



This guide explains what normally happens when you are charged with a **breach of a court order**. It does not try to cover every situation. For detailed information, speak to a lawyer about your case.

Who can use this guide?

This guide is for people who want to plead **not guilty** to a charge of a **breach of a court order**. You can use this guide if:

- you do not qualify for legal aid,
- you cannot afford a lawyer, and
- you plan to represent yourself in court.

You should represent yourself only if you do not qualify for legal aid and you cannot afford a lawyer. If you choose to represent yourself, be sure to talk to a lawyer before your trial for advice. Some legal help is better than none. See “Where can I get legal help?” at the end of this booklet.

What information will I find here?

This guide describes:

- what a breach of a court order is,
- what the prosecutor must prove in court,
- how you can defend yourself, and
- the sentence you could get if the judge finds you guilty.

At the end of this guide, you will find a checklist. Use this at your trial to help you figure out if the prosecutor has proven all the necessary parts of the offence.

*reasons for
using this
guide*

*what this
guide explains*

other helpful guides

For more information on offences, trials, and sentencing, see these three other guides:

- *If You Are Charged with a Crime*
- *Representing Yourself in a Criminal Trial*
- *Speaking to the Judge Before You Are Sentenced*

Ask for them at the same place where you got this guide. Read them before you go to court.

to disobey a condition of a court order

What is a breach of a court order?

A breach of a court order (“a breach”) is to disobey or to fail to comply with a condition ordered by the court. The condition can be *to do* or *not to do* something as part of:

- a peace bond,
- a judicial interim release order (bail order),
- a probation order (after you have been sentenced),
- a conditional sentence order (house arrest), or
- a long-term supervision order (after you have been declared a dangerous or long-term offender).

conditions of a court order may vary greatly

The types of conditions that can be ordered by the court vary greatly. They can include the following:

- a no contact order
- a condition not to go to a specific area
- a condition not to be in possession of drugs or alcohol
- a condition to obey a curfew
- a ban from possessing weapons

You will have committed a breach if you fail to complete community service work hours that were ordered as part of a probation order or a conditional sentence order (house arrest).

breach of a court order subject to criminal charges

You may be subject to criminal charges for breach of a court order if you *fail* to do the following:

- Pay restitution (pay money to someone, usually the victim), when ordered by the court.
- Attend counselling, when ordered by the court.

- Keep the peace and be of good behaviour while on bail or on probation.
- Follow the conditions of a peace bond.
- Respect an order imposed by a civil court, other than for payment of money.

Which type of offence am I charged with?

While a breach of a court order is a serious matter, the prosecutor may have the option to treat it as a **summary offence**, which is a less serious crime. But he or she may decide to treat it as an **indictable offence**, which is a more serious crime that normally involves a stricter sentence. Whether the prosecutor proceeds summarily or by indictment, a conviction for a breach of a court order will likely involve a risk of jail. The first time you are in court, ask which type of offence the prosecutor is charging you with, and whether he or she will be seeking jail if you are convicted.

Usually, the prosecutor will say that he or she is “proceeding summarily” (which means that you are being charged with a summary offence). But you might hear that the prosecutor is “proceeding by indictment” (which means that you are being charged with an indictable offence) and/or that the prosecutor is seeking a jail sentence. If that happens, you should immediately ask the judge or justice of the peace to **adjourn** (delay) your case so that you can get legal help.

If you are charged with an indictable offence, you will usually have a better chance of getting legal aid — so be sure you know what type of offence you are being charged with.

For more information on summary and indictable offences, see the guide called *Representing Yourself in a Criminal Trial*.

*summary or
indictable
offence*

*if indictable,
ask for delay
and speak to a
lawyer*

when to ask for a government-funded lawyer

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

- the prosecutor says that he or she will seek a jail sentence if you are convicted, or will seek any other type of sentence that will have serious consequences for you,
- you cannot afford a lawyer and were denied legal aid coverage, and
- you feel that your case is too complex for you to handle.

For more information about having a lawyer appointed to your case, see the guide called *If You Can't Get a Lawyer for Your Criminal Trial*.

prosecutor must prove you are guilty

What must the prosecutor prove?

The prosecutor must prove beyond a reasonable doubt that you are guilty of all the parts that make up the crime of a breach of a court order. To do this, the prosecutor will present **evidence** (information about the crime) to the court, using witnesses or documents.

In the case of a breach of a conditional sentence, the prosecutor needs only to present **evidence** (information about the crime) to the court, using witnesses or documents, showing that you more probably committed the breach than not. The prosecutor does *not* have to prove beyond a reasonable doubt that you are guilty of breaching the conditional sentence order.

you can question witnesses

You can **cross-examine** (question) the prosecutor's witnesses. But you will normally do so only if you disagree with their information. For details about how to cross-examine, see the guide called *Representing Yourself in a Criminal Trial*.

For a judge to find you guilty of a breach of a court order, the prosecutor must prove the following things:

1. A court order was made

proof that a court order was made

The prosecutor must prove that the court order was made. To do this, the prosecutor will have the court declare that it has the records to support this or, if the order was made in another court, produce documents

(such as a signed recognizance) to prove that the order exists. If the order was made in another court, the prosecutor must give you advance notice that he or she is going to file documents to prove that the order exists. If he or she does not give you advance notice, you can object.

2. Identity

The prosecutor must first prove that you were the subject of the court order. The prosecutor may do this by calling witnesses who reviewed the order with you (like a court clerk, a probation officer, or a bail supervisor) and/or by producing documents (like a signed recognizance).

The prosecutor must then prove that you are the person who committed the breach (*you* failed to comply with a condition of the court order). To do this, the prosecutor will call witnesses, which may include the investigating police officer, to give evidence. The witnesses will probably describe the person they saw or heard committing the breach. Then the prosecutor will ask the witnesses to say if that person is in the courtroom. The evidence, either from the witnesses or from other sources (like fingerprints, a photograph, a video, or audio recording), must show that you are the person who committed the breach.

3. Jurisdiction

The prosecutor must prove:

- the date of the breach, and
- the specific location where it happened.

These details are included in the **information** (the official court form listing the date, place, and type of offence) that the prosecutor gave you before the trial.

Usually the prosecutor will call a witness to give evidence about the date and place of the breach. This witness may be a police officer or a civilian.

A breach of a court order may be prosecuted (brought to trial) where the court order was made or in the specific location where the breach took place, if it happened in Canada.

*you were
ordered to
comply with a
condition and
you breached it*

*you are the one
who committed
the breach*

*place and date
of the breach*

you understood the condition that was breached

your action or omission was a failure to comply with the condition

no-evidence motion

4. You understood the condition that the prosecutor says you have breached

The prosecutor must prove that the conditions in the court order were explained to you and that you were given a copy of the order. The prosecutor will ask the person who reviewed the order with you what they told you and if you had any questions. If you needed an interpreter, the prosecutor will call the interpreter who reviewed the order with you. The prosecutor may also use documents that you have signed to prove that you understood the conditions in the order.

5. You failed to comply with a condition

The prosecutor must prove that your **action** (what you did) or **omission** (what you didn't do) amounts to a failure to comply with a condition of the court order.

To prove this, the prosecutor might call as a witness any of the following people to provide information:

- your probation officer to say that you have not completed the number of community service hours within the time limit,
- the police officer who arrested you after the curfew hours, or
- the people whom you were not allowed to contact to say that you phoned them or sent them letters.

How do I defend myself?

Remember that the prosecutor must prove that you committed the breach. If the prosecutor does not prove all the parts of the crime of breach, tell the judge you want to make a **no-evidence motion**. You do this after the prosecutor finishes presenting his or her case (often called the **Crown's case**). Tell the judge what it is that the prosecutor did not prove. If the judge agrees with you, you will be found **not guilty** and the trial will end.

If the judge does not agree with your no-evidence motion (or if you do not make one), the trial will continue. No-evidence motions often do not work because the prosecutor usually has *some* evidence — so be ready to defend yourself.

Preparing your defence

In preparing your defence, think about what evidence you have to use. Evidence can include documents, witnesses, or your own personal testimony.

Use evidence *only* if it helps you more than it could hurt you. It can hurt you because once you offer something as evidence, the prosecutor can use it *against* you to help fill in weak spots in the Crown's case.

For more information about how to use witnesses, prepare questions, and decide whether to give evidence yourself, see the guide called *Representing Yourself in a Criminal Trial*.

To defend yourself against a charge of breach of a court order, you may be able to argue one of the following points:

1. "I did not know I had that condition."

If you were not aware of a condition or confused by the explanation you were given about the meaning of it, the judge may find that you did not plan to or did not intend to breach the court order. For example, if English is not your first language and the interpreter who reviewed the order with you made a mistake when he described the curfew period, you may have believed that you were allowed to be outside your home when the police arrested you.

2. "It was impossible for me to comply."

There might be situations outside of your control that prevented you from following the court order. For example, the judge may find that you had a good reason for not completing the community service work hours on time if you were seriously ill during that period and could not work. Or, if you were asked to pay restitution as a condition of your probation and you lost your job and could not pay, the judge might find that you had a good reason not to pay on time.

For more information on whether your situation might be considered a good reason, get legal advice.

To avoid problems, ask the court in advance to change any condition that you believe will be impossible to follow.

For information about how to change a court order, see the guide *How Does a Court Order Affect Me?*

*your own
evidence can
hurt you*

get the guide

*you did not
intend to
breach the
court order*

*reasonable
excuse*

get legal advice

*unenforceable
condition*

*you disagree
with the charge
against you*

*your rights
under the
Charter*

*police must
respect your
rights*

*judge might
throw out
some evidence*

3. “The order is unenforceable.”

If you are in a situation where the judge ordered a sentence or a combination of sentences of more than two years’ imprisonment to be followed by a probation period, the sentence is illegal, according to section 731(1) (b) of the Criminal Code. A probation order may only be made with a prison sentence of two years or less. If you want to argue against the legality of the order, talk to a lawyer first.

4. “I did not do it.”

You may agree that you were fully aware of the court order and its validity, but you do not agree that you breached the order.

5. “My Charter rights were violated.”

If the police got evidence by violating your rights under the Charter of Rights and Freedoms, the judge might not let the prosecutor use that evidence. And if that happens, you can ask the judge to dismiss the charge against you.

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

- tell you immediately what they have arrested you for,
- tell you immediately that you can talk to a lawyer, and let you do so in private before questioning you,
- give you access to a telephone, and
- tell you that you can get legal help for free. (The Legal Services Society has lawyers available 24 hours a day to talk to you over the phone for free if you are in police custody.)

If the police do not do all of these things, you can argue that they violated your rights. You would then argue that the prosecutor should not be able to use any statements you made or other evidence that the police got by violating your rights.

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

If you plan to argue that your Charter rights were violated, talk to a lawyer before your trial. Judges expect you to tell the prosecutor in advance if you plan to use this type of an argument.

get legal advice about Charter violations

Closing your case

After you have finished presenting your defence, you will close your case by telling the judge why you think the prosecutor did not prove that you are guilty beyond a reasonable doubt. This summary is called your **submission**. See the guide called *Representing Yourself in a Criminal Trial* for more details on preparing submissions.

closing your case

What if the judge finds me guilty?

If the judge finds you guilty, you will receive a sentence. It could be any of the following:

- an absolute discharge (your record will not show a conviction)
- a conditional discharge (your record will not show a conviction if you meet conditions that the judge sets)
- probation (including, for example, community service)
- a restitution order (you must pay money to someone, usually the victim)
- a fine
- a conditional sentence (like a jail term, but you serve it in the community)
- a jail term

possible sentences

If you are convicted of a breach of a court order, you will probably go to jail.

risk of jail

Speaking to the judge before you are sentenced

You get a chance to speak before the judge decides your sentence (this is called **speaking to sentence**). The judge will give you a chance to explain why you committed the crime, whether you will do it again, and whether you need help for any problems you may have that were connected to the crime.

explain your situation before you are sentenced

Speaking to sentence is important because it gives you a chance to explain your situation to the judge.

get the guide

Ask for a copy of a guide called *Speaking to the Judge Before You Are Sentenced* from the same place where you got this guide and read it before you go to court.

amount of fine and time to pay

Paying a fine

The maximum fine for a summary offence is \$2,000. If the judge fines you, you can ask for time to pay. Tell the judge how much you can pay each month. Later, if you find you cannot pay on time, get the guide called *If You Can't Pay Your Court Fine on Time* from the same place where you got this guide. Do this as soon as possible.

automatic victim surcharge

If you are convicted of a summary offence, you also have to pay a victim **surcharge** (fee). The amount you have to pay will be either of the following:

- 15% of your fine (if the judge gives you a fine as part of your sentence),

OR

- \$50 for a summary offence, \$100 for an indictable offence, or more if the judge orders a higher amount.

judge may excuse you from the surcharge

You can ask the judge to excuse you from paying the victim surcharge. The judge can decide that you do not have to pay the surcharge only if you show that paying it would cause you or your dependants undue hardship. *If you do not ask, the court registry will automatically charge you this fee.*

Checklist: What the prosecutor must prove if you are charged with a breach of a court order

Use this checklist when the prosecutor presents the Crown's case against you.

The prosecutor must prove all of these things:

- 1 a court order was made
- 2 your identity:
 - you were the subject of the court order
 - you are the person who committed the breach
- 3 jurisdiction:
 - the date of the breach (for summary offences, the information must be dated within six months of the date of the crime)
 - the town, city, or municipality where the breach took place
- 4 you understood the condition that the prosecutor says you have breached:
 - the conditions in the court order were explained to you
 - you were given a copy of the order
- 5 you failed to comply with one of the conditions of the order (a breach took place)

prosecutor must prove these things

Remember:

- If the prosecutor does not prove all the necessary parts of the crime, make a no-evidence motion (see page 6).
- If the prosecutor's case is weak or inconsistent in one of the above areas, mention this in your submission (see page 9).

Where can I get legal help?

Even if you cannot afford a lawyer to represent you in court, it is a good idea to talk to a lawyer before your trial. To find one:

help from duty counsel

- Speak to a duty counsel lawyer at the courthouse. When duty counsel are available, they can give you advice about the charges against you, court procedures, and your legal rights. This service is free. Duty counsel can also speak on your behalf the first time you appear in court, but they cannot act as your permanent lawyer. Call the Legal Services Society at **604-408-2172** (in the Lower Mainland) or **1-866-577-2525** (call no charge, outside the Lower Mainland), or your local courthouse to find out when duty counsel will be there.

help from a private lawyer

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

how to find a lawyer

- If you do not know a lawyer who handles criminal cases, contact the Lawyer Referral Service. They will give you some suggestions. For a \$25 fee plus taxes, you can meet with a lawyer they recommend for a half hour. You can see whether you want to hire the lawyer and how much it would cost. Call the service at **1-800-663-1919** (call no charge), or **604-687-3221** in the Lower Mainland.

help from free clinics

If you live in the Lower Mainland, you may be able to get help from the University of British Columbia's Law Students' Legal Advice Program (LSLAP). You can get free legal advice or assistance from LSLAP if you are charged with a summary offence and are not likely to get a jail sentence if convicted. Call **604-822-5791** to find the location of the nearest LSLAP clinic.

If you live in Victoria, the Law Centre may be able to help you. Call **250-385-1221** for more information.

links to more help on the Web

For more information about the law, go to the Clicklaw website at www.clicklaw.bc.ca. Here, you will find links to legal information, education, and help. You can find out about your rights and your options to solve legal problems, access toll-free numbers for law-related help, and learn about the law and the legal system.

Also available

How Does a Court Order Affect Me?

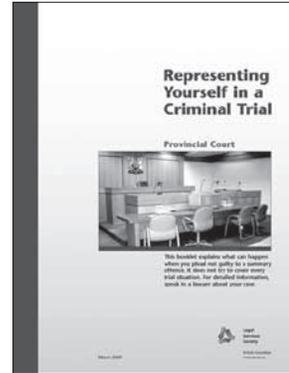
If You Are Charged with a Crime

If You Can't Get a Lawyer for Your Criminal Trial

If You Can't Pay Your Court Fine on Time

Representing Yourself in a Criminal Trial

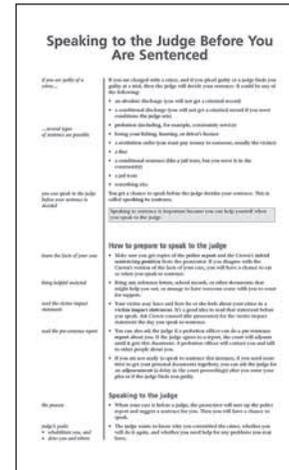
Speaking to the Judge Before You Are Sentenced



All of these guides can be read online at www.lss.bc.ca.

Get free copies of these guides from your local legal aid office or from:

Distribution
Legal Services Society
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Telephone: 604-601-6075
Fax: 604-682-0965
E-mail: distribution@lss.bc.ca



Legal
Services
Society

British Columbia
www.lss.bc.ca