



KELOWNA REGIONAL CONFERENCE

**Manteo Resort Waterfront Hotel
3762 Lakeshore Rd
Kelowna, BC V1W 3L4**

AGENDA – Wednesday March 13

Time	Session	Speaker	Facilitator
8:30 - 9:00	<i>Registration & Breakfast</i>		
9:00 – 9:15	Opening ceremony & welcome		Baljinder Gill
9:15 – 10:45	Overview of family law	➤ Jeanine L. Ball - Family Lawyer	Baljinder Gill
10:45 – 11:00	<i>Coffee break</i>		
11:00 - 12:30	Wills and estates off and on reserve	➤ Kelly P. Melnyk - Lawyer	Baljinder Gill
12:30 - 1:15	<i>Lunch</i>		
1:15 – 2:15	Family law and protection orders	➤ Jeanine L. Ball - Family Lawyer	Baljinder Gill
2:15– 2:30	<i>Coffee break</i>		
2:30 – 3:30	Focus group about priority legal information needs for Indigenous communities	➤ Kinwa Bluesky - Consultant	Baljinder Gill
3:30– 5:00	Elder law – seniors issues	➤ Kelly P. Melnyk - Lawyer	Baljinder Gill



KELOWNA REGIONAL CONFERENCE

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AGENDA – Thursday March 14

Time	Session	Speaker	Facilitator
8:30 – 9:00	<i>Registration & Breakfast</i>		
9:00 – 10:30	Gladue and restorative justice	➤ Mitch Walker - Gladue Writer	Baljinder Gill
10:30 – 10:45	<i>Coffee Break</i>		
10:45 – 12:15	Overview of child protection law	➤ Karen Tse - Lawyer	Baljinder Gill
12:15 – 1:00	<i>Lunch</i>		
1:00 – 2:30pm	- LSS publications and other legal resources - Working with LSS intake	➤ Patricia Lim - LSS ➤ Deneen Garrett - LSS	Baljinder Gill
2:30 – 4:00 pm	Immigration law	➤ Amanda Aziz - Lawyer	Baljinder Gill

Family Law - The Legal Framework The Family Law Act

Jeanine Ball
Lawyer
Paul & Company, Kamloops

Introduction

- ▶ This lecture provides an overview of the Family Law Act in BC today

A brief word on the Constitution -which government has jurisdiction and which court do we start with?

▶ Marriage and Divorce

- ▶ Federal Power. This means Divorce can only be granted in Supreme Court

▶ Property

- ▶ Provincial Power. The Family Law Act sets out that Property Division may only be dealt with in Supreme Court

▶ Related Issues

- ▶ Parenting Issues, Child Support, and Spousal Support can all either be dealt with together as part of a Divorce proceeding in Supreme Court ,but can also be dealt with in Provincial Court. Family Law Act orders for these issues can be granted in either court

FLA Part 1 - Interpretation and Definitions

- ▶ Some key definitions include the definition of a “spouse”, and the definition of “family violence”
- 3 (1)A person is a spouse for the purposes of this Act if the person
 - (a)is married to another person, or
 - (b)has lived with another person in a marriage-like relationship, and
 - (i)has done so for a continuous period of at least 2 years, or
 - (ii)except in Parts 5 [*Property Division*] and 6 [*Pension Division*], has a child with the other person.
- ▶ Family Violence will be addressed specifically in the next session. It is a broad definition and means more than physical violence

Part 2 – Resolution of Family Law Disputes

- ▶ There are a number of avenues to avoid court! Why avoid it?

These options include:

Mediation

Arbitration

Parenting Coordinators

Case Conferences

Part 3 - Parentage

- ▶ Deals with scenarios of biological and non-biological parents

Part 4 – Care of and Time with Children

- ▶ Best Interests of the Child
- ▶ Guardianship
- ▶ Parenting Responsibilities & Parenting time
- ▶ Contact Time
- ▶ Relocation

Best Interests as defined in the FLA

- ▶ To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - ▶ (a) the child's health and emotional well-being;
 - ▶ (b) the child's views, unless it would be inappropriate to consider them;
 - ▶ (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - ▶ (d) the history of the child's care;
 - ▶ (e) the child's need for stability, given the child's age and stage of development;
 - ▶ (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - ▶ (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - ▶ (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - ▶ (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - ▶ (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

Guardianship

- ▶ **39** (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.
- ▶ (2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.
- ▶ (3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:
 - ▶ (a) section 30 [*parentage if other arrangement*] applies and the person is a parent under that section;
 - ▶ (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
 - ▶ (c) the parent regularly cares for the child.
- ▶ (4) If a child's guardian and a person who is not the child's guardian marry or enter into a marriage-like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship.
- ▶ **Parenting arrangements**
- ▶ **40** (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

Parenting Responsibilities and Parenting time

- ▶ For the purposes of this Part, parental responsibilities with respect to a child are as follows:
 - ▶ (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
 - ▶ (b) making decisions respecting where the child will reside;
 - ▶ (c) making decisions respecting with whom the child will live and associate;
 - ▶ (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
 - ▶ (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
 - ▶ (f) subject to section 17 of the [Infants Act](#), giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
 - ▶ (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
 - ▶ (h) giving, refusing or withdrawing consent for the child, if consent is required;
 - ▶ (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - ▶ (j) requesting and receiving from third parties health, education or other information respecting the child;
 - ▶ (k) subject to any applicable provincial legislation,
 - ▶ (i) starting, defending, compromising or settling any proceeding relating to the child, and
 - ▶ (ii) identifying, advancing and protecting the child's legal and financial interests;
 - ▶ (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- ▶ **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.

Contact Time

- ▶ What is it and who can seek it?

Relocation

- ▶ Written Notice is required
- ▶ Difference between equal and unequal parenting and relocation

Part 5 - Division of Property

- ▶ What is “Family Property”?
- ▶ What is “Excluded Property”?
 - A grey area of the law *V.J.F. v. S.K.W.*, 2016 BCCA 186
- ▶ What changed with the 2013 FLA?

Part 6 - Pension Division

Sets out the specific requirements for dividing different types of pension plan

Part 7 – Child and Spousal Support

- ▶ What Guidelines apply?
- ▶ What information is required?
- ▶ What happens if the payor doesn't pay?

LEADING CASE ON ARREARS

- ▶ D.B.S. v. S.R.G, [2006] 2 SCR 231, 2006 SCC 37

Part 8 – Children's Property

- ▶ Who can hold property in trust for a child?

Part 9 – Protection from Family Violence

- ▶ New emphasis on Family Violence...WHY?

Parts 10 - 14 - Court Processes, Appeals, Transition, and Regulations

- ▶ Issues of jurisdiction
- ▶ How to deal with matters that started before the current FLA
- ▶ Which court hears an Appeal?

A word on the UN Convention on the Rights of the Child

- ▶ Came into force in Canada on September 2, 1990
- ▶ Which country is the only country that is still not a party to this Convention?

How children's voices are heard in family law disputes

- ▶ Hear the Child Reports

D.A.F. v. R.D.F., [2017 BCSC 873](#) at paras 34-35

- ▶ Views of the Child Reports

- ▶ Judicial Interviews

WILLS AND ESTATES

Kelly P. Melnyk, Lawyer

Paul & Company

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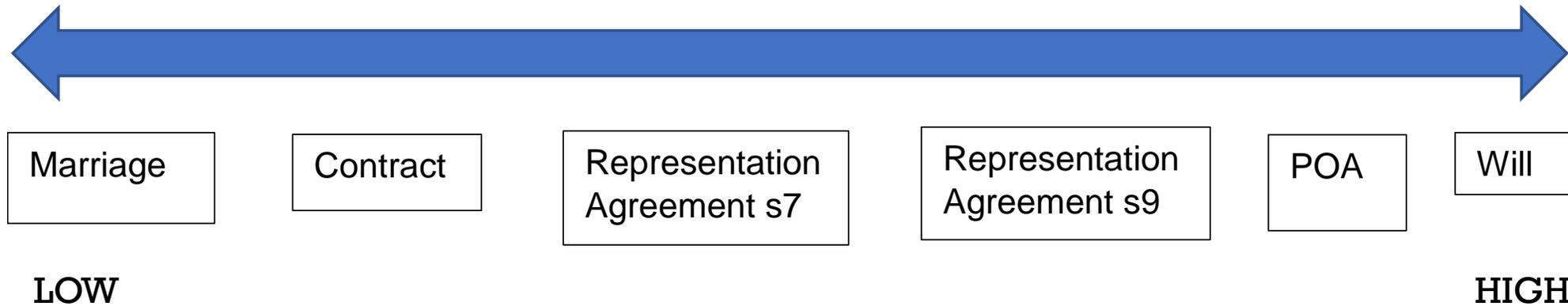
OVERVIEW –TOPICS TO BE COVERED

- **Testate versus Intestate**
- **Grants of Probate or Administration**
- **Indian Act**
- **Question and Answer**



FIRST AND FOREMOST - CAPACITY

Does this person have the mental capacity to make the decision?



TESTATE

- Testate: Why Do I Need a Will?
- Testate: What Makes a Will Valid?
- Testate: Beneficiaries and Joint Tenancy
- Testate: Common Issues



TESTATE: WHY DO I NEED A WILL?

- Provides guidance for your survivors as to your final wishes:
 - Who do you trust to carry out your last wishes – the Executor;
 - Who do you want to gift to – the Beneficiaries;
 - How are you giving out the gifts – instructions to the Executor;
 - Don't forget about the residue!
 - Who should take care of your children – the Guardian;
 - Giving authority to pay out final debts, funeral and testamentary expenses – the Executor;
 - Are there any other concerns that the Executor is meant to deal with on behalf of your estate?
 - Is there a business?



TESTATE: WHAT MAKES A WILL VALID?

- Two main components:
 1. The Will-Maker must have been in a position to sign the Will:
 - Were they old enough?
 - Did they have testamentary capacity?
 - Was the Will signed under the influence of another?
 2. A Will must conform to the statutory requirements of the *Wills, Estates and Succession Act*, SBC 2009, c 13 (“WESA”);
Section 4 of *WESA*



TESTATE: WHAT MAKES A WILL VALID?

- If a Will is found to be invalid due to a deficiency in the requirements, the Court has discretion to “cure” the deficiency – Section 58 of *WESA*;
- If a Will is found to contain an error that changes the intention of the Will-Maker, the Will may be rectified to carry out the true intentions of the Will-Maker – Section 59 of *WESA*;
- The strength of the Will as a legal document only comes into effect upon the death of the Will-Maker.



TESTATE: WHAT MAKES A WILL VALID?

- **Age Requirement** – A person as young as 16 years of age can sign a Will - Section 36(1) of *WESA*
 - If a person is a member of the Armed Forces, on active duty and under 16 years of age, they are permitted to execute a Will – Section 38 of *WESA*;
- **Testamentary Capacity** – The Will-Maker is mentally capable of making a Will – Section 36(1) of *WESA* and the *Banks v Goodfellow* test:
 - Does the person know what they have/the contents of their estate?
 - Does the person know who they have an obligation to provide for:
 - Legal and Moral Obligations – Children and/or Spouse?
 - Does the person understand how they are going to gift their estate?
 - Does the person understand and appreciate the effect and implications of signing the Will?
 - Are there delusions, illnesses, or people influencing the decisions?



TESTATE: WHAT MAKES A WILL VALID?

- At the stage of assessing testamentary capacity, we must always ask:
 - “Is this person truly expressing their final wishes or this what someone else wants them to do?”
 - Testamentary Autonomy is KEY!
- **UNDUE INFLUENCE** is very real and more common than we would like to think:
 - Section 52 of *WESA*, two elements to establish:
 - (a) being in a position where the potential for dependence or domination of the will-maker was present, and
 - (b) using that position to unduly influence the will-maker to make the will or the provision of it that is challenged,



TESTATE: WHAT MAKES A WILL VALID?

- Any Questions so far?



TESTATE: WHAT MAKES A WILL VALID?

- The Statutory Requirements under Section 37(1) of *WESA* :
 - Must be in writing;
 - Must be signed at the end by the Will-Maker (or at least acknowledged the signature is theirs) witnessed by two individuals over 19 years of age at the same time; and
 - Must be signed by the two witnesses in the presence of the Will-Maker.
- Signing at the “end”, the attestation clause – Section 39 of *WESA*;
- *While not a statutory requirement, dating the Will ensures that the executor and the Registry can confirm if this is the Last Will and Testament.*



TESTATE: BENEFICIARIES AND JOINT TENANCY

- **Beneficiaries – RRSPs, RIFs, TFSAs, Life Insurance Policies**
 - These types of programs allow a designated beneficiary
 - They are not subject to Probate so fall outside of the Estate
 - They go directly to the designated beneficiary
- **Joint Tenancy – Real Property, Bank Accounts, some personal property**
 - This places the Will-Maker on title, or as the account holder, with someone else “jointly”
 - Right of Survivorship applies so not subject to Probate and falls outside of the Estate
 - They are deemed to have transferred to the survivor upon the death of the Will-Maker



TESTATE: SOME COMMON ISSUES

- The Witness Who Gets a Gift – Section 43 of *WESA*
 - *Could be valid BUT only on successful application to the Court*
- Disinheriting the Child or Spouse– Section 60 of *WESA*
 - *Becoming more common with blended families*
- A Change Made Within the Will – Section 45 of *WESA*
 - Did the Will-Maker and witnesses sign in the margin or somewhere opposite the change?
- The Non-Existent Holograph Will – Section 38(2) of *WESA*
 - Only a member of the Armed Forces on active duty can have a Will without witnesses in BC
 - **HOWEVER**, see *Indian Act*



TESTATE

- Any Questions so far?



INTESTATE

- Intestate: *WESA* Clarity
- Intestate: Who Stands to Benefit?
- **As A Note:**
 - A child who is adopted by a deceased is considered a child of the deceased. When a child is adopted, the adoptive parents are the parents and are considered to have a legal and moral obligation to their child. The flipside is that the biological parents would not inherit from a deceased child under the intestacy hierarchy. Nor would an adopted child stand to inherit from their biological parents.
 - **UNLESS** there is a Will providing such a gift with the intention to gift to the bio child/parent.



INTESTATE: *WESA* CLARITY

- Under Part 3 of *WESA*, a greater amount of clarity was brought about for the process of estate administration when a person passes away without a Will.
- Allows for those left behind to understand what they are entitled to.
 - For example, the family residence for a surviving spouse who was not on title – Part 3, Division 2 of *WESA*
- Expressed intention without a formal Will may be recognized under Section 58, giving the Courts the discretion to recognize the “testamentary intention” of a would-be will-maker.
- Greater clarity with respect to inheritances of property on Nisga’a and Treaty First Nations lands – Sections 13 – 18.3.
- Age requirements



INTESTATE: *WESA* CLARITY

- Some fun language:
 - Escheat – Section 23(2)(f)
 - The deceased has no surviving beneficiaries or heirs, their estate escheats to the Crown:
 - This means that either the provincial Crown or the federal Crown becomes the beneficiary, depending upon the asset
 - **Fun Fact:** The federal Crown has jurisdiction over banking, therefore they get the bank accounts
 - Per Stirpes – Section 24
 - By branch/stem, meaning that the gift is split between the descendants, or their survivors, equally.
 - For Example, to my siblings per stirpes – If one of the siblings pre-deceases, his/her survivors receive that siblings gift equally.
 - Per Capita
 - By head, meaning the gift is to the descendants equally but if one passes, their share does not pass down to their survivors.



INTESTATE: WHO STANDS TO BENEFIT?

PART 3, DIVISION 1 OF *WESA*

Spouse?

- Spouse to receive entire estate

Spouse and
Children?

- Spouse receives first \$300,000 if all related
- Blended family? Spouse receives first \$150,000
- Then $\frac{1}{2}$ of remainder to Spouse and other $\frac{1}{2}$ to Children, per stirpes

Just
Children?

- The Children receive the entire estate



INTESTATE: WHO STANDS TO BENEFIT?

PART 3, DIVISION 1 OF *WESA*

No Children
or Spouse

- Deceased's surviving parents
- If only one parent surviving, they receive entire estate

No Parent

- Estate is then distributed equally amongst the descendants of the parents, or one parent's descendants, per stirpes.
- Meaning: to the siblings of the deceased.

No Siblings

- If there is a grandparent alive, to the grandparent.
- If no surviving grandparent, are there descendants of the grandparent? Yes, then:
 - Aunt or Uncle who is alive



INTESTATE: WHO STANDS TO BENEFIT?

- What if there is uncertainty over who passed away first?
- Section 5 of *WESA*: General presumption is that they are assessed as if they had both survived each other.
 - Anything held jointly is dealt with as though it had been held as tenants-in-common.
- Section 10 of *WESA* provides a five day survival rule, meaning that if one person does not survive the other, they are deemed to have passed first.



INTESTATE

- Any Questions so far?



GRANTS OF PROBATE OR ADMINISTRATION

- **Grant of probate:**
 - You have the Will and are named the Executor or Alternate Executor
 - Application made in BC Supreme Court, the Will is validated and you are named as Executor and receive the
 - Grant of Probate
- **Grants of Administration:**
 - You have the Will but are not the Executor or Alternate Executor
 - Application is made in BC Supreme Court, the Will is validated, and you are named as Administrator and receive the
 - Grant of Administration with Will Annexed
 - There is no Will so no named Executor
 - Application made in BC Supreme Court and, if granted, you are named as Administrator and receive the
 - Grant of Administration without Will Annexed



THE *INDIAN ACT*, RSC 1985, C I-5

- First, is the person registered, or could they be registered, in accordance with Section 2 and /or 6 of the *Indian Act*?
- Second, is the person considered to be on-reserve or off-reserve?
- Section 45(2) of the *Indian Act*:
 - “The Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes with respect to the disposition of his property on his death.”
- Section 45(3) of the *Indian Act*:
 - “No will executed by an Indian is of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act.”



THE *INDIAN ACT*, RSC 1985, C I-5

- Section 46 grants discretion to the Minister to declare a Will void, for example a lack of testamentary capacity, duress or undue influence, or even if the terms were thought to be against public interest.
- Passed Intestate?
 - Section 48(1) – If net Estate deemed by Minister to be at or below \$75,000, or some other amount fixed by Order of Governor in Council, to the surviving spouse.
 - Section 48(2) – Over \$75,000? Then:
 - Spouse but no children? To spouse;
 - Spouse and one child? Half to spouse, half to child (per stirpes);
 - Spouse and more than one child? 1/3 to spouse, rest to children (per stirpes).
 - Section 48(3) – The Minister has the discretion to ensure that children are provided for despite there being a survivor



THE *INDIAN ACT*, RSC 1985, C I-5

- Passed Intestate continued:

No Children
or Spouse

- Deceased's surviving parents
- If only one parent surviving, they receive entire estate
- Section 48(5)

No Parent

- Estate is then distributed equally amongst brothers and sisters of the deceased or to the children of a deceased sibling.
- **NOTE** – If the gift is to the deceased's nieces/nephews, it is **per capita**.
- Section 48(6)

No Siblings

- Estate distributed then to next-of-kin – Section 48(7)



THE *INDIAN ACT*, RSC 1985, C I-5

- Who is Next-Of-Kin?
- Section 48
 - **“(8)** Where an estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.
 - **(9)** For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.”
 - **(10)** Descendants and relatives of an intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.



THE *INDIAN ACT*, RSC 1985, C I-5

- Reserve Land:

- Section 50(1) does not allow for an individual to receive a gift of reserve land if that person is not entitled to reside on the reserve
- Section 50(2): if a gift cannot pass to a person not entitled to reside on reserve, those lands are, in the discretion of the minister/superintendent, to be sold and the proceeds of the sale to the person.
- Section 50(3): if the lands remain unsold, the land reverts to the band.



WILLS AND ESTATES

- Any Questions?



FAMILY VIOLENCE AND THE BC FLA

Jeanine Ball

Lawyer

Paul & Company, Kamloops

Abuse and violence in intimate relationships - Introduction

- History in BC
- New provisions in 2013 FLA to address Family Violence specifically

R v Lavallee, [1990] 1 SCR 852

- An example of how courts have viewed this issue in the past

Family Violence is a gender issue

- Family violence is a gender issue

Statistics

- Over half of women in BC have experienced physical or sexual violence since the age of 16...that's more than one million women in our province

What is family violence?

(FLA definition, Part 1, section 1)

Also see the definition of “at-risk family member” in s.182

- **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;

Duties of family dispute resolution professionals (s. 8 of the *FLA*)

- **8** (1)A family dispute resolution professional consulted by a party to a family law dispute must assess, in accordance with the regulations, whether family violence may be present, and if it appears to the family dispute resolution professional that family violence is present, the extent to which the family violence may adversely affect
 - (a)the safety of the party or a family member of that party, and
 - (b)the ability of the party to negotiate a fair agreement.
- (2)Having regard to the assessment made under subsection (1), a family dispute resolution professional consulted by a party to a family law dispute must
 - (a)discuss with the party the advisability of using various types of family dispute resolution to resolve the matter, and
 - (b)inform the party of the facilities and other resources, known to the family dispute resolution professional, that may be available to assist in resolving the dispute.
- (3)A family dispute resolution professional consulted by a party to a family law dispute must advise the party that agreements and orders respecting the following matters must be made in the best interests of the child only:
 - (a)guardianship;
 - (b)parenting arrangements;
 - (c)contact with a child.

Duties of all

(Child, Family and Community Service Act)

Duty to report need for protection

14 (1) A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

(2) Subsection (1) applies even if the information on which the belief is based

(a) is privileged, except as a result of a solicitor-client relationship, or

(b) is confidential and its disclosure is prohibited under another Act.

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.

(5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.

(6) A person who commits an offence under this section is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

(7) The limitation period governing the commencement of a proceeding under the Offence Act does not apply to a proceeding relating to an offence under this section

Family Violence & Best Interests

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;

Family Violence and Best Interests

(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

(3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

(4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

Legal Responses

- There are **3** types of **protection orders**:
 - **peace bonds** and no contact orders (s. 810, *Criminal Code*)
 - **protection orders** (Part 10, FLA)
 - **conduct orders** (s. 183, FLA): their purpose is to manage behaviours that get in the way of resolution, rather than to protect from violence. Can be very useful tools.

Legal Responses – Peace Bonds and No Contact Orders

- Section 810 order aka Peace Bond
- No contact orders

Legal Responses – Conduct Orders

- Part 10 of the *Family Law Act* provides for judicial remedies for situations in which a person's conduct in the litigation is contributing to the ongoing conflict.

Legal Responses -Protection Orders

- Section 183 of the **Family Law Act** sets out a scheme for court orders for the protection of persons.

Protection vs Conduct Orders

- What's the difference?

Enforcement of protection orders

Enforcement - Practical Issues

FLA, s. 90: Temporary orders respecting family property

- What are these?

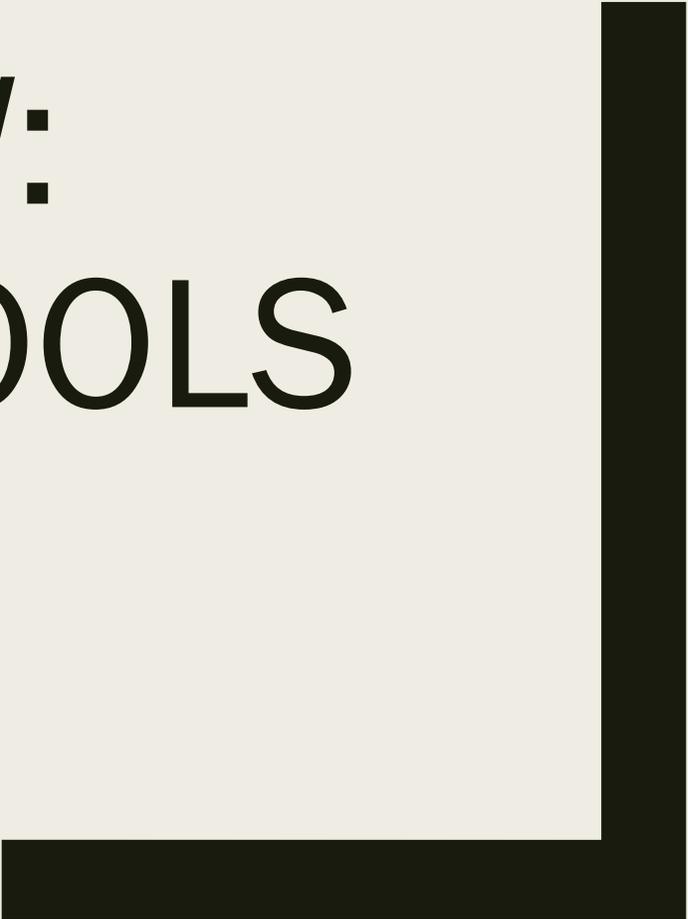
Tort Actions in relation to spousal violence

- Spouses can pursue tort claims as part of their relief.



ELDER LAW: ISSUES AND TOOLS

Kelly Melnyk
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Overview

■ Issues:

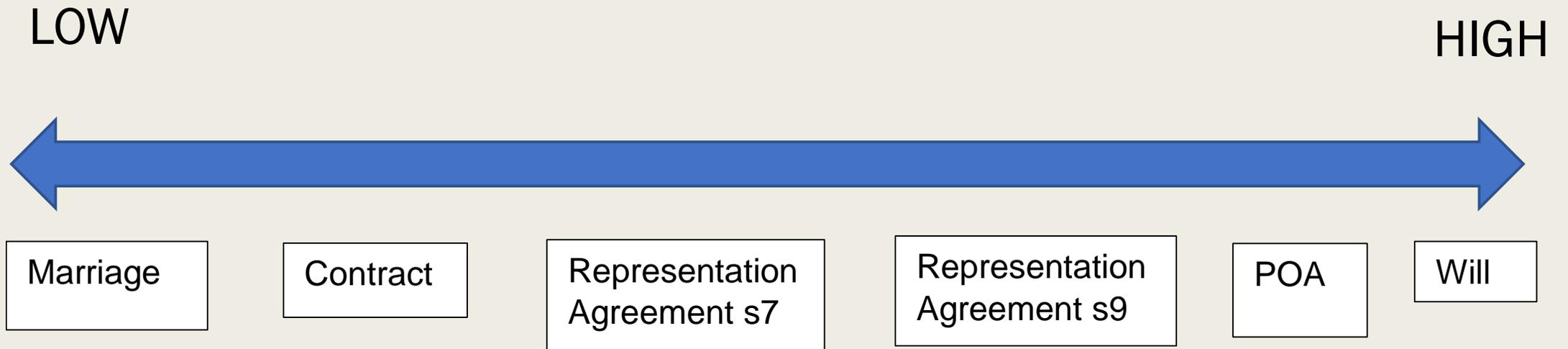
- *Capacity*
- *Predatory Marriages and the Marriage-Like Relationship*
- *Undue Influence*

■ Tools:

- *Power of Attorney*
- *Representation Agreements*
- *Public Guardian and Trustee*

■ The Issue and the Tool – Joint Tenancy

Capacity: What are we deciding?



What could affect capacity in a legal question?

- A disability;
 - Cognitive Disease – Alzheimer’s or dementia; or
 - Medication
-
- **These do not automatically mean someone has lost capacity but more detailed assessment is required**

How do we know if they have lost capacity?

- It can be obvious – Year is 1973 (actually, 2019)
- It can be more hidden – Year is 2019, I have three children but then struggles to remember a middle name or birthday
 - *More probing questions used – Do you remember my name? Why are you here? Etc.*
- Depending on what we are doing will impact how we are looking at capacity

So what about marriage?

- Marriage is considered the lowest threshold for capacity
- **BUT** that has changed recently - *Devore-Thompson v. Poulain*, 2017 BCSC 1289
 - *Used to be that a person understood the nature of the contract (ie Marriage) and the duties and responsibilities it created (Hart v Cooper, 1994 BCSC 159)*
 - Now, there must be an appreciation of the long-term implications of the marriage
 - For example, will this impact estates for the marrying parties?

Marriage-Like relationships?

- As discussed in the Family Law session, we are looking for relationships of 2 or more years in a marriage-like relationship
- **This is tricky in Elder Law!**
 - *Not necessarily a sexual relationship*
 - *May not even sleep in the same room*
- How does the client view this relationship?
 - *Have they met family members?*
 - *How did they meet?*

Were they influenced?

- As discussed, the law is clear in *WESA* about undue influence
 - *Who is this person?*
 - *What is their relationship to the client?*
 - *Is the client reliant on them for anything?*
 - *Why is the client making a change/entering an agreement or contract now?*
 - *How does this impact the client's life/estate/property?*

Questions so far?



Tools to Help Protect an Elderly Client

- Does this person have a Power of Attorney they trust?
- Are they concerned over who is making the health care decisions?
- Should the Public Guardian and Trustee be involved?
- Should the Courts step in?

Power of Attorney

- My Favourite Personal Planning Tool!
- If nothing else, a client should have a power of attorney
- Gives legal and financial authority – The Stuff
- Quite high threshold for capacity needed

Power of Attorney

- What if you think someone is misusing their Power of Attorney?
 - *Talk to the Client – Do they know what is going on?*
 - *Possibly consult a lawyer, if it seems appropriate*
 - *Call the Public Guardian and Trustee*
 - *Make an application to the Court to have the person removed*

Representation Agreement – Section 9

- High level of capacity required!
- Section 9 of the *RAA* allows a Rep to:
 - Anything considered necessary related to the personal or health care of the adult
 - Make any number of decisions for personal or health care, such as:
 - Who or where they live (ie. A care facility);
 - If and where an adult should work;
 - Whether the adult should participate in schooling, training, social activities;
 - Who the adult should have contact with;
 - Any licensing, permits, approvals, etc to participate in an activity;
 - Day-to-day decisions, diet, dress;
 - Give or refuse consent to health care
 - Physically restrain, move, or manage adult or authorize another to do IF NECESSARY FOR PERSONAL OR HEALTH CARE

Representation Agreements Section 9

- If EXPRESSLY PROVIDED FOR the S 9 Rep can
 - *Give or refuse consent care necessary to preserve life;*
 - *Make arrangements for temporary care/education for anyone dependant upon the adult;*
 - *Interfere with the adult's religious practices*
- If the S 9 Rep is granted power to refuse or consent to health care, this includes the care necessary to preserve life. Again, EXPRESSLY permitted.

Representation Agreement Section 7

- Created as a stop gap measure for those Adults unable to grant a POA or Section 9 Representation Agreement
- Allows the Representative to make
 - *day-to-day financial decisions;*
 - *Major or minor health care decisions;**
 - *Personal care decisions; and*
 - *Obtaining legal counsel.*
- *It is possible to have the Adult placed in a care facility but is restricted under the *Representation Agreement Act*
- A Representative cannot refuse treatment to preserve an Adult's life nor can they choose to have the Adult restrained, moved, etc.

Representation Agreement Section 7

- Capacity is determined under Section 8:

(1) An adult may make a representation agreement consisting of one or more of the standard provisions authorized by section 7 even though the adult is incapable of

(a) making a contract,

(b) managing his or her health care, personal care or legal matters, or

(c) the routine management of his or her financial affairs.

(2) In deciding whether an adult is incapable of making a representation agreement consisting of one or more of the standard provisions authorized by section 7, or of changing or revoking any of those provisions, all relevant factors must be considered, for example:

(a) whether the adult communicates a desire to have a representative make, help make, or stop making decisions;

(b) whether the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others;

(c) whether the adult is aware that making the representation agreement or changing or revoking any of the provisions means that the representative may make, or stop making, decisions or choices that affect the adult;

(d) whether the adult has a relationship with the representative that is characterized by trust.

Representation Agreement Section 7

- This is a stop-gap for those that cannot do a Power of Attorney or a Section 9
- *The Day-to-Day Financial authority*
 - *This can be a problem*
 - *Banks do not understand this authority*
- While this option exists, may not provide the answers that a client wants

What if we can't do a POA or Representation Agreement?

- We must then look to whether this person is to be declared incompetent by the Court and a Guardian, or Committee, appointed
- If this is the case, the person applying to be the Committee must:
 - *Have two doctors affidavits satisfying the Court that the person is incapable of managing their personal or financial, or both, affairs;*
 - *An application be made and served on the Public Guardian and Trustee;*
 - *Any requests by the Public Guardian and Trustee satisfied; and*
 - *The application spoken to in Court and, if granted, an Order made naming the applicant as the Committee*
 - **This person will likely be required to report annually to the Public Guardian and Trustee on the financial status of the client**

Public Guardian and Trustee

- They exist to protect the legal and financial interests of youth and vulnerable adults
- Concerned with financial abuse particularly
- Can be very helpful
- Usual course is to investigate and then determine if that person should be removed from their position of authority

The Court

- Can give guidance to an Attorney
- Can give guidance to a Committee
- Can give guidance on a health care decision for a Representative

BUT

- Can remove an Attorney
- Can remove a Committee
- Can overrule a Representative

Joint Tenancy

- Rule of Survivorship
- Does the client really trust this person???
- How would doing this affect other people – siblings, spouses, etc.

BUT

- Can avoid probate fees
- Can fill the gap if a Power of Attorney was not granted

Questions?



INDIGENOUS JUSTICE— GLADUE REPORTS AND A NEW WAY FORWARD

Mitch Walker – March 14th, 2019

Gladue Writers Society of British Columbia



WHAT TO EXPECT FROM TODAY

- I'm going to try and communicate a linear explanation of how Gladue Reports can be a key contributor to the reduction of Indigenous offending
- We will do this through the following:
 - An of exploration formal social control and informal social controls
 - A discussion around loss of autonomy and informal social controls as a consequence of Colonization
 - A discussion of how Gladue Principles and Gladue Reports can engage investment and capacity building within Indigenous communities

WHAT WE ALREADY KNOW

- Indigenous Peoples are overrepresented in areas such as:
 - Lower Educational attainment and Vocational Stability
 - Lower Socioeconomic Status
 - Mental Health and Addictions
 - Unstable Housing
 - Victims of Crime – especially violent crime
- This certainly is not an exhaustive list
 - *** From a Criminological perspective, we recognize that these are all important factors in criminality, recidivism and overall deviance ***

INFORMAL MEANS OF SOCIAL CONTROL

- Let's start to explore the why, as it relates to Indigenous rates of offending
- Defined academically, Informal Means of Social Control are the:
 - Internalization of norms and values by a process known as "socialization", or the process by which an individual, born with behavioral potentialities of enormously wide range, is led to develop actual behavior which is confined to the narrower range of what is acceptable for him by the group standard
- We experience socialization in a primary (ages 0-6), secondary (ages 6-18) and tertiary stages (18 and beyond) stages – it shapes our beliefs, values and norms, which in turn determine how we interact with the outside world
- Our Informal Means of Social Control play a large role in our behavioural decisions

INFORMAL MEANS OF SOCIAL CONTROL

- This process also defines our “Normal”
- Our normal is built by an accumulation of experiences, at vital times, with those with whom we are closest or admire, or rely upon the most
- Our normal becomes not only an outward experience, but perhaps more importantly, a feeling
- We seek out contexts and situations – relationships, jobs, friends, housing, etc. – that feel “Normal”
- This, as everyone here in the room knows, means that depending on our “Normal”, sometimes we make bad decisions...

FORMAL MEANS OF SOCIAL CONTROL

- Beyond informal means of Social Control, we also have formal means
- These are centralized and broadly based measures to regulate behavior and choices
- From a criminological point of view these can be defined as follows:
 - External sanctions enforced by government to prevent the establishment of chaos or anomie (lack of moral guidance) in society
- In practice, here in Canada, formal means of Social Control exist in many forms
 - From lines on the road that dictate how we drive all the way to Federal Penitentiaries, there are varying degrees of formal Social Controls that are both necessary and required for a functioning modern society

FORMAL MEANS OF SOCIAL CONTROL

- For most of us, formal means of Social Control are effective
- For the average person, we understand the consequences of our behaviour as a predictable outcome, one that is grounded in our values, beliefs and norms
- Many call this – “The Social Contract” – a latent understanding that we give up some our freedoms and abide by certain laws, so in exchange we can live within a fairly organized and predictable society
- In Canada, our formal methods of Social Control are built on a consensus model, the idea that most of us agree, for the most part, on our rules and laws – but these routinely reflect the party(ies) in positions of power

GET TO THE POINT MITCH....

- Colonization systemically de-constructed the ability of Indigenous populations to build, maintain and apply Informal Means of Social Control
- The structures of governance, language, celebration, tradition, education, economy, etc. were replaced with imposed Formal Means of Social Control, ones that had no meaning in Indigenous cultures, nor were they welcomed
- As a result, the structures that had existed for thousands of years disintegrated – replaced with Indian Residential School, Reserves, the Indian Act, the RCMP, MCFD, Indian Agents, the Courts and many other arms of the Criminal and Social Justice Systems

WHAT THIS ALL MEANS FOR INDIGENOUS CRIMINALITY

- With an understanding of those ideas and issues, we can integrate an understanding of how “Normal” is created through a lens of Intergenerational Trauma
 - This takes many forms:
 - Education, family, housing, finances, addictions, mental and physical health
 - Relationships with authority
 - Learning from past behavior
 - The assurance of hope
 - Experiencing stability and predictability
- “Normal” may be negative, harmful, etc. but it is normal and it feels right

WHAT THIS ALL MEANS FOR INDIGENOUS CRIMINALITY

- This also means that Formal means of Social Control are largely ineffective
- Regardless of the efforts of our Criminal Justice System to deter through appropriate punishment, without the ability to learn from consequences, seek out and maintain stability, or even have the value/thought systems to even recognize this as a path to desistance from crime
- An imposed system of Formal Social Control will never be an adequate deterrent for criminal activity, nor will it ever be understood as a legitimate source of authority

RISK NEEDS AND PRE-SENTENCE REPORTS

- Currently, we judge criminality and deviance too heavily on an individual basis
- We use Risk Needs Assessments and Pre-Sentence Reports to determine why someone has offended and what risk they pose for recidivism
- PSR's, like Gladue Reports, are a reflection of the lens through which its respective writers view criminality and its inherent causes
- PSR's reflect the use of an actuarial model of risk/needs assessment, an individualized lens
- A Gladue Report seeks to contextualize the information beyond the level of the individual, while examining the systemic barriers noted previously

SO WHAT ARE GLADUE REPORTS?

- Reports written for the Court that help a Judge contextualize such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and, of course, higher levels of incarceration for Aboriginal peoples
- Gladue Reports play an important role in enabling judges to fulfil their duty. When done correctly, Gladue Reports assist the court to understand the individual circumstances of the offender AND determine a "**fit sentence**". In other words, Gladue Reports outline the "systemic and background factors" of an Aboriginal offender, lay out a plan to address the root cause of their offence(s) and offer restorative justice options that are non-custodial in nature.

SO WHAT ARE GLADUE REPORTS?

- They seek to provide CONTEXT through the lens of Intergenerational Trauma
- They seek to INFORM the the Judge and the Criminal Justice System as a whole as to the historical context in which an individual has been raised
- They seek to HEAL through the creation of an individually and culturally appropriate release plan

Most of all, they seek to provide an alternative explanation regarding the systematic and intergenerational impacts of colonization on Indigenous communities, highlighting the imposed loss of Informal Means of Social Control and it's many consequences.



GLADUE REPORTS

Currently Gladue Reports are used at:

- First Appearances
- Sentencing, Bail and Parole Hearings
- Reviews in First Nation/Indigenous Court
- Dangerous Offender Hearings (DO's)
- Long term Offender Hearings (LTO's)
- Not Criminally Responsible Hearings (NCR's)

BUILDING CAPACITY AS A MEANS OF CREATING A NEW “NORMAL”

- In areas such as Health, Education, Mental Health, Finances and Employment, many Indigenous communities have taken back self-control and determination
- The one area where we have seen consistent dislocation is the Justice System
- Part of the Social Contract for Canada is the surrendering of certain behaviors in exchange for protection by the structure of the system
- For Indigenous populations, this has historically been an antithetical experience – Their version of Justice was a victim of colonialist practices in the establishment of a centralized bureaucracy

BUILDING CAPACITY AS A MEANS OF CREATING A NEW “NORMAL”

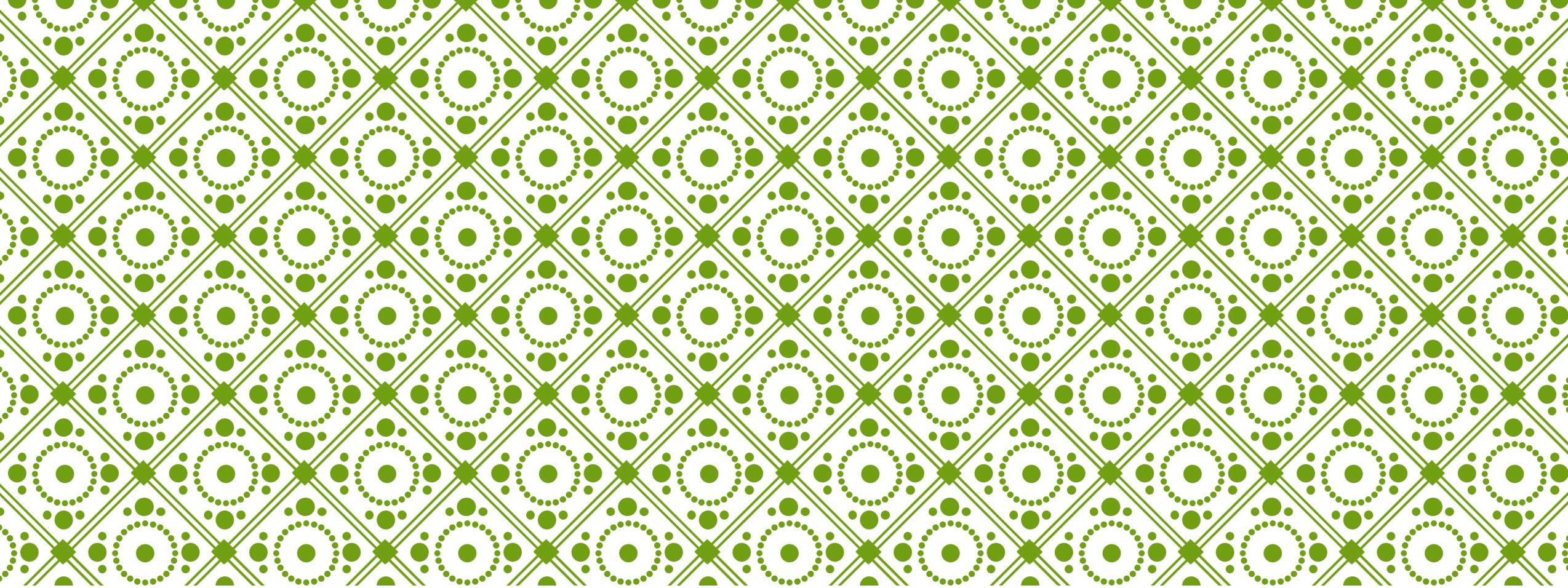
- I am an advocate for the approach of involving individual Indigenous communities to reclaim a role in the Justice System
- Through engagement with Gladue Principles and through the use of Gladue Reports, I believe that we help facilitate participation, autonomy and control
- This in turn will, for some, foster identity and play a role in creating a new system of Informal Means of Social, whereby individuals and communities recognize that they not only play a part in the system, but that the system works for them

WHAT YOU CAN DO....

- Take a Gladue Approach in your own work
- Insist on building capacity within the contexts in which you work and live – capacity for further autonomy and self-sufficiency
- Educate yourself on the impacts of Intergenerational Trauma and Colonization on Informal Means of Social Control
- Understand your own “Normal” and the biases which it can cause
- Make a handsome donation to your local LSS office

***** Questions? Comments?
Criticisms? *****

Thank you for having me!



OVERVIEW OF CHILD PROTECTION LAW

Presented by **Karen Tse** of
Rockies Law Corporation
in Fernie, British Columbia

BC FAMILY AND PARENTING LEGISLATION

Child, Family and Community Service Act (CFCSA)

- The law in British Columbia which outlines the standard that parents and guardians must meet
- Explains what the Ministry can do if those parents and guardians cannot adequately care for a child

Family Law Act (FLA)

- The law in British Columbia which outlines what happens when parents disagree or are going through a separation
- Covers a large number of topics including parenting time, guardianship, child support, spousal support, property division and protection against violence

HIGHLIGHTS OF THIS PRESENTATION

This presentation will provide an overview of child protection law

There will also be Case Studies which explore things to consider when working with a client who is involved with the Ministry

- The case studies are based on actual situations I have encountered, but names and facts have been changed to protect client confidentiality

A REPORT IS MADE

Anyone who believes a child has been (or is likely to be) abused or neglected, must report it

- The Director cannot release the names of a person who reports child abuse

Who investigates

- Child protection workers (sometimes called social workers) investigate
- 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

INVESTIGATION

- Child protection worker will decide:
 - If the child needs or does not need protection
 - If protection required, child may or may not be removed

CASE STUDY — DRINKING AND NEGLECT

Background

- The Ministry social workers have received reports that Janet has been out partying and leaving her young children alone at home. The Ministry believes the children are in need of protection
- Janet belongs to the Ktunaxa Nation. She lives in the same community as her sister, mother and several aunts and uncles
- Janet has passed out twice this month after binge drinking while caring for the children
- Janet's family is willing to help her and the kids

COLLABORATIVE DECISION MAKING

- The family has the right to be involved in decisions about the children's care
 - Parents and a child protection worker will negotiate to reach an agreement about what's best for the children
 - 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 children's care
- As soon as the Ministry raises concerns about the children's safety, parents can talk with the child protection worker to figure out what is best for the children
- Even if the case is already in court, parents can try to resolve the issues out of court – social workers and parents can come up with a Safety Plan which is a plan about how the children will be cared for during a child protection investigation

SAFETY PLAN

- Identifies key safety people who the children can contact
- Identifies people to assist the parents and monitor children's safety
- Identifies people who will help out if parents are ill or under stress
- Makes arrangements in situations (like celebrations) when the parents may use alcohol
- Makes arrangements about others who might visit the family
- Addresses how long the safety plan will be in place for

A COLLABORATIVE DECISION

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 children will live
- How to keep the children safe
- What services the family's needs
- Plans for the children to return home
- How the family and community will support parents and the children

A TYPE OF COLLABORATIVE DECISION MAKING: FAMILY GROUP CONFERENCES

- Child's parents, relatives, close friends, or other community members meet about how to keep the child safe. This works well if there are supportive extended family or community
- Questions to ask:
 - What are we worried about?
 - What is going well? How do we help the children grow up well?
 - What do we need to do?
 - Janet will be sober during visits. Janet is going to attend AA sessions
 - Janet will ensure that there is no drinking when she is caring for the kids
 - Janet's family will supervise some visits to begin with. They will also speak up if they notice Janet is not doing well. Social worker may drop in to check

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. Parents can also ask the child protection worker for a referral as well.
- The coordinator is trained and works for the Ministry.

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
- Parents can get help to work through issues and learn about how the family can get support services
- Next, the invited community members and professionals will leave the room. The family will have private time to discuss a plan for the child's protection
- The family will develop a plan for child's safety and well-being
- A child protection worker will look the plan over to make sure it addresses child's safety concerns and speak with the family

TRADITIONAL DECISION MAKING

Traditional decision making

- Similar to a family group conference
- Includes the indigenous community the child belongs to
- Parents can invite Elders and other community members
- Allows the family to make decisions based on cultural traditions and values

AGREEMENTS 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

TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE

Independent Legal Advice

- Speak with lawyer before and after the meeting
- Lawyer can also attend meetings with parents, explain their rights, or help parents negotiate with the Ministry
- Before parents sign a written agreement, they can request to have a lawyer look over it

TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE

Be a part of the decision making process

- Make the plan fit the needs of the parent and child. For example, if a parent has a drug or alcohol problem, the Ministry might ask that parent to go to drug counselling. Parents should ensure they select a counselling program that is workable
- If a parent agrees to place a child in the Ministry's care, parents should ensure that the child have visits with them as well as other important people
- Make the agreement for the shortest possible time
- Ask the Director to be clear about what services or programs will be provided to the parents and the extended family

TIPS FOR MAKING AGREEMENTS FOR CHILD'S CARE

Be realistic

- Understand what is agreed to
- Agree only to what the parent knows is helpful. Always put the child's best interests first
- Be clear about expectations
- If a parent cannot follow through with parts of the agreement, there could be serious consequences. Ask the Ministry what will happen if a parent cannot complete everything that is required, and include this in the written agreement

TIPS FOR MAKING AGREEMENTS FOR CHILD'S CARE

Check time limits

- Be sure the agreement gives the parents enough time to make the changes required
- Check that programs and counselors can meet the timelines in the agreement
- Request flexible time limits

Keep notes

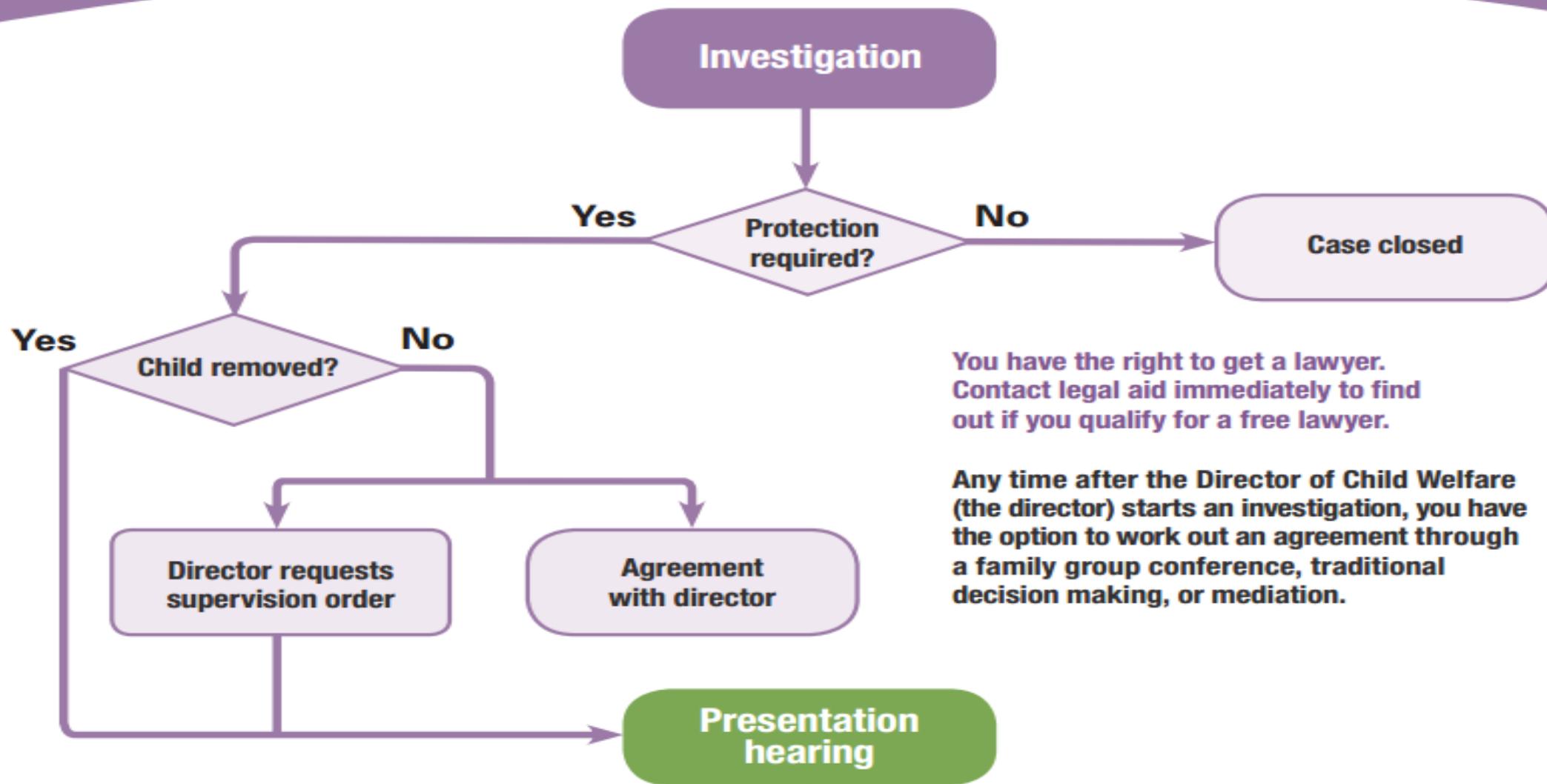
- Keep notes of meetings with the social worker, advocate, and lawyer. Write down what people say they will do and what the parents agree to do
- Keep track of all important dates — such as meetings, court dates, and deadlines
- Parents should keep notes and papers sorted so that everything is in one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

CASE STUDY – MINISTRY APPLYING FOR A PROTECTION ORDER

Background

- The police were dispatched to Tom's home
- When the police arrived, they see drug paraphernalia throughout the house
- Tom is passed out on the couch
- The house is a mess, and the children have soiled diapers and appear very unkempt
- The police have contacted the Ministry
- The Ministry has protection concerns around Tom's drug use and the children being neglected

The Child Protection Process in British Columbia



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 a child has been removed from the 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 the children were 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 the parents 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 the 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 the 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. Under special circumstances, the Judge can also say that the child may have his or her own free lawyer

TIPS FOR PARENTS AT THE PRESENTATION HEARING

- Attend and be on time
- Can have lawyer present
- If the parent cannot be present, can request to participate by phone
- If child is Aboriginal, the Director must tell the child's community (such as the band) if the Director removes the child from a home, even if the child does not live on reserve. Someone from the community can then come to the Presentation Hearing

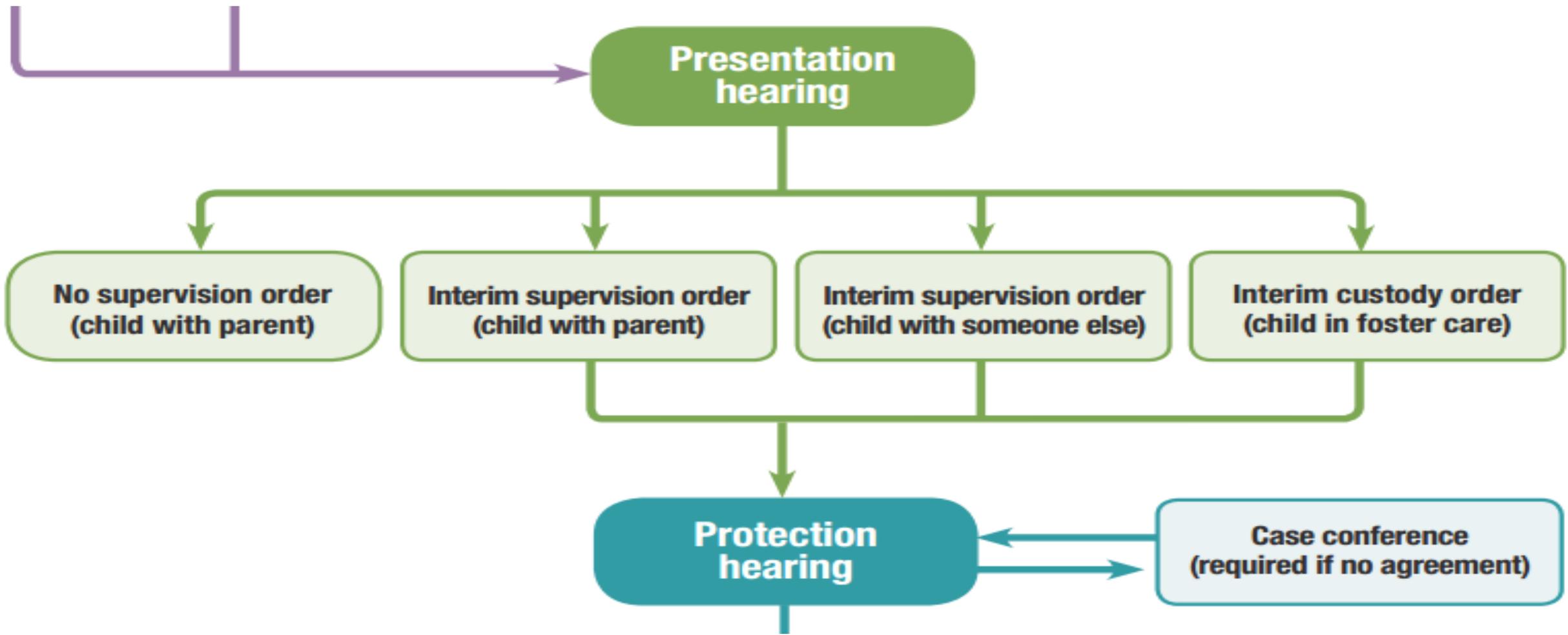
AT THE PRESENTATION HEARING

- Before or at the Presentation Hearing, the parents will receive a copy of the child protection worker's document called the Report to Court
- Judge will ask whether they agree with what the Director wants to do in the Report to Court.
 - If the parents agree, the Judge will make an order right away. That will be the end of the Presentation Hearing.
 - If the parents don't agree, the Judge will schedule another day for the Presentation Hearing to learn more about the case. It's usually two to six weeks later. These hearings usually take half a day, but they could take longer

JUDGE MAKES AN INTERIM ORDER

At the Presentation Hearing, the 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)

- Parents demonstrated they are able to care for the child, and a Protection Hearing isn't needed. The Judge will return the child to live with the parents without supervision. This will end the court process
- This could happen if the parents have worked out an agreement with the Director, and/or if the parents have made changes that the child protection worker suggested

Interim supervision order (child with parent)

- Child will live with the parents, and the Director will supervise the care the parents give. This order will include conditions the parents must follow

Interim supervision order (child with someone else)

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

Interim custody order (child in foster care)

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

TIPS FOR PARENTS AFTER REMOVAL

- Attend court hearings
- Ask for access visits, which can also be by phone or video conference
- Ask the child protection worker to plan visits – if refused, make a request for access in court
- Try to see the child as often as possible – show that the parents care
- Be on time. Give notice for cancellations
- Director may request supervised access. Parents should 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 PROTECTION STAGE

The Judge will decide whether the child needs protection and who will care for the 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 the case and when the courtroom is free
- At least 10 days before the Protection Hearing, the Director must provide an application that explains the order sought and a plan of care that says how the Director wants the child to be looked after

CASE CONFERENCE AT THE PROTECTION STAGE

- A case conference is a lot like mediation, except the Judge is in charge instead of a mediator
- It's a meeting between the parents, lawyers or advocates, the child protection worker, the Director's lawyer, and the Judge
- The Judge may ask the child to be there if the child is more than 12 years old, other family members, or people involved with taking care of the child
- When there is an Indigenous child, a representative of the Indigenous community may also be there

CASE CONFERENCE

- Parents should be prepared to speak for themselves at a case conference. Judges usually want to hear directly from the parents
 - Discuss what to say with a lawyer beforehand
 - The Director can't use what the parents say at the case conference against them in court (all discussions are on a 'without prejudice basis')
 - However, the Director can try to use what the parents 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 parents 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 the parents and the Director cannot agree at the case conference, they 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 the parents and the Ministry agree on a plan of care but disagree whether the child needs protection, they can make a written agreement

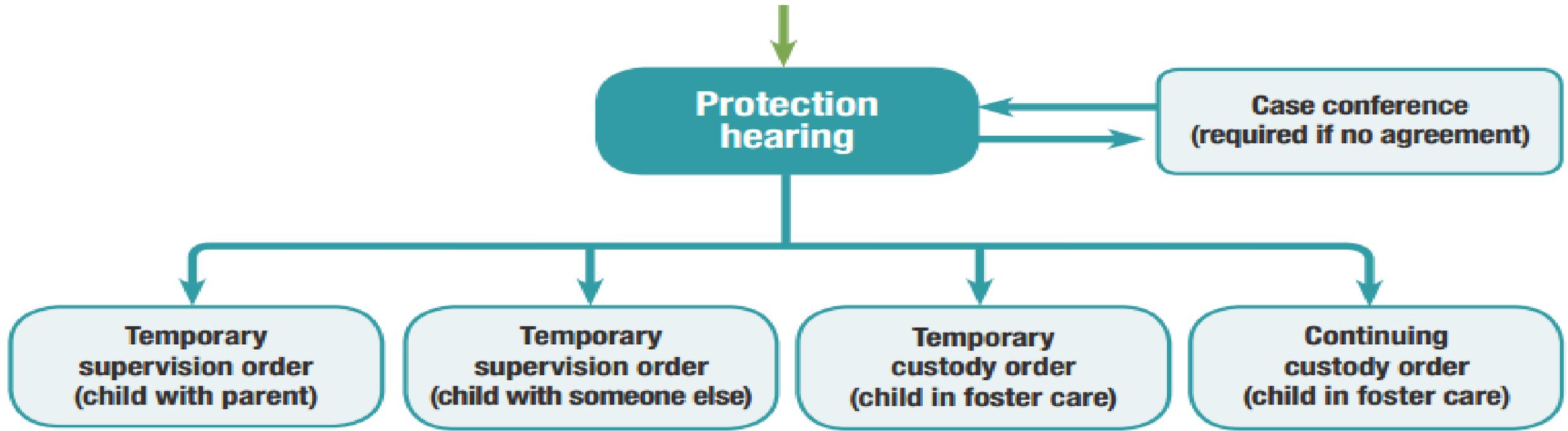
- The Judge may then make what's called a Consent Order and doesn't have to decide that the child needs protection
- In most cases, both parents have to agree before the Judge can make a Consent Order

IF NO CONSENT AT THE CASE CONFERENCE: PROTECTION HEARING

Protection Hearing

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

- If the parents agree that the child needs protection, the Judge can make that decision at the start of the Protection Hearing
- If the parents don't agree that the child needs protection, then a hearing, with evidence and witnesses, must be held before the Judge can make (or refuse to make) that decision



JUDGE MAKES A TEMPORARY ORDER

If the Judge decides the 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):** child will live with parents, and the Director will supervise the care the parents give
- **Temporary supervision order (child with someone else):** child will live with another person who can care for the child under the Director's supervision
- **Temporary custody order (child in foster care):** 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 the 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 the child will stay with another person.

CASE STUDY — MINISTRY APPLYING FOR PERMANENT TRANSFER

Background

- Your client, Vanessa, has been struggling with severe drug addiction for many years
- The Ministry has been involved for six years. There has been many supervision orders
- Vanessa's sister, Rhonda, has been caring for Vanessa's children. This was arranged through the Ministry
- When Vanessa's condition continued to deteriorate, the Ministry applied for a "Permanent Transfer of Custody"
- If the Ministry is successful, Vanessa will no longer be a guardian
- Vanessa knows that the Ministry is likely to be successful
- Rhonda and Vanessa do not always get along, and Vanessa is worried she might not see the children after a permanent transfer of custody

HOW CAN AN FLA ORDER HELP VANESSA?

Goal

- Ensure that Vanessa gets a minimum amount of contact with the Children if the Permanent Transfer of Custody occurs

FLA Consent Order

- It is possible to negotiate a **Consent Order between the sisters**, Vanessa and Rhonda
- This Consent Order will cover that **Vanessa will get contact time with the Children**, and will be filed immediately after the CFCSA Order is entered into
- Contact time can be specified: every other weekend, from Friday at 3 p.m. to Sunday at 7 p.m.

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
- Mediators are neutral & cannot provide legal advice
- Mediators work 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 don't take sides. They won't tell any party what to do
- Under the CFCSA, parents, children and child protection workers or anyone directly involved in a child protection case can suggest mediation to help solve various problems. Both sides have to agree to try mediation for it to go ahead

MEDIATION

- Mediation can help parents deal with issues such as:
 - What do they want to have happen
 - What does the child protection worker want to have happen
 - What are they expected to do (or not do) to get the child back
 - What services can be provided for them and their child
 - How long will the child stay in care
 - Where will the child live temporarily
 - How and when can they or others have access to the child
 - What terms and conditions should be put in a supervision order
- What does mediation cost?
 - Free. The Ministry may also pay for some of the parents' costs so they can be at the mediation sessions, such as day care, meals, and transportation. Make sure the parents 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. Parents may have to remind the mediator about that and how it feels for them
- Speak up clearly if the parents think the mediator is taking sides or acting unfairly in any way
- Parents should state their needs, opinions, and suggestions clearly and honestly. It's the mediator's job to help them do that
- They can ask to have a private session with the mediator at any time during the mediation process if they have concerns
- Parents should only agree to what is fair and fits the 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, the parents have the right to talk to a lawyer before making a final decision
 - The parents may be able to have their lawyer come to the mediation (sometimes to wait in a separate space)
- Parents have the right to stop mediation if they find it's not working

CASE STUDY - FAMILY VIOLENCE & USING FLA TO RESOLVE MATTERS

Background

- Amy is your client. Amy and Jeff are married with three children
- Recently, they went through a tumultuous separation
- The police were called to the home during an instance where Jeff hit Amy in front of the children. Jeff had been drinking. The police officers alerted the Ministry. They also charged Jeff and put him on conditions not to contact Amy or be at the home
- The Ministry has protection concerns due to the children witnessing violence
- The Ministry's position is that unless Amy demonstrates she can protect the children, the children will be removed

CLIENT GOALS

Goals

- Demonstrate to the Ministry that Amy is willing to protect the children
- Amy wants to ensure that the children are not removed from her
- Amy wants to obtain some legal advice, but she has a limited budget

LEGAL AID

The Legal Services Society can provide the following types of referrals:

- CFCSA file
 - FLA file, or
 - Both
-
- If a client obtains only a CFCSA referral, the lawyer will still have 7 hours to work on an ancillary FLA application

DOESN'T QUALIFY FOR A FULL LEGAL AID FILE

Alternatives

- **Family LawLINE**

- Those with low income experiencing a family law issue may be eligible for free legal advice over the telephone from a family lawyer. Call 604.408.2172 in Greater Vancouver; 1.866.577.2525 no charge, elsewhere in BC

- **Duty Counsel**

- Inquire with the Registry when Duty Counsel might be available in the area

- **Canadian Bar Association Lawyer Referral Service**

- Call 604.687.3221 or 1.800.663.1919. Once the area of law is determined the operator will provide the client with the name and telephone number of a lawyer in the geographical area. Clients are entitled to up to a half hour consultation for \$25 plus taxes

HOW CAN AN FLA APPLICATION HELP AMY?

Make the following applications under the FLA

- Supervised parenting time for Jeff
 - possible supervisors: Jeff's siblings/mother
- Condition that Jeff must abstain from alcohol in the 12 hours preceding and during all parenting time
- Protection Order:
 - Jeff not attend the home
 - Jeff may only communicate with Amy via text message for the purposes of discussing the children
 - Why is this needed in an FLA order when there are police undertakings? Because Crown may decide to stay charges in the future, in which case the protection there may be lost

TIPS FOR THE APPLICATION

Some helpful tips

- If the matter is urgent, the client can prepare, along with the Application, a [Notice of Motion and an Affidavit](#)
- A request can be made that the matter is urgent, and the usual 30 day waiting period should not apply

EVIDENCE FOR FLA FILE

MCFD might ask your client to take steps to protect the Children

- But how does this translate to your client having evidence to present in the FLA file?

Suggestions

- Write the MCFD office team leader and the social worker. Ask for MCFD's written position on "whether or not the other parent's parenting time should be supervised"
- If there is a hearing, the social worker can be subpoenaed as a witness
- Provide copies of Applications/ Motions filed by client to MCFD (to establish client has tried to take steps)
- Request for access into the MCFD file – this is known as a disclosure request
- Request the Police file

OBTAINING MINISTRY DISCLOSURE FOR AN FLA FILE

If there is an ongoing FLA file, and your client is interested in using information contained in the CFCSA file to help the Judge determine issues, your client can **apply to the Court for the Ministry to disclose its file.**

The Disclosure Process

- Your client will need to file an Application and Notice of Motion under the FLA file for disclosure. **The Ministry's Victoria head office and opposing party must be served**
- A Ministry lawyer will contact your client with terms the Ministry is comfortable with:
 - For example, the Order will have set terms protecting the identity of informants, etc.
- If opposing party (the other parent) disagrees with disclosing the materials, all parties will have to appear before the Judge to explain why the disclosure is necessary and relevant to the triable issues in the FLA file & how that disclosure will be used

CASE STUDY — PARENT NEEDS REHAB

Background

- Wendy is a single mother with two children. She has struggled with depression for several years. Recently, she has been abusing prescription medication
- Recently, she came to the realization that she wants to change her life
- She really wants to go to rehab. The best program for her is a live-in treatment centre in Vancouver, and she needs someone to look after the children while she is gone for six weeks.

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 children from the home because the parent is temporarily unable to take care of them, that parent 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 suggested

The social worker will:

- review the caregiver's CFCSA records;
- do a criminal record check;
- check personal references; and
- check their home.

THE LATEST: BILL 26

- If passed, the proposed bill will give Indigenous communities greater involvement in child-welfare decisions to help keep their children out of care, safe in their home communities and connected to their cultures
- The current law requires the ministry to notify an Indigenous child's community after the child is removed. If the bill passes, the ministry could choose to involve the community earlier on, before a child is removed from their family
- Where a child is removed, the proposed changes would allow the Ministry to step back if the community and the parents can come up with a plan "that the Director considers adequate to protect the child."



QUESTIONS?

Thank you for your attention during my presentation.

Do you have any questions or topics you would like me to discuss?

LEGAL INFORMATION PUBLICATIONS AND WEBSITES

KELOWNA LSS CONFERENCE
PATRICIA LIM
PUBLICATIONS DEVELOPMENT COORDINATOR



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

PUBLIC LEGAL EDUCATION AND INFORMATION

- Legal information publications
 - Overview
 - How to order
- Legal information websites
- How to get updates

HOW CAN YOU HELP PEOPLE WITH LEGAL INFORMATION?

1. Recognize the **legal issue** and a **general understanding** of legal processes and definitions.
2. Help find ways to **stay out of court** and how to **resolve problems early**
3. Find **options for help**
 - help apply for legal aid
 - help access information, representation, and advice services
 - provide referrals to advocates and other intermediaries





FREE

PUBLICATIONS |

LSS Publication Readability

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.

Level 2 — Some helpful.

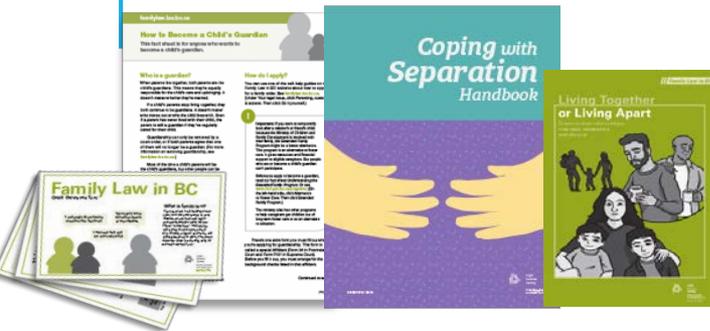
Some understanding helpful but not essential. Offers all basic information on a topic, meant for those who are reasonably comfortable reading and who may have a general sense of some legal concepts.

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.

[Legalaid.bc.ca/read](https://legalaid.bc.ca/read)

Family law



Child protection



Welfare



Abuse & Family violence



Immigration & refugees



Criminal law

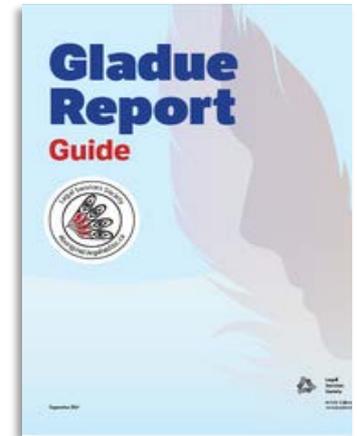
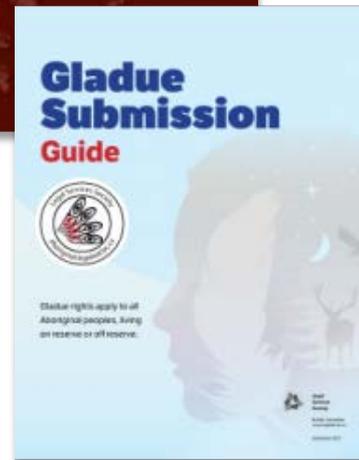
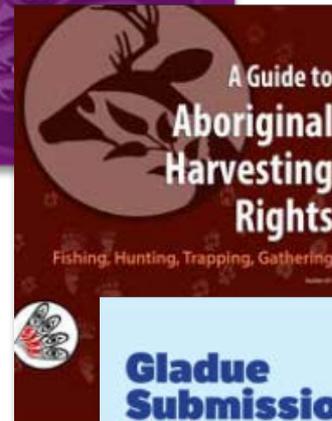
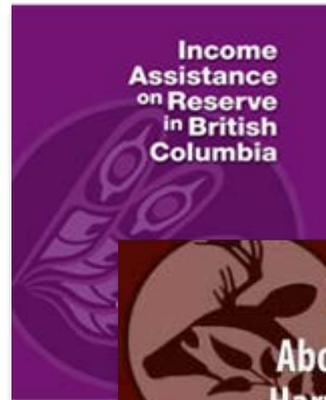
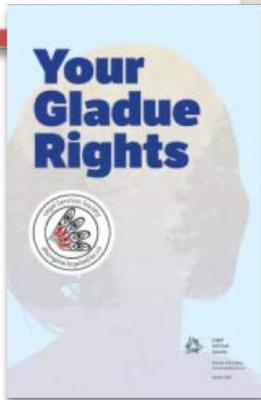


ABORIGINAL

Level 1

Level 2

Level 3



LETTING PEOPLE KNOW ABOUT LEGAL HELP AND LEGAL AID



Legal Aid Free legal help
L'aide juridique Aide juridique gratuite
Asistencia legal Ayuda legal gratuita

Call **Appeler** **Llamadas**

604-408-2172 (Greater Vancouver) (Grand Vancouver) (Metro Vancouver)
1-866-577-2525 (no charge elsewhere in BC) (sans frais) (demanda gratuita en otros lugares)

Click **Clicar**

aboriginal.legalaid.bc.ca
familylaw.lss.bc.ca
mylawbc.com

Come in **En**

legalaid.bc.ca (see Our locations) (voir Nos bureaux) (ver Nuestros centros)

legal aid can help you

multilingual



Family LawLINE
a free telephone service in BC

Going through a family law issue?
Need free legal advice?

- Talk to the same lawyer over several phone calls
- Learn about your options both in and out of court
- Have a lawyer coach you through court
- Get help with court documents
- Connect with other services and resources

You may qualify if you have a low income and are facing a family law issue.

legalaid.bc.ca/Qualify

604-408-2172
1-866-577-2525

Legal Services Society Call Centre
Inquiries are available from here: 604-681-5555

Who can get help
You may be able to get help and advice from Family LawLINE if you are eligible for legal aid.

Family LawLINE
Call advice from a lawyer about parenting, separation, divorce, or other family law matters.

604-408-2172 (Greater Vancouver)
1-866-577-2525 (elsewhere in BC)
Legal Services Society Call Centre
Inquiries are available if you have difficulty with English.



Family Duty Counsel

If you have a family law problem, you may qualify for free help.

Legal Services Society



LEGAL AID legal assistance

Get legal services for part of your family law problem

The LSS provides legal services for people who are unable to pay for legal services.

Check out these options:

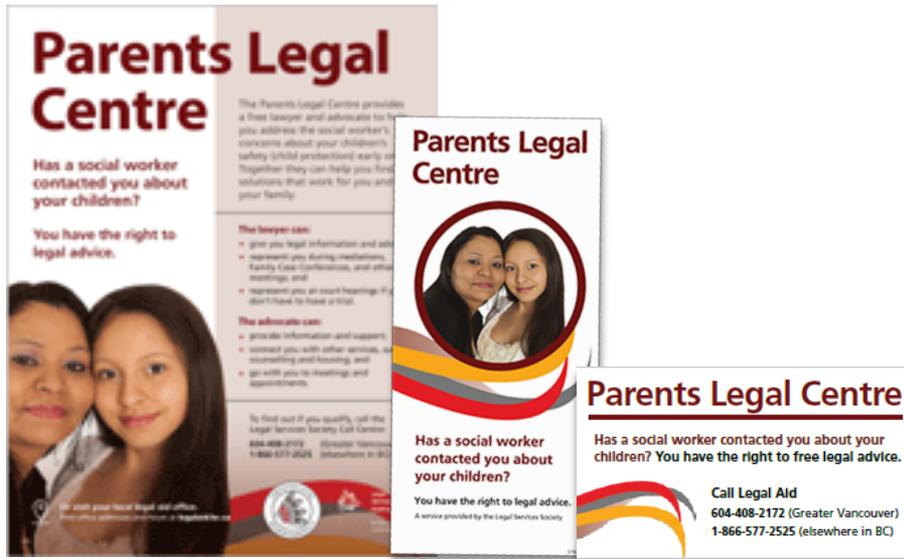
- Legal Aid
- Family LawLINE
- Family Duty Counsel

Services available in English and French

More information about legal services

Legal Services Society

LETTING PEOPLE KNOW ABOUT PARENTS LEGAL CENTRE



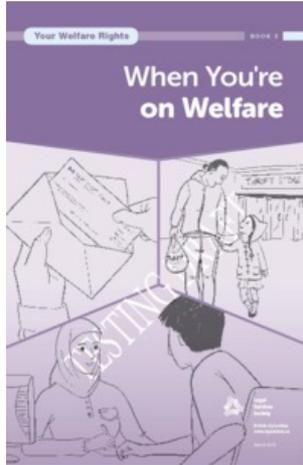
Locations opening 2018/2019

- Campbell River
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- Victoria
- Prince George

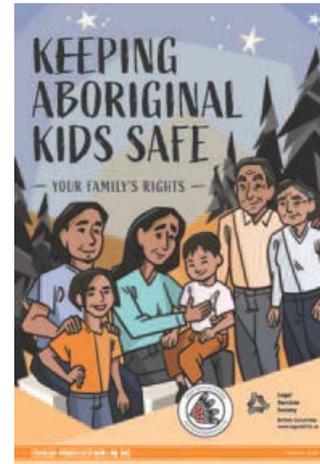
UPCOMING PUBLICATIONS



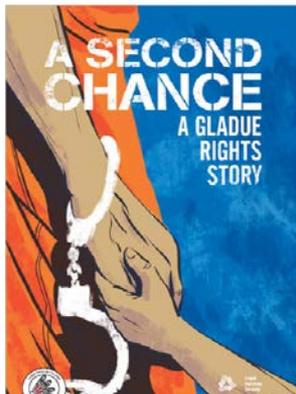
Welfare



Child protection



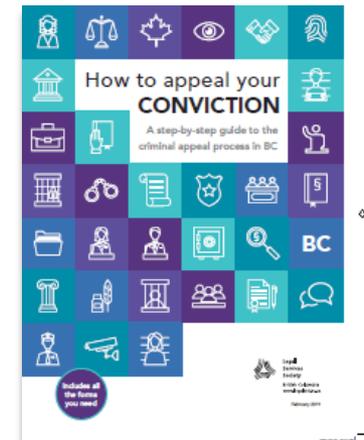
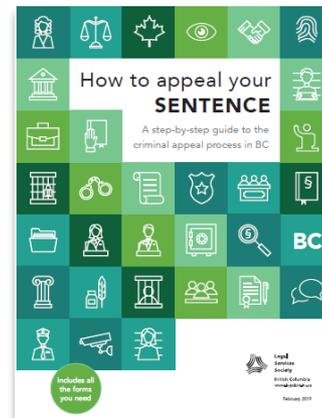
Gladue



**Teachers
Guide on
Gladue
Rights**

Video will be available

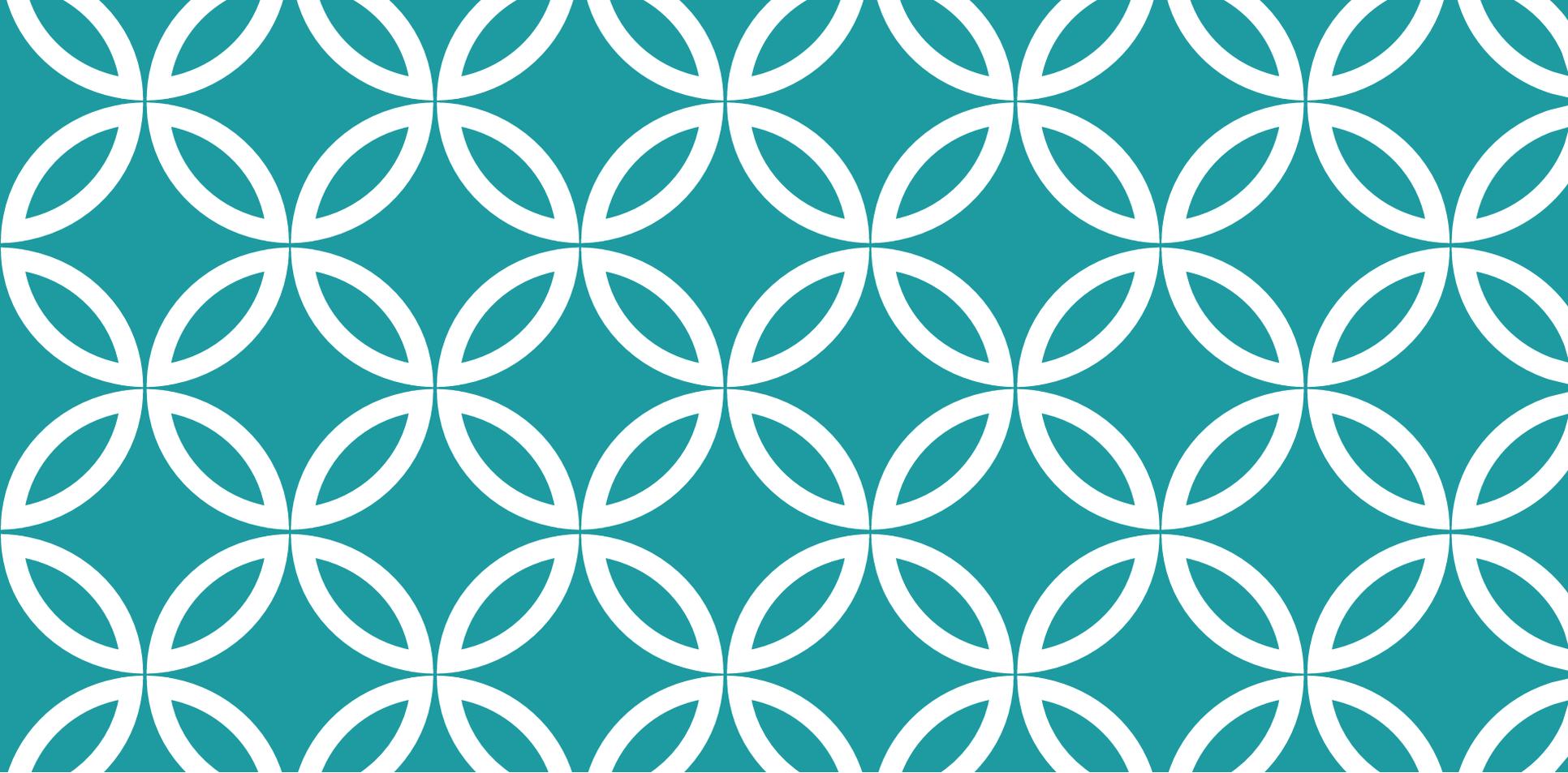
Criminal law



Other upcoming publications

- Mental Health Act legal rights resource
- Refugee Claim infographic
- Matrimonial property on reserve resource





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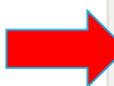


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- ▶ Child protection/removal
- ▶ Crimes & offences
- ▶ Debt
- ▶ Families & children
- ▶ Gays, lesbians, trans, & bisexuals
- ▶ Housing & tenancy
- ▶ Immigrants & refugees
- ▶ Legal help & lawyers
- ▶ Legal system & courts
- ▶ Promotional materials
- ▶ Staying out of court
- ▶ Welfare & benefits
- ▶ Wills, estates, & life planning
- ▶ Women

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 I want to find a publication by title 

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To get a copy of a free LSS publication

- Go to your [local legal aid location](#), or
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Plain language guide for Aboriginal peoples, lawyers, and Native courtworkers about how to prepare an oral or written Gladue submission for a bail or...

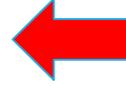
 **Is That Legal?**
What the Law Says about Online Harassment and Abuse To help youth become safer online when they use social media. It describes four online situations...

 **Live Safe, End Abuse**
Live Safe, End Abuse is for people leaving an abusive partner. The fact sheets and folder contain information on what abuse is, how people can plan fo...

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Ordering process



Legal Services Society
Legal aid

legalaid.bc.ca/publications/signup.php



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Home > Other Organizations > Legal Services Society > Your Welfare Rights:...



Your Welfare Rights: Welfare Benefits

This plain language booklet gives basic information about:

- the types of monthly welfare benefits;
- benefits called supplements, including housing-related supplements, a wide range of health supplements, subsidies for families with children, and employment-related supplements;
- how to apply for a supplement if you qualify; and
- how to appeal a ministry decision.

It also includes where to get help if you have a problem getting monthly welfare benefits or a supplement. Welfare Benefits is the second publication in the series Your Welfare Rights. How to Apply for Welfare is the first booklet in this series. The series replaces the booklet Your Welfare Rights: A Guide to BC Employment and Assistance.

To view this publication online: [Click Here](#)

Stock: 19479
Price: Free Each

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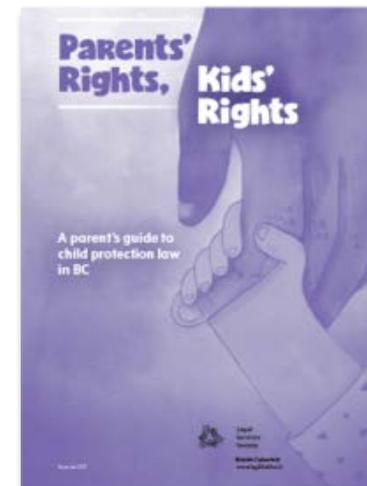
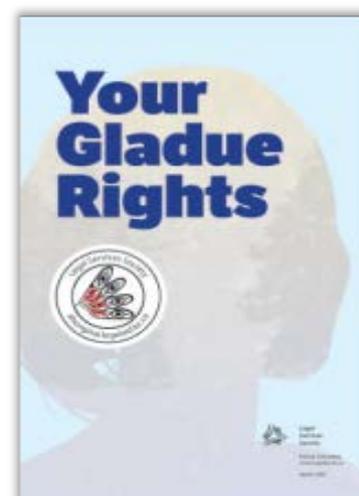
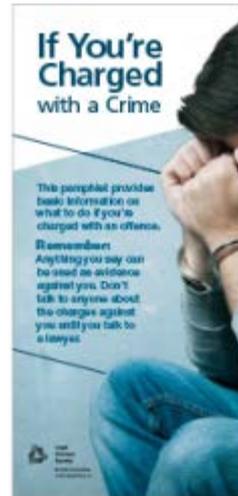
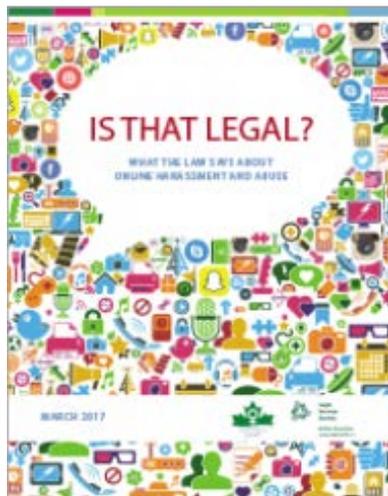
Q1: WHICH BOOKLET OR BROCHURE HAD THE MOST ORDERS IN KELOWNA IN THE LAST 2 YEARS?

A. Is That Legal?

B. If You're Charged With a Crime

C. Your Gladue Rights

D. Parents' Rights, Kids' Rights



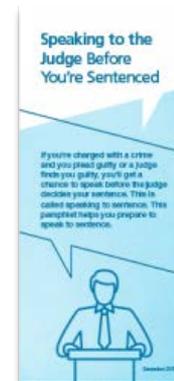
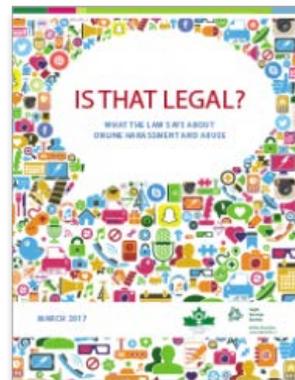
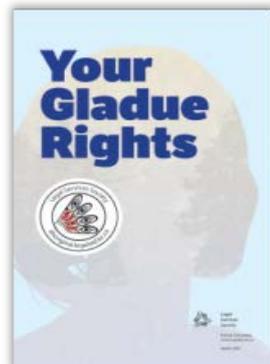
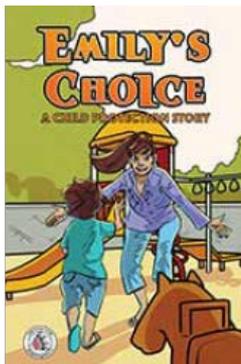
Q2: WHICH PUBLICATION TALKS ABOUT ABORIGINAL PEOPLES' RIGHTS AT BAIL AND SENTENCING HEARINGS?

A. Emily's Choice

B. Your Gladue Rights

C. Is That Legal?

D. Speaking to the Judge Before You're Sentenced



LEGAL INFORMATION WEBSITES

**UPDATES AND CHANGES
ROLLING OUT APRIL 2019**

- Family Law Website
- Aboriginal Legal Aid in BC
- MyLawBC





Family Law

in British Columbia



Search for



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Staying out of court ▾

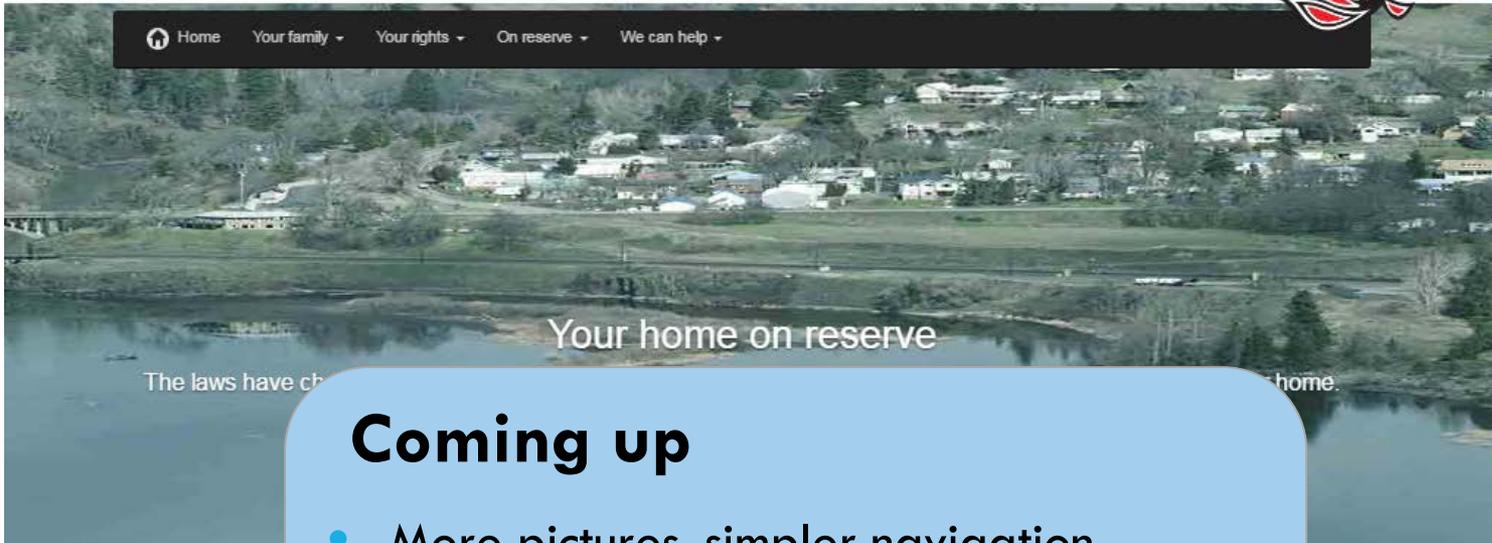
Shortcuts ▾

Coming up

- New, modernized design
- Improved search function
- Chatbot that will answer simple FAQ questions
- Scenarios illustrating a common legal problem.

British Columbia's [Legal Services Society](#) maintains this site. If you're having a family problem, you may qualify for a lawyer to advise you or take your case. Contact [Legal Aid](#) to find out.

familylaw.lss.bc.ca



Your home on reserve

The laws have ch

home.

Coming up

- More pictures, simpler navigation
- Videos about the Parents Legal Centre and intros to different legal topics
- Continued user testing and feedback



Is this site for you?

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

[Learn more »](#)

Do you know about First Nations Court?

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

[Learn more »](#)

Find out more in a publication

We have free publications. See if we have one that's right for you.

[Learn more »](#)



2018-04-26
Community engagement
Residential Historical Abuse Program: Free Counseling Support

Free counselling support for people abused in foster care and for



My problem. My solution.

Dialogue Tool

Coming up

- **New pathway on Gladue submissions**
 - by April 2019
- **New pathways on criminal law issues**
 - rolling out after April 2019
- **Online Family Resolution Centre**
 - parenting agreements with a free professional mediator

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Action plan



Make a separation plan



You're finished!
Here's a plan that's personalized for your situation.

Your situation

Based on your answers

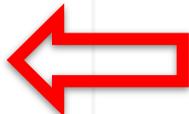
Click **Download your plan** to save or print a PDF of this information. This will let you keep a copy of all the important information you need to take your next steps. MyLawBC doesn't keep your confidential information. Your downloaded PDF is your only record.

Your plan is based on the following information:

- You and your spouse are married
- You don't have children
- You rent your home
- You and your spouse have taken on debt
- You think you can work together

[Read first >](#)

[Download your plan \(PDF\)](#)



Help us out

Navigating the legal system is hard; we're happy to make that process easier. Help us improve MyLawBC.

[Donate](#)

[Give us your feedback](#)

WWW.MYLAWBC.COM





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.

Get started

Is this your first time here? Before you create an account or log in, you can get started by answering some questions about your situation. MyLawBC can help you make a separation plan or let you know how the Dialogue Tool can help you.



Make a separation plan

If you haven't already done so, find out

Work on your agreement

Use the Dialogue Tool to make a fair and lasting separation agreement. Set out what's important for your children, money, home, and other property.



Create an account

Not yet registered? Create an account first.

WWW.MYLAWBC.COM



OTHER USEFUL RESOURCES (Legal Info and Referrals)

Clicklaw



www.clicklaw.bc.ca



www.povnet.org

**COURTHOUSE
LIBRARIES | BC**

www.courthouselibrary.ca



People's
Law
School

Work out life's legal problems

www.peopleslawschool.ca

DIAL·A·LAW

A service of People's Law School

dialalaw.peopleslawschool.ca

1-800-565-5297

PRACTICE SCENARIOS

“I’m the executor of my mother’s will, what do I have to do?”

Online / Referrals

- Clicklaw Common Question: [I’m the executor of a will; what are my first steps?](#)
- Clicklaw Common Question: [Is a will different for people who live on reserve?](#)

Print:

People’s Law School

- *Your Duties as an Executor*
- *A Death in Your Family*

PRACTICE SCENARIOS

I want to separate from my spouse, what do I do?

Online:

- Family Law Website > Your Legal Issue> Divorce & Separation
- JP Boyd on Family Law through Clicklaw Wikibooks
 - Chapter on [Separation & Divorce](#)
- MyLawBC > Make a Separation Plan

Print:

- *Living Together or Living Apart*

Referrals:

- Unbundled Services

PRACTICE SCENARIOS

A client recently moved to Canada and her husband said he had sponsored her. Her husband has moved in with another woman. She is scared she is going to be deported and doesn't know how she is going to get money to live

Online/Referrals

- Clicklaw: Common Questions: A friend was sponsored to come to Canada but the sponsor left her.

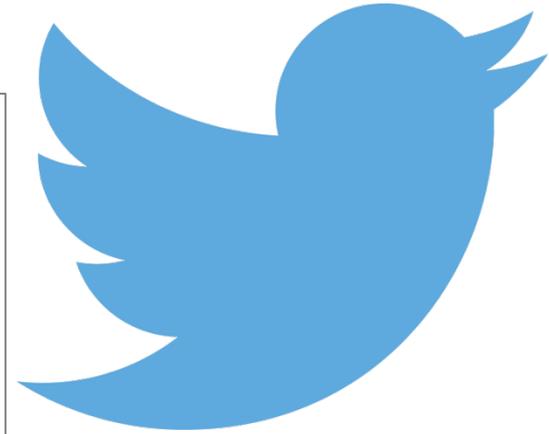
Print/Online:

- LSS: *Sponsorship Breakdown*
- YWCA: *Mothers Without Legal Status in Canada – Information for Service Providers (online-only)*

LSS ON SOCIAL MEDIA

factum.mylawbc.com

The screenshot shows the homepage of the Factum MyLawBC website. At the top, there are navigation links for MYLAWBC, LEGAL SERVICES SOCIETY, FAMILY LAW IN BC, and ABORIGINAL LEGAL AID IN BC. The Factum MyLawBC logo is on the left, and a search bar is on the right. Below the navigation is a 'THE LATEST' section with four article cards. The first card is titled 'Legal Aid' and dated Oct 30, 2018. The second card is titled 'Legal aid now available to help children stay out of foster care' and dated Oct 18, 2018. The third card is titled 'More people with child protection matters will now be financially eligible for legal aid' and dated Sep 28, 2018. The fourth card is titled 'Gladue Reports Graphic Novel Focus Group' and dated Sep 18, 2018. A 'Read All Posts' link is located to the right of the article cards. At the bottom of the screenshot is a blue banner for a newsletter subscription.



@legalaidBC



SUBSCRIBE TO OUR NEWSLETTER

We periodically send out a newsletter with all the important stories and updates from the past few months. Click the button below to subscribe.

[Subscribe](#)

DO YOU WANT TO HELP DEVELOP OUR PUBLICATIONS AND WEBSITES?

- Aboriginal Legal Aid in BC website
- Feedback on publications and websites

If you think you can help,
please put your name on one of the
sign-up sheets circulating around the room.

QUESTIONS ABOUT ORDERING OR PUBLICATIONS?

IDEAS FOR NEW OR EXISTING PUBLICATIONS?

Contact me!
Publications@lss.bc.ca
604.601.6054



**Legal
Services
Society**

British Columbia
www.legalaid.bc.ca



Working with LSS Intake



March, 2019

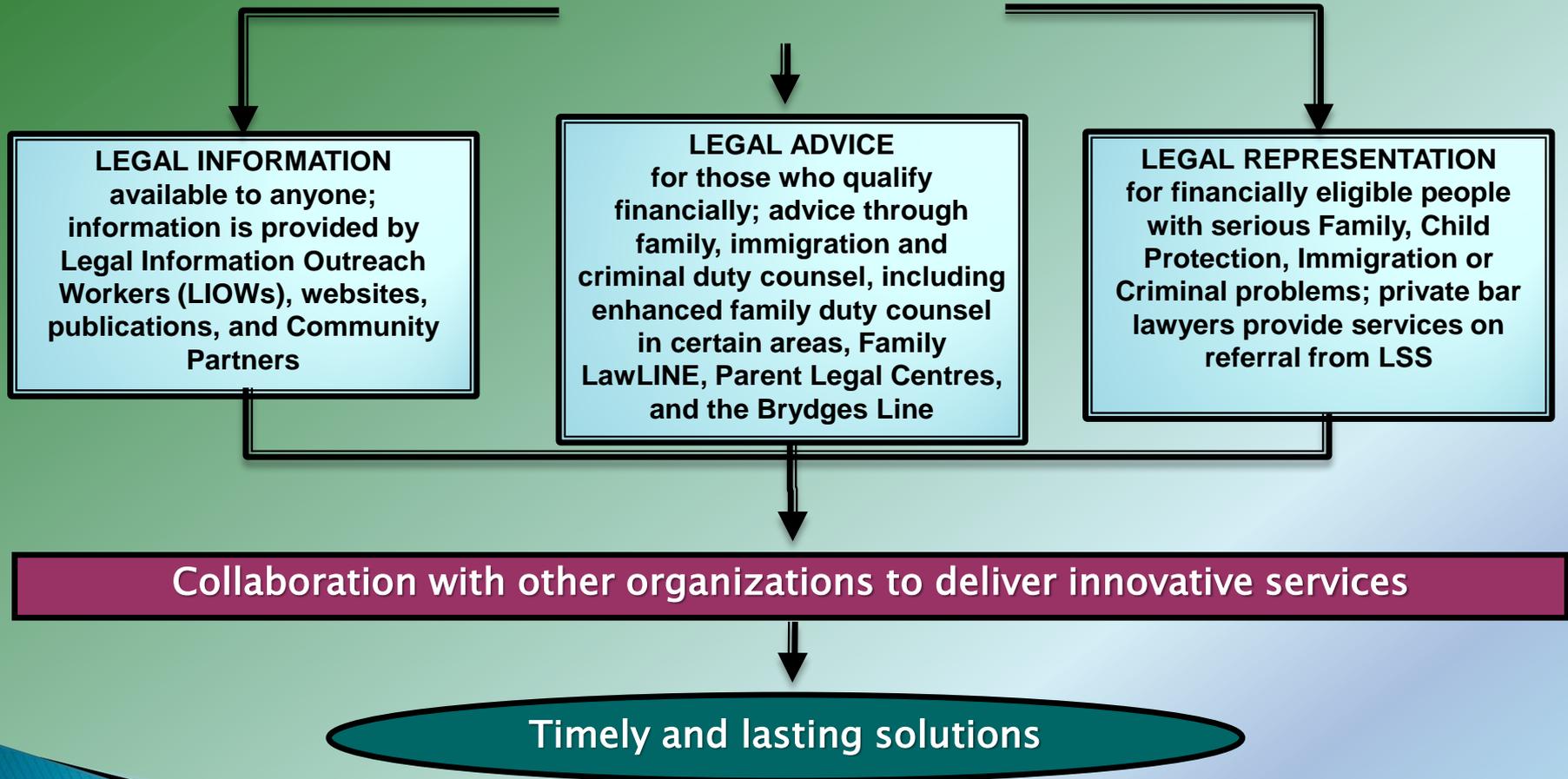
Deneen, Provincial Supervisor, Legal Aid Applications

Our Clients



Services Overview

Legal Aid



Legal Information

Legal Information
Outreach Worker



Community Partners

We have 25 Community partners providing services in 34 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.



Legal Advice

Family LawLINE



Duty Counsel

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

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



APPLYING FOR LEGAL AID

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

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



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

Legal Aid Offices

There are 35 communities in BC where someone can apply for legal aid in person, as well as get legal information.



Who Qualifies for Legal Aid Representation?

A client qualifies for legal aid representation 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. And the issues need to be addressed immediately to ensure the safety of the children and/or the client.

We now also have **Limited Representation Contracts** that allow a client to deal with financial security issues such as property division, spousal support, and child support, if there are no other serious family issues.



CFCSA (Child Protection and Removal)

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



Parent Legal Centres and Expanded Duty Counsel

- We now have Parent Legal Centres (PLC's) in Vancouver, Surrey, Prince George, Campbell River, Smithers, and Duncan
- We are opening 3 new PLC's before the end of the 2018/2019 Fiscal Year in Kamloops, Victoria, and Williams Lake.



Choice of Indigenous counsel for Indigenous clients with Family or CFCSA Cases (Pilot Project)

If an Indigenous client with a Family or CFCSA case requests Indigenous counsel and no local Indigenous counsel is available, LSS will try to find non-local Indigenous counsel who is available to accept the contract, and will pay this lawyer Travel costs.

Reciprocals – Where the client lives in one province and their Family or CFCSA matter is in another province.



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

Table of net household income

Household Size	CFCSA Cases	All other cases
1	\$2,580	\$1,580
2	\$3,210	\$2,210
3	\$3,840	\$2,840
4	\$4,470	\$3,470
5	\$5,100	\$4,100
6	\$5,730	\$4,730
7 or more	\$6,360	\$5,360

Effective October 30, 2018

Financial Eligibility

Personal Property/Assets (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

Effective April 1, 2018



Financial Eligibility

LEGAL ADVICE GUIDELINES

Household Size Monthly Net Income

1 – 4	\$3,470
5	\$4,110
6	\$4,770
7 or more	\$5,390

▶ Effective April 1, 2018



FINANCIAL DISCRETIONARY COVERAGE

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

- A file can be sent for a Discretionary Coverage Review if an applicant is over the financial eligibility guidelines on income by approximately \$100 – \$200 for Criminal, Immigration, and Appeal cases, or \$500 for Family cases, or on assets by \$500, and the matter is a serious and complex case and there is available budget.
- There is no Discretionary Coverage Reviews on CFCSA cases as they are already allowed an additional \$1,000 per month for income.



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:

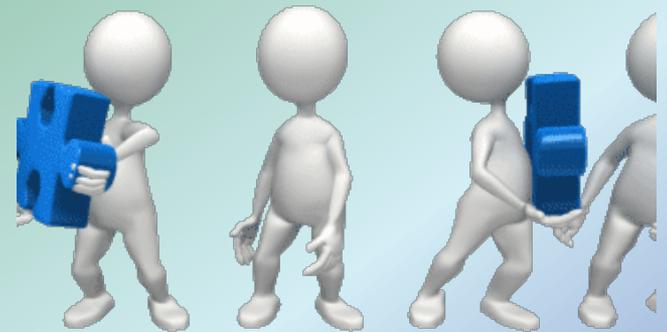
Provincial Supervisor
Vancouver Regional Centre
425 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787
Email: provincialsupervisors@lss.bc.ca



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 staff with requested information



Presenter: Deneen

Provincial Supervisor, Legal Aid Applications

Phone: 604-601-6217

Fax: 604-682-0787

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



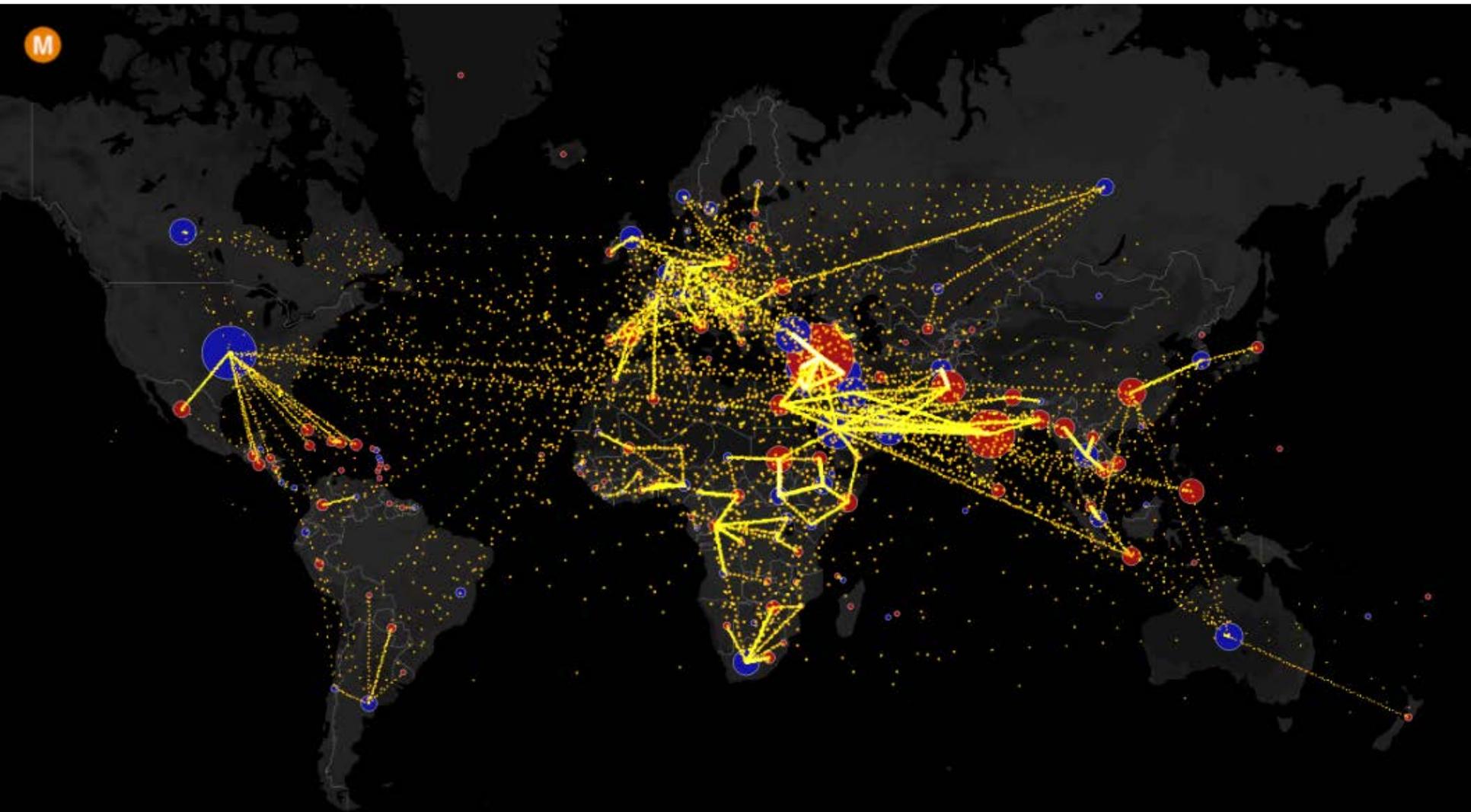


Overview of Canada's Immigration System

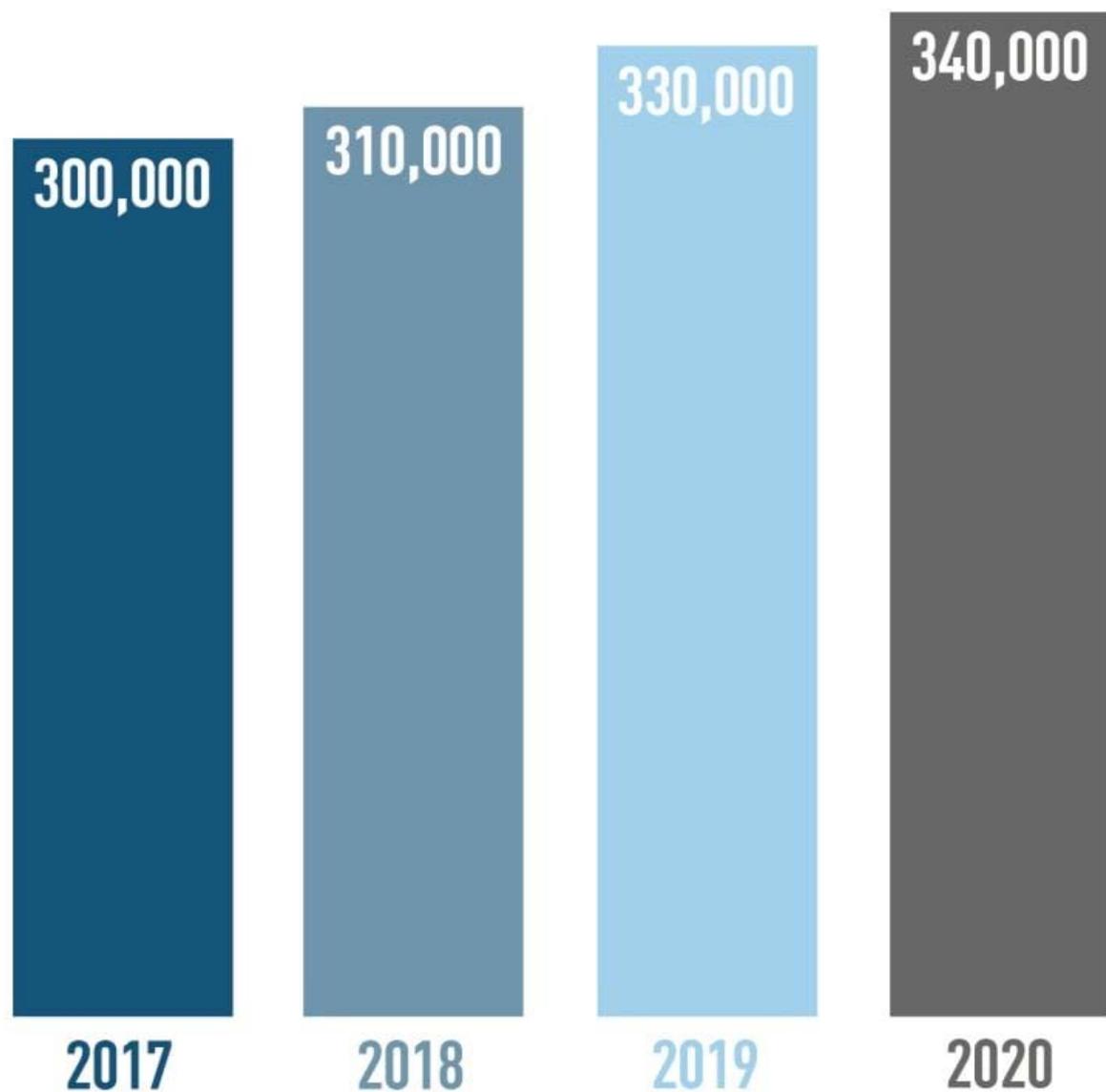
Amanda Aziz
Lawyer
Embarkation Law Corporation

Legal Services Society
March 2019

Country-to-country net migration (2010-2015)

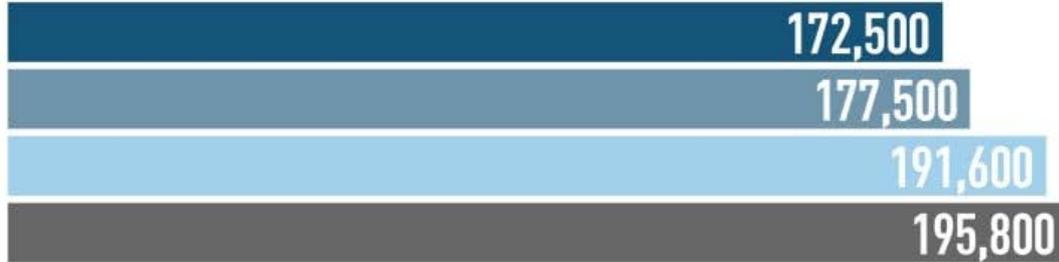


TOTAL CANADIAN IMMIGRATION LEVELS BY YEAR



CANADIAN IMMIGRATION CLASS LEVELS BY YEAR

Economic class



Family reunification



Refugees, protected persons and humanitarian



IRCC vs. CBSA

- Immigration, Refugees & Citizenship Canada
 - Temporary & Permanent Resident Programs
 - Immigration & Refugee Board
 - Canada Border Services Agency (Public Safety)
 - Enforcement
 - LSS engages with both Ministries
 - IRB Proceedings (RPD Hearings, Detention Reviews)
 - H&C Application , Submissions
- 

Presentation Road Map

1. Economic Pathways to Permanent Residence
 2. Family Sponsorship
 3. Humanitarian Considerations
 4. Temporary Residence
 - a) Visiting Canada
 - b) Studying in Canada
 - c) Working in Canada
 5. Inadmissibility and other tidbits
- 

Pathways to Permanent Residence

- Express Entry
 - Points based system
 - Canadian Experience Class
 - Federal Skilled Worker
 - Federal Skilled Trades
 - Two step process
 - Requires an invitation to apply
- 

Pathways to Permanent Residence

Summary of maximum points per factor for Express Entry candidates

A. Core / human capital factors

Factors	Points per factor - With a spouse or common-law partner	Points per factor - Without a spouse or common-law partner
Age	100	110
Level of education	140	150
Official languages proficiency	150	160
Canadian work experience	70	80

Pathways to Permanent Residence

B. Spouse or common-law partner factors

Factors	Points per factor (Maximum 40 points)
Level of education	10
Official language proficiency	20
Canadian Work Experience	10

A. Core/human capital + B. Spouse or common-law partner factors = Maximum 500 points (with OR without a spouse or common-law partner)



Pathways to Permanent Residence

C. Skill Transferability factors (Maximum 100 points)

Education	Points per factor (Maximum 50 points)
With good/strong official languages proficiency and a post-secondary degree	50
With Canadian work experience and a post-secondary degree	50
Foreign work experience	Points per factor (Maximum 50 points)
With good/strong official languages proficiency (Canadian Language Benchmark [CLB] level 7 or higher) and foreign work experience	50
With Canadian work experience and foreign work experience	50
Certificate of qualification (for people in trade occupations)	Points per factor (Maximum 50 points)
With good/strong official languages proficiency and a certificate of qualification	50

A. Core/human capital + B. Spouse or common-law partner + C. Transferability factors = Maximum 600 points

Pathways to Permanent Residence

D. Additional points (Maximum 600 points)

Factor	Maximum points per factor
Brother or sister living in Canada (citizen or permanent resident)	15
French language skills	30
Post-secondary education in Canada	30
Arranged employment	200
PN nomination	600

A. Core/human capital + B. Spouse or common-law partner factors + C. Transferability factors + D. Additional points = Grand total - Maximum 1,200 points



Pathways to Permanent Residence

- BC Provincial Nominee Program
 - Skilled Worker Stream
 - Semi-skilled & Entry level
 - International Graduate
 - Health Care Professional
 - 2,000 additional spaces for temporary workers (NOC C Level)
 - Announced March 12, 2019
- 

Pathways to Permanent Residence

- Caregiver Permanent Residence Pathways:
 - Permanent residence through the Live-in Caregiver Program (LCP) (pre 2014)
 - Caring for Children
 - Caring for People with High Medical Needs
 - Interim Pathway for Caregivers (applications accepted between March 4 and June 4, 2019)
 - Home Child Care Provider and Home Support Worker pilots (will launch later in 2019)
 - Occupation-specific work permits
 - Accompanying spouses & children
- 

Family Sponsorship

- Spouse, Common-Law
 - Obligations of a sponsor
 - No more conditional PR
 - Sponsorship breakdown – H&C
 - Children
 - Parents & Grandparents
 - Additional Family - Lonely Canadian
- 

Humanitarian Considerations

- Section 25 of IRPA

Humanitarian and compassionate considerations — request of foreign national
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, **examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.**



Temporary Residence

- Visitor Visas, ETAs – Only USA exempt
 - Study Permits
 - Any Designated Learning Institutions
 - Accompanying family members
 - Post-Graduate Work Permits – NOT ALL INSTITUTIONS!
 - Non-compliance s.220(1) IRPR
- 

Work Permits

- Temporary Foreign Worker Program
 - Job Offer – Employer Driven
 - Labour Market Impact Assessments
 - BC Provincial Nominee Program
 - Open vs. Closed work permits
 - International Experience Class
 - Accompanying family members
 - Unauthorized Work s.200(3) IRPR
- 

Inadmissibility

- Sections 34 – 40 of IRPA
 - Security, Terrorism & War Crimes
 - Criminality
 - Organized Crime
 - Health Grounds
 - Misrepresentation
 - Family Members can make you inadmissible
s. 42 IRPA
- 

Working with vulnerable people

- Temporary Resident Permits
 - Access to Work Permits
 - Victims of Trafficking
 - Access without Fear – be cautious
 - Immigration Consultants vs. Lawyers
- 

Resources

- Access Pro Bono
- Operational Manuals
 - Overseas Processing Manuals
 - Inland Processing Manuals
 - Enforcement Manuals
 - Policy directives on the IRCC website

Operational instructions and guidelines

This section contains policy, procedures and guidance used by Immigration, Refugees and Citizenship Canada (IRCC) and Canada Border Services Agency (CBSA) employees. It is posted on the Department's website as a courtesy to stakeholders.

Immigration, Refugees and Citizenship Canada (IRCC) and Canada Border Services Agency (CBSA) employees consult operational bulletins (OBs) and manuals for guidance in the exercise of their functions and in applying the Immigration and Refugee Protection Act, the Citizenship Act and their Regulations.

Program Delivery Instructions

- [Refugee Protection](#)
- [Temporary Resident Program](#)
- [Citizenship](#)
- [Permanent Residence](#)
- Guidance that applies to many business lines:
 - [Standard requirements](#)
 - [Language requirements](#)
 - [Medical requirements](#)

Operational manuals

Operational manuals are divided into different categories. Each manual, in turn, is divided into specific chapters and assigned a chapter number.

Active manuals (PDF format)

Manual	Chapter	Title
Citizenship Policy (CP)	CP 14	Adoptions (PDF, 1.23 MB)
Enforcement (ENF)	ENF 1	Inadmissibility (PDF, 618.98 KB)
Enforcement (ENF)	ENF 3	Admissibility Hearings and Detention Review Proceedings (PDF, 626.22 KB)
Enforcement (ENF)	ENF 4	Detention and Removal Proceedings (PDF, 1.03 MB)



Questions?

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Legal Services Society
March 2019