal rights

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 at bccrns.ca ^[4] features a way to search for contacts and supports in your community.

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 victimlinkbc.ca ^[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 at trustee.bc.ca^[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 at trustee.bc.ca^[7] or call 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 at patientcarequalityreviewboard.ca^[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 at seniorsadvocatebc.ca^[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 (no. 428) 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 (no. 180).

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 (no. 428)) 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 (no. 430).

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 (no. 248).

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 (no. 176).

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 (no. 176).

Get 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.

Telephone: 604-437-1940 in the Lower Mainland

Toll-free: 1-866-437-1940

Web: seniorsfirstbc.ca^[11]

VictimLink BC is a toll-free, confidential, telephone service available 24x7. They provide information and referral services to all victims of crime.

Toll-free: 1-800-563-0808

Web: victimlinkbc.ca ^[5]

The **BC Association of Community** Response Networks are people working on a local level to help coordinate community response to elder abuse.

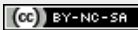
Web: bccrns.ca ^[4]

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.

Telephone: 604-660-4444 in Vancouver

Toll-free: 1-800-663-7867

Web: trustee.bc.ca ^[12]

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Wills, Planning & Estates

Preparing a Will and Estate Planning (No. 176)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan ^[1], McLellan Herbert in October 2018.

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**.

Understand your legal rights

A will is a legal document

A **will** is a document that says what you want done with your property when you die. Examples of property that wills deal with include real estate, money, investments, and personal and household belongings that you own. You can change your will at any time. A will has no legal effect until you die.

Why you should 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. The few hours you spend preparing a will and planning your estate could save your spouse, children, and other beneficiaries much time, effort, and money. If you don't have a will, you lose control over who gets your money and property, and when. You also give up the right to appoint a guardian for any young children you have. And the costs to administer your estate will be much higher.

A will doesn't deal with some types of property

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). Also, a will does not apply to property like life insurance, retirement savings plans and income funds, and tax-free savings accounts if you have already named a beneficiary for them.

If you don't prepare a will

If you don't have a will, your net estate is distributed to your qualifying next-of-kin or the provincial government under the *Wills, Estates and Succession Act* ^[2]. Our information on what happens when you die without a will (no. 177) explains this in more detail.

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”. This means that when one person dies, the other joint owners own the asset. 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**. No probate fees have to be paid by your estate for the home (probate fees are paid to the court based on the value of the estate assets). If the home is your principal residence, no tax will be paid by your estate.

Note that in several recent cases, courts have ruled that a jointly-owned asset had to be returned to the estate. If your joint asset is not with your spouse or a minor child but instead with an adult child or other adult, then that joint holder may actually own the asset in trust for you. In practice, this means that the asset is returned to your estate and distributed according to your will.

This can be avoided by clear documentation showing that, when the person (say, your adult child) became a joint owner with you, you intended to give the property to them after you die. For example, if you add an adult son to your bank account as a joint holder and you want the account to belong to him when you die, you should sign a **deed of gift**. Otherwise, the law may assume that your son holds the bank account in trust for your estate and the money will be paid out under your will. It is very common for an older person to have a joint account with one of their children to help them manage their affairs while they’re alive, on the understanding that the account is being held in trust for all the children, when the parent dies.

Assets with a designated beneficiary

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 go outside your will to them. For example, a beneficiary will get the money in a registered retirement savings plans directly from the company holding the plan, and not from the estate.

Life insurance policies

Life insurance policies let you name a beneficiary to receive money at your death. Again, this money passes outside your will and does not go through the estate. This means the life insurance funds are not used to pay off the debts of 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.

Preparing a will

It's important to get it right

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. You can be confident your affairs will be handled according to your wishes. To make an effective will requires a good understanding of property ownership rules and the law about wills. The words used must be chosen carefully so that the will is clear. If the formalities are ignored or the terms of the will are unclear, there may be extra legal costs for your estate to get court orders to fix the problems — and in some cases, that may not even be possible.

Getting advice from a lawyer or notary public 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.

You must appoint an executor in your will

You have to appoint an **executor** in a will. An executor needs to:

- deal with your remains and funeral
- safeguard the estate (for example, change the home insurance if the home is unoccupied, or keep any vehicle insured)
- gather up your assets
- pay your debts (including taxes)
- divide what remains of your estate among the people named in your will to receive a share of your estate — these people are called **beneficiaries**

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 are 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.

You can appoint more than one executor

You can appoint more than one executor and they can act together as **co-executors**. It's important to appoint an **alternate executor**, who can take over if the first executor can no longer act.

If you have a complex estate or investments or need someone to take over the operation of a company, consider naming a professional executor, who may be a lawyer, accountant, or other professional. Trust companies can also be executor if the estate is big enough. Professionals and trust companies charge for their services.

If you have minor children, appoint a guardian for them in your will

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.

The guardian's role

The guardian's job is to look after your minor children, and they may in turn appoint a replacement guardian. But the guardian generally doesn't have any rights to look after a minor child's property — the guardian can only receive and hold a minor child's property or money if it's worth less than \$10,000. So you should appoint a **trustee** to manage a minor child's inheritance. The executor can be the same person as the trustee.

Create a trust for a minor child's interest

Make sure your will is written so that a child under 19 won't have direct access to their share until they're 19 or beyond. 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** to be held in trust for the minor until they're 19 years old. It's best to speak to a lawyer about drafting a trust.

You can minimize legal fees by preparing well

It helps if you have the following information ready before you meet with a lawyer or notary public about preparing your will:

- 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**.

Filing 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 court probate process to ensure the court has the last will.

You should review your will to make sure it still reflects your wishes

It's good to review your will every three to five years to ensure that it still reflects your current wishes. You should still consider changing your will whenever your financial or personal circumstances change, or if beneficiaries die or reach the age of majority.

For example, if you prepared a will when your children were young and named your parents as guardian and executor, you'll no longer need the guardian clause when your children become adults. And you may want your adult children or a sibling to be executor instead.

Review your will after any change in your marital status

If you married before March 31, 2014 (when a new wills and estates law came into effect), any will made before marriage was automatically cancelled when you married, unless the will said it was made in contemplation of your marriage. After March 31, 2014, a marriage does not revoke — that is, cancel — a will.

If you divorced before March 31, 2014, the portions of your will that appoint your ex-spouse as an executor and make a gift to them are not valid. Any divorce after March 31, 2014 will mean that the appointment or gift won't be valid if:

- you've lived separate and apart for at least two years before your death (and one or both of you intended to live separately and apart permanently),
- before you die, an event occurs that causes an interest in family property to arise (under the *Family Law Act*), or
- in the case of a marriage-like relationship, one or both of you end the relationship before you die.

After you pass away

Your will can be changed after you die

If your will doesn't properly provide for your spouse or children (including illegitimate and adopted children), they can request to have your will changed by a court. This is called a **wills variation claim**. Our information on challenging a will (no. 179) explains this in more detail.

A **spouse** includes both a married spouse and a person you have lived in a marriage-like relationship with for two years before your death.

The law is clear that people have both a legal and moral obligation to provide for a spouse or child in a will. If you're thinking of disinheriting a spouse or child (even a self-sufficient, adult child), or leaving them less than they might reasonably expect, or, in the case of a child, less than their siblings, see a lawyer before finalizing your will.

If you have a disabled adult child, and do not leave enough for them, the court may order that they receive more from your estate. A lawyer can help draft an appropriately worded **trust** for a disabled adult child.

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 (no. 178) explain the process. In applying for probate, **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
- over \$25,000 — basic fee of \$208
- between \$25,000 and \$50,000 — basic fee of \$208 plus \$6 per \$1,000 (\$358 for the first \$50,000)
- over \$50,000 — \$358 plus \$14 per \$1,000 of estate value over \$50,000

These fees can change. Details are in the *Probate Fee Act* ^[7] and the Supreme Court Civil Rules ^[8].

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.

The probate registry of the BC Supreme Court decides the estate value based on documents filed by the executor. Probate fees can often be avoided or reduced by estate planning outside of a will. A lawyer can help with that planning.

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 the assets increased in value since they were bought, 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?

Keep the original will 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. 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 a will cost?

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 quotes. You can 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.

Get help

With preparing a will

A notary public can help you prepare a will. The **Society of Notaries Public of BC** offers a list of notaries in the province.

Telephone: 604-681-4516 in the Lower Mainland

Toll-free: 1-800-663-0343

Web: notaries.bc.ca^[9]

MyLawBC is an online resource from Legal Services Society, the agency that provides legal aid in BC. MyLawBC steers you in preparing a simple will through a set of questions. It also gives information on wills and personal planning documents such as powers of attorney and representation agreements.

Web: mylawbc.com/paths/wills^[10]

Access Pro Bono offers an in-person clinic in Vancouver staffed by volunteer lawyers to help low-income seniors (ages 55+) and people with terminal illnesses prepare a will.


Telephone: 604-424-9600

Web: accessprobono.ca/willsclinic^[11]

More information

The **Nidus Personal Planning Resource Centre & Registry** has detailed information on all aspects of personal planning, including fact sheets, forms, and videos.

Web: nidus.ca ^[12]

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Challenging a Will (No. 179)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Hugh McLellan ^[1], McLellan Herbert in October 2018.

If you think your spouse or parent did not leave you enough in their will, you may be able to challenge it with a **wills variation claim**. Learn what's involved.

Understand your legal rights

You can challenge a will if you are a spouse or child of the will-maker

If your spouse or parent passed away, and you are unhappy with what they left you in their will, you can challenge the will 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**.

A friend or relative (other than a spouse or child) may be disappointed with what they got or didn't get under a will. They **cannot** make a wills variation claim. However, they may have a claim in "**unjust enrichment**" against the estate. For example, if they agreed to provide personal services to an older person in exchange for money when the person dies, or a share of the estate, they may be able to make a claim the estate was unjustly enriched at their expense. The law of unjust enrichment is complex, and it is best to seek legal advice if you think this might apply in your situation.

You don't have to be married to be considered a spouse

In this context, 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.

Marriage-like relationships between people of the same sex are included, so a gay or lesbian partner can make a claim as a spouse if they meet the same two-year test.

Children can be biological or adopted

Children entitled to inherit from their parent's estate include biological children of any age, born either within or outside of marriage, and legally adopted children.

Stepchildren are not considered children under wills variation law. Biological children adopted by someone else (unless they were adopted by the parent's spouse) are not entitled to inherit from their biological parent's estate.

You can challenge a will if you think the will-maker wasn't capable when they made the will

Even if a will appears to meet the technical requirements of the law, a court may change it if it finds the will-maker lacked the **mental capacity** to make a will. A person can be eccentric or suffer from a mental disorder and still be able to make a will. However, they must have the capacity to:

- understand they're making a will
- understand the effect of the will
- appreciate the amount of the property they're distributing with the will
- understand who their next of kin are and appreciate their will should, if possible, provide for their spouse and children and not unfairly exclude them

You can challenge a will if you suspect there was undue influence or coercion

Sometimes unreasonable terms in a will raise the suspicion that the will-maker was coerced or forced into making the document. While there's nothing illegal in suggesting to someone that they remember you in their will, the court can disallow any gift or inheritance in a will if it was given because of **undue influence** or pressure on the will-maker.

It often happens that an older person who has been befriended by another person will leave their entire estate to that person. The court will make sure that the older person was not "unduly influenced" and had the appropriate mental capacity to make the will.

Understand the legal process

There's a time limit to making a wills variation claim

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 want to make a claim, you should talk to a lawyer immediately.

The court considers several factors when deciding whether to change a will

The court can decide to vary a will if they think it is fair to do so in the particular circumstances of the case at hand. The court considers many things to decide whether the will adequately provided for the spouse or children of the deceased, including:

- the value and nature of the estate's assets (for example, money and property the will-maker owned)
- the financial circumstances of the spouse or child challenging the will
- the financial circumstances of the other beneficiaries
- the character and conduct of the spouse or child towards the deceased
- whether the spouse or child depended financially on the deceased and to what extent
- evidence of the will-maker's reasons for not fairly providing for their spouse or child

The court's **main consideration** will be whether the will-maker acted as a judicious spouse or parent. For example, if a disabled adult child is left out of the will, the court may find there was a moral and legal obligation to provide for this child. Many people are concerned that if they leave their disabled adult child a share of their estate, that child will lose social assistance benefits. This is not always true. You should consult a lawyer to ensure you are protecting your assets for the benefit of your disabled child so they get the maximum benefit.

The court considers what a reasonable will-maker would have done

The court will consider 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.

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 ^[3], or
- had another will, then their most recent will — made when they were mentally capable — is valid.

Under the law, the court can consider any record, document, email, or text message to help learn the deceased's intentions for their estate. The court can then order the administrator of the estate to distribute the estate based on what the court believes the deceased wanted. This can give documents such as emails, letters, and text messages the same authority as a valid will. This part is relatively new to BC's wills and estates law — so far, courts have been conservative in interpreting it. Still, 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.

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

What if the person dies without a will?

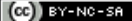
If someone dies without a will, their estate is distributed according to the law ^[3]. Generally, the estate goes to the spouse, children, and descendants (for example, grandchildren) of the deceased. If there's no spouse or descendants, the estate will go to other relatives. Our information on what happens when you die without a will (no. 177) explains in more detail how an estate is divided if there is no will.

Do I need to see a lawyer?

If you have a problem like the ones described, you should see a lawyer. There are deadlines, called **limitation periods**, that must be met if you are a disappointed beneficiary and want to have a will changed. If you miss the deadlines, it may be too late. For example, if a spouse or child feels the will doesn't adequately provide for their maintenance and support, they must sue within 180 days from the grant of probate (when the will is accepted by the court) and must serve the claim on the executor within 210 days of the grant of probate.

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 preparing a will and estate planning (no. 176) explains this in more detail.

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Your Duties As Executor (No. 178)

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.

Understand your legal rights

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 also 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 at gov.bc.ca/vitalstatistics ^[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 you should wait at least 210 days from the grant of probate before distributing the assets of the estate. Or get consents and releases from each potential claimant. You are responsible if the assets go to the wrong people — you could be sued.

Our information on challenging a will (no. 179) 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. There is no deadline to distribute the estate.

Get help

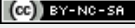
With more information

People's Law School has a publication on *Being an Executor* ^[7] for people who have been appointed as executor in a will.

Web: peopleslawschool.ca ^[8]

The **BC government** website includes information on wills and estate planning ^[9] and wills & estates ^[10].

Web: gov.bc.ca ^[11]

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When Someone Dies Without a Will (No. 177)

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.

Understand the legal framework

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 (no. 176) 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.

Get 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.

Telephone: 604-660-4444 in the Lower Mainland and 250-387-6121 in Victoria

Toll-free: 1-800-663-7867

Web: trustee.bc.ca ^[8]

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When Your Common-Law Spouse Dies (No. 150)

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.

Understand your legal rights

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 ^[3]. 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 (no. 178) 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* ^[4], 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 (no. 179).

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 (no. 177) 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* ^[4] 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 (no. 176).

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.

Get help

With more information

Legal Services Society, the legal aid provider in BC, publishes the booklet “Living Together or Living Apart: Common-Law Relationships, Marriage, Separation, and Divorce”^[5].

Web: legalaid.bc.ca^[6]

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Powers of Attorney and Representation Agreements (No. 180)

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 Registr 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 (no. 176).

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 ^[4] of the *Power of Attorney Act* 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 ^[4].

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 committeeeship (no. 426).

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 ^[5], **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 ^[6], **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^[7] sets out the duties of an attorney under an enduring power of attorney. 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^[8], 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^[9] of the Act, 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^[10], 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^[11] of the *Representation Agreement Act* 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^[12] deals with standard provisions for **routine management** of financial affairs and legal affairs, personal care, and minor and major health care. Under section 8^[13], an adult can make a representation agreement under section 7 even if they cannot make a contract or make decisions independently.

Section 9^[14] deals with non-standard representation agreements for all **personal care and health care matters**. Section 10^[15] 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 (no. 428) 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^[16], 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^[17], 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^[18], 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^[19] 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^[20], 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 ^[21], to cancel a representation agreement, you have to give written notice to the representative and alternate representative and monitor.

Under section 28 ^[22], 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 ^[23], 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 ^[24] of the *Land Title Act*, 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 ^[25], 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.

Get 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.


Web: nidus.ca ^[25]

The **Public Guardian and Trustee of British Columbia** provides information on personal planning tools, including enduring powers of attorney and representation agreements.

Telephone: 604-660-4444 in the Lower Mainland and 250-387-6121 in Victoria

Toll-free: 1-800-663-7867

Web: trustee.bc.ca ^[26]

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Committeeship (No. 426)

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.

Understand the legal framework

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 (no. 180) 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*^[1]. 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** ^[2]. The Public Guardian and Trustee may apply to court to be the committee ^[3] 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 ^[3] when no other suitable person is willing to be committee. 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 ^[2], decides on payments to committees, and receives and investigates reports of abuse and mismanagement by committees.

The Public Guardian and Trustee ^[4] 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 ^[6].

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 ^[7] to be appointed by an order under the *Patients Property Act* ^[8]. 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 ^[9] 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 ^[2].

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* ^[10] 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* ^[11]
- *Health Care (Consent) and Care Facility (Admission) Act* ^[12]
- *Adult Guardianship Act* ^[13]
- *Public Guardian and Trustee Act* ^[14]

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 (no. 180) 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 ^[15] is an option. Service Canada has more on this. Call 1-800-277-9914.

Get help

With more information

The **Public Guardian and Trustee of British Columbia** provides information and forms relating to the committee process.


Telephone: 604-660-4444 in the Lower Mainland and 250-387-6121 in Victoria

Toll-free: 1-800-663-7867

Web: trustee.bc.ca ^[16]

The **Nidus Personal Planning Resource Centre & Registry** has information about committeeship and personal planning alternatives.

Web: nidus.ca ^[17]

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Part 5. Courts & Crime

Courts & Resolving Disputes

Resolving Disputes Without Going to Court (No. 429)

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**”.

Understand your legal options

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:

1. negotiation,
2. mediation,
3. collaborative practice, and
4. 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 (no. 111).

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 (no. 111).

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.

Get 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 the BC Branch of the Canadian Bar Association, 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 cbabc.org^[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 cbabc.org^[4].

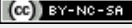
Visit the **BC Collaborative Roster Society's** website at bccollaborativerostersociety.com^[7] and search for collaborative lawyers nearby.

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 (no. 111).

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Our Court System in a Nutshell (No. 432)

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.

Understand the legal framework

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 (no. 211).

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 (no. 110).

Youth Court handles criminal cases involving young people aged 12 to 17. Our information on youth justice trials (no. 226) 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 (no. 166 to 168).

Claims of \$5,000 and less are dealt with by the **Civil Resolution Tribunal**. This tribunal ^[3] 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 ^[4] 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 ^[5] 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 ^[6] and the Supreme Court of Canada ^[7].

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 (no. 429).

Get 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.

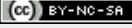
Web: provincialcourt.bc.ca ^[8]

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.

Web: courts.gov.bc.ca ^[9]

The **Justice Education Society** provides online help guide websites for all levels of court in BC.

Web: justiceeducation.ca ^[10]

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Starting a Lawsuit (No. 165)

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.

Understand the legal framework

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 (no. 429).

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 (no. 166 to 168).

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 ^[4]. See our information on our court system in a nutshell (no. 432) 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 worker's 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:

1. The tribunal deals with most disputes involving **strata properties** (condos), of any dollar amount.
2. 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 ^[5] 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 ^[6] 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 ^[7] 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 (no. 166).

For the process before the **Civil Resolution Tribunal**, see the tribunal's website ^[8].

For the process in **Supreme Court**, see the court's Online Help Guide ^[9].

As you consider your next steps, it's worth asking yourself a few questions.

1. **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.
2. **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.
3. **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 (no. 169) for options if the person you sue doesn't pay.

Get 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 (no. 430).

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.


Web: civilresolutionbc.ca ^[8]

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.

Web: gov.bc.ca/smallclaims ^[10]

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.

Web: supremecourtbc.ca ^[11]

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Suing Someone in Small Claims Court (No. 166)

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.

Understand your legal rights

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 (no. 165).

Tip Have a claim arising out of a **motor vehicle accident**? For accidents taking place in BC after April 1, 2019, injury claims up to \$50,000 must be brought to the Civil Resolution Tribunal ^[2].

There’s a time limit to sue

The law in BC ^[4] 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 (no. 165).

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 ^[5], 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 ^[6], or
- going to a Small Claims Court registry ^[7] 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 ^[8]. You can call them at 1-877-526-1526 or visit a Service BC location ^[9] 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 ^[7]. 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 ^[6].

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 ^[10] 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 ^[11]. 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 (no. 168).

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^[11]. 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.

Get 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 (no. 430).

More information

The **BC government** website has how-to guides on Small Claims Court, including making a claim^[12], replying to a claim, serving documents, getting ready for court, and getting results.

Web: gov.bc.ca/smallclaims^[13]

The BC government's **Small Claims Court Filing Assistant** walks you through the steps of completing court forms.


Web: justice.gov.bc.ca/FilingAssistant^[14]

The **BC Provincial Court** website features information on Small Claims Court, as well as past court decisions.

Web: provincialcourt.bc.ca^[15]

The **Small Claims BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a small claims case.

Web: smallclaimsbc.ca ^[16]

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Being Sued in Small Claims Court (No. 167)

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.

Understand your legal rights

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

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 (no. 168) 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.

Get 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 (no. 430).

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.

Web: gov.bc.ca/smallclaims ^[5]

The BC government's **Small Claims Court Filing Assistant** walks you through the steps of completing court forms.

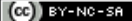
Web: justice.gov.bc.ca/FilingAssistant ^[6]

The **BC Provincial Court** website features information on Small Claims Court, as well as past court decisions.

Web: provincialcourt.bc.ca ^[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.

Web: smallclaimsbcc.ca ^[8]

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Going to Trial in Small Claims Court (No. 168)

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.

Get 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 (no. 430).

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.

Web: gov.bc.ca/smallclaims ^[6]

The BC government's **Small Claims Court Filing Assistant** walks you through the steps of completing court forms.


Web: justice.gov.bc.ca/FilingAssistant ^[7]

The **BC Provincial Court** website features information on Small Claims Court, as well as past court decisions.

Web: provincialcourt.bc.ca ^[8]

The **Small Claims BC Online Help Guide**, from Justice Education Society, provides step-by-step information on each stage of a small claims case.

Web: smallclaimsbcc.ca ^[9]

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Appearing in Court by Phone (No. 433)

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.

Understand your legal rights

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 (No. 169)

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**.

Understand your legal rights

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 (no. 251) 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.

Get help

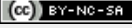
With more information

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.

Web: gov.bc.ca/smallclaims ^[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.

Web: supremecourtbc.ca ^[8]

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Class Actions in British Columbia (No. 233)

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**.

Understand the legal framework

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?

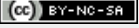
Yes, any member of the class may appeal an order that certifies a lawsuit as a class action, a refusal to certify a lawsuit, or a judgment on a common issue. And defendants can also appeal an order that certifies a class action or a judgment on a common issue.

Get 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.

Web: cba.org ^[3]

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Crime

If You Receive an Appearance Notice or Summons (No. 210)

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.

Understand your legal rights

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:

1. the time and place when you have to go to court,
2. the type of offence you have to answer to, and
3. 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.

Deal with 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

The 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.

Get help

Finding a lawyer

Contact **Legal Services Society** to find out if you qualify for a free lawyer under legal aid.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaid.bc.ca ^[3]

Call the **Lawyer Referral Service** to get the name of a lawyer. For \$25 plus taxes, you can speak to the lawyer for 30 minutes about your case, to help decide whether you would want to hire them.

Toll-free: 1-800-663-1919

Web: cbabc.org ^[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.

Telephone: 250-385-1221 in Victoria or 604-822-5791 in the Lower Mainland

Web: uvic.ca/law/about/centre ^[5] for Victoria or lslap.bc.ca ^[6] for the 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.

Web: legalaid.bc.ca ^[7]

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Defending Yourself Against a Criminal Charge (No. 211)

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.

Understand your legal rights

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 legalaid.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 (no. 212).

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. For more on possible sentences, see our information on conditional sentences, probation, and discharges (no. 203).

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.

Get help

With your case

If you haven't done so, contact **Legal Services Society** to find out if you qualify for a free lawyer under legal aid.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaidsbc.ca^[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.

Web: legalaidsbc.ca^[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.


Telephone: 250-385-1221 in Victoria or 604-822-5791 in the Lower Mainland

Web: uvic.ca/law/about/centre^[5] for Victoria or lslap.bc.ca^[6] for the Lower Mainland

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: legalaid.bc.ca^[7]

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Pleading Guilty to a Criminal Charge (No. 212)

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.

Understand your legal rights

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 traveling 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 (no. 205).

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 Crown 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 Services Society 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 (no. 225) and youth justice court trials (no. 226).

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 **Crown 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 Crown 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 Crown 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 Crown 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 Crown 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 (no. 211).

In deciding how to proceed, you can ask for more time (an **adjournment**) to decide how to plead.

Or you can talk to the Crown 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 particulars 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 Crown 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 Crown prosecutor's submissions

During the sentencing hearing, the Crown 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 Crown 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 counseling 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 Crown prosecutor is finished making their submissions, it is your turn to speak to the judge.

Your submissions

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 Crown 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, and whether these things are still a problem and whether counseling 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. For more on possible sentences, see our information on conditional sentences, probation, and discharges (no. 203).

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.

Get help

With your case

If you haven't done so, contact **Legal Services Society** to find out if you qualify for a free lawyer under legal aid.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaid.bc.ca^[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.

Web: legalaid.bc.ca^[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.


Telephone: 250-385-1221 in Victoria or 604-822-5791 in the Lower Mainland

Web: uvic.ca/law/about/centre^[5] for Victoria or lslap.bc.ca^[6] for the Lower Mainland

More information

Legal Services Society, the legal aid provider in 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.

Web: legalaid.bc.ca^[7]

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[3] https://lss.bc.ca/legal_aid/criminalLaw.php

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Outstanding Warrants and Welfare (No. 204)

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.

Understand your legal rights

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, no. 288.

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.

Get help

With legal advice

You can apply to the **Legal Services Society** to see if you qualify under legal aid for a criminal lawyer to take your case or give you some advice about a warrant.

Toll-free: 1-866-577-2525

Web: legalaidsbc.ca^[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 Map at povnet.org^[7]. Clicklaw's HelpMap^[8] lists dozens of advocates in BC.

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.

Web: clasbc.net^[9]

More information


The **Community Legal Assistance Society** publishes a factsheet on "Welfare and Outstanding Warrants"^[10].

Web: clasbc.net^[9]

The **Ministry of Social Development and Poverty Reduction** is responsible for welfare in BC.

Toll-free: Call Enquiry BC at 1-800-663-7867

Web: gov.bc.ca/sdpr^[11]

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Possession of Marijuana (No. 201)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Paul Briggs^[1], Paul Briggs Law in October 2018.

It is **legal** in British Columbia for adults to **possess marijuana** (up to certain quantities). There are restrictions on where you can use it and how you can buy it.

Understand your legal rights

It is legal to possess marijuana (up to certain quantities)

In October 2018, new marijuana laws came into effect. The combined effect of the federal *Cannabis Act*^[2] and the BC *Cannabis Control and Licensing Act*^[3] is that in British Columbia, it is legal for adults (age 19 or over) to carry up to **30 grams of cannabis** in a **public place**.

Adults can possess up to **1,000 grams** of cannabis in a **non-public place**, such as at their home. This limit is per household and is based on the expected yield from four cannabis plants. (Under the marijuana laws, adults can grow up to four cannabis plants per household.)

These maximum amounts apply only to **dried cannabis**. The amounts are different for cannabis in other forms, like fresh cannabis or cannabis oil. They're also different for medical marijuana (as we explain shortly).

Using marijuana in public

Adults (age 19 or over) can generally smoke or vape cannabis in public spaces where tobacco smoking is allowed.

Under BC law^[4], using cannabis is **not allowed** in the following **public places**:

- Playgrounds, sports fields, skate parks, swimming pools, or any deck, seating or viewing areas associated with these places.
- Public buildings, workplaces, or common areas of apartments or condos, and within six metres of doorways, windows and air intakes attached to these places.
- Within six metres of bus stops, transit shelters, train stations, ferry docks and similar places.
- Regional, provincial and municipal parks, except for designated areas.

- Public patios. (There are some liquor establishments in BC with a tobacco smoking area on their patio. Cannabis **cannot** be smoked or vaped there.)

Using cannabis is **not allowed on school properties**, as well as any adjacent sidewalks or boulevards.

Local governments can also put restrictions on the use of cannabis in public spaces.

Tip Smoking or vaping cannabis is not allowed inside bars or restaurants in BC. This is because no one can smoke or vape cannabis in a substantially or fully enclosed workplace.

Using marijuana in a vehicle

Under BC law ^[5], you can't use cannabis in a **vehicle**. That is so whether you are driving or a passenger. And you can't operate a vehicle if another person is smoking or vaping cannabis in the vehicle.

There is an exception ^[6] to this rule. You can use cannabis in a vehicle being used as a private residence and parked in an area where camping is allowed (a camper or trailer, for example).

Using marijuana for medical purposes

If you are authorized by a health care provider to use marijuana for medical purposes, you can possess higher quantities of marijuana in public places. You can legally have up to **150 grams** of dried cannabis, or a 30-day supply, whichever is lower.

You need to:

1. Have a medical document from a health care provider ^[7] recommending cannabis to treat your symptoms (similar to a prescription).
2. Register with Health Canada ^[8] to produce cannabis for your own medical purposes, or register with a licensed producer ^[9] who you buy your marijuana from.

Under BC law ^[10], there are exemptions for use of medical marijuana on school property, and on inter-city buses, trains and boats. You must meet specific requirements, such as carrying proof you can possess medical marijuana.

Buying marijuana

Cannabis is legally sold at licensed retailers and the BC government's online store ^[11]. Licensed retailers are required to display a valid licence where it is visible to the public.

All legal non-medical cannabis has an **excise stamp** attached to its packaging. Federally-licensed producers apply the excise tax stamp for British Columbia. Each province has a different coloured cannabis excise stamp ^[12] for products sold in their jurisdiction. If the product does not have a British Columbia stamp it is not legal for sale in BC.

Tip Cannabis edibles, extracts and topicals are not currently legal for sale in Canada. The federal government intends to legalize the sale of these cannabis products by October 2019. A draft set of rules were released as part of a public consultation ^[13].

If you possess more than the legal limit

Under BC law ^[14], it is illegal to possess **more than 30 grams** of dried cannabis in a public place. 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 result in a fine and possible jail time. But you don't get a criminal record. For a first offence, the fine can be up to \$5,000 and up to three months in jail.

(There is an exemption for medical marijuana. You can legally possess in a public place up to 150 grams of dried cannabis or a 30-day supply, whichever is lower. You must show proof you can possess medical marijuana.)

If you have **more than 50 grams** of dried cannabis in your possession, you can be charged under the *Controlled Drugs and Substances Act* ^[15]. This *is* a criminal offence. It *can* result in a criminal record.

If you are charged with possession over the legal limit

In responding to a charge of possessing cannabis over the legal limit, 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** (also called Crown counsel), must prove three things beyond a reasonable doubt: **knowledge**, **consent** and **control**. The prosecutor does this by proving that:

- you had **control** of the marijuana — for example, the police found it on you or in an area you controlled, such as your car, suitcase or bedroom, and
- you **knew** the marijuana was there, and
- you **consented** to having the marijuana in that place.

If the prosecutor proves all these things, the judge will convict you.

To prove these things, the prosecutor will have witnesses tell the court (**testify**) about the situation when they found the marijuana on you. You can question (**cross-examine**) each witness the prosecutor uses.

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. 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 story, 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 (no. 211).

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 is your first offence, you can ask the prosecutor to be considered for **diversion**. This program diverts you out of the court system to complete a probation period that may include community service work or counselling (for example). Or, if you go before a judge for sentencing, you can ask for a **discharge**. Like diversion, a discharge allows you to avoid getting a **criminal record**, which can prevent you from traveling to other countries, getting certain jobs, and applying for citizenship.

Common questions

What is the legal limit for other forms of cannabis?

In the *Cannabis Act* ^[2], “cannabis” is defined as a cannabis plant or any substance that contains a cannabis plant. 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, for example, that an adult can legally possess **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 the chance you may be charged with **possession for the purpose of trafficking**, a more serious offence with more serious penalties. The way the marijuana is packaged is also important.

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, or what the laws of your destination are. This prohibition applies even if you are authorized to use cannabis for medical purposes, and no matter how much cannabis you have with you.

What are the rules for young people?

If you are under age 19, it is not legal in BC to possess or use cannabis. (There is an exemption ^[16] for medical marijuana, with proof you can possess medical marijuana.)

If you are under 19 and you possess **more than five grams of cannabis**, the police can give you a ticket. The penalty is a \$200 fine. If you pay the fine in full, you won’t get a criminal record.

It is an offence to sell or supply cannabis to someone under age 19.

Get 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. For \$25 plus taxes, you can speak to the lawyer for 30 minutes about your case, to help decide whether you would want to hire them.

Toll-free: 1-800-663-1919

Web: cbabc.org ^[17]

You can contact **Legal Services Society** to find out if you qualify for a free lawyer under legal aid. Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaidsbc.ca ^[18]

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.

Web: legalaids.bc.ca ^[19]


More information

The BC government's **Get Cannabis Clarity** website explains cannabis laws, including where you can buy, use or grow marijuana.

Web: cannabis.gov.bc.ca ^[20]

The federal government's **Cannabis in Canada** website summarizes cannabis laws.

Web: canada.ca/cannabis ^[21]

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Shoplifting (No. 202)

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.

Understand your legal rights

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 (no. 212).

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 (no. 211).

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 (no. 203).

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 traveling 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.

Get 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.

Telephone: 604-520-1166 in the Lower Mainland


Toll-free: 1-888-879-9593

Web: elizabethfry.com ^[3]

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.

Web: legalaid.bc.ca ^[4]

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Impaired Driving (No. 190)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Paul Doroshenko QC ^[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.

Understand your legal rights

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 Cod* ^[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 (no. 187).

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, 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 ^[6], 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 ^[7], if the police have reasonable grounds to believe a driver's ability to drive is affected by alcohol or a drug, they can issue a **24-hour roadside prohibition**. 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 fill in an application form available at any ICBC driver licensing office ^[8]. 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 ^[9] the prohibition vary depending on the type of prohibition. 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.

Get 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. For \$25 plus taxes, you can speak to the lawyer for 30 minutes about your case, to help decide whether you would want to hire them.

Toll-free: 1-800-663-1919

Web: cbabc.org ^[10]

You can contact **Legal Services Society** to find out if you qualify for a free lawyer under legal aid.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaid.bc.ca ^[11]

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.

Web: legalaid.bc.ca ^[12]


More information

The **BC government** website includes information on driving prohibitions, suspensions, and impaired driving.

Web: gov.bc.ca/driving ^[13]

ICBC has information on the driver risk premium. Toll-free: 1-800-663-3051

Web: icbc.com ^[14]

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Driving While Prohibited (No. 192)

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**.

Understand your legal rights

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], if the police have reasonable grounds to believe a driver's ability to drive is affected by alcohol or a drug, they can issue a **24-hour roadside prohibition**.

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 (no. 190).

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, no. 190.)

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 (no. 194).

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, no. 187.)

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 ^[8] the prohibition vary depending on the type of prohibition. The reality is most prohibitions are upheld. During the review process, you are still prohibited from driving.

Get help


With more information

The **BC government** website includes information on driving prohibitions and suspensions.

Web: gov.bc.ca/driving ^[9]

With its **Driver Improvement Program**, the Superintendent of Motor Vehicles identifies high-risk drivers and encourages them to improve their driving habits.

Web: gov.bc.ca/driving ^[10]

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Driving Without Insurance (No. 193)

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.

Understand your legal rights

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 at icbc.com ^[3] shows the current fine amounts for these offences.

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 (no. 210).

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 ^[4] in your community. 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 (no. 212).

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 at icbc.com ^[5] for details. 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 (no. 211).

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 (no. 194).

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

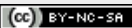
With more information

The **Provincial Court of BC** website includes a "Guide to Disputing a Ticket".

Web: provincialcourt.bc.ca ^[6]

The **ICBC** website explains how to dispute a ticket and pay fines.

Web: icbc.com ^[7]

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Traffic Tickets (No. 194)

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.

Understand your legal rights

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 (no. 210) and defending yourself against a criminal charge (no. 211).

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, no. 187.)

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 at icbc.com ^[3] for details.

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.

Get help


With more information

The **Provincial Court of BC** website includes a "Guide to Disputing a Ticket".

Web: provinciacourt.bc.ca ^[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.

Web: icbc.com ^[9]

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Conditional Sentences, Probation, and Discharges (No. 203)

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.

Understand the legal framework

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 **Crown 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* ^[3] says the crime is not eligible for a conditional sentence.

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 Crown 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-grc.gc.ca ^[5] for a form 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 and Record Suspensions (No. 205)

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.

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).

Understand your legal rights

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 (no. 212). Pleading Guilty to a Criminal Charge (No. 212)

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 ^[6], 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 rcmp-grc.gc.ca ^[7] 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 ^[8]. 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 ^[8]. Visit canada.ca/record-suspensions ^[9] 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 \$631. 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 (No. 216)

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.

Understand your legal rights

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 in 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.

Get help

With more information

Justice Education Society offers tips and videos on appearing in court as a witness.

Web: justiceeducation.ca^[2]

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Complaints Against the RCMP (No. 220)

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.

Understand your legal options

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 at rcmp.gc.ca^[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 (no. 221).

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 ^[3] that reviews complaints made against RCMP officers.

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 (no. 165).

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 (no. 215).

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 at iiobc.ca ^[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 at complaintscommission.ca^[7].
- By phone by calling the Commission toll-free at 1-800-665-6878.
- By fax or mail, using the fillable complaint form^[8] on the Commission website.

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 at complaintscommission.ca^[10] explains the process.

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 (No. 221)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Yulina Wang in August 2017.

If you are concerned about a **municipal 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.

Understand your legal options

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 (no. 220).

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 starting a lawsuit (no. 165).

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 (no. 215).

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 a municipal police force or the RCMP.

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 at iiobc.ca ^[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 at opcc.bc.ca ^[4].
- By calling the Commissioner's office toll-free at 1-877-999-8707.
- By fax or mail, using the PDF complaint form ^[5] on the Commissioner's website.

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 (No. 242)

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.

Understand the legal framework

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 \$60; for restricted or prohibited firearms, the fee is \$80.

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 at rcmp.gc.ca ^[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 ^[2].

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 ^[10] 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 ^[11].

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* ^[12], it is an offence to possess a firearm without a valid licence. 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.


Get 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.

Toll-free: 1-800-731-4000

Web: rcmp.gc.ca ^[2]

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Charging Someone with a Criminal Offence (No. 215)

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.

Understand the legal framework

The process in Vancouver (other places may differ)

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 (no. 166).

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 **make a police report**. 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 (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 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 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 (no. 220) or complaints against the municipal police (no. 221).

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 (no. 216). 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 (No. 217)

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.

Understand your legal rights

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 ^[3] of the *Criminal Code*, 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 (no. 215) 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.

Get 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.

Web: justice.gc.ca ^[5]

The **Legal Services Society** website includes the publication "For Your Protection: Peace Bonds and Family Law Protection Orders".

Web: legaid.bc.ca ^[6]

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Stalking, Criminal Harassment, and Cyberbullying (No. 206)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Maurizio Datilo, 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**.

Understand your legal rights

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^[1] of the *Criminal Code*.

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 their conduct is harassing the victim. “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^[1] of the *Criminal Code*. 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^[2], it’s a crime to **share an intimate image** of someone without their consent. 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^[3] of the *Criminal Code*, it’s a crime to publish a “defamatory libel”. 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 (no. 240) for more.

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 cellphone 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 (no. 217) and family violence (no. 155).

Get help

Support for victims

For support and services for victims of crime, call the 24-hour helpline at **Victim Link BC**.

Toll-free: 1-800-563-0808

Web: victimlinkbc.ca^[4]

The **BC government's** Victim Services and Violence Against Women Program Directory^[5] provides contact information for service providers across the province that assist women impacted by violence.

Web: gov.bc.ca/victimservices^[6]


More information

The website of **MediaSmarts**, a non-profit organization for digital and media literacy, features information on cyberbullying and the law.

Web: mediasmarts.ca^[7]

The **BC government** website includes information on stalking and criminal harassment.

Web: gov.bc.ca/victimservices^[8]

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Young People and Criminal Law (No. 225)

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.

Understand your legal rights

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* ^[4] guarantees basic rights to everyone in Canada — 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 (no. 210).

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.

Get 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.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaidsbc.ca ^[5]

You can also find a lawyer through the **Lawyer Referral Service**.


Toll-free: 1-800-663-1919

Web: cbabc.org ^[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.

Toll-free: 1-866-458-5500

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Youth Justice Court Trials (No. 226)

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 charged with a crime**, learn your rights and what to expect, from alternatives to trial to possible sentences if a judge finds you guilty.

Understand your legal rights

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* ^[4] has a procedure called “**extrajudicial measures**” (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* ^[5] requires police to keep records of any **extrajudicial measures** 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.

Get 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.

Telephone: 604-408-2172 in Greater Vancouver

Toll-free: 1-866-577-2525

Web: legalaidsociety.bc.ca ^[6]

You can also find a lawyer through the **Lawyer Referral Service**.


Toll-free: 1-800-663-1919

Web: cbabc.org ^[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.

Toll-free: 1-866-458-5500

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Legal Help & Lawyers

Free and Low-Cost Legal Help (No. 430)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by People's Law School in February 2019.

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.

Understand your options

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 the Legal Services Society by visiting legalaid.bc.ca^[1] 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^[2] 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^[3] 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 Services Society 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'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 and Nanaimo 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 these numbers: in Vancouver, 604-660-2084; in Victoria, 250-356-7012; and in Nanaimo, 250-741-5447. Or visit ag.gov.bc.ca/justice-access-centre ^[4].

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 ^[5].

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 ^[6] 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 ^[7] 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 ^[8].

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 ^[9].

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 ^[10]. **Clicklaw's HelpMap** at clicklaw.bc.ca/helpmap ^[11] 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 ^[12]. In the Victoria area, call 250-385-1221 or visit uvic.ca/law/about/centre ^[13].

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 half-hour consultation for \$25 plus taxes. The service is operated by the BC Branch of the Canadian Bar Association. Call 604-687-3221 in the Lower Mainland or 1-800-663-1919 toll-free elsewhere in BC, or visit Irsbc.org ^[14]. 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. For \$25 plus taxes, the lawyer will meet with you for a consultation for up to 30 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 normal rate.

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 ^[15].

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 ^[16].


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 ^[17].

People's Law School is a non-profit society dedicated to making the law accessible to everyone. Their website at peopleslawschool.ca ^[18] 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 Services Society, the legal aid provider in BC, provides free legal information on family law, criminal law, immigration, and Aboriginal legal issues. Their main website legalaid.bc.ca ^[19] includes many publications in languages other than English. Their **Family Law in BC** website at familylaw.lss.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 (No. 435)

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**.

Understand your options

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 Services Society by visiting legalaidsociety.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 the BC Branch of the Canadian Bar Association. Visit Irsbc.org ^[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. For \$25 plus taxes, the lawyer will meet with you for a consultation for up to 30 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 normal rate. 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 (no. 438) 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 (no. 436).

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Lawyers' Fees (No. 438)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Steven Gjukich ^[1], Gilchrist & Company in March 2018.

Lawyers must be fair and transparent in the **fees** they charge. Learn about the types of fee arrangements lawyers use, and your options if you're concerned about your lawyer's bill.

Understand the legal framework

Lawyers must be fair and transparent in charging fees

For lawyers, much like other professional advisors, fees are a market issue. There are no fixed rates for legal services, and the Law Society of BC (which regulates lawyers in British Columbia) has no authority to control what lawyers charge. (There is one exception: the Law Society sets maximums for some "contingency fees", where a lawyer gets a percentage of the money the client wins in a lawsuit.)

That said, lawyers have an obligation ^[2] to be fair and transparent in the fees they charge. What is a fair and reasonable fee depends on factors such as the time and effort spent, the difficulty of the matter, whether special skill was required, and the results obtained.

There are several types of fee arrangements lawyers use. Many lawyers charge by the hour. Some offer fixed fees. Others charge a contingency fee. We explain each of these here.

Most lawyers charge by the hour

Most lawyers charge fees based on an **hourly rate**. The amount can vary from lawyer to lawyer. Hourly rates usually reflect the lawyer's skill and experience — senior lawyers charge more per hour than lawyers who are just starting out in practice.

A lawyer charging by the hour keeps detailed records of all the time spent on your file. Then they multiply the total hours by their hourly rate to get your bill.

Fixed fees are commonly used for specific transactions

Fixed fees are commonly used for specific transactions such as purchasing a home or incorporating a business. The fee is fixed at a specific amount (a "flat rate"), regardless of how much time the lawyer spends to get the work done.

Many lawyers used fixed fees for preparing specific types of documents, such as a will, a representation agreement, or a separation agreement. Some lawyers use fixed fees for uncontested divorces or defending a client on a minor criminal charge.

Contingency fees depend on the result of the case

Contingency fees depend (or are “contingent”) on whether the client wins their case. If the client wins, the lawyer gets part of the money awarded. If the client loses, they don’t pay the lawyer any fee (but the client still pays **expenses**, such as the costs to file documents in court or pay for expert reports).

Contingency fees are common in personal injury claims, product liability cases, and class actions. Contingency fees are **not** allowed in family law cases involving child custody or access. They are permitted in other types of family law cases, but must be approved by the court.

Maximum amounts

In personal injury cases involving a motor vehicle accident, the **maximum contingency fee** is one-third of the amount recovered. In all other cases involving personal injury or wrongful death, the maximum is 40%. These maximums are set in the Law Society Rules ^[3].

There are no maximum limits for contingency fees in cases **not** involving personal injury or wrongful death. Lawyers often vary their contingency fee rates depending on the amount of the claim, the degree of risk involved, and the stage at which the case is resolved.

Arriving at a contingency fee

At the start of your case, you and your lawyer agree on the amount of the fee as a percentage of what you win. The percentage might depend on your chance of success, the amount of your claim, and whether your case goes to trial or settles before trial. The percentage is typically lower if your case settles early, before the lawyer has done much trial preparation. The percentage is higher if your case goes to trial. Your agreement with the lawyer will typically have different percentages for different outcomes.

Contingency fee agreements must be in **writing**.

If you can’t afford a lawyer

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 Services Society by visiting legalaid.bc.ca ^[4] or calling 604-408-2172 in Greater Vancouver or toll-free 1-866-577-2525 elsewhere in BC.

If you don’t qualify for legal aid, see our information on free and low-cost legal services (no. 430) for other options.

Prevent problems

Discuss fees up front

When you first meet with your lawyer, ask about fees and expenses. Lawyers have an obligation to be fair and transparent in the fees they charge.

Ask the lawyer to estimate about how much it will cost to fully deal with your legal matter — including fees and expenses (called **disbursements**). The lawyer might not be able to give you a firm estimate of the total cost because so much depends on factors outside their control, such as the behaviour of the other party. But they should be able to give you at least a ballpark estimate or range.

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?

Be organized

If you're organized, it will keep your costs down by keeping your communication with your lawyer concise and focused. Before your first meeting with the lawyer, make a list of everything you want to say and ask. Make a point-form summary of your case in chronological (or time) order. Include the important details and names (with addresses, phone numbers, and other helpful information). Some lawyers will ask you to fill in a fact sheet before your first interview.

Have a written agreement with your lawyer

Make sure you have a written agreement with your lawyer that covers fees. If your lawyer doesn't use a form of **retainer agreement**, ask for a letter confirming your discussion about their fees. A lawyer has a professional duty ^[2] to provide the client with a written description of the lawyer's fees, including the basis on which fees will be determined.

Ask the lawyer to keep you updated

Ask the lawyer how they will tell you about the progress of your matter. Keep your own file with copies of all letters and emails, as well as any court or other documents. Make notes of things you want to bring up at your next meeting.

Tip Don't phone the lawyer too often. Many people do, and as a result pay more than they need to. Before you phone, consider if it would be better to write a letter or email. Then you have a written record and your lawyer can deal with your questions properly. If you must phone, explain to the lawyer's assistant why you are calling. The assistant may be able to help, so you don't have to speak to the lawyer.

Be reasonable — and have realistic expectations

If you are in a dispute or a court matter, try to agree on the minor things that aren't worth fighting about. Save your time and money for the important things.

Be realistic. Don't spend \$10,000 to recover something worth \$5,000. Don't count on the court ordering the other side to pay all your costs. It's true that a court may award the successful party an amount to cover some expenses of a lawsuit. But when a court does this, the amounts paid are based on a fixed schedule and may cover only about a third of your lawyer's bill.

Tip If you are in Provincial Court, judges rarely award the successful party any amount to cover litigation expenses.

Deal with any problems

Step 1. Discuss your concerns with the lawyer

If you have a problem with your lawyer's bill, discuss it with the lawyer. Most lawyers want to clear up any misunderstanding over fees.

Ask your lawyer what services were performed, and why. Clarify how the lawyer's fee was calculated: was it based on an hourly rate or calculated on some other basis? If you are confused about the disbursements charged, ask what they are for, and why they were necessary.

Once you have a good understanding of the bill, explore possible solutions. You may be able to talk about ways to reduce your bill or agree on a payment plan.

Step 2. Try mediation

If you can't solve the problem directly with the lawyer, you may be able to use the **Law Society Fee Mediation Program**. This is a free, informal service to help lawyers and clients resolve fee disputes quickly without having to go to court. It can be used where the amount in dispute is between \$1,000 and \$25,000.

The Law Society, the organization that licenses all BC lawyers, offers the mediation program as part of its commitment to protect the public. The program works only if your lawyer agrees to use it. If so, the Law Society appoints a private **mediator** to help you reach a settlement. The mediation can occur in person or at a distance. You do not need a lawyer to represent you.

For more information or to apply for fee mediation, visit lawsociety.bc.ca ^[5], or call the Law Society at 604-669-2533 in the Lower Mainland and 1-800-903-5300 elsewhere in BC.

Step 3. Ask the court to review your lawyer's bill

If you are unable to resolve a dispute regarding fees by discussing it with your lawyer or through mediation, you can ask the court to **review** your lawyer's bill to ensure the fees are reasonable. Under the *Legal Profession Act* ^[6], lawyers and clients have the right to have a lawyer's bill reviewed by a BC Supreme Court registrar. This is a legally trained court officer.

The court's website at courts.gov.bc.ca ^[7] includes a package to make an "appointment" for a review hearing. There is an \$80 filing fee. (Note that if you lose the review, you may also have to pay your lawyer's costs.) You don't need your lawyer's agreement to use this process. There is no limit to the dollar value of the dispute.

You have **one year** from the date of the lawyer's bill to apply to the court — if you have not already paid the bill. If you have already paid the bill, you must apply within **three months** of paying it.

The registrar holds a hearing where you and your lawyer each give your side of the story. Then the registrar decides whether to reduce the bill or leave it unchanged.

Step 4. Bring a lawsuit

Clients and lawyers have the right to sue over fee disagreements. If the amount in dispute is under \$5,000, the lawsuit would be brought in the Civil Resolution Tribunal ^[8]. If the dispute is over \$5,000 and less than \$35,000, the lawsuit would be brought in Small Claims Court. A claim for over \$35,000 can be brought in the BC Supreme Court ^[9].

Common questions

Is there tax on lawyers' fees?

Yes, you have to pay Goods and Services Tax (GST) plus provincial sales tax (PST) on lawyers' fees and on most expenses.

How exactly does a retainer work?

A **retainer** is money you pay to your lawyer as a deposit at the start of your legal matter. The lawyer keeps this money in a trust account and uses it for fees and expenses. The lawyer bills you periodically and takes the amount you owe from the retainer. The lawyer may bill you monthly, or at the end of each stage of your legal matter, or at the end when everything is resolved. When the retainer falls below a certain level, the lawyer may ask you for more money to "top up" the retainer.

What are disbursements?


Disbursements are expenses your lawyer pays for you. You have to pay your lawyer for those expenses. They include costs of photocopies, long distance telephone calls, postage, couriers, experts, medical reports, and court filings. Disbursements can often add up — ask your lawyer to estimate how much they will be.

Get help

With more information

The **Law Society of BC** website includes information on lawyers' fees, including common billing practices, contingency fees, fee disputes, and the Law Society Fee Mediation Program.

Web: lawsociety.bc.ca ^[10]

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If You Have a Problem with a Lawyer (No. 436)

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.

Understand your legal rights

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 (no. 438).

Deal with 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].

Get help

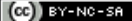
With more information

The **Law Society of BC** provides information on making a complaint about a lawyer.

Telephone: 604-669-2533 in the Lower Mainland

Toll-free: 1-800-903-5300

Web: lawsociety.bc.ca ^[7]

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The Law Society, Bar Associations, and Law Foundation (No. 431)

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.

Understand the legal framework

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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