



NELSON REGIONAL CONFERENCE:

Family & Child Protection Law, Aboriginal Services & Civil Law Issues

Prestige Lakeside Resort

701 Lakeside Drive, Nelson BC, V1L 6G3

Wednesday June 29th, Thursday June 30th, 2016

AGENDA – Wednesday, June 29th, 2016

Time	Session	Speaker	Facilitator
8:30 – 9:00	Registration & Breakfast		
8:45 – 9:00	Opening Ceremony & Welcome		
9:00 – 10:45	Overview of Family Law Act - Protection orders	• Lori Kennedy – Family lawyer	Baljinder Gill
10:45 – 11:00	Break		
11:00 – 12:30	Overview of Child Protection Law and Child Protection Mediation	• Karen Tse - Lawyer	Baljinder Gill
12:30 – 1:15	Lunch		
1:15 – 2:45	MYLAWBC	• Candice Lee – Supervisor Print, Media and Publications	Lynn McBride
2:45 – 3:00	Break		
3:00 – 4:30	Wills and Estates	• Karen Tse - Lawyer	Lynn McBride

LSS-Community and Publishing Services

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Time	Session	Speaker	Facilitator
8:30 – 9:00	Breakfast		
9:00 – 9:45	Family Justice Updates	<ul style="list-style-type: none">• Tony Holes – Family Justice Services	Baljinder Gill
9:45 – 10:45	Working with LSS Intake and other Legal Resources	<ul style="list-style-type: none">• LSS Intake – Sherilyn Thompson• PLEI – Candice Lee	
10:45 – 11:00	Break		
11:00 – 12:30	Updates on Immigration law and Sponsorship	<ul style="list-style-type: none">• Kamaljit Lehal – Immigration Lawyer	Baljinder Gill
12:30 – 1:15	Aboriginal Services and Gladue	<ul style="list-style-type: none">• Lynn McBride – Acting Manager Aboriginal services	
1:15 – 2:00	Lunch		

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PARENTING TIME

Parenting time

42 (1) For the purposes of this Part, parenting time is the time that a child is with a guardian, as allocated under an agreement or order.

(2) During parenting time, a guardian may exercise, subject to an agreement or order that provides otherwise, the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child.

Denial of parenting time or contact

61 (1) An application under this section may be made only

(a) by a person entitled under an agreement or order to parenting time or contact with a child, and

(b) within 12 months after the person was denied parenting time or contact with a child.

(2) If satisfied that an applicant has been wrongfully denied parenting time or contact with a child by a child's guardian, the court on application may make an order to do one or more of the following:

(a) require the parties to participate in family dispute resolution;

(b) require one or more parties or, without the consent of the child's guardian, the child, to attend counselling, specified services or programs;

(c) specify a period of time during which the applicant may exercise compensatory parenting time or contact with the child;

(d) require the guardian to reimburse the applicant for expenses reasonably and necessarily incurred by the

applicant as a result of the denial, including travel expenses, lost wages and child care expenses;

(e) require that the transfer of the child from one party to another be supervised by another person named in the order;

(f) if the court is satisfied that the guardian may not comply with an order made under this section, order that guardian to

(i) give security in any form the court directs, or

(ii) report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(g) require the guardian to pay

(i) an amount not exceeding \$5 000 to or for the benefit of the applicant or a child whose interests were affected by the denial, or

(ii) a fine not exceeding \$5 000.

(3) If the court makes an order under subsection (2) (a), (b) or (e), the court may allocate among the parties, or require one party alone to pay, the fees relating to the family dispute resolution, counselling, service, program or transfer.

When denial is not wrongful

62 (1) For the purposes of section 61 [*denial of parenting time or contact*], a denial of parenting time or contact with a child is not wrongful in any of the following circumstances:

(a) the guardian reasonably believed the child might suffer family violence if the parenting time or contact with the child were exercised;

(b) the guardian reasonably believed the applicant was impaired by drugs or alcohol at the time the parenting time or contact with the child was to be exercised;

(c) the child was suffering from an illness when the parenting time or contact with the child was to be exercised and the guardian has a written statement, by a medical practitioner or nurse practitioner, indicating that it was not appropriate that the parenting time or contact with the child be exercised;

(d) in the 12-month period before the denial, the applicant failed repeatedly and without reasonable notice or excuse to exercise parenting time or contact with the child;

(e) the applicant

(i) informed the guardian, before the parenting time or contact with the child was to be exercised, that it was not going to be exercised, and

(ii) did not subsequently give reasonable notice to the guardian that the applicant intended to exercise the parenting time or contact with the child after all;

(f) other circumstances the court considers to be sufficient justification for the denial.

(2) If, on an application under section 61, the court finds that parenting time or contact with a child was denied, but was not wrongfully denied, the court may make an order specifying a period of time during which the applicant may exercise compensatory parenting time or contact with the child.

Failure to exercise parenting time or contact

63 (1) If a person fails repeatedly to exercise the parenting time or contact with the child to which the person is entitled under an agreement or order, whether or not reasonable notice was given, the court on application may make an order to do one or more of the following:

(a) require one or more of the things described in section 61 (2) (a), (b) or (e) [*denial of parenting time or contact*];

(b) require the person to reimburse any other person for expenses reasonably and necessarily incurred by the other person as a result of the failure to exercise the parenting time or contact with the child, including travel expenses, lost wages and child care expenses;

(c) if the court is satisfied that the person who failed to exercise the parenting time or contact with the child may not comply with an order under this section, order that person to do one or more of the things described in section 61 (2) (f).

(2) In making an order under subsection (1) (a), the court may allocate among the parties, or require one party alone to pay, the fees relating to the family dispute resolution, counselling, service, program or transfer.

Orders to prevent removal of child

64 (1) On application, a court may make an order that a person not remove a child from a specified geographical area.

(2) On application, if satisfied that a person proposes to remove a child from, and is unlikely to return the child to, British Columbia, the court may order the person who proposes to remove the child to do one or more of the following:

(a) give security in any form the court directs;

(b) surrender, to a person named by the court, passports and other travel records of the person who proposes to remove the child or of the child, or of both;

(c) transfer specific property to a trustee named by the court;

(d) if there is an agreement or order respecting child support, pay the child support to a trustee named by the court.

(3) This section does not apply in relation to the relocation of a child within the meaning of Division 6 [*Relocation*] of this Part.

(4) A person required by an order made under this section to hold passports, travel records or other property delivered under the order must do so in accordance with the directions set out in the order.

RELOCATION

Definition and application

65 (1) In this Division, "**relocation**" means a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship with

- (a) a guardian, or
- (b) one or more other persons having a significant role in the child's life.

(2) This Division applies if

- (a) a child's guardian plans to relocate himself or herself or the child, or both, and
- (b) a written agreement or an order respecting parenting arrangements or contact with the child applies to the child.

Notice of relocation

66 (1) Subject to subsection (2), a child's guardian who plans to relocate himself or herself or a child, or both, must give to all other guardians and persons having contact with the child at least 60 days' written notice of

- (a) the date of the relocation, and
- (b) the name of the proposed location.

(2) The court may grant an exemption from all or part of the requirement to give notice under subsection (1) if satisfied that

- (a) notice cannot be given without incurring a risk of family violence by another guardian or a person having contact with the child, or
- (b) there is no ongoing relationship between the child and the other guardian or the person having contact with the child.

(3) An application for an exemption under subsection (2) may be made in the absence of any other party.

Resolving issues arising from relocation

67 (1) If notice is required under section 66 [*notice of relocation*], after the notice is given and before the date of the relocation, the child's guardians and the persons having contact with the child must use their best efforts to cooperate with one another for the purpose of resolving any issues relating to the proposed relocation.

(2) Nothing in subsection (1) prevents

(a) a guardian from making an application under section 69 [*orders respecting relocation*], or

(b) a person having contact with the child from making an application under section 59 [*orders respecting contact*] or 60 [*changing, suspending or terminating orders respecting contact*], as applicable, for the purpose of maintaining the relationship between the child and a person having contact with the child if relocation occurs.

Child may be relocated unless guardian objects

68 If a child's guardian gives notice under section 66 [*notice of relocation*] that the guardian plans to relocate the child, the relocation may occur on or after the date set out in the notice unless another guardian of the child, within 30 days after receiving the notice, files an application for an order to prohibit the relocation.

Orders respecting relocation

69 (1) In this section, "**relocating guardian**" means a guardian who plans to relocate a child.

(2) On application by a guardian, a court may make an order permitting or prohibiting the relocation of a child by the relocating guardian.

(3) Despite section 37 (1) [*best interests of child*], the court, in making an order under this section, must consider, in addition to the factors set out in section 37 (2), the factors set out in subsection (4) (a) of this section.

(4) If an application is made under this section and the relocating guardian and another guardian do not have substantially equal parenting time with the child,

(a) the relocating guardian must satisfy the court that

(i) the proposed relocation is made in good faith, and

(ii) the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and

(b) on the court being satisfied of the factors referred to in paragraph (a), the relocation must be considered to be in the best interests of the child unless another guardian satisfies the court otherwise.

(5) If an application is made under this section and the relocating guardian and another guardian have substantially equal parenting time with the child, the relocating guardian must satisfy the court

(a) of the factors described in subsection (4) (a), and

(b) that the relocation is in the best interests of the child.

(6) For the purposes of determining if the proposed relocation is made in good faith, the court must consider all relevant factors, including the following:

(a) the reasons for the proposed relocation;

(b) whether the proposed relocation is likely to enhance the general quality of life of the child and, if applicable, of the relocating guardian, including increasing emotional well-being or financial or educational opportunities;

(c) whether notice was given under section 66 [*notice of relocation*];

(d) any restrictions on relocation contained in a written agreement or an order.

(7) In determining whether to make an order under this section, the court must not consider whether a guardian would still relocate if the child's relocation were not permitted.

If relocation permitted

70 (1) If the court makes an order under section 69 [*orders respecting relocation*] that permits a child's relocation, the court may make any of the following orders:

(a) subject to subsection (2) of this section, if the order made under section 69 affects an agreement or order that allocates parenting arrangements between the relocating guardian and another guardian, an order under section 45 [*orders respecting parenting arrangements*] or 47 [*changing, suspending or terminating orders respecting parenting arrangements*], as applicable;

(b) any order necessary to ensure that the relocating guardian complies with the terms of the order permitting relocation, including an order to do one or more of the following:

- (i) give security in any form the court directs;
- (ii) transfer specific property to a trustee named by the court.

(2) In making an order under subsection (1), the court must seek to preserve, to a reasonable extent, parenting arrangements under the original agreement or order.

Not a change in circumstances

71 The fact that an order is made that prohibits a child's relocation is not, in itself, a change in the child's circumstances for the purposes of

section 47 [*changing, suspending or terminating orders respecting parenting arrangements*].

FAMILY VIOLENCE

"family violence" includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence

"family member", with respect to a person, means

- (a) the person's spouse or former spouse,
- (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
- (c) a parent or guardian of the person's child,
- (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or

(e) the person's child,
and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

Part 9 — Protection from Family Violence

Definitions

182 In this Part and the regulations made under section 248 (1)

(d) [*general regulation-making powers*]:

"at-risk family member" means a person whose safety and security is or is likely at risk from family violence carried out by a family member;

"firearm" has the same meaning as in the *Criminal Code*;

"residence" means a place where an at-risk family member normally or temporarily resides, including a place that was vacated because of family violence;

"weapon" has the same meaning as in the *Criminal Code*.

Orders respecting protection

183 (1) An order under this section

(a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and

(b) need not be made in conjunction with any other proceeding or claim for relief under this Act.

(2) A court may make an order against a family member for the protection of another family member if the court determines that

(a) family violence is likely to occur, and

(b) the other family member is an at-risk family member.

(3) An order under subsection (2) may include one or more of the following:

- (a) a provision restraining the family member from
 - (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,
 - (ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
 - (iii) following the at-risk family member,
 - (iv) possessing a weapon, a firearm or a specified object, or
 - (v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;
- (b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;
- (c) directions to a police officer to
 - (i) remove the family member from the residence immediately or within a specified period of time,
 - (ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or
 - (iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(e) any terms or conditions the court considers necessary to

(i) protect the safety and security of the at-risk family member, or

(ii) implement the order.

(4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.

(5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 [*Orders Respecting Conduct*] of Part 10, the orders must not be recorded in the same document.

Whether to make protection order

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

(a) any history of family violence by the family member against whom the order is to be made;

(b) whether any family violence is repetitive or escalating;

(c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;

(d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

(e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems

associated with a risk of violence, access to weapons, or a history of violence;

(f) the at-risk family member's perception of risks to his or her own safety and security;

(g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

(2) If family members are seeking orders under this Part against each other, the court must consider whether the order should be made against one person only, taking into account

(a) the history of, and potential for, family violence,

(b) the extent of any injuries or harm suffered, and

(c) the respective vulnerability of the applicants.

(3) For the purposes of subsection (2), the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made.

(4) The court may make an order under this Part regardless of whether any of the following circumstances exist:

(a) an order for the protection of the at-risk family member has been made previously against the family member against whom an order is to be made, whether or not the family member complied with the order;

(b) the family member against whom the order is to be made is temporarily absent from the residence;

(c) the at-risk family member is temporarily residing in an emergency shelter or other safe place;

(d) criminal charges have been or may be laid against the family member against whom the order is to be made;

(e) the at-risk family member has a history of returning to the residence and of living with the family member against

whom the order is to be made after family violence has occurred;

(f) an order under section 225 [*orders restricting communications*] has been made, respecting the at-risk family member, against the family member against whom the order is to be made.

If child a family member

185 If a child is a family member, the court must consider, in addition to the factors set out in section 184 [*whether to make protection order*],

(a) whether the child may be exposed to family violence if an order under this Part is not made, and

(b) whether an order under this Part should also be made respecting the child if an order under this Part is made respecting the child's parent or guardian.

Orders without notice

186 (1) An application for an order under this Part may be made without notice.

(2) If an order is made under this Part without notice, the court, on application by the party against whom the order is made, may

(a) set aside the order, or

(b) make an order under section 187 [*changing or terminating orders respecting protection*].

Changing or terminating orders respecting protection

187 (1) On application by a party, a court may do one or more of the following respecting an order made under this Part:

(a) shorten the term of the order;

(b) extend the term of the order;

(c) otherwise change the order;

(d) terminate the order.

(2) An application under this section must be made before the expiry of the order that is the subject of the application.

(3) Nothing in subsection (2) of this section prohibits a person from making a subsequent application for an order under section 183 [*orders respecting protection*].

Enforcing orders respecting protection

188 (1) An order made under this Part may not be enforced

(a) by means of any order that may be made under this Act, or

(b) under the *Offence Act* .

(2) A police officer having reasonable and probable grounds to believe that a person has contravened a term of an order made under this Part may

(a) take action to enforce the order, whether or not there is proof that the order has been served on the person, and

(b) if necessary for the purpose of paragraph (a), use reasonable force.

Conflict between orders

189 (1) In this section, "**protection order**" means any of the following orders:

(a) an order made under this Part;

(b) an order, made under the Criminal Code, that restricts a person from contacting or communicating with another person;

(c) an order, made by a court in British Columbia or another jurisdiction in Canada, that is similar in nature to an order made under this Part.

(2) If there is a conflict or an inconsistency between a protection order and an order made under a Part of this Act other than this Part, the other order is suspended, to the extent of the conflict or inconsistency, until

(a) either the other order or the protection order is varied in such a way that the conflict or inconsistency is eliminated, or

(b) the protection order is terminated.

Rights not affected by Act

190 The making of an order under this Part does not affect any existing right of action of a person who has been the subject of family violence.

Extraprovincial orders

191 The Enforcement of *Canadian Judgments and Decrees Act* applies to an order, made by a court in another jurisdiction of Canada, that is similar to an order made under this Part.

CHILD PROTECTION LAW

WHAT PARENTS SHOULD KNOW

PRESENTER: KAREN TSE

ROCKIES LAW CORPORATION

Presentation materials are sourced from
Legal Services Society publications on Child Protection

CHILD PROTECTION

- Why does Child Protection laws exist?
 - Children have a right to be protected from abuse, neglect, and harm or threat of harm.
- If a child's safety is at risk, the Ministry of Children and Family Development (or an Aboriginal delegated agency) must look into it.
 - If necessary, the Ministry must take the child from the home.
- Child protection legislation in British Columbia
 - *Child, Family and Community Service Act (CFCSA).*

CHILD PROTECTION

This presentation

- Provides an overview of child protection law
 - This presentation is geared towards parents, families and those helping parents and families
- Information from this presentation is based on and include many excerpts from the very helpful online guides from the Legal Services Society.
 - You will be able to find this information by visiting the LSS website

HOW PARENTS ARE DEFINED IN THIS PRESENTATION

Who is a parent?

- A parent is a person who is responsible for a child's care.
- This person could be the child's mother or father, a person given custody or guardianship of a child by a court order or agreement, a relative or a friend the child lives with, or an appointed guardian.
- A guardian is a person who has the legal authority to act as a parent.



A REPORT IS MADE

The law in BC provides that

- Anyone who believes a child has been (or is likely to be) abused or neglected, must report it
 - Includes teachers, religious leaders, friends, family, childcare workers, neighbours
 - The director cannot release the names of a person who reports child abuse. This is so people won't be afraid to tell the director when they think a child is being harmed
- Who investigates
 - Child protection workers (also called social workers) investigates
 - Sometimes people make false reports – the director looks at all available information
 - Some Aboriginal communities have Aboriginal delegated agencies

INVESTIGATION

Child protection worker

- Makes assessment by asking questions and gathering information
- Some cases close after short assessment if child does not need protection
- Referral to services
 - Home support, counselling, parenting classes
- May speak with the child alone and with people who knows the child
- Parents should explain their views and work with Ministry from early stage to protect the child and make the situation better
- Child protection worker will decide:
 - If the child needs or does not need protection
 - If protection required, child may or may not be removed

VOLUNTARY CARE AGREEMENT

Ministry might offer

- to place the child in foster care on a voluntary and temporary basis.
- In this case, parents sign a Voluntary Care Agreement with the Ministry.
 - A written agreement proposed when parents face a crisis that leaves parents temporarily unable to care for child at home.
- For example, sole parent who needs to enter the hospital or a treatment program.
- Worker makes sure situation meets the conditions for agreement and explores all other options first

VOLUNTARY CARE AGREEMENT

Contents of the Agreement

- Prepare plan for the earliest possible return and for any support the parents might need
- The initial term for least amount of time needed to recover from crisis.
 - Three months or less for children under five years old, and six months or less for older children.
- Agreement can be renewed for a limited number of months based on the age of the child involved.
- The ministry's goal is to reunite children and families as soon as possible.
- If possible, parents contribute to the care of the child based on income

EXTENDED FAMILY PROGRAM

If a social worker takes the child from your home because you're temporarily unable to take care of them, you can ask the social worker to place them in the care of:

- a family member,
- a friend who has an important relationship with them, or
- someone who has a cultural or traditional connection to them.

Instead of going into foster care

- the children will stay with someone they know.
- The program's goal is to return the children to the parents when possible.



EXTENDED FAMILY PROGRAM AGREEMENTS

An Extended Family Program Agreement:

- sets out the best way to meet the child's needs, and
- how long the child will stay with the caregiver.

Requires:

- social worker, caregiver and parent work as a team to come up with a plan for child's care. The plan will include the services and supports the child needs.

Parent must deal with the issues that led to them being unable to take care of the child. This is so that the ministry can return the child when the agreement ends.



EXTENDED FAMILY PROGRAM AGREEMENTS

The social worker must screen the caregiver you suggest.

The social worker will:

- review the caregiver's Child, Family and Community Service Act records;
- do a criminal record check;
- check personal references; and
- check their home.

If a social worker contacts you or visits your home, you have the right to get legal advice.

- Call Legal Aid immediately to find out if you qualify for a free lawyer.



HOW LONG DOES AGREEMENT LAST?

The length of the agreement depends on:

- your circumstances, and how old the children are:
 - | | |
|------------------------|--------------------------|
| <u>Age of children</u> | <u>Agreement length</u> |
| Under five | No longer than 3 months |
| Between five and 12 | No longer than 6 months |
| Over 12 | No longer than 12 months |

Renewing an agreement

- If a longer placement would be better for the children, you may be able to renew the agreement. The total length of the agreement, including all renewals depends on:
 - your circumstances, and how old the children are:
 - | | |
|------------------------|--------------------------|
| <u>Age of children</u> | <u>Agreement length</u> |
| Under five | No longer than 12 months |
| Between five and 12 | No longer than 18 months |
| Over 12 | No longer than 24 months |

COLLABORATIVE PLANNING AND DECISION MAKING IN CHILD PROTECTION CASES

What is collaborative decision making?

- The family has the right to be involved in decisions about the child's care.

Collaborative (shared) decision making:

- Parents and a child protection worker will negotiate (talk and work together) to reach an agreement about what's best for the child, and
- A neutral person (someone who is not involved in making decisions about the child's protection) guides participants through a process that lets each person share their story and be a part of the decision making.




WHEN CAN FAMILIES USE COLLABORATIVE DECISION MAKING?

At almost any time in the child protection process

- Parents can negotiate with ministry to make a plan or agreement about the child's care.
- As soon as the ministry raises concerns about the child's safety, parents can talk with the child protection worker to figure out what is best for the child.
- Even if the case is already in court, parents can try to resolve the issues out of court.

Voluntary

- Parents can choose whether or not the family participates. If the child protection worker doesn't suggest using collaborative decision making, parents can ask to use it.
 - Free
- 

WHEN CAN FAMILIES USE COLLABORATIVE DECISION MAKING?

By working with the child protection worker

- Parents may be able to resolve issues faster than going to court and in ways that best suit the family. Issues that can be dealt with using shared decision making might include:
 - Where the child will live
 - How to keep the child safe
 - What services the family needs
 - Plans for the child to return home
 - How the family and community will support parents and the child

FAMILY GROUP CONFERENCES


Collaborative (Family Group) Decision Making

- Child's parents, relatives, close friends, or other community members meet about how to keep the child safe.

When can a family group conference help?

- Family and the Ministry must agree to use this option
- Works well if there are supportive extended family or community.

Parents can use a family group conference to help everyone agree on issues such as:


- How to keep the child safe
 - What services the family needs
 - Where the child will live
 - How the family and community will support the parents and the child
- 

FAMILY GROUP CONFERENCES

How to get started


- Once the ministry decides that the child needs protection, the child protection worker can offer to refer the family to a family group conference coordinator (section 20 of the CFCSA.)
- Parents can also ask the child protection worker for a referral to a family group conference coordinator.
- The coordinator is trained and works for the ministry.
- Can use a family group conference at any time while family is involved with the Ministry — even if case is already in court.

How does a family group conference work?

- Parents work with the family group conference coordinator to decide who will participate.
 - The coordinator meets with the participants before the conference to prepare them for the meeting.
- 

FAMILY GROUP CONFERENCES

At a family group conference

- Everyone will gather to talk about the reason for the meeting — the need for a family plan that deals with specific concerns about the child's safety.
 - A coordinator organizes the meeting and helps everyone stay focused.
 - Get help to work through issues and learn about how your family can get support services.
 - Next, the invited community members and professionals will leave the room. Family will have private time to discuss a plan for the child's protection.
 - Family will develop a plan for child's safety and well-being.
 - A child protection worker has to look it over to make sure the plan addresses child's safety concerns and speak with the family.
- 

TRADITIONAL DECISION MAKING

Traditional decision making

- Like a family group conference .
- Includes the community.
- Can invite Elders and other community members.
- Lets the family make decisions based on cultural traditions and values if the child is Aboriginal.



MEDIATION IN CHILD PROTECTION CASES

What is mediation?


- Mediation is an option of collaborative (shared) decision making where someone with special training (a mediator) helps people solve problems.
- The mediator works to help both sides listen to and understand each other and then together come up with a solution that feels fair. Mediators aren't judges and they aren't supposed to take sides. They won't tell you what to do.
- Under Section 22 of *CFCSA*, parents, children and child protection workers or anyone directly involved in a child protection case can ask for or suggest mediation to help solve various problems. Both sides have to agree to try mediation for it to go ahead.
- Mediators
 - Neutral & cannot provide legal advice

MEDIATION

- Mediation can help you deal with issues such as:
 - What do you want to have happen
 - What does the child protection worker want to have happen
 - What are you expected to do (or not do) to get your child back
 - What services can be provided for you and your child
 - How long will your child stay in care
 - Where will your child live temporarily
 - How and when can you or others have access to a child
 - What terms and conditions should be put in a supervision order
- What does mediation cost?
 - Free. The Ministry of Children and Family Development may also pay for some of your costs so you can be at the mediation sessions, such as day care, meals, and transportation. Make sure you ask for that help.

HOW DOES MEDIATION WORK?

The mediator's job is to help balance the power between the sides.

- That is hard when one side is a large government ministry, and the other is a single parent or child. You may have to remind the mediator about that and how it feels for you.
 - Speak up clearly if you think the mediator is taking sides or acting unfairly in any way.
 - State your needs, opinions, and suggestions clearly and honestly. It's the mediator's job to help you do that.
 - You can ask to have a private session with the mediator at any time during the mediation process if you have concerns.
 - Only agree to what is fair and fits for you and your family.
- 


HOW DOES MEDIATION WORK?

Things to Keep in Mind

- Be willing to hear and understand the child protection worker's concerns.
- At any point, you have the right to talk to a lawyer before making a final decision.
 - You may be able to have your lawyer come with you to the mediation.
- You have the right to stop mediation if you find it's not working for you.
 - If you can, let the mediator know your reasons.

CASE CONFERENCE

If you can't reach an agreement with the director by the protection hearing, the judge will order you to go to a case conference.

- A case conference is a lot like mediation, except the judge is in charge instead of a mediator.
 - It's a meeting between you, your lawyer or advocate, the child protection worker, the director's lawyer, and the judge.
 - The judge may ask your child to be there if your child is more than 12 years old, other family members, or people involved with taking care of your child.
 - If your child is Aboriginal, a representative of the Aboriginal community may also be there.
- 

CASE CONFERENCE

Things to Keep in Mind

- Be prepared to speak for yourself at a case conference. Judges usually want to hear directly from the parents.
 - You may want to discuss what to say with your lawyer beforehand.
 - The director can't use what you say at the case conference against you in court.
- However, the director can try to use what you say to find out more information to use at a hearing.
- Supervision orders or custody orders can't be made at the case conference unless everyone agrees.
 - If you work out an agreement with the director in the case conference, then the judge can make a consent order and that ends the protection hearing.

CASE CONFERENCE


Things to Keep in Mind

- If you and the director can't agree in the case conference, you will then set a date to complete the protection hearing and have a judge decide what will happen.
- How long it takes to finish the protection hearing will depend on the length of the trial and available court dates.



WHAT A CONSENT ORDER MEANS

If you and the Ministry agree on a plan of care but disagree whether your child needs protection, you can make a written agreement

- The judge may then make what's called a Consent Order and doesn't have to decide that your child needs protection.
 - The court won't have in its records that you couldn't care for your child or that your child needed protection.
 - If your child is 12 years or older, he or she has the right to be part of the discussion about a consent order. If possible, get legal advice for your child.
 - In most cases, both parents have to agree before the judge can make a consent order. You can make a consent order with the director after a case conference or at any time during the protection hearing process.
- 

WHAT AGREEMENTS CAN I MAKE USING COLLABORATIVE DECISION MAKING?

Support Service Agreement

- Support services to help parents take care of the child (whether or not the child needs protection).

Safety Plan

- Plan about how the child will be cared for during a child protection investigation.

Extended Family Program Agreement

- Agreement for the child to be in the care of a friend or family member for a limited time.

Voluntary Care Agreement

- Agreement for the child to be in foster care for a limited time.



WHAT AGREEMENTS CAN I MAKE USING COLLABORATIVE DECISION MAKING?

Plan of Care

- Plan for how to meet the child's needs while the ministry is involved with the family; for example, where the child will live while the case is in court.

Access Agreement

- Agreement about when and where parents can visit with the child if the ministry has removed the child from the home.

Any other arrangement parents and child protection worker want to make during the investigation or court process, or even after parents have been to court.



TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE


Independent Legal Advice

- Speak with lawyer.
- Lawyer can attend meetings with parents, explain their rights, or help parents negotiate with the ministry.
- Before parents sign a written agreement, have a lawyer look over it.




TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE

Be part of making decisions

- Make the plan fit the needs of you and your child. For example, if you have a drug or alcohol problem, the ministry might ask you to go to drug counselling. Make sure that the agreement lets you choose a counselling program that you can work with.
 - If you agree to place your child in the ministry's care, make sure your child sees you and other important people while in care. Make the agreement for the shortest possible time.
 - Ask the director to be clear about what services or programs will be provided to you and your family.
- 

TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE FOR PARENTS

Be realistic


- Understand what is agreed to
 - Agree only to what you know is helpful. Always put your child's best interests first.
 - Be clear about when the ministry will think you have completed the terms of the agreement.
 - If you don't do what you agree to or can't follow through with parts of the agreement, there could be serious consequences. Ask the ministry what will happen if you don't complete everything required, and include this in the written agreement.
- 

TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE FOR PARENTS

Check time limits

- Be sure the agreement gives you enough time to make the changes you have to make.
- Check that programs and the people you'll be working with (for example, counsellors) can meet the timelines in your agreement.
- Think about how your family situation might change and ask for flexible time limits.

Keep notes

- Keep notes of your meetings with the social worker, advocate, and lawyer. Write down what people say they will do and what you agree to do.
 - Keep track of all important dates — such as meetings, court dates, and deadlines.
 - Keep notes and papers sorted so that everything is in one place.
- 


IF THE DIRECTOR REMOVES YOUR CHILD

Go to court hearings

Ask for access visits

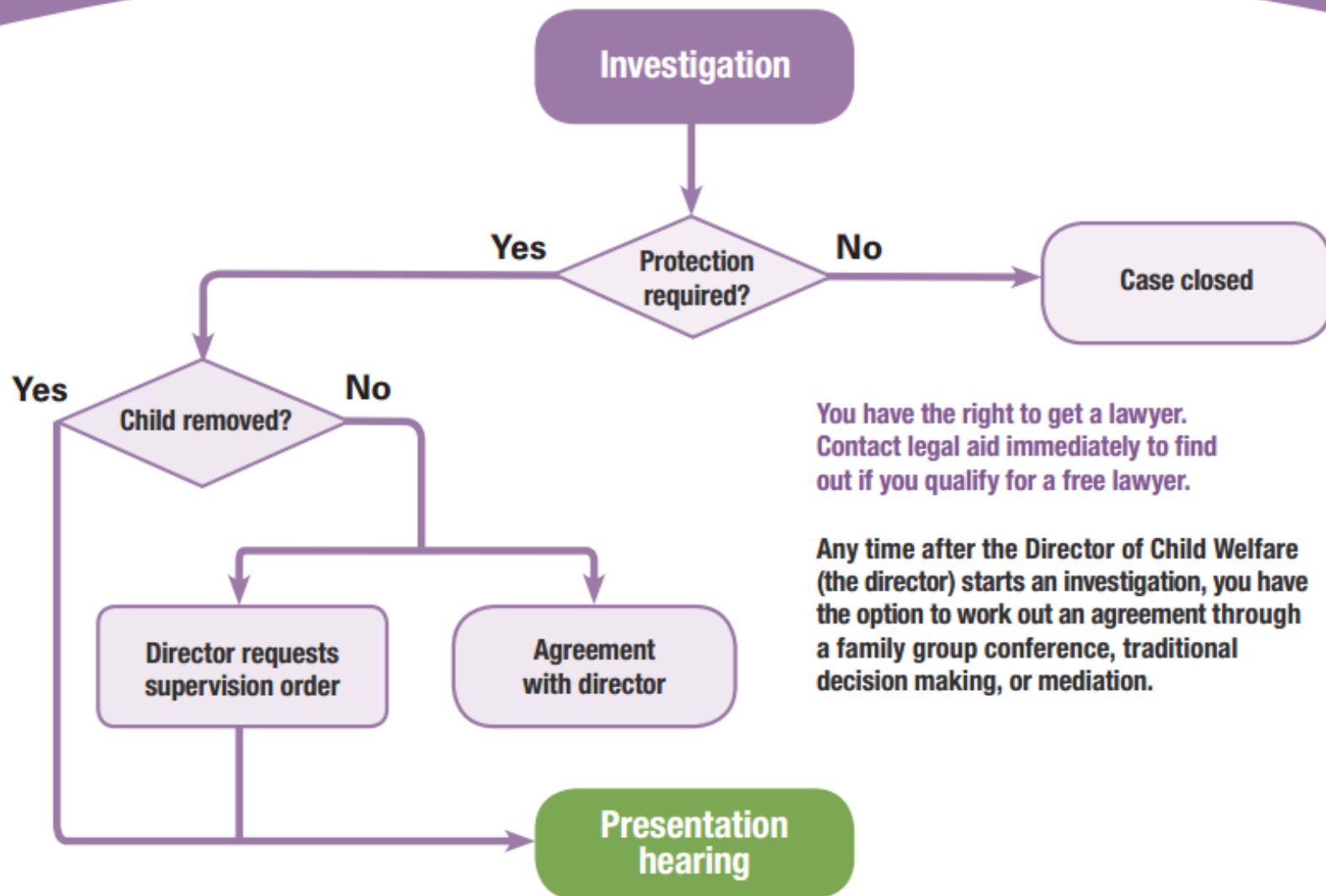
- Visits can also be by phone or video conference
- Ask the child protection worker to plan visits – if refused, ask for visits when you attend court
- Try to see child as often as you can – show that you care
- Be on time. Give notice for cancellations.
- Director may request supervised access – plan which adult will supervise. If no agreement, may go to mediation.

Ask for case information

- Can ask to see child protection worker's notes
 - Can ask to see reports (e.g. Suspected child abuse and neglect (SCAN) report)
- 

The Child Protection Process in British Columbia

Family Law in BC



You have the right to get a lawyer.
Contact legal aid immediately to find out if you qualify for a free lawyer.

Any time after the Director of Child Welfare (the director) starts an investigation, you have the option to work out an agreement through a family group conference, traditional decision making, or mediation.

WHAT HAPPENS IN COURT

When your child is removed from your home, or the child protection worker applies for a supervision order without removal, the next step is to go to court.

The court process usually has two stages:

- Stage 1) Presentation stage
- Stage 2) Protection stage



THE PRESENTATION STAGE

If removal

- Director presents a report to the court within seven days. This starts the court process for the presentation hearing.

Without removal

- If the child protection worker applies for a supervision order without removal, the presentation hearing will be held within 10 days after the application date and you receive a copy of the application.




WHAT'S IN THE REPORT TO COURT?

The Report to Court should include this information:

- Why the director decided to remove your child or ask for a supervision order
- What other steps the director tried before taking that action
- The date, time, and place of the action
- Who was there at the time
- What terms the director wants in a supervision order without removal
- How the director plans to care for your child — called an interim plan of care
 - Children who are 12 years and older have the right to have this plan explained to them, and to tell the judge what they want. Also, the judge can also say that your child may have his or her own free lawyer.

PLAN TO GO TO THE PRESENTATION HEARING

- Attend and be on time
 - Can have lawyer present.
 - If child 12 years or older, the director will tell child about the date of the presentation hearing too.
 - If you cannot be present, ask if you can participate by phone.
 - If child is Aboriginal, the director must tell your child's community (such as the band) if the director removes your child from your home, even if you don't live on reserve. Someone from the community can then come to the presentation hearing.
- 

AT THE PRESENTATION HEARING

- Before or at the presentation hearing, you will receive a copy of the child protection worker's document called the Report to Court.
- Judge will ask whether you agree with what the director wants to do in the Report to Court.
 - If you agree, the judge will make an order right away. That will be the end of the presentation hearing.
 - If you don't agree, the judge will schedule another day for the presentation hearing to learn more about your case. It's usually two to six weeks later. In some cases, it could be more than six weeks later, depending on how busy the court is in your area. These hearings usually take half a day, but they could take longer.
- If you don't go to the presentation hearing, the judge will probably make the order the director asks for, without hearing from you.

JUDGE MAKES AN INTERIM ORDER

At the presentation hearing, judge may

- Make an Interim Order which says how child will be cared for
 - Order stays in place until protection hearing is complete, or another order is made
 - Each order will also have the date and time of the start of the protection hearing.
 - The protection hearing must be scheduled within 45 days of when the presentation hearing ends

FOUR TYPES OF INTERIM ORDERS

No supervision order (child with parent)

- If you can show that you are able to care for your child, and a protection hearing isn't needed, the judge will return your child to live with you without supervision. This will end the court process for you and your child.
- This could happen if you have worked out an agreement with the director, and/or if you have made changes that the child protection worker suggested.

Interim supervision order (child with parent)

- Your child will live with you, and the director will supervise the care you give your child. This order will include conditions you must follow.
- An interim supervision order will have terms and conditions of supervision.

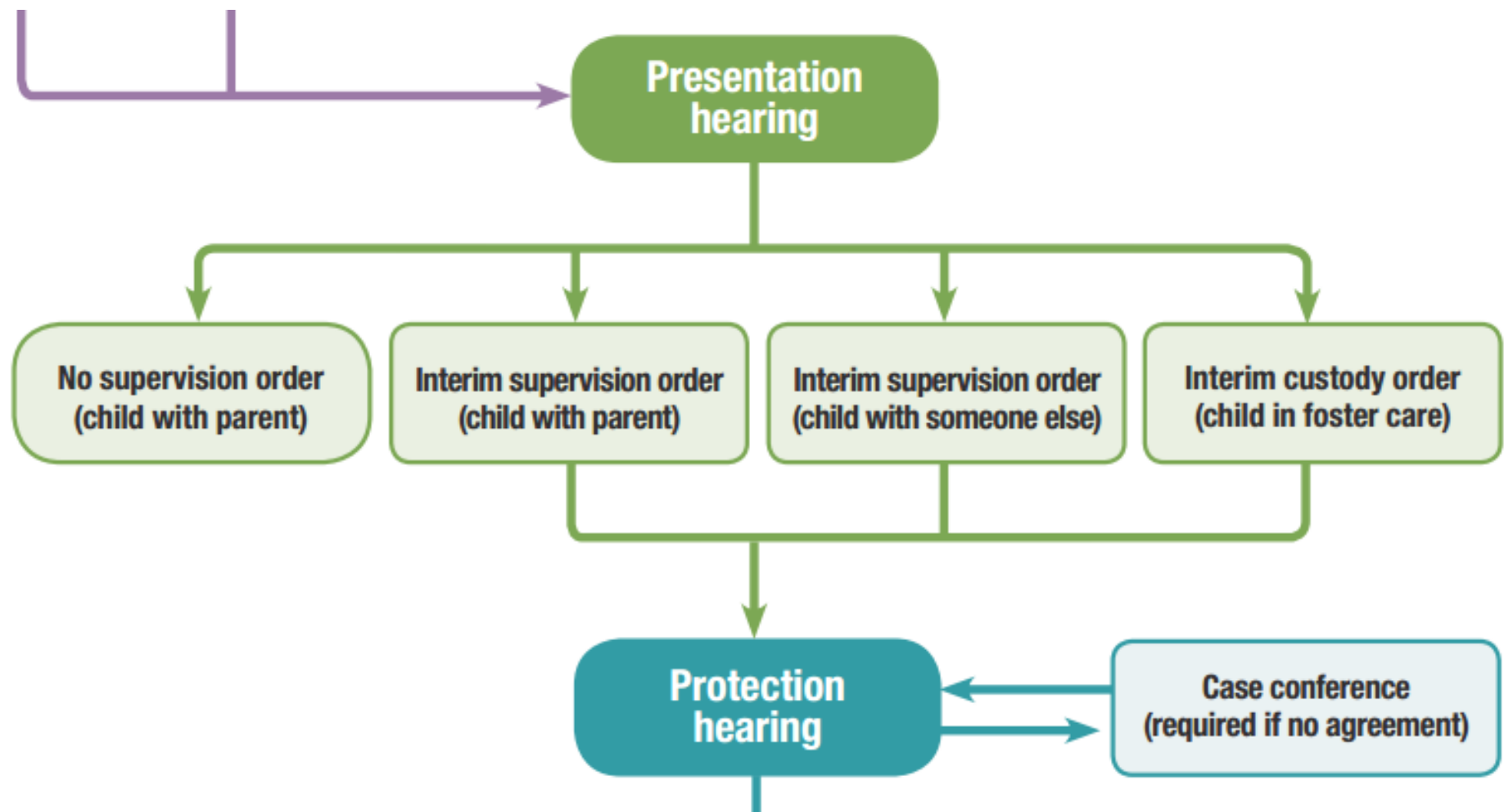
Interim supervision order (child with someone else)

- Your child will live with another person who is able to care for your child under the director's supervision. This order will set out how your child will be cared for and may set out when and how you can visit your child.

Interim custody order (child in foster care)

- Your child will stay in the care of the director (foster care). This order may set out when and how visits will occur.





THE PROTECTION STAGE

The judge will decide whether your child needs protection and who will care for your child in the future. The judge makes this decision at the protection hearing.

- The protection hearing must start no more than 45 days after the presentation hearing ends.
 - The whole process can last up to several months. Or it can end on the same day that it starts, depending on the details of your case and when the courtroom is free.
- At least 10 days before the protection hearing, the director must give you an application that says what kind of order he or she will ask the judge for and a plan of care that says how the director wants your child to be looked after.



AT THE PROTECTION HEARING

Before the judge can decide whether to make the order the child protection worker applied for, the judge must first decide whether your child needs protection.

- If you agree that your child needs protection, the judge can make that decision at the start of the protection hearing.
- If you don't agree that your child needs protection, then a hearing, with evidence and witnesses, must be held before the judge can make (or refuse to make) that decision.
- Before that hearing can be held, a case conference must be completed.



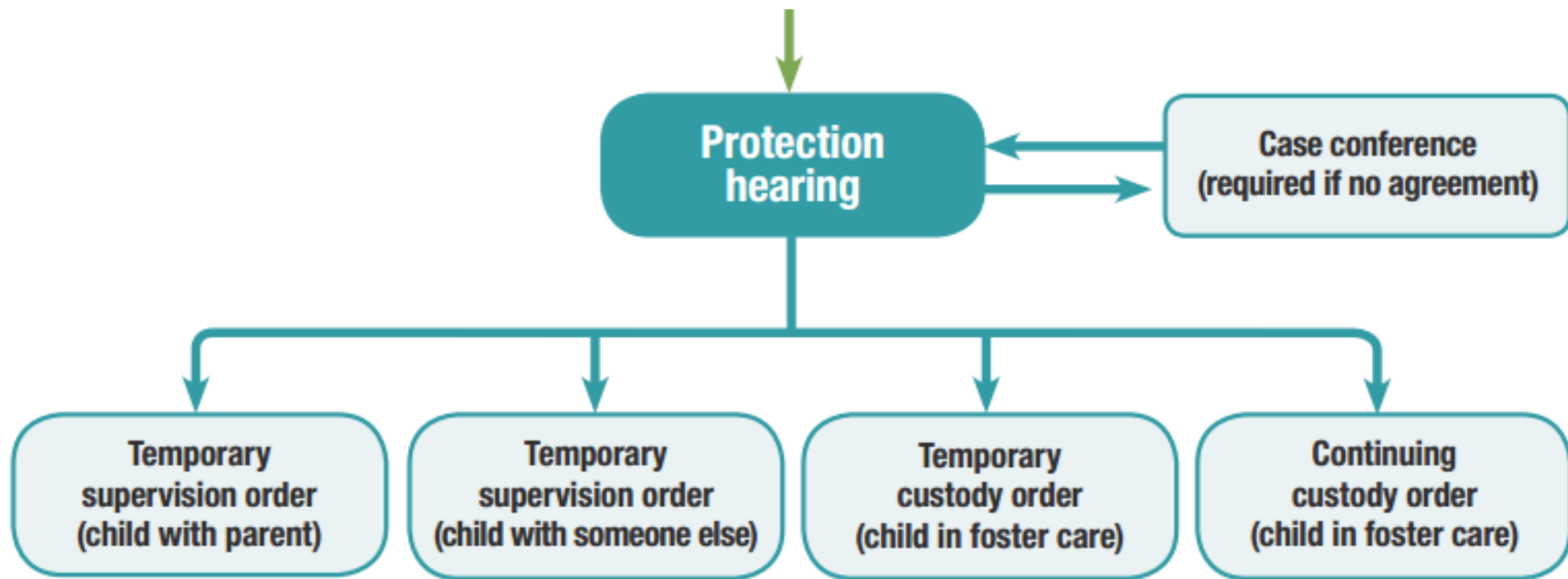
JUDGE MAKES A TEMPORARY ORDER

If the judge decides your child needs protection, the judge will make one of the following orders at a protection hearing and will decide how long the order will last:

- **Temporary supervision order (child with parent):** Your child will live with you, and the director will supervise the care you give your child.
- **Temporary supervision order (child with someone else):** Your child will live with another person who can care for your child under the director's supervision.
- **Temporary custody order (child in foster care):** Your child will stay in the care of the director (foster care).
- **Continuing custody order (child in foster care):** If there's a serious problem that can't be fixed within the time the court allows, the judge might make this order. It means your child will stay in the care of the director (foster care) without limits on how long this will last. The judge makes this order in very rare cases.

The judge will include terms and conditions in the supervision order and an order of access if your child will stay with another person.






LENGTH OF TIME FOR TEMPORARY ORDERS

- Supervision orders and custody orders are made for a specific period of time, called a fixed term. The length of the fixed term is based on the age of your child at the time of the removal, or the age of the youngest child if there is more than one child. If your child is:
 - Under five years old, the order can last for up to three months;
 - Five years to under 12 years old, the order can last for up to six months;
or
 - Twelve years or older, the order can last for up to 12 months.

HOW TO APPEAL OR CHANGE AN ORDER

- You may be able to appeal a custody order — that is, you can ask another judge to decide if the order is fair. If you want to appeal a decision, get legal advice immediately because you have only 30 days after a protection hearing to appeal an order. These time limits are very strict.
 - You can also apply to change an order if you make big changes in your life. (This is different from appealing an order.) For example, you may have had counselling that's helped you with an anger problem or an addiction, or you may be changing your housing or leaving an abusive relationship. If you have done something like that, you can ask to change an order any time after the judge makes it. You will need a lawyer's help.
 - A judge will consider your application and decide whether to make a new order or leave it the way it is.
- 

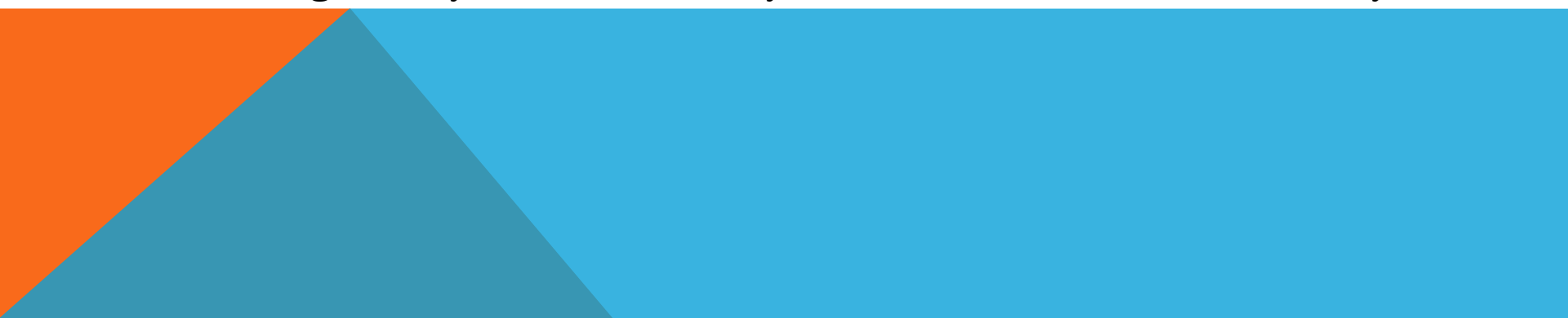
CONTINUING CUSTODY ORDER

In the rare case when there's a serious problem that can't be fixed within the time the court allows

- The judge might make a continuing custody order.
- This means your child will stay in the director's care (foster care) for an unknown length of time.
 - The ministry becomes the permanent guardian of your child. You lose all your guardianship rights.
 - Sometimes you can get an access order
- After there is a Continuing Custody Order in place, there may be a permanent transfer of custody of your child to another person.
 - This also means your child may be adopted.
 - You may want to request an open adoption where you can remain in contact with your child.

WHO CAN HELP?

You can get a free lawyer if your income is below a certain level, and:

- You believe the ministry is about to take your child away.
 - You're trying to work out an agreement with the ministry and you need advice from a lawyer about what to do.
 - You have worked out an agreement with the ministry and they want you to sign it.
 - The ministry plans to apply for a supervision order for your child.
 - The ministry has removed your child from your home.
 - You want to see your child, who is in foster care, more often.
 - Your circumstances have changed and you want to bring your child back home from permanent foster care.
 - The ministry has applied to give permanent custody of your child, who is in continuing custody, to someone who you don't believe should have custody.
- 

WHO CAN HELP?

If you are denied legal aid...

- and then are refused again after a review,
- and you want a lawyer but cannot afford one,
- and you have an upcoming court hearing and face complicated child protection issues (educational, knowledge and language barriers),
 - you can ask the judge to appoint a lawyer for you



WHO CAN HELP?

“Making a JG application”

- “JG” is the name of an important Canadian court case
- You can make the JG application no matter where you are in the court process
- Speak with family duty counsel
- Online guide by LSS
 - “How to Get a Court-Appointed Lawyer for Your Child Protection Case”
- Application for an Order plus Affidavit required.

OTHER RESOURCES

- Visit your local Legal Aid office
- Speak with duty counsel
- Read the *Parent's Guide to Child Protection Law in BC*
 - Available online on the LSS Website
- Get an advocate
 - Check advocacy centres, community centres, churches, or women's centres. Look for one who's knowledgeable about, and trained in, child protection.
 - Advocates can help parents understand information, look at options, develop plans, prepare documents, negotiate agreement
 - Advocates aren't lawyers. They can't give you legal advice. Even though an advocate can go to court with you to offer support, they can't be your legal representative.

CHILD PROTECTION LAW

WHAT PARENTS SHOULD KNOW

PRESENTER: KAREN TSE

ROCKIES LAW CORPORATION

Presentation materials are sourced from
Legal Services Society publications on Child Protection



June 2016



- How and why we developed it?
- Try out the pathways
- Look at the Dialogue Tool
- Highlight features

City of
NELSON
BRITISH COLUMBIA



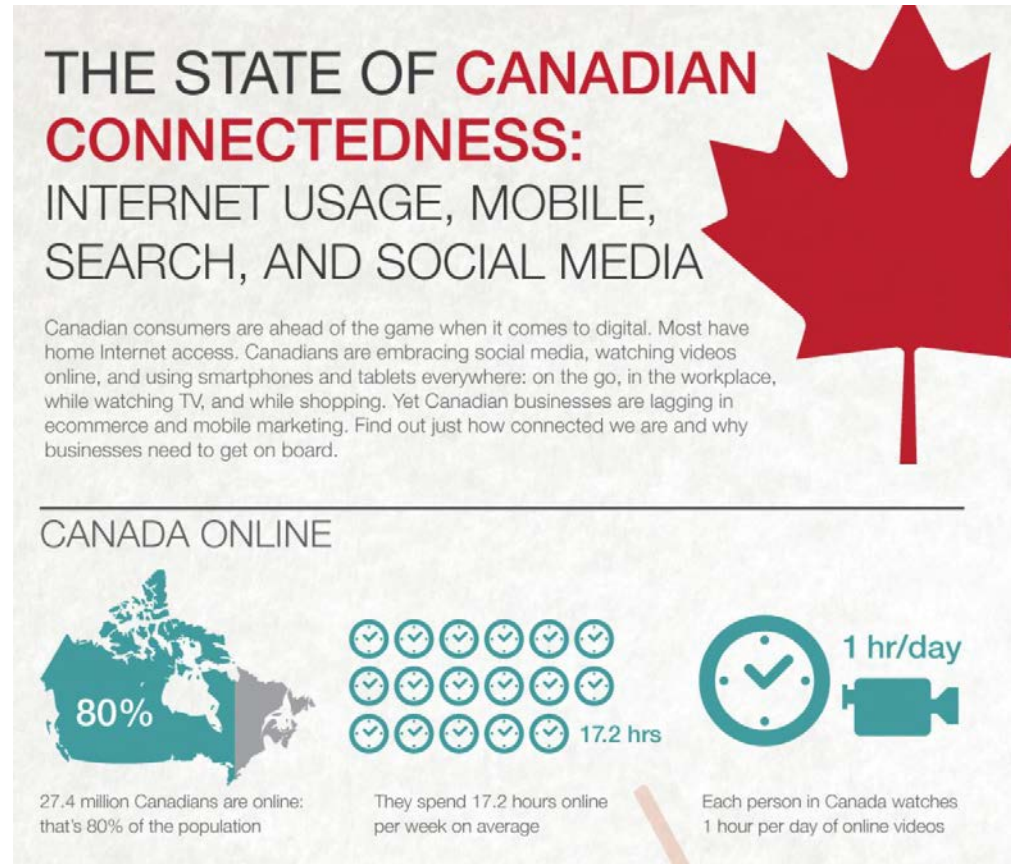


Q 1: What is the percentage of Canadian population -- you think are on the **Internet** every day?

1. Over 40%

2. Over 60%

3. Over 80%



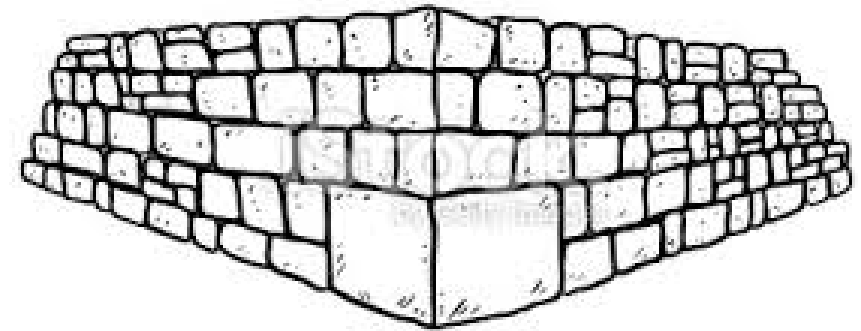
Q 2: Which **criteria** people want when go looking for information to help solve a legal problem?

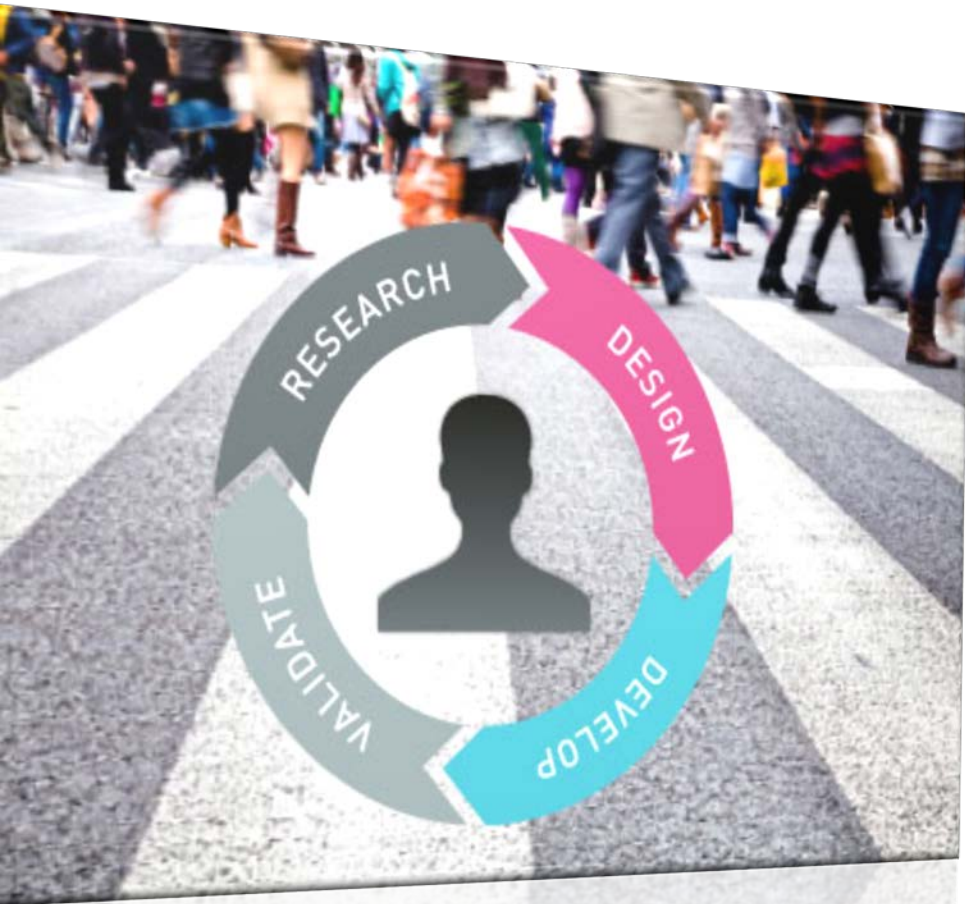
1. quick

2. reliable

3. easy

4. all of the above





- Interactive Q&A
- Info in small chunks
- User-friendly self-help tools
- Links to in-person services
- Highlight the value of professional assistance

Q 3: Based on the Civil Resolution Tribunal Survey 2015, how many % of our BC seniors, aged 74+, **go online daily?**

1. 69%

2. 39%

3. 19%



Make a
will



Personal
planning



MY
LAW
- BC -

Go-live on Feb 29, 2016 ... it's a leap year baby!



- Separation
- Family violence
- Mortgage debt
- Wills & personal planning



Lost in the legal maze?

Find your way with

MY
LAW
- BC -



I want to make sure my family is taken care of **once I'm gone.**



What happens if I can **no longer make decisions** on my own?



I've missed a couple of **mortgage payments.**

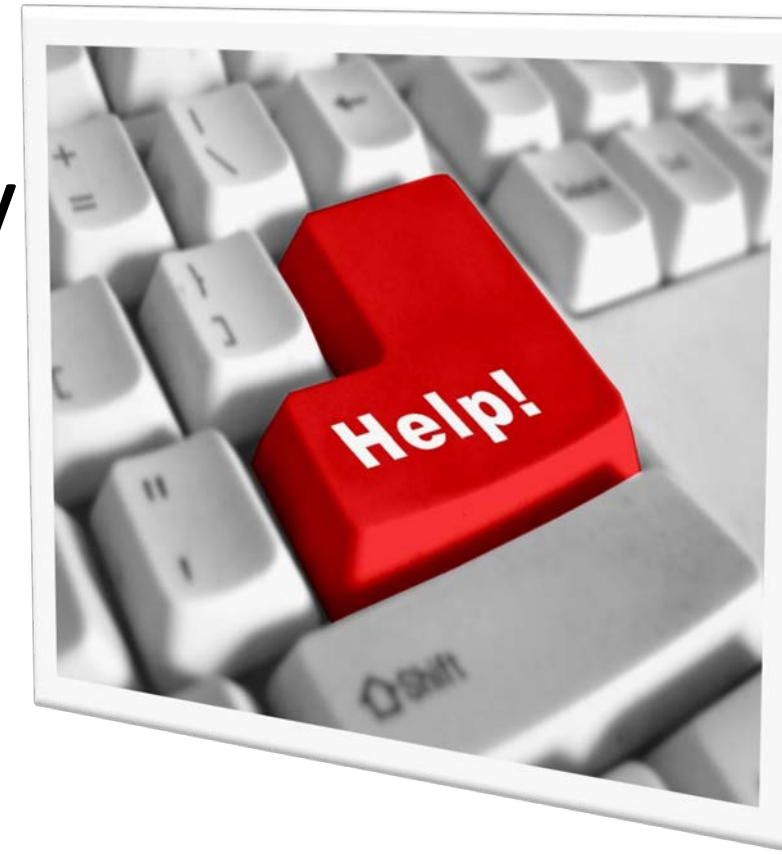


My partner and I are **separating.** How do we do





- Make choice from options
- An action plan as a takeaway
- Less time spent reading info



**Let's get
interactive!**



User story #1

A friend is thinking about separating from her partner who she has lived with for five years. She has two children, aged two and four.

- ✓ Both her and her partner work.
- ✓ They own their house together.
- ✓ They have a small mortgage, but no other debt.



User story #2

One of your client has been laid off his job in construction, but his company is going to hire him back once their workload pick up.

- ✓ He has a wife but no children.
- ✓ He worries about paying his mortgage.
- ✓ His wife has a job, but her income and his EI alone won't be enough to cover the mortgage payments.

How would you help your friend/client?

Go to mylawbc.com



In your group:

- 1) Discuss how you might use the MylawBC website to help a friend.
- 2) How would you use the MylawBC website together with other PLEI and legal resources to assist your clients?
- 3) How do you think MyLawBC might be improved to better help clients?

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Demo live!



Take a tour of our pathways ...



My problem. My solution.

Dialogue Tool

Work together to make an agreement

Select an option below.

Make a plan. Review your situation. Work on your agreement.

CANDICE



We negotiated a
separation agreement.

JASON

Dialogue Tool

- ✓ Password protected accounts
- ✓ **Draft separation agreement**
- ✓ Guide users work through issues
- ✓ **Suggest language**
- ✓ Comply with privacy laws
- ✓ **“Asynchronous”**
- ✓ Options & 3rd party support

intake

negotiate

document

Demo live!



Live demo



- ✓ Facts & files section
- ✓ Finish the negotiation
- ✓ Reach 100% agreement
- ✓ View
- ✓ Preview
- ✓ Download
- ✓ PDF



On the RH sidebar

- ✓ **Diagnosis tool**
- ✓ **Legal Information Toolkits**
- ✓ **Coping with Separation Handbook**
- ✓ **Negotiation toolkits**
- ✓ **Links to 3rd party tools**
- ✓ **PLEI factsheets**
- ✓ **Infographics**



My problem. My solution.

Dialogue Tool

Abuse & family violence

Make a plan to stay safer

Click a pathway to get started.

Find help to address your issues in 25 minutes.

Demo live!



- ✓ Customized safety plan
- ✓ Safety exit button



MY
LAW
- BC -

My problem. My solution.

Wills & personal planning

Plan for the future

Click a pathway to get started.

Get solutions for the future in 10 – 20 minutes.

Demo live!



✓ Worksheet

✓ Will

MY
LAW
– BC –

My problem. My solution.

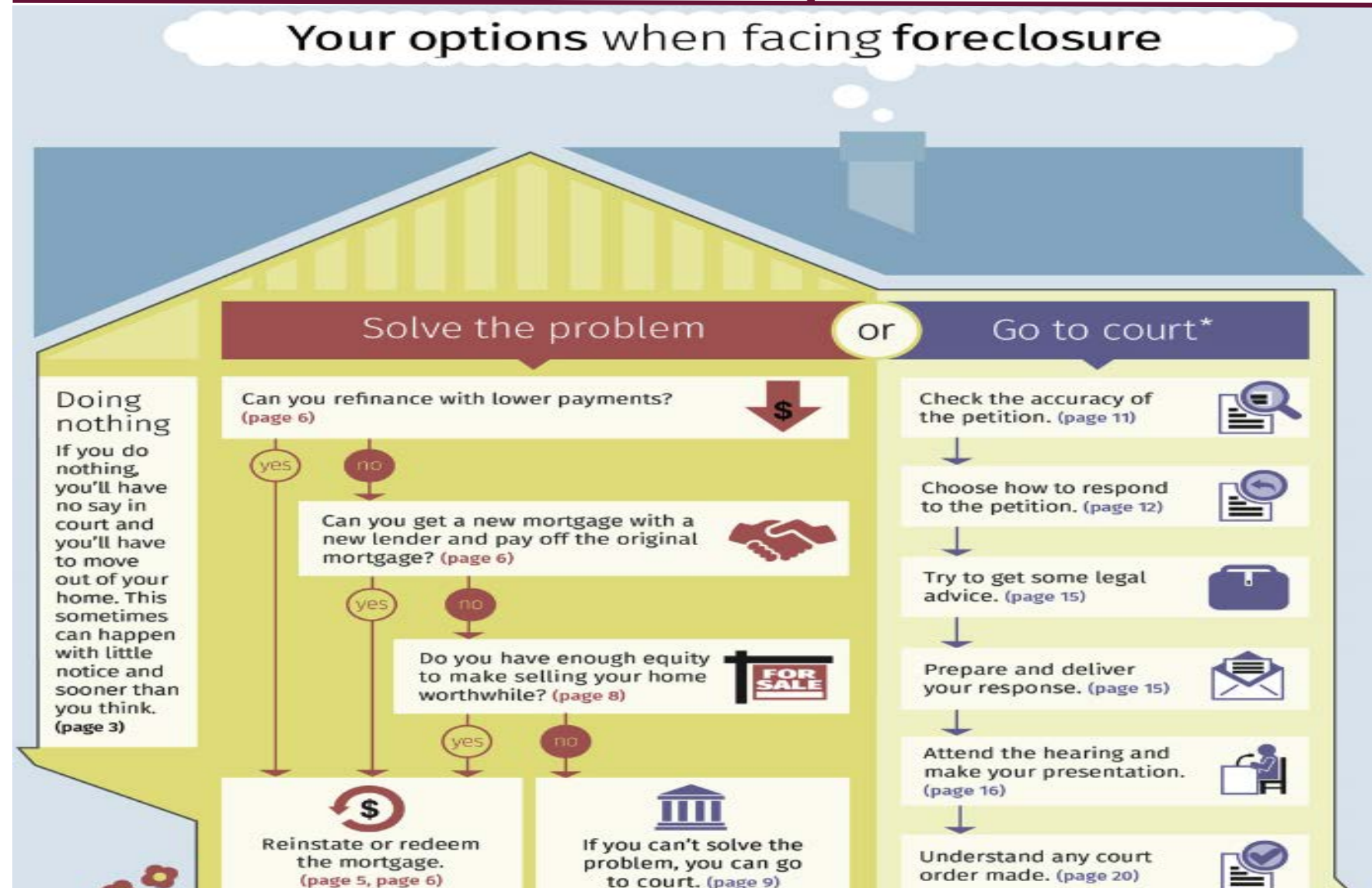
Missed mortgage payments

Find out if you can keep your home

Click a pathway to get started.

Find out what your options are in 10 – 20 minutes.

Overview of the court process



Demo wrap!





May 30, 2016

MyLawBC site stats (Feb 29-Jun 18)

- Sessions: 7,302
- Users: 4,540
- Guided pathways started: 3,962

- **Make a Will** pathway is by far the most popular.
 - ✓ with 1,432 people using it, about 1/3 of all pathway users

- **Make a Separation Plan** is the 2nd most popular
 - ✓ with 812 users

- **The Dialogue Tool** currently has 59 cases, and a total of 16 of those are finalized.

Sent: Thursday, June 16, 2016 11:45 AM
To: Lynn McBride <Lynn.McBride@lss.bc.ca>
Subject: MyLawBC

Hi Lynn,

I hope you are doing well. I just wanted to provide some feedback regarding the new site. I did my own will on it and I'm really **impressed**. Easy to use, easy to understand, great tool!

Thanks,

*Community Legal Advocacy Centre
Abbotsford Community Services
2420 Montrose Avenue
Abbotsford BC V2S 3S9*



Questions?



Thank you!

Candice Lee
Project Manager, MyLawBC
candice.lee@lss.bc.ca
604.601.6123

Wills, Estates and Succession Act

Presenter: **Karen Tse** – Rockies Law Corporation

These presentation materials are sourced and referenced from CLE and TLABC materials, online legal publications and Ministry publications. These materials are not meant to substitute legal advice. When in doubt, speak with a lawyer.

Wills, Estates and Succession Act

- * The new Wills, Estates and Succession Act (WESA) came into force on March 31, 2014
- * WESA streamlines administration of estates
- * Generally applies to a deceased's will or estate if they died on or after March 31, 2014.
 - * The *Estate Administration Act*, *Wills Act*, and other legislation replaced by WESA apply to the deceased's estates if they died before March 31.
- * If you apply for probate, regardless of the date of death, you should use the new forms (and the new rules apply).

What will this presentation cover?

- * This presentation will provide a broad overview of WESA
 - * Highlights include:
 - * New Survivorship Rules
 - * Effect of Marriage and Separation
 - * Intestate Distribution
 - * Curing Deficiencies and Rectification
- * WESA is a piece of detailed and complex legislation
 - * What we will not have time to cover:
 - * How to draft a will
 - * How to probate a will under the New Probate Rules
 - * Estate Administration
 - * How to make various applications ... all of these topics will require a workshop in and of itself!

New Survivorship Rules

- * Prior to WESA

- * Common accident - impossible to tell who died first:
 - * Younger person is deemed to have died after the older person.

- * Under WESA

- * Each person is deemed to have survived the other.
- * In the case of joint tenancy, asset deemed to be held instead as tenants in common and will not pass to the survivor.
- * If a person fails to survive the deceased by 5 days, deemed to have died before the deceased.

WESA - Who are Spouses?

- * Spouses

- * Both alive immediately before deceased's death and
 - * (a) were married to each other, or
 - * (b) lived in marriage-like relationship for at least 2 years

- * More than one spouse

- * e.g. deceased living with wife, but had been having an affair and living common-law with another too for at least two years immediately prior to date of death.
 - * In this case, there are two spouses: can share the portions if they can agree, or if they cannot agree, then as determined by the Court on Application.

Intestacy: Spouse – Old Act

- * Under **previous** legislation:
- * Spouse **no Children**
 - * Receives the entire estate
- * Spouse **with Children**
 - * First \$65,000 of estate, plus
 - * 1/2 of remainder if one child, or
 - * 1/3 remainder if more than one child
 - * Plus life interest in matrimonial home
 - * Plus furniture and household effects

Spousal Share under WESA

- * The same provisions apply if there is no children under WESA (all to spouse)
- * The distribution is somewhat greater if there is children of the deceased. The only difference is the amounts involved and how the spousal home is dealt with.

Leaving Spouse + Children

- * If there are children of the deceased and they are also the children of the spouse
 - * spouse → first \$300,000.00 of the Estate as **preferential share**.
- * Spouse **not** the parent of the descendants (e.g. step mom/dad)
 - * Spouse → reduced to \$150,000.00.
 - * **The balance is divided ½ to the spouse and ½ to the intestates' descendants.**
- * If the net value of the estate is **less than** the preferential share than the entire estate is to go to the spouse

Pre-WESA Intestate Distribution

- * Prior to WESA, intestacy was governed by the provisions of the *Estate Administration Act*.
- * The intestate distribution was based on consanguinity
- * Consanguinity
 - * Closeness in blood relation

WESA – Parentelic Distribution

- * **WESA: parentelic distribution**
- * What this means: not based on consanguinity
 - * now based on closeness to a parent rather than just closeness in blood relations.

Distribution Scheme

1. If there is a spouse and no descendants all to the spouse (s.20);
2. If no spouse, all to descendants per stirpes but not to great-nieces or great nephews;
 - * **Per Stirpes:** an estate is distributed *per stirpes* if each branch of the family is to receive an equal share of an estate.
 - * a. Under s. 8.1 descendants can include assisted births conceived after death so long as the surviving parent, has given notice to the personal representatives within 180 days from the date of death of an intention to use human reproductive material. The birth must occur within two years of the death and the child must live for at least 5 days.

Distribution Scheme

3. If there is no spouse of descendants than the estate would go to the parents;
4. If there are no parents than to the descendants of the parents per stirpes;
5. If no descendants of the parents than to the deceased's grandparents and if no grandparents to the descendants of the grandparents per stirpes;
6. If no grandparents or descendants of grandparents to the deceased's great grandparents or the descendants of the great – grandparents per stirpes;
7. If no great-grandparents or descendants of the great – grandparents, the Estate will escheat to the crown under the *Escheat Act*.

Example

- * Intestate leaves an uncle on one side of the family and a first cousin on the other
- * Old Act: uncle takes the whole estate since he is a relative of the 3rd degree and the cousin is of the 4th degree

Example

- * Under WESA – the parentelic system provides that the uncle and the 1st cousin take equally given they are both descendants of grandparents

Another Example

- * Uncle Bob survives on one side of the family and a niece, Nancy, survives on the other side of the family
 - * Table of Consanguinity provides that Bob and Nancy would take equally since they are both relatives of the 3rd degree
- * Under WESA
 - * Nancy would take ahead of Bob because the niece has a closer common ancestor (the intestate's parent) than the uncle and the intestate

Separation

- * Marriage and marriage-like relationships can terminate by either one or both parties
 - * Prior to WESA, the old act did not provide for termination of common-law relationship
- * Two persons cease being spouses of each other for the purposes of this Act if
 - * (a) in the case of a marriage, an event occurs that causes an interest in family property (see [Family Law Act](#)) to arise – e.g. separation, or
 - * (b) in the case of a marriage-like relationship, one or both persons terminate the relationship.
- * Spouses are not considered to have separated if, within one year after separation,
 - * (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
 - * (b) they continue to live together for one or more periods, totalling at least 90 days.

What happens after Separation

- * A gift in a will to a person who has subsequently ceased to be a spouse, or an appointment of that person as a Personal Representative (executor or trustee) is **revoked** and any gift treated as though the spouse had predeceased the will-maker (s.56(2)).
 - * Subject to contrary intention appearing in a will
- * Revocation continues notwithstanding subsequent reconciliation if separation longer than one year.

The Elderly and Separation

- * Examples of interesting scenarios:
 - * Grandfather decides to terminate the relationship and there are questions as to capacity and or undue influence by the adult children.
 - * What if grandmother was placed in a care facility due to health reasons but the adult children take the position that it was a termination of the marriage-like relationship?
- * Cases will be dealt with on a case by case basis.

Spousal Home

- * The spousal life interest in the matrimonial home is abolished
- * Deceased spouse is the sole owner of the home or owns an interest in the family home:
 - * Spouse has right to purchase the matrimonial home or elect that it be considered part of share of the estate.
- * Spouse must elect this option within 180 days from the grant of administration.
 - * Personal representative cannot dispose of the spousal home within 180 days from the date of the grant without the consent of the spouse unless debts exceed assets and mortgage would not suffice to pay debts.

Spousal Home Valuation

- * New procedure to determine the home value:
 - * If personal representative dispute spouse's valuation, must provide alternate value.
 - * If they cannot agree, apply to court to have determination.
 - * If spouse is personal representative, she must apply to court unless all descendants agree.

Retention of the Spousal Home

- * Surviving spouse can seek an order from the court that the spousal home be retained for the surviving spouse without the surviving spouse purchasing
- * Under the New Probate Rules:
 - * surviving spouse may make an application to have the court exercise its discretion in determining if the spousal home should be retained.

Household Furnishings

- * Spouse entitled to the household furnishings, which have been defined as personal property “usually associated with the enjoyment by the spouses of the spousal home”.
- * Usually, unlikely to have issue with the household furnishings.
- * However, in the situation of a blended family, dispute may arise over items such as heirlooms, or rare coin, stamp or wine collections if items were only enjoyed by the deceased.

Occupancy Costs

- * Spouse who occupies the spousal home obliged to pay for the occupancy costs pending the purchase of the spousal home being dealt with. The surviving spouse **must pay** from the date of death:
 1. insurance against damage, destruction and public liability;
 2. taxes against the spousal home from the date of death of the deceased person to the date of the purchase of the spousal home;
 3. all reasonable and necessary expenses to maintain and repair the spousal home;
 4. rate and charges for electricity, gas, fuel, oil and water; and
 5. mortgage payments.

Wills

- * Do existing wills need to be rewritten?
 - * WESA does not invalidate any wills that were written before it came into effect.
 - * However, the Act affects all wills no matter when they were written.
- * Already have a will?
 - * May wish to discuss with lawyer to ensure wishes are upheld in light of changes to how wills are interpreted.

Deceased Person's Last Wishes

- * Courts have more latitude to ensure last wishes are respected.
- * Testamentary intent
 - * Possible for a document which is not duly signed and executed to supersede an older Will.
- * Courts have power to declare that a document which does not meet the formality requirements of a Will to be effective.

Curing Deficiencies

- * S. 58 of WESA
 - * Court empowered to order that a record, document, or writing be effective despite deficiencies in execution, attestation, or other aspects of compliance with the Act.

Record, document or writing that may be cured

- * “Record” includes data that:
 - * is recorded or stored electronically;
 - * can be read by a person; and
 - * is capable of reproduction in a visible form
- * Electronic data, provided it can be read by humans in visual form

Curing Requirements

- * Court may use curative power if the record, document or writing represents:
 - * testamentary intention
 - * intention to revoke, alter or revive a will
 - * testamentary disposition
 - * intention to revoke, alter or revive a testamentary disposition contained in a document other than a will.

Curing Requirements

- * No express witness or signature requirement
- * **Finality** – draft may not qualify
- * **Degree of connection**
- * Represents deceased's testamentary intentions
- * **Authenticity** – lawyer's notes did not qualify, but in notes on a will in deceased's handwriting did

What this means for Will-Makers

- * **Mark** as authentic and final the operative documents
- * Record and **preserve** all interim communications with will maker until final documents are executed, then **destroy** obsolete records
 - * E-mails
 - * Instructions, accountant's plans, memos
 - * Draft documents
- * Will-maker could **sign** instructions/letters/drafts to confirm intention that those are provisional will

What this means for Nominees and Personal Representatives

- * Will-maker's mental incapacity?
 - * “Nominee” (attorney/committee) should search for, review and preserve records
 - * Avoid loss of documents
- * Will-maker dies?
 - * Personal representative must urgently and diligently ascertain all records
 - * Preserve records to avoid unintentional destruction or failure to follow last wishes

Where to look for items?

- * Search will-maker's residence, office, safety deposit box, computers, cellular phone
- * Speak with family members, friends, lawyer, accountant, notary, accountant, financial advisor, insurance agent, charities
 - * May need a court application to gain access
- * Probate applicant must swear or affirm to **diligent search in each place** that could be reasonably considered to be a likely place

Rectification

- * Fixing Errors
- * There will be additional powers to “fix” a Will that has errors, including
 - * power to the court to rectify a Will after a grant of probate has been issued.
- * S. 59 expands court’s ability to rectify a will to coincide with will-maker’s intent

The Test

- * What did the will-maker intend regarding the terms in question?
 - * Is the will expressed in a way that fails to carry out that intention?
 - * Is the will so expressed because of an error of a kind that may be rectified under the statute?

What errors are rectifiable?

- * Accidental slip or omission: s. 59(1)(a)
- * Misunderstanding of the will-maker's instructions: s. 59(1)(b)
- * Failure to carry out the will-maker's instructions: s. 59(1)(c)

Accidental slip or omission: s. 59(1)(a)

- * Inadvertent inclusion or omission by anyone involved in generating will:
 - * will-maker
 - * drafter
 - * transcriber or assistant to drafter
 - * E.g. draft writes *per stirpes* but writes after that the names of every alive children. What happens to the kids of the one deceased child?

Misunderstanding of will instruction

- * Error of will drafter
 - * Not cases of misunderstanding by will-maker of effect of language used
- * Example
 - * Written as “vineyard”
 - * Vineyard includes fields, a bottling plant and a store
 - * Gift only meant to include only the fields

Extrinsic Evidence

- * WESA s.4 – Extrinsic Evidence
 - * Admissible if will provision is meaningless or ambiguous-for “construction”
- * Extrinsic evidence of intent is admissible to prove rectifiable error present
 - * Statements of the will-maker
 - * Will instructions and notes
 - * Draft wills and changes

Witnesses

- * Previously, if a witness as to the will is a beneficiary or the spouse of a beneficiary, the gift to that person is void.
- * WESA: gift to the witness is still considered void, but may be saved by the Court on application.

Marriage & Wills

- * Marriage will no longer revoke a prior Will.
- * Previously, a will was revoked if someone married:
 - * Many unaware that marriage revokes a will;
 - * Surprised – died without revision? Last wishes not necessarily carried out.
- * However, a will revoked by marriage under the old act is not revived by WESA, even if the person who made the will died after March 31, 2014.

Age

- * Anyone over the age of 16 shall be able to make a Will.
- * Previously, age requirement is 19, with an exception to those who are and have been married before age 19.

Undue Influence

- * Challenging a Will based upon Undue Influence
 - * Onus shifted from the opposing party having to prove undue influence directly, to the beneficiary (e.g. a caregiver) who is claiming the Will is valid, to prove that undue influence not exerted.

Gifts and Loans During Life Time

- * Gifts given during lifetime, are they deducted from gifts under will?
- * WESA: no more common-law presumption that a gift made during a will-maker's lifetime to a child is an advance of that child's inheritance.
 - * Gift in the will survives by Will's terms.
- * WESA: no more presumption that legacies in a will are revoked if the will-maker made a lifetime gift in the same amount as the legacy
- * Also, no more presumption that a debt owed by the will-maker is satisfied by an equal legacy to a creditor.
- * If these are to be otherwise accounted for, important to specifically provide for this in estate plan.

What are some indicators that I should review my will?

- * There are many reasons why you may wish to sit down with a lawyer to speak about your will. Some of these are:
 - * You got married after making a will
 - * You have made gifts similar to those mentioned in your will
 - * A gift in the will is subject to a security interest (such as a boat with loan payments)
 - * You have given your child some money that you think should now be deducted from child's share of estate
 - * You want to pay a debt by making a gift to the debtor in your will

Wills, Estates and Succession Act

Presenter: **Karen Tse** – Rockies Law Corporation

These presentation materials are sourced and referenced from CLE and TLABC materials, online legal publications and Ministry publications. These materials are not meant to substitute legal advice. When in doubt, speak with a lawyer.

Working with LSS Intake



June 2016

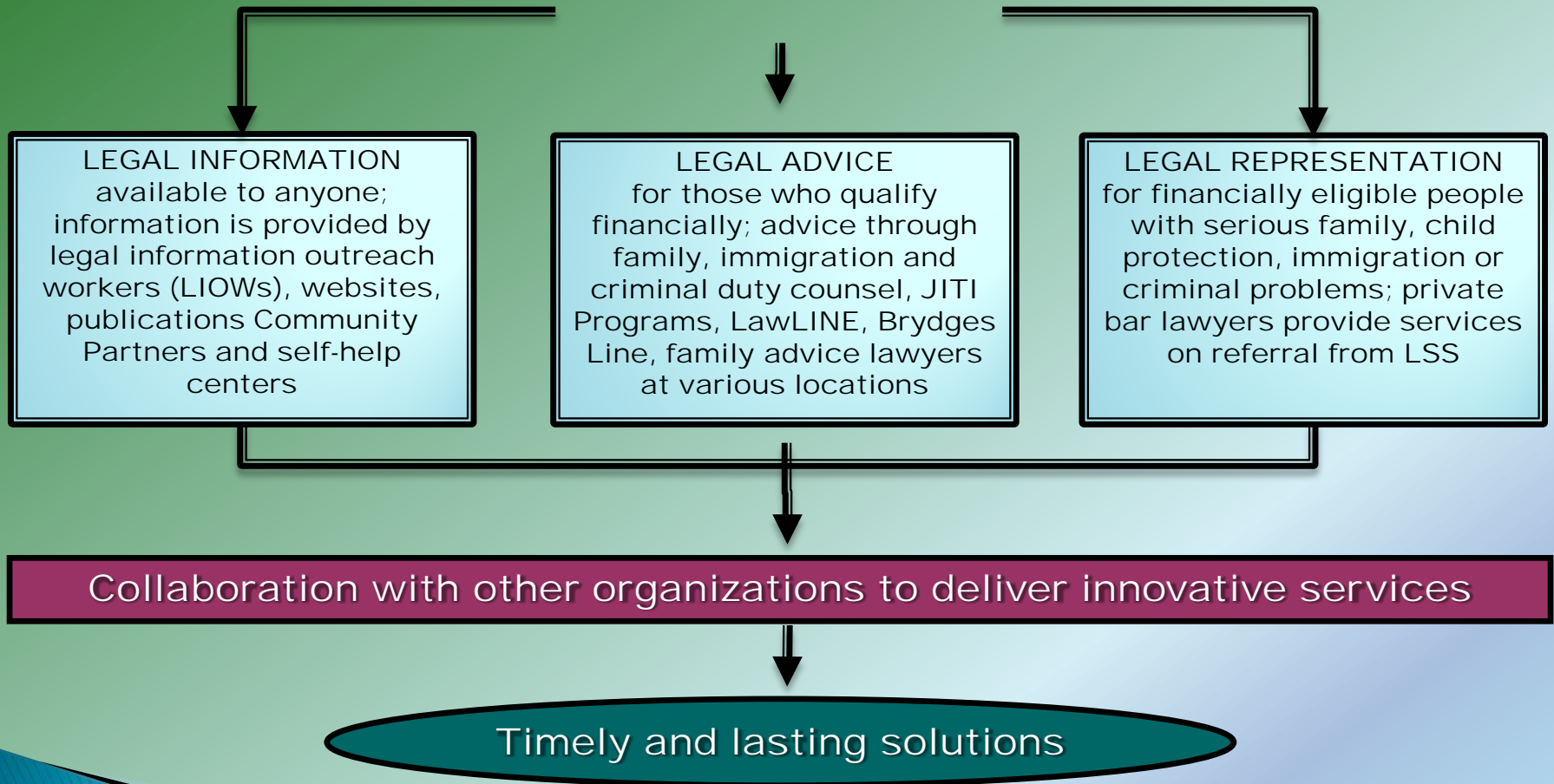
Sherilyn, Provincial Supervisor, Legal Aid Applications

Our Clients



Services Overview

Legal Aid



Legal Information

Legal Information Outreach Worker



Community Partners

Community partners are available in 27 communities around the province.

Clients can:

- get free legal information;
- call Legal Aid;
- find nearest Legal Aid office;
- get legal help online; and
- connect with people who can help.



Nelson Community Partner

Nelson CARES
(The Advocacy Centre)

521 Vernon Street
Nelson, BC V1L 4E9

Phone: 250-352-5777

Fax: 250-352-5723

Toll-free: 1-877-352-5777



Trail Community Partner

Trail Family & Individual
Resource Centre Society
(FAIR)

2079 Columbia Avenue
Trail, BC V1R 1K7

Phone: 250-364-2326 (ext. 234)

Fax: 250-364-1255



Cranbrook Community Partner

Community Connections
Society of Southeast BC

209 - 16th Avenue North
Cranbrook, BC V1C 5S8

Phone: 250-426-2976

Fax: 250-426-2984

Toll-free: 1-877-298-2211



Grand Forks Community Partner

Boundary Women's
Coalition (services for
women and men)

PO Box 181
Grand Forks, BC V0H 1H0

Phone: 250-442-2267

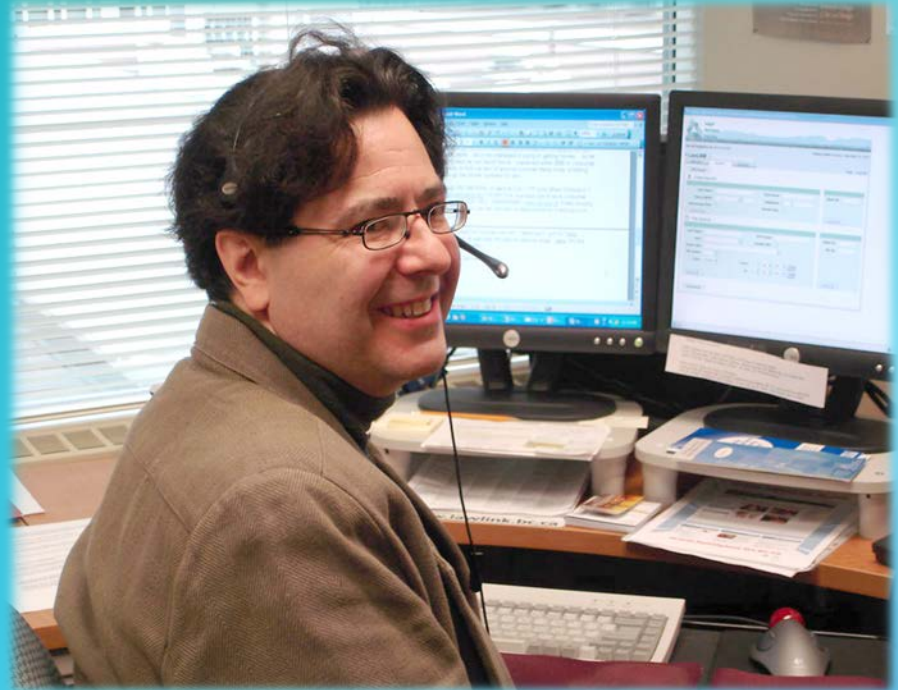
Toll-free: 1-877-442-5355



Legal Advice



Duty Counsel



Family LawLINE

Duty Counsel

Duty Counsel provides legal advice in the following areas of law:

- Immigration Law (if in detention)
- Family law
- Criminal



Justice Innovation Projects

- Expanded Family Law Line
- Family Mediation
- Parent Legal Centre (Vancouver)
- Expanded Family Duty Counsel (Victoria)
- Expanded Criminal Duty Counsel (Out Of Custody -Port Coquitlam)



Family LawLINE (Enhancement)

- Brief next-step telephone advice for people representing themselves
- Can set up phone appointments
- Help with preparation and review of legal documents, and coaching
- Up to 6 hours of help from the same lawyer for each current legal matter



FAMILY MEDIATION PROGRAM

- Service offered by LSS and Mediate BC
- Designed to assist clients achieve an early resolution of family disputes that may include property division, debt and/or support issues
- Up to 6 hours of paid family mediation services



Applying For Legal Aid

Call LSS Provincial Call Centre at 604-408-2172 in Greater Vancouver or 1-866-577-2525 (no charge)

Come into one of our Legal Aid offices, their contact information is available on our website
www.legalaid.bc.ca



Clients applying for immigration matters can call the LSS Immigration Line at 604-601-6076 or 1-888-601-6076 (no charge)

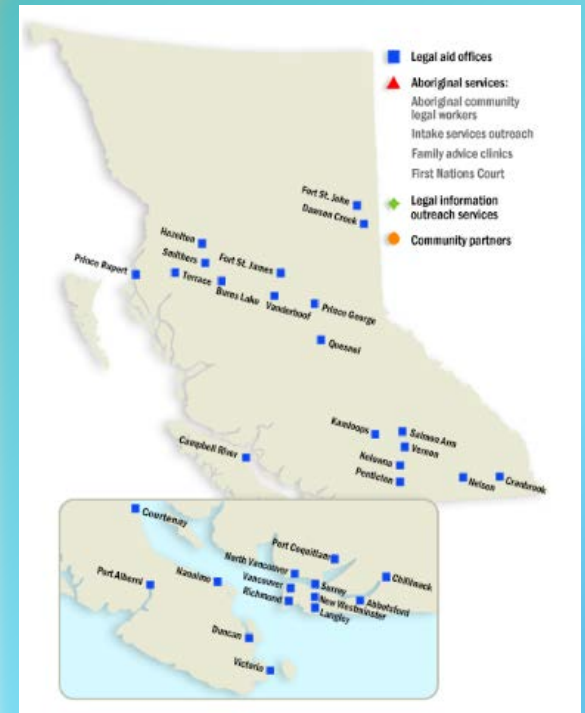
Trail Local Agent

William Westcott
William Westcott & Company

1402 Bay Avenue
Trail, BC V1R 4B1

Phone: 250-368-9171
Fax: 250-368-3369
Toll-free: 1-866-368-9171

Hours: Mon and Wed: 9:30 AM – 3:30 PM



Nelson Local Agent

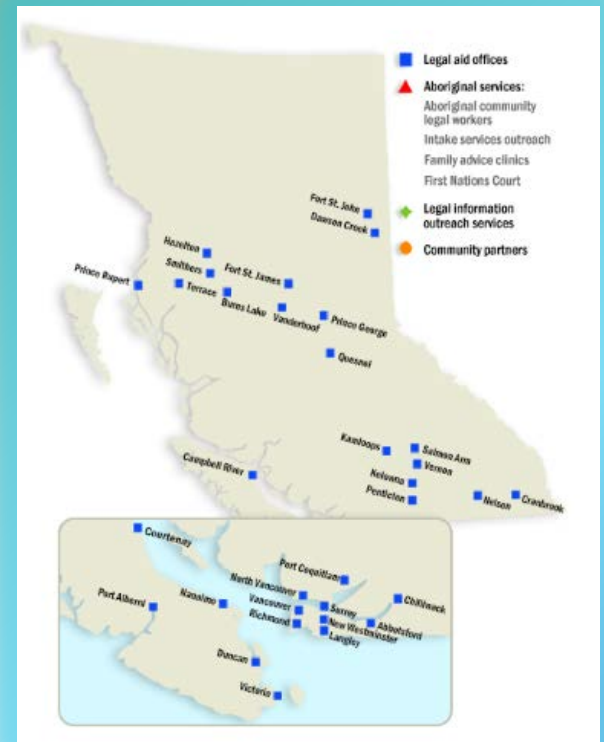
Nelson Courthouse

320 Ward Street
Nelson, BC V1L 1S6

Phone: 250-368-9171

Toll-free: 1-866-368-9171

Hours: Fri: 10:00 AM – 4:00 PM



Cranbrook Local Agent

Community Connections Society of Southeast BC

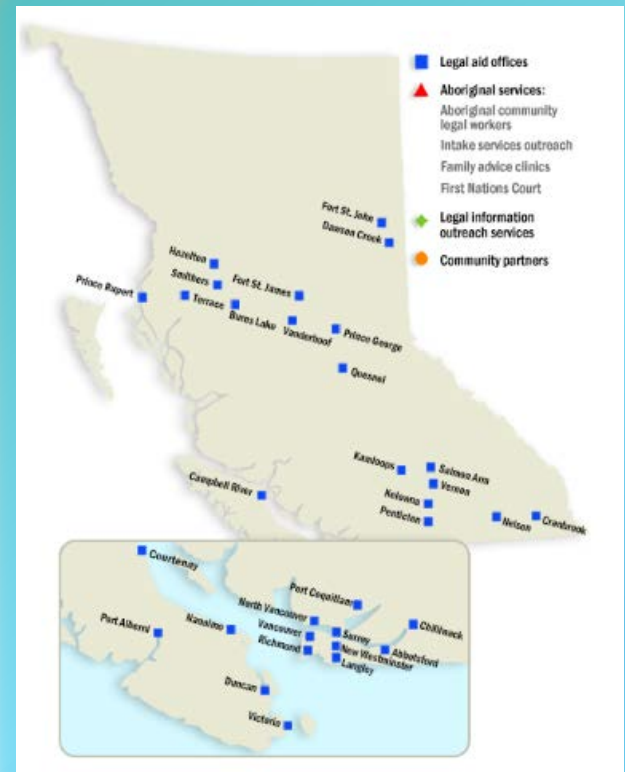
209 - 16 Avenue North
Cranbrook, BC V1C 5S8

Phone: 250-368-9171

Fax: 250-426-2978

Toll-free: 1-866-368-9171

Hours: Mon: 10:00 AM – 4:00 PM



Who Qualifies for Legal Aid?

A client qualifies for legal aid when:

- The legal problem is covered by LSS; and
- The client meets LSS financial guidelines



What Legal Problems Are Eligible For Coverage?

Criminal – Where charges are serious and there is a likelihood of jail



Family Law - Serious family situations regarding parenting (guardianship, parenting arrangements or custody/access), protection orders, child support and more depending on the issues. The issues need to be addressed immediately to ensure the safety of the children and/or the client.



Child Removal - Where the Ministry of Children and Family Development or a Designated Agency has removed a child or where there is a risk or threat of a child being removed. This could also include custody and/or access issues arising from a child in care.



Reciprocals - Where the client's legal matter may be in another province. This generally encompasses family legal aid problems where the other party resides in another province or the client resides in another province. However, on occasion criminal and immigration cases have gone through the reciprocals process as well.



Immigration - Where the client may wish to claim refugee status or where the client faces an immigration proceeding that may result in their removal from Canada.



Financial Eligibility Representation Income chart

Household Size

Monthly Net Income

1	\$1,520
2	\$2,120
3	\$2,730
4	\$3,340
5	\$3,490
6	\$4,550
7 or more	\$5,160

Am I
eligible?



Financial Eligibility

LEGAL ADVICE GUIDELINES

Household Size

Monthly Net Income

1 - 4

\$3,340

5

\$3,950

6

\$4,580

7 or more

\$5,180



Financial Eligibility

Personal Property (All case types)

Household Size

Exemption

1

\$2,000

2

\$4,000

3

\$4,500

4

\$5,000

5

\$5,500

6 or more

\$6,000



FINANCIAL DISCRETIONARY COVERAGE

Legal Representation – Criminal, Family, CFCSA, Immigration, and Appeal Cases

- If an applicant is over the financial eligibility guidelines, by approximately \$100 – \$200 on income or \$500 on assets, and the matter is a serious and complex case it can be sent for discretionary coverage review



Requesting A Review of A Denial

A client can request a review of a denial for legal aid

- This request must be in writing
- The client should state why they disagree with the denial and explain why they believe they should get legal aid
- The client should include any supporting documents

Coverage and financial eligibility reviews must be submitted within 30 days of the denial of legal aid to:

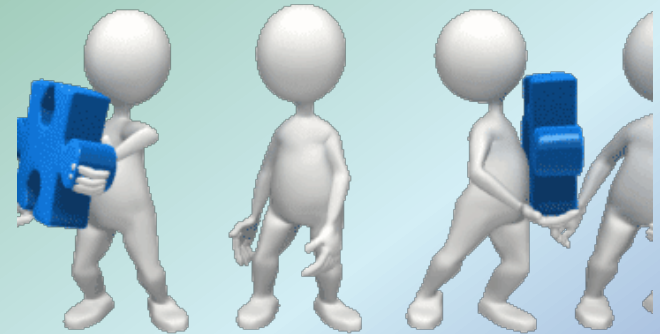
Provincial Supervisor
Vancouver Regional Centre
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787



Working Together

You can help your clients:

- Understand the intake process
- Prepare for the interview
- Organize documentation
- Make sure they follow up and provide intake with requested information



Presenters:

Sherilyn, Provincial Supervisor, Legal
Aid Applications

Phone: 604-601-6093

Fax: 604-682-0787

E-Mail: sherilyn.vancouver@lss.bc.ca



PUBLIC LEGAL EDUCATION & INFORMATION (PLEI)



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

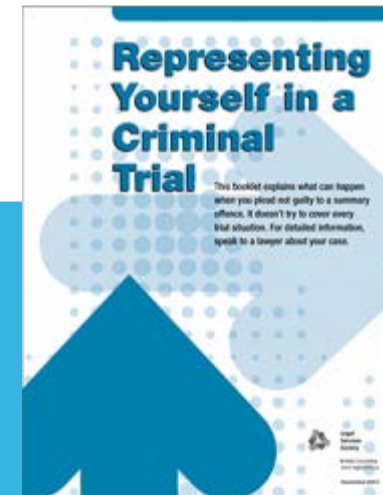
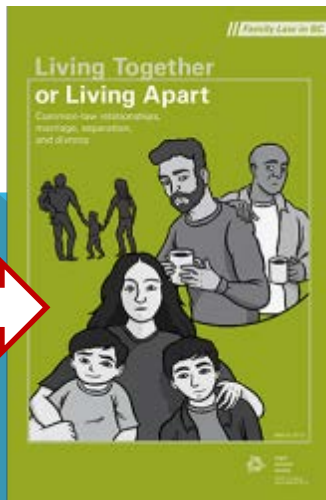


Candice Lee
candice.lee@lss.bc.ca
604-601-6123

The LSS Game Show

Q 1: WHICH PUBLICATION HAD THE MOST ORDERS IN NELSON LAST YEAR?

- A. Living Together or Living Apart
- B. Sponsorship Breakdown
- C. For Your Protection
- D. Representing Yourself in a Criminal Trial



Q 2: HOW MANY PUBLICATIONS WERE ORDERED BY NELSON LAST YEAR?

A. 1,865

B. 2,646

C. 2,875

D. 3,451



Q 3: WHICH OF THESE ADDRESSES IS WRONG?

A. aboriginal.legalaid.bc.ca

B. familylaw.lss.bc.ca

C. mylaw.bc.ca

D. factum.mylawbc.com



mylaw.bc.com

PUBLIC LEGAL EDUCATION & INFORMATION

- How can legal information help you help your clients?
- Free print publications
- Websites
 - ❖ Videos, social media, and online pathways and tools

HOW CAN YOU HELP YOUR CLIENTS?

- recognize **legal nature** of problems
- find ways to stay **out of court**
- know how they can **resolve problems early** —
on their own or by seeking assistance



Credit: www.emsleys.co.uk

HOW CAN YOU HELP YOUR CLIENTS?

➤ find options for help

- ❖ apply for legal aid
- ❖ access information, representation & advice services
- ❖ provide referrals to advocates and other intermediaries



Credit: www.emsleys.co.uk

Providing legal information
for British Columbians



FREE PUBLICATIONS

AUDIENCE & ACCESSIBILITY

LSS Publication Readability

1

How much legal understanding is needed?

Level 1 — None needed.

No legal understanding required. Outline or “first step” information, written in clear language for those with no previous knowledge or experience with the law.

2

Level 2 — Some helpful.

Some understanding helpful but not essential. Offers all basic information on a topic, meant for those who are reasonably comfortable reading and who may have a general sense of some legal concepts.

3

Level 3 — Some needed.

Basic familiarity assumed. Detailed material, written primarily as a reference for the advocate/intermediary audience, although accessible to members of the public with adequate literacy skills.

www.mylawbc.com/pubs

FAMILY LAW

Level 2

Level 1



multilingual



multilingual



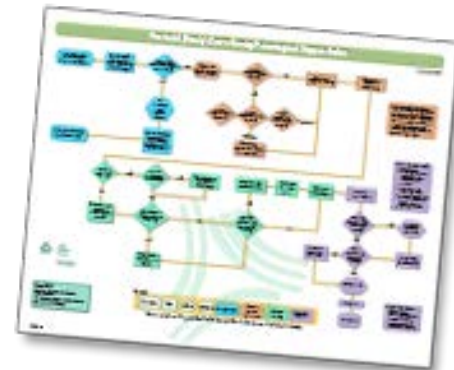
new

online



multilingual

Level 3



FAMILY VIOLENCE

Level 2

Level 1



new



online



multilingual

under revision

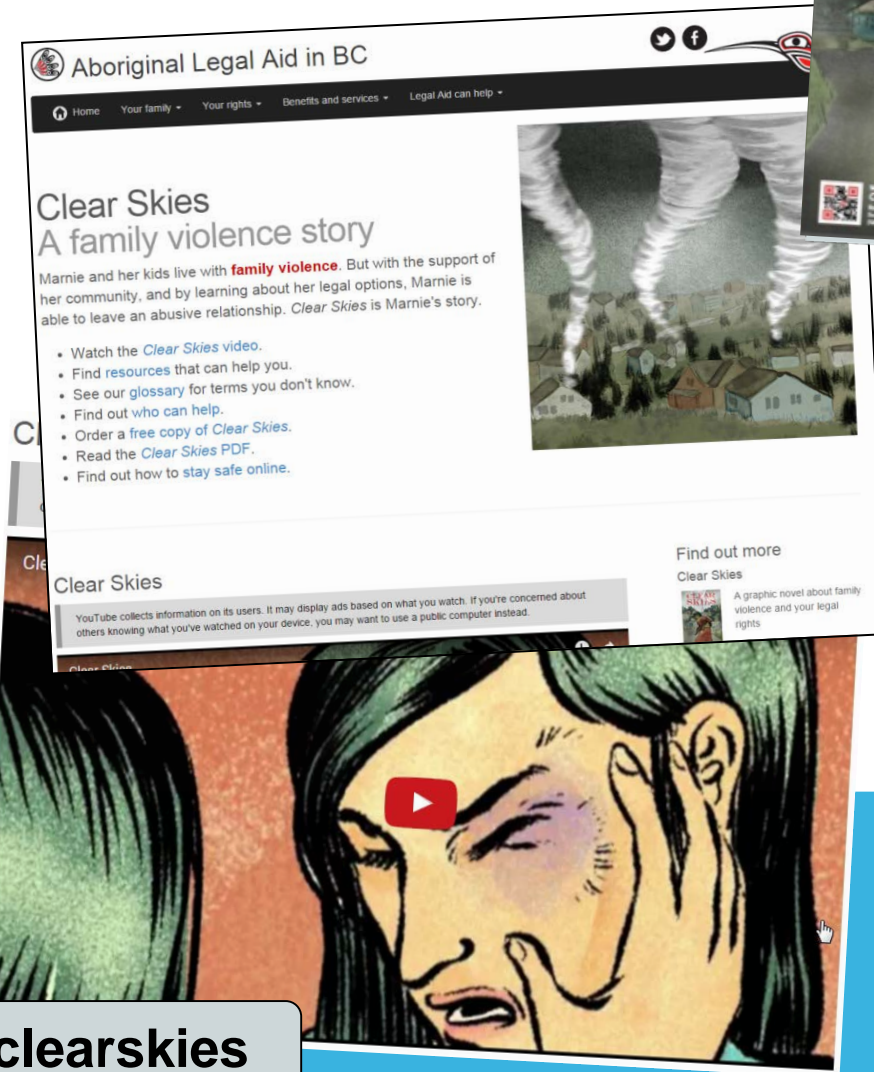


multilingual



award winning

CLEAR SKIES GRAPHIC NOVEL



lawbc.help/clearskies

CHILD PROTECTION

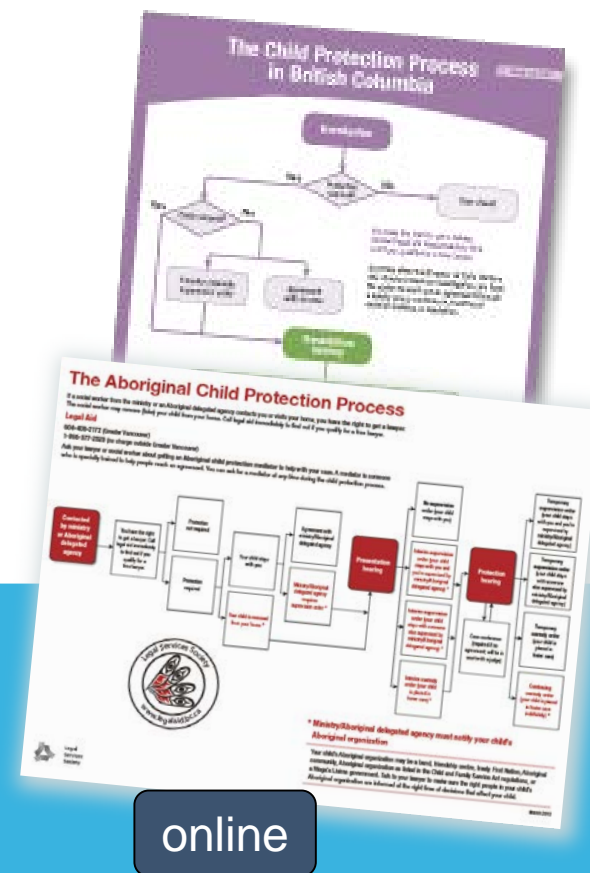
Level 1



Level 2



Level 3



CRIMINAL

Level 1



revised

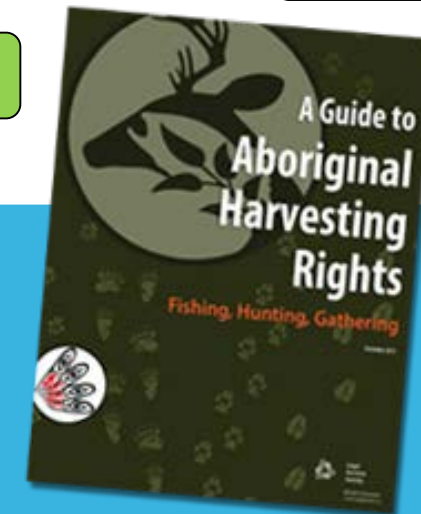
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revised

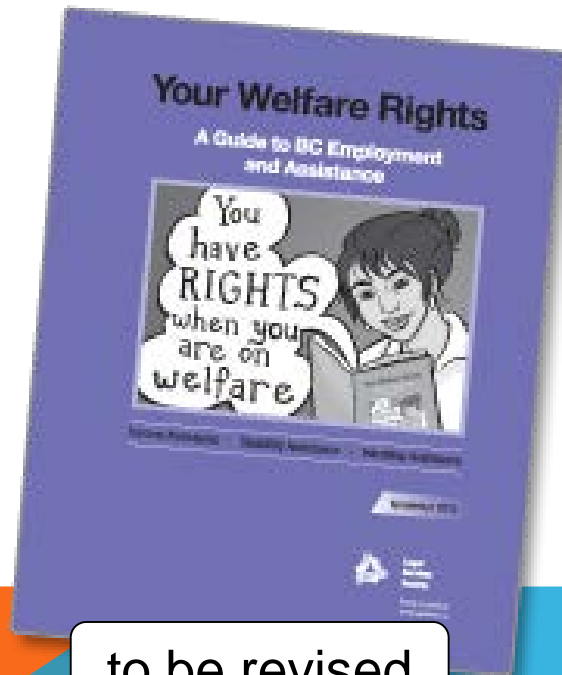


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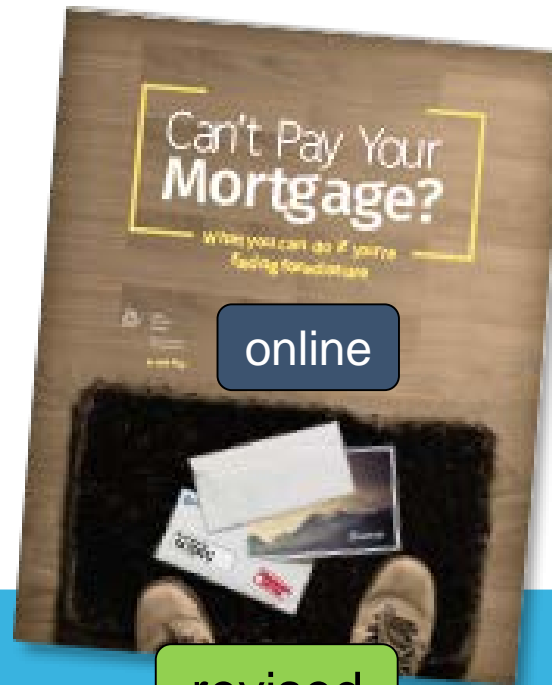


CIVIL

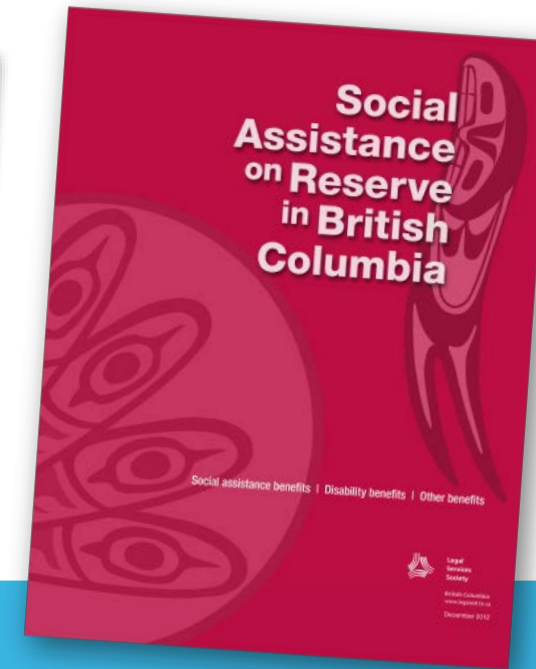
Level 2



to be revised



revised



IMMIGRATION & REFUGEE

Level 1



multilingual

Level 2



revised

new multilingual

UPCOMING PUBLICATIONS

Child protection

- *Emily's Choice*: Child protection graphic novel
- Child protection series redevelopment

Cyberbullying

- *Is that Legal?* (with West Coast LEAF)

Family violence

- *Leaving an Abusive Partner* (with YWCA)

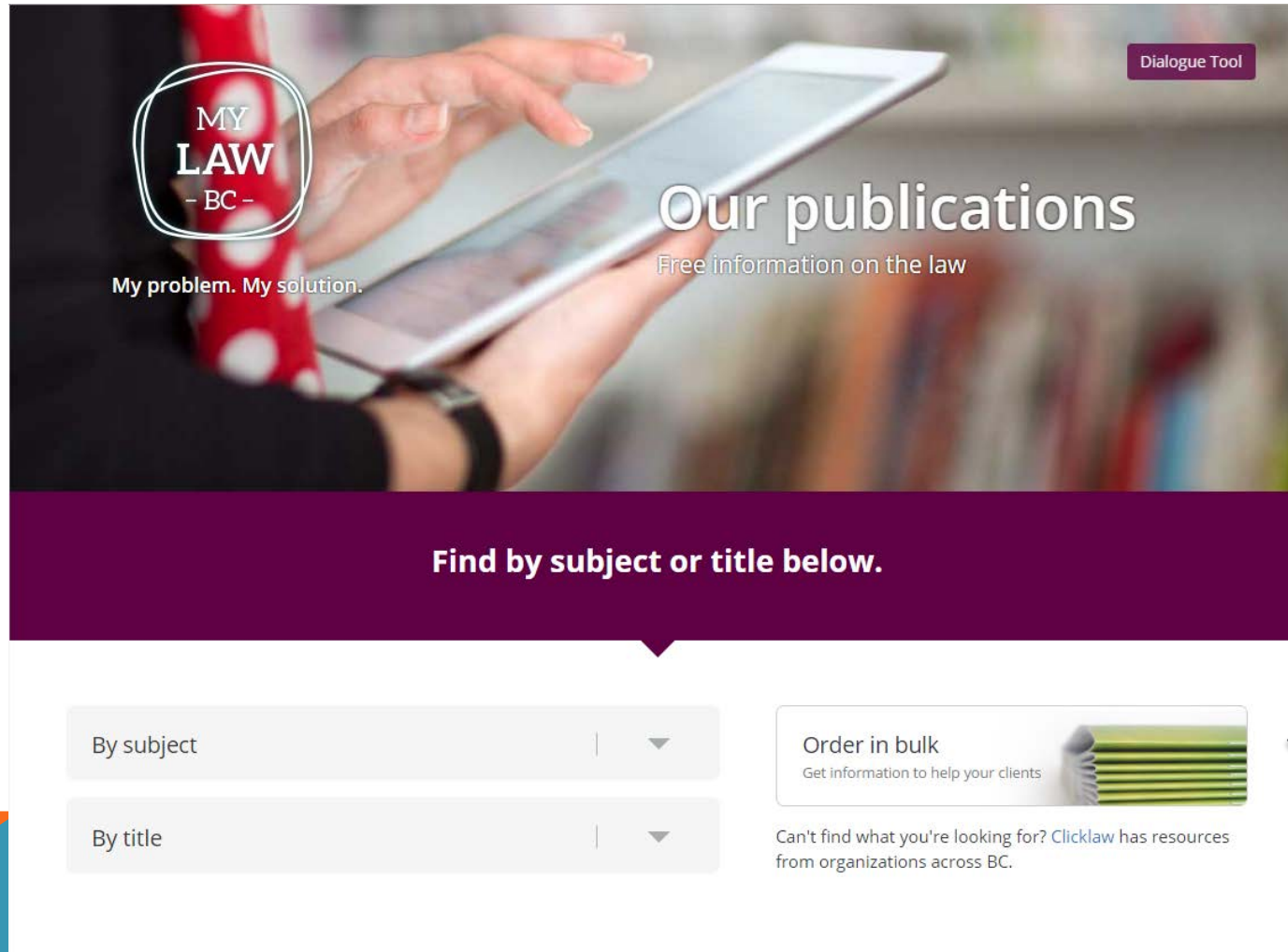
Welfare/Social assistance

- *Your Welfare Rights* redesign

Aboriginal

- Matrimonial Property on Reserve quick reference tool
- Gladue rights series

How to order **free** publications



The screenshot shows the 'MY LAW - BC -' website. At the top, there's a header with the logo 'MY LAW - BC -' and the tagline 'My problem. My solution.' Below this, a large banner reads 'Our publications' with the subtitle 'Free information on the law'. A purple bar below the banner says 'Find by subject or title below.' Underneath, there are two search boxes: 'By subject' and 'By title', both with dropdown arrows. To the right of these boxes is a section titled 'Order in bulk' with the text 'Get information to help your clients' and an image of a stack of papers. Below this, it says 'Can't find what you're looking for? Clicklaw has resources from organizations across BC.' An orange arrow points to the 'Order in bulk' section.

MY LAW
- BC -

My problem. My solution.

Our publications
Free information on the law

Dialogue Tool

Find by subject or title below.

By subject | ▼

By title | ▼

Order in bulk
Get information to help your clients

Can't find what you're looking for? Clicklaw has resources from organizations across BC.

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Abuse & family violence, Families & children, Gays, lesbians, trans, & bisexuals, Legal system & courts, Women

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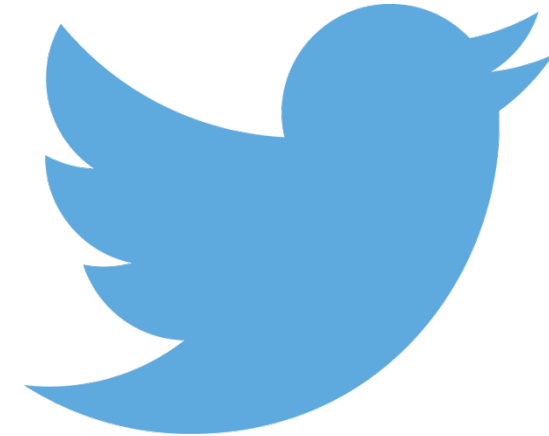
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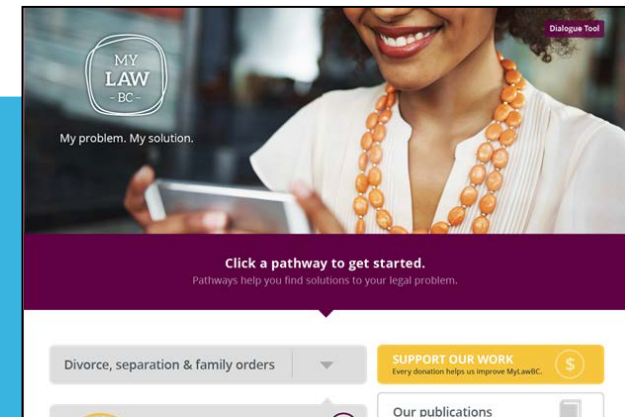
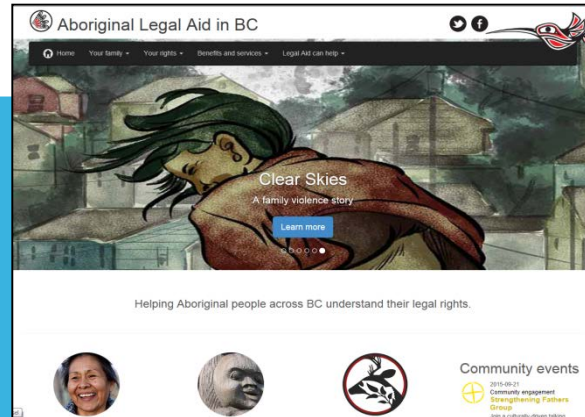
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Clear Skies

A family violence story

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Helping Aboriginal people across BC understand their legal rights.



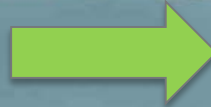
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- Your family and the law
- Abuse and family violence
- Your home on reserve

- The ministry and your kids
- Your family's rights
- Aboriginal delegated agencies
- Mediation
- Understanding court orders and hearings
- The Extended Family Program

Your home on reserve

The laws have changed. If you break up with your partner or your partner dies, you may be able to stay in your home.

[Learn more](#)

Helping Aboriginal people across BC understand their legal rights.



Is this site for you?

This website is for anyone who identifies themselves as **Aboriginal**.

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Do you know about First Nations Court?

There are now four First Nations Courts in BC. You may be able to have your



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Community events



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Conference
**Accommodating FASD:
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For front-line and primary care professionals working in Vancouver's Downtown Eastside

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Vancouver Aboriginal Friendship Centre, 1607 East Hastings Street
Vancouver, BC

Your family's rights

The ministry and your kids

If a social worker from the [Ministry of Children and Family Development](#) or an [Aboriginal delegated agency](#) contacts you or visits your home, this means that they think your child might be at risk and are looking into it. This is part of the **child protection process**. (This is also called an **investigation**.) An **investigation** is when a social worker checks if your child is safe. If your child is placed in foster care, it may result in the social worker **taking your child from your home**.

You, your family, and your community have rights. The law says the ministry should respect your child's family ties and **Aboriginal** identity.



What is child protection?

BC law says that if the ministry gets a report about your child, the ministry (or an [Aboriginal delegated agency](#)) must look into it. If the ministry believes your child is at risk, they must:

- go to court to get an **order that supervises your child's care**, or
- if necessary, take your child from your home.

This process is called **child protection**.

Child protection and Aboriginal families

BC law also says that:

- Aboriginal cultural ties are very important to the well-being of Aboriginal children.

Find out more

Understanding Aboriginal Child Protection/Removal Matters

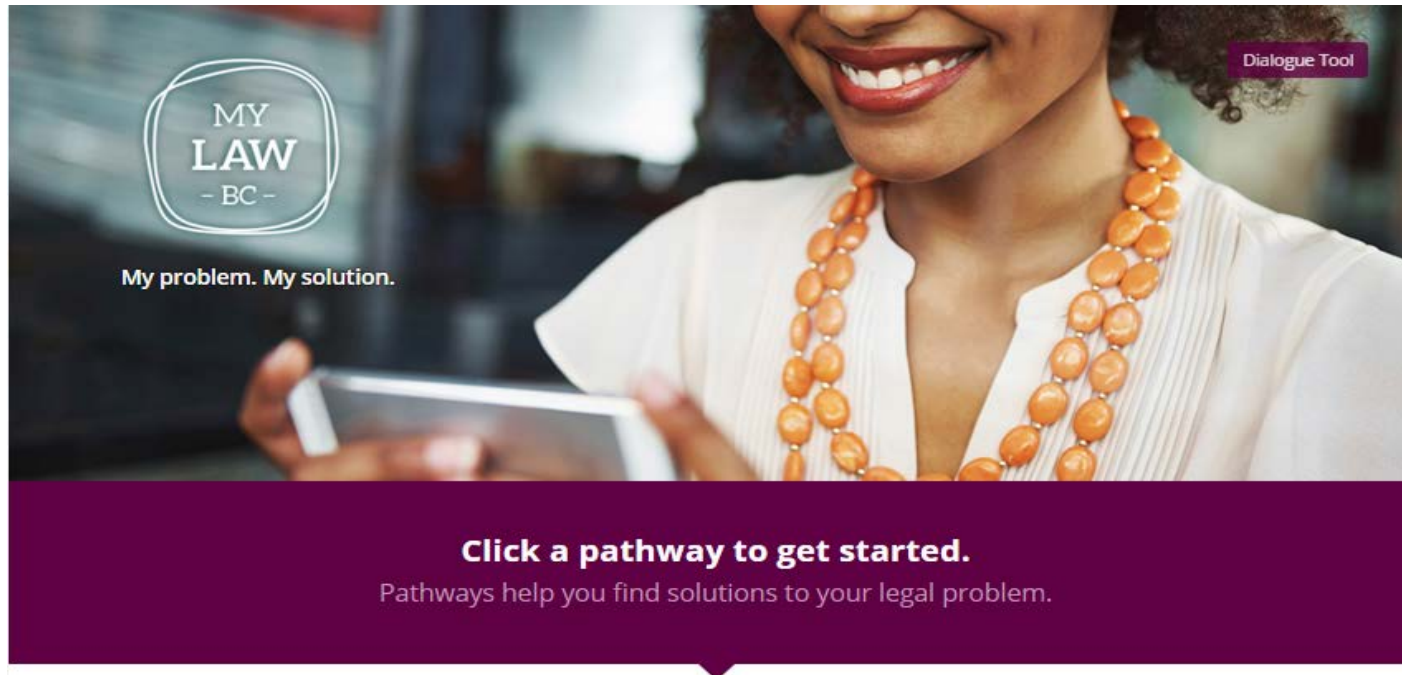


Explains what Aboriginal parents can do during a child protection investigation

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Candice Lee

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IMMIGRATION: Navigating a Complex System

Keeping Women Safe

KAMALJIT LEHAL OF LEHAL LAW CORPORATION

June 30, 2016

Leaving An Abusive Relationship

- Women who want to leave an abusive relationship must be prepared to embark through a complicated set of systems:
 - Criminal justice system
 - Victim services
 - Family court system
 - Ministry of Children and Families

Leaving an Abusive Relationship with Immigration Issues Involved

- Women who leave an abusive relationship and have immigration issues enter an even more complex system. A system that for the most part acts within its own silo.
- There are a number of scenarios that can arise in the immigration context that we need to be vigilant about in order to help women navigate the system while keeping them safe.

Some Common Scenarios Facing Women in the Immigration System

- Sponsorship Debt
- Conditional Permanent Residence
- Out of Status Women

Sponsorship Debt

- Arises from the Sponsorship Undertaking
 - A contractual obligation to repay any monies paid, in the form of social assistance, to the sponsored person.
 - The collection “may” be held off “if the default is the result of abuse” but resumed once “circumstances have changed.”
- For spouses the undertaking is 3 years.
- For family class the undertaking is now 20 years

Sponsorship Debt

- Women choose to remain in the abusive relationship rather than incur a sponsorship debt.
- The abusive partner may deliberately incur the debt.

Sponsorship Debt

- How can we help women navigate this issue?
- Advocate the positive statements in MAVI:
 - While the Undertaking creates a statutory debt the province does have the discretion, short of a write off, in how it collects the monies.
 - i.e. \$20.00 a month on a large debt.
 - Emphasize that it is not in the public interest to collect from the abused women, in fact, it is re-victimization.

Conditional Permanent Resident

- Spouses or partners being sponsored to reside in Canada, who are in a relationship of 2 years or less and who have no children with their sponsor at the time of the sponsorship application will be subject to a conditional permanent residence status.
- The sponsored spouse must live together with the sponsor in a “legitimate relationship” from the day they receive conditional permanent residence. The condition ends after the two year period.

Conditional Permanent Residence

- This category arose out concerns with fraudulent marriages, commonly referred to as “passport marriages,” where a foreign national marries a Canadian sponsor and then leaves the Sponsor as soon as or shortly after they arrive in Canada.
- The previous government wanted to ensure that only those in genuine relationships were allowed in Canada.
- The current government has indicated it will remove this category.

Conditional Permanent Residence

- What happens to a woman who is sponsored by her spouse in Canada and after she arrives is subjected to abuse?
- Is she required to stay in the relationship for 2 years?
- How do you help such a woman navigate the system?

Conditional Permanent Residence

- The woman is not required to remain in the relationship.
- A woman facing abuse can request an “exception” to this condition. The CIC Backgrounder specifically states that such a woman can come forward without having to worry about enforcement action.

Conditional Permanent Residence

- Category of who can claim exception is broad:
 - The sponsored spouse;
 - Children; parents; grandparents; other relatives residing in the household
- Category of who is a potential perpetrator is broad:
 - The sponsor;
 - Children; parents; grandparents; other relatives residing in the household

Conditional Permanent Residence

- Women can call the Call Centre at 1-888-242-2100 to request an “exception.”
- She will be asked to provide a statement and documents establishing the abuse.
- Is this call in system the most effective process?

Conditional Permanent Residence

- What kind of considerations are made when a request for an exception is made?
- According to the CIC Backgrounder it can consist of:
 - Physical abuse, including assault and forcible confinement;
 - Sexual abuse, including sexual contact without consent;
 - Psychological abuse, including threats and intimidation;

Conditional Permanent Residence

- Financial abuse, including fraud and extortion;
- Neglect: the failure to provide the necessities of life, such as food, clothing, medical care or shelter and any other omission that results in a risk of serious harm.

Conditional Permanent Residence

- What considerations are CIC staff to make when assessing for an exception:
 - The CIC backgrounder states that it is understood that there may be many reasons why a victim may not report abuse to authorities, such as:
 - Feeling alone and isolated;
 - Being provided false information about their status in Canada;
 - Language barriers; and
 - Religious or cultural constraints.
- It states that CIC officers are being provided with information to assist them in processing requests for exceptions.

Conditional Permanent Residence

- OB 480 provides operational guidance to CIC and CBSA staff regarding the Conditional Permanent Resident category.
- If you are assisting a woman in obtaining an exception refer to these guidelines to help them navigate this process. Make your submissions as comprehensive as possible.
 - Time lines vary.

Conditional Permanent Residence

- What happens if exception is not granted?
 - Is she expected to return to live with the Sponsor?
 - Is the removals process engaged?
- Hopefully this category will be removed fairly soon, but no indication that when it is removed that it will apply retroactively.

Out of Status Women

- This includes women who may, initially, have had status when they entered in Canada and, subsequently, lost it OR they may have entered the Canada without status to begin with.
- If these women end up in a relationship with a Canadian while out of status they face the very real risk removal.
- What happens to these women when that relationship turns abusive, what are their options, how do we help them navigate through the system(s)?

Out of Status Women

- Focus groups in BC identified cases of out of status women who called the police to report abuse only to be referred to CBSA who then proceeded with their removals.
- The fact that these women had children and may have been dealing with custody issues did not prevent their removal.
- It has been the practice of CBSA in some regions to enter transition homes to look for out of status women in order to effect removals.

Out of Status Women

- Helping women, therefore, who are out of status is extremely complex and can have significant consequences for the women.
- As a result this is one category of women who are the most likely to stay in their abusive relationship.

Out of Status Women

- A common control tactic used by the spouse of the out of status woman is to claim he has a spousal application underway but delay completion of the paperwork, or if the paperwork is submitted to threaten withdrawing it if the spouse decides to leave or report the abuse.
- Withdrawal of a spousal sponsorship can occur any time up until a decision is made.

Out of Status Women

- Again, how do we help out of status women navigate through a system which is not viewing her through a safety lens?
- Really the only option is an H & C application.
 - Legal Aid does cover these applications.
 - Unfortunately, these applications can take a long time to complete, sometimes years to process.
 - During this time the woman has no status (unless she is able to apply for and receive a Temporary Resident Permit (“TRP) and limited access to benefits, especially, if there are no children.

Out of Status Women

- The evidence to support an H & C application can consist of:
 - Police incident reports;
 - Charges or convictions;
 - Reports from shelters for abused women;
 - Medical reports;
- Include affidavits if other evidence is lacking.

Out of Status Women

- Other factors considered in an H & C application are:
 - The hardship to the woman if she had to leave Canada;
 - The customs and culture of the woman's country of origin;
 - Whether she is pregnant or has children in Canada;
 - The degree of establishment in Canada.
- Be as comprehensive as you can in the H & C application.

Zero Tolerance for Law Against **Barbaric** Cultural Practices

- This law has was intended to ban people in polygamous from immigrating to Canada and criminally sanction those involved in forced marriages.
- The Shafia killings are referenced as the basis for the need for this law.

Law Against **Barbaric** Cultural Practices

- The alleged mandate, according to a press release, is that the government wants to protect women and girls who seek to escape polygamous or forced marriages.
 - This law is intended to eliminate early and forced marriages from Canada's immigration system and the country as a whole.

Law Against Barbaric Cultural Practices

- What are the implications of this proposed law?
- How would one help an abused woman navigate through this process?

RECENT PROJECTS

- Forced Marriage project funded by the Department of Justice
- MOSAIC and EVA BC collaborated and a resource guide was created.
- Go to www.endforcedmarriages.ca for the project website.

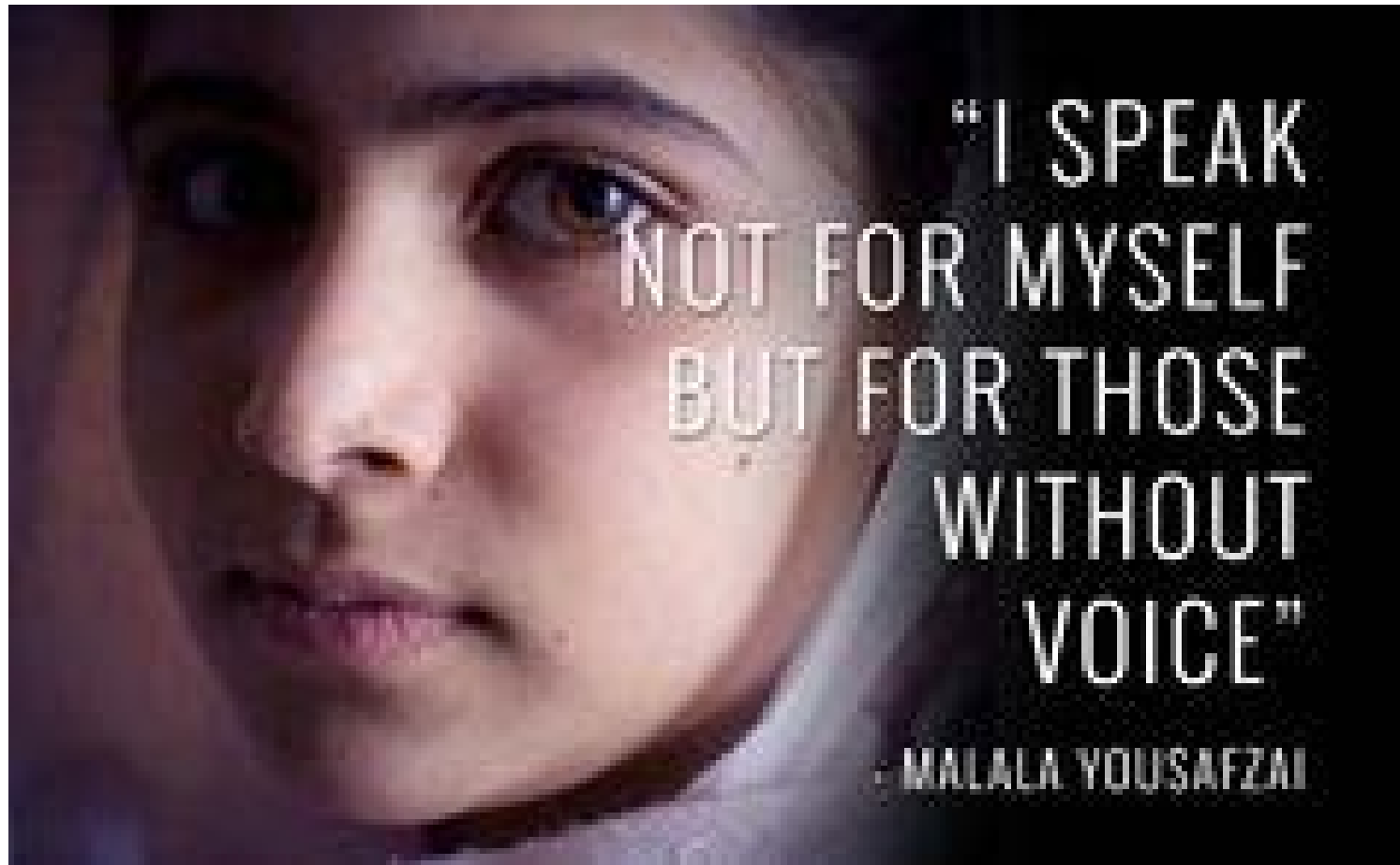
RECENT PROJECTS

- **Building Supports Project** – Through the FREDA Centre for Research on Violence Against Women and Children.
- The project is examining the barriers to housing access for immigrant and refugee women leaving domestic violence. In collaboration with BC Non-Profit Housing Association (BCNPHA) and BC Society of Transition Houses (BCSTH).

SUMMARY

- Women in abusive relationships who are also involved with immigration issues have a complex system to navigate.
- If we understand the system and what they are likely to face we are in a better position to help them navigate it and keep them safe.

THE END



"I SPEAK
NOT FOR MYSELF
BUT FOR THOSE
WITHOUT
VOICE"

MALALA YOUSAFZAI

IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



June 2016



ABORIGINAL PEOPLES



4.5% OF BC'S POPULATION

LEGACY OF COLONIALIST HISTORY



- ❖ RACIAL DISCRIMINATION IN GOVERNMENT POLICIES & PRACTICES
- ❖ INDIAN RESIDENTIAL SCHOOL GENERATIONAL IMPACT
- ❖ ABORIGINAL CHILD APPREHENSION
- ❖ ILLITERACY
- ❖ POVERTY
- ❖ FASD
- ❖ SEXUAL ABUSE

ABORIGINAL PEOPLE IN PRISONS

22 % of the
prison population

17% community supervision*



**A Profile of B.C. Corrections, Ministry of Public Safety and Solicitor General,
January 2010*

ABORIGINAL CHILDREN



**Over 50% of the children in care
in BC are Aboriginal**



Manager of Aboriginal Services for Legal Services Society



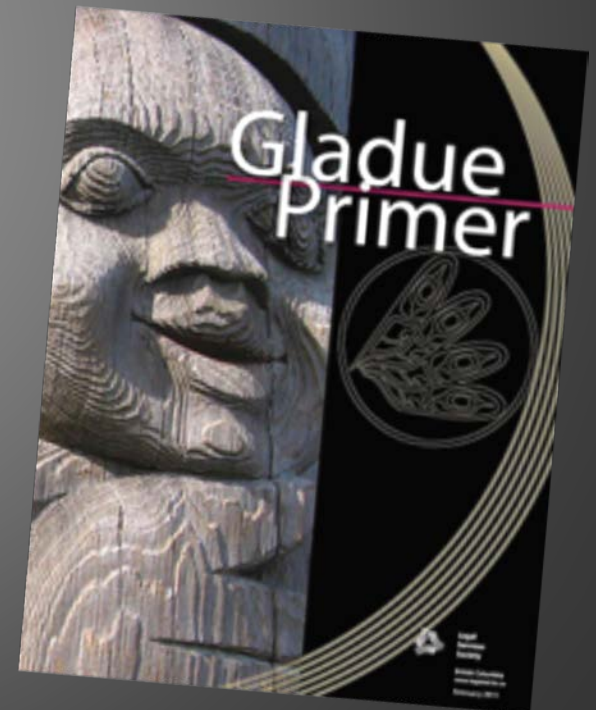
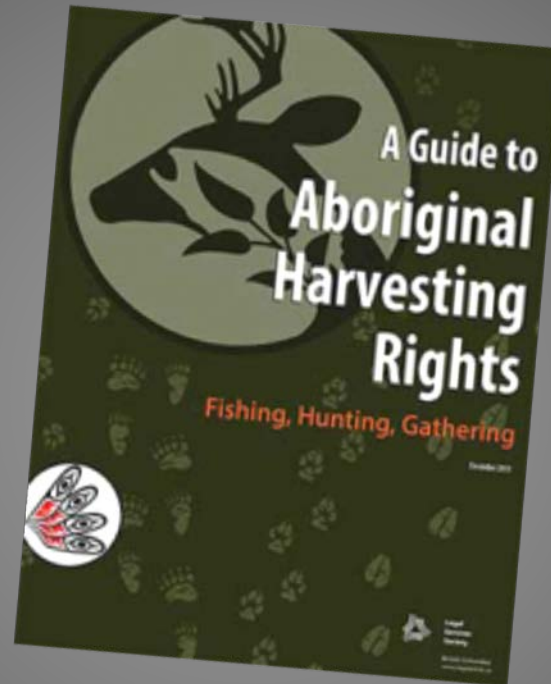
Mandate is to improve access to justice
for Aboriginal peoples

“ABORIGINAL” defined inclusively

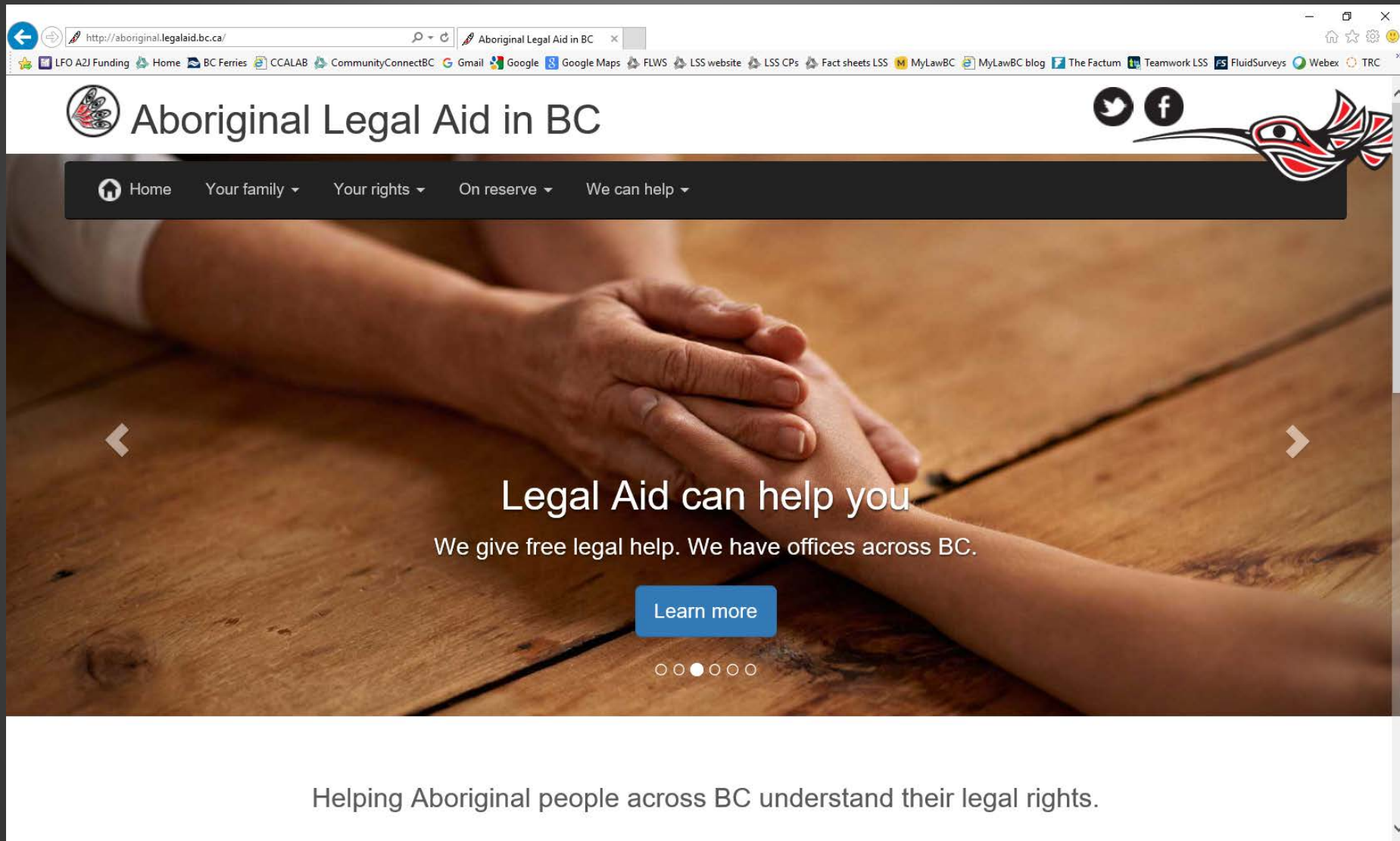


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Instructs judges at sentencing to recognize the over-representation of Aboriginal people in prison, to take notice of the unique circumstances of Aboriginal offenders, and to consider all available sanctions...

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paint a picture of the defendant
for the court

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Reconciliation



Final Comment from the TRC

Together, Canadians must do more than just talk about reconciliation; we must learn how to practise reconciliation in our everyday lives — within ourselves and our families, and in our communities, governments, places of worship, schools, and workplaces. To do so constructively, Canadians must remain committed to the ongoing work of establishing and maintaining respectful relationships.

IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



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