

If You Can't Get Legal Aid for Your Criminal Trial

How to Make a Rowbotham Application

Denied legal aid?

Can't afford a lawyer?

Facing a serious/complex criminal charge?



Legal
Services
Society

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Acknowledgements

Editor: Jennifer Hepburn

Designer: Dan Daulby

Development coordinator: Patricia Lim

Legal reviewers: Camran Chaichian, Freya Zaltz

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This booklet explains the law in general. It isn't intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. The information in this booklet is up to date as of February 2018.

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Are You Aboriginal?

If you're Aboriginal, you have certain rights under the Criminal Code, called **Gladue rights**. These rights apply to all Aboriginal people: status or non-status Indians, First Nations, Métis, or Inuit. They also apply whether you live on or off reserve. See the Aboriginal Legal Aid in BC website at aboriginal.legalaid.bc.ca for information about Gladue rights and more.



What if I can't get legal aid?

If you can't get legal aid for your criminal trial, you can ask a judge to **stay** (temporarily discontinue) your charges until the government gives funding for a lawyer to **represent** you (take your case). You may have a right to do this under the Canadian Constitution and your right to a fair trial. This is called a **Rowbotham application**. *Rowbotham* is the name of an important Ontario case about when a person should have a government-funded lawyer.

You can make a *Rowbotham* application if you:

- need a lawyer but can't afford one, AND
- face a serious criminal charge, AND
- face a complex criminal charge.

This booklet explains:

- Why a judge can stay your charges until the government gives funding for a lawyer.
- When and how to ask for a stay until the government gives funding for a lawyer (your *Rowbotham* application).
- What you have to prove.
- How to prepare for court.
- What happens in court.

Why can a judge stay my charges?

As part of the Canadian Constitution, the Charter of Rights and Freedoms says you have the right to a fair trial. Judges have a duty to protect this right. The courts have decided that sometimes a person can't have a fair trial if they don't have a lawyer.

If you need a lawyer and you've been denied legal aid, you have the right to ask a judge to stay your charges until the government pays for a lawyer for you. Whether the judge agrees to order a stay depends on your financial situation and the nature of your charges. You have to prove these things to the judge.

What do you need to prove?

To convince the judge to order a stay, you need to prove the following four points.

1. You've been denied legal aid, and have run out of all options to have the decision reviewed.
2. You can't afford a lawyer.
3. You face a serious charge.
4. You can't defend yourself because the charge is too complex.

You'll put this information in your application. Later, you'll give the judge supporting documents. If the judge decides you need a lawyer to get a fair trial and orders a stay, you won't have to return to court for your trial unless the **Attorney General** (the government) agrees to pay for your lawyer.



How do I make my *Rowbotham* application?

To make a *Rowbotham* application, you first apply to the court to ask for an official delay called a **stay of proceedings**. Your application is made up of the following two forms (provided in this booklet with instructions):

- **Affidavit** — a written statement with your background information that you **swear** (take an oath to confirm) to be true to the best of your knowledge.
- **Notice of Application and Constitutional Issue** — a document that tells the federal government, provincial government, and local Crown counsel office that you're asking for your case to be temporarily discontinued until you have a government-funded lawyer to represent you.

Apply to the court where your trial will be heard

Your trial may be heard in Provincial Court or Supreme Court, depending on what kind of offence you're charged with. It might also depend on how you choose to be tried. (For some offences, you have a choice of courts.)

If you don't know which court will hear your trial, ask a lawyer to explain where you should apply. (To find a lawyer, see Where can I get legal help? on page 15.) If you do know, apply at the courthouse where your trial will be heard.

Apply as soon as possible

Try to start your application as soon as you find out you can't get legal aid. Follow the same steps even if your trial has started.

Do your application

1. Use the two forms in this booklet

- The Affidavit form is on page 23.
- The Notice of Application and Constitutional Issue form is on page 25.

2. Follow the instructions on the forms

- Fill out both forms right in the booklet. (See the instructions in the left-hand columns.) Then tear out the forms along the dotted lines.
- Take the Affidavit form to a lawyer, a commissioner, or a notary public to be sworn and signed. You can usually find a commissioner at the court registry.
- Sign the Notice of Application and Constitutional Issue.
- Make **4 copies** of the signed Affidavit AND the signed Notice of Application and Constitutional Issue.

3. File the forms at the court registry where your trial will be heard

- Take the originals and the 4 copies of the forms with you to the court registry where your case will be heard.

The registry staff will:

- look at the forms and ask you to fix any mistakes, and
- give you the file number and a **fix-date**.

The fix-date is a date for you to attend court to schedule your application so that you can fill in the remaining blanks. This date must be *at least two weeks* after the date the government gets your application.

- Add this number and the fix-date to all the copies.

The registry staff will:

- stamp all the documents, and
- keep the **originals**.

Your application is now filed with the court.

4. Serve your application on the government

Now you **serve** your application on (send it to) the government, as listed on the forms.

- Send a copy of the **Affidavit** AND a copy of the **Notice of Application and Constitutional Issue** to each of the following offices:
 - The local Crown counsel (government lawyer). Ask the registry staff for the Crown's **address for service (copy 1)**.
 - The Attorney General of Canada. The address and fax number are on the Notice of Application and Constitutional Issue form (**copy 2**).
 - The Attorney General of BC (**copy 3**). The address and fax number are on the Notice of Application and Constitutional Issue form.

Send these documents by *registered mail* or by *fax*, so you keep track of them and have proof of delivery. If you use registered mail, you can check Canada Post's website to see that they've been delivered. If you send by fax, get a fax confirmation sheet.

- Keep one copy of each document for yourself (**copy 4**).

5. Wait for the government to respond

Once the government lawyer gets your Affidavit and your Notice of Application and Constitutional Issue, they'll send you a letter explaining the next steps in the process.

What if my trial has already started?

You can still make a *Rowbotham* application if your trial has already started. If you appear in court without a lawyer, the judge will probably ask you if you plan to represent yourself. Do the following:

- Tell the judge: “I want to make a *Rowbotham* application because I can’t afford a lawyer and I can’t get legal aid.”
- Complete the steps on pages 2 to 4 of this booklet.
- Tell the judge if you:
 - filed your documents at the court registry and sent copies to the Attorney General of BC, Attorney General of Canada, and local Crown counsel, OR
 - haven’t filed your documents, and then say when you plan to file them.



What do I do after the government responds?

After you send copies of your Affidavit and your Notice of Application and Constitutional Issue to the Attorney General of BC, the Attorney General of Canada, and the local Crown counsel, you’ll get a letter from a government lawyer. If you need help understanding the letter, ask a lawyer. To find a lawyer, see *Where can I get legal help?* on page 15.

This letter will ask you to prove:

1. that you were denied legal aid, and have run out of all options to have the decision reviewed,
2. what your financial situation is,
3. how serious your charges are, AND
4. how complex your charges are.

How do I prove the four points?

Read the following section and refer to the checklist on pages 17 to 20 to find out what information you need to provide to answer the government lawyer's questions and prove the four points.

It takes time to gather all your supporting documents to submit to the judge, so *start right away*. If your documents are incomplete, the government lawyer or judge might ask you to give more information.

To find out what to do after you've gathered your supporting documents, see page 10.

1. How to prove you've been denied legal aid

Give the judge your documents from Legal Aid BC

- Give the judge your letter from Legal Aid BC telling you that you can't get legal aid. It explains why they denied your application.

If the Legal Aid letter also says you can appeal, give the judge proof that you appealed or asked for a review but were turned down again.

Be prepared to give the judge any other documents from Legal Aid that show you were denied legal aid and the reasons why. If you've lost any of them, ask your contact person at Legal Aid for copies.

2. How to prove you can't afford a lawyer

Give the judge a clear picture of your finances (income and expenses)

- Make a list of your finances from the time you first learned you faced charges until now. Include the following information:
 - your current job situation
 - your monthly income and household expenses, including any support payments you make
 - your assets and debts (if you have any)
 - your dependants (such as children that you support)
 - financial details about any adult who lives with you and contributes to your household expenses
 - what you've done to save or borrow money to pay for a lawyer and how much money you'd need

- Gather documents to prove anything you say about your finances, including:
 - deposit statements, if you get welfare benefits
 - recent pay stubs, if you have a job
 - personal financial statement (the Attorney General will give you a form when you apply)
 - your most recent income tax return and Canada Revenue Agency (CRA) assessment
 - bank and credit card statements
 - receipts for support payments and all other expenses (such as rent, utilities, transportation, and food)

Tell the judge how much you think it would cost to hire a lawyer

The cost of a lawyer depends on how long your trial is expected to last. Ask a few lawyers for a written estimate of their time and fees for a case like yours. Or you can make your own notes from their answers to your questions. (To find a lawyer, see *Where can I get legal help?* on page 15.)

- Show the judge:
 - that you tried to find a lawyer who'll work for free, OR
 - that you tried to find a lawyer who'll work for a low rate you can afford, AND
 - what it'll cost to have a lawyer defend you.

What if you don't give enough information about your finances?

If you don't include enough financial information in your application, the government may:

- **oppose** (argue against) your application, OR
- ask the judge to delay setting a hearing date until you give more information.

If you still don't give enough information, and if a hearing is held, the judge might **dismiss your application**. This means it won't be allowed and your trial will go ahead.

3. How to prove you face a serious charge

You need to prove that you're charged with a serious offence.

Usually **serious** means you'll probably go to jail if you're **convicted** (found guilty).

You face a serious charge if:

- you face a **mandatory minimum sentence** (this means the judge has to follow certain rules about how to sentence you).
- OR
- the **Crown counsel** will ask for a jail sentence if you're convicted.

Get the government lawyer's position on sentencing

- Ask the government lawyer to write down their **position on sentencing**. This is what's likely to happen if you're convicted *after a trial*.

The government lawyer's position on sentencing might be different from their **initial sentencing position**. The initial sentencing position only states the government lawyer's position if you plead guilty.

The sentence for a serious offence will affect your family or your job:

- If you have children, a conviction could affect your parental rights.
- You'll lose your job or be banned from working in certain jobs if you're convicted.

Show the judge the penalties will seriously affect your life

- Explain to the judge that the penalties you likely face if you're convicted will seriously affect your life.

Some consequences you likely face are usually not considered serious enough to succeed on this type of application unless you also face a jail sentence. The following are *not* seen as serious consequences on their own, but may be serious if they happen along with other factors:

- a criminal record,
- travel restrictions, OR
- losing your driver's licence.

4. How to prove you can't defend yourself because the charge is too complex

You need to prove that your case is too complex for you to defend yourself. For example:

- Your case may raise technical legal issues.
- The trial procedure may be too difficult for you to follow.
- There may be too much evidence or too many witnesses for you to handle on your own (especially if you're in jail).

Talk to a lawyer

- Ask a lawyer to explain what's complex about your case (see page 15 for how to find one). If you can, talk to a lawyer *before you go to court*. This way you can have all the information you need to show the judge your case is complex and that you need a lawyer to defend you. Also, ask the lawyer to help you plan your defence.

You may qualify for some free brief legal advice services. See *Where can I get legal help?* on page 15 for available services.

Give the judge information about your ability to defend yourself

- Tell the judge the following information to help them decide if you're able to defend yourself.
 - your education level
 - your reading, writing, and speaking abilities
 - anything that makes it difficult for you to speak for yourself (such as a disability or illness)
 - your knowledge of the criminal process



What do I do once I have my supporting documents?

1. Make copies of your documents

- Make **3 copies** of everything — one copy for the judge, one for the government lawyer, and one for yourself.
- If you can, attach everything to another Affidavit that states that it's accurate and complete. Put your court file number at the top. If you need help with this, ask a lawyer. To find one, see Where can I get legal help? on page 15.

2. Take the documents to the court registry

- Take all **3 copies** of the documents to the **same court registry** where you filed your Affidavit and Notice of Application and Constitutional Issue forms.

The registry staff will stamp the first page of each copy and keep the original (**copy 1**).

- Send a copy of all the documents to the government lawyer (Crown counsel address for service) (**copy 2**).
- Keep the third copy for yourself (**copy 3**).

3. Wait to find out the government's position

Before you get the government's position on your application, you may receive one or more letters asking you to provide additional documents or information.

You might have to appear in court one or more times (for interim appearances) to tell the court about your progress. If you don't agree with what the government's lawyer asks for, tell the judge at your next court appearance.

Get the government’s position on your application

Once the government lawyer gets all of your documents, they’ll tell you the government’s position on your application. You’ll probably receive a letter to tell you whether the government consents to or opposes your application. But you may find out first at a court appearance.

<p>If the government says you do qualify</p> <p>OR</p> <p>you’ll qualify if you contribute to the cost</p>	<p>If the government says you don’t qualify</p> <p>OR</p> <p>your documents are incomplete</p>
<p>The government will pay for a legal aid lawyer for you, and your trial will go ahead. You won’t need a hearing for your <i>Rowbotham</i> application.</p> <p>OR</p> <p>The government will pay for a legal aid lawyer only if you agree to contribute to the cost of the lawyer.</p> <p>You’ll need to negotiate with the government lawyer the amount you’ll pay, sign an agreement, and make the first payment before a legal aid lawyer will be provided.</p> <p>You won’t need a hearing for your <i>Rowbotham</i> application unless you disagree with the amount the government lawyer asks you to pay and can’t agree on a different amount.</p>	<p>The government lawyer or judge may suggest that a hearing date should be set for your application, if you still want to go ahead with it.</p> <p>If a hearing date is set, the government lawyer will:</p> <ul style="list-style-type: none"> • prepare documents to explain why your application should be turned down, and send them to you before the hearing, AND • appear at the hearing to oppose your application. <p>At any time, you can choose to:</p> <ul style="list-style-type: none"> • go ahead with a hearing, OR • provide more documents, OR • withdraw your application.



How do I prepare for a hearing at court?

Not all *Rowbotham* applications need a hearing. A judge will hold a hearing of your application if the government lawyer:

- opposes your application and you decide you still want to proceed with it, OR
- makes an offer to settle your application that you don't agree with.

If a judge holds a hearing of your application, do the following to prepare for court.

1. Think about what to tell the judge.

Use the Affidavit on page 23 and the checklist on pages 17 to 20 as a guide to organize your thoughts. Think about how you can prove the four points that the judge will use to make a decision.

Remember, you can use:

- Your own **testimony** (what you say to the judge under oath in court)
- Your Affidavit
- Other documents (such as letters, forms, bank statements, and pay stubs)
- Witnesses

The law on *Rowbotham* applications says that your own testimony or testimony by a witness isn't enough to prove you qualify. You need documents that support what you or the witness plans to say. Use those documents while you give your testimony.

The government lawyer is allowed to see copies of all the documents you plan to use at the hearing before the hearing takes place. Prepare your documents well ahead of time. Send them to the government lawyer before the hearing. If you don't, your hearing might be **adjourned** (delayed).

2. Meet with a lawyer and ask for help

Ask a lawyer to go over the four points and what you can expect in court. (See *Where can I get legal help?* on page 15.)

If you don't get legal help, you can still attend your hearing to prove the four points. To prepare for the hearing, follow the instructions in this booklet. The judge will know what you're asking for.



What happens at my hearing?

Whether you make a *Rowbotham* application before or after your trial starts, the judge may hold a hearing. At your hearing, the following will happen.

1. You go first

You speak first. If you're in:

- Provincial Court** — Call the judge “Your Honour”
- Supreme Court** — Call the judge “My Lord/My Lady”

When you finish speaking, your witnesses speak.

You need to prove the four points

You need to convince the judge that:

- You've been denied legal aid, and you've run out of all options to have the decision reviewed.
- You can't afford a lawyer.
- You face a serious charge.
- You can't defend yourself because the charge is too complex.

You need to give evidence for all four points

To present your evidence, you can:

- testify** (speak) under oath;
- refer to your filed Affidavit;
- present your documents (such as pay stubs, receipts, bank statements); AND
- call witnesses (if you have any).

Your documents must support anything you or your witnesses say.

You may need to answer questions about your application

The government lawyer may ask you and your witnesses questions about your application. The judge may have questions too.

When you speak to the judge, refer to your documents or other parts of your evidence that support the four points you need to prove.

If the judge finds a problem with your application

If the judge says you made a mistake in your application or some documents are missing, don't give up. Ask the judge:

- what you should have done in the first place, AND
- for an **adjournment** (delay) so you can fix the mistakes and come back to court.

2. The government lawyer goes next

The government lawyer will probably try to prove that you can defend yourself because:

- the charge isn't serious or complex, OR
- you can afford a lawyer

They might also ask the judge to dismiss your application if any information or documents are missing or incomplete.

3. You can speak again

After the government lawyer has finished speaking, you can speak again. This is a chance to respond to points made by the government lawyer. When you address the judge, only talk about the parts of your evidence that support the points you're trying to make.

4. The judge decides

After you and the government lawyer both present your evidence, the judge will decide if they'll **grant** (accept) your application. Sometimes the court will **adjourn** (take a break until a later date) so the judge can think about the evidence before making their decision.

- If the judge decides you should have a government-funded lawyer, they'll order a **stay of proceedings**. This means you won't have to return to court for your trial unless the government agrees to pay for your lawyer.
- If the judge denies your application, you *can't* appeal it. But if your circumstances change before the end of the trial, you can make another legal aid application and/or *Rowbotham* application.



Where can I get legal help?

Even if you can't afford a lawyer to represent you in court, it's a good idea to talk to one before your trial.

To talk to a lawyer:

- Speak to a **duty counsel** lawyer at the courthouse. Duty counsel are lawyers paid by Legal Aid. If you don't have your own lawyer, duty counsel can give you free brief advice about the charges against you, court procedures, and your legal rights (if time permits). They can also speak on your behalf the first time you appear in court. But they can't act as your permanent lawyer or prepare your *Rowbotham* application for you.

Call Legal Aid BC at **604-408-2172** (Greater Vancouver) or **1-866-577-2525** (elsewhere in BC). Or call your local courthouse to find out when duty counsel will be there.

- Contact a **private lawyer** to pay for legal advice. Even if you pay for just two meetings to get basic advice about your case, it could be worth the cost. Find out at your first meeting what kind of help the lawyer can give you and what it'll cost.
- If you don't know a lawyer who handles criminal cases, call the **Lawyer Referral Service**. For \$25 (plus tax), you can call a lawyer for a half-hour appointment. If you decide to hire that lawyer, ask how much you can expect to pay. Call the service at **604-687-3221** (Greater Vancouver) or **1-800-663-1919** (elsewhere in BC).

- Contact **Access Pro Bono** to find legal advice clinics throughout the province. To make an appointment, call **604-878-7400** (Greater Vancouver) or **1-877-762-6664** (elsewhere in BC).
- If you live in Greater Vancouver, the **Law Students' Legal Advice Program** (LSLAP) may be able to help you. The University of British Columbia runs this program. LSLAP can give you free legal advice or help if you're charged with a **summary offence** (a less serious offence also known as a petty crime) and aren't likely to get a jail sentence if convicted. Call **604-822-5791** to find the nearest LSLAP clinic.
- If you identify as Aboriginal, the **UBC Indigenous Community Legal Clinic** (ICLC) in Vancouver's Downtown Eastside may be able to help you. The clinic provides free legal advice, accompaniment to court, and advocacy to Indigenous persons who don't qualify for legal aid. Call the clinic at **604-684-7334** (Greater Vancouver) or **1-888-684-7874** (elsewhere in BC).
- If you live in Victoria, the **Law Centre** may be able to help you. Call **250-385-1221** for information.

To get more information about the law:

- See the **Clicklaw** website at **clicklaw.bc.ca**. This website has links to legal information, education, and help for British Columbians. You can find out about your rights and options, get toll-free numbers for law-related help, and learn about the law and the legal system.



Checklist of points to cover in court on a *Rowbotham* application

Use this checklist to help you prepare what you need to prove in court. Remember that your own **testimony** (spoken evidence) or testimony from witnesses must be supported by documents. Make a list of the information you need to gather as supporting documents.

1. I've been denied legal aid

Legal Aid turned me down

- To support this point, give details of when and where

I appealed or asked for a review and was denied again

- To support this point, give details of when and where

The reasons Legal Aid turned me down

- Give details of what the Legal Aid worker and/or the letter said

To prove point 1, I'll use:

- my own testimony
- my Affidavit
- letters or forms from Legal Aid
- my witnesses' evidence

2. I can't afford a lawyer

Because of my employment situation:

- employment record
- proof of employment or lay-off

Because of my financial situation:

- monthly income and household expenses and/or my assets and debts, including:
 - personal financial statement
 - pay stubs or deposit statements
 - support payment receipts
 - bills and receipts (such as rent, utilities)
 - bank and credit card statements
 - income tax return and assessment
 - property assessments
 - property tax notices
 - mortgage or loan statements
 - collection notices
 - financial details for any other adult who lives with me and contributes to my household expenses
- my efforts to save and/or borrow money aren't enough
 - applications for loans
 - steps to reduce my expenses
 - people I've asked to lend me money

Because of my dependants (children I support):

- child support order
- support payment receipts
- bank statements showing payments received
- details of dependants (such as number of children, their ages, associated expenses)

To prove point 2, I'll use:

- my own testimony
- my Affidavit
- documents (see the lists in the section above)
- my witnesses' evidence

3. I face a serious charge

I'm likely to go to jail if convicted

- details of the charge (the court document also called the **Information**)
- the government lawyer's position on sentencing if I'm convicted *after a trial*
- my criminal record, if I have one

A conviction may have serious consequences for my life

- for example, loss of my parental rights or employment

To prove point 3, I'll use:

- my own testimony
- my Affidavit
- documents, such as pay stubs, that show what I do for a living and information about any licences I need
- my witnesses' evidence

4. I can't defend myself because the charge is too complex

Technical legal issues are involved in my defence

- use details from a lawyer or ask the judge to explain

The trial procedure is too difficult for me to follow because of:

- my education level
- my language or ability to read
- my knowledge of the legal process
- my learning disability or other disabilities

- There's too much evidence and/or too many witnesses for me to handle

To prove point 4, I'll use:

- my own testimony
- my Affidavit
- documents, such as a letter from a lawyer about the legal issues
- my witnesses' evidence



Forms

You need **four copies** of the forms on page 23 to 27.

INSTRUCTIONS

Staff at the court registry will give you the file number. Print the name of the registry. Print the name of the court where your trial will be heard: Provincial or Supreme.

File No. _____
_____ Registry

IN THE _____ COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN

and

(Applicant's name)

You're the applicant. Print your name on the line.

AFFIDAVIT

Print your name on the line.

I, _____, swear that the following is true:

List the charges you face.

1. That I am the accused in these proceedings and have personal knowledge of the matters referred to in this Affidavit.

2. That I am charged with:

(List the charges) _____

Check your:

- pay stubs
- bank statement
- rent, hydro
- tax return
- bills

Use them to provide the dollar amounts.

3. That my financial circumstances are:

- (a) my income is: \$ _____
- (b) my expenses are: \$ _____
- (c) my debts total: \$ _____
- (d) all the things that I own have a value of: \$ _____

4. That I have been refused legal aid.

5. That I have not been able to hire a lawyer because I cannot afford one.

You can list any additional reasons why a conviction may be serious: for example, loss of driver's licence if you drive for a living.

Put down what grade you completed in school. (Or the number of years of high school you completed if you didn't go to school in Canada.)

You can explain why you think your case is complex, if you want.

Where it says, Attorney General of _____ you'll probably put "British Columbia." But if you're charged under certain federal laws, such as the Controlled Drugs and Substances Act or the Fisheries Act, put "Canada."

Don't sign until you are in front of the lawyer. See step 2 on page 3.

The lawyer or notary public fills out the date and place, and signs the form.

6. That I believe my case is serious because I believe I may go to jail if convicted.

My case is also serious because: _____

7. That I do not know how to represent myself in a criminal trial. My education level is: _____

8. That I believe my case is complex.

My case is complex because: _____

9. I swear this Affidavit in support of an application to have a judge order that I be provided with counsel and for a stay of proceedings against me until the Attorney General of _____ provides the necessary funding for counsel.

SWORN BEFORE ME at the city of _____)
_____, in the province of _____)
British Columbia, this ___ day _____)
of _____, 20 ___. _____)

_____)
_____)
_____)
A commissioner for taking _____)
Affidavits within British Columbia _____)

Signature of applicant

When the lawyer, notary, or commissioner of affidavits has completed this Affidavit, make **4 COPIES**.

Take these copies plus the original to the court registry and get them stamped. Ask for the **ADDRESS FOR SERVICE** of the local Crown counsel. Put one copy of this Affidavit and the Notice of Application and Constitutional Issue in an envelope and MAIL IT to this address (**copy 1**).

Then, MAIL ONE COPY of this Affidavit and the Notice of Application to the ATTORNEY GENERAL OF CANADA. MAIL ONE COPY to the ATTORNEY GENERAL OF BC. The addresses are on the Notice of Application form (**copies 2 and 3**).

It's a good idea to send all documents by registered mail to keep track of them and get proof of delivery.

KEEP ONE COPY for yourself (**copy 4**).

INSTRUCTIONS

Staff at the court registry will give you the file number. Print the name of the registry. Print the court where your trial will be heard: Provincial or Supreme.

File No. _____

_____ Registry

IN THE _____ COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN

and

(Applicant's name)

You're the applicant. Print your name on the line.

NOTICE OF APPLICATION AND CONSTITUTIONAL ISSUE

*(Constitutional Question Act, R.S.B.C. 1996, c. 68, Section 8;
Constitution Act, 1982, Part I, Sections 7, 11 (d) and 24(1))*

**TO: Attorney General of Canada
900 – 840 Howe Street
Vancouver BC V6E 3P9**

and

**TO: Attorney General of British Columbia
PO Box 9280
Stn Prov Govt
Victoria BC V8W 9J7
Attn: Duty Counsel
Fax: 250-387-6224**

Print the court name: Provincial or Supreme.

You get the hearing date, time, and place from the staff at the court registry.

TAKE NOTICE that the applicant will make an application to a judge of the _____ Court on the day of _____, 20____ at _____, or as soon after that time as the application can be heard at the _____ Court at (address): _____

Where it says, Attorney General of _____, you'll probably put "British Columbia." But, if you're charged under certain federal laws, such as the Controlled Drugs and Substances Act or the Fisheries Act, put "Canada."

THE APPLICATION IS FOR an Order staying the proceedings until the Attorney General of _____ provides the necessary funding for counsel subject to any assessment of counsel's bill.

Write in the date the registry gives you.

List all of the charges you face.

Give your age and what grade you completed in school. (Or give the number of years of high school you completed if you didn't go to school in Canada).

THE GROUNDS FOR APPLICATION ARE:

1. The applicant has a hearing date of _____ with respect to offences, including charges of:

(list charges here) _____

2. The applicant wishes to retain counsel to defend these charges. To that end, the applicant applied to the Legal Services Society for legal aid and legal aid has been refused.
3. The applicant cannot pay for a lawyer.
4. Representation of the applicant by counsel is essential to a fair trial and to the ability of the applicant to make full answer and defence. The applicant believes that the charges are serious and complex. The applicant is _____ years old and his/her level of education is _____.
5. The appropriate remedy is a stay of proceedings until the necessary funding of counsel is available.

THE CONSTITUTIONAL ISSUES TO BE RAISED AND PRINCIPLES TO BE ARGUED ARE:

6. The applicant relies on Sections 7 and 11 (d) and 24 (1) of the *Charter*, Section 650(3) of the *Criminal Code of Canada*.
7. Sections 7 and 11(d) of the *Charter* guarantee the applicant the right to a fair hearing in accordance with the principles of fundamental justice and accordingly require funded counsel to be provided if the accused wishes counsel, cannot pay a lawyer, and representation of the accused by counsel is essential to a fair trial: *R. v. Rowbotham* [1988] O.J. No. 271.
8. Sections 7 and 11 (d) of the *Charter* also guarantee the right to make full answer and defence.
9. The proper remedy is a stay of proceedings pursuant to Section 24 (1) of the *Charter* until the necessary funding of counsel is provided: *R. v. Rowbotham* (1988), 41 C.C.C. (3d) 1 (Ont. C.A.).

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING:

- (a) the Affidavit of the applicant;
- (b) such further and other evidence as the court may permit.

Fill in this line at the registry.

DATED at _____, BC this ____ day of _____, 20____

Sign and print your name.

Applicant's signature: _____

Applicant's name: _____

Write in your address and phone number.

Address: _____

Phone: _____

Once you've completed this Notice of Application and Constitutional Issue, make **4 COPIES**.

Take these copies plus the original to the court registry. Ask for the **ADDRESS FOR SERVICE** of the local Crown counsel. Put one copy of this Notice of Application and Constitutional Issue and the Affidavit in an envelope and MAIL IT to this address (**copy 1**).

Then, MAIL ONE COPY of this Notice of Application and Constitutional Issue and the Affidavit to the ATTORNEY GENERAL OF CANADA. MAIL ONE COPY to the ATTORNEY GENERAL OF BC. The addresses are on this form (**copies 2 and 3**).

It's a good idea to send all documents by registered mail to keep track of them and get proof of delivery.

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