

# **Community Forum: Family Law Act Updates**

**Pemberton, BC  
February 27, 2013**



**Legal  
Services  
Society**

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## COMMUNITY FORUM: Family Law Act Updates

Pemberton Community Centre

7390 Cottonwood Road | Pemberton, BC | V0N 2L0

Wednesday | February 27 | 2013

### AGENDA

Time	Session	Speaker	Facilitator
8:30 – 9:00	<b>Breakfast &amp; Registration</b>		Alex Peel
9:00 – 9:30	<b>Welcome and Introductions</b>		Baljinder Gill
9:30 – 10:45	<b>Update on Recent Developments in Family Law &amp; Child Protection Law</b>	• Amanda Rose - Family Lawyer	Baljinder Gill
10:45 – 11:00	<b>Break</b>		
11:00 – 12:00	<b>Family Law Act and Protection Orders</b>	• Amanda Rose - Family Lawyer	Baljinder Gill
12:00 – 12:30	<b>Adult Protection: Abuse and Neglect, Intervention / Prevention</b>	• Jane Osborne - BC Association of Community Response Networks / North Shore Restorative Justice	Baljinder Gill
12:30 – 1:15	<b>Lunch</b>		
1:15 – 2:30	<b>Overview of LSS Services and Other Legal Resources</b>	• LSS Intake - Sarah Khan • Overview of PLEI - Baljinder Gill, Alex Peel • Clicklaw - Alex Peel	Baljinder Gill
2:30 – 2:45	<b>Break</b>		
2:45 – 4:00	<b>Overview of Aboriginal Services and Gladue</b>	• Pamela Shields - Manager, Aboriginal Services	Alex Peel

#### Community and Publishing Services

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# 1. Family



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# An introduction to the *Family Law Act*

PowerPoint created by: John-Paul Boyd

Aaron Gordon Daykin Nordlinger

20 November 2012

Law Foundation / Legal Services Society

<http://www.bcfamilylawresource.com/>

# Coming into force

- FLA became law on 24 November 2011
- Bulk of act, including all of the really important parts, not presently in effect
- FLA to come into force on **18 March 2013**
- the FLA will apply to all cases in which a court action is started *after* March 18, 2013, regardless of date of marriage/ date of separation/ etc.

Determining parentage, guardianship, the care of children, relocation.

**CHILDREN**

# Parentage

- FLA determines parentage for all purposes within province except adoption (s. 23)
- Parents are presumed to be **biological father** and **birth mother** (s. 26)
- Presumptions of paternity (s. 26), for example: when a male person was married to the child's birth mother on the day the child was born

# Parentage – Assisted Reproduction

- Donor **is not parent**, unless artificial reproduction agreement to contrary (ss. 24, 30)
- Surrogate mother **is parent**, unless artificial reproduction agreement to contrary (ss. 29, 30)



# Best interests of child

- Best interests of child are **only consideration** not “paramount” consideration (s. 37)
- Expanded list of factors includes: views of child, history of care, capacity of person to exercise responsibilities for child, impact of family violence, and any civil or criminal proceedings relevant to the child’s safety or well-being (s. 37)

# Best interests of child

- Presumption that views of children will be heard in determining children's best interests "unless inappropriate" (s. 37)
- Additional factors prescribed to determine **impact of family violence** on child and on person's capacity to care for child (s. 38)
- Court *must* consider family violence factors if violence is an issue

# Guardianship

- Parents living together at child's birth are both **guardians** of child; parent may lose this status by agreement or order (s. 39)
- Parent never living with child is not guardian without appointing agreement or order unless regularly cares for child (s. 39)
- Non-parent may only be appointed guardian by court order (s. 50)

# Guardianship

- Guardians have **parental responsibilities**, the duty to make decisions respecting a child in the best interests of the child (s. 41)
- Parental responsibilities may be allocated among or shared between guardians (s. 40)
- Guardians have duty to consult each other unless consultation would be unreasonable or inappropriate (s. 40)

# Guardianship

- The time a guardian is with a child is **parenting time** (s. 42)
- During parenting time, guardian has care and control of child and responsibility for day to day decision-making (s. 42)
- Parenting time may be on terms and conditions, including supervision (s. 45)

# Guardianship

- **Parenting arrangements** are arrangements for parental responsibilities and parenting time under agreement or order; does not include contact (s. 1)
- No presumptions that parenting time should be shared equally or that parenting responsibilities should be allocated equally or shared equally (s. 40)

# Guardianship

- Guardian can temporarily authorize a person to handle limited parental responsibilities if unable to act (s. 43)
- Guardian may appoint a guardian in anticipation of permanent incapacity and in will in case of death (ss. 53, 55)
- Parent who is not a guardian does not become a guardian on guardian's death (s. 54)

# Persons without guardianship

- People who are not guardians, including parents who are not guardians, have **contact** with a child (s. 59)
- Contact may be agreed to by all guardians, or may be granted by court (ss. 58, 59)
- Contact may be on terms and conditions, including supervision



# Relocation

- Guardians wishing to relocate with or without child must give **60 days' notice** to guardians and persons with contact (s. 66)
- If objection, moving guardian must show that **1** move is made in good faith, **2** reasonable arrangements are proposed to preserve relationship with other guardians (s. 69)
- May be opposed on basis move is not in child's best interests (s. 69)

# Relocation

- If guardians have equal time, moving guardian must show that **1** move is made in good faith, **2** reasonable arrangements are proposed to preserve relationship with other guardians, and **3** move is in child's best interests (s. 69)
- Good faith measured in relation to reasons for the move, whether move will enhance quality of life of guardian or child (s. 69)

# Making changes: orders

- Orders about parenting arrangements and contact may be varied if there has been a change in needs or circumstances of child, including as a result of a change in circumstances of another person (s. 47)

# Making changes: agreements

- Portions of agreements on parenting arrangements and contact may be set aside if agreement not in best interests of child (s. 44)

Minors who lose entitlement, ranked obligations, order requiring insurance to be maintained, making support binding on payor's estate.

## **CHILD SUPPORT**

# Disqualifying minor children

- Entitlement may terminate where minor **becomes a spouse** or voluntarily **withdraws** from parental charge, for reasons other than family violence or objectively intolerable living circumstances (s. 147)
- Minor may requalify for support on returning to charge of parents (s. 147)

# Ranked priorities

- Duty of **non-parent guardians** secondary to obligation of parents (s. 147)
- Duty of **stepparents** secondary to both (s. 147)
- Stepparent's liability assessed considering length of time child and stepparent cohabited and standard of living enjoyed by child during relationship (s. 147)

# The not-so-sweet hereafter

- Where payor has **insurance policy**, court may order that policy be maintained and that child or spouse be named as beneficiary (s. 170)
- Support obligation may be made **binding on payor's estate**, either at making of original child support order or upon recipient's application post-mortem (s. 170)



# Making changes: orders

- Orders for child support may be varied upon a **change** in circumstances under Child Support Guidelines, if, since hearing, evidence of a **substantial nature** has become available or if evidence of **lack of disclosure** has become available (s. 152)

# Making changes: agreements

- Portions of agreements on child support may be set aside **if court would make a different order** (s. 148)

Who is a spouse, effect of agreements, insurance to secure obligation, making support binding on estate.

# **SPOUSAL SUPPORT**

# Standing

- “Spouses” are 1 married spouses, 2 persons cohabiting in marriage-like relationship for more than two years, and 3 persons cohabiting in marriage-like relationship shorter than two years who have had a child together (s. 3)
- Claim must be brought within two years of divorce or nullity for married spouses or separation for unmarried spouses (s. 198)

# Entitlement, duration and quantum

- Entitlement determined by specified **objectives** (ss. 160, 161)
- If entitlement, quantum and duration determined by specified **factors** (ss. 160, 162)

# Misconduct

- Court must not consider misconduct ...except misconduct that **1** unreasonably causes, prolongs or aggravates need for support, or **2** unreasonably affects ability to pay (s. 166)

# Review provisions

- Orders and agreements can provide for review of spousal support obligation upon **fixed date** or occurrence of **defined event** (s. 168)
- Review provisions may address manner of review and considerations on review (s. 168)
- Order or agreement may be reviewed upon party becoming eligible to receive **pension benefits** if silent as to effect (s. 169)

# Support from the afterlife

- Payor can be required to maintain **life insurance policy** to secure spousal support obligation in same manner as for child support
- Spousal support can be made **binding on payor's estate** in same manner and on same test as for child support
- Payor's personal representative has same standing as with child support (s. 171)



# Making changes: orders

- Orders for spousal support may be varied upon a **change** in the needs, means and other circumstances of a spouse, or if, since hearing, **evidence of a substantial nature** has become available or **evidence of lack of disclosure** has become available (s. 167)

# Making changes: agreements

- Agreements on spousal support may be set aside where there is a **lack of procedural fairness** at the negotiation and execution of the agreement or if agreement turns out to be **significantly unfair** (s. 164)
- Until agreement is set aside, court **may not** make order on spousal support (s. 165)

Family property, family debt, excluded property, valuing property.

# **PROPERTY AND DEBT**

# Standing

- “Spouses” are 1 married spouses, 2 persons cohabiting in marriage-like relationship for more than two years (s. 3)
- Claim must be brought within two years of divorce or nullity for married spouses or separation for unmarried spouses (s. 198)

# Excluded property

- All property owned by a spouse prior to the commencement of the spousal relationship is **excluded property** (s. 85)
- Includes gifts and inheritances, certain court awards, certain insurance proceeds, certain trusts received during the relationship (s.85)
- Includes **property bought during relationship** with excluded property (s. 85)

# Family property

- All property owned by either party at the date of separation is **family property**, including assets acquired after separation with family property (s. 84)
- Includes corporate interests, ventures and partnerships, bank accounts, annuities, RRSPs and private pensions (s. 84)

# Family property

- Family property doesn't include the value of excluded property brought into the relationship (s. 85)
- Family property does include the **increase in value** of excluded property (s. 84)

# Family debt

- All debt incurred by a spouse during the spousal relationship is **family debt**, including debt incurred after separation to maintain family property (s. 86)



# Presumptions

- Spouses are presumed to be entitled to **half** of family property and be **half** liable for family debts, regardless of use or contribution (s. 81)
- Excluded property is presumed to remain the property of the owning spouse (s. 96)

# Unequal division

- The court may divide family property or family debt unequally if equal division would be **significantly unfair** (s. 95)
- Factors include length of spousal relationship, spouse's contribution to other's career, family debt exceeding family property, spouse's responsibility for increase or decrease in value of property or debt (s. 95)

# Division of excluded property

- The court may divide excluded property if it cannot divide family property located outside province or if it would be significantly unfair not to divide excluded property (s. 96)
- Factors are length of spousal relationship and spouse's direct contribution to excluded property (s. 96)

# Agreements

- Spouses may make property agreement dividing what should be divided, dividing what shouldn't be divided, dividing unequally what should be divided equally, valuing property other than it should be valued (s. 92)

# Making changes: agreements

- Agreements on property and debt may be set aside where there is a **lack of procedural fairness** at the negotiation and execution of the agreement or if agreement turns out to be **significantly unfair** (s. 93)
- Court **may not** make order on property or debt in face of agreement unless agreement is set aside (s. 94)

Protection orders, children's best interests, duty to screen for violence.

## **FAMILY VIOLENCE**

# Family violence

- Defined as including: physical abuse, sexual abuse and verbal abuse; psychological and emotional abuse, including harassment, stalking and restricting personal liberty; and, for children, exposure family violence (s. 1)

# Screening for family violence

- New requirement on **family dispute resolution professionals**, including lawyers, mediators and family justice counsellors to screen for family violence (s. 8)
- Must assess impact on family violence on safety and capacity of party to negotiate fair settlement (s. 8)



# Best interests of the child

- Factors include presence of family violence; if family violence, test is prescribed for court to assess impact of family violence (ss. 37, 38)
- Orders and agreements are not in the best interests of children unless they protect the well-being of children to the maximum extent possible (s. 37)

# Protection orders

- Variety of orders may be made to protect “**at-risk family member**” from family violence
- Application may be made by at-risk family member, a person on behalf of at-risk family member or court on its own motion (s. 183)
- Application for protection order may be brought without notice and independent of any other action or application (ss. 183, 186)

# Protection orders

- Orders include: restraints on communications, attending or entering place, following person, possessing weapons; directions to police to remove person from property, accompany person to remove belongings, seize weapons; requirement to report; other terms (s. 183)
- Protection orders expire in one year unless otherwise ordered (s. 183)

Duties of dispute resolution professionals, duties of parties to disclose.

# **DISPUTE RESOLUTION PROCESSES**

# Dispute resolution processes

- New emphasis on and support for dispute resolution processes out of court (s. 4)
- New duty to make full and frank disclosure imposed on parties not litigating (s. 5)
- Better legislative support of agreements generally, and significantly strengthened support for agreements on property and spousal support (ss. 6, 7, 93, 164)

# Family dispute resolution

- “Family dispute resolution” means services of family justice counsellor or parenting coordinator; mediation, collaborative law and arbitration; other processes prescribed by regulation (s. 1)

# Duties of professionals

- Family dispute resolution professionals must assess for **family violence** and extent to which it impairs party's capacity to bargain (s. 8)
- Must inform party of dispute resolution processes and **other resources** (s. 8)
- Must advise that agreements and orders about children must be made in children's **best interests only** (s. 8)
- Lawyers must certify compliance (s. 197)

# Family dispute resolution

- Court may require parties to engage in dispute resolution process (s. 224)
- Court may adjourn proceeding while parties attempt to resolve issues before court (s. 223)



# Parenting coordinators

- Parenting coordinators may assist with implementation of **parenting arrangements** or **contact** when appointed by order or agreement (s. 15)
- May resolve disagreements by **consensus** or by making **binding determinations** (ss. 17, 18)
- Court may enforce, vary or set aside (s. 19)

# Arbitration

- *Commercial Arbitration Act* amended to better accommodate family law disputes (ss. 306-313)
- Award inconsistent with FLA of no effect (s. 309)
- May appeal award on question of law, or law and fact, under CAA s. 31 (s. 312)
- Party may apply to vary award on same grounds as could vary order under FLA (s. 311)

Conduct orders, general provisions for enforcement of orders,  
extraordinary enforcement provisions.

# **COURT PROCESSES**

# Conduct orders

- Court may make conduct orders for reasons including to: **manage behaviour** frustrating resolution, **prevent misuse** of court process, and **facilitate settlement** (s. 222)
- Orders include: dismiss or strike pleadings or application, adjourn proceeding, judge seizing self, attend counselling, attend dispute resolution, restrict communications, restrict contact, maintain family home (ss. 223-226)

# Specific enforcement powers

- Withholding of or failure to exercise parenting time or contact enforceable by referral to dispute resolution or counselling, make-up time, reimbursement of expenses (ss. 61, 63)
- Agreements on children and support can be filed and enforced as orders (ss. 44, 58, 148, 163)

# General enforcement powers

- Where no specific enforcement provision, may order may be enforced by requiring **security**, payment of party's **expenses**, or payment of **up to \$5,000** (s. 230)
- Where nothing else will secure compliance, court may order party be **jailed** (s. 231)
- Provisions not applicable to protection orders, only enforced by *Criminal Code*, s. 127 (s. 188)

Finally, a summary  
of the highlights of  
the new act.

# Children

- New provisions on **parentage** addressing assisted reproduction and parental status for all purposes
- Expanded **best interests** test
- Parents cohabiting during child's life are **guardians** with **parental responsibilities** and have **parenting time** with child
- Non-guardians have **contact** with child



# Children

- New powers to **enforce** parenting time and contact for both provincial court and supreme court
- New test to determine **mobility** with shifting burden to establish best interests; only guardians may object

# Child support

- Statutory authority to terminate support for minors who **leave home** or **marry**
- Nifty **ranking of obligations** of parents, non-parent guardians and stepparent
- New criteria to establish extent of **stepparent** liability
- Obligation may be made **binding on estate**

# Spousal Support

- Regime applies to unmarried couples in short cohabiting relationships who have a child
- Consideration of **misconduct**, in a limited way
- Remarkable new **deference to agreements** on spousal support; two tests to set aside assess fairness at different moments in time
- Obligation may be made **binding on estate**

# Property and debt

- Regime also applies to unmarried couples cohabiting for at least two years
- New regime exempts assets **brought into relationship** and certain classes of assets acquired during relationship
- Shared assets are those **acquired during relationship** and **increase in value** of exempt assets

# Property and debt

- Regime presumes equal liability for **debts** incurred during relationship
- New **deference to agreements** on property and debt; two tests to set aside assess fairness at different moments in time

# Dispute resolution processes

- New power of court to compel parties to enter dispute resolution process ...and to take counselling
- Out-of-court processes supported with **disclosure** requirement
- Statutory support for parenting coordination, may make **binding determinations**
- Renewed role for **arbitration**

# Court processes

- New **enforcement powers** applicable in provincial court, including some with teeth
- New suite of **conduct orders** and **protection orders** enabling better control of parties

## **2. Overview of LSS Services & Resources**



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February 2013



# 32 Legal Aid Offices

Abbotsford	Campbell River	Chilliwack
Courtenay	Cranbrook	Dawson Creek
Duncan	Fort St. James	Fort St. John
Hazelton	Kamloops	Kelowna
Langley	Nanaimo	Nelson
New Westminster	North Vancouver	Penticton
Port Alberni	Port Coquitlam	Prince Rupert
Quesnel	Richmond	Salmon Arm
Smithers	Surrey	Terrace
Vancouver	Vanderhoof	Vernon
Victoria	Williams Lake	

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# Community Engagement & Outreach Team

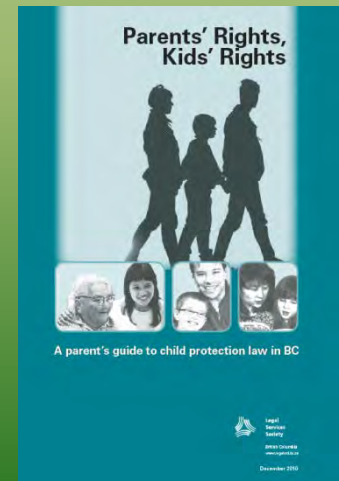
# LSS Publications & the new FLA

All current LSS family law **PRINTED** materials will be revised and updated to conform to the new FLA by March 18, 2013 (the FLW “in force” date) in three key areas:

- General family law  
(e.g. *Living Together or Living Apart*)
- Abuse & family law violence  
(e.g. *Surviving Relationship Violence and Abuse, For Your Protection* and the *Live Safe End Abuse* series)
- Child protection (*Parents’ Rights, Kids’ Rights*)

A number of **NEW** publications will be added to the family law print collection:

- *A Guide to the New BC FLA* (gives an overview to introduce the FLA changes in plain language)
- *Understanding Mediation in Child Protection Cases* (a fact sheet for the Aboriginal community).



# LSS Publications & the new FLA

All current material on the [FLWS](#) will be revised and updated to conform to the new FLA (self-help guides, fact sheets, FAQs and videos alike).

A number of **NEW** fact sheets and self-help guides will be added to the website.

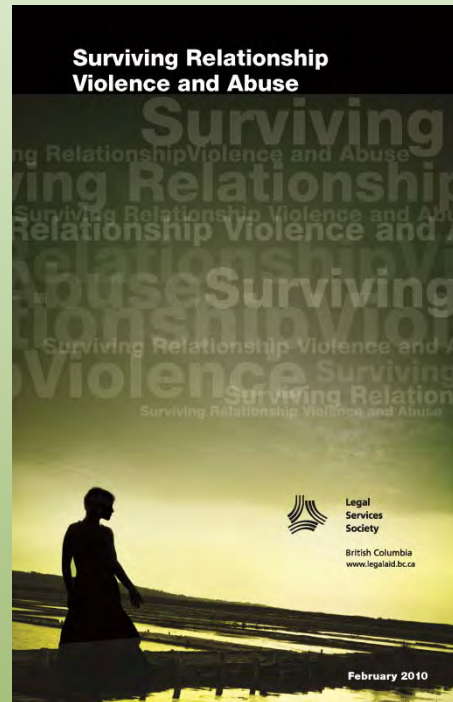
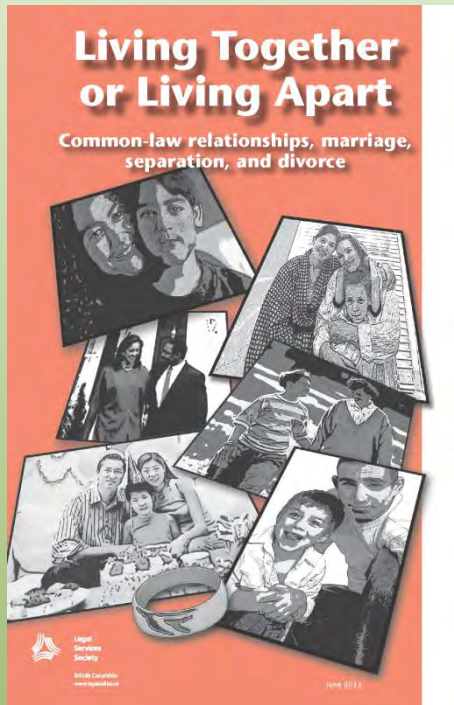
## **Fact sheets (20 more)**

- General family law (e.g. Best Interests of the Child, Guardianship and Parenting Arrangements, Parentage etc.)
- Abuse & Family Violence (e.g. Family Court protection orders)
- Child protection with a focus on dispute resolution options (e.g. Collaborative planning and decision making in child protection cases)

## **Self-help guides (6 more)**

- General family law  
(e.g. how to set aside an agreement in Provincial Court)
- Guides will focus on dispute resolution options  
(e.g. how to start or respond to a family case in Supreme Court)





**For any queries or suggestions about  
FLA-impacted publications, please contact:**

**Candice Lee**  
**Supervisor, Print, Web & Multimedia**  
**Email: [candice.lee@lss.bc.ca](mailto:candice.lee@lss.bc.ca)**

# Family Law

## in British Columbia

*Helping families use the law*



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## Welcome

The [Legal Services Society](#) maintains this legal information website and provides legal aid in British Columbia, Canada. If you're having a family problem, you may also qualify for a lawyer to advise you or take your case. Contact [legal aid](#) to find out if you qualify.

Who can help



## Shortcuts

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## Changes coming

[About the new Family Law Act](#)



## What's new in family law

Find out about the [latest changes](#) to family law

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British Columbia, Canada



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## We're here to help

Welcome to the Legal Services Society (LSS), the organization that provides legal aid in BC.

If you have a legal problem and can't afford a lawyer, we can help. Join the thousands who use the self-help information on our [Family Law in BC](#) website or who read our free legal information [publications](#). You may also qualify for some [legal advice](#) from a lawyer or even for a [lawyer to take your case](#).

Find out more about [legal aid](#) and [LSS](#).



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[www.povnet.org](http://www.povnet.org)



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**Other agencies  
that provide  
PLEI services**



[www.accessprobono.ca](http://www.accessprobono.ca)

# Thank You!



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February 2013

# Working Together with LSS Intake



February 27, 2013



# There are two ways to apply for legal aid at this time:

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



- ▶ **Come** into one of our Legal Aid offices (contact info available on our website [www.legalaid.bc.ca](http://www.legalaid.bc.ca). )

# Our clients



# Who qualifies?

**How does a person qualify for legal aid? The following two criteria must be met:**

1. Their legal problem is covered by LSS; and
2. They qualify according to our financial guidelines

**Approved**

# 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 custody, access, guardianship, restraining orders, child support and more depending on the issues. These situations need to be addressed immediately to ensure the safety of the applicant and or children.



➤ **Child removal** – Where the Ministry of Children and Family Development has removed a child or where there is a threat of a child being removed. These matters also include any custody or access issues arising from a child in care.



➤ **Immigration** – Where an applicant may wish to claim refugee status or where the applicant faces an immigration proceeding that may result in their removal from Canada.



➤ **Reciprocals** – Where an applicant's legal matter may be in another province. This generally encompasses family legal aid problems where the opposing party resides in another province or our applicant resides in another province. However, on occasion criminal and immigration cases have gone through the reciprocals process as well.



## Number of Applications for 2011/2012

Total Number of Applications for the year – 40, 301

Total Number of Referrals for the year – 27, 633

**Victim Representation** – 15 applications and 15 Referrals

**CFCSA** – 2,721 Applications and 2, 187 Referrals

**Criminal** – 26, 593 Applications and 20, 253 Referrals

**Family** – 9, 319 Applications and 4, 119 Referrals

**Immigration** – 1, 653 Applications and 1, 059 Referrals



# Financial Eligibility

## Income chart(All case types)

Household Size	Monthly Net Income
1	\$1,470
2	\$2,050
3	\$2,640
4	\$3,230
5	\$3,810
6	\$4,400
7 or more	\$4,990

# 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

# Appealing a refusal

- ▶ If a client is refused legal aid he or she has the right to appeal the refusal.
  - This must be in writing.
  - The client should note the reasons for disagreeing with the refusal.
  - The client should include any supporting documents.
- ▶ Coverage and financial eligibility reviews must be submitted within 30 days of being refused 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
- ▶ Provide public legal information education and information materials

# More information

- ▶ Legal Services Society [www.legalaid.bc.ca](http://www.legalaid.bc.ca)
- ▶ Family Law in BC [www.familylaw.lss.bc.ca](http://www.familylaw.lss.bc.ca)
- ▶ QR mobile website link





## Are you a member of the public or helping someone with a legal problem?

The Clicklaw website offers a single place to start on the Internet for quality legal information, education and help for British Columbians. Here are five key ways you can use Clicklaw:

The screenshot shows the Clicklaw website interface. At the top, there's a navigation bar with links like 'British Columbia, Canada', 'Laws, Cases & Rules', 'Blog', 'About Us', 'Contact', and 'Contributors'. Below this is the Clicklaw logo and a search bar. The main content area is divided into several sections: 'Solve Problems', 'Learn & Teach', 'Reform & Research', and 'HelpMap'. Each section has a brief description and a list of related topics. For example, 'Solve Problems' includes categories like 'Your money', 'Your family', 'Your daily life', 'Your safety', 'Your communities', and 'Your legal system'. The 'Common questions' section at the bottom provides starting points for various legal issues. On the right side, there's a 'What's new on Clicklaw' section with recent updates and a 'Find us on Facebook & Twitter' section at the bottom right.

**1 In Solve Problems, find understandable information on your legal rights and options to solve legal problems**

**2 Choose from over 100 common questions, which offer starting points for common legal problems**

**3 On HelpMap search for someone in your community who can help with legal problems**

**4 Find resources and services that are in languages other than English**

**5 See what's new on the Clicklaw blog or find Clicklaw on Facebook or Twitter**



## The Clicklaw HelpMap

Integrated with Google Maps, the HelpMap assists the public in British Columbia in finding those who can provide assistance with legal problems in their community. It also assists service providers and helpers who are making referrals for clients who have legal issues.



### HelpMap

Find someone in your community who can help with legal problems.

## Three steps to finding law-related assistance on the HelpMap

**1** Search by keyword or city/town at [www.clicklaw.bc.ca](http://www.clicklaw.bc.ca). Or you can browse by topic.

Search the HelpMap for law related help with a Keyword OR Location

Keyword

or

cl

Go

Campbell River

Chilliwack

Clinton

**2** [optional] Refine your search by topic, location, type of service, or language.

#### Refine your search

HelpMap

Campbell River

#### Topic

Legal help & lawyers (16)

Abuse & family violence (15)

Family law (14)

Crimes & offences (13)

Victims of crime (11)

+ more topics...

#### Location

+ Language

+ Type of service

#### Your search results

Results: 1 to 5 of (27)

Sort by: relevance | most viewed | alphabet

##### Lawyer Referral Service

Lawyer Referral Service is a program that connects you with the right lawyer. Lawyers who participate in the program offer an initial consultation of up to 30 ... [+ more details](#)

From The Canadian Bar Association BC Branch (CBABC)

Topics: Abuse & family violence; Accidents & injuries; Alternatives to court; Business & non-profits; [+ all topics](#)

##### Legal Aid Intake Services

The Legal Services Society (LSS) provides intake at more than 50 legal aid office and courthouse locations across BC. To qualify for a legal aid lawyer, ... [+ more details](#)

From Legal Services Society

Topics: Abuse & family violence; Children & teens; Crimes & offences; Family law; [+ all topics](#)



**Campbell River Courthouse**

500 - 13th Avenue, Campbell River, BC, V9W 6P1

**3** Click on a service to see details on the Clicklaw HelpMap.



## What can you find on the HelpMap

- o pro bono clinics, community legal clinics, and legal aid offices
- o organizations with community legal advocates
- o court registries
- o courthouse libraries
- o Native Courtworkers
- o victim support programs
- o key government agencies
- o dozens of other law-related helping services





**www.povnet.org**

<http://facebook.com/povnet>  
<http://twitter.com/povnet>

#300 - 1140 W. Pender Street  
Vancouver, BC V6E 4G1  
Phone (604) 876-8638  
fax (604) 685-7611  
Email [info@povnet.org](mailto:info@povnet.org)

*A network for advocates, community workers and marginalized communities.*

## Povnet website

The Povnet website provides up-to-date information about welfare, housing and homelessness, unemployment, disability and human right issues.



We host a "Find an Advocate" map to assist people in finding some help wherever they are in BC or across the country. You can also follow up-to-date information on PovNet by linking to our Twitter and Facebook feeds.

PovNet links to resources for immigrants and refugees, seniors, women, youth, workers, people with disabilities, First Nations, Inuit and Aboriginal people. The site offers links to provincial, federal and territorial legislation, information about books, videos and articles about poverty issues.

## Email lists

Povnet hosts confidential email lists for front line workers, advocates, community and settlement workers.

These lists provide a forum for discussing cases, sharing strategies and identifying and working on systemic issues that arise in the pursuit of access to justice:

### Our BC lists:

- n Welfare
- n Housing
- n Mental health
- n Workers' rights
- n First Nations & Aboriginal
- n Debt

### Our national lists:

- n Canadian Pension
- n Employment insurance
- n Older adults
- n Issues
- n Intercultural

If you are interested in joining any of these lists, contact us at [co-ordinator@povnet.org](mailto:co-ordinator@povnet.org).

## Povnetu



<http://povnetu.povnet.org>

Povnetu offers online courses for front line workers.

Current PovNetU courses include:

- n Introduction to Advocacy
- n Welfare Level 1 and 2
- n Residential Tenancy Level 1 and 2
- n Employment Insurance Level 1 and 2
- n Seniors' Residential Care Advocacy
- n Persons with Disabilities Appeals
- n Dealing with Debt
- n CPP Disability

Contact [povnetu@povnet.org](mailto:povnetu@povnet.org) for more information and schedules.

*PovNet is funded by the Law Foundation of BC with additional funding from the Legal Services Society. Additional support for PovNetU courses is provided by BC Government and Service Employees' Union, BC Coalition of People with Disabilities, BC Teachers Federation, Community Legal Assistance Society, Community Unemployed Help Centre (Winnipeg), First United Church Mission, Hospital Employees Union, Law Foundation of Ontario, Society of Notaries Public of BC and TRAC Tenants Resource and Advisory Centre.*

May 2012

## 3. Aboriginal Services



# IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



Pamela Shields  
Manager, Aboriginal Services

Lynn McBride  
Community Engagement Coordinator



February 2013



# LEGACY OF COLONIALIST HISTORY



- INDIAN RESIDENTIAL SCHOOL GENERATIONAL IMPACT
- ILLITERACY
- ABORIGINAL CHILD APPREHENSION
- POVERTY
- FASD
- SEXUAL ABUSE



# GOAL #1:

Reducing the number of



Aboriginal people in prison

# GOAL #2:

Reducing the number of



Aboriginal children in care

# “ABORIGINAL” defined inclusively



- FIRST NATIONS (INDIAN)
  - STATUS
  - NON-STATUS
  - ON & OFF RESERVE
- MÉTIS
- INUIT

# ABORIGINAL LEGAL SERVICES



- PUBLICATIONS
- ABORIGINAL COMMUNITY  
LEGAL WORKERS
- EXPANDED DUTY COUNSEL
- GLADUE INITIATIVE





Legal Services Society  
Legal aid can help

British Columbia, Canada



Resize text + - |  

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### Search our site

Google™ Custom Search 

#### Aboriginal

- [Aboriginal legal issues](#)
- [Aboriginal Gladue rights](#)
- [First Nations Court](#)
- [Aboriginal publications](#)
- [Who can help](#)

[A Guide to Aboriginal Organizations and Services](#)

[BC Association of Aboriginal Friendship Centres](#)

[Native Courtworker and Counselling Association of BC](#)

[Union of BC Indian Chiefs: Publications](#)

[Clicklaw](#)

### Aboriginal publications

Below are links to all of our Aboriginal publications.



# ABORIGINAL CHILD PROTECTION PUBLICATIONS

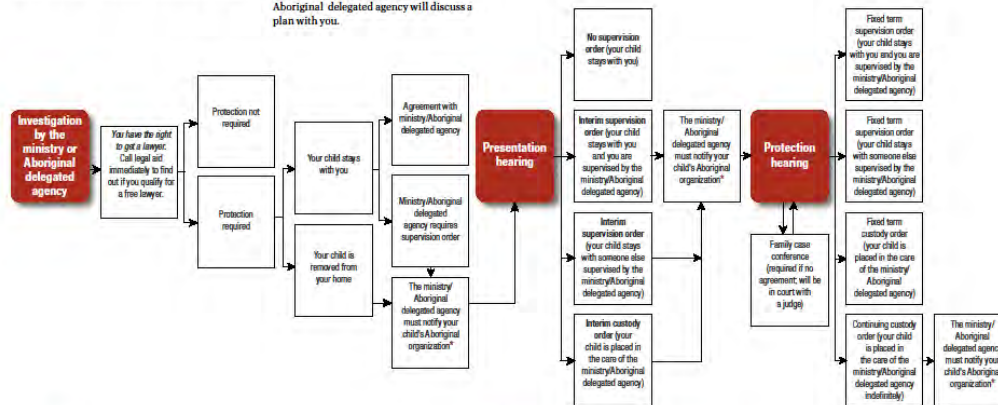
## The Aboriginal child protection process: Information for Aboriginal parents and communities

### Child protection laws and what they mean for Aboriginal families

It is very important for Aboriginal children to be able to spend time with their extended families and communities. Child protection laws in BC recognize the importance of Aboriginal family ties to Aboriginal children.

If the ministry or Aboriginal delegated agency decides that your child needs protection, you can:

- ask for a **family group conference**. A facilitator will organize the conference. The conference is *not* in court and a judge is *not* involved. Your family members, friends, and other people who help to care for your child can be involved, as well as your lawyer and advocate. At the conference, a social worker from the ministry or Aboriginal delegated agency will discuss a plan with you.
- ask the ministry or Aboriginal delegated agency to use **traditional decision making**. Your community leaders and family members can take part in working out a plan.
- ask for a **mediator** (someone who will help work out an agreement between you and the ministry/Aboriginal delegated agency).



#### \* Note

Your child's Aboriginal organization may be a band, friendship centre, treaty first nation, Aboriginal community, Aboriginal organization as listed in the Child and Family Service Act regulations, or a Nisga'a Lisims government. Talk to your lawyer to make sure the right people in your child's Aboriginal organization are informed at the appropriate time of decisions that affect your child.

#### Legal aid

604-408-2172 (in the Lower Mainland)  
1-866-577-2525 (no charge, outside the Lower Mainland)

October 2009



Aboriginal Child Protection poster

1-Page Fact Sheets

Right to Counsel Cards

Mediation

# EARLY INTERVENTION



Asserting legal rights



Aboriginal Community  
Legal Workers

Expanded  
Duty Counsel

First Nations Court



<http://www.legalaid.bc.ca/aboriginal/>





**Legal  
Services  
Society**

British Columbia  
[www.legalaid.bc.ca](http://www.legalaid.bc.ca)

**ENDING  VIOLENCE**  
Association of BC

[www.endingviolence.org](http://www.endingviolence.org)

# Indigenous Communities' Safety Project

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## **Funded by:**

Law Foundation of Ontario  
and Vancouver Foundation

## **Project Managers:**

Ending Violence Association of BC (EVA)  
and Legal Services Society (LSS)

# Project Purpose

- provide knowledge sharing to Aboriginal leadership including governance leadership, service providers and the natural leadership
- work with 12 Aboriginal communities (First Nations and urban Aboriginal communities)
- focus on criminal justice, family justice and child protection laws, policies and practices that directly affect police and government responses to domestic and sexual violence and child abuse

# Project Goals

**This project has multiple goals, including:**

- Encouraging communities to discuss practical ways to improve safety and access to justice for women and children.
- Helping communities develop community safety plans that will help keep women and children safe from domestic and sexual violence and child abuse and neglect.
- Empowering Aboriginal communities across the province to respond to violence.
- Empowering Aboriginal service providers to better assist Aboriginal communities—especially women and children—to keep themselves safe, to be aware of their legal rights, and to access justice if they become victims.

# 12 Aboriginal Communities

1. Saik'uz First Nation (Vanderhoof)
2. Nak'adzli First Nation (Fort St. James)
3. Lytton First Nation, including Merritt
4. Sto:lo Nation Chiefs Council (Chilliwack)
5. Tsay Keh Dene (north of Mackenzie; north end of Williston Lake)
6. Nisga'a (northwest BC; west of Hazelton)
7. Blueberry First Nation (Fort St. John)
8. BC Association of Aboriginal Friendship Centres  
(at their Youth Conference in Penticton in March 2013)
9. Gitwangak (near Hazelton)
10. Gitanyow (near Hazelton)
11. Gitsegukla (near Hazelton)
12. 12<sup>th</sup> community to be confirmed

# Indigenous Communities' Safety Project WEBINAR

**If you are interested in attending a webinar to learn more detailed information about this project and the training curriculum and related materials, contact:**

**Pamela Shields**

Manager of Aboriginal Services at LSS

**Beverley Jacobs**

Indigenous Communities Project Consultant

**Lynn McBride**

Community Engagement Coordinator at LSS

# Project Consultant

**Beverley Jacobs, LL.B., LL.M, PhD Student**  
Indigenous Communities Project Consultant  
Ending Violence Association of BC

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Fax: 604-633-2507

# IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



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604.601.6021

February 2013

## 4. Adult Care



**Legal  
Services  
Society**

British Columbia  
[www.legalaids.bc.ca](http://www.legalaids.bc.ca)



# Adult Protection:

Health, Police & Community working together towards safer communities

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BC Association of  
Community Response  
Networks

*Stopping Adult Abuse and Neglect ...Together*



# Community Perspectives

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*"Legislation doesn't keep people safe;  
community keeps people safe."*

Heather von Ilberg

*"A community development approach  
means the community owns both the  
issues and the answers for abuse and  
neglect of vulnerable adults."*

April Struthers



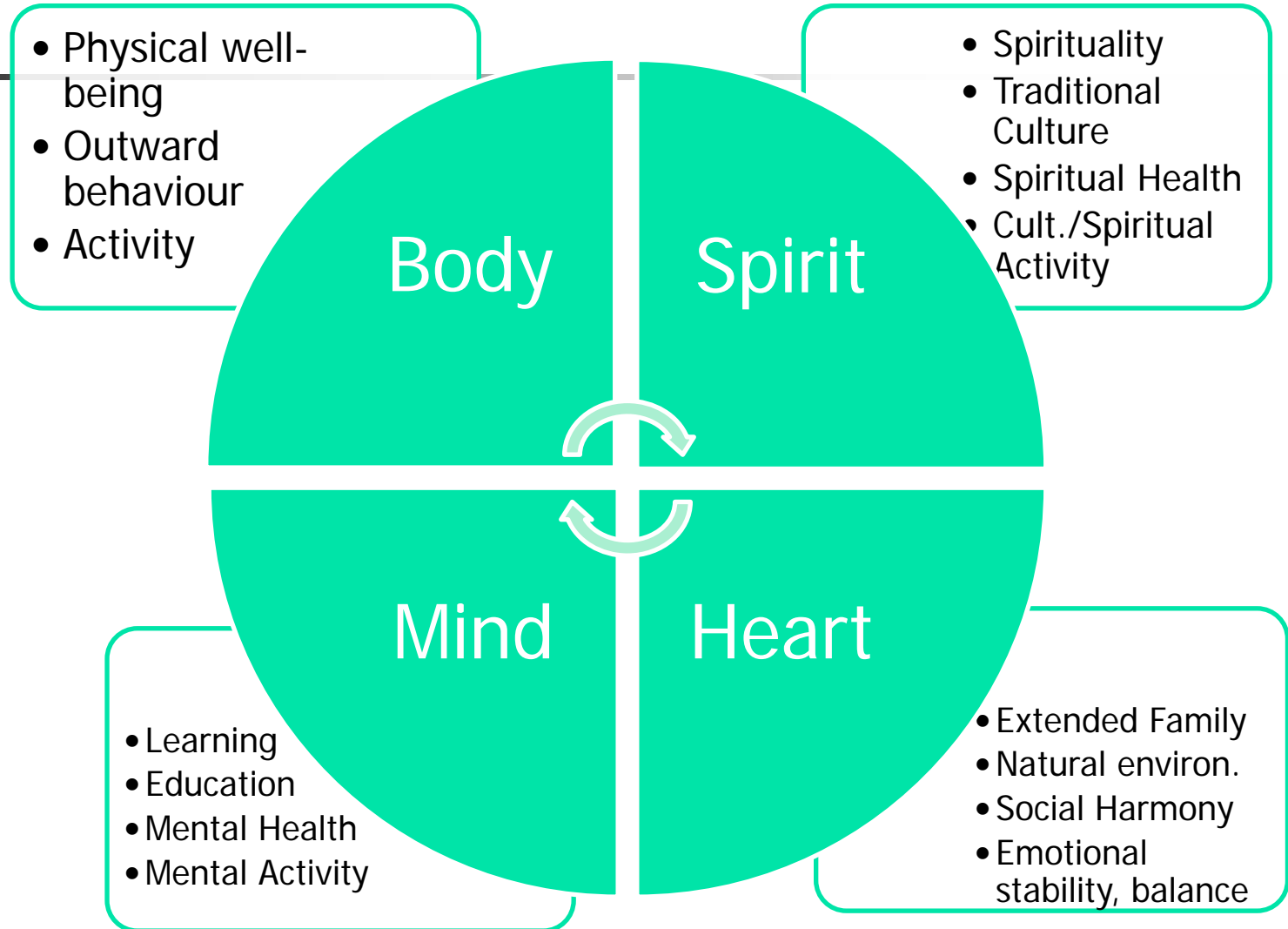
# Agenda

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1. Adult Guardianship: Why do we need it?  
What is abuse, neglect & self-neglect?
2. BC's coordinated response components
  - a) Legislation
  - b) Designated Authorities (Responders)
  - c) Community Response Networks
3. Restorative Responses to Adult Abuse
4. What is already in place in Sea-to-Sky?



# Abuse Violates Personhood





# What is abuse?

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Abuse can be physical, sexual, emotional, psychological, financial and/or neglect:

- Control of another person through use of threats or violence
- Use of psychological tactics such as humiliation, intimidation, guilt ...
- Physical or sexual assault
- Financial through misuse of another's funds
- Neglect through failure to provide care



# Abuse includes ...

---

- Intimate partner violence
  - Spousal abuse
- Abuse by caretakers
  - Depriving patients of dignity & choice
  - Excessive use of physical restraints / medication
  - Neglect
  - Financial
- Abuse by family members



# Abuse may not be obvious

- Domestic violence usually has a gradual onset
- An abused person may not realize that her/his life is being controlled
- An abuser may not realize the consequences of his or her actions
- Abuse may be denied due to shame, fear, guilt, etc.
- Family/cultural norms may normalize or mask



# Self-neglect

---

- Occurs when an adult's **actual** performance in everyday activities is deficient, putting them at risk
- The adult may lack insight, judgment and the ability to organize adequate supports
- The adult does not have, or has refused, appropriate help to maintain health, safety and (their usual) quality of life





# BC's Coordinated Community Response Model

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Enables two interrelated responses:

- Designation of agencies who have a duty to look into abuse reports received (voluntary reporting / mandatory response) and access to new legal tools in the most complex situations
- Creation of coordinated community responses, or teams, known as Community Response Networks (CRNs)



# Legislation: Principles & Presumptions

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- Self-determination
- Just enough support
- Court as last resort
- Presumed to be capable
- Duty to communicate



# Components: Designated Agencies

---

- Health Authorities (VCH)
    - Designated Responders [www.vchreact.ca](http://www.vchreact.ca)
    - DAs – Aboriginal Health Staff
  - Community Living B.C.
- 
- Public Guardian and Trustee of BC
  - Police



# Components: Legislation Guiding PGT

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- Consultation
- Informal Resolution
- Investigations where warranted
  - Trustee
  - Power of Attorney
  - Representative
- Freeze accounts and caveats on property
- Financial/Legal Decision Maker of Last Resort



# Components – Legislated Duty to Report Offence

- s. 50 If a designated agency has reason to believe that a criminal offence has been committed against an adult about whom a report is made under section 46, the designated agency must report the facts to the police



# Components – Police Policy “E” Division Policy – OM 100.3.4

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## **Liaison member to establish protocols (unit supplements) for:**

- Communication with the designated agencies – contact positions
- Receiving complaints of possible criminal offences from designated agencies
  - Emergency situations
  - Non-emergency situations



# DA Response: Two Pivotal Questions

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- Is this adult abused, neglected or self-neglecting?
- Is this adult able to seek or refuse support and assistance on his/her own?



# But Who in the Designated Agency?

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- In General, designated responders are:
  - Hospital Social Workers, Continuing Care Coordinators, Mental Health Therapists, Case Managers, Abuse & Neglect Consultants
  - Community Living Facilitators
- In Pemberton
  - Case Managers at Community Health Ctre
  - Designated responders for FN communities





# Adult Guardianship Continuum ...

## Legal & informal/community tools

<b>Personal Planning or “I Decide”...</b>	<b>Informal Support</b>	<b>Others decide... legal tools</b>
<ul style="list-style-type: none"><li>✓ Who will help?</li><li>✓ What help?</li><li>✓ When to help?</li><li>✓ How? (values &amp; instructions)</li></ul> <p><b><u>Legal Tools:</u></b></p> <ul style="list-style-type: none"><li>➤ Representation Agreement</li><li>➤ Enduring Power of Attorney</li><li>➤ Advance Directive</li></ul>	<ul style="list-style-type: none"><li>➤ Direct Deposits</li><li>➤ Direct payments</li><li>➤ Local agencies</li><li>➤ Pension Trustee</li><li>➤ Community groups</li><li>➤ Leverage local networks (CRNs)</li><li>➤ Help adult do future planning/put SDM or supportive DM in place (e.g. RA/POA)</li></ul>	<ul style="list-style-type: none"><li>➤ TSDM (health care)</li><li>➤ Investigation (DA)</li><li>➤ Investigation (PGT)</li><li>➤ Protect Assets (PGT)</li><li>➤ Support &amp; Assistance (DA) (voluntary or court ordered)</li><li>➤ Committee of Estate</li><li>➤ Statutory Committee (PGT of BC)</li><li>➤ Committee of Person</li></ul>





## As of Sept 1, 2011

- All personal planning legislation in place
  - Enduring powers of attorney
  - Representation agreements
- Health care consent regime
  - Advance directives
- Investigation powers for abuse & neglect
  - Designated agencies
  - Public Guardian and Trustee of BC



# Still not in place

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- New guardianship regime
  - Parts 2 & 2.1 AGA – not in force
  - Patient's Property Act and "committeeship" continue to be discussed
- Bill 26 care facility admission regime
  - Still no legislation in this area



# Legislation: Enduring Power of Attorney

---

- What is a Power of Attorney (POA)?
  - Adult “donor” authorizes “attorney” to make financial & legal decisions for donor
- Part 1 – “General POA” continues
  - Attorney is donor’s agent
  - Ends according to POA or if donor is incapable
- Part 2 – “Enduring POA”
  - Continues when adult is incapable
  - Detailed rules



# Legislation: EPOAs in BC

## Sept 1 – The Basics

---

- New: Detailed rules
- Safeguards to help prevent financial abuse
- s. 9 RA for financial/legal affairs no longer available
- Presumption of capability
- Test for incapability to make EPOA
- Multiple attorneys permitted
  - Act unanimously unless EPOA says otherwise



# Legislation: Representation Agreements (RAs)

---

- Purpose:
  - To allow adults to arrange in advance how, when and by whom, decisions will be made and to avoid the need for court appointed decision maker
- Adult (19+) appoints representative(s) to help make or to make decisions



# Legislation: Decisions covered by an RA

---

- Standard powers (s. 7 RA)
  - Routine financial; legal;
  - Personal care; major and minor health care
- Non-standard powers (s. 9 RA) include
  - Health care
  - Restraints
  - Personal care
  - Temporary care and education of dependants



# Legislation: Adult Guardianship Act - Part 3

---

Purpose: To provide support and assistance for adults who are **abused and neglected** and who are **unable to get help on their own** because of

- Physical restraint
- Physical handicap that limits their ability to seek help, or
- An illness, disease, injury of other condition that affects their ability to make decisions about the abuse or neglect.





# Legislation: Adult Guardianship Act - Part 3

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- Part 3 *AGA* applies to adults in:
  - Public places
  - Adult's home and relative's home
  - Care facility
  - Any other place
  - Exception: correctional centre



# BC Association of Community Response Networks

[www.bccrns.ca](http://www.bccrns.ca)

Stopping Adult Abuse & Neglect -  
Together



# Who are we?

---

- A provincial umbrella for local Community Response Networks around the Province
- Grew out of Adult Guardianship Legislation
  - Originally funded by the Solicitor General
  - Now a non-profit Association
- A *Community Response Network* (CRN) is a complex of agencies & individuals concerned about abuse, neglect & self-neglect of adults



# CRNs in BC Communities

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- Include members from designated agencies (Health Authorities, Community Living BC), law enforcement, multi-cultural, mental health, disabilities, home support, peer support, municipal, faith, seniors, restorative justice, finance, business organisations and individuals



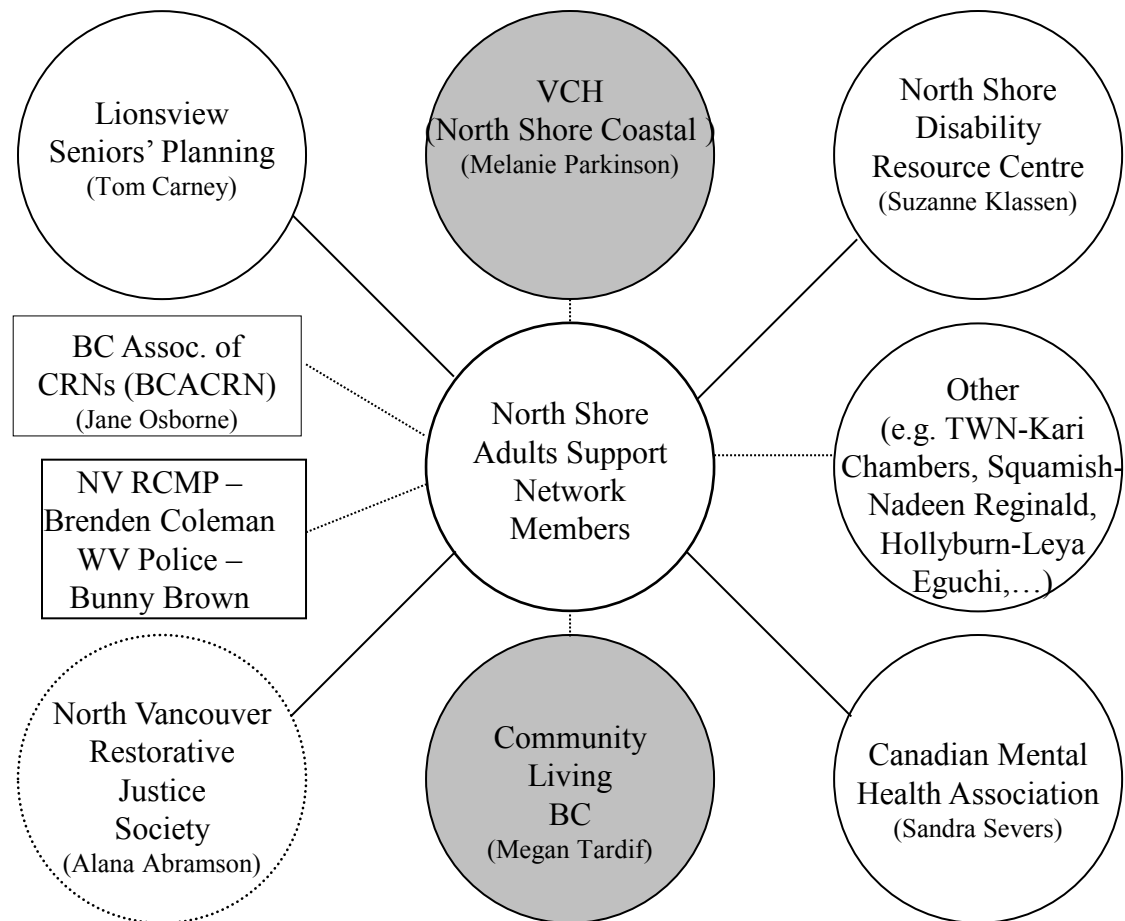
# What is the CRN Mandate?

---

- Provide a supportive network of agencies, volunteers & community to:
  - Raise awareness about adults at risk of abuse, neglect and self-neglect
  - Design and develop protocols for coordinated responses to abuse & neglect
  - Provide education, prevention and intervention for those unable to do so for themselves



# North Shore CRN





# North Shore Initiatives

## Some Examples

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- Advanced Care Planning
  - Workshops for agency staff and volunteers
  - Workshops for adults in community
- Annual World Elder Abuse Awareness Day Events
  - Partnership with community groups
- Restorative Responses to Adult Abuse & Neglect Project (now a program)



# North Shore Restorative Justice Society

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- 15 years of service to community
- Referrals from the police, schools, community agencies, citizens
- Volunteers and staff
- Office in the community and at North Van RCMP

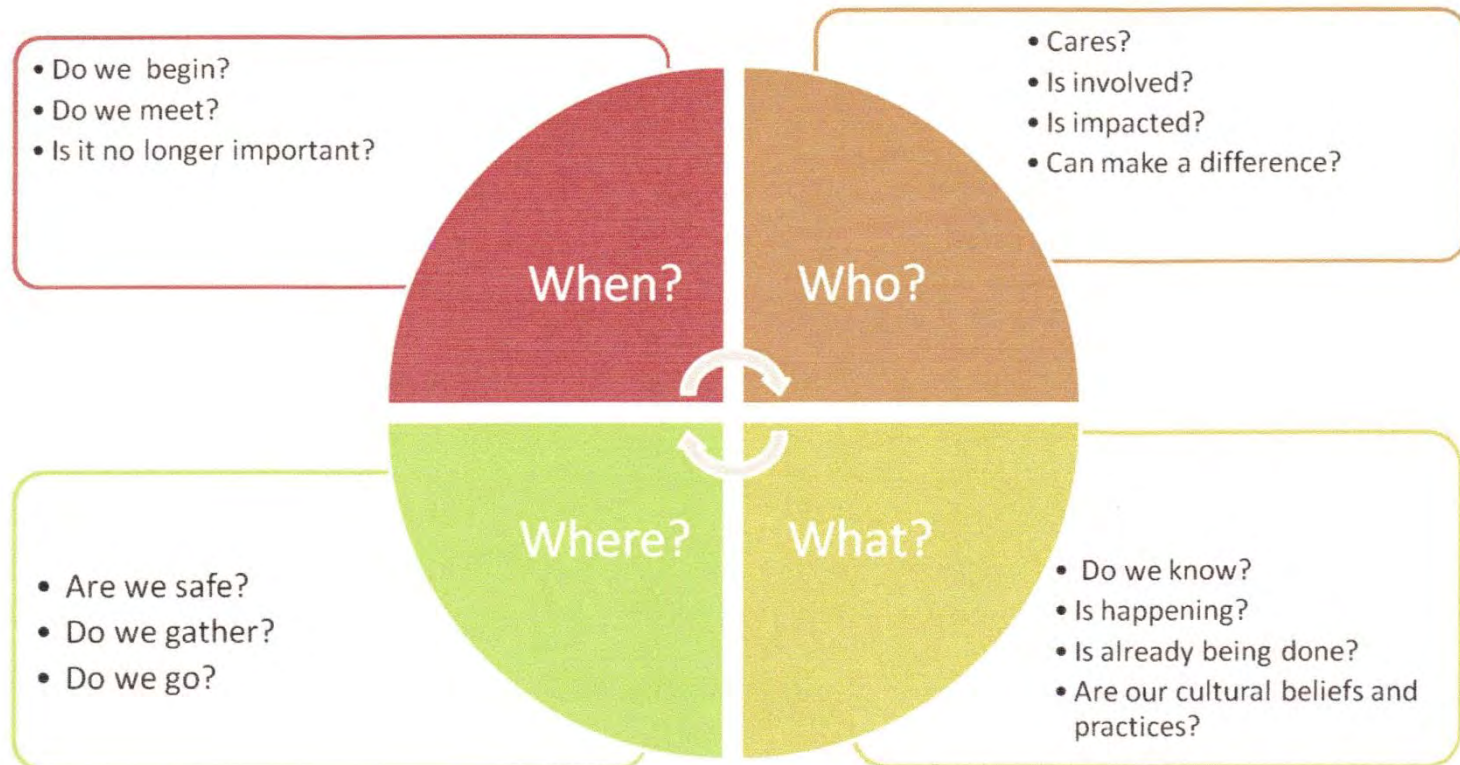






# Why / When a Restorative Justice Approach?

## Wisdom Wheel





# Referral Criteria

---



- Harm or conflict exists (financial, emotional, neglect, care decisions)
- All parties give consent for RJ to contact them for a meeting
- All parties understand the process is voluntary and that they have other options
- There is general agreement about what happened



# Restorative Justice Process

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- Initial phone calls
- Meet with all parties individually
- Assess needs
  - Make referrals to other resources
  - Facilitate a face-to-face meeting
  - Exchange letters
  - Shuttle mediation towards a resolution
- Provide follow up and document outcome
- Advise referral source of the outcome





## *Benefits to Participants in a Restorative Justice Process*

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- **Questions** answered
- Sharing **stories** was therapeutic
- Held **accountable** in a meaningful way
- Being heard with **empathy** and **non-judgement** was healing
- There were **positive future interactions** between people previously in conflict
- Restore power and control
- Generates **learning** about the consequences of actions
- More **understanding** gained between people
- **Less fear**
- **Transforming** people and relationships
- Reconnection to **community**
- Felt **empowered** to solve own conflicts



# Case Example 1

---

- 6 siblings & Mother with mid-late stage Alzheimer's in facility care
- 2 eldest siblings had POA
  - Decided to place mother in care
  - Thought POA conferred authority to make the decision w/o consultation
  - Disputed by other siblings
- Referred by Care Facility Social Worker



# Case Example 1 - Complexities

---



- Mother not able to participate – became the symbolic centre
- Counselling
  - Past conflict between older sister and younger sister
- Mediation
  - Financial conflict involving 5 of the siblings
- Outcome – agreement about Mum staying in care



## Case Example 2

---



- Mother with early Alzheimer's still living in her own home with supports from VCH and sons
- Police called to intervene in fight between the sons
- VCH / Police decided a referral to RJ was the best approach for Mum who wanted to continue to live at home safely and supported by sons





# Case 2 – Complexities / Outcomes

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- Pre-work
  - Met with Mum with support of Health
  - Met with each of the sons – 2 or 3 times
- Two conferences
  1. Mum present to express her wishes
  2. 3 sons and supporters (drug & alcohol, counsellor - both male)
- Outcome
  - Agreement allowed Mum to remain at home initially / later went into care





# CRNs Provide Cost-effective Solutions in Communities

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- CRNs can maintain with minimal core funding for a Coordinator
- CRNs are translating the tools provided by legislation and the responses provided by designated and community agencies into effective solutions for prevention and intervention in adult abuse, neglect and self-neglect



# Questions / Discussion

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What is already in place in Sea-to-Sky?

?

# Adult Guardianship Continuum ...

## Legal & informal/community tools

<b>Personal Planning or “I Decide”...</b>	<b>Informal Support</b>	<b>Others decide... legal tools</b>
<ul style="list-style-type: none"> <li>✓ Who will help?</li> <li>✓ What help?</li> <li>✓ When to help?</li> <li>✓ How? (values &amp; instructions)</li> </ul> <p><b><u>Legal Tools:</u></b></p> <ul style="list-style-type: none"> <li>➤ Representation Agreement</li> <li>➤ Enduring Power of Attorney</li> <li>➤ Advance Directive</li> </ul>	<ul style="list-style-type: none"> <li>➤ Direct Deposits</li> <li>➤ Direct payments</li> <li>➤ Local agencies</li> <li>➤ Pension Trustee</li> <li>➤ Community groups</li> <li>➤ Leverage local networks (CRNs)</li> <li>➤ Help adult do future planning/put SDM or supportive DM in place (e.g. RA/POA)</li> </ul>	<ul style="list-style-type: none"> <li>➤ TSDM (health care)</li> <li>➤ Investigation (DA)</li> <li>➤ Investigation (PGT)</li> <li>➤ Protect Assets (PGT)</li> <li>➤ Support &amp; Assistance (DA) (voluntary or court ordered)</li> <li>➤ Committee of Estate</li> <li>➤ Statutory Committee (PGT of BC)</li> <li>➤ Committee of Person</li> </ul>

# Other Resources

- Federal government Financial Abuse/Elder Abuse – Fact sheets  
<http://www.seniorsbc.ca/elder/weaad/factsheets.html>
- BC Seniors: <http://www.seniorsbc.ca/elder/>
- Victim Services: <http://www.pssg.gov.bc.ca/victimservices/index.htm>
- Public Guardian & Trustee:  
[http://www.trustee.bc.ca/services/adult/personal\\_planning\\_tools.html](http://www.trustee.bc.ca/services/adult/personal_planning_tools.html)
- Ministry of Attorney General (RA7, RA9, EPOA):  
<http://www.ag.gov.bc.ca/incapacity-planning/>
- The Nidus Personal Planning Resource Centre and Registry-  
<http://www.nidus.ca/>
- BC Centre for Elder Advocacy & Support <http://www.bcceas.ca/>
- BC Association of Community Response Networks: <http://www.bccrns.ca/>  
– North Shore Adults Support Network, 604-363-5370
- National Initiative for the Care of the Elderly: Knowledge to Action project  
(watch here for 12 tools in coming months as project winds up)  
<http://www.nicenet.ca/list.aspx?menu=43&app=197&cat1=570&tp=9&lk=no>

## **OUR PRESENTATION TODAY: ADVANCE CARE PLANNING**

### **What is Advance Care Planning?**

The process of a capable adult talking over their beliefs, values, and wishes about the health care they want, discussed with their health care provider and/or family, in advance of a situation when they are incapable of making health decisions.

### **What is an Advance Care Plan?**

A record (often written, but may have only been discussed) of the capable adult's advance care planning conversation and wishes to guide their Temporary Substitute Decision-Maker or Representative, if called to make a health care decision in the event the adult is incapable of making decisions.

### **Who can be appointed a Temporary Substitute Decision-Maker (TSDM)?**

The TSDM must be 19, willing and available, and is chosen from the following (in order):

- The adult's spouse (legally married or living together in a marriage like relationship; same sex included)
- The adult's child (ranked equally)
- The adult's parent (ranked equally)
- The adult's brother or sister (ranked equally)
- The adult's grandparent (ranked equally)
- The adult's grandchild (ranked equally)
- Anyone else related by birth or adoption to the adult
- A close friend of the adult
- A person immediately related to the adult by marriage
- Someone appointed by the Public Guardian and Trustee

NOTE: If you want a specific person to speak for your healthcare decisions who does not fall in this order (e.g. you want a specific child to make decisions for your healthcare instead of your spouse), you should consider completing a Representation Agreement (see below).

### **What is an Advance Directive?**

A written instruction made by a capable adult that gives or refuses consent to health care directly to the health care provider if no Representative is named.

### **How is the Advance Care Plan different from an Advance Directive?**

The content of these two documents may be similar, but they differ in how they are recognised in law:

- In the Advance Care Plan, your wishes, beliefs and values are to be followed by your TSDM or Representative when making a decision about care proposed by a health care provider (who would consider your ACP in what to propose).
- In the Advance Directive
  - *If you have completed a Representation Agreement*, the Advance Directive will direct the Representative in making a decision
  - *If you have not completed a Representation Agreement*, your direct instructions about a care decision will be followed by the healthcare provider
  - If the decision at hand is not covered in the directions in the Advance Directive, the intent – or the values, wishes and beliefs underlying the Advance Directive - will guide any decisions of the Representative or TSDM

### **What is a Representation Agreement ?**

A Representation Agreement is a legal document in which a capable adult names a Representative and sets out the *type* and *scope* of decisions that the Representative may make on behalf of the adult if the adult becomes incapable.

If the capable adult completed an Advance Directive, the Representative must treat – and follow - the Advance Directive as the adult's wishes.

**Advance Care Plans, Advance Directives and Representation Agreements can all work well together --**

**...and you still need to have the conversation with your loved ones so they know what to do.**

**"Decisions are going to be made.  
We can express our intentions and  
state our wishes or we can allow  
somebody else to decide what should  
happen. But come what may,  
decisions will be made."**

With thanks to the Council of Senior Citizens of BC

### **More Information**

**What is a Will?** This legal document details the distribution of your assets after death

**What is a Power of Attorney?** This legal document assigns someone authority over your assets while you are living.

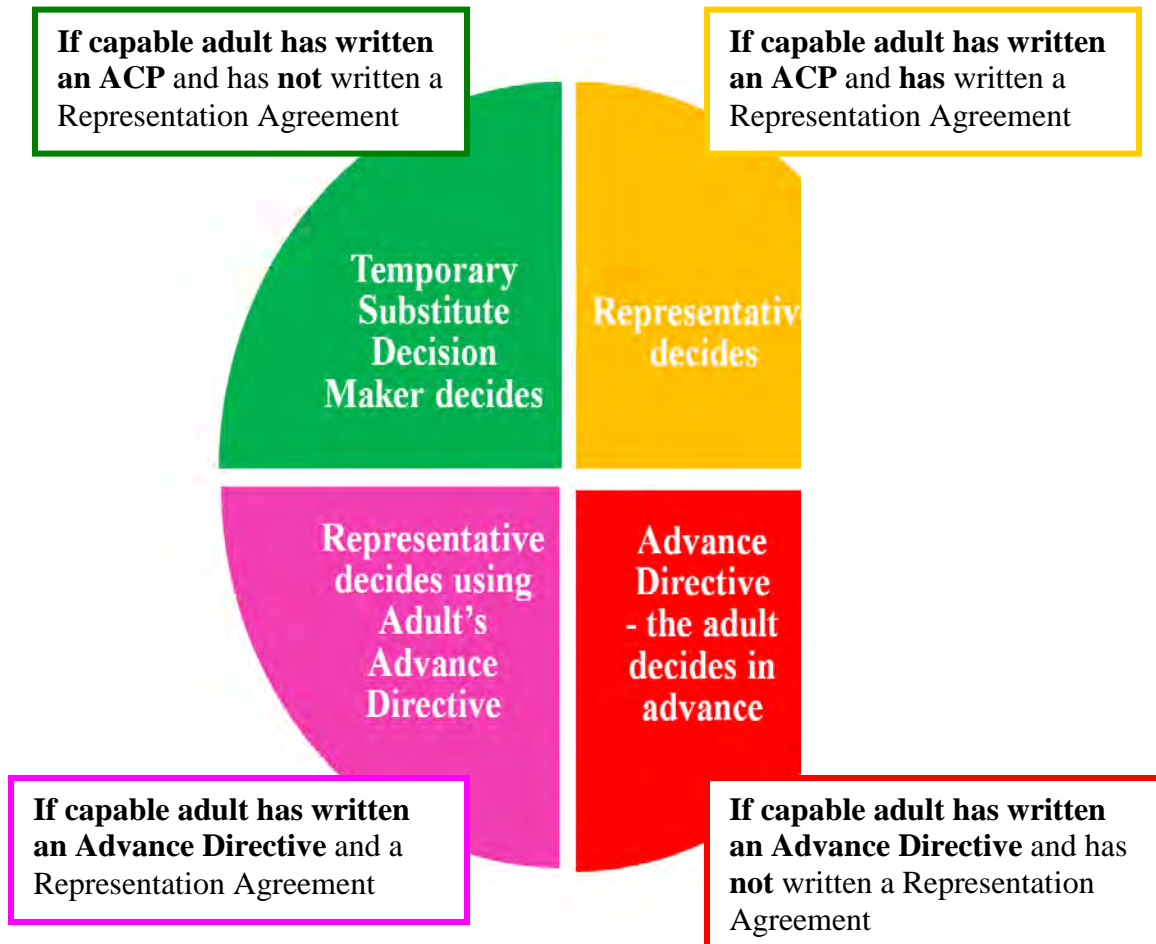
**For more information about Advance Care Planning, please see:**

*The Public Guardian and Trustee of British Columbia*, [www.trustee.bc.ca](http://www.trustee.bc.ca), operates under provincial law to provide assistance to adults who need support for financial and personal decision making.

*The Health Care Providers' Guide to Consent to Health Care* is a document from the BC Ministry of Health – a comprehensive guide outlining BC's health consent legislation, including information about advance care planning and the new Advance Directive.

<http://www.health.gov.bc.ca/library/publications/year/2011/health-care-providers'-guide-to-consent-to-health-care.pdf>

## Options for Advance Care Plans: Who Decides?



**These options will only be used when the adult is NOT capable.**

If there is no Advance Care Plan, no Representation Agreement and no Advance Directive, healthcare providers will choose a Temporary Substitute Decision Maker, based on a hierarchy in the legislation (e.g. spouse, child, parent, sibling, etc.)