



# What to do if you are charged with **ASSAULT**

This guide explains what normally happens when you are charged with **assault**. 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 **assault**. 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 assault 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 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.

*assault is force without consent*

## What is assault?

Assault (also known as “common assault”) is:

- the intentional use of force against another person
- *without* that person’s **consent** (agreement).

Assault can range from mere touching to violent punching. Assault can include kicking someone, or shoving someone out of your way, or patting someone’s bottom.

*indirect force*

Indirect use of force can also be an assault. An example of this is throwing a stone to hit someone. Spitting at someone is also considered assault.

*threatening or trying to use force*

Threatening to use force can be an assault if you are close enough to carry out the threat. *Trying* to use force can also be an assault. An assault can occur even if the victim is not hurt.

*summary or indictable offence*

## Which type of offence am I charged with?

If an assault does not involve serious injuries or the use of a weapon, the prosecutor will usually treat it as a **summary offence**, which is a less serious crime. Otherwise, he or she may treat it as an **indictable offence**, which is a more serious crime that normally involves a stricter sentence.

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 usually have a better chance of getting legal aid — so be sure you know what type of offence you are being charged with. Legal aid may change the decision to not cover your case.

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

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

- you cannot afford a lawyer and were denied legal aid coverage,
- 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, 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 *If You Can't Get a Lawyer for Your Criminal Trial*.

## 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 assault. To do this, the prosecutor will present **evidence** (information about the crime) to the court, using witnesses or documents.

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 *Representing Yourself in a Criminal Trial*.

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

*when to ask for  
a government-  
funded lawyer*

*prosecutor  
must prove you  
are guilty*

*you can  
question  
witnesses*

*you are the one who committed the crime*

*place and date of crime*

*you used force (or tried or threatened to do so)*

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

### 1. Identity

The prosecutor must prove that you are the person who committed the crime. To do this, the prosecutor will call witnesses, including the investigating police officer, to give evidence. The witnesses will probably describe the person they saw committing the crime. 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 (such as fingerprints), must show that you are the person who committed the crime.

### 2. Jurisdiction

The prosecutor must prove:

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

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

Usually the prosecutor will call a witness to give evidence about the date and place of the assault. This witness will likely be the victim. The investigating police officer may also be a witness.

### 3. You intentionally used force (or tried or threatened to do so)

The prosecutor must prove that you intended to use force, and that the assault was not an accident. An attempt to use force or a threatening act or gesture can be an assault, but only if the victim had reason to believe you would be able to carry out the threat. (Threatening someone who is not nearby is still a crime; it is just not considered *assault*.)

For example, if you said to someone on the phone, “If I were there I would hit you so hard...,” that would not be an assault because you were not there. But if you said that to someone in the same room, it could be considered an assault because the other person could reasonably believe that you were going to use force.

The prosecutor will ask the victim, along with anyone else who was present, to give evidence about the force you used (or tried to use) or the threats you made.

#### 4. The other person did not consent

The prosecutor must prove that you used force (or tried or threatened to do so) against the victim without his or her consent.

The prosecutor might argue that the victim consented out of fear, or that you tricked the victim into consenting. In either case, the prosecutor would argue that there was no *real* consent.

If you think the prosecutor might say there was no real consent, ask a lawyer for advice.

*no consent  
from victim*

*consent must  
be real*

*get legal advice*

## How do I defend myself?

Remember that the prosecutor must prove that you committed the crime. If the prosecutor does not prove all the parts of the crime, 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 for each part of the crime — so be ready to defend yourself.

*no-evidence  
motion*

### 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 (telling the court your side).

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.

*your own  
evidence can  
hurt you*

*get the guide*

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

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

*no intent*

**1. “I did not intend to do it.”**

You can use this defence if you touched the other person accidentally. For example, perhaps you were in a crowd and tripped. Or you lost your balance and bumped into a stranger, but it was an accident and you did not mean to assault the person. If you did not intend to hit someone, you have not committed an assault.

*self-defence*

**2. “I was acting in self-defence.”**

If someone assaulted you (or tried or threatened to do so) and you used necessary and reasonable force to protect yourself, then you acted in self-defence.

*reasonable force*

When you act in self-defence, you can use only enough force to protect yourself. For example, it would not be reasonable to pull a knife on someone who threatened to punch you. And saying you used self-defence does not work if you continue to use force after the threat has ended. If you started the incident with your words or actions, this defence also may not work. For more information about arguing self-defence, get legal advice.

*the other person consented*

**3. “The other person consented.”**

You can use this defence if the other person agreed to the physical contact. If you were arguing with a person and you both decided to settle it outside with a fist fight, then you agreed to assault each other. But you cannot use this defence if you pulled a knife and the other person agreed only to a fist fight. And you cannot use the defence of consent if you injured the other person. This defence will also not work if you have special training or skill in fighting, and the other person did not know that.

*consent must be real*

If you are going to say that the other person consented, both of you must have had the same idea about what you were getting into. The agreement was not real if it was based on a trick or lie.

#### 4. "I was defending my property."

If someone tried to take or damage your property and you used force to prevent it, you can argue that you were defending your property. The force you used must be necessary and reasonable. For example, if you see someone taking your bike from your porch, you can try to stop him or get the bike away from him. But you can only use reasonable force to do this.

*defending your property*

#### 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.

*your rights under the Charter*

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 over the phone for free to people who are in police custody.)

*police must respect your rights*

If the police did 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.

*judge might throw out some evidence*

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 argument.

*get legal advice about Charter violations*

*closing your case*

## 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 *Representing Yourself in a Criminal Trial* for more details on preparing submissions.

*possible sentences*

## 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

*explain your situation before you are sentenced*

## Speaking to the judge before you are sentenced

You get a chance to speak to the judge before he or she 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.

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 the guide *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.

## 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 *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.

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

- 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.

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.*

*amount of fine  
and time to  
pay*

*automatic  
victim  
surcharge*

*judge may  
excuse you  
from the  
surcharge*

*prosecutor  
must prove  
these things*

## Checklist: What the prosecutor must prove if you are charged with assault

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

The prosecutor must prove all of these things:

- 1  **your identity**
- 2  **jurisdiction:**
  - the crime happened in BC
  - the date of the crime (for summary offences, the **information** must be dated within six months of the date of the crime)
  - the town, city, or municipality where the crime took place
- 3  **you intentionally used force (or tried or threatened to do so)**
- 4  **the other person did not consent**

Remember:

- If the prosecutor does not prove all the necessary parts of the crime, make a no-evidence motion (see page 5).
- If the prosecutor's case is weak or inconsistent in one of the above areas, mention this in your submission (see page 8).

## 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:

- 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 Greater Vancouver) or **1-866-577-2525** (call no charge, outside Greater Vancouver) or your local courthouse to find out when duty counsel will be there.
- 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.
- 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 Greater Vancouver.

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.

For more information about the law, go to the Clicklaw website at [www.clicklaw.bc.ca](http://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.

*help from duty counsel*

*help from a private lawyer*

*help to find a lawyer*

*help from free clinics*

*links to more help on the Web*

## 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
- What to Do If You Are Charged with a Breach of a Court Order
- What to Do If You Are Charged with a Drinking and Driving Offence
- What to Do If You Are Charged with Mischief
- What to Do If You Are Charged with Possession of an Illegal Drug
- What to Do If You Are Charged with Possession of Property Under \$5,000 Obtained by Crime
- What to Do If You Are Charged with Theft Under \$5,000

## How to get these publications

All of these publications can be read online at [www.legalaid.bc.ca/publications](http://www.legalaid.bc.ca/publications)

Many are available in both English and French.

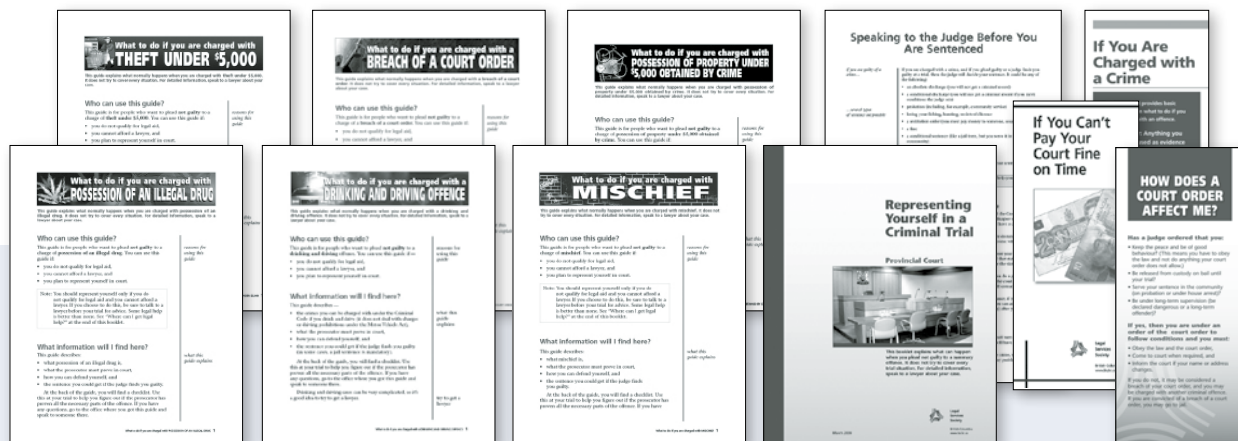
Get free copies of these guides from your local legal aid office or order:

**Online:** [www.crownpub.bc.ca](http://www.crownpub.bc.ca)  
(click the Legal Services Society image)

**Phone:** 1-800-663-6105 (call no charge)  
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