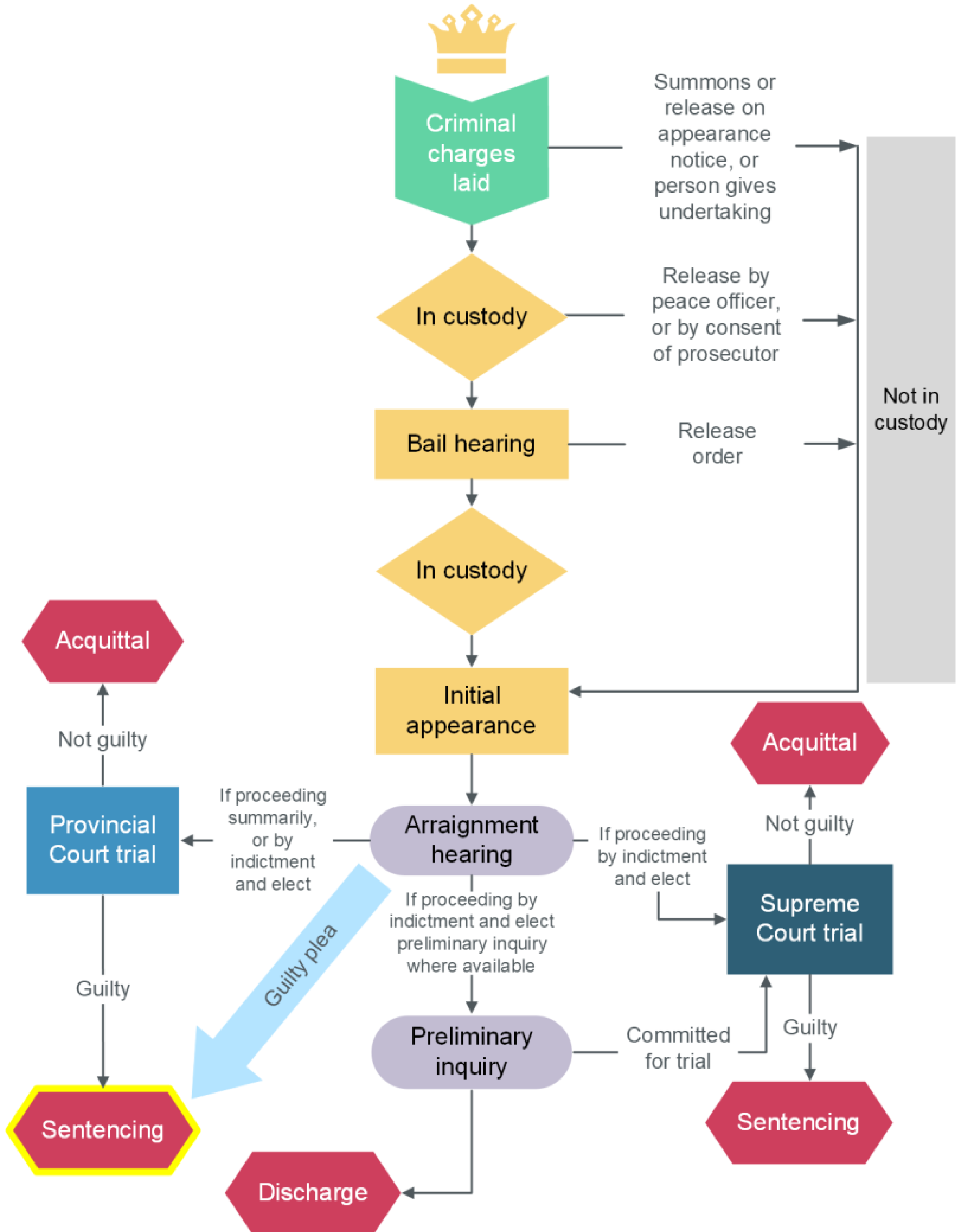
Provincial Court
of British Columbia

If you plead guilty to a criminal charge or are found guilty after a trial, you will be sentenced at a sentencing hearing.



Criminal charges laid
Summons or release on appearance notice, or person gives undertaking
In custody
Release by peace officer, or by consent of prosecutor
Bail hearing
Release order
Not in custody
In custody
Initial appearance
Acquittal
Not guilty
Provincial Court trial
If proceeding summarily, or by indictment and elect
Arraignment hearing
If proceeding by indictment and elect
Acquittal
Not guilty
Supreme Court trial
Guilty plea
If proceeding by indictment and elect preliminary inquiry where available
Guilty
Preliminary inquiry
Committed for trial
Guilty
Sentencing
Sentencing
Discharge

Judges cannot just impose any sentence they want. Although courts function independently from the other two branches of government, the legislative and the executive, there is a very large body of law that judges must apply when deciding on sentences. Judges have discretion, but that discretion may only be used within the limits set by Parliament and interpreted by the Supreme Court of Canada, the BC Court of Appeal and the BC Supreme Court.

# *Criminal Code* sentencing principles

The *Criminal Code* includes principles that require a judge to consider the circumstances of the offence and the offender, any aggravating or mitigating circumstances and other similar cases.

Judges must also decide what sentence would best achieve the objectives of:

- Denouncing unlawful conduct
- Deterring the offender and other persons from committing offences
- Separating the offender from society to protect the public
- Rehabilitating the offender
- Providing reparations for harm done to victims or to the community
- Promoting a sense of responsibility in the offender, and acknowledging the harm done to victims and to the community

The *Criminal Code* requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. Also, the sentence must be similar to sentences imposed for similar offenders who commit similar offences in similar circumstances. In addition, the *Criminal Code* says that:

- An offender should not be deprived of liberty if less restrictive options may be appropriate
- Before imposing a jail sentence a judge must consider all available options other than imprisonment that are reasonable in the circumstances

- When consecutive sentences are combined, the result should not be unduly long or harsh

Judges must balance all of these factors. They cannot focus on one factor at the expense of the others.

# Other factors that a judge must consider in imposing a sentence

## Minimum and maximum sentences

The *Criminal Code* and other criminal laws provide for maximum sentences ranging from six months in jail to life imprisonment, depending on the offence.  There are also minimum sentences for some offences.  In some cases, the Crown has a choice about whether to proceed by indictment or summarily, which will affect the maximum sentence available.

[Charges and types of offences]

## Credit for pre-trial custody

Some offenders are denied bail and detained in jail before their trial. This is called pre-trial custody. The *Criminal Code* requires judges to deduct the time spent in pre-trial custody from an appropriate sentence since it is time spent in jail as a result of the offence.

Sometimes a sentence is reported as “one day”, reflecting the fact that the offender has fully served the appropriate jail time before conviction. A sentence phrased as “three months in jail with credit for six months” would mean an effective sentence of nine months.

## Lesser offences

Although car theft may have been the original charge, sometimes an offender is found guilty of, or agrees with Crown counsel to plead guilty to, another less serious charge (perhaps mischief or taking an auto without consent) because of problems in proving the original charge or as part of a plea agreement between an accused person and the Crown.

Less serious charges often have lower sentence ranges, so the sentence will be less severe than it would have been for the original charge.

## Court decisions

Judges must follow the law and decisions of the BC Supreme Court, BC Court of Appeal and the Supreme Court of Canada about how to weigh the factors mandated in the *Criminal Code*, and about appropriate ranges of sentence for particular offences.

Judges are required to consider how other judges have sentenced other offenders for similar crimes in similar circumstances, while also keeping in mind the unique circumstances of the offender before the court.

A sentence that is above or below the range set by similar cases could be appealed.

## Joint submissions

A joint submission is an agreement between Crown counsel and the accused person's lawyer to recommend a particular sentence to the judge in exchange for the accused pleading guilty. The Supreme Court of Canada has set a strict test for a judge who wishes to reject a joint submission. The Court said joint submissions are vitally important to the wellbeing of the criminal justice system and a judge should not reject a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The Court explained that joint submissions “benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally” and are “vitally important to the well-being of the criminal justice system”.

*R. v. Anthony Cook*, 2016 SCC 43

## Repeat offenders

If people continue to commit criminal offences, they often receive increasingly longer jail sentences, within the limits set by the *Criminal Code* and binding court decisions. Crown counsel may also apply to have indefinite (indeterminate) sentences imposed on people convicted of serious personal injury offences, in some circumstances.

## Sentencing Indigenous people

In section 718.2(e) of the *Criminal Code*, Parliament requires judges to consider all available sentences other than imprisonment that are reasonable in the circumstances and consistent with the harm done, for all offenders, "with particular attention to the circumstances of Aboriginal offenders."

All sentences are based on a judge’s full consideration of the relevant legal principles and the

appropriate range of sentence for the offence. When Indigenous offenders are sentenced, a judge must consider certain factors related to their unique circumstances. Although this may sometimes cause an Indigenous offender’s sentence to be reduced, that is not always the case.

### The Supreme Court of Canada's decision in ***R. v. Gladue***

The Supreme Court of Canada interpreted section 718.2(e) of the *Criminal Code* in 1999, in a case called *R. v. Gladue*. The Court noted that Parliament included this section in the *Criminal Code* in an effort to reduce the over-representation of Indigenous peoples within both the Canadian prison population and the criminal justice system in general.

The Court concluded that when sentencing an Indigenous offender, a judge must consider:

- the unique systemic or background factors that may have played a part in bringing the particular offender before the courts
- the types of sentencing procedures and sanctions that may be appropriate for the offender because of his or her particular Indigenous connection or heritage

*R. v. Gladue* decision

### The Supreme Court of Canada's decision in ***R. v. Ipeelee***

In *R. v. Ipeelee*, the Supreme Court of Canada provided trial judges with more guidance about how to apply unique factors facing Indigenous offenders. The Court said judges must consider the systemic and background factors affecting Indigenous people in Canadian society, such as the history of colonialism, displacement, and residential schools. They must also consider how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous peoples.

While these factors on their own do not necessarily justify a different or lower sentence for Indigenous offenders, they provide a necessary context for the judge to consider all of the other sentencing factors specific to an offender.

*R. v. Ipeelee* decision

### Gladue reports

Both defence and Crown counsel have a duty to provide the sentencing judge with information relevant to the unique factors facing Indigenous offenders.  If they do not, the judge has a responsibility to obtain the information. If a judge does not consider the Gladue factors when sentencing an Indigenous offender, the sentence can be appealed. However, Indigenous offenders may waive (give up) their rights to have Gladue evidence presented, and such decisions will be respected.

Information relevant to the Gladue factors is often presented in a Gladue Report which is a report tailored to the specific circumstances of the Indigenous offender.

Gladue reports or pre-sentence reports with Gladue factors, help judges to decide the most

appropriate sentence possible for each offender. Although judges must take the Gladue factors into account for Indigenous offenders in addition to the usual sentencing factors, this does not mean that Indigenous offenders will automatically get lighter sentences. It simply means that Indigenous offenders have unique circumstances that judges may not be aware of, so judges need additional information to ensure that they give Indigenous offenders the most appropriate sentence possible.

The *Criminal Code* also directs that judges must pay particular attention to the circumstances of Aboriginal female victims when imposing a sentence.

Gladue Services (BC First Nations Justice Council)

## Information that can be considered in sentencing

A judge will consider all the admissible information presented in court during the sentencing hearing, including:

- The nature of the charge
- The circumstances of the offence (the victim's circumstances, the way the crime was committed)
- The offender's circumstances such as age, family situation, work or school, any substance abuse, any previous criminal record, and factors related to the offender's background as an Indigenous person, if applicable
- Mitigating and aggravating factors
- Pre-sentence report
- Victim impact statements
- Community impact statements
- Any other relevant information

This information is usually presented in spoken submissions made by Crown counsel and the defence lawyer, or by the offender if they do not have a lawyer.  When Legal Aid duty counsel are available, they will often "speak to sentence" for an offender who does not have a lawyer. Sometimes reports, documents showing personal achievements and letters of support are

presented as evidence in a sentencing hearing.

If there was a trial, the judge would also consider the facts proven in the trial. Otherwise, they will consider the facts alleged by the Crown and admitted by the offender. If the offender does not admit facts alleged in a sentencing hearing, Crown counsel must present evidence to prove them beyond a reasonable doubt. Otherwise, they cannot be considered.

More details about some of the kinds of information that a judge will consider, as well as information that a judge cannot consider, are provided below.

## Pre-sentence report

The judge may ask that a pre-sentence report be prepared. If so, a probation officer will interview the offender and attempt to interview people who know them well and any victims of the crime. The report will describe the offender's background and attitude towards the offence. It may include options for sentence, especially if there are specific programs that would help rehabilitate the offender. The judge decides whether or not to follow any suggestions in the report after hearing the Crown and defence submissions.

## Victim impact statement

The judge will also consider victim impact statements which may be presented in writing or read out in court by the victim or victims, explaining the harm they have suffered from the crime.

Victim Impact Statement (Government of BC)

## Community impact statement

A community representative, someone representing a city government, local organization, religious group or Indigenous community, can also prepare a statement describing the harm and losses suffered by a community and the people who live and work there. The statement must be in writing on a specific form and submitted to the court registry where the offence occurred. It may include information on economic and emotional impacts or deprivation of access to a service or facility. It must comply with requirements set out in the *Criminal Code*, and cannot include certain information.

Community Impact Statement (Government of BC)

## Information that cannot be considered in sentencing

A judge cannot consider information reported in the media or circulated on social media if it has not been introduced in the sentencing hearing. Because of this, people assessing a sentence after it is imposed may have information the judge did not have or was not permitted by the law to consider.

## Types of sentence available in Canada

Not all types of sentence can be imposed for every offence or in every circumstance.

## Absolute discharge

When a person is found guilty or pleads guilty but the judge decides it is not necessary to convict them. The person then has no criminal record. See *Criminal Code* section 730.

## Conditional discharge

When a person is found guilty or pleads guilty but the judge decides it is not necessary to convict them if they obey the rules (conditions) of a probation order. If they obey all the rules, at the end of their probation they will not have a criminal record. See *Criminal Code* section 730.

Note that a conditional discharge is very different from a conditional sentence.

## Conditional sentence

A jail sentence served in the community. The offender does not live in jail but is supervised by BC Community Corrections. They must follow certain rules (conditions).

Note that a conditional sentence is very different from a conditional discharge.

## Suspended sentence and probation

With a suspended sentence, a judge convicts the offender, but suspends sentencing and instead releases the offender on specific conditions for a period of time, as set out in a probation order. This often includes a condition that the offender must report to a probation

officer. Other conditions might include:

- Attending alcohol or drug assessment and/or treatment
- Taking programs for anger management or domestic violence
- Not using alcohol or drugs
- Not contacting certain people or being at certain places
- Any other conditions that are appropriate to the crime and your situation

If the offender does not follow the conditions the judge ordered, Crown counsel can apply to the Court to revoke the suspended sentence and impose a different sentence.

## Fine

If the offender is given a fine, they will be given time to pay it. If it is not paid within that time, they could end up in custody or there could be other impacts such as being unable to renew their driver's licence.

## Custodial sentence

This is where the offender serves a period of time in jail, either a provincial correctional centre or a federal penitentiary.

## Intermittent custodial sentence

For sentences of 90 days or less, a judge may order an intermittent custodial sentence. This means the offender does not serve all the days of the sentence at the same time. For example, they may serve the sentence on weekends.

## Victim fine surcharge

The offender may be required to pay a surcharge or fee, called the victim surcharge, that goes toward helping victims of crime. This surcharge will be added by the court registry unless the judge says the offender does not have to pay it (exempts them from paying it) or reduces the amount. The judge may order that the offender pay no victim surcharge or that a reduced

amount must be paid if the full amount would cause undue hardship because of financial circumstances. The judge may also decrease, increase or order no payment based on the circumstances of the offence and the offender's responsibility for it.

# More information about sentencing

## Judges’ reasons for sentence

Judges' reasons for their sentencing decisions may be found online.

[Finding judgments]

## Picklists for sentencing orders

Picklists are lists of standardized terms for court orders. They are available on courtroom computers so a Court Clerk can use them to quickly and accurately capture the order a judge makes.

[Criminal orders picklists]

## Sentence appeals

An offender can appeal a sentence. The appellate court will consider if they have evidence to support that the sentencing judge made an error in principle, failed to consider a relevant factor, made an error considering aggravating or mitigating factors that impacted the sentence or was demonstrably unfit (clearly unreasonable). A sentence that is considered unfit because, for example, it is too lenient, may also be appealed by Crown counsel.

## Media reports on sentences

The type of charge and sentence may not always describe any of the aggravating or mitigating factors, the background of the offender, the legal principles that apply, or the sentencing guidelines that may have been applicable. It is very important to our fair and independent system of justice that people be sentenced based upon the full range of factors a judge is required to consider in order for our justice system to operate fully and fairly.

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