



June 15, 2006

## Family Law Representation & Advice Services

### Legal representation

#### *Emergency referrals*

Legal representation in family law is available for financially eligible people who —

- are victims of domestic violence or at risk of violence and likely need a physical restraining order or other legal assistance to protect their physical safety;
- have a child or children who are at risk and need a supervised access order or restraining order to protect them;
- need a change to a current custody or access order to ensure their and/or their child(ren)'s safety;
- need a non-removal order to prevent the other parent from permanently moving their child(ren) out of the province (the threat must be real, likely to happen soon, and involve a permanent change of residence);
- have custody of a child who has been kidnapped by the person who has access;
- are responding to a maintenance enforcement committal proceeding and face a real likelihood of going to jail soon;
- face a serious denial of access to their child or children by the other party; or
- are unable to represent themselves due to a mental disability and the matter must be resolved to avoid further harm.

An emergency referral may include several actions under the Family Relations Act or the Divorce Act, such as obtaining custody, access, and maintenance orders; orders preventing the other parent from selling or disposing of family assets; or restraining orders. Emergency referrals usually do not provide enough hours for the lawyer to go to trial, unless the client is eligible for extended services (see page 2).

#### *Coverage exceptions*

Coverage may be approved by the LSS applications and eligibility manager for cases involving special circumstances such as:

- There are references in court documents to sexual, physical, or emotional abuse.
- The case has merit and the applicant is unable to represent him or herself due to a serious physical condition or physical disability.
- The applicant has received prior legal aid referrals in relation to the same children or parties, and it is uncertain whether the circumstances warrant a new referral.
- The opposing party is using repeated and unfounded court actions to harass the applicant.
- LSS staff believe the society's policy covers the applicant's type of problem and need a manager to decide this.

## Backgrounder: Family law advice & representation services

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### *Child protection*

LSS provides legal representation to financially eligible clients who have a legal problem that falls under the Child, Family, and Community Service Act (CFCSA) and the LSS CFCSA coverage guidelines. The LSS guidelines cover situations where —

- the Ministry of Children and Family Development has taken, or has threatened to take, their child(ren) away from them, or
- legal representation is required to deal with custody and access issues related to a child in the care of the Ministry for Children and Family Development.

### *Extended services*

Extended family services referrals are available for legal aid clients whose high conflict cases, if left unresolved, would leave them at great risk.

These referrals are designed specifically for clients whose high conflict cases cannot be dealt with through mediation. The program provides lawyers with an additional 40 hours for court attendance and preparation time so they can help clients attain longer-term resolutions to their legal problems than is normally possible through the society's emergency services coverage.

Lawyers with legal aid referrals issued January 1, 2004 or later, and who believe they have cases that warrant this additional coverage, apply to LSS for the extended services on behalf of their clients. To be eligible, cases must entail one or more of:

- significant contested issues involving sexual, mental, or physical abuse of the client or the client's children,
- significant involvement with the Ministry of Children and Family Development,
- an unreasonably litigious opposing party who is using the justice system to continue a pattern of abuse,
- a significant risk of alienation from the client's children,
- an abused client and/or the client's children may be left at risk or without security if coverage of the case is discontinued, or
- a client and/or the client's children may suffer significant harm or injustice if an outstanding issue such as property or spousal support is left unresolved.

In making decisions about applications, LSS staff consider issues such as whether legal representation is the most appropriate service to provide, given an applicant's situation; and whether pursuing the case will result in a significant benefit for the applicant.

### **Limited Supreme Court family referrals**

Low-income people who are not eligible for emergency referral services but cannot avoid taking their dispute to Supreme Court may be able to get a limited scope family referral.

These limited referrals provide eligible clients with up to 14 hours of assistance from a lawyer. The referrals allow lawyers to “unbundle” their usual services so they can help those who need more assistance than family duty counsel and advice lawyers can provide. Some simple matters such as adoptions, straight-forward divorces, or property division under \$10,000 are not covered.

## Backgrounder: Family law advice & representation services

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These referrals include a range of services (excluding representation in court) and are available to clients who —

- would not be covered by an emergency services referral and whose case must be litigated in Supreme Court, and
- meet the LSS financial eligibility guidelines for representation services.

Services include —

- advising clients about options and case strategy;
- helping clients prepare pleadings;
- reviewing affidavits and correspondence;
- negotiating settlements with opposing parties or helping clients negotiate;
- helping clients draft separation agreements or consent orders;
- referring clients to other resources such as self help kits, family justice counsellors, or mediation;
- providing mediation support or collaborative law services;
- providing legal research and analysis;
- coaching clients to represent themselves in court; and
- attending judicial case conferences with clients.

### Legal advice

#### *Family duty counsel (FDC)*

FDC are lawyers available in BC courts who give legal advice to unrepresented clients with family law and child protection problems. Advice is provided for custody, access, guardianship, and child support; property (limited); tentative settlement agreements; and court procedures. These lawyers can speak for clients in court on simple matters such as adjournments, consent and emergency restraining orders, and uncontested custody, access, and support hearings. They can also help clients draft documents, review documents to be filed in court, and negotiate and settle issues. Duty counsel do not provide representation at trial.

FDC services are provided on days set for first appearances in most BC Provincial Courts for cases involving the Child, Family and Community Service Act (CFCSA); Family Relations Act (FRA); Family Maintenance Enforcement Program, and Family Maintenance Programs.

As well, FDC services are available at the Supreme Courts in Chilliwack, Duncan, Kamloops, Kelowna, Nanaimo, New Westminster, Prince George, Revelstoke, Salmon Arm, Terrace (advice only), Vernon, Vancouver and Victoria.

#### *Family advice lawyers*

Family advice lawyers are available at some family justice counselor (FJC) offices to help unrepresented clients before and/or after their court appearance. These lawyers help clients prepare their case and follow up on what took place during the proceedings. Advice lawyers at several FJC offices can also help low income parents who are going through separation or divorce and are participating in the FJC mediation process (Located at family justice counsellor offices in Kamloops, Kelowna, Prince George, Surrey, Vancouver, and Victoria.)