

INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and CLIENT FILE OPENING AND CLOSING (A-2) checklists. It should also be used with the CRIMINAL PROCEDURE (C-1) checklist.

This checklist is designed to help defence counsel prepare for sentencing proceedings: to identify and organize relevant information required to persuade a judge of the merits of a sentence being suggested on behalf of the client. However, a simple recitation of the checklist information should not replace advocacy on behalf of the client.

- (1) the principles of sentencing as set out in the *Criminal Code*, R.S.C. 1985, c. C-46;
- (2) the case law; and
- (3) the sentence proposed on behalf of the client.

The checklist is current to September 4, 2024.

LEGEND



Checkbox



Important Reminder



Deadline or Limitation Date

NEW DEVELOPMENTS

- **Appearances by counsel.** Check the Courts of British Columbia website (bccourts.ca) to obtain up-to-date Practice Directions, Notices to the Profession, guides to remote proceedings, and announcements from all levels of court for methods of appearance by counsel and accused persons.
- **Conditional sentence orders (“CSO”) availability.** Bill C-5 received Royal Assent on November 17, 2022, which removed most of the restrictions on CSO availability (see *Criminal Code*, s. 742.1). Thirteen days earlier, the Supreme Court of Canada held in *R. v. Sharma*, 2022 SCC 39 that the previous restrictions were constitutional.
- **CSOs for sexual offences.** In the wake of the 2022 amendments removing restrictions on CSO availability for sexual offences, the Court of Appeal nevertheless confirmed that CSOs are rarely appropriate in cases involving child sexual abuse (*R. v. C.K.*, 2023 BCCA 468 at para. 108). The court also confirmed that CSOs will rarely be appropriate for sexual assaults against adults that are prosecuted by indictment and involve “aggravating circumstances” (*R. v. Hurley*, 2024 BCCA 259 and *R. v. Maslehati*, 2024 BCCA 207). Aggravating circumstances include factors such as the invasiveness and duration of the assault, threats or use of a weapon, and the age and vulnerability of the victim (*R. v. Maslehati* at para. 74). Nevertheless, a non-penitentiary term may be appropriate where the offender establishes diminished moral blameworthiness or compelling mitigation (*R. v. Maslehati* at para. 85).
- **Section 161(1)(a) prohibition orders.** The court may not prohibit an offender from attending at a location that is not specified under s. 161(1)(a), such as a theatre (*R. v. Veringa*, 2024 BCCA 295).

- **Impact of Race and Culture Assessment Reports (“IRCA”)**. IRCA’s are pre-sentencing reports that help the courts better understand the effect of marginalization, racism, and social exclusion on Black and racialized offenders. This type of evidence has been admissible in some cases as relevant social context evidence (*R. v. Handule*, 2023 BCSC 1031; *R. v. Ellis*, 2022 BCCA 278; *R. v. Anderson*, 2021 NSCA 62; and *R. v. Morris*, 2021 ONCA 680). Contact irca@legaid.bc.ca for questions about funding and availability of IRCA’s.
- **Sex Offender Information Registration Act regime**. In *R. v. Ndhlovu*, 2022 SCC 38, the court held that mandatory registration provisions under the *Sex Offender Information Registration Act*, S.C. 2004, c. 10 (the “SOIRA”) regime are overbroad and therefore of no force and effect. Parliament re-enacted the SOIRA provisions further to *Ndhlovu* on October 26, 2023, limiting automatic registration to the circumstances enumerated under s. 490.012(1) and (2), and permitting exceptions to automatic registration for sexual offenders who demonstrate that either the registration would not assist police services in preventing or investigating crimes, or that the impact on the offender would be grossly disproportionate (ss. 490.012(3)(a), (b), and (4)). Unless the offence is punishable by a maximum term of life imprisonment, a lifetime registration order can only be imposed on sexual offenders who are found guilty of more than one offence in the same proceeding, and if the offender poses an increased risk of re-offending (s. 490.013(3)).
- **Mandatory minimum sentence (“MMS”) for child luring**. In *R. v. Marchand*, 2024 SCC 26, the court struck down the MMS for child luring offences prosecuted by indictment or summarily.
- **Credit for pre-sentence driving prohibitions**. In *R. v. Basque*, 2023 SCC 18, the court held that judges have discretion to credit time spent under a release document driving prohibition toward a mandatory criminal driving prohibition. Note, however, that this decision was rendered on the basis of statutory interpretation of what was then s. 259 of the *Criminal Code*, which has since been repealed and replaced by s. 320.24. Also, whether this applies to provincial driving prohibitions is the subject of conflicting decisions (*R. v. Sideen*, 2024 SKKB 79; *contra R. v. Walker*, 2024 ONSC 3403).
- **Credit may be granted for pre-sentence driving prohibitions**. In *R. v. Basque*, 2023 SCC 18, the court held that judges have the discretion to credit time spent under a release document driving prohibition toward a mandatory criminal driving prohibition. Note that, in British Columbia, s. 99 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 may limit the effect of this.
- **Sentencing judges to notify the parties of their intention to impose a sentence above the range suggested by the Crown**. In *R. v. Nahanee*, 2022 SCC 37, the court refused to extend the *Anthony-Cook* public interest test (*R. v. Anthony-Cook*, 2016 SCC 43) to contested sentencing hearings. However, if the sentencing judge intends to impose a harsher sentence than the Crown proposal, they should notify the parties and allow further submissions, otherwise they risk appellate intervention. Failure to give this notice would only result in a successful appeal if there is information the accused could have provided that impacts the sentence or if the reasons for judgement are unclear, insufficient, or erroneous. The sentencing judge providing this notice does not justify the withdrawal of the guilty plea.
- **Forms of address**. The Supreme Court of British Columbia provided direction on how parties and counsel are to address a justice in a courtroom and provided clarification on how to introduce themselves in proceedings (see Supreme Court Civil Practice Direction PD-64—Form of Address).

OF NOTE

- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues “of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).
- **Additional resources.** See the Canadian Bar Association’s 2017 publication “[Collateral Consequences of Criminal Convictions](http://www.cba.org/Sections/Criminal-Justice/Resources/Resources/Collateral-Consequences-of-Criminal-Convictions)” at www.cba.org/Sections/Criminal-Justice/Resources/Resources/Collateral-Consequences-of-Criminal-Convictions.

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1.	INTERVIEW CLIENT	
1.1	Conduct a conflicts of interest check. Complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>
1.2	Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110). Collect the following additional information:	<input type="checkbox"/>
	.1 Citizenship and immigration status, including place and date of birth. Where appropriate, review the <i>Immigration and Refugee Protection Act</i> , S.C. 2001, c. 27 (the “IRPA”) to determine the possible impact of any conviction or any particular sentence on a person’s status in Canada, or refer the client to counsel who has expertise in immigration law. Consider <i>IRPA</i> , s. 36(1) and (2), to determine whether your client could face a removal order, as well as s. 64 to consider the effect of the length of a sentence on your client’s right to appeal a removal order. (See <i>R. v. Gonzales</i> , 2016 BCCA 436; <i>R. v. Zhang</i> , 2017 BCCA 185; and <i>Tran v. Canada (Public Safety and Emergency Preparedness)</i> , 2017 SCC 50 regarding the effect of the collateral consequences of immigration laws on sentencing. See also <i>R. v. Wong</i> , 2018 SCC 25 regarding the requirement that a person be informed of the collateral immigration consequences to enter an informed guilty plea.).	
	(If the client was between the ages of 12 and 17 at the time of the commission of the offence, refer also to the <i>Youth Criminal Justice Act</i> , S.C. 2002, c. 1 (the “YCJA”).)	

	.2 Address(es) for the past 10 years, including names of people the client lives with now, as well as alternate means of contacting the client if they were to move (e.g., parents).	
	.3 Education (where, when, level achieved) and any current schooling.	
	.4 Other training, including certificates, special licences, or trade tickets.	
	.5 Employment history, including:	
	(a) Current employment: employer's name, address, and phone number (obtain permission to contact the employer); job title; length of employment with that employer; name of immediate supervisor; hours regularly worked; typical duties; and future prospects.	
	(b) Previous employment: same details as set out in (a) above; reasons for leaving.	
	(c) If unemployed: employment prospects, likelihood that any prospective employer will hire the client.	
	.6 Family:	
	(a) Marital status, including date and place of marriage, or duration and status of any common-law relationship.	
	(b) Children's names, ages, and gender, as well as custodial status.	
	(c) Dependents: including whether the client is under an obligation to make maintenance payments. If the client owes maintenance, whether payments are up-to-date.	
	(d) Parents: names, addresses, and occupations; relationship with parents if they are still living.	
	(e) Persons who raised client; if not the client's parents, get the same information as for parents.	
	(f) Siblings: ages, addresses, occupations.	
1.3	Obtain consents and releases from the client to obtain relevant information (e.g., medical, school, tax, and probation records).	<input type="checkbox"/>
1.4	Collect information relevant to sentencing: refer to item 2.4 in this checklist on submissions to sentence.	<input type="checkbox"/>
1.5	Ask for names and addresses of people who can testify to the client's good character.	<input type="checkbox"/>
1.6	Find out whether the client can raise money to pay a fine.	<input type="checkbox"/>
1.7	Review the client's criminal record with them, including previous convictions and outstanding charges, with the client. Consider the offence, place, date, penalty, and circumstances. Find out whether the client is currently on probation and if the probation officer is aware of the new charges.	<input type="checkbox"/>

1.8	Obtain the name of the client's probation officer and, unless the client instructs otherwise, contact the probation officer to determine their position regarding the client and the charge.	<input type="checkbox"/>
1.9	Counsel the client regarding behaviour from now until trial or sentencing; advise the client of possible repercussions of further criminal charges.	<input type="checkbox"/>
1.10	Explain the sentencing procedure to the client.	<input type="checkbox"/>
	.1 Have discussions with the Crown concerning the appropriate range of sentence and inform the client about those discussions. Explain to the client that the court is not bound by recommendations of counsel.	
	.2 If the client is entering a guilty plea, review <i>Criminal Code</i> , R.S.C. 1985, c. C-46, s. 606(1.1) to ensure the client understands that a guilty plea is an admission of the essential elements of the offence; the nature and consequences of a plea; and that the court is not bound by any agreement made between the accused and the prosecutor. Also note the <i>Code of Professional Conduct of British Columbia</i> ("BC Code"), rules 5.1-7 and 5.1-8. See also <i>R. v. Wong</i> , 2018 SCC 25.	
1.11	Advise the client of the victim fine surcharge pursuant to s. 737 of the <i>Criminal Code</i> . Note that in December of 2018, the Supreme Court of Canada declared the mandatory victim surcharge unconstitutional and the provision to be of no force and effect. Parliament has since passed legislation to re-enact the victim fine surcharge regime. The new regime, effective July 22, 2019, provides the court with discretion to waive the victim surcharge if it would cause the offender undue hardship or be disproportionate to the gravity of the offence or the degree of responsibility of the offender. Otherwise, the surcharge is 30% of the fine or \$100 per count for summary conviction offences and \$200 per count for indictable offences. The court also has discretion to order an increase in the amount of the victim surcharge if the court considers it appropriate and is satisfied the offender is able to pay the higher amount. For offences committed on or prior to July 21, 2019, no victim surcharge applies, as s. 11(i) of the <i>Canadian Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c. 11 entitles the offender to the benefit of the lesser punishment where a punishment has been varied between the time of commission of the offence and time of sentencing. Note that there is a separate victim surcharge scheme for provincial offences pursuant to the <i>Victims of Crime Act</i> , R.S.B.C. 1996, c. 478, s. 8.1.	<input type="checkbox"/>
1.12	Contact Crown counsel to discuss the possibility of alternative measures. If necessary, provide a without prejudice letter to the Crown indicating why the client should be considered for alternative measures. If the Crown agrees, then assist the client at an initial interview with the probation officer to determine the feasibility of alternative measures (including diversion or restorative justice programs). It might be necessary to adjourn the case for a number of weeks to allow that interview to take place.	<input type="checkbox"/>

	.1 This process will require initial consent from Crown counsel that alternative measures are appropriate. Discuss with the client, advising that diversion will require an acceptance of responsibility for the allegation and, if accepted, the client may be required to write a letter of apology or do community work service, but will be able to avoid a conviction under the <i>Criminal Code</i> . If there is a restorative justice component, the client may be required to have a meeting with the victim to apologize personally and to explain the client's conduct.	
	.2 The other requirements that often accompany an alternative measures resolution would be some form of counselling and a short essay from the client expressing an understanding of what a criminal record would mean for them. Go over this with the client, so that they are prepared.	
1.13	Contact Crown counsel to determine, where appropriate, whether the matter can be resolved by way of a s. 810 peace bond so as to avoid a criminal conviction. The client should be advised that the peace bond may have compulsory conditions attached to it. The court must also consider whether a weapons prohibition would be appropriate (<i>Criminal Code</i> , s. 810(3.1)).	<input type="checkbox"/>
1.14	For an Indigenous client, consider unique systemic or background factors that may have brought the client before the court. Also consider whether the client can participate in a First Nation or Indigenous court process in your region and alternatives to incarceration existing inside or outside the client's Indigenous community. For the purposes of <i>Criminal Code</i> , s. 718.2(e), counsel should provide to the judge case-specific information or set it out in the pre-sentence report (a "Gladue Report", following <i>R. v. Gladue</i> , [1999] 1 S.C.R. 688).	<input type="checkbox"/>
	Particularly if the offence is not violent and serious, and an appropriate infrastructure is in place, the judge should be encouraged to consider a restorative approach to sentencing. However:	
	.1 Disposition must protect the community from future short-term and long-term harm.	
	.2 The offender must want to participate, and community representatives should be willing to assume some responsibility in the healing process.	
	.3 The victim's interests must be accounted for (and the victim invited to participate).	
	Further information on Aboriginal law issues is available on the "Aboriginal Law" page in the "Practice Areas" section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications.	
1.15	Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>

2. PREPARE FOR SENTENCING		
2.1	Review case law on sentencing relevant to this case.	<input type="checkbox"/>
2.2	Review <i>Criminal Code</i> , Part XXIII, ss. 718 to 751.1, <i>Controlled Drugs and Substances Act</i> , S.C. 1996, c. 19 (the "CDSA"), s. 10, and, if applicable, <i>YCJA</i> , Part 4.	<input type="checkbox"/>

2.3	Consider the client's criminal record in context:	<input type="checkbox"/>
	.1 How does the client explain previous convictions.	
	.2 Whether the previous offences are related.	
	.3 Time lapse since the last offence.	
	.4 Whether the client was sentenced for previous similar offences.	
	.5 Options for rehabilitation.	
	.6 If the client received a discharge or record suspension (formerly called a "pardon") for a prior offence, participated in an alternative measures program, or committed the prior offence when a young person, research the law on the weight to be given to such offences.	
2.4	Prepare a draft submission to sentence. Consider including some of the following matters. (Assess which points help the client's case, which points will be introduced by a social worker or probation officer, and which points may be raised by the Crown. Note any further research that needs to be done. For an Indigenous client, consider whether systemic or background factors affect any of the following factors (for the purposes of <i>Criminal Code</i> , s. 718.2(e)).	<input type="checkbox"/>
	.1 The offence:	
	(a) The client's mental state:	
	(i) Circumstances immediately prior to the offence (e.g., intoxication, personal or financial difficulties), and whether these problems have since ceased or abated.	
	(ii) Whether the client's mental state at the time of the offence was such that the degree of personal responsibility for his or her act was diminished. See <i>R. v. McGee</i> , 2020 BCCA 362 at para. 20 and <i>R. v. Milne</i> , 2021 BCCA 166 at paras. 45 to 48.	
	(b) Degree of direct contact between the client and the victim (e.g., physical contact or proximity, or no contact at all).	
	(c) Whether there was harm to an individual, a business or corporation, a public or government body, and society generally.	
	(d) Degree of violence:	
	(i) Whether there was physical harm involved; if so, whether it was intended, actual, threatened, or potential.	
	(ii) Whether there was death or permanent injury as a result of violence.	
	(iii) Whether the client used more violence than was necessary for the successful completion of the offence, or whether there was an attempt to minimize violence.	


	(e) Whether a weapon was involved. Consider firearms provisions of the <i>Criminal Code</i> .	
	(f) Loss in monetary terms (value of goods taken or damaged).	
	(g) Whether the client received a pecuniary profit. Consider proceeds of crime provisions of the <i>Criminal Code</i> .	
	(h) Whether the offence involved an abuse of a position of trust.	
	(i) Whether the crime involved abuse against an intimate partner and/or a vulnerable person (see <i>Criminal Code</i> , ss. 718.2(a)(ii), 718.04, and 718.201).	
	(j) Whether the crime was an isolated offence or part of an organized criminal enterprise.	
	(k) What consequences the client has already suffered as a result of the incident (e.g., loss of employment from being charged, deterioration of relationship with a loved one, adverse publicity, or shaming in the community).	
	(l) Role played by the client in the commission of the offence:	
	(i) Whether the client was the principal.	
	(ii) Whether the client was under the influence of others by reason of age, intelligence, personality, or because of a special relationship with one of the other parties to the offence.	
	(iii) Whether the client purposely involved others of previously good character in the commission of the offence.	
	(iv) Whether the harm done was contemplated by the client at the time or was the result of accident or occurred through the commission of a lesser crime.	
	(m) Motive:	
	(i) The client's motivation (e.g., money, revenge, excitement, need).	
	(ii) The degree of premeditation.	
	(iii) Whether the client acted under the stress of strong provocation.	
	(n) Whether the victim consented to or provoked the offence.	
	(o) Any previous relationship between the client and the victim.	
	(p) The extent to which the use of alcohol or drugs was a factor in the commission of the offence.	
	(q) Whether the offence was the result of other unusual circumstances.	
	(r) Whether the client co-operated with the police in:	
	(i) The client's arrest.	
	(ii) Apprehension of others involved.	

	(iii) Recovery of property taken.	
	(s) The client's present attitude about the crime (e.g., remorseful, repentant, hostile, recalcitrant, denial of guilt).	
	(t) Any circumstances of the offence that are particularly callous, vicious, immoral, or depraved.	
	(u) Any possibility and suitability of the Victim/Offender Reconciliation Program.	
	.2 Protection of the public:	
	(a) Whether the client's record indicates that they are a persistent offender whose removal from society for a substantial period of time is necessary to protect the public.	
	(b) Whether the client is a dangerous person whose removal from society for a substantial period of time is necessary to protect the public. See <i>BC Code</i> , rule 3.3-3 and commentary regarding situations where a lawyer believes on reasonable grounds there is an imminent risk of death or serious bodily harm. See also <i>BC Code</i> , rule 5.6-3 for circumstances where a lawyer has concern with the security of court facilities. A lawyer who believes that disclosure may be warranted should contact the Law Society for ethical advice. When practicable and permitted, a judicial order may be sought for disclosure.	
	(c) Whether the client's record indicates that the individual offences committed are few but are serious, indicating that imprisonment is necessary to protect the public.	
	(d) Whether the offence committed was of a type that raises genuine fear on the part of the public or on the part of any special group.	
	(e) Whether the victims of this type of offence can adequately protect themselves.	
	(f) Whether the client's previous record and the circumstances of the offence indicate that the client knowingly devoted themselves to criminal activity as a major source of livelihood.	
	(g) Whether the client has a substantial income or resources that could only be derived from criminal activity.	
	(h) Whether the client is a member of a delinquent or criminal group.	
	(i) Whether the short-term gain achieved by the client's removal from society through imprisonment would offset the possible destructive effects of imprisonment on the client's future behaviour when they are finally released.	
	(j) Whether deterrence is a major objective:	
	(i) Whether the sentence contemplated is likely to be effective as a deterrent to this particular type of offence.	
	(ii) Whether the publicity given to the sentence is likely to reach potential offenders.	

	(iii) The likely deterrent effect of the sentence on the client's associates.	
	(iv) Whether the client would be sufficiently deterred from further crime by reason only of apprehension and appearance in court, thus warranting a nominal penalty.	
	(k) The extent of recent similar crime in the community.	
	(l) Whether the sentence proposed adequately satisfies the public's sense of justice so that confidence in the courts is maintained.	
	.3 Rehabilitation of offenders:	
	(a) Whether the client's record indicates a persistent pattern of crime or other forms of antisocial behaviour.	
	(b) Date of the client's last conviction.	
	(c) Gaps in the client's criminal record indicating that under certain circumstances they can live in the community without violating the law.	
	(d) Motive for this crime:	
	(i) Events leading up to it.	
	(ii) Specific motivation.	
	(iii) Whether the crime was the result of circumstances that are unlikely to recur.	
	(e) Whether the client views the criminal behaviour as wrong and appears to genuinely want to stay out of further trouble; whether the client is prepared to express remorse to the court.	
	(f) Conduct of the client between commission of the offence and sentencing (e.g., co-operation with the police, compensation or restitution voluntarily made, good behaviour, acceptance of treatment, maintenance of steady employment, demonstration of remorse and reformation).	
	(g) Anything in the client's history that may explain their present behaviour:	
	(i) History of social maladjustment in other aspects of their life (e.g., at school or employment, during military service, within the family group, or in the community generally).	
	(ii) Lack of stability in employment or in personal relationships.	
	(iii) Whether the client can form constructive relationships with other people.	
	(h) Physical or mental disabilities, and whether they may have contributed to the commission of the offence and are curable or controllable. In particular, whether the client has:	
	(i) An addiction to alcohol or narcotics. Find out details of treatment, including treatment program, dates, and success.	

	(ii) A physical disability or illness. Get details; find out whether the client is presently under medical care; if so, get the doctor's name and address.	
	(iii) A serious physical injury. Get details (type, cause, date of injury); find out whether the client is presently under medical care; if so, get the doctor's name and address.	
	(iv) Been hospitalized. Get details (name and address of hospital, reason for and dates of hospitalization, records).	
	(v) Been committed to an institution to treat mental illness. Get details (name and address of institution, reason for and dates of institutionalization, records).	
	(vi) Been treated by a psychiatrist. Get details (name and address of psychiatrist, reason for and dates of treatment, reports or records).	
	(i) If the client is addicted to alcohol or drugs, whether the client sees this as a problem and is doing something about it.	
	(j) The client's educational and vocational handicaps.	
	(k) The client's general level of intelligence and emotional maturity.	
	(l) The extent to which the client has shown evidence of responsibility in the handling of their personal affairs.	
	(m) The client's attitude towards authority; if the client has difficulty in this respect, any indications of why this is so.	
	(n) Whether the client belongs to a delinquent or criminal group; if so, why the client joined, and what influence this group has on them.	
	(o) Present conditions in the client's home; strength of personal relationships; how the client and their family have been affected by involvement in the criminal justice system.	
	(p) Attitude of the client's friends and associates toward their criminal behaviour; whether any of these people have criminal records.	
	(q) Whether the client participates in activities that suggest that, because of their makeup and personality, the offence will not be repeated (e.g., hobbies, sports, clubs, good deeds, church attendance).	
	(r) The client's future plans (e.g., education, career, marriage, family).	
	(s) Whether the client can face problems and accept criticism.	
	(t) How the client estimates their capacity; whether the estimate is realistic.	
	(u) Whether the client accepts supervision; the client's previous response to correctional treatment.	
	(v) Whether unfavourable factors in the client's background can be addressed and overcome.	

	(w) Resources available to the court by way of sentence or recommendation that may address factors associated with the client's criminal behaviour.	
	.4 Appropriate sentence:	
	(a) The maximum penalty; whether this is in line with commonly held beliefs as to the seriousness of this type of offence.	
	(b) Whether there is a minimum penalty:	
	(i) If this is for a second or subsequent conviction, whether the Crown has served the client with notice of intention to seek greater punishment (<i>Criminal Code</i> , s. 727), if it is necessary to do so.	
	(ii) If there is a minimum sentence due to the presence of specified aggravating factors, consider whether the Crown has given notice that they intend to prove the presence of these factors (e.g., <i>CDSA</i> , s. 8).	
	(iii) Review recent jurisprudence on the constitutionality of any applicable minimum sentence.	
	(c) The average sentence for this type of offence and offender.	
	(d) Refer to <i>Criminal Code</i> , ss. 109 and 110, in relation to firearms prohibition orders. However, consider whether your client requires a firearm for hunting or sustenance purposes, and therefore is eligible for a prohibition to be lifted (s. 113).	
	(e) Refer to <i>Criminal Code</i> , s. 490.011, in relation to designated sex offences. Consider whether the impact on the offender of complying with the <i>SOIRA</i> would be disproportionate to the public interest (see " <i>Sex Offender Information Registration Act</i> regime" under "New developments" in this checklist).	
	(f) Consider whether the client will be subjected to a DNA order under <i>Criminal Code</i> , s. 487.051. If the offence is a "primary designated offence," then the court has no option but to order it unless the exception in s. 487.051(2) applies. If it is a "secondary designated offence," it is discretionary and counsel may make submissions regarding whether it is appropriate.	
	(g) The number of separate counts in the indictment; whether other offences are being taken into consideration.	
	(h) Whether the client spent time in custody. Under <i>Criminal Code</i> , s. 719(3.1), the client may receive up to 1.5 days' credit per day spent in custody prior to sentencing. The decision to award an accused enhanced credit at a rate of 1.5:1 pursuant to s. 719(3.1) is based on whether "the circumstances justify it" in accordance with <i>R. v. Summer</i> , 2014 SCC 26. See also <i>R. v. Romanchych</i> , 2018 BCCA 26 at para. 71 and <i>R. v. Pete</i> , 2019 BCCA 244.	


	(i) Whether the client will incur other penalties as a result of conviction (e.g., deportation, automatic loss of licence or accreditation). Consider whether any property will be subject to forfeiture (see, for example, <i>CDSA</i> , s. 17, <i>Criminal Code</i> , s. 490.1 (order of forfeiture of property on conviction) and ss. 462.37 to 462.46 (proceeds of crime). Consider also whether the Crown did or will institute civil forfeiture proceedings.	
	(j) Whether incarceration will affect treatment programs in which the client is involved. Consider the difference between a provincial sentence and a federal sentence, and which would better serve the client's interests. Consider the timing of parole provisions, as well as treatment programs that are offered in each.	
	(k) Effect of segregation: in <i>R. v. Anderson</i> , 2015 BCPC 210, the court reduced the global sentence from eight years to seven because the accused was likely to serve their sentence in segregation, for the accused's own safety, and the likelihood of adverse effects on their rehabilitation.	
	(l) Alternatives to incarceration:	
	(i) Community service programs.	
	(ii) Absolute or conditional discharge.	
	Note that under s. 737.1 of the <i>Criminal Code</i> , the court must consider making a restitution order if an offender is convicted or is discharged under s. 730 of an offence.	
	(iii) Probation.	
	(iv) Fine.	
	(v) Conditional sentence of imprisonment (<i>Criminal Code</i> , s. 742.1).	
	(vi) Electronic monitoring.	
	(vii) A judge is required to consider all available sanctions other than imprisonment that are reasonable in the circumstances and, under the amendment to s. 718.2(e), consistent with the harm done to victims or to the community, with particular attention to the <i>Gladue</i> factors of Indigenous offenders (<i>Criminal Code</i> , s. 718.2(e)) (see item 1.14).	
	(m) If a young person, refer to <i>YCJA</i> , Part 4.	
2.5	Gather and make copies of documentary evidence:	<input type="checkbox"/>
	.1 Letters of reference (e.g., employer, character references). The ideal letter is from an individual who knows the client well and addresses the offence(s). However, general reference letters are also useful.	
	.2 Restitution receipt, letter of apology to victim.	
	.3 Progress report from present correctional centre.	
	.4 Case law.	

	.5 Existing medical reports, assessments, and pre-sentence reports. See also items 2.9 and 2.10 in this checklist.	
2.6	Witnesses:	<input type="checkbox"/>
	.1 Interview and take statements.	
	.2 Decide whether to call any witnesses.	
	.3 Prepare witnesses for hearing (e.g., discuss courtroom procedure, how to answer questions, etc.).	
	.4 Advise them of the hearing date, time, and place.	
	.5 Advise the court clerk of any need for a translator.	
2.7	Determine whether the client's family and friends should attend in court, and so advise them.	<input type="checkbox"/>
2.8	Prepare the client, discussing what will happen, how to dress, and what to do and say (e.g., whether the client will say anything when the judge offers the opportunity at sentencing; if so, what).	<input type="checkbox"/>
2.9	Consider whether to get a pre-sentence report (particularly if an appeal from conviction will be pursued). If proceeding with a pre-sentence report:	<input type="checkbox"/>
	.1 Obtain a judge's order for preparation of the report.	
	.2 Advise the client to see their probation officer as soon as possible.	
	.3 Advise the client that anything client says to the probation officer can be included in the report. While the client should be truthful with the probation officer, the client may wish to refrain from giving opinions about complainants, the judge, Crown counsel, etc.	
	.4 When the report is received, review it with the client.	
2.10	Consider the advisability of getting a psychiatric assessment, a report from an alcohol and drug counsellor, or a treatment plan; if you do, decide whether to tender it in evidence.	<input type="checkbox"/>

3.	CONTACT THE CROWN TO FIND OUT ITS POSITION	
3.1	Assess the strengths of your position and weaknesses of the Crown's position, thinking about what you have to offer the Crown:	<input type="checkbox"/>
	.1 Discuss the possibility of alternative measures.	
	.2 Discuss the possibility of a peace bond (<i>Criminal Code</i> , s. 810) where appropriate.	
	.3 Discuss offering a guilty plea on one, some, or all charges. Before agreeing on a guilty plea, consider <i>BC Code</i> rules 5.1-7 and 5.1-8.	
	.4 Discuss waiving charges from other jurisdictions.	

	.5 Discuss amending the counts to be more inclusive, so as to reduce the overall number of counts the client would face.	
	.6 Where appropriate, consider persuading the Crown to proceed summarily rather than indictably.	
3.2	Confirm with Crown counsel the agreed facts to be presented to the court. If you cannot agree, then discuss a full sentencing hearing with the Crown.	<input type="checkbox"/>
3.3	Find out what submissions the Crown intends to make.	<input type="checkbox"/>
3.4	Discuss with Crown counsel the possibility of reaching an agreement as to the appropriate sentence, or of the Crown maintaining a neutral position before the court.	<input type="checkbox"/>
3.5	If the Crown is likely to be seeking a conditional sentence and/or probation, find out the wording of the proposed conditions and review them with your client.	<input type="checkbox"/>
3.6	Discuss with the Crown which ancillary orders they will be seeking (such as weapons prohibition, driving prohibitions, DNA orders, and <i>SOIRA</i> , s. 161 orders).	<input type="checkbox"/>
3.7	Discuss whether the criminal record will be filed.	<input type="checkbox"/>
3.8	Ask whether the Crown intends to request a pre-sentence report.	<input type="checkbox"/>
3.9	Prepare a final draft of submissions to sentence. (See item 2.4 in this checklist).	<input type="checkbox"/>

4.	ATTEND SENTENCING HEARING	
4.1	Prior to the sentencing hearing, provide Crown Counsel with copies of any letters or reports you intend to tender as exhibits, and get agreement or have the authors ready to testify. Consider filing the sentencing materials with the court in advance.	<input type="checkbox"/>
4.2	If a guilty plea has been entered, listen to Crown Counsel's reading of the circumstances of the offence:	<input type="checkbox"/>
	.1 Decide whether any explanation is required.	
	.2 If the client does not accept the facts alleged, dispute them.	
	.3 If the Crown disputes the client's version of the facts, the Crown may be called upon to call evidence to prove those facts in dispute, and the client should be prepared to call evidence to refute any of the facts alleged by the Crown.	
4.3	If there is a guilty plea, identify any triable issues that could have been argued had the matter gone to trial.	<input type="checkbox"/>

4.4	If the sentence is proceeding by way of a joint submission, advise the court. In <i>R. v. Anthony-Cook</i> , 2016 SCC 43, the Supreme Court of Canada held that a sentencing judge should not depart from a joint submission unless it would bring the administration of justice into disrepute or otherwise be contrary to the public interest. See also <i>R. v. H. (C.R.)</i> , 2021 BCCA 183 regarding a sentencing judge's duty to give cogent reasons for departing from a joint submission.	<input type="checkbox"/>
	Note that if the sentencing judge intends to impose a harsher sentence than the Crown proposal, they should notify the parties and allow further submissions, otherwise they risk appellate intervention (<i>R. v. Nahanee</i> , 2022 SCC 37). Failure to give this notice would only result in a successful appeal if there is information the accused could have provided that impacts the sentence or if the reasons for judgment are unclear, insufficient, or erroneous. The sentencing judge providing this notice does not justify the withdrawal of the guilty plea.	
4.5	Ask the judge to order a pre-sentence or psychiatric report, or both, where appropriate:	<input type="checkbox"/>
	.1 Advise the client to see their probation officer as soon as possible.	
	.2 When the report is received, go over it with the client.	
4.6	If the Crown is seeking a greater penalty, ensure that proper notice has been served and proved (<i>Criminal Code</i> , s. 727) or obtain instructions from the client to admit.	<input type="checkbox"/>
4.7	When the client's criminal record is put to them, advise the court whether the client agrees with the criminal record and, if not, ask Crown counsel whether the Crown insists on its accuracy, intends to rely on it, and is prepared to provide some proof that it is accurate.	<input type="checkbox"/>
4.8	Make submissions, calling witnesses if appropriate, tendering exhibits, and focusing on viable alternatives to incarceration.	<input type="checkbox"/>
4.9	When sentence is ordered by the court:	<input type="checkbox"/>
	.1 Note the terms.	
	.2 If a fine is imposed and time to pay is required, ask the client's view on the reasonable time for payment and advise the court of the client's request regarding time to pay.	
	.3 If jail is imposed and the client prefers a certain institution, consider asking the judge to recommend it.	

5.	AFTER SENTENCING	
5.1	Explain the sentence to the client, including any probation terms, victim fine surcharge, restitution order, and time limits.	<input type="checkbox"/>

5.2	The pardon regime has now been replaced by the record suspension regime, so explain the availability of a record suspension to the client (see <i>Criminal Records Act</i> , R.S.C. 1985, c. C-47, s. 3). (Note <i>Chu v. Canada (Attorney General)</i> , 2017 BCSC 630, where the court held that the retrospective application of the record suspension regime is unconstitutional. Thus, the shorter waiting periods under the pardon regime will apply if the offender was sentenced when the pardon regime applied.).	<input type="checkbox"/>
5.3	Discuss with the client whether a sentence appeal is advisable.	<input type="checkbox"/>

6.	CLOSING THE FILE	
6.1	Prepare a reporting letter and account as soon as practicable after closing. Notify the client of limitation periods for appeal, and diarize dates.	<input type="checkbox"/>
6.2	If the client is not going to appeal, close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.	<input type="checkbox"/>