



This guide explains what normally happens when you are charged with **theft under \$5,000**. 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 **theft under \$5,000**. 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.

Note: You should represent yourself only if you do not qualify for legal aid and you cannot afford a lawyer. If you choose to do this, 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 theft under \$5,000 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 back of the 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. If you have any questions, go to the office where you got this guide and speak to someone there.

*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 these guides at the same place where you got this one. Read them before you go to court.

*taking property without consent*

## **What is theft under \$5,000?**

Generally, theft is taking, or trying to take, property that belongs to someone else, without the owner's consent and with the intention of stealing. The property can be anything from food in a grocery store to a neighbour's dog.

Shoplifting is a common example of theft under \$5,000. If you take, or try to take, something from a store and you do not intend to pay for it, that is theft.

*summary or indictable offence*

## **What type of offence am I charged with?**

The prosecutor will usually treat theft under \$5,000 as a **summary offence**, which is a less serious crime. But sometimes the prosecutor will treat it as an **indictable offence**, which is a more serious crime that typically involves a stricter sentence.

The first time you are in court, ask how the prosecutor is proceeding.

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

Usually, the prosecutor will say that he or she is proceeding "summarily" (which means that you are being charged with a summary offence). But if you hear that the prosecutor is proceeding "by indictment" (which means that you are being charged with an indictable offence), 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*.

If you have been charged with theft from your employer and you were in a position of trust (for example, if you were employed as a cashier or bookkeeper), a court will treat the matter very seriously. In this type of a situation, you should definitely talk to a lawyer about your case before you decide whether to represent yourself.

*theft from employer*

## 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 theft under \$5,000. To do this, the prosecutor will give **evidence** (information about the crime) to the court, using witnesses or documents.

*prosecutor must prove you are guilty*

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*.

*you can question witnesses*

For a judge to find you guilty of theft under \$5,000, 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 (like fingerprints), must show that you are the person who committed the crime.

*you are the one who committed the crime*

*place and date  
of 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, time, 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 crime. This witness will likely be the investigating police officer or the property owner.

## 3. You intended to take something from the property owner without his or her consent, and did so (or tried to do so)

*intent to steal*

Usually, the prosecutor must prove that you intended to take something from the property owner, even if only for a short time.

*no consent*

A clear example is shoplifting: you took the steak from the supermarket and you did not intend to pay for it. Or you stole a bike from somebody's front porch and the owner of the bike did not say that you could take it.

*witnesses*

To prove that you intended to commit the crime, the prosecutor will usually call witnesses. For example, store security guards might **testify** (tell the court) that they saw you pick up an item and take it out of the store without paying for it. Guards might also say that they then stopped you and got the stolen item from you. If the guards stopped you before you left the store, you can still be convicted if the prosecutor can show that you were going to take the item without paying for it.

The investigating police officers can testify that, when they arrived, the security guard had detained you.

*what you say  
can be used  
against you*

If you admit to anyone, like the property owner or the police officer, that you took the property without planning to pay for it, that person can tell the court what you said to show that you intended to steal the property. The prosecutor can use anything you voluntarily said (or wrote) against you.

If the prosecutor proves that you had property that was recently stolen, the judge can presume that you must have stolen it and find you guilty of theft unless you can explain how you got the property.

*judge can  
presume you  
stole it*

#### 4. The property belongs to someone else

The prosecutor must prove that the property belongs to someone else and not to you. The prosecutor may ask the property owner to be a witness. The owner will testify that the property belongs to him or her. The owner will also identify the property that was taken from you as the stolen property.

*property  
belongs to  
someone else*

In the case of shoplifting, the store security guard will identify the property.

#### 5. The property is worth less than \$5,000

*value*

#### Affidavit evidence

Sometimes the prosecutor uses an **affidavit** to prove some of the points in the Crown's case. An affidavit is a document containing information that a person **swears** (promises) is true.

*affidavits*

If the prosecutor plans to use an affidavit, you will get a copy of this document before the trial. If you disagree with it, or if you think it should include other information, ask the court to make the person who swore the affidavit come to your trial. Then you can question that person about the information that he or she swears is true.

*making the  
witness come  
to court*

Sometimes you can work out the differences between your version of events and the Crown's version of events by speaking with the prosecutor. Before you do this, talk to a legal adviser about your case.

*no-evidence motion*

## 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 the Crown's case. Tell the judge what 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.

*your own evidence can hurt you*

Use any kind of 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 this *against* you to help fill in weak spots in the Crown's case.

*get the guide*

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*.

*no intent*

A common way to defend yourself against a charge of theft under \$5,000 is to show that you did not intend to take the property from the property owner.

To do this, you may be able to argue one of the following points:

#### 1. "I paid for the property."

You could explain that you bought the property, and show the judge your receipt.

*you paid for the property*

#### 2. "I honestly believed that the property was mine or that I had a right to it."

You could argue that you had **colour of right** (an honest claim to the property). With this argument, you would explain why you believed the property was yours.

*you thought it was yours*

For example, maybe you saw a bicycle on someone's porch and it looked exactly like the one you had lost the day before. You took it because you believed it was yours.

### 3. "I forgot I had the property."

You could argue that you did not intend to steal the property — you simply forgot to pay for it.

For example, maybe you were in a drugstore and you picked up some razor blades. You were so worried about an upcoming doctor's appointment that you slipped the razor blades into your pocket without thinking. You can explain your state of mind when the crime happened. For instance, you may have been drinking. And you might get a witness to testify about your personal circumstances.

### 4. "I got the property another way."

For example, maybe someone gave you the property as a present, or asked you to keep it for a while.

## 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.

## 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 (you will not get a criminal record)
- a conditional discharge (you will not get a criminal record if you meet conditions the judge sets)
- probation (including, for example, community service)
- a restitution order (you must pay money to someone, usually the victim)
- a fine

*you forgot to pay*

*property was a gift*

*closing your case*

*possible sentences*

*theft from employer*

- a conditional sentence (like a jail term, but you serve it in the community)
- a jail term

If you are found guilty of stealing from your employer and you were in a position of trust (for example, if you were a bookkeeper or a cashier), the judge will treat the matter very seriously. You may get a jail term even if you stole only a small amount and have no criminal record.

*speak to judge before you are sentenced*

### **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*

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

*get the guide*

Get the guide called *Speaking to the Judge Before You Are Sentenced* 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* 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:

- 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.**

*judge may  
excuse you  
from surcharge*

## Checklist: What the prosecutor must prove if you are charged with *theft under \$5,000*

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

The prosecutor must prove all of these things:

*prosecutor  
must prove  
these things*

- 1  your identity
- 2  jurisdiction:
  - crime happened in BC
  - the town, city, or municipality where the crime took place
  - the date of the crime (for summary offences, the **information** must be dated within six months of the date of the crime)
- 3  the property belonged to someone else
- 4  you intended to take the property without the owner's consent and did so (or tried to do so)
- 5  the property was worth less than \$5,000

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 defence (see page 6).

## 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 talk to a lawyer:

- Call the Lawyer Referral Service at **(604) 687-3221** (Lower Mainland) or **1-800-663-1919** (toll free, outside the Lower Mainland). For \$25 you can speak with a lawyer about your case for half an hour.
- Speak to a duty counsel lawyer at the courthouse on the day of your trial (ask at the desk for how to find the duty counsel lawyer). This service is free.

If you are in Victoria or the Lower Mainland, there are also law student clinics that may be able to help you. In Vancouver, call **(604) 822-5791**. In Victoria, call **(250) 385-1221**.

For more information about the law:

- Call LawLINE at **(604) 408-2172** (Lower Mainland) or **1-866-577-2525** (toll free, outside the Lower Mainland). In some cases, you may be able to get brief legal advice.
- Go to the LawLINK website at **www.lawlink.bc.ca**. This website offers links to information on legal topics including crime, family, immigration, and housing. Contact your local legal aid office for locations of free LawLINK public access computers you can use to find legal information on the Internet.



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