



KELOWNA CONFERENCE:

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

Manteo Resort Waterfront Hotel & Villas

3762 Lakeshore Road, Kelowna, BC V1W 3L4

Wednesday March 9th and Thursday March 10th, 2016

AGENDA – Wednesday March 9, 2016

Time	Session	Speaker	Facilitator
8:30–9:00	Registration & Breakfast		
8:45 – 9:00	Opening Ceremony & Welcome	<ul style="list-style-type: none">• Jordan Coble B.A.	Baljinder Gill
9:00–10:45	Working with LSS Intake and Other Legal Resources	<ul style="list-style-type: none">• LSS Intake – Lisa• Access Pro bono – Emma• My Law BC – Patricia Lim, John Simpson	Baljinder Gill
10:45–11:00	Break		
11:00–12:30	Overview of Child Protection Law and Child Protection Mediation	<ul style="list-style-type: none">• Anna Campbell – Local Agent and Child Protection Lawyer	Baljinder Gill
12:30 – 1:15	Lunch		
1:15–3:00	Overview of Family law act	<ul style="list-style-type: none">• Lori Kennedy – Local Agent and Family Lawyer	Baljinder Gill
3:00 – 3:15	Break		
3:15 – 4:30	WELFARE ACCESS DENIED: Ongoing problems with access to welfare and ways to challenge it	<ul style="list-style-type: none">• Lobat Sadrehashemi – Staff Lawyer BCPIAC	Baljinder Gill

LSS-Community and Publishing Services

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0965
www.legalaid.bc.ca



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AGENDA – Thursday March 10, 2016

Time	Session	Speaker	Facilitator
8:30–9:00	Breakfast		
9:00–10:00	Update on JITI Projects	<ul style="list-style-type: none">• Susanna Hughes - Lawyer	Baljinder Gill
10:00–11:30	Wills and Estates – On and Off Reserve	<ul style="list-style-type: none">• Raymond Phillips - Lawyer	
11:30–11:40	Break		
11:40–12:40	Gladue and Restorative Justice	<ul style="list-style-type: none">• Halie Bruce• Ana Tonasket – Justice manager	John Simpson
12:40–1:15	Lunch		
1:15–2:45	Update on the New Matrimonial Property Act	<ul style="list-style-type: none">• Ardith Walkem & Halie Bruce	Baljinder Gill

Working with LSS Intake



March 2016

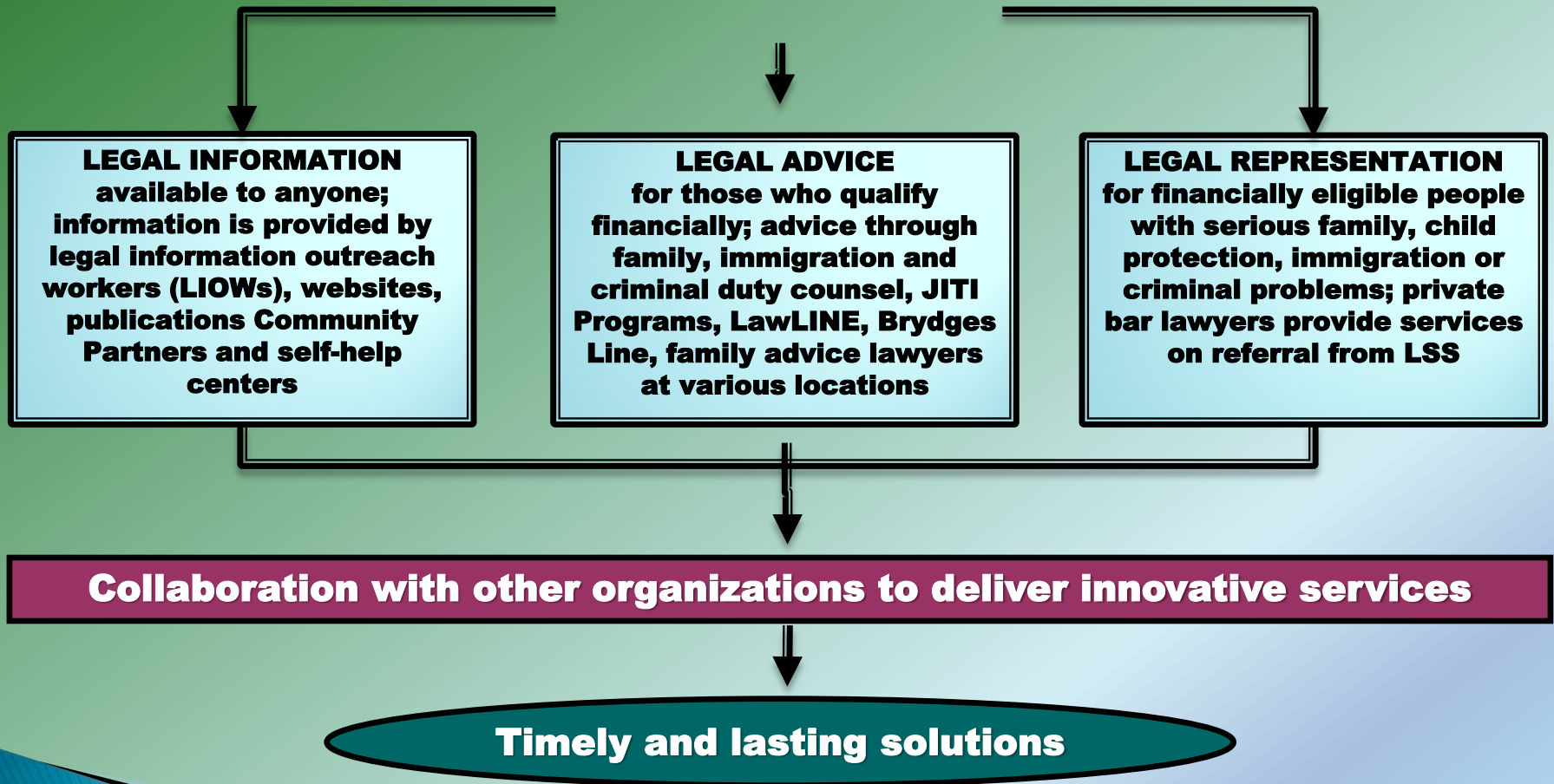
Sherilyn, Provincial Supervisor, Legal Aid Applications
Lisa, Kelowna Local Agents Assistant

Our Clients



Services Overview

Legal Aid



Legal Information

Legal Information Outreach Worker



Penticton Community Partners

Penticton & Area Access Society (The Access Centre)

**209 - 304 Martin Street
Penticton, BC V2A 5K4**

Phone: 250-493-6822

Toll-free: 1-866-493-6822

Fax: 250.493-6827



Vernon Community Partners

**Vernon Women's
Transition House Society
Centre For Community
Collaboration, Creekside
Professional Building**

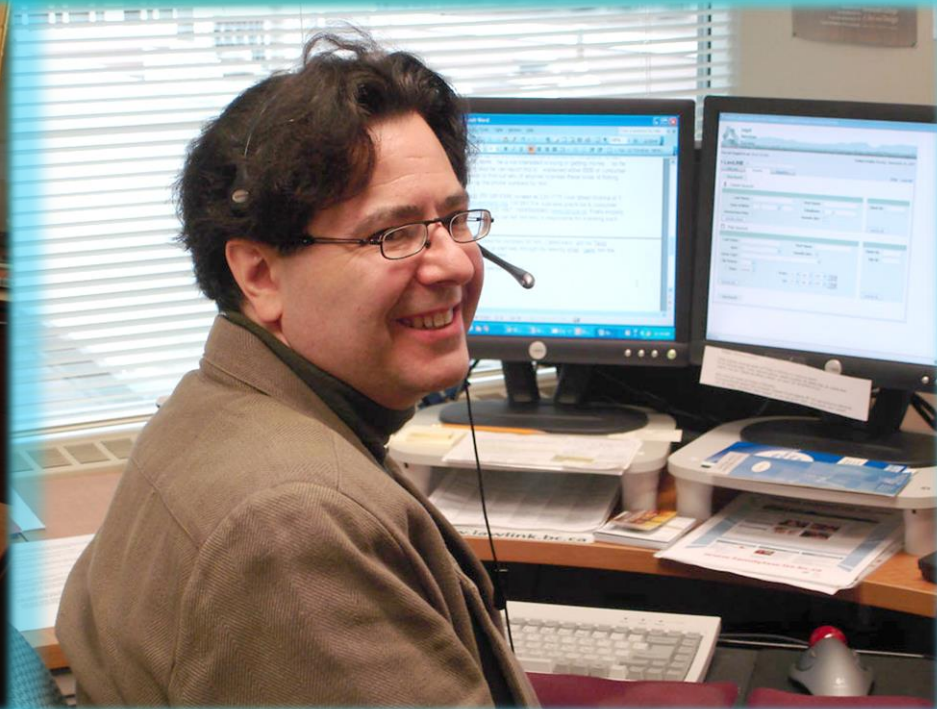
**#102 - 3301 24th Avenue
Vernon, BC V1T 9S8**

Phone: 250-558-3850 (522)

Fax: 250-558-3856



Legal Advice



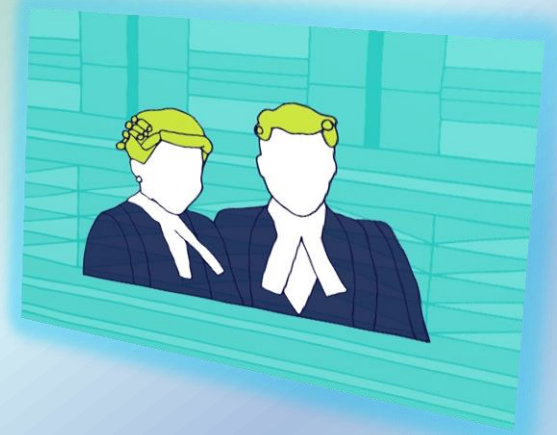
Duty Counsel

Family LawLINE

Duty Counsel

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

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



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

Kelowna Local Agent

Lori Kennedy, Barrister & Solicitor

210 – 347 Leon Avenue

Kelowna, BC V1Y 8C7

Phone: 250-763-8613

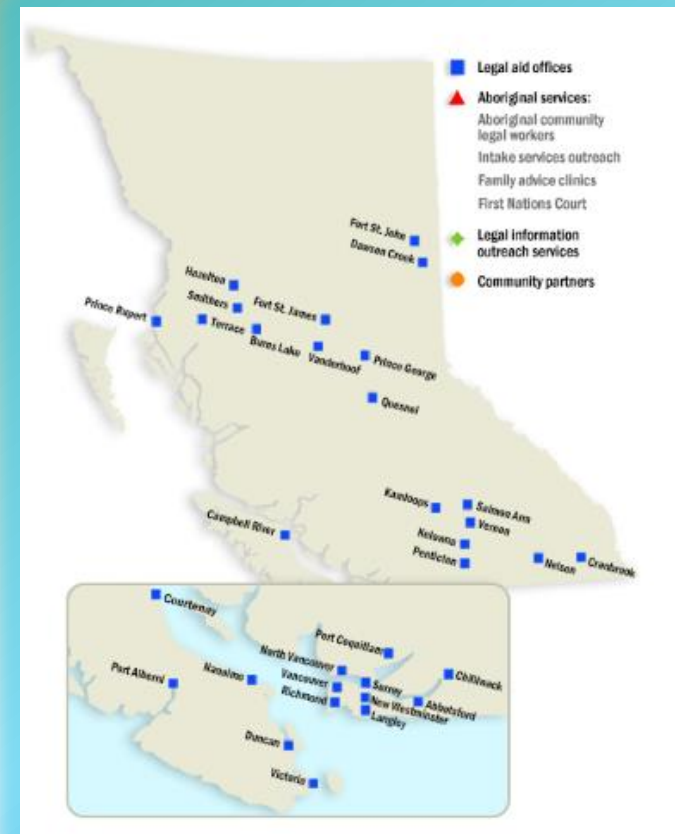
Fax: 250-763-3594

Also

Kelowna Law Courts

251–1355 Water Street

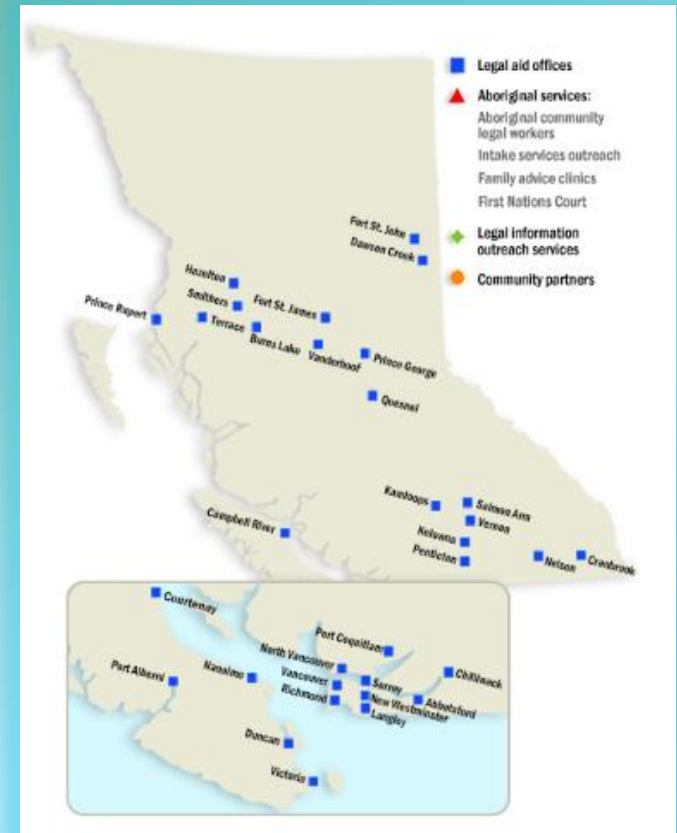
Kelowna, BC V1Y 9R3



Penticton Local Agent

Anna Campbell, Barrister & Solicitor
Penticton Courthouse
106 - 100 Main Street
Penticton, BC V2A 5A5

Phone: 250-493-7164
Fax: 250-493-7165



Vernon Local Agent

Arthur Channer, Barrister & Solicitor
Suite E, 3105–31st Avenue
Vernon, BC V1T 2G9
Phone: 250-545-3666
Fax: 250-545-4419

Also

Vernon Courthouse
3001-27th Street
Vernon, BC V1T 4W5



Who Qualifies for Legal Aid?

A client qualifies for legal aid when:

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



What Legal Problems Are Eligible For Coverage?

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



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



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



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



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



Financial Eligibility

Representation Income chart

Household Size

Monthly Net Income

1	\$1,500
2	\$2,100
3	\$2,700
4	\$3,290
5	\$3,890
6	\$4,490
7 or more	\$5,090

Am I
eligible?



Financial Eligibility

LEGAL ADVICE GUIDELINES

Household Size

1 - 4

5

6

7 or more

Monthly Net Income

\$3,300

\$3,900

\$4,520

\$5,110



Financial Eligibility

Personal Property (All case types)

Household Size

1

2

3

4

5

6 or more

Exemption

\$2,000

\$4,000

\$4,500

\$5,000

\$5,500

\$6,000



FINANCIAL DISCRETIONARY COVERAGE

JITI Pilots - Expanded Criminal Duty Counsel and Parents Legal Centre

- **If an applicant is over the financial eligibility guidelines, by approximately \$1000 on monthly income or assets, the file can be sent to the pilot lawyer who will consider the nature of the charges or issues, the complexity, seriousness, and duration of the case**

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

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



Requesting A Review of A Denial

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

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

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

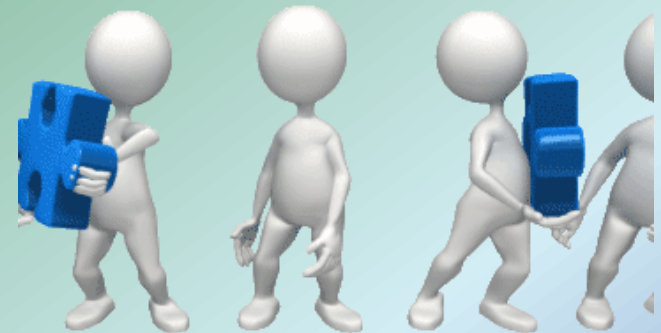
**Provincial Supervisor
Vancouver Regional Centre
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787**



Working Together

You can help your clients:

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



Presenters:

Sherilyn, Provincial Supervisor, Legal Aid Applications

Phone: 604-601-6093

Fax: 604-682-0787

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

Lisa, Kelowna Local Agents Assistant

Phone: 250-763-8613

Fax: 250-763-3594

Email: lisa.kelowna@lss.bc.ca



Access Pro Bono Society of British Columbia

access|probono
QUALITY LEGAL SERVICES FOR ALL

Agenda

1. **Access Pro Bono**
2. **Vision and Mission**
3. **History**
4. **Our Team**
5. **Our Services**
6. **Funding**
7. **Means Test**
8. **Summary Advice Clinic Program**
9. **Highlights of 2012**
10. **Top 10 Civil Matters**
11. **Clinic Process**
12. **Video Phone Clinics**
13. **Roster Programs**
14. **Roster Program Process**
15. **Main Contacts**

Access Pro Bono

- **We are a non-profit society incorporated in February 2010 to carry on the work of the Western Canada Society to Access Justice and Pro Bono Law of British Columbia, which formally merged as of April 1, 2010.**
- **All services are provided free of charge by our volunteer lawyers.**
- **Facilities are provided by social agencies committed to providing help to the needy.**

Vision and Mission

Vision: A justice system in which having limited means is not a barrier to obtaining quality legal services.

Mission: To promote access to justice in BC by providing and fostering quality pro bono legal services for people and non-profit organizations of limited means.



History

The Western Canada Society to Access Justice ("Access Justice") was incorporated in August of 1990 and was originally known as the Lower Mainland Society to Assist Research of Trials (START), comprised mainly of senior litigation lawyers. Access Justice had a history of research and provided a number of working papers on the length of court proceedings and other legal access issues. The Society was a leader in issues such as advocating for the abolition of P.S.T. and G.S.T. on legal bills. From 1999 through to 2009, one of the Society's main thrusts was the development of pro bono clinics across western Canada.

Pro Bono Law of British Columbia was originally incorporated under the name Public Legal Access Society in March, 2002. Pro Bono Law of BC commenced its operations in April, 2002 under the leadership of acting Executive Director Charlotte Ensminger and Chair Carman J. Overholt, QC. Pro Bono Law of BC received a three-year core funding grant from the Law Foundation of British Columbia to carry out the recommendations of the Committee. The grant application was supported by the Law Society of British Columbia and the Canadian Bar Association (BC Branch). Pro Bono Law of BC's initial focus was on five areas: community development; lawyer and law firm recruitment; development and maintenance of a pro bono website; fundraising; and lobbying for a properly funded legal aid system.

Our Team

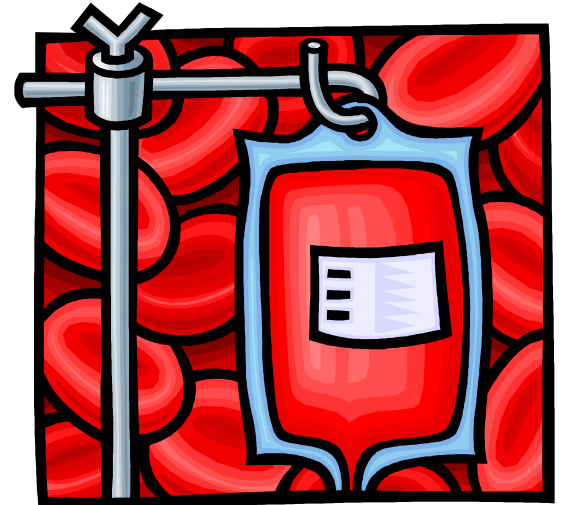


Our Services

- **Summary Advice Clinics**
- **Roster Programs**
- **Civil Chambers Duty Counsel Program**
- **Nanaimo Children's Lawyer Program**
- **Pro Bono Paralegal Program**
- **Pro Bono Telephone Clinic**
- **Wills and Estates Clinic**
- **Commercial Trial Assistance Project**

Funding

- The Law Foundation of British Columbia
(<http://www.lawfoundationbc.org/>)
- Lawyers and Law Firms



Means Test

- **No Equity Test**
- **To be eligible for most of our legal advice services, your net monthly household income must be below the amount for your household size in the table below:**

1–4 or fewer	\$3,230 CDN
5	\$3,810
6	\$4,400
7 or more	\$4,990



Summary Advice Clinic Program

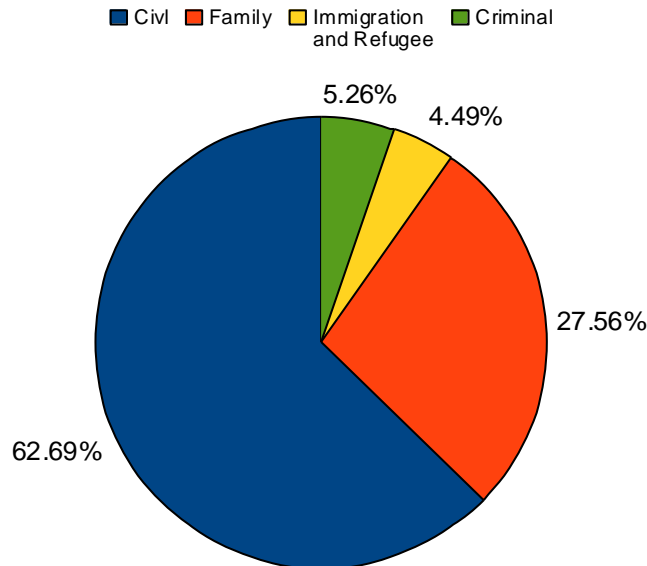
- **Appointments lasting approximately 30 minutes**
- **Qualified lawyers**
- **Strictest confidence**
- **Follow-up meetings, if necessary**
- **Written advice**
- **Our lawyers do not go into court but can prepare you to do so**



Highlights of 2012

- 6,700 actual client sessions at all Access Pro Bono clinics;
- 9,570 client sessions scheduled; and
- 496 lawyers participating at one or more clinic sessions

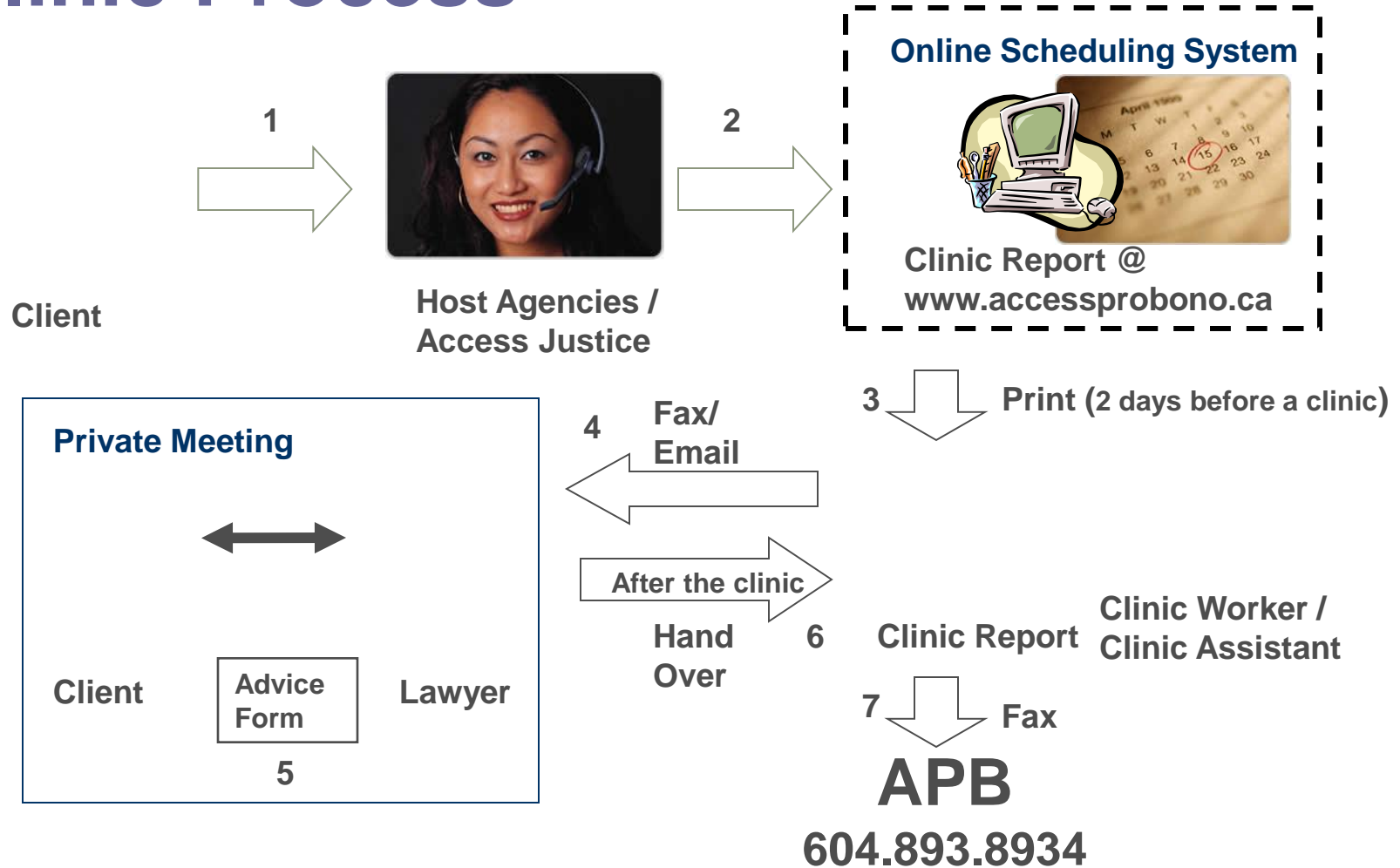
Breakdown of case types:



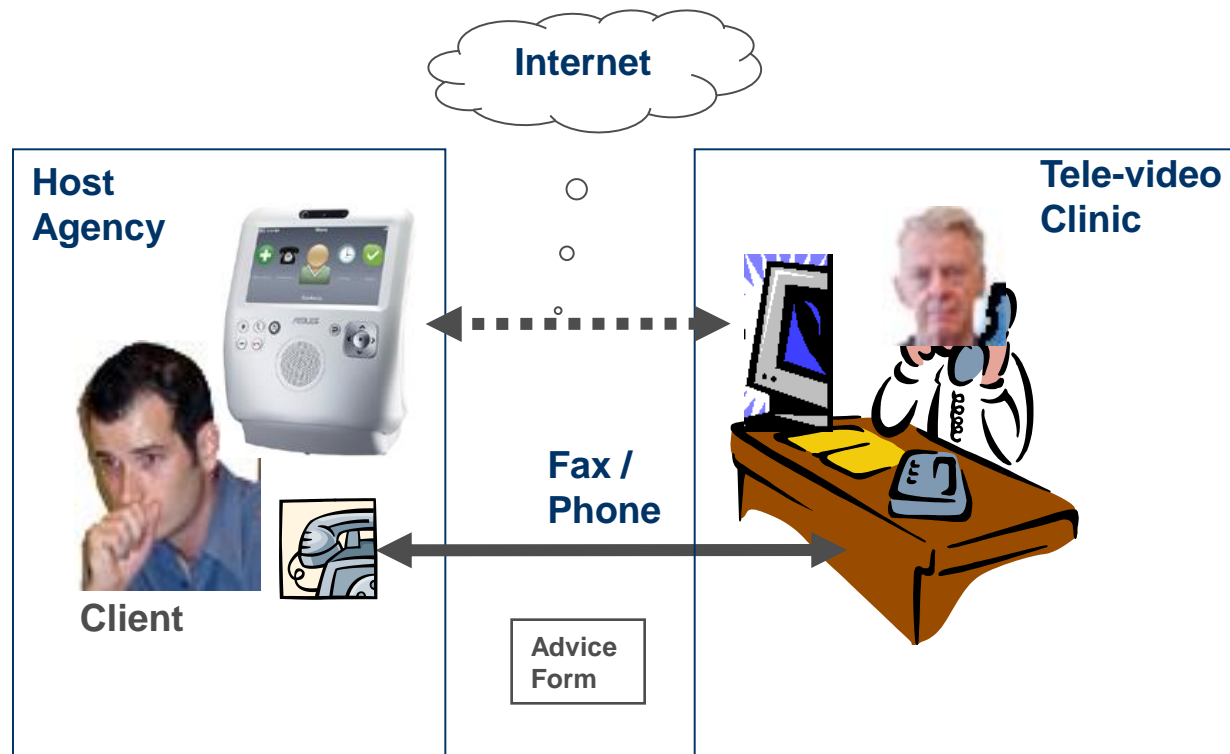
Top 10 Civil Matters in 2012

	Civil Areas	2012
1	Wills & Estates	16%
2	Torts-Personal Injury & Negligence	13%
3	Civil Procedure	11%
4	Contracts	8%
5	Employment-Wrongful Dismissal	7%
6	Debt-Collections	7%
7	Employment-Other	7%
8	Housing-Other	5%
9	Insurance	4%
10	Housing- Residential Tenancy	4%

Clinic Process



Videophone Clinics



ASUS
Rock Solid · Heart Touching

skype



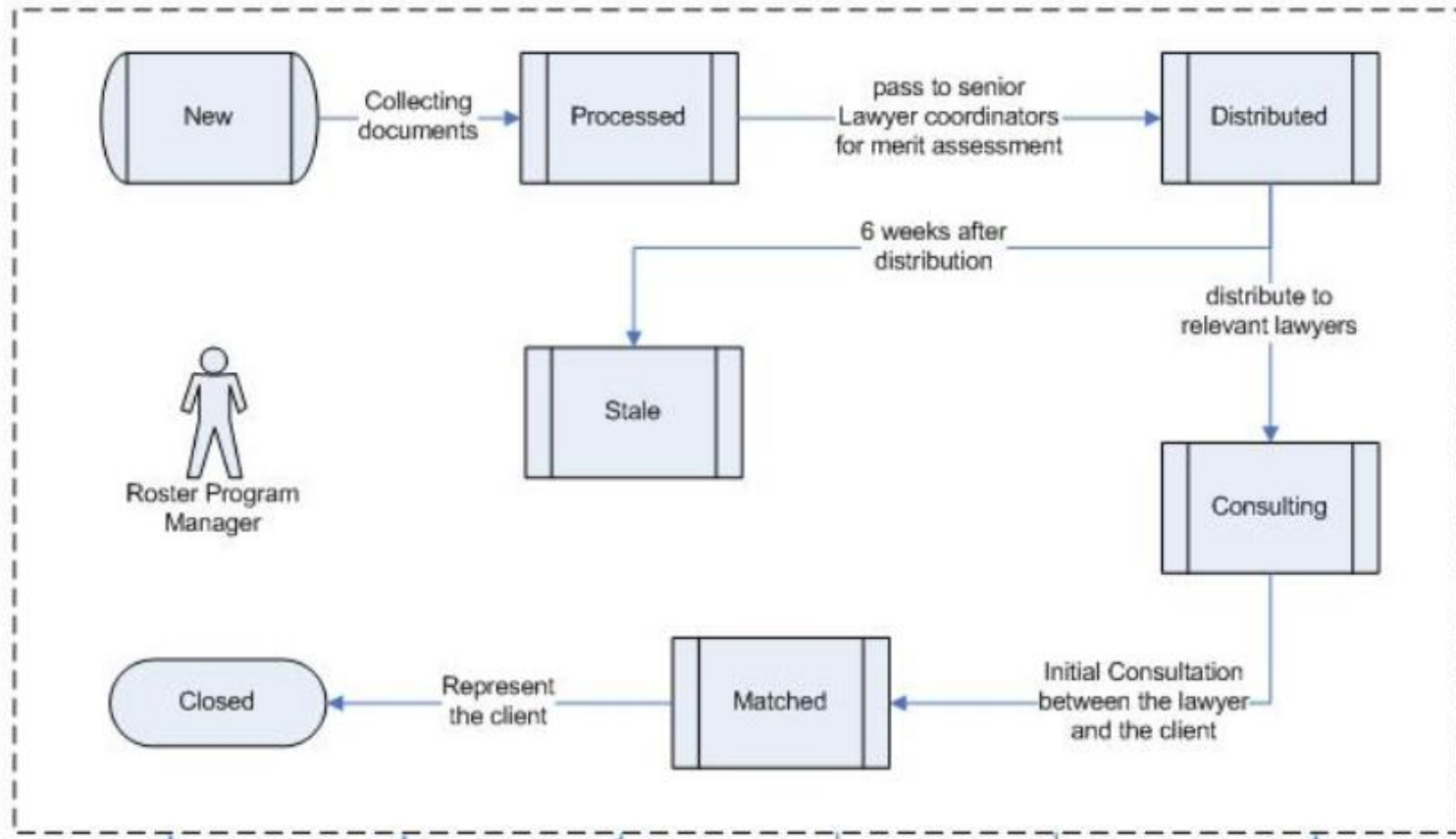
Videophone Clinics

Agency's Name	Lawyer Clinics in 2012	Actual Clients in 2012
Trail FAIRS Clinic	28	110
Nanaimo Citizen Advocacy Association	4	24
Kaien Anti-Poverty Society (KAPS)	3	3
Anahim Lake	1	3
Aboriginal Women's Society	10	32
SHED Society Bella Coola	2	6
Lower columbia All First Nations Castlegar	1	4
Quesnel Native Friendship Centre	6	21
Community Connections Revelstoke	8	31
Golden Family Center	11	25
Smithers Comm. Serv. Assoc	7	17
Total	81	276

Roster Programs

- **the Court of Appeal Program;**
- **the Federal Court of Appeal Program;**
- **the Mediators' Program;**
- **the Wills and Estates Program;**
- **the Family Law Program;**
- **the Judicial Review Program; and**
- **the Solicitors' Program;**

Roster Program Process



Main Contacts

Executive Director: Jamie Maclaren

jmaclaren@accessprobono.ca

Clinic Coordinator: Frank Yates

fyates@accessprobono.ca

Roster Manager: Michelle Quigg

mquigg@accessprobono.ca

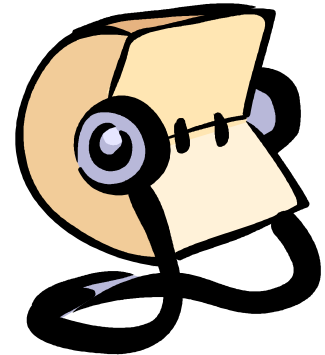
Project & Information Officer: Jimmy Yan

jyan@accessprobono.ca

Phone: 604.482.3195

Fax: 604.893.8934

Email: help@accessprobono.ca



PUBLIC LEGAL EDUCATION AND INFORMATION (PLEI)




Legal
Services
Society

British Columbia
www.legalaid.bc.ca



Patricia Lim, 604-601-6007
patricia.lim@lss.bc.ca

PUBLICATIONS AND ONLINE RESOURCES

- **Free publications**
 - **Social media**
 - **Websites**
 - **Videos**
- 

The LSS Game Show

Q 1: HOW MANY PUBLICATIONS WERE ORDERED LAST YEAR?

A. 101,000

B. 125,000

C. 140,000

D. 154,000



**Q 2: WHICH OF THESE IS NOT
THE NAME OF AN LSS PUBLICATION?**

- A. Clear Skies: *A Family Violence Story*
- B. Defending Yourself: *Possession of Property Under \$5,000 Obtained by Crime*
- C. A Guide to Living Wills and Powers of Attorney
- D. What You Need to Know About Fraud Charges and Social Assistance

Q 3: WHICH IS NOT AN LSS SITE?

A. aboriginal.legalaid.bc.ca

B. familylaw.lss.bc.ca

C. mylaw.bc.ca

D. factum.mylawbc.com



AUDIENCE & ACCESSIBILITY

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.

www.legalaid.bc.ca/publications

FAMILY LAW PUBLICATIONS

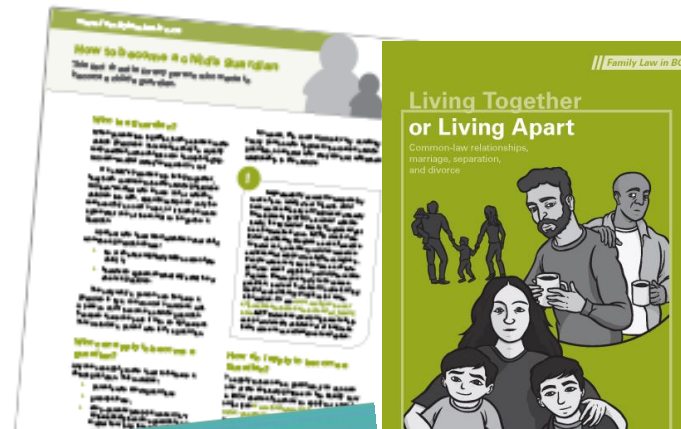
Level 2

Level 1

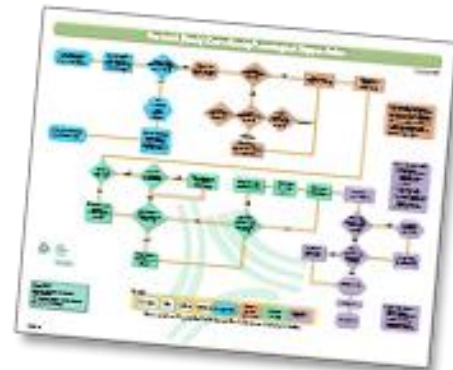
Level 3



multilingual



multilingual



online

new



multilingual

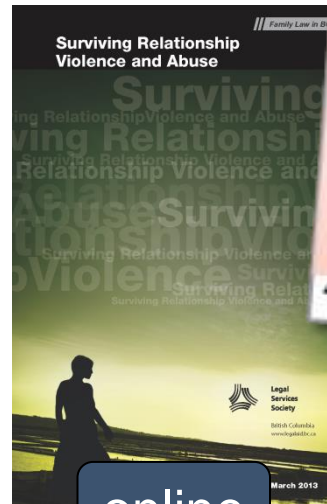
FAMILY VIOLENCE

Level 1



multilingual

Level 2



online



multilingual

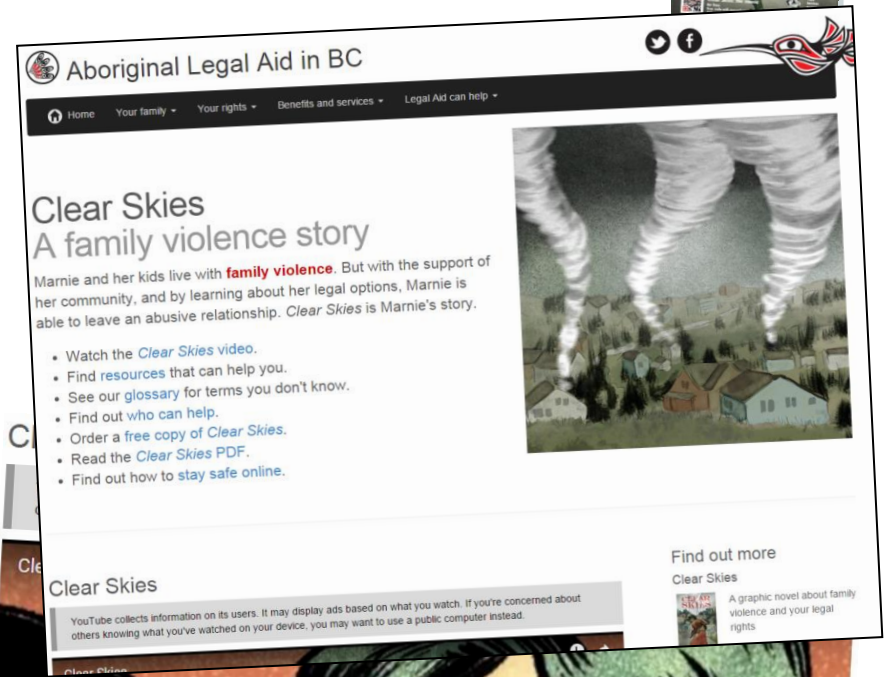


new



new

NEW! CLEAR SKIES GRAPHIC NOVEL



lawbc.help/clearskies

CHILD PROTECTION

to be revised

Some online

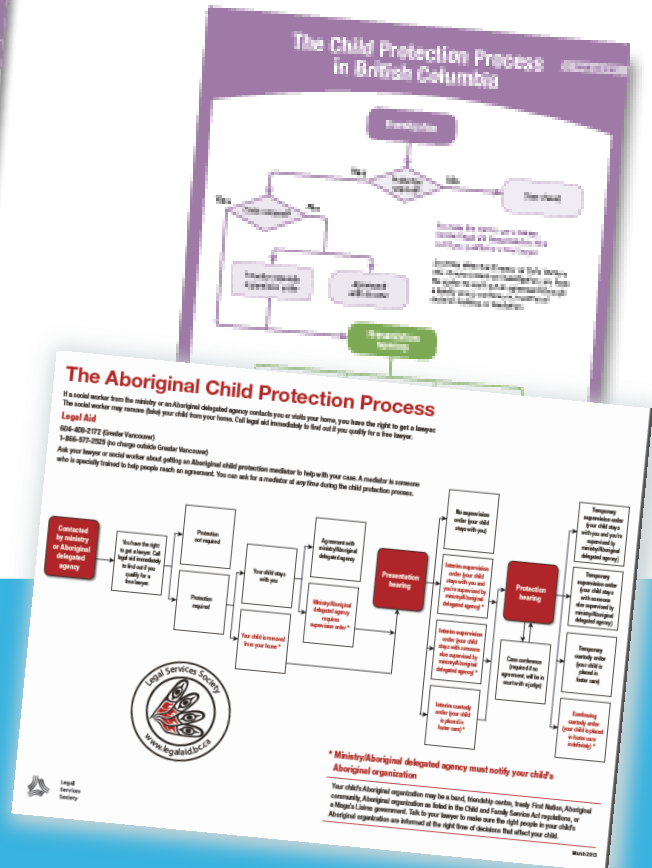
Level 1



Level 2



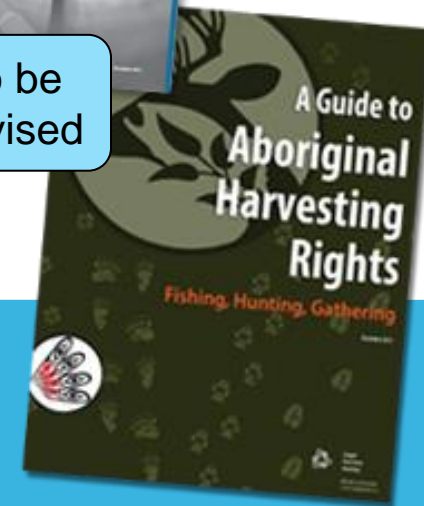
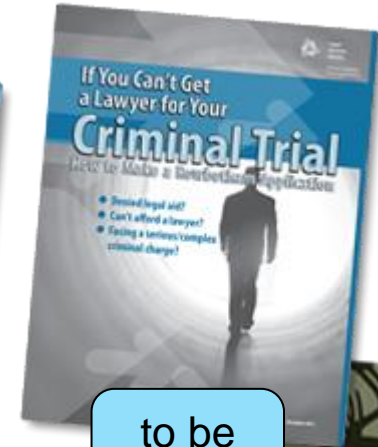
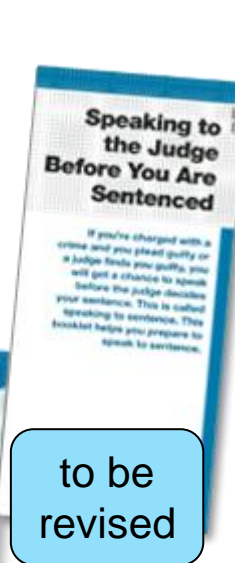
Level 3



CRIMINAL

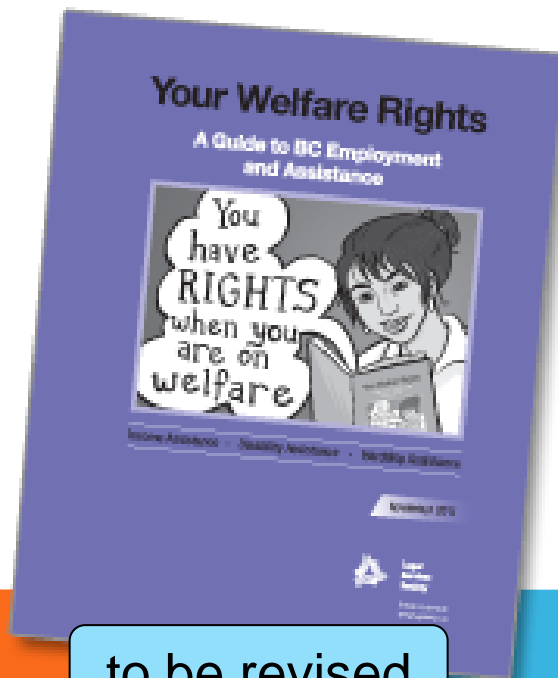
Level 1

Level 2



CIVIL PUBLICATIONS

Level 2



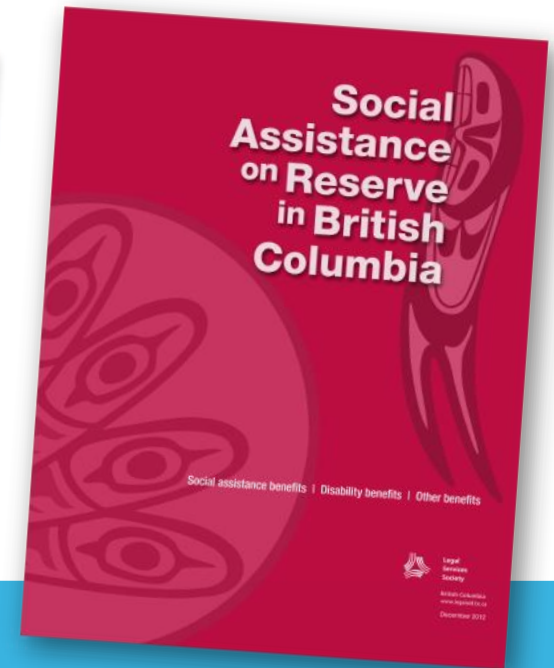
to be revised

Online



revised

Online



IMMIGRATION & REFUGEES

Level 1



multilingual

Level 2



revised

Multilingual to come

UPCOMING PUBLICATIONS

Child protection

- Child protection graphic novel
- Child protection redevelopment

Cyberbullying

- *Is that Legal?* (cyberbullying)

Family violence

- *Leaving Abuse* graphic novel
- *Leaving an Abusive Partner*
- Online safety for women

Welfare/Social assistance

- *Your Welfare Rights* redesign

Aboriginal

- Matrimonial Property on Reserve quick reference tool
- Gladue Rights series of publications



How to order LSS publications

The screenshot shows the homepage of the Legal Services Society website. The header includes the logo and tagline "Legal Services Society Legal aid can help". A search bar is located in the top right. The navigation menu includes links for Home, Legal Aid, Lawyers, Community workers, Aboriginal, LSS news, and About us. A red arrow points to the "I want to find a publication by subject" section, which lists various topics such as Aboriginal people, Abuse & family violence, Crimes & offences, Debt, Families & children, Gays, lesbians, trans, & bisexuals, Housing & tenancy, Immigrants & refugees, Legal help & lawyers, Legal system & courts, Pensions, benefits, & welfare, Staying out of court, Wills, estates, & life planning, and Women. Another red arrow points to the "I want to find a publication by language" section. A third red arrow points to the "If You Can't Get Legal Aid for Your Child Protection Case" publication in the featured section.

Legal Services Society
Legal aid can help

Search our site

Search

Home Legal Aid ▾ Lawyers ▾ Community workers ▾ Aboriginal LSS news ▾ About us ▾

I want to find a publication by subject

- Aboriginal people
- Abuse & family violence
- Crimes & offences
- Debt
- Families & children
- Gays, lesbians, trans, & bisexuals
- Housing & tenancy
- Immigrants & refugees
- Legal help & lawyers
- Legal system & courts
- Pensions, benefits, & welfare
- Staying out of court
- Wills, estates, & life planning
- Women

I want to find a publication by language

I want to find a publication by title

I want to get a publication

To get a copy of an LSS publication

- Go to your local legal aid office, or
- Place an order with Crown Publications (see below).

Online ordering with Crown Publications

Featured publications

Clear Skies
Clear Skies tells the story of Marnie and her kids who live with family violence. With the support of her community, and by learning her legal options...

Coping with Separation Handbook
For spouses (married or living in a marriage-like relationship) who are dealing with the emotional aspects of separating. It explains the emotional st...

If You Can't Get Legal Aid for Your Child Protection Case
For people facing a complicated child protection hearing who have been denied legal aid but can't... Explains why you can ask for a co...

Legal Aid Can Help You
Outlines in plain language what legal aid is, and how and where to apply for it. It also lists the phone numbers of legal aid offices in BC....

Sponsorship Breakdown
Sponsorship Breakdown is for permanent residents and conditional permanent residents who need help when the person sponsoring them in Canada is no...

legalaid.bc.ca/publications

HOW TO ORDER MULTIPLE COPIES

www.crownpub.bc.ca

distribution@lss.bc.ca



Legal Services Society
Legal aid can help

British Columbia - Canada

Customer Account Application Form

To order:

- Fill in the form online, then e-mail it to Legal Services Society; or
- Print out and fill in the form, then fax it to Legal Services Society


If you plan to order multiple copies of a publication or place regular orders, then you can apply for a customer account. Please fill in the information below and return this form to Legal Services Society by email at distribution@lss.bc.ca or by fax at 604-682-0965. We will contact you after we have reviewed your application. You will receive your customer number and your pre-approved order quantity if your application is accepted.

Does your organization already have an approved Crown Publications customer number? Yes ☐ No ☐

Organization name:			
Contact person:			Title: <input type="text"/>
Mailing address:	<input type="text"/>		
Phone:			Fax: <input type="text"/>
Email:			Website: <input type="text"/>
Order requirements:	Maximum number of copies <input type="text"/>	Estimated frequency of orders <input type="text"/>	
Preferred languages:	<input type="text"/>		
Area of law:	<input type="checkbox"/> Aboriginal <input type="checkbox"/> Civil <input type="checkbox"/> Criminal <input type="checkbox"/> Family <input type="checkbox"/> Immigration <input type="checkbox"/> Legal aid		
Type of organization:	<input type="checkbox"/> Aboriginal <input type="checkbox"/> Community group <input type="checkbox"/> Government <input type="checkbox"/> Library <input type="checkbox"/> Legal organization <input type="checkbox"/> Medical <input type="checkbox"/> Police/RCMP <input type="checkbox"/> School/College <input type="checkbox"/> Victim services <input type="checkbox"/> Other		
Demographics: (Groups/individuals you serve)	<input type="checkbox"/> Aboriginal <input type="checkbox"/> Children and youth <input type="checkbox"/> Community workers/Advocates <input type="checkbox"/> Gay/Lesbian/Bisexual/Transgender <input type="checkbox"/> Immigrants/Refugees <input type="checkbox"/> Police/RCMP <input type="checkbox"/> Seniors/Elders <input type="checkbox"/> Victims <input type="checkbox"/> Women <input type="checkbox"/> Other		
Services: (Type of service offered)	<input type="checkbox"/> Advocacy services <input type="checkbox"/> Counselling/Support Group <input type="checkbox"/> Crisis line <input type="checkbox"/> ESL/Literacy training <input type="checkbox"/> Legal advice <input type="checkbox"/> Legal representation <input type="checkbox"/> Mediation and conflict resolution <input type="checkbox"/> Pro bono legal services <input type="checkbox"/> Restorative justice <input type="checkbox"/> Other		

Disclaimer

LSS collects and uses personal information solely to operate its business and provide legal aid in BC. LSS does not sell the personal information it collects and will not disclose an individual's personal information to a third party unless the disclosure is authorized under FOIPPA and/or in writing by the individual.



Providing legal information
for British Columbians

SOCIAL MEDIA & WEBSITES



- Facebook/Twitter @legalaidbc
- Factum factum.mylawbc.com
- MyLawBC development blog devblog.mylawbc.com



LSS on social media

PLEI websites from LSS

1. Family Law Website

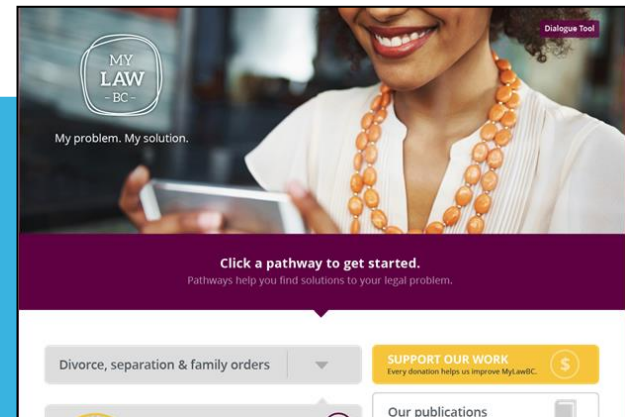
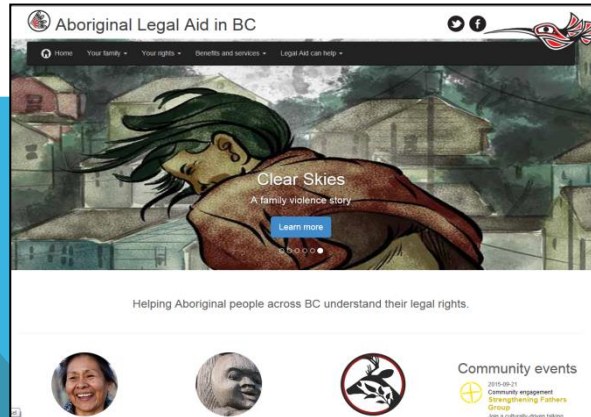
familylaw.lss.bc.ca

2. Aboriginal Legal Aid in BC

aboriginal.legalaid.bc.ca

3. MyLawBC

mylawbc.com



OTHER USEFUL RESOURCES



www.publiclegaled.bc.ca



www.clicklaw.bc.ca



www.povnet.org

Thank you!

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**Legal
Services
Society**

British Columbia
www.legalaid.bc.ca

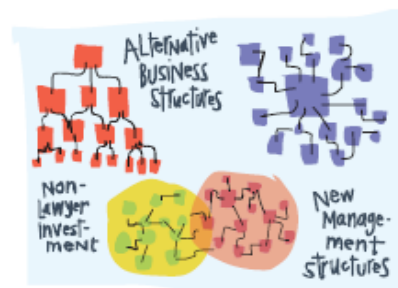




February 2016

IN THE FUTURE,
LAWYERS WILL BE
FREED
TO WORK BETTER,
DIFFERENTLY.

New Ways of
Working Together



New Structures
For Legal
Services
Entities

New ways to
ENSURE
COMPLIANCE
with ETHICAL
& LEGAL
OBLIGATIONS



New means
TO SUPPORT
CLIENTS



ACCESS
To Legal Services
WILL Be the
TRUE TEST for
LEGAL INNOVATION



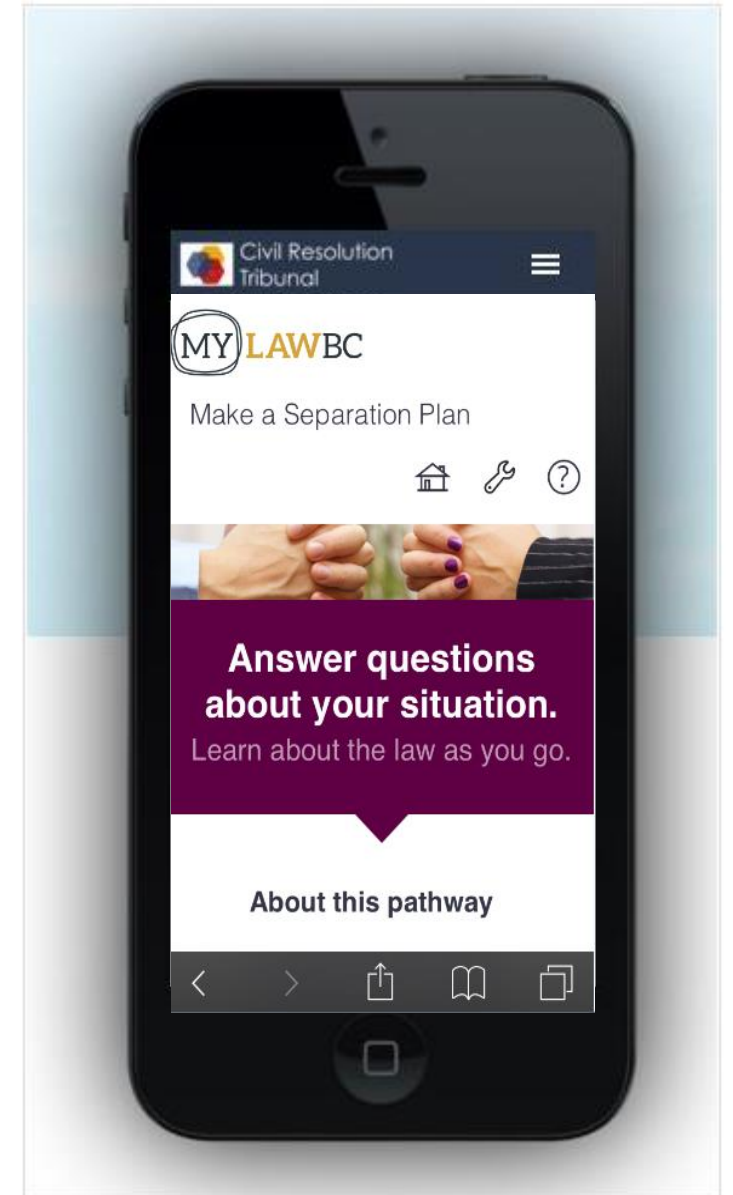
meet existing
LEGAL NEEDS
Better differently

& Meeting
UNMET Legal
Needs

Considering Not Just the
QUANTITY of People SERVED
But the QUALITY of the SERVICE

Going forward, it's a mobile first, cloud first world.

- Satya Nadella, Microsoft CEO





TEST DRIVE mylawbc.com





Make a separation plan



Read information. Answer questions.

Click previous question to go back.

How is communication going with your spouse?



< Previous question

Continue >

Call for free legal help

Legal advice from a family lawyer

Mediation



Mediators to help you, if you qualify

Call **Legal Aid** (Legal Services Society)
1-866-577-2525 (no charge)

HOME



Start a new pathway.

ABOUT US



We're the Legal Services Society.
We provide legal aid in BC.

CONTACT US

400 - 510 Burrard Street
Vancouver, BC V8C 3A8
604-601-6000

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Guided pathway

Home / Family / Make a separation plan

Multiple Question Types



Do you and your spouse have children together?

< Previous question

Yes >

No >



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.





The next three questions ask you to rate your relationship with your partner in terms of:

- communication
- cooperation
- trust

◀ Previous question

Continue ▶

Talk with someone right now

VictimLINK

Confidential, multilingual crisis support line

Call: 1-800-563-0808

(no charge, 24 hours)

TTY: 604-875-0885

BC211

Confidential, multilingual service

Call: 211 (24 hours)

Text: 2-1-1

Your answers are confidential

Answers are erased when you exit the pathway.

todo!

QUICK EXIT





Your options when facing foreclosure

Solve the problem

or

Go to court*

Doing nothing

If you do nothing, you'll have no say in court and you'll have to move out of your home. This sometimes can happen with little notice and sooner than you think. (page 3)

Can you refinance with lower payments? (page 6)



yes

no

Can you get a new mortgage with a new lender and pay off the original mortgage? (page 6)



yes

no

Do you have enough equity to make selling your home worthwhile? (page 8)



yes

no


Reinstate or redeem the mortgage. (page 5, page 6)


If you can't solve the problem, you can go to court. (page 9)

Check the accuracy of the petition. (page 11)



Choose how to respond to the petition. (page 12)



Try to get some legal advice. (page 15)



Prepare and deliver your response. (page 15)



Attend the hearing and make your presentation. (page 16)



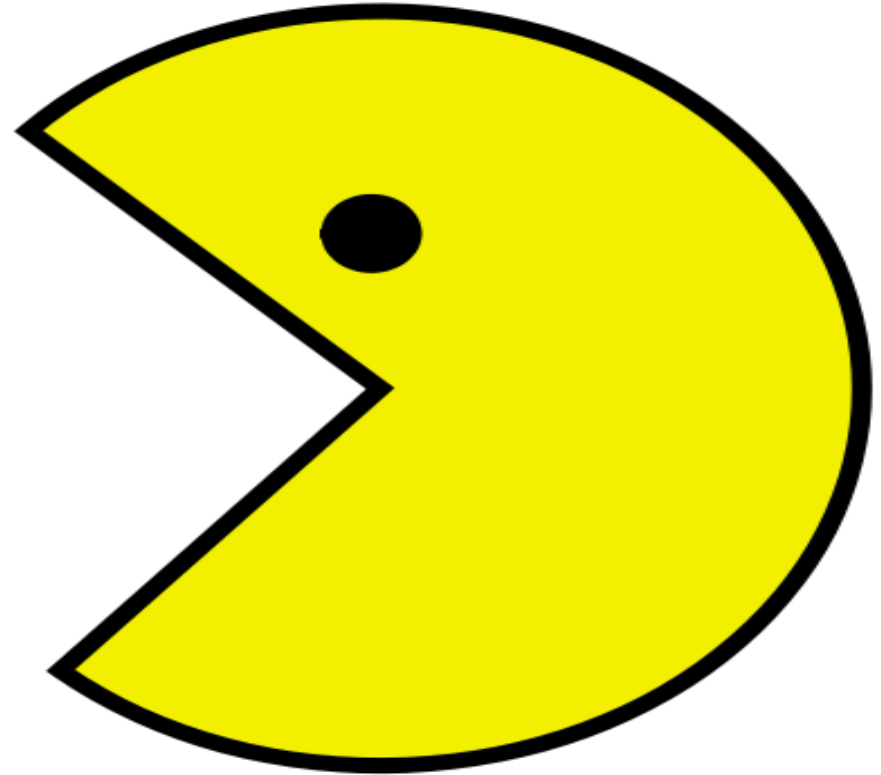
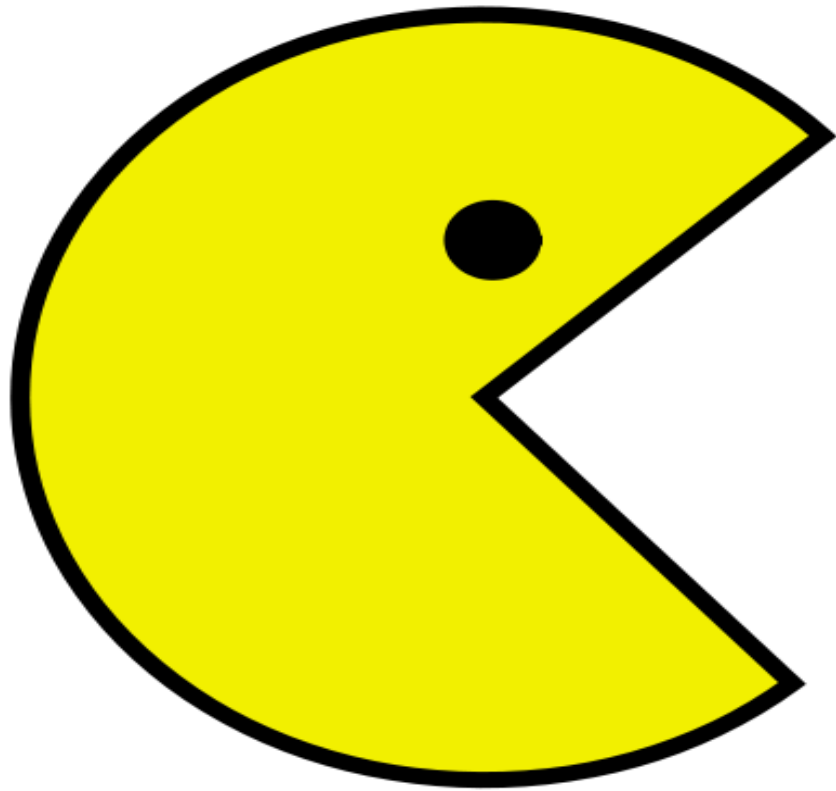
Understand any court order made. (page 20)





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Feb 29, 2016



How can we use MylawBC to help clients?

CHILD FAMILY AND COMMUNITY SERVICE ACT

Legal Services Society presentation March 9, 2016, Kelowna, by Anna M Campbell

The *Child Family and Community Service Act* RSBC 1996 (CFCSA) is the legislation that governs the standard of care that parents must provide for children and that gives government authority of to remove a child if adequate care is not being provided. The CFCSA applies to all children up to the age of 19 and to a child's parents. Parent is defined under the CFCSA as any person who is either the natural parent or a guardian or someone who stands in the place of a parent or guardian (generally referred to as the parent). Under the *Family Law Act* SBC 2011 c25 (in effect since November 28, 2013) the natural parents who have resided with the child/children are deemed to be guardians, and legal guardianship can be awarded to a non-parent which includes a family member, a grandparent, or a family friend.

The Ministry for Children and Family Development (the Ministry) is the ministry responsible for social workers who investigate reports regarding a parent's ability to care for a child physically, emotionally and financially. The CFCSA makes reference to the Director, and the Director oversees the social workers. The CFCSA's reference to the Director is for all practical purposes a reference to the social worker in charge of the case. Under the CFCSA all children have the right to have a safe and healthy home, free from abuse and neglect. Abuse includes physical, sexual and emotional abuse and neglect includes neglect caused by the parents' inability to care due to their own disability or drug dependencies, and neglect caused by lack of knowledge about acceptable community standards of living. The definition of abuse and neglect which gives authority to the social worker to remove a child is found in s. 13 of the CFCSA.

The CFCSA requires that any person who is aware of abuse or neglect of a child has a legal obligation to report it to the Ministry. All professionals, i.e. doctors, teachers, lawyers, police officers, and friends or family members have an obligation to report to the Ministry any concerns about a child/children's wellbeing (s.14 CFCSA).

Legislative Framework

The CFCSA is the legislation that defines what steps social workers must take when a report is received from the community about the safety of a child. The social worker receiving a report has 30 days to complete the investigation. During the investigation process the social worker can: provide services to families (s.5 CFCSA), sign voluntary agreements with the parent (s.6 CFCSA), make a special needs agreement (s.7 CFCSA), make a written agreement with a child's relative or another person who was given authority to care for the child by the child's parent (s.8 CFCSA), or remove the child (s.30 CFCSA).

Unless the child is in immediate danger, the removal of a child from his parent under s.30 of the CFCSA is a social worker's last resort and the social worker has an obligation to consider all other alternatives to protect the child before removing.

Once the child is removed from the parent, the social worker in effect becomes the child's parent and will make all relevant decision in regards to the child's well being. The social worker has obligations in regards to providing notice of the proceedings to parents, to the aboriginal community (if the child is native), and to children who are 12 years of age or older. Children who are in care of the ministry have rights (s.70 CFCSA) and the social worker has to take those rights into account. However s.70 does not provide power to the court to review the care provided to children in care. It is the social worker's responsibility to ensure that children in foster care receive proper care and the court cannot substitute its view for that of the director. The court can only intervene and overrule a decision by the director if that decision is capricious or made in bad faith (*K.(C) v British Columbia Ministry of Children and Family Development*, 2003 BCSC 785)

Under s.71 of the CFCSA social workers have to consider the child's best interest when placing a child. The social worker has an obligation to give priority to placing a child with a relative, or in a location where the child can maintain contact with relatives and friends, and in the same family unit as the child's siblings, and in a location that will allow the child to attend the same

school; and if the child is aboriginal, the social worker must give priority to placing the child within the aboriginal cultural community.

Under s.93 of the CFCSA, social workers have the power to provide support services to families. This is an important section which is often overlooked and that allows social worker to pay for support services to assist a family when a report is received. Sections 93.1 and 93.2 provides an administrative mechanism to review the exercise of the Director's powers.

Once the child is removed there are timelines which the social worker must follow and which are enforced by the court. These timelines provide a timeframe in which a parent needs to address the concerns raised by the social worker.

Within 7 days from the removal, the social worker must file a Report to Court with the provincial court. The Report to Court will set out the circumstances and the reasons for the removal, the interim plan of care for the child, and what least disruptive measures were considered by the social worker. At that hearing (the Presentation Hearing) the Judge will be asked to make a court order. The Judge's options at the presentation stage are: to return the child to the parents, to return the child to the parent under supervision, to grant interim custody to the Director, or to place the child in the interim custody of a person other than a parent with the consent of that person and under the Director's supervision. This hearing is summary and if there is a dispute about the facts for the removal, then the Judge must decide in favor of the director.

Within 45 days of the Presentation Hearing, the protection hearing must start and it must be concluded as soon as possible. For the protection hearing, the social worker must file a plan of care for the child together with their application setting out whether they are seeking a return of the child to the parent under supervision, a temporary custody order, or a continuing custody order. A temporary custody order has legislated time limits which are based on the age of the child when he was removed (s.43 CFCSA). However, temporary custody orders and supervision orders can be extended (s.44 CFCSA). Under s.45 of the CFCSA imposes time limits for the total period of time that a child can be in the temporary custody of the director.

Under s.45 of the CFCSA the total period during which a child is in the temporary custody of the director or of a person other than the child's parents, is calculated from the date the initial order is made until the date the child is either returned to the parent, or the child's custody is transferred to another person, or when a continuing custody order is made. The legislated total period of time that children are to be in temporary custody is as follows:

- (a) 12 months if the child or the youngest child who was the subject of the initial order was under 5 years of age on the date of that order,
- (b) 18 months if the child or the youngest child who was the subject of the initial order was 5 years of age or over but under 12 years of age on the date of that order, and
- (c) 24 months if the child or the youngest child who was the subject of the initial order was 12 years of age or over on the date of that order.

If the parent is not able to remedy the issues which were raised in the Report to Court at the time of the removal, then the social worker will file an application for a continuing custody order. The time limitations imposed by s.45 are a guideline of how much time parents have to deal with the issues raised by the social worker. The Judge can extend these time limits for a specified period if they believe it is in the child's best interests to do so (s.45(2)). However, the longer it takes for parents to deal with the issues raised by the social worker, the more difficult it becomes to have the children returned into the parent's custody.

The legal effects of an interim custody order (presentation hearing) or of a temporary custody order (protection hearing) are set out in section 47 of the CFCSA. The section provides that if a third party obtains custody of the child at either presentation hearing stage or at the protection hearing stage, that third party has the same rights and responsibilities that are granted by s.47 to the director. Those rights and responsibilities unless limited by the court are:

- (a) to consent to health care for the child;
- (b) to make necessary decisions about the child's education and religious upbringing;

(c) to exercise any other rights and to carry out any other responsibilities of a personal guardian of the child, except the right to consent to the child's adoption.

Under s.47 (3) when an interim or a temporary custody order is made, the court may order that the parent retain either or both of the following rights if it is in the child's best interest:

(a) to consent to health care for the child;

(b) to make necessary decisions about the child's education and religious upbringing.

In *British Columbia (Director of Child, Family and Community Service v. Schneider* (26 March 1997 BCPC), the Judge refused to allow a parent to continue to have the right to make decisions about the child's education and religious upbringing by stating that as a rule the people who have the day to day care and control of the child (in this case a foster parent) must have the power to make these decisions to avoid constant deadlock.

When the director files an application for a continuing custody order, if the parents do not consent then a trial needs to be scheduled. At the trial, the judge will hear evidence from the social worker, the foster parents, medical experts, access supervisors, parents and family. Section 49 of the CFCSA sets out what steps the social worker must take and what evidence the Judge must consider at a continuing custody hearing. After hearing all of the evidence and before making a continuing custody order, the Judge must consider the following: first, the conduct of the parents (whether the circumstances that led to the removal have been remedied and the parents are able to meet the child's needs); second, the plan of care prepared by the social worker; and thirdly, the child's best interests. At the end of the trial, the Judge will make the decision of whether the child should be returned to the parent entitled to custody with or without supervision, whether the child should be placed in the care of the director, or whether a 'last chance' order should be granted to allow up to 6 more months for the parents to fully complete dealing with the issue raised by the social worker. This only happens when the parent proves that he/she has taken significant steps to improve his/her situation and the order is made to give the parent some additional time to be ready to have the child returned into his/her care. If during this time the parent does not properly satisfy the

ministry that the child can be safely returned into his/her care, the social worker must once again file an application for a continuing custody order.

When a continuing custody order is granted, the director becomes the sole guardian of the child and the public trustee becomes the sole property guardian of the child and the order does not affect the child's rights respecting inheritance from the natural parents. A continuing custody order grants the director the legal authority to be able to request to place a child for an adoption.

At the time a continuing custody order is granted, the parent can ask the Judge to grant an order for continued access to the child, (s.56 CFCSA). However, the Judge will grant access to a parent only if the access is consistent with the plan of care, if it is in the child's best interests, and if it is consistent with the wishes of a child who is 12 years of age or over. If an access order is granted, section 57 of the CFCSA gives power to the director and the parents to bring an application to vary or cancel that access.

In cases where the director plans to place the child for adoption, the director will oppose an order for access to the parents, because it will stand in the way of the adoption proceeding. Where the child has special needs and will continue to need supports from his natural family, access orders are usually granted.

Under s.53 of the CFCSA a continuing custody order ends either when the child reaches 19 years of age, the child is adopted, the child marries, the continuing custody order is cancelled or the custody of the child is transferred to a third party.

During this lengthy proceeding there are alternative steps/processes that are available to parents and social worker to attempt to resolve issues without a trial. These alternative processes offer a variety of ways in which a protection proceeding can be resolved by the consent of all of the parties.

The alternative steps/processes are as follows:

A. Family Group Conference

The family group conference does not happen in a courtroom. The social worker organizes the meeting and the meeting takes place in a ministry office. The social worker will meet with the parents to obtain information about family members that may be considered a resource to care for the child. The aim of this meeting is to determine whether there are family members who are willing and able to take care of the child so that ministry involvement is no longer required to safeguard the child. Lawyers are usually not involved in this process. The parents, together with the family and the social worker discuss the issues and everyone can come to an agreement about the future care of the child which can be reduced to writing and enforced through the court process.

B. Mediation

Mediation is a formal process which requires the involvement of a mediator who is a neutral party. The social worker makes a referral to mediation and the mediator is hired by the Attorney General. The mediator meets with the parents and with the social worker separately and they will run the mediation. The mediation suspends the court process. The parents can have interested family members attend the mediation, and if the child is aboriginal, a representative for the band can also attend the mediation. The mediator will control the mediation and will ensure that the formal process is followed. The parents' lawyers and the director's lawyer are required to attend the mediation. At mediation the parents can plan around issues of access and of short term custody of the child, or they can plan for the long term custody and care of the child. Mediation is a confidential process. All of the parties to the mediation must sign a confidentiality agreement and no one can disclose what is stated in mediation. If at mediation the parents and the social worker reach an agreement, then the mediator writes up the agreement at the end of the mediation and everyone is required to sign the agreement. The agreement can then be filed with the court and enforced through the court process.

C. Family Case Conference

A Family Case Conference is a step in the court process and it occurs at the courthouse. After the protection hearing is started, all contested cases are referred to a family case conference. A Judge presides in a family case conference. The Judge hears what the parents, the social workers and their respective lawyers have to say about the case and then the Judge assists in canvassing possible solutions to the issues raised. The Judge cannot make any orders unless all of the parties come to an agreement. The Family Case Conference is also private and confidential. What is stated at the family case conference cannot be repeated in court.

All of these alternative steps/processes are available for each CFCSA case that is before the court; they are not mutually exclusive. Also these alternative processes are not limited to a one time only and they usually happen more than once in any individual case. A summary of the procedural steps in a protection case are set out in Appendix ``A``.

When a child is removed from the care of the parents, the social worker has an obligation to look at all available alternatives instead of placing the child in foster care. The social worker will consider whether extended family is available to care for the child. Often grandparents become involved at this stage. The social worker can place the child in the care of a grandparent or another family member as a restricted foster placement without transferring custody of the child. The social worker can also place the child with a grandparent or other family member prior to a presentation hearing, at the presentation hearing or after the presentation hearing. The social worker will have to do a criminal record check, a review of the home environment and be satisfied that the placement is safe for the child. Under s.8 of the CFCSA the director may make a written agreement with that family member for MCFD to provide financial assistance while the child is in that person's care.

Under s.54.01 the custody of a child can be transferred to another person before a continuing custody order is made. This can happen with the agreement of all the parties or the social worker can ask the Judge to make an order to grant the child's custody to a person other than the parent.

Under s.54.1 the custody of a child can be transferred to another person after a continuing custody order has been made, provided the continuing custody order was made with the consent of the parents, and further provided that the appeal period has expired or the appeal has been heard and the continuing custody order has been upheld. The social worker will file the application and ask the Judge to make an order transferring custody to a third party.

Section 54.2 provides that when an order is granted under either s. 54.1 or s.54.01 transferring custody of the child to a third party, that individual becomes the guardian of the child and the order is enforceable under the *Family Law Act* and can be modified or cancelled under the *Family Law Act*. If an access order was made prior to custody being transferred under either of s.54.1 or s.54.01, that access order continues to be an access order which binds the third party and the person to whom access was granted and the access order will need to be enforced, or modified or cancelled under the *Family Law Act*.

When an application is brought by the director to transfer custody of a child to a third party after a continuing custody order has been made, (s.54.1 CFCSA), a parent who obtained an order for access at the time the continuing custody order was granted (s.56 CFCSA), may apply to the court for a change of the access order and the Judge may either confirm, change or cancel the access order that was granted, (s.57.1 CFCSA)

The ministry has been using these two sections to transfer custody of children to family members or foster parents. This option resolves the issue of child protection by giving the child care responsibility to a third party who is a family member, until that child reaches the age of 19. That third party is not able to change the child's name and that third party may have to deal with access and guardianship applications that are brought by the parent at a later date. A third party who accepts custody of a child under s.54.01 and 54.1 receives financial assistance through the ministry of children and families (Post Transfer of Custody Assistance Agreement, PTCAA).

If an order is made for the continuing custody of the child, then depending on the facts of each case, the ministry will likely place the child for an adoption. The adoption process provides

different rights to the adoptive parents. Adoptive parents are able to change the name of the child and they are named in the child's birth certificate. Children who are adopted have the right to receive an inheritance from their adoptive parents. Financial assistance is available if the adoptive parents are eligible and the application is through Post Adoption Assistance (PAA)

Attached as Appendix "B" is a comparison table to point some of the legal differences between s.54.01, s.54.1, adoption, and application for guardianship under the *Family Law Act* and the different funding available in each scenario. Attached as Appendix "C" is a Payment and Supplemental Benefits Table from May 2015.

In conclusion, the law in CFCSA cases is that a parent is not required to be perfect. A parent is required to be adequate. Adequacy of a parent is based on acceptable community standards. Parents need to learn about acceptable community standards. To succeed, parents need to be supported and reach out for services in the community.

In a protection case Judges must consider what happened at the time of the removal BUT the focus at trial is not what happened but what has parent done to move forward, to correct what happened. The Judge will want to know what steps has the parent taken to improve himself or to improve his/her ability to care for the child or to provide a safe environment for the child. The Judge must also consider the best interest of the child and whether after the removal, the parent has maintained regular contact with the child. A Judge always puts the child's wellbeing first and the parent needs to show that he/she is able to put the child's needs first.

Specific Issues with Aboriginal Children

- Aboriginal children make up the majority of children in care in the province of British Columbia. However, statistics have shown that in our province, the Okanagan has the lowest rate of aboriginal children in care and the highest rate of out of care placement.
- `delegated agency` as referred to and defined in the CFCSA is not the aboriginal community so when an aboriginal child is removed, it is important to ensure that the proper community is served with notice of the protection proceeding. The Friendship Centre can assist in identifying the proper Aboriginal Community connected to the child.
- Supreme Court of Canada definition of ``aboriginal child`` under the CFCSA does not require the child to have status. A child over 12 or a parent may identify themselves as aboriginal.
- Aboriginal communities can have representative appear and can ask to be added as a party to the proceeding. That allows the aboriginal community to obtain full disclosure and to fully participate in the court process.
- Bonding is more important than culture, *Racine v Woods* (1983) 2 SCR 173
An aboriginal community representative can help the court identify how culture becomes more important when a child is older and how grandparents and other community supports can provide a better environment for a child who has been removed.
- Under s 22 CFSA Aboriginal community can propose a process that provides traditional resolutions to the issues raised at the time of the removal.
- In aboriginal cases, Family Group Conference may have too many people to be effective. Instead a hybrid process could be used, where the elders are involved in a traditional way with the assistance of a mediator. An aboriginal mediator can be requested and would invaluable add to the process.

- The aboriginal community can make a proposal, ex. Circle of Care. This includes a guide/facilitator and a coordinator, elders, band representatives, the social worker and other key people in the community.
- Band Chief in Council may approve and create a relationship between the community and the child. If the parents do not comply with the plan of care that is agreed to by all of the parties, then the band representatives, elders, coordinator, and social worker can continue planning for the child without the parents. If the birth parents and the aboriginal community have different plan for the child, then they are treated like separated parents.
- Under s.104 CFCSA a Tribunal may be established. Some BC communities are considering a proposal for a tribunal. There is no process in place at this time. The Tribunal would then have the power to send a CFCSA case with an aboriginal child, to the Aboriginal Process.
- Aboriginal community can create own procedures and develop a process by focusing on how to protect the aboriginal identity, how to promote a sense of belonging for the child and how to strengthen the relationship for the child. In the end, the aboriginal community will need to have a plan of care for the child.
- Court forms are generic and must be followed but under Rule 8(19) they can be adapted and modified by making the alteration in bold prints, to provide more details when an aboriginal community is involved, Rule 8(19) Provincial Court Rules.

TIPS FOR PARENTS

- Get a lawyer ASAP. As soon as contacted by SW can apply for LSS coverage.
- Before sign any agreement with the SW, and especially before signing a VCA get a lawyer who can explain to you the legal ramifications of the VCA.
- Time is of the essence both at the time the investigation is started and at the time that the court process commences.
- Removal of a child can be prevented by a parent accessing proper resources and supports in the community, Ex. Therapy, counselling, substance abuse treatment, parenting classes, mental health assessments, medications, attendance at AA/NA. If a parent is successful in obtaining proper support services, then the SW may amend court application to a return under supervision.
- Removal of a child can be prevented by a parent engaging with a social worker in either a Special Needs Agreement, a Voluntary Care Agreement or an In Care of Kin Agreement.
- If a child is removed and the court process is engaged, time is still important because delay works in favor of SW. Parents need to engage with services as quickly as possible and must follow through; that means that parents need to attend and complete programs.
- Parents must maintain a regular access routine and must work towards unsupervised and overnight access with the child.
- Parents must attend court and must keep in contact with their lawyer and provide the lawyer with current address and phone number.
- The court process is slow and any delay favors the SW. It can take 1 to 5 years before a ministry file is completed. During that time the child develops bond with foster parent and develop stability in their new routines.
- Out of court solutions are usually better for everyone. Family Group Conferences are helpful tool to bring all the family members together to look at options and possibly reach an agreement outside of court. Use that time to try to canvass a possible solutions. If you are involved in the court process use the Family Case Conference to get an impression of how a judge sees your case. Ask for Mediation. If you do not ask for Mediation it may not happen. SW rarely request mediation process. Parents usually benefit the most in the mediation process.
- Poverty does not lead to removal of children. A child is not removed if a parent needs to be supplemented by the food bank or community kitchen. Budgeting skills can be learned and there are community resources available to assist. If a parent needs help ask. Asking for help means that you are a responsible parent.
- If a parent is not able to learn the skills or to deal with the issues/concerns raised then do consider the option of family members or a third party to transfer custody of your child. A child does better in a family environment than in foster care.

- To prevent Ministry intervention under the CFCSA familiarize yourself with services in your community. The internet provides a lot of information, in the south Okanagan we have www.communitiesforkids.ca/communities/Penticton (in Kelowna, Kelowna community resources) which provide a community directory of available services. Access the services that you as a parent or that your child need. If you need a social worker to provide you with additional resources then contact the Ministry of Children and Family Development, resource team in your community.
- Be proactive about the needs of your child and of your family. Many CFCSA cases are about parents not accessing resources and supports in the community.

TIPS IN DEALING WITH SOCIAL WORKERS

- Listen to what the SW says. If you are unclear then ask questions. Parents and their lawyers need to understand the SW perception of risk to the child. Once the concerns are identified then focus on dealing with the concerns.
- Be open and candid with a SW, do not state untruths as SW will hold that against you. You do not have to tell SW everything but if they ask tell the truth. The truth will come out in court and your lack of candor with SW will be used against you.
- SW is not your friend. SW is a professional whose first obligation is the child's wellbeing. Be careful about what you talk about with the SW. There are discussions that parents should not have with SW. Those are conversations that a parent should have with a counsellor or their lawyer.
- SW write everything down, all phone calls, interactions with clients or others is documented and all of the SW notes become evidence at trial. Parents need to learn to also make notes (not during a meeting, but as soon as possible) of all their interactions with social workers. On crucial issues, for example access issues, a parent would benefit from asking the SW to confirm their position in writing.
- Ask for access to your child and follow through with the access.
- When you promise the SW that you will do something, do it.
- SW who deal with children with special needs can provide supports and services to parents and caregivers (Ministry of Children and Family Development). Support includes funding for programs in community, funding for respite for the child, referral to resources and supports in community. When dealing with a children with special needs, the social worker you deal with works with the parent to provide supports and programs for the child. If you need help with your child ask for help. I would suggest you first ask help from your physician, but you can also ask help from a social worker who may be able to connect you and provide you with resources.
- Most important skills for parents: learn to work with your SW in a positive way, that means listen to SW, accept that the concerns raised by SW may lead to a permanent removal. Parent need to work on the concerns and issues identified in the report to court by the social worker and NOT on fighting the SW or the court process. Remember that parent do not need to be perfect, they need to be adequate and need to be aware of acceptable community standards. Parents can learn new skill and it is not a strike against a parent to ask for help.

Appendix ``A``

PROCEDURAL CHART

Report and Investigation

Removal and Court Process

Presentation Hearing (7 days)

- Interim Custody Orders, (s.35(2)(d), s.42.2(4)(c))

Protection Hearing (45 days)

- Temporary Custody Order, (s.41(1)(b))

*Time Limits

Alternative Processes

- Family Group Conference
- Mediation
- Family Case Conference

Transfer of custody to third party s.54.01

Continuing Custody Order (CCO)

- Final order guardianship of person to MCFD, of property to Public Trustee
- Final transfer of custody to third party s.49(7)(b)

Transfer of custody to third party if CCO made by consent s.54.1

Application to Cancel Continuing Custody Order

- Two step process, must obtain leave and if leave is granted, then a hearing is set.

RESOURCES FOR PARENTS

Ministry of Children and Families Development of BC -1-877-387-7027

Mediate BC – 1-877-656-1300/www.mediatebc.com

Legal Aid- 1-866-577-2525 /www.lss.bc.ca/ legalaid.bc.ca /aboriginal.legalaid.bc.ca

Comprehensive Child Support Service -250-712-3636

Family Justice Counsellors -1-800-663-7867

Parenting After Separation Program- www.familieschange.ca

Parent Support Services Society of BC -1-877-345-9777/www.parentsupportbc.ca

VictimLink BC 1-800-563-0808/www.victimlinkbc.ca

SOWINS Community Outreach

SOVAS – www.sovas.ca (women and men counselling)

Native Courtworkers and Counselling Association of BC- 1877-811-1190

Family Law Line -1-866-577-2525

Family Law Websites - www.familylaw.lss.bc.ca www.povnet.org
www.bcfamilylawresource.com

Family Law Publications –www.lss.bc.ca/publications

Access Pro Bono Society of BC -1877-762-6664

Payment and Supplemental Benefits Table

Reference for Out-of-Care Options Practitioners

Program	Maintenance Payment	Basic Medical (MSP)	Extended Medical	Dental Optical	Child Care Subsidy & Surcharge	Child Tax Benefit Universal Child Care Benefit Child Disability Allowance
	MCFD					Canada Revenue Agency
Extended Family Program (Sec. 8)	✓ Not income tested	✓	✓	✓ Form CF2190	✓	Care provider to contact CRA about eligibility
Age 0 to 11	\$554.27					
Age 12 to 19 (ends 19 th birthday)	\$625.00					
Interim and Temporary Custody to Other (Sec. 35(2)(d); 41(1)(b); 42.2(4)(c) & 49(7)(b))	✓ Not income tested	✓ CSM Approval	✓ CSM Approval	*	✓	Not Eligible
Age 0 to 11	\$803.81					
Age 12 to 19 (ends 19 th birthday)	\$909.95					
Post Transfer of Custody Assistance (Sec. 54.01 & 54.1)	✓ Not income tested	X	X	X	✓	Not Eligible
Age 0 - 11	\$803.81					
Age 12 to 19 (ends 19 th birthday)	\$909.95					
Family Law Act (FLA) Guardianship Formerly Family Relations Act (FRA)	\$0	X	X	X	X	Guardian to contact CRA about eligibility
MCFD Restricted and Regular Foster Care	✓ Not income tested	✓	✓	✓	✓ Subsidy only	Not Eligible
Ages 0 - 11	\$803.81					
Age 12 to 19 (ends 19 th birthday)	\$909.95					
Post Adoption Assistance (PAA)**	Income and asset test Up to	X	X	X	X	Adoptive parent(s) to contact CRA about eligibility
Ages 0 - 11	\$701.55					
Age 12 to 19 (ends 19 th birthday)	\$805.68					

* Funding may be available when considered on a case-by-case basis and approved by the Community Service Manager. (Paid by local cheque: Activity Code 14312)

** Adoptive parents may be eligible for additional support services.

X Not available through MCFD. Section 54.01/54.1/FLA guardians and adoptive parents with low incomes may be eligible for Premium Assistance (MSP) and Healthy Kids Program (dental) available through the Ministry of Social Development.

Youth agreements are based on SA rate for 1 person May 2015
(will be on SA at 19 presumed)

SYSTEMIC EXCLUSION BY DESIGN:

How BC's welfare system has quietly
shut out the most vulnerable

Lobat Sadrehashemi

Staff Lawyers | BC Public Interest Advocacy Centre

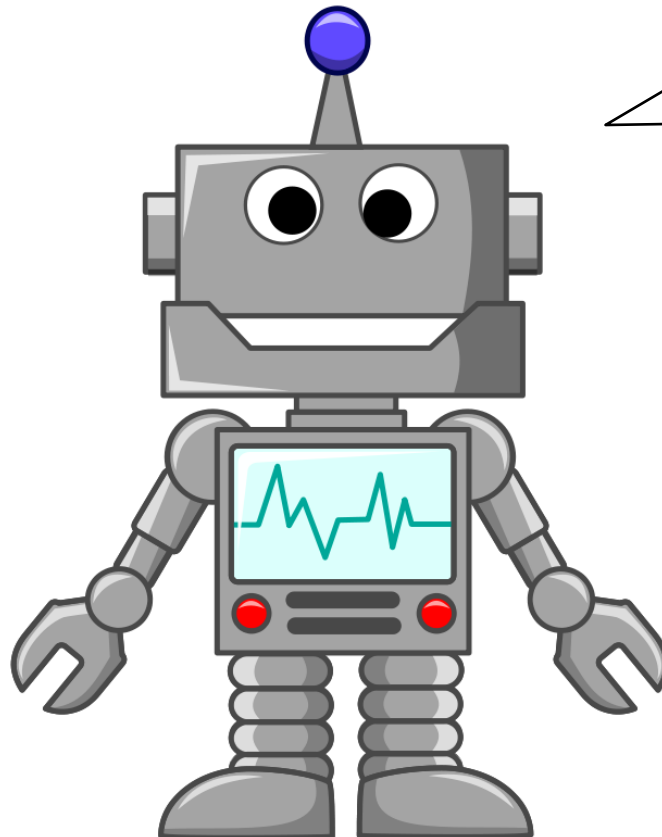


OVERVIEW

- BC's welfare service delivery changes
- Challenging bureaucratic disentitlement at welfare
- Systemic Ombudsperson complaint
- Other strategies – human rights law?

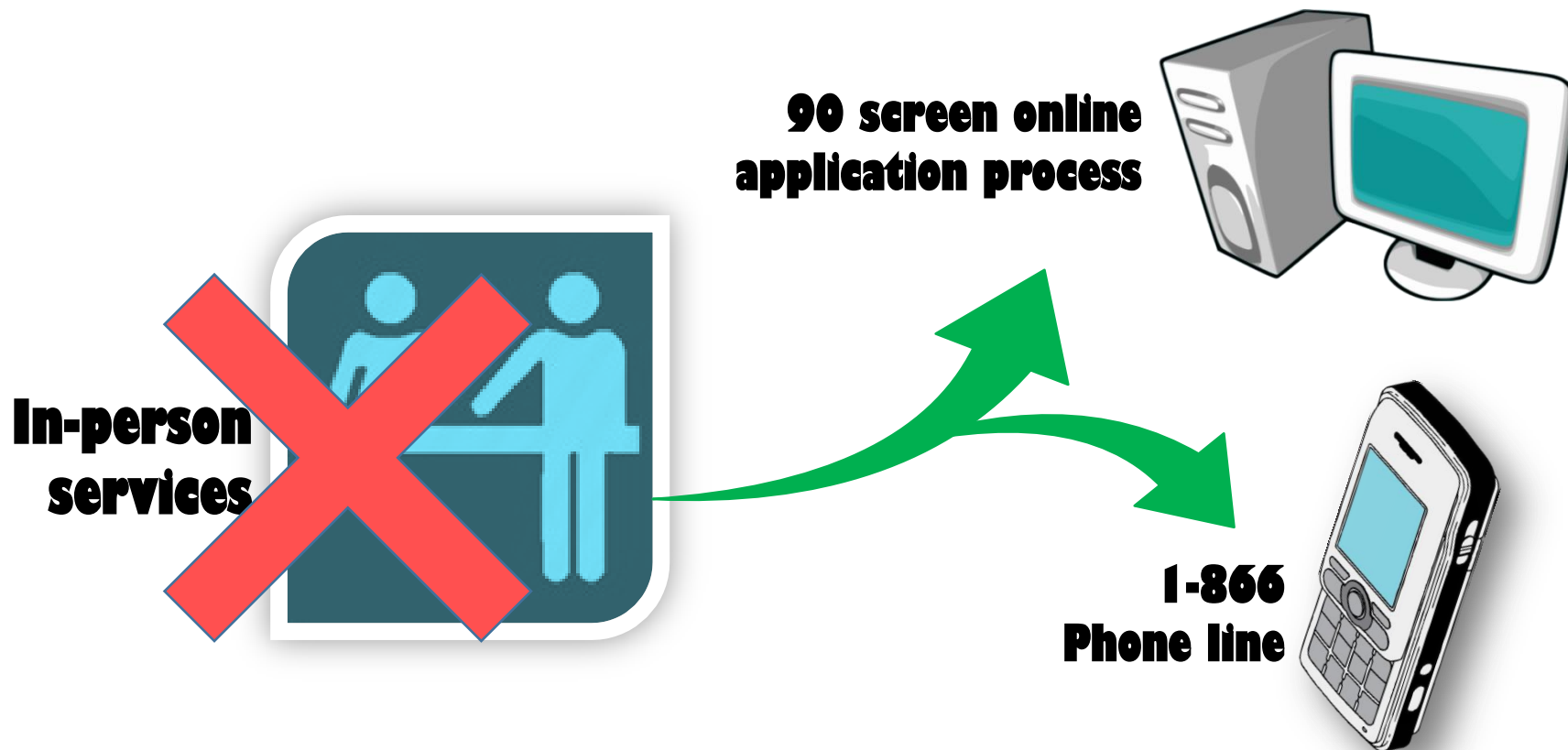
SHIFTS AND “TRANSFORMATION PROJECTS” IN GOVERNMENT SERVICE DELIVERY

Moving from **in-person service** at government offices to **call-centre and online** based mode of delivery



How can I
help you?

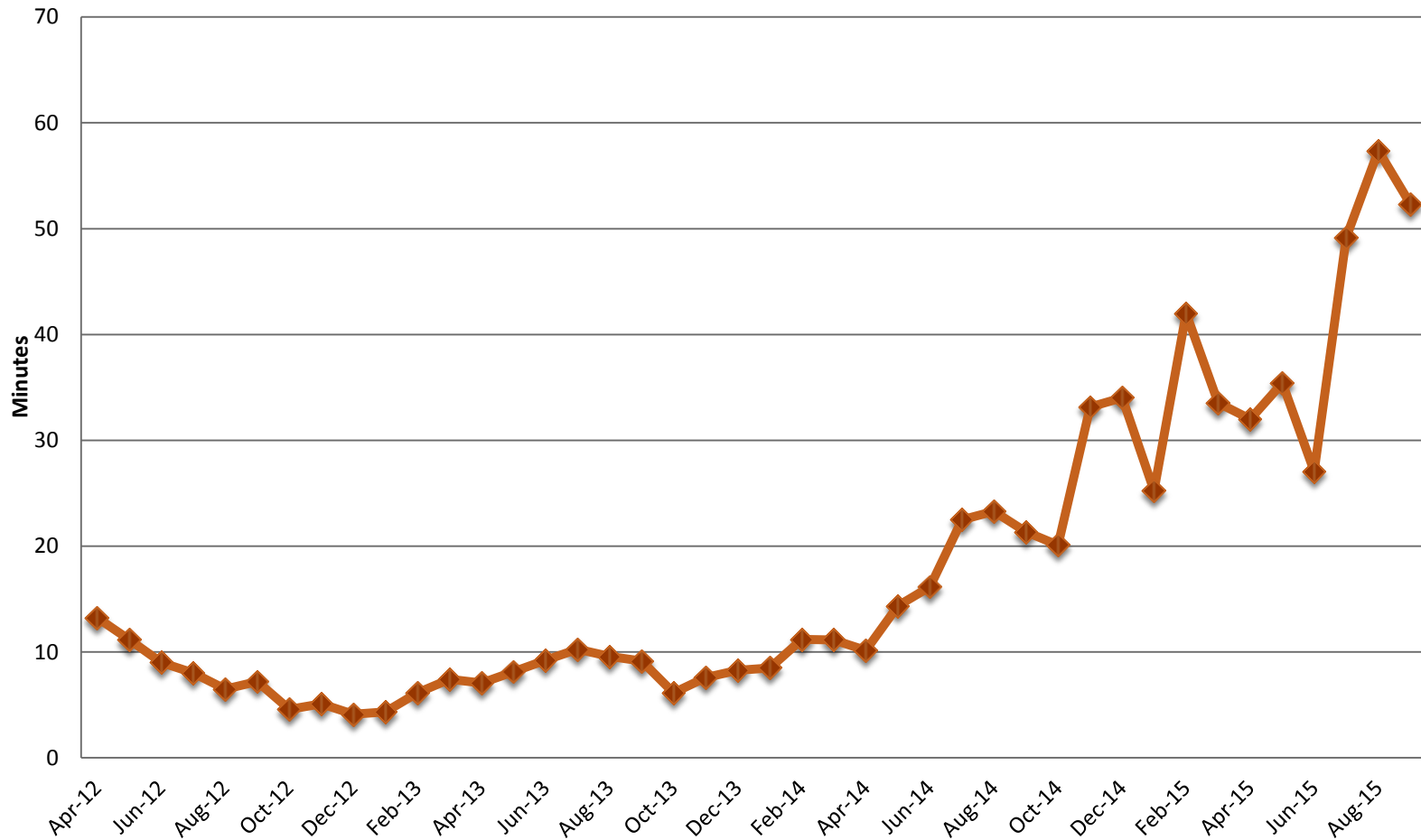
BC'S WELFARE SERVICE DELIVERY TRANSFORMATION



MINISTRY PHONE-LINE WAIT TIMES

Average Speed of Answer

—◆— Average wait times by month (April 2012 to September 2015)



LONG LINES AT MINISTRY OFFICES



ENHANCED ACCESSIBILITY?

ACCESS DENIED

14 office closures since 2005

11 offices reduced to 3 hours/day

45 minutes on hold

0 accountability to BC's most vulnerable



The illustration shows a grey door frame with a large black padlock hanging from the handle. Above the door, a sign reads 'BRITISH COLUMBIA' next to a sun logo and 'Ministry of Social Development and Social Innovation'. A group of purple silhouettes of people of various sizes are standing in front of the door, waiting.

 FIND OUT MORE
www.bcpiac.com

THE BIG PICTURE

Welfare Rate
\$610/mth

≠

Rent

Food

Hydro

Bus Pass

Health

Hygiene

Phone

Internet

Clothing

Low income
assistance rates,
not raised in
over a decade

BUREAUCRATIC DISENTITLEMENT

Challenging service delivery models
critical but very difficult

BUREAUCRATIC DISENTITLEMENT

Policy...can accomplish the same end without changing a single eligibility condition or requirement by making administrative adjustments which have the same effect.

~Matthew Diller



BUREAUCRATIC DISENTITLEMENT

Disentitlement is not always a clear-cut experience of losing or failing to obtain benefits. It is often the accumulation of subtle, difficult to pinpoint 'discouragement practices

~Lorne Sossin



SYSTEMIC OMBUDSPERSON COMPLAINT

SYSTEMIC OMBUDSPERSON COMPLAINT

BCPIAC on behalf of Complainant Organizations:

- Abbotsford Community Services (Abbotsford)
- Atira Women's Resource Centre (Vancouver)
- First United Church (Vancouver)
- Kettle Friendship Society (Vancouver)
- The Advocacy Centre (Nelson)
- Together Against Poverty Society (Victoria)

SYSTEMIC OMBUDSPERSON COMPLAINT

“ At the heart of this complaint is the incongruence between the changes to the Ministry’s service delivery and the lives of the people that the system is purportedly designed to serve ”

~BCPIAC May 2015 Complaint to the BC Ombudsperson

SYSTEMIC OMBUDSPERSON COMPLAINT



NEWS HEADLINES



MINISTER'S RESPONSE



Feedback from clients indicates a growing interest in services available over the phone or online, giving front line staff more time to help those needing extra assistance.

~Minister Michelle Stilwell

OMBUDSPERSON'S RESPONSE



While I welcome your submission I am declining your request to conduct a systemic investigation. I believe most of our resources must continue to be devoted to resolving individual complaints and cases, which also have the potential to resolve broader issues of unfairness.

~ Kim Carter

WHAT'S NEXT?

Looking for accountability for
access denial

LOOKING FOR ACCOUNTABILITY



INDIVIDUAL COMPLAINTS

Complaint to the BC Ombudsperson With Regard to the Ministry of Social Development and Social Innovation (the "Ministry")

CONTACT INFORMATION

I am (or was at the time of this complaint) a recipient of the following benefit:

☐ Income Assistance ☐ PPMB ☐ PWD ☐ Hardship Assistance

MY COMPLAINT IS ABOUT: *(check all that apply)*

1-866 Phone line

- ☐ I was waiting on hold on the 1-866 phone line for _____ minutes. dd/mm/yyyy
- ☐ Call got disconnected before I spoke to a Ministry worker. dd/mm/yyyy
- ☐ After speaking to a worker for _____ minutes, the Ministry worker told me they had to end the call, even though I felt we had not finished discussing my issue. dd/mm/yyyy
- ☐ I was not offered an interpreter when I needed one. I am not comfortable communicating in English. dd/mm/yyyy
- ☐ Other _____

Online Application

- ☐ The Ministry refused to help me with the online application when I asked for help. dd/mm/yyyy
- ☐ The Ministry would not give me a paper copy of the application when I asked for one. dd/mm/yyyy
- ☐ The Ministry referred me to _____ (e.g. library, security guard, community agency) for help with filling in the online application. dd/mm/yyyy
- ☐ Other _____

In-person Services

- ☐ I asked to meet with a Ministry worker in person, and was told I could not have an appointment. dd/mm/yyyy
- ☐ I went into a Ministry office, but was told I had to leave and call the 1-866 phone line dd/mm/yyyy
- ☐ I went to a Ministry office and waited in line for ____ mins. [If applicable: I had to leave before speaking to a worker because _____.] dd/mm/yyyy
- ☐ Other _____

Do you have a disability? *(If yes, please describe your disability/disabilities)*

Do you have difficulty communicating (reading and/or speaking) in English?

Do you have your own phone? *(If not, what phone, if any, do you use to call the 1-866 phone line? If you do have a phone, is it a pay-as-you-go cell phone with limited minutes?)*

Do you have a computer? *(If yes, do you have regular internet access? If no, is there a computer you can use regularly to access the internet?)*

What was the impact on you by the issues you checked off in this complaint?

HUMAN RIGHTS LAW

Studying service design shifts through an equality lens

ACCOMMODATION POLICIES

**Incongruence between detailed policies
on accommodation and the way
services are designed**

SYSTEMIC EXCLUSION BY DESIGN:

How BC's welfare system has quietly
shut out the most vulnerable

Lobat Sadrehashemi

Staff Lawyers | BC Public Interest Advocacy Centre



JUSTICE INNOVATION & TRANSFORMATION INITIATIVES



LSS Kelowna Regional Training Conference

March 10, 2016

Presentation by: Susanna Hughes

Coordinator, Family Law Projects & Services

- *British Columbia government gave LSS funding of \$2 million/year for 3 years*
- *5 Pilot Projects are all underway and will end March 31, 2017*
- *Evaluation process will provide information for consideration of future continuation or expansion of some or all of these 5 projects*

5 PILOT PROJECTS

1. *Expanded Criminal Duty Counsel*
2. *Expanded Family Duty Counsel*
3. *Family LawLINE*
4. *Mediation Referral*
5. *Parents Legal Centre*

Expanded Criminal Duty Counsel (EXP CDC)

Available in Port Coquitlam

- *Client must have a Port Coquitlam matter & contact CDC there*
- *Out of custody duty counsel*
- *Goal is to get clients connected with a lawyer early so they get an early resolution*
- *Early indications are that the clients and other stakeholders are satisfied with results*

What is changing with EXP CDC?

- *Continuing service from the same lawyer prior to fixing a trial date*
- *In addition to assistance on remand days, clients can also make appointments to discuss and prepare for their case with the CDC lawyer on non-remand days*
- *Number of court appearances are being reduced*
- *Length of time to reach resolution is being reduced*

Expanded Family Duty Counsel (EXP FDC)

Available in Victoria

- *clients receive up to 6 hours of service*
- *located in the Justice Access Centre at the Victoria courthouse*
- *operated by 2 lead lawyers and 2 administrative assistants, plus a roster of family duty counsel lawyers*
- *client files are maintained to allow for continuity of service*
- *clients can book follow-up appointments with the same lawyer*

Expanded Family Duty Counsel (EXP FDC) continued

- *soon will have legal coaching to help people who are self-representing*
- *referrals to other services, including online resources and other public agencies*
- *other services are co-housed in the Justice Access Centre which allows for coordination of referral services and additional support for clients*
- *interpreters provided for office appointments if pre-arranged*
- *phone 1-250-356-7035 to make an appointment*

Family LawLINE

Available province-wide

- *Family lawyers located around the province give information, advice, coaching, and assistance with forms*
- *Hours of service are expanded*
 - *Mon, Tues, Thurs, Fri* *9:00 am – 3:00 pm*
 - *Wed* *9:00 am – 2:30 pm*
- *Clients are referred to the service via LSS Intake and Family Justice Counsellors*

Family LawLINE continued

- *Clients receive up to 6 hours of telephone advice*
- *Clients are encouraged to schedule a telephone appointment for up to 45 minutes per session*
- *administrative assistant maintains digital client files and records, sets appointments, etc.*
- *digital client files are maintained to allow for continuity of service by a roster of lawyers located throughout the province*

Family LawLINE continued

- *lawyers advise and support Family Justice mediation clients and those clients in the Mediation Referral Pilot*
- *referrals to other services, including online resources and other public agencies*
- *soon will have legal coaching to help people who are self-representing*
- *interpreters available if needed*
- *First-time Family LawLINE clients call 604-408-2172 or toll-free 1-866-577-2525*

Family LawLINE continued

- Financial eligibility for Family LawLINE is the same as for other advice services such as Family Duty Counsel

Do I qualify financially for legal advice?

! To get criminal or immigration legal advice services, you don't have to be financially eligible.

Family advice services

Family legal advice services have a financial eligibility test

To be eligible for family advice services, your net monthly household income must be below the amount for your household size in the table below.

Household size* (number of family members)	Net monthly income** (income after deductions)
1 – 4	\$3,300
5	\$3,900
6	\$4,520
7 or more	\$5,110

*Family members include children and parent(s) or other adult(s) responsible for and living with the children.

**Income is your net income from all sources (excluding a common-law partner of two years or less) and child support payments.



Legal
Services
Society

Providing legal aid
in British Columbia
since 1979.

British Columbia
www.legalaid.bc.ca



Ministry of
Justice

Family Justice Services Division



FAMILY LAWLINE

What is the
Family LawLINE?



The Family LawLINE:

- Is a telephone advice service provided by Legal Services Society.
- Provides eligible clients legal advice and support to assist them with family law issues.

Why would I use the
Family LawLINE?



In addition to legal advice, the Family LawLINE provides:

- Appointments with the same lawyer.
- Assistance preparing documents for court.
- Coaching to help you represent yourself through all stages of court and other collaborative processes.

What if I do NOT speak English?



- If someone helping you speaks your language and English, they can participate in the call.
- If you do not have anyone helping you, Family LawLINE can arrange an interpreter.

Who can qualify?



You may be eligible if:

- You qualify financially.
- You have an eligible family law issue.
- You do NOT have a lawyer already working for you.

How do I begin?



Telephone Legal Services Society:

- 604-408-2172 or (toll free) 1-866-577-2525
- Monday to Friday, 9 am - 3 pm (Wednesday to 2:30 pm).

HOW MANY CLIENT CALLS HAS THE
FAMILY LAWLINE ANSWERED SINCE
MARCH 30, 2015?

- a. 500
- b. 2500
- c. 4500
- d. 7500

HOW MANY CLIENT CALLS HAS THE
FAMILY LAWLINE ANSWERED SINCE
MARCH 30, 2015?

- a. 500
- b. 2500
- c. 4500
- d. 7500

Mediation Referrals

Available province-wide

- *To help families reach out of court agreements*
- *Mediators from Mediate BC*
- *Distance mediation available if no mediator in client's community*
- *Up to 6 hours mediation*
- *Must be financially eligible, AND*
- *Do not have a legal issue that qualifies client for representation by a legal aid family lawyer*

Mediation Referrals continued

- Financial eligibility – at least one of the parties must be eligible for family law representation services

Do I qualify for legal representation?


! To find out if you qualify for a legal aid lawyer, it's best to phone the **Call Centre** or come into a **legal aid office** and **apply**.



To get a legal aid lawyer to **represent** you:

- your legal problem must be **covered by our legal aid rules**, and
- your net monthly household **income** and **assets** must be at or below our financial guidelines.

REPRESENTATION

Household income

Your  **net monthly income** must be below the amount for your household size in the table below. The guidelines apply to all types of cases, including appeals.

 Only a legal intake assistant can determine if you're  **financially eligible** for legal aid. The following information is **not** complete.

Household income table

Household size <i>(number of family members)</i>	Net monthly income <i>(income after deductions)</i>
1	\$ 1,500
2	\$ 2,100
3	\$ 2,700
4	\$ 3,290
5	\$ 3,890
6	\$ 4,490
7 or more	\$ 5,090

Mediation Referrals continued

- *Typically there must exist a spousal support, family property or family debt division issue, alone or along with other family law issues*
- *Integrated with referrals to LSS advice services such as FDC and FAM LL to support the client through mediation – client can set appointments*
- *Mediate BC will offer mediation services beyond the 6 hours if needed, on a sliding scale based on income and assets of the parties*

Mediation Referrals continued

HOW TO APPLY FOR MEDIATION REFERRAL PROGRAM:

- *Apply for legal aid at Local Agent's office or through the Provincial Call Centre at 604-408-2172 or toll-free 1-866-577-2525*
- *Applicant will go through Intake to see if eligible for legal representation*
- *If LSS provides coverage on legal issues, client will get legal representation i.e. a lawyer*
- *If no coverage on legal issues, then will be offered Mediation Referral as an option*
- *If desired, given contact information for the Mediation Referral Administrator*
- *Both parties must be willing to try mediation for a referral to a Mediator to occur*



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

Providing legal aid
in British Columbia
since 1979.

MediateBC

Family Mediation Referral Program



Ministry of
Justice

Family Justice Services Division



FAMILY MEDIATION REFERRAL PROGRAM

What is the Family
Mediation Referral Program?



The Family Mediation Referral Program:

- Is offered by Legal Services Society and Mediate BC.
- Provides mediation to help clients who qualify address matters about property or assets, debt, support and other family issues.

Why would I try mediation?



Mediation:

- Helps the family find a solution collaboratively.
- Enables more creative solutions than the court process.
- Saves money, time and stress.
- Is informal and takes place in private.

How do I begin?



- Go to your local legal aid office at legalaid.bc.ca or contact Legal Services Society at: 604-408-2172 or (toll free) 1-866-577-2525, from Monday to Friday, 9 am - 3:45 pm (Wednesday to 2 pm).

If my circumstances qualify?



- Legal Aid will give you contact information for the Mediation Administrator.
- If your circumstances qualify, you will receive mediation services for up to 6 free hours.

What if I need more
than 6 hours?



- You can continue private mediation at a special Mediate BC rate based on your income and assets.

If my circumstances
do NOT qualify?



You may have other options, such as:

- Family Duty Counsel
- Family LawLINE
- Other services

Parents Legal Centre (PLC)

Available in Vancouver (Robson Square)

- *case has to be in catchment area of Robson Square (Vancouver) Provincial Court*
- *MCFD or DAA of Vancouver or Burnaby*
- *For parents (or person who regularly cares for a child i.e. in place of a parent), and there is:*
 - *removal;*
 - *threat of removal; or*
 - *pregnancy, and threat of removal on birth of child.*

HOW TO APPLY:

Contact LSS Intake in Vancouver or the Provincial Call Centre

Parents Legal Centre (PLC) continued

- *PLC has 2 full-time lawyers and an advocate who are highly experienced in child protection work. There is also an Administrative Assistant.*
- *Designed to be culturally sensitive and easily accessible to the clients served*
- *The lawyers and the advocate work with and on behalf of parents to focus on early collaborative solutions*
- *“Early?” = often before the children are even taken into government care, or prior to birth of the child*

Parents Legal Centre (PLC) continued

- *Early indications are that this model is working for the families involved, LSS, MCFD and the DAA*
- *PLC model has driven earlier mediations and other collaborative processes and is resolving cases faster with better results*
- *The advocate and lawyers are able to secure required programs and services for the parents with their work*
- *We are hopeful that these results continue and are starting to think ahead about what other factors or considerations there are to have PLCs in other locations around the province*

Contact information:

Susanna Hughes

Coordinator, Family Law Projects & Services

Legal Services Society

Tel: 604-601-6203

Fax: 604-601-6195

Email: susanna.hughes@lss.bc.ca



Family Duty Counsel in the Okanagan

LSS Kelowna Regional Training Conference

Presented by: Susanna Hughes

Coordinator, Family Law Projects & Services

March 10, 2016

Family Duty Counsel

The five W's

- * Who?
- * What?
- * When?
- * Where?
- * Why?

Who are the lawyers?

- * Lawyers in private practice who have been contracted by LSS to provide Family Duty Counsel services
- * Minimum 2 years family law experience, most have considerably more
- * Limited roster of lawyers in each location, each do a couple of FDC shifts/month
- * All take some legal aid cases

Who are the clients?

- * Self-represented parties
- * People who have a lawyer, either privately or on legal aid, are not eligible for FDC services
- * Must be financially eligible for advice services

Family Advice Services Financial Eligibility Test

Family advice services

Family legal advice services have a financial eligibility test

To be eligible for family advice services, your **net monthly household income** must be below the amount for your household size in the table below.

Household size* <i>(number of family members)</i>	Net monthly income** <i>(income after deductions)</i>
1 – 4	\$3,300
5	\$3,900
6	\$4,520
7 or more	\$5,110

*Family members include children and parent(s) or other adult(s) responsible for and living with the children.

Income is your **net income from all sources (excluding a **common-law** partner of two years or less) and child support payments.

Who are the clients (continued)?

- * Clients who are not financially eligible may be given up to 45 minutes of advice at the lawyer's discretion
- * Must have a family law issue – in BC Provincial Court or BC Supreme Court, or involved in out-of-court dispute resolution (formal or informal), or just trying to decide how to proceed

What does FDC help with?

- * Brief legal advice about the law and procedure
- * Review documents
- * Assist clients who are preparing documents themselves, but FDC cannot prepare documents for a client
- * Emergency applications
- * Referrals to legal aid (if appropriate) or other resources

What does FDC help with (continued)?

- * Assistance in Provincial Court on family list days
- * Sometimes can participate in case conferences if arranged in advance
- * Maximum 3 hours of advice for financially eligible clients

What FDC cannot do

- * Help with non-family law issues eg. civil or criminal
- * Help if the client already has a lawyer
- * Become the client's lawyer while acting as FDC
- * Attend court for trials or contested hearings
- * Prepare court documents for a client
- * Advise a client regarding Court of Appeal proceedings
- * Advise a client on non-BC court procedures or forms

When & where?

Kelowna

- * Monday to Friday, 9:00 am to 4:00 pm
- * 2 lawyers every day
- * Lawyers assist in Provincial Court on family list days: Tuesdays (all day) and Wednesday mornings
- * Available for drop-ins at other times
- * Mondays and Tuesdays are particularly busy, may have longer waits
- * Has a full-time lead Family Duty Counsel – who is it?

Kelowna's lead FDC

* Eric Watson



When & where? Salmon Arm

- * 2 lawyers assist in Provincial court on family list days:
every other Wednesday – 9:00 am to 1:00 pm
- * On the other (non-court) Wednesdays – 1 lawyer is
available for advice – 9:00 am to 1:00 pm

When & where?

Vernon

- * 2 lawyers assist in Provincial Court on family list days:
every Friday – 9:00 a.m. – 1:00 p.m.
- * One lawyer daily Monday – Thursday for drop-in
advice – 9:00 a.m. – 2:00 p.m.

When & where?

Penticton

- * 2 lawyers assist in Provincial Court on family list days: every Friday – 9:00 am to 1:00 pm
- * 2 lawyers are available for advice and Supreme Court matters: every Thursday – 9:00 am to 1:00 pm

Why would you send a client to Family Duty Counsel?

Examples:

- * Client recently separated, needs basic legal advice & information about various family law issues and options
- * Client has urgent safety concerns, can't wait for legal aid to appoint counsel
- * Client doesn't qualify for legal aid, needs advice on preparing for mediation or court

Case conferences

Clients who have an upcoming Family Case Conference (Provincial Court) or Judicial Case Conference (Supreme Court) may be eligible for FDC assistance

- * Attendance at case conference (up to 2 hours) plus up to 3 hours preparation time
- * Must be arranged in advance (either with FDC or through the legal aid intake office)
- * Client must be financially eligible for FDC services and FDC believes his/her assistance would be helpful

Family Law in BC website


Home [What's new](#) [Site map](#) [About us](#) [Contact us](#) [Feedback](#) Legal Services Society

Family Law

in British Columbia

Text Size: [A](#) [A](#) [A](#) [f](#) [t](#)

Your legal issue Your community Your FAQ Legal system Staying out of court Search Go



Dealing with family issues in Supreme Court?

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.

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Family Law in British Columbia

Text Size: [A](#) [A](#) [A](#) [f](#) [t](#)

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Dealing with family issues in Supreme Court?

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What's new

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feedback

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.

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Questions?

The image features a dark green rectangular header at the top. Below the header, a light green wavy line separates it from the main body of the slide. The main body has a light green background with a subtle grid pattern. The word "Questions?" is centered in the header area in a black, sans-serif font.

WILLS & ESTATES

Raymond D. Phillips, QC



FORMALITIES

■ **IS THE WILL VALID? (Section 4 WESA)**

- The primary requirements relate to the “ability of a person” to make a will; a persons competency (testamentary); and the person’s age.
- Other requirements relate to the formalities for the preparation and execution of the Will.

Note: If a Will is invalid, the Deceased is deemed to have died intestate. If the formality that makes a Will valid is deficient, it may be cured by a court order so as to uphold the wishes of the Will-maker.

- A Will comes into effect only upon the death of the Will-Maker.

Age Requirement

- To make a valid Will, a person must be 16 years of age (s.36(1)WESA). An exception is when the Will-maker is a member of the military forces or on active services.

Testamentary Capacity

- Be of sound mind):
 - Understand the nature of the act (Will) and its effect;
 - Have a general idea of the extent of the property that he or she owns;
 - Understand and appreciate the nature of the document - division of property; and
 - Have no insane delusion that would influence his will in disposing of this property

Undue Influence (s.52 WESA)

- The Will-maker must make and execute his or her Will voluntarily, free from undue influence. Have to establish that the beneficiary was in a position in which the potential for dependence or domination was present. Once established, the beneficiary must prove that undue influence was not exercised at the time Will was executed.

Statutory Requirements

1. Must be in writing (s.37(1)(a) WESA). A voice recording or a movie is not valid.
2. Will must be signed. To be valid, a Will must be signed “at its end” by the Will-maker – “attestation”.
3. Dated. Although not required by WESA, a Will is always dated in order to ensure that the one being executed is the last Will chronologically.
4. Will-maker’s signature must be witnessed.

SIGNING THE WILL

- The signature of the Will-maker must be witnessed by at least two witnesses who are present with the Will-maker. Each witness must sign in the other's presence and in the presence of the Will-maker, who must see the witness sign.

Holograph Will (no witnesses)

- Not valid in BC unless Will-maker was a member of the military on active service. Note: other provinces recognize holograph Wills (ie: Saskatchewan – Also Indian Act).

Legal Effect of a Will

- The main function of a Will is to:
 - Appoint an executor;
 - Appoint a guardian if there are infant children;
 - Provide for payment of Will-maker's debts;
 - Distribute property per Will-makers instructions; and
 - Provide for care of Will-makers family and/or business.

Gifts to Witnesses (s.43 WESA)

- A gift made to a witness, the spouse of a witness, or a child of a witness is void unless the witness seeking to uphold the gift makes a successful application to the court to declare that such a gift is valid.

Changes or Alterations to Wills (s.45 WESA)

- An alteration to a Will is valid if the signature or initials of the Will-maker and of the witnesses to the alteration are affixed in the margin or in some other part of the Will opposite or near the alteration.

Contesting a Will (s.60)

- A spouse or a child may contest a Will and apply to the court to vary its terms if it can be shown that the Will-maker has not made adequate provision for the proper maintenance and support of the Will-makers spouse and children. Action has to be commenced within 180 days from the date the representation grant is issued in BC, by initiating a pleading or petition.

Wills Notice

- In order to enable the personal representative to locate the original Will after the Will-makers death, it is recommended that a Wills Notice be filed with the chief executive officer under the Vital Statistics Act (Wills Registry).

Benefit Plans

- The designation of a beneficiary is one way to ensure that a benefit passes directly to a designated person or a trustee for the designated beneficiary and does not form part of the participants estate and is not subject to the claims of the participants creditors.

INTESTATE - NO WILL

- **INTESTATE (Part 3 of WESA)**

The Wills, Estates and Succession Act came into force on March 31, 2014. The act provides greater certainty for individuals who put their last wishes into writing and simplifies the process for those responsible for distributing an estate (Pre WESA – Estate Administration Act and Wills Variation Act).

WESA Benefits

- Clarifies the process of inheritance when a person dies without leaving a will;
- Makes the process easier for a person to transfer the title of their spousal home when their spouse dies;
- Clearly outlines the sequence in which to look for heirs to a person's estate;
- Provides the courts with more latitude to ensure a deceased person's last wishes will be respected;
- Clarifies obligations relating to property inheritance in the context of Nisga'a and Treaty First Nation lands; and
- Lowers the minimum age at which a person can make a will from 19 to 16 years old.

Per Stirpes v. Per Capita

Per Stirpes. (Latin for “by branch or stem”) means that each branch of the deceased’s family receives an equal share of the estate, regardless of how many people are in that branch. (s.24 WESA)

Per Capita. (Latin for “by head”). Means that shares are distributed to individual beneficiaries by “head”, and if a beneficiary is no longer alive (and therefore not counted), there is no further share for that person and no distribution to descendants of that person.

Escheat

- When a person dies intestate and has no heirs entitled under Part 3 WESA, the deceased's estate will escheat to the Provincial Crown, except those personal or real assets (bank accounts) that fall under federal jurisdiction and escheat to the Federal Crown. (the Band if reserve land)

DISTRIBUTION ON INTESTATE

- If an intestate dies leaving...
- **A spouse but no surviving descendants:**
 - the entire estate goes to spouse

INTESTATE

- **A spouse and descendants:**
 - If all descendants are also descendants of spouse, then first \$300K goes to spouse.
 - If all descendants are not common (blended family) to intestate and spouse, then \$150K.
 - After spouse preferential share, then 1 / 2 of remainder to spouse - 1 / 2 to descendants per stirpes.

INTESTATE

- No surviving spouse but descendants, whether surviving or deceased.
- Entire estate distributed equally among the deceased's descendants per stirpes.

INTESTATE

- **No surviving spouse or descendants**
 - The estate must be distributed equally to the intestate's parents or the survivor of them.

INTESTATE

- No surviving spouse, descendants or parents.
- Estate must be distributed equally to descendants of the intestate's parents or either parent per stirpes.

INTESTATE

- No surviving spouse, descendants, parents or descendants of a parent but intestate survived by one or more grandparents or descendants of grandparents (uncles aunts)
- Estate divided equally for each surviving grandparent (or to descendants in equal shares per stirpes).

INTESTATE

- **Effect of Adoption**

- An adoption severs a blood relationship for succession purposes. Adopted children have no right to inherit from their birth parents and the birth parents have no right to inherit from their adopted out child, unless provided for under a Will.

SURVIVORSHIP RULES

- Where 2 people die in common disaster, difficult to establish the order in which they died.
- Pre-WESA - younger person presumed to survive the older - estate passes to younger (different family?).
- WESA - 5 day survivor rule - if a person fails to survive a deceased by 5 days, he or she deemed to have died before the deceased.

REPRESENTATION / ESTATE GRANTS

- 3 types of estate grants
 - Grants of probate;
 - Grants of administration with Will annexed;
 - Grants of administration without Will annexed.

REPRESENTATION/ ESTATE GRANTS

- **Grant of Probate**
 - Applied for if the deceased left a Will;
 - BC Supreme Court validates the Will and confirms the appointment of the executor.

REPRESENTATION /ESTATE GRANTS

- **Grant of Administration without Will annexed**
 - Applied for if the deceased did not leave a valid Will (intestate).

INDIAN ACT

- s.45 “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”

INDIAN ACT

- s.45(3) Probate. No will executed by an Indian is of any legal force or effect...until Minister has approved the will or a court has granted probate per IA.

INDIAN ACT

- s. 48 Intestate. surviving spouse share - \$75K;
- s. 48(3) “where children not provided for Minister may direct all or part of estate go to children;

INDIAN ACT

- s.50 Person not entitled to reside on reserve cannot receive reserve land via estate.
- s.50(2) Minister can sell land
- s.50(3) Unsold land reverts to band ownership

FHRMIR ACT

- Section 14.
- When a spouse or common-law partner dies, a survivor who does not hold an interest or right in or to the family home may occupy that home for a period of 180 days after the day on which the death occurs, whether or not the survivor is a First Nation member or an Indian.

FHRMIR ACT

- 21.(1) A court may, on application by a survivor whether or not that person is a First Nation member or an Indian, order that the survivor be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies.
- (3) In making an order under this section, the court must consider, among other things (b) terms of Will

FHRMIR ACT

- s. 23. For greater certainty, an order made under any of sections 16 to 18, 20 or 21 does not change who holds an interest or right in or to the family home nor does it prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy, or a court from ordering the transfer of such an interest or right under section 31 or 36.

FHRMIR ACT

- 38(1) – Distribution of Estate: Subject to subsection (2), an executor of a will or an administrator of an estate must not proceed with the distribution of the estate until one of the following occurs:
- (a) the survivor consents in writing to the proposed distribution;

FHRMIR ACT

- (b) the period of 10 months referred to in subsection 36(1) and any extended period the court may have granted under subsection 36(2) have expired and no application has been made under subsection 36(1) within those periods; or
- (c) an application made under subsection 36(1) is disposed of.

SOUTH OKANAGAN RESTORATIVE JUSTICE PROGRAM

Presentation to Legal Services Society Conference

Held at Mateo Resort

Kelowna, BC

March 9 & 10, 2016

Restorative Justice

- How did it all start?
- If we were to track our ancestry, we would come to a time in our history when our ancestors lived in small close-knit communities. We depended on our community for survival and problem-solving. The Okanagan Nation members utilized the Enowkinwixw process which was a conflict resolution/problem-solving process.
- Justice was very harsh in some communities. History books have recorded inquisitions, torture and other unsavory methods to extract “Justice” for harm caused to individuals or communities.

Restorative Justice

- In matters of misconduct, some communities would convene a council, or some type of community gathering to decide the fate of the victims and offenders.
- New Zealand and Aboriginal communities utilized the wisdom and experience of the community's Elders as safeguards against rash decisions , retaliation and anger.
- Although not perfect, this approach attempts to provide mediation and resolution to conflict within the community.

Restorative Justice

- In terms of reparation, the offender might have agreed to repair the harm inflicted by performing work for the victims.
- He or she may have also paid some form of restitution. Once the reparation was made, the matter was closed and the offender was accepted back into the wider community.
- The community's traditions and values were factored into the process, ensuring fairness and accountability. In other words, it was a system where justice decisions were made by those directly affected by the offending behavior.

Restorative Justice

- What are the differences between the current criminal justice system and restorative justice?
- The current criminal justice system is concerned with determining legal guilt. The focus is on the facts which meet the rules of evidence and the rules of law.
- The court only concerns itself with whether a crime has been committed and whether the Crown can prove that the offence was committed by the accused.

Restorative Justice

- There is no onus on the offender to take responsibility for his or her actions. Ultimately, the focus is on the law, the proof of guilt by the Crown and rules that govern the appropriate punishment and treatment of the person found guilty of the offense.
- Restorative justice practices begin with the offender taking responsibility for his or her actions by owning up to them. Consequently, determining guilt is not an issue. Instead the questions are “Who has been harmed?” “How have they been harmed?” followed by “How can the harm be repaired while reducing the likelihood of future harm?”. Therefore the focus is on problem-solving.

Restorative Justice

- Court systems are focused on offender, the incident and how the offender should be punished. The roles of the victim and the wider community are often overlooked. While focus of the offender establishes a rationale for punishment, it does not allow for, nor does it encourage offenders to take responsibility or learn from their actions.
- In restorative practices, victims and offenders play key roles in both identifying the problem and finding solutions to repair the harm. Offenders are encouraged to take responsibility for their actions. The needs of the victim and community is recognized.

Restorative Justice

- Punishment is the main objective of the criminal system. An elaborate system of weights and measures exists to determine the level of punishment. The re-integrative component is not highly evident in current court practices.
- Punishment is not the key concern in restorative justice practices. Having the offender assume responsibility for his or her actions is the primary goal. It brings an element of accountability not always found in the court system.

Restorative Justice

- In the process of restorative justice, all participants (offender, offender support, victim support) are involved in deciding the outcome through this problem-solving model.
- All participants must agree that the outcome is fair to the victim, offender and the wider community.
- The offender and victim sign an agreement that outlines how and when the harm will be repaired.

Restorative Justice

- The criminal justice system often evokes a sense of alienation for both victims and offenders. The stigma of being charged with a criminal offense can alienate an offender from his or her family and/or community.
- If found guilty, an offender may be physically removed from their community to serve a sentence. Victims also report feelings of isolation and alienation from the court process where they have little to no involvement in the outcome.

Restorative Justice

- One of the most important features of restorative justice practices is the commitment to the reintegration of the offender back into the community. Victim's feelings of alienation are reduced as they become central players in achieving justice.
- The concept of reintegration is central to the larger goal of healing and of repairing the harm caused. Unless everyone touched by an incident or crime can be involved in making things right, healing cannot take place.

Restorative Justice

- A great number of people both in the criminal justice system and in the general community believe that the present criminal justice system doesn't always meet the needs of the community, victims or offenders. While the current court system is required to address a broad range of offenses, many forms of these may be better handled at the community level.
- In restorative justice, the offender's behavior is addressed, the victim's and community's needs are addressed, consequences are established, victims and offenders are supported, forgiveness and apologies may occur and reintegration of the offender begins.

Restorative Justice

- Forums are cost effective, timely, fair and cooperative. Many community programs claim reduced recidivism rates as well as high participant satisfaction. More importantly, harm is repaired and there is restoration of relationships among victims, offenders and the community.
- Some of the benefits of restorative justice are cost effectiveness; forum times are scheduled to be as convenient as possible for all concerned. Court, probation and legal aid or lawyer costs are not being incurred and police officers can be deployed more effectively than they are when waiting for their turn to testify in court.

Restorative Justice

- A chance to be heard; every person affected by an incident is given the opportunity to share their reactions to the crime and how it has affected their lives. This includes victims, parents, friends, witnesses and anyone else involved.
- Curiosity is satisfied; many people especially victims have a strong need to ask “Why did you do this”, “Why me?”. These questions are rarely answered in a court room but are addressed within restorative practices. Often it is a relief for the victim to discover that they may not have been targeted personally. Parents of an offender may not have been provided with an adequate answer as to why their child committed an offense. Restorative practices can provide such answers.

Restorative Justice

- Restoring or creating bonds; in restorative practices, family ties are strengthened, new bonds may be forged between parties, trust and stability are restored within the community. Families may feel they have gained control over their lives, support is given and received, respect is often earned by offenders who take responsibility for the harm they have caused and labels of “victim” or “offender” are removed.
- Immediacy; while court cases may take months to process, restorative practices can be conducted in a matter of days or weeks following the incident. The details and feelings are still fresh but enough time has passed for people to reflect on what has happened.

Restorative Justice

- Families, community and victims appreciate the timeliness of restorative practices. Restorative practices are advantageous because participants have a recent memory of the incident.
- Contributing to the outcome; people directly affected by the incident decide how to repair the harm after hearing from all participants. Outcomes must be fair and the solutions can be as creative as the people in the forum wish them to be.
- Gaining perspective on the incident; offenders, victims and their supporters hear directly from each other. All participants have the chance to explain their views and to hear another version of the story/incident.

Restorative Justice

- Closure and Healing; once an offender understands the true consequences of their actions, an honest apology can be made to all victims. When people receive an honest/sincere apology, generally, they are quick to forgive. Victims often feel a great sense of relief when forgiveness occurs because forgiving is the corner stone of healing. An apology by the offender and forgiveness by the victim can launch the healing and reintegration process.
- Learning experience; everyone can learn from participating in what is essentially a problem-solving exercise. Offenders learn to recognize the effect of their actions on others and to take responsibility for them. Families begin to understand each other and communities learn how to repair the harm.

Restorative Justice

- Police and schools, using restorative justice practices can learn a more holistic approach to problem-solving and the community's trust in them is enhanced. All participants ~ offender, victims, teachers, police and community caregivers cast off their labels and understand each other better.
- A restorative justice process is one in which the parties with a stake in the resolution of a harmful occurrence are supported and voluntarily participate, with the assistance of a fair and impartial facilitator, in a discussion of the circumstances surrounding the incident. The purpose is to understand the underlying causes of the incident and the effect on those who have been harmed and to address the needs of the parties for healing and reparation.

Restorative Justice

- Restorative justice is a way of viewing justice that puts the emphasis on repairing the harm caused by conflict and crime. In this approach crime is understood as a violation of people, relationships and the disruption of peace within the community. It is not simply an offense against the State. Restorative justice is collaborative and inclusive. It involves the participation of those responsible for the harm, those harmed and those effected by the ripples of harm, as they find solutions that seek to repair trust and promote harmony.
- The underlying values of restorative justice include respect for the dignity of everyone affected by crime. Priority is given to addressing the human needs of the participants and empowering them to communicate through thoughts and feelings in an open and honest way.

Restorative Justice

- The goal is to build understanding, to encourage accountability and to provide an opportunity for healing. A restorative justice process encourages those responsible for causing the harm to take responsibility for their behavior in a meaningful way, to gain insight in to the effects their behavior had on others, to change their behavior and be accepted back in to the community. The process gives those harmed a chance to ask questions, receive answers, gain understanding, explain the impact the incident has had on them and to contribute to the outcome. Finally, the process enables the community to reinforce its values and expectations, to understand the underlying causes of crime and to determine what can be done to repair the damage caused by crime. This will serve to promote community well-being and reduce the future incidence of crime.

Family Homes on Reserve and Matrimonial Interests or Rights Act

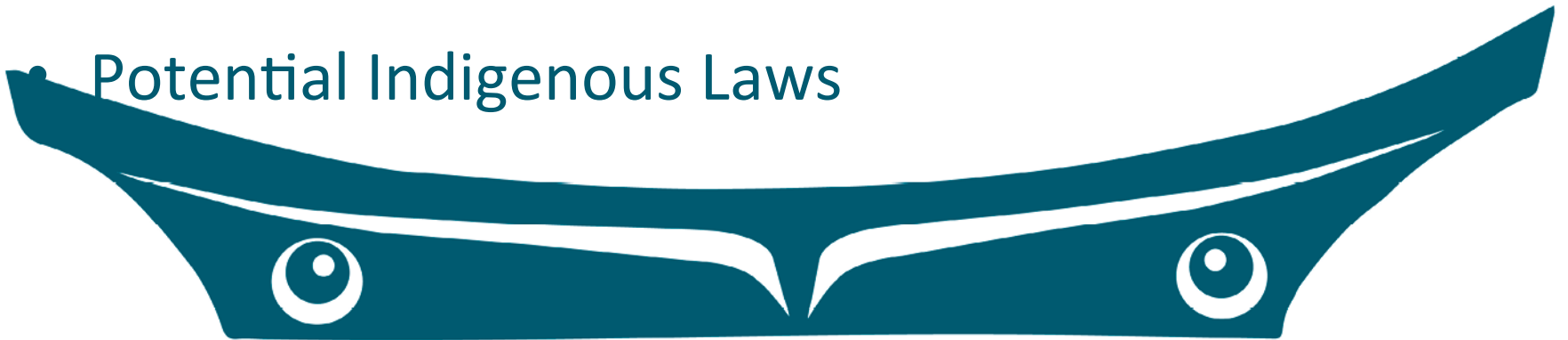
In force December 16, 2014

by Ardith Walkem and Halie Bruce
(Cedar and Sage Law)



Why might family law processes for Indigenous Peoples may be different

- Location of property (on reserve)
- Indian status of one or more parties
- Treaty (lands or laws)
- Need to account for Indigenous heritage of children
- Potential Indigenous Laws



Prior to the Act:

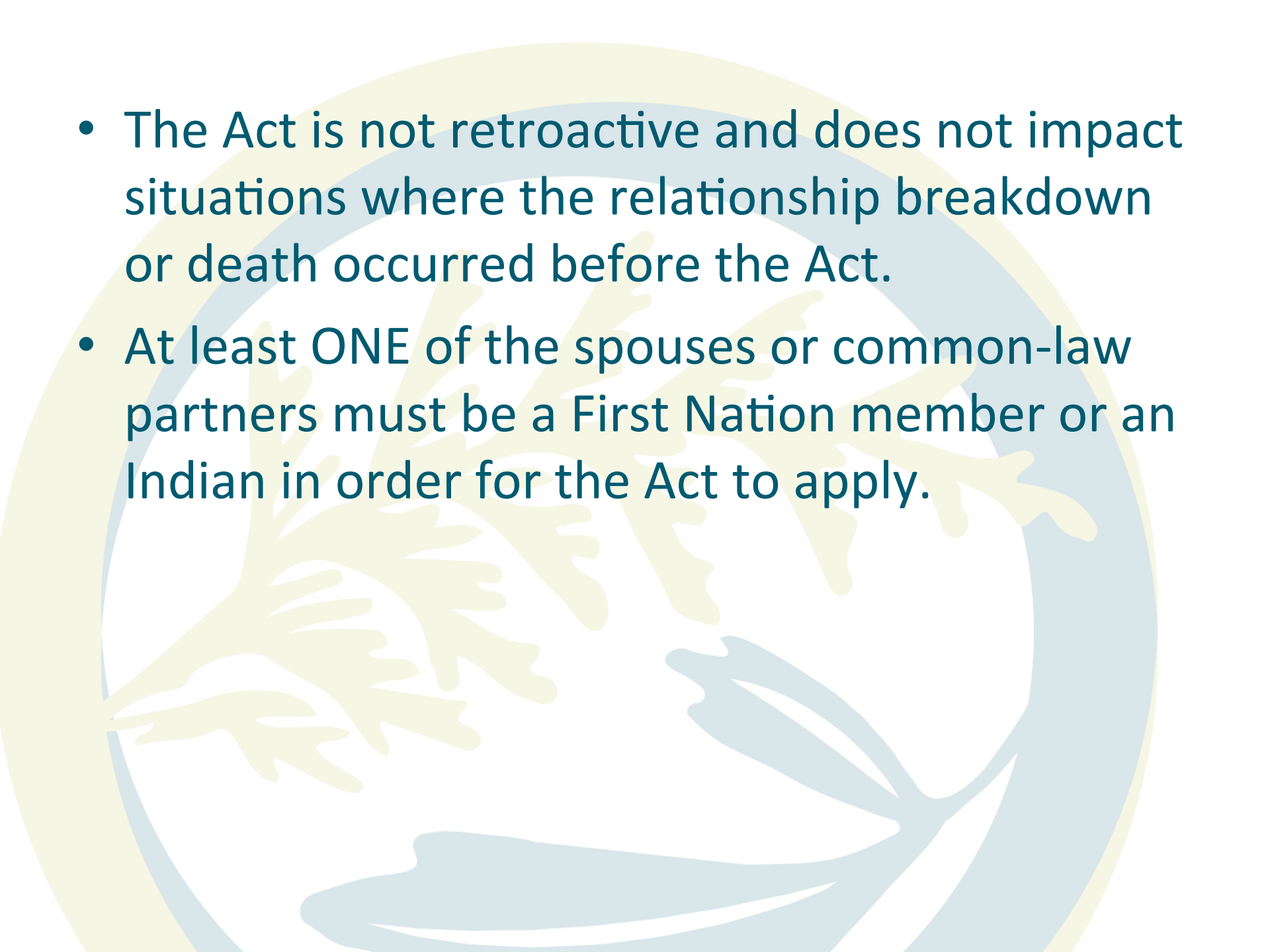
- Indigenous laws regarding matrimonial property were not recognized.
- Provincial laws regarding matrimonial property did not apply on reserve.
- Exclusion intended to preserve a land base for the use and benefit of Indigenous Peoples.

Result:

- No recognized law that applied to determine rights to, or in, matrimonial property on reserve upon breakdown of a relationship, or rights of non-members upon death or relationship breakdown.
- Derickson v. Derickson
- Considerable hardship - primarily to Indigenous women and children.

Family Homes on Reserves and Matrimonial Interests Act applies:

- In the event of a relationship breakdown or death of one of the partners in a marriage or common law relationship,
- Where at least one of the spouses is a status Indian or member of a First Nation,
- To the matrimonial home, and other real property interests on reserve, acquired during the course of (or in contemplation of) their relationship.

- 
- The Act is not retroactive and does not impact situations where the relationship breakdown or death occurred before the Act.
 - At least ONE of the spouses or common-law partners must be a First Nation member or an Indian in order for the Act to apply.

Under the Act, First Nations can:

- 1) Pass their own matrimonial property law; or
- 2) Provisional federal rules will apply.

First Nations under the *First Nations Land Management Act* or with separate self-government agreements may be subject to different rules or timelines.

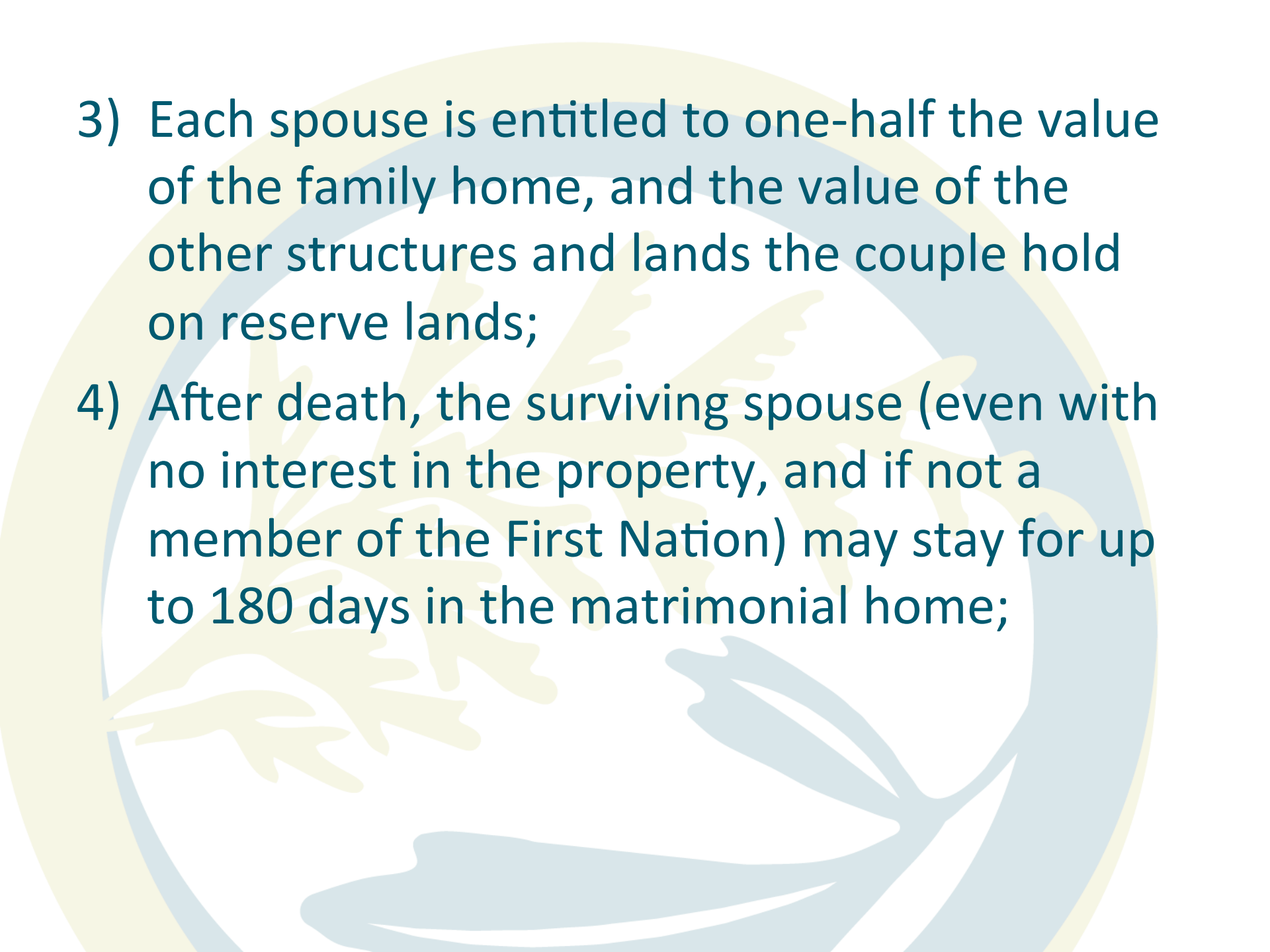
Provisional Federal Rules

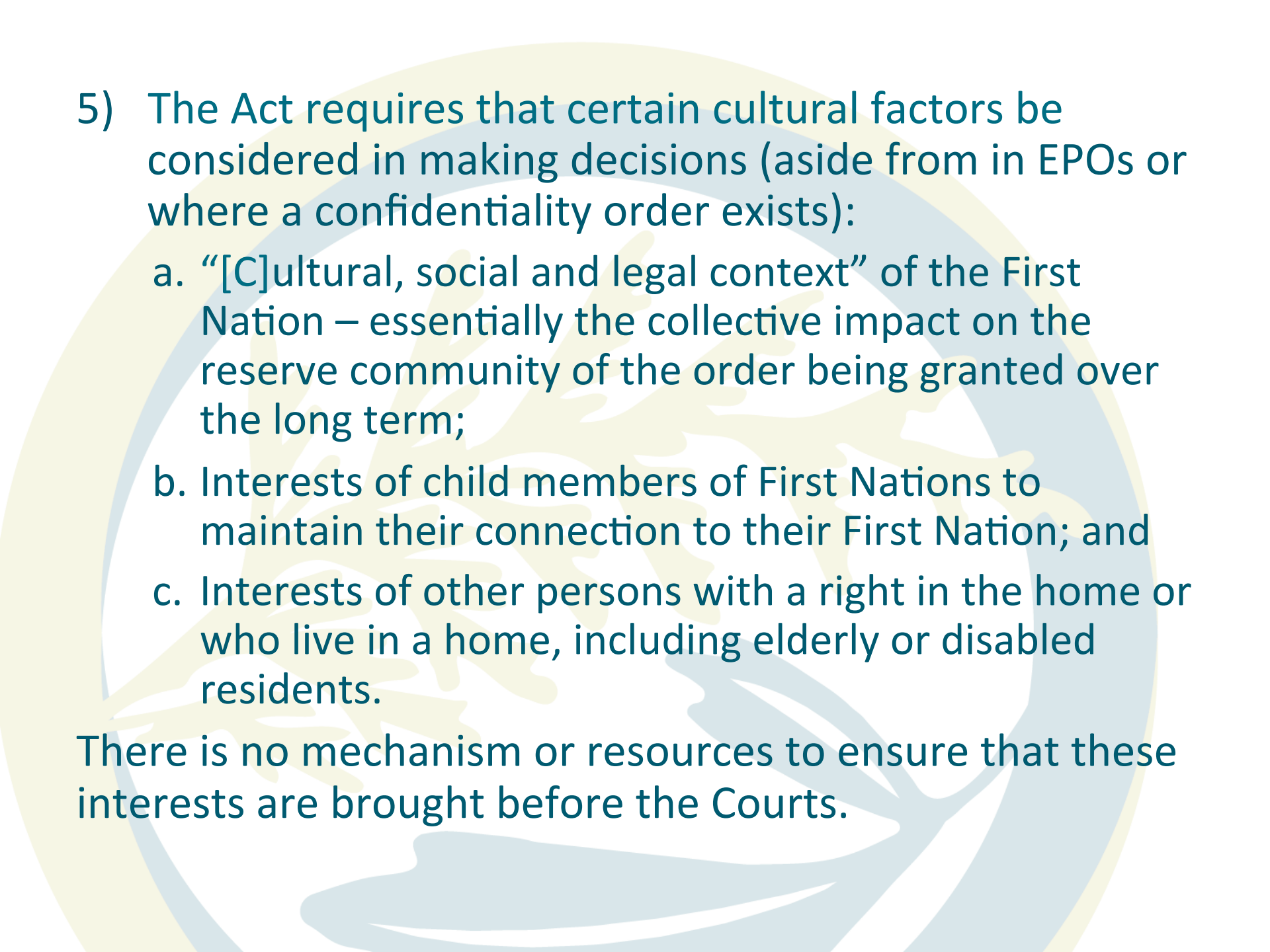
Apply unless or until a First Nation passes its own law



General

- 1) A spouse or common law partner will not be able to sell or otherwise encumber (for example: mortgage) an on-reserve family home without the written consent of the other spouse;
- 2) One spouse cannot block the other spouse or from their on-reserve family home – it does not matter if the other spouse is not a status Indian or member of the First Nation;

- 
- 3) Each spouse is entitled to one-half the value of the family home, and the value of the other structures and lands the couple hold on reserve lands;
 - 4) After death, the surviving spouse (even with no interest in the property, and if not a member of the First Nation) may stay for up to 180 days in the matrimonial home;

- 
- A background graphic featuring a stylized globe with a blue and yellow color scheme. Overlaid on the globe are several hands in yellow and blue, reaching out and holding each other, symbolizing global unity and support.
- 5) The Act requires that certain cultural factors be considered in making decisions (aside from in EPOs or where a confidentiality order exists):
- a. “[C]ultural, social and legal context” of the First Nation – essentially the collective impact on the reserve community of the order being granted over the long term;
 - b. Interests of child members of First Nations to maintain their connection to their First Nation; and
 - c. Interests of other persons with a right in the home or who live in a home, including elderly or disabled residents.

There is no mechanism or resources to ensure that these interests are brought before the Courts.

Emergency Protection Order (EPO)

An **Emergency Protection Order (EPO)** allows a court to order the exclusive occupation of the family home for up to 90 days (time can be extended) to either spouse, whether or not they are a member of the First Nation.

- A party can make an application for an EPO, without other spouse knowing or making submissions.

Emergency Protection Order (EPO) can:

- 1) Grant the applicant exclusive occupation and access to the home
- 2) Require spouse and others specified to vacate at a time the judge orders, and prohibiting re-entry
- 3) Give instructions for a Peace Officer to remove a person and keep the person away from the home
- 4) Any other necessary provisions to protect the family at risk

In deciding whether to grant an EPO, the judge should consider:

- History and nature of family violence, and risk of immediate danger;
- Best interests of any children involved (including their right to maintain their connection to the First Nation that they are part of);
- Interests of any elderly or disabled persons who reside in the family home, or others who have an interest in the home;
- Period of residence on the reserve; and
- Exceptional circumstances that require removing a person other than the applicant's spouse.

Any person named in the EPO can appeal. An order can extend beyond the initial 90-day period. The Court decides confidentiality issues and whether the information on which the order was granted will be made public.

Generally – BC Supreme Court Judges Have Jurisdiction under the FHMIRA

- Potential differences:
- Justices of the Peace or designated judges of the provincial court make decisions in some instances
- Reference to having matters referred to Provincial court – Province has said it will not appoint provincial judges to do the review



Follow-on Matters:

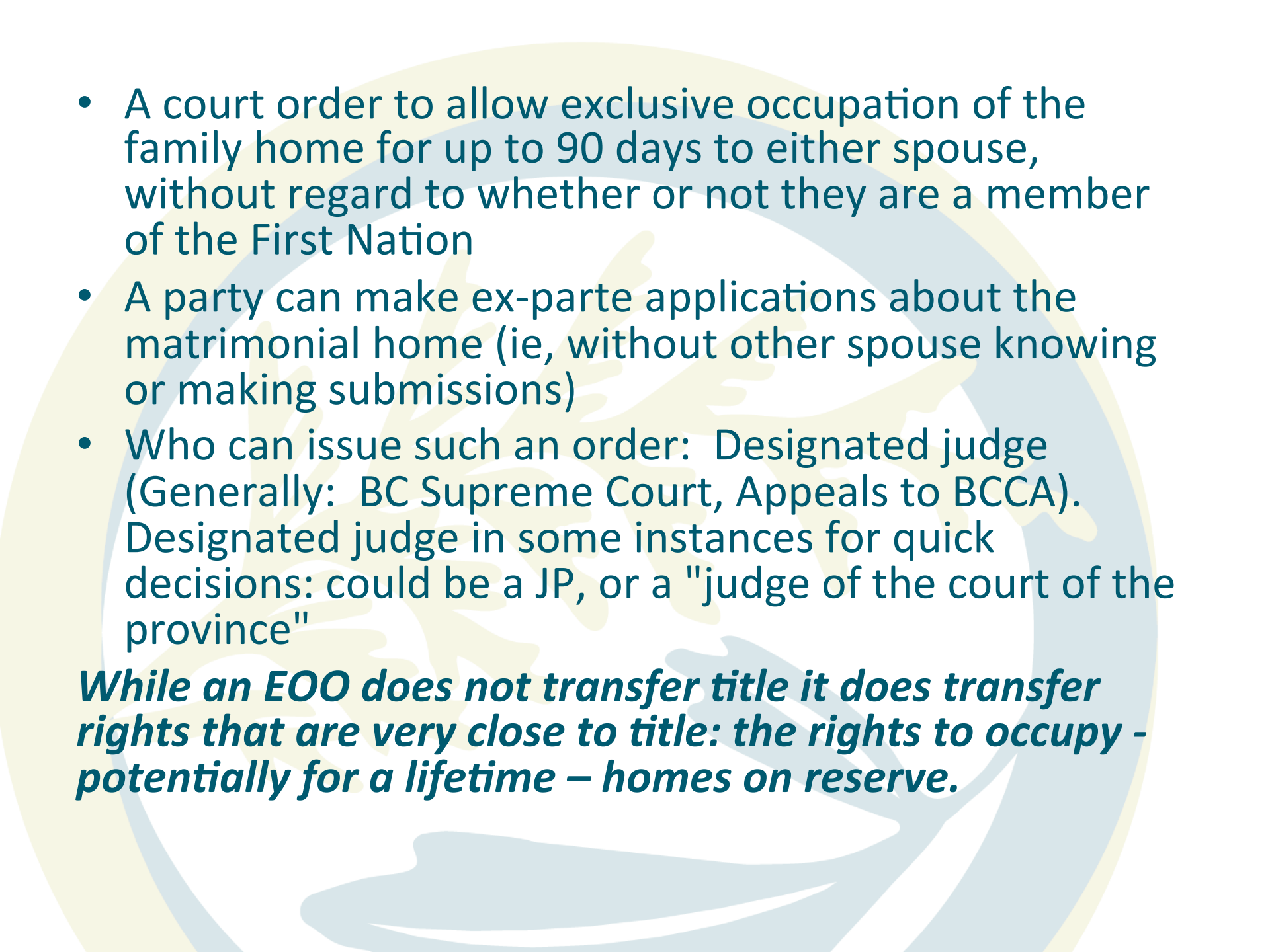
- A judge from the appropriate level of court must review within 3 days, and can confirm, re-hear, or revoke the order
- A person named in EPO may appeal, and a court can confirm, re-hear or revoke the order, or extend it beyond the initial 90- day period
- Court decides confidentiality issues, and whether the information on which the order was granted will be made public or not

Exclusive Occupation Order (EOO)

A court can make an **exclusive occupation order (EOO)** for the family home to one spouse upon the death of a spouse or breakdown of a relationship.

An EOO could:

- Require a spouse and other persons to vacate the matrimonial home;
- order a spouse to make payments to the other spouse toward the cost of accommodation;
- require one spouse to preserve the condition of the home (or contribute toward repairs and maintenance); or,
- order a spouse to make payment of all or part of the repair and maintenance of the home.

- 
- A court order to allow exclusive occupation of the family home for up to 90 days to either spouse, without regard to whether or not they are a member of the First Nation
 - A party can make ex-parte applications about the matrimonial home (ie, without other spouse knowing or making submissions)
 - Who can issue such an order: Designated judge (Generally: BC Supreme Court, Appeals to BCCA). Designated judge in some instances for quick decisions: could be a JP, or a "judge of the court of the province"

While an EOO does not transfer title it does transfer rights that are very close to title: the rights to occupy - potentially for a lifetime – homes on reserve.

Exclusive Occupation Order:

A court can order exclusive occupation of, and access to the family home to one spouse.

When can this judge make such an order?

- Death of a spouse [An Exclusive Occupation Order does NOT change who holds an interest or right in the home or prevent an Executor/Administrator from transferring this interest.]
- Break-up of a conjugal relationship
- For removal of disruptive person(s)

What does the judge consider in deciding to grant an EOO?

- Best interests of any children involved
- Terms of any agreement between the spouses
- Terms of any wills
- Medical condition of the survivor
- Financial situation and/or medical issues of spouses
- Any existing orders made on the matter
- History of any family violence or psychological abuse
- Any exceptional circumstances
- Collective interests of the First Nation (it is not clear how this will get before the Court in every instance though a First Nation has a right to be notified of the proceeding)
- Interests of other persons with a right in the home or who live in the home, including elderly or disabled occupants (again it is not clear how this information will get before the Court in each instance)

An Exclusive Occupation Order could:

- 1) Require spouse and others specified to vacate at a time the judge orders, and prohibiting re-entry
- 2) Preserve the condition of the home
- 3) Make payments to the other spouse toward the cost of other accommodation
- 4) Payment of all or part of the repair and maintenance of the home

Revoking an Exclusive Occupation Order:

On Application an EOO can be revoked or varied, only if there are changes in circumstances, and the other party must be given notice of the application.

Exclusive Occupation Order could include:

- Conditions to preserving the condition of the home;
- Requiring someone to vacate the home and not re-enter it;
- Having a Peace Officer deliver notice to certain persons; or
- Having the executor of the will or the administrator of the estate pay for repairs and maintenance.

Notice to First Nation Council

- For any order other than an EPO, or order where a Court has granted a Confidentiality Order, an applicant must send a copy to the First Nation.
- The Court must allow the First Nation to make representation at the hearing about the cultural, social and legal context surrounding the application and to present the community's views about whether the order should be made.
- There is no direction in the Act for how these submissions must be considered or weighed in decision making
- If the First Nation does not appear, there is no process or factors set out for how the Court must consider the collective interests of the First Nation.

Notice to First Nation Council required:

- No notice: where there is an Emergency Protection Order or there is a Confidentiality Order [Section 19: The Court will weigh the balance between making the information public and the need to protect affected parties, especially children.]
- The successful applicant must send a copy of the Court Order to the First Nation Council

Division of Value on Breakdown:

- Each spouse is entitled to one half of the value of the family home; and, the evaluation of other structures and lands they hold on reserve, considering the appreciation in value during the time of the relationship, and the difference in payments each made for maintenance/improvements.
- Assessed according to what a buyer would reasonably pay minus debts/liabilities or any agreement between the parties.

Division of Value – Relationship Breakdown

Courts may make changes...

...if it is considered unconscionable, given:

- 1) needs of caring for children
- 2) the debts or liabilities of each spouse
- 3) a significant change in value of the interests
- 4) other pertinent factors

Division of Value – Relationship Breakdown

Can the Order be revoked?

On Application it can be revoked or varied...

- ... only if there are changes in circumstances, and
- ... the other party must be given notice

Division of Value – Death of a Spouse

Surviving **First Nation member spouse** is entitled, on application, to:

- 1/2 of the value of the interest of the deceased in the family home, plus
- 1/2 of the value of the interest of the deceased in the land on which the family home is situated, plus
- Amount = 1/2 of the value of interest of the deceased of other on-reserve structures and lands

Division of Value – Death of a Spouse

Surviving **non-First Nation member spouse** is entitled, on application, to:

- $\frac{1}{2}$ of the value of the interest of the deceased in the family home, plus
- Amount = $\frac{1}{2}$ of the value of interest of the deceased of other on-reserve structures (NOT land), plus
- The greater of: $\frac{1}{2}$ appreciation, or, the difference between survivor payments minus debts

Division of Value – Death of a Spouse

Can the amounts be changed?

On application by the survivor, the Court may vary the amount owed if it is considered unconscionable

- ... given the needs of caring for children, and
- ... if the spouses had previously resolved the consequences of a breakdown

Division of Value – Death of a Spouse

If survivor makes an application within 10 months of the death of the spouse...

The court may make changes with respect to...


- The amount payable to the survivor
- The method of payment (lump sum, installments)
- If the survivor is an FN member, the transfer of any interests or rights in any structure or land situated on the reserve
- Extension of the 10-month period due to special circumstances
- Permitting the executor of a will to vary the terms under the will to allow for the amounts due to be paid to the survivor
- Ensuring that proper notice is given



Centre of Excellence for Matrimonial Real
Property at www.coemrp.ca (forms,
information)

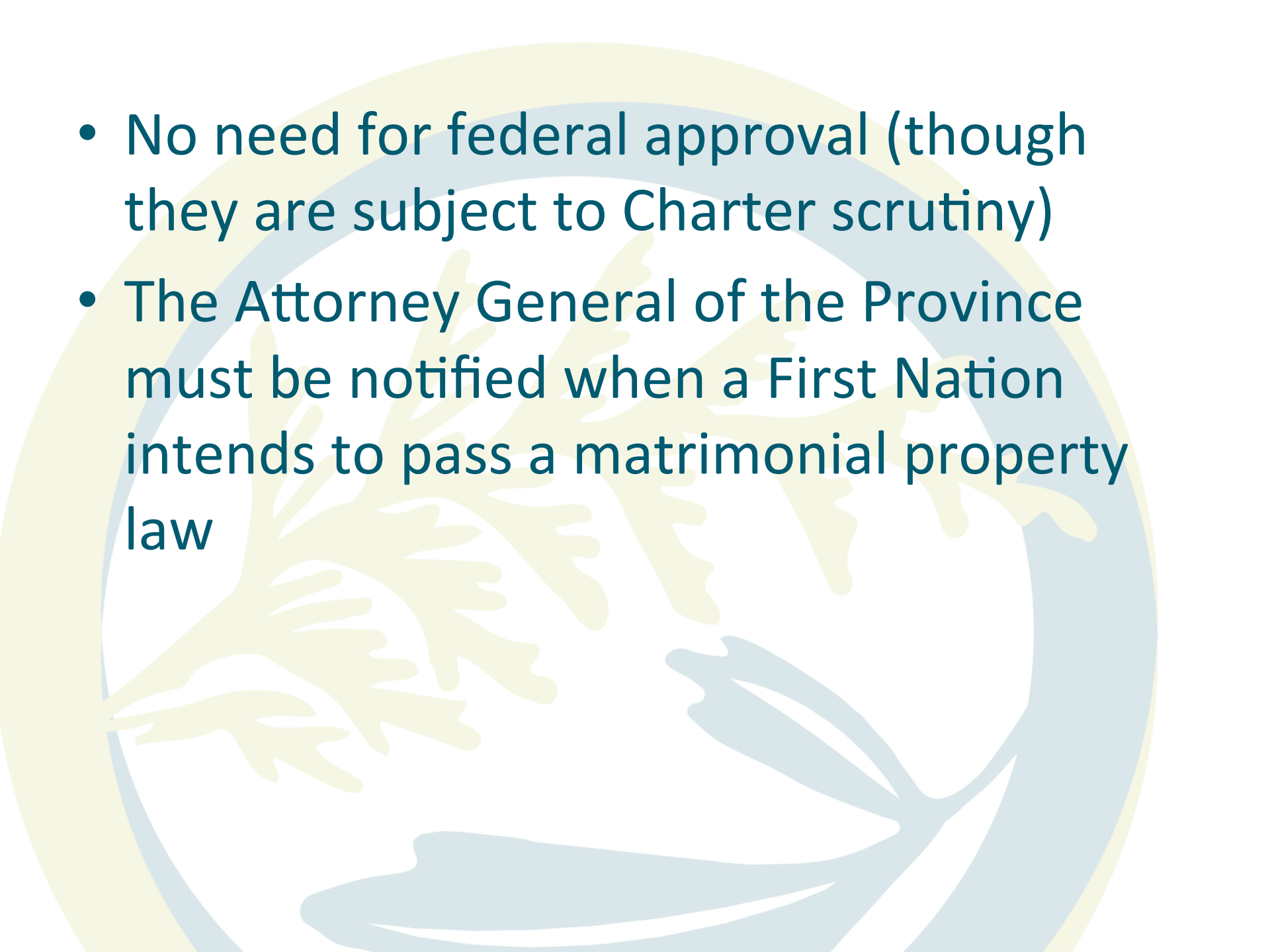
First Nation Law-Making






First Nations can pass their own laws in this area

- Required support: 25% of members must participate in the vote, and majority of those who vote must approve

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- No need for federal approval (though they are subject to Charter scrutiny)
 - The Attorney General of the Province must be notified when a First Nation intends to pass a matrimonial property law

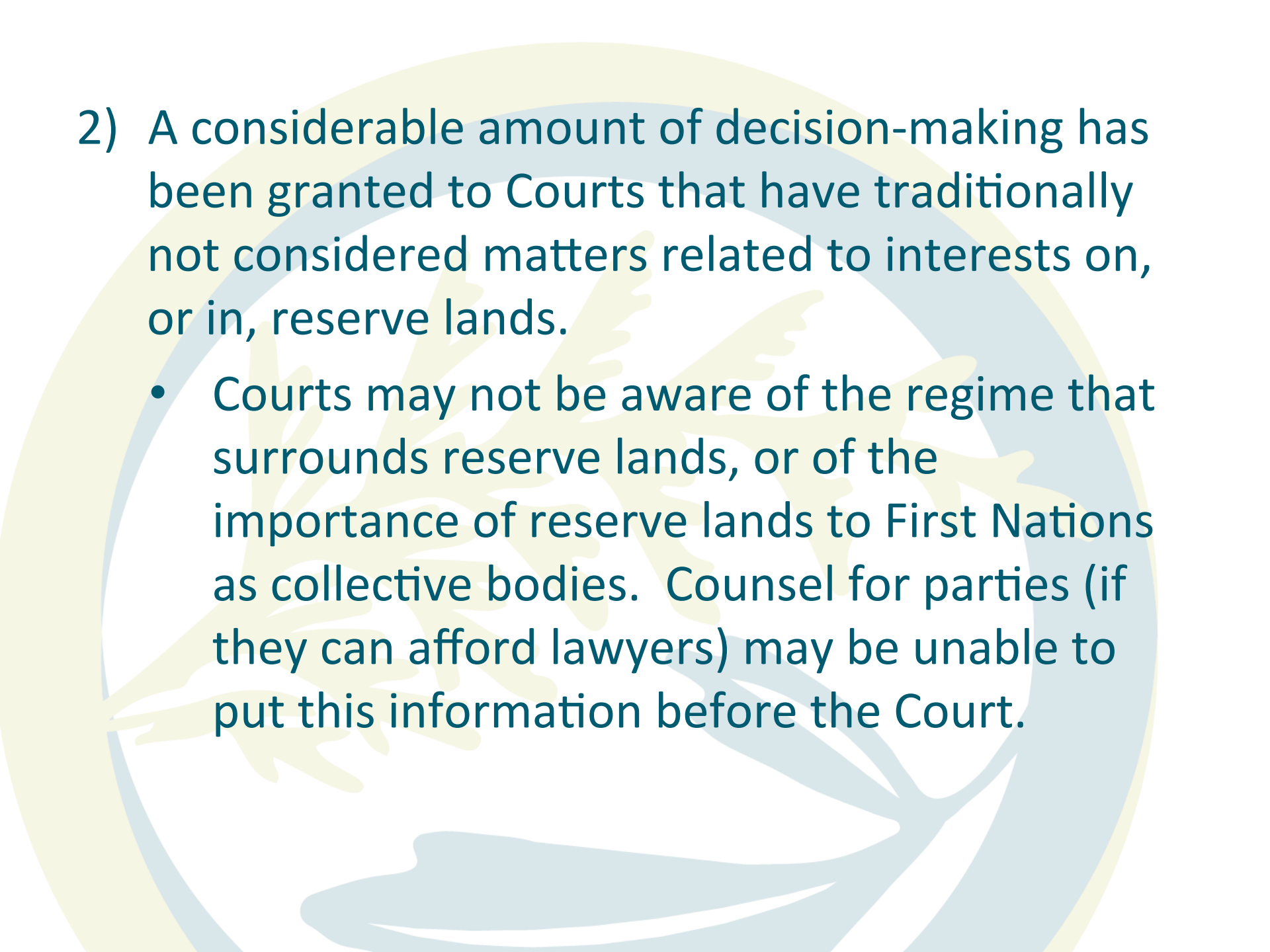
Significant Areas of Concern

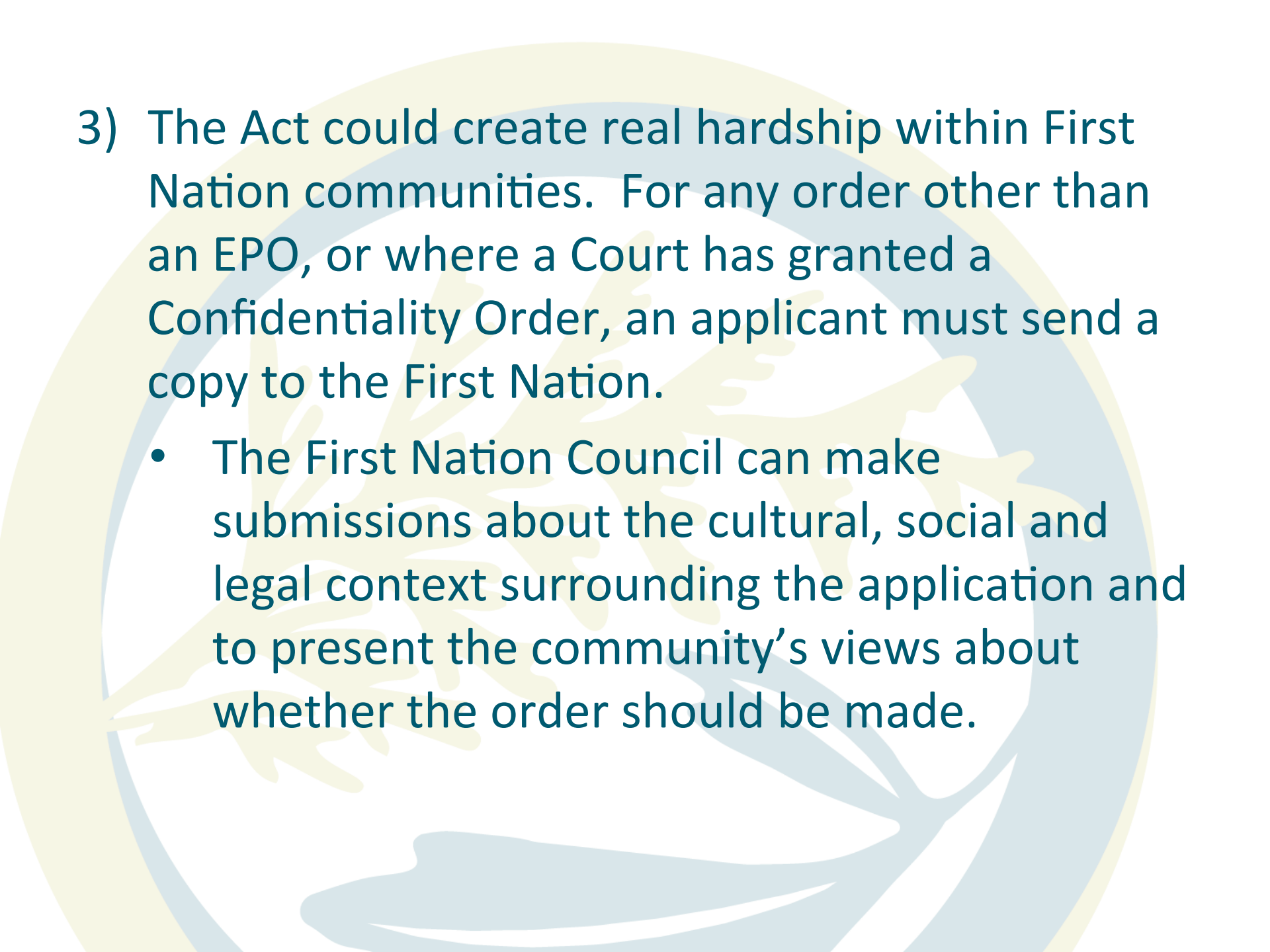


The background features a large, light blue and yellow circular graphic. Inside the circle, there is a stylized tree with yellow branches and green leaves. Below the tree, there are several hands in yellow and blue, reaching upwards towards the tree. The overall theme suggests global unity and environmental stewardship.

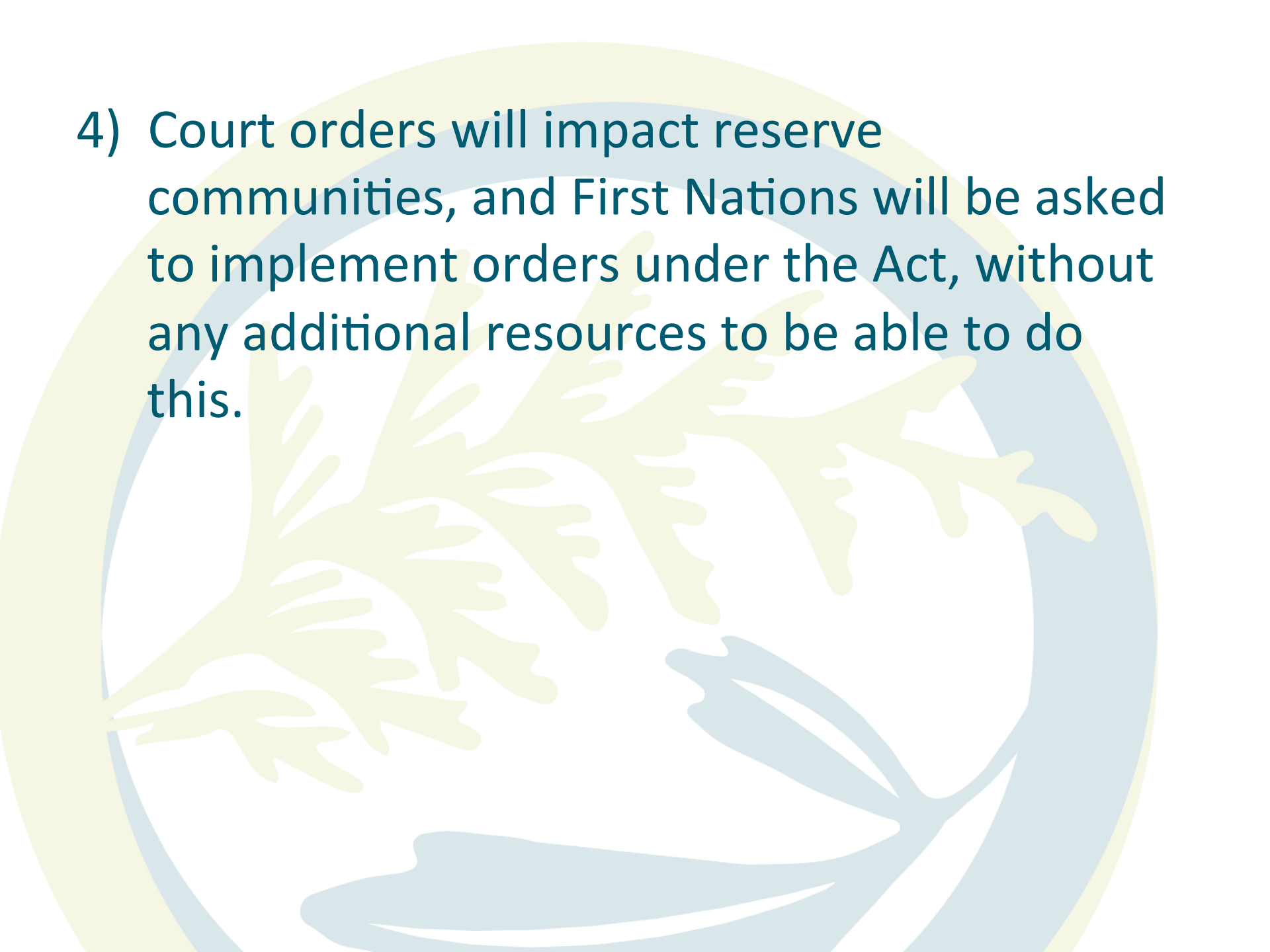
1) Access to justice (to lawyers, to courts) is a significant issue for Indigenous Peoples.

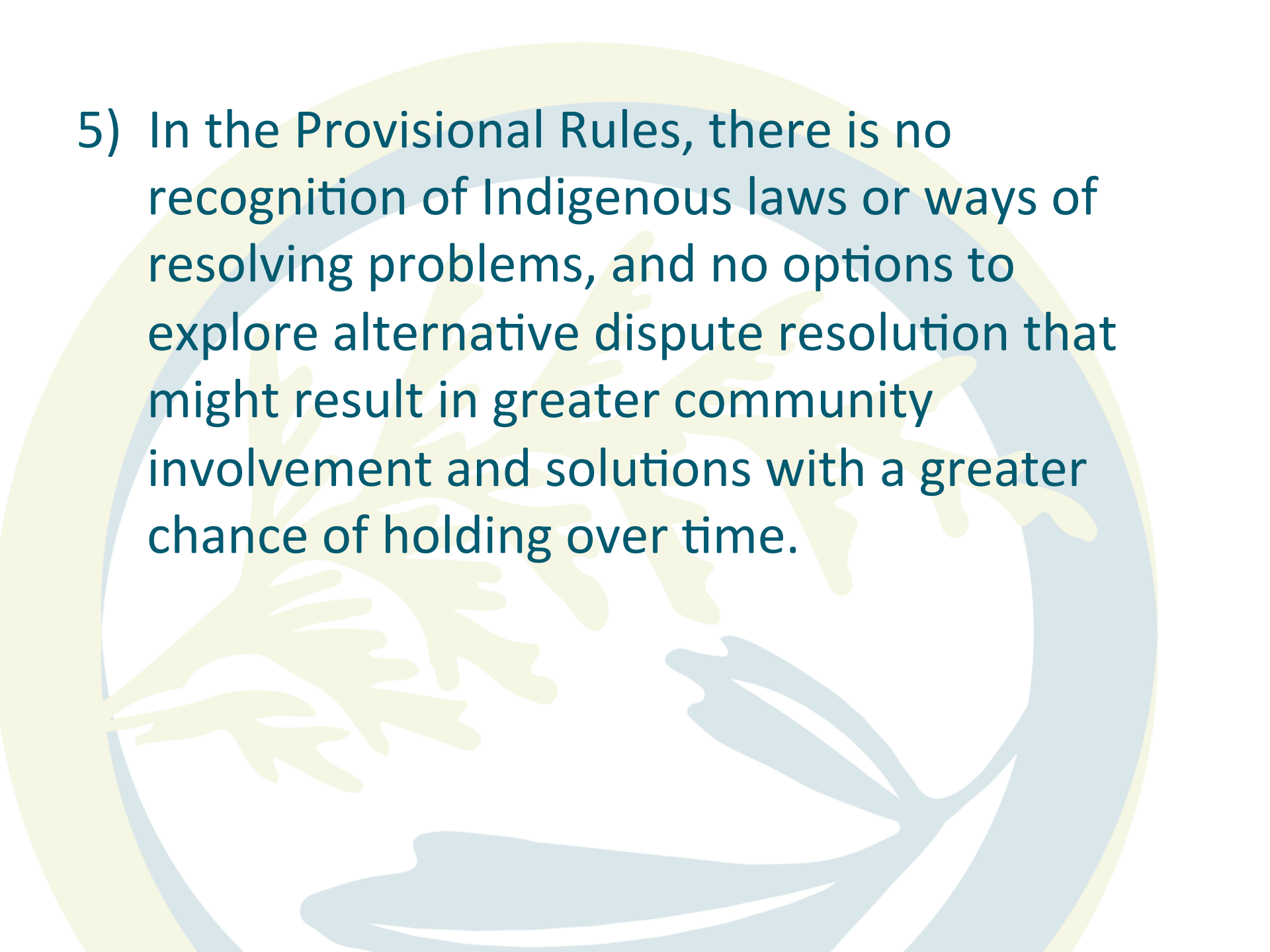
- The Act moves more decisions to the court process.
- Without legal representation, and without access to courts, peoples' rights may be seriously impacted or denied.
- Forms require parties to say that they give their “full and informed consent” .
- Decisions may be made with one party being self-represented or not appearing at all.

- 
- A background graphic featuring a stylized globe with a blue and yellow color scheme. Overlaid on the globe are several hands in a light yellow color, reaching out and holding each other, symbolizing global unity or support.
- 2) A considerable amount of decision-making has been granted to Courts that have traditionally not considered matters related to interests on, or in, reserve lands.
- Courts may not be aware of the regime that surrounds reserve lands, or of the importance of reserve lands to First Nations as collective bodies. Counsel for parties (if they can afford lawyers) may be unable to put this information before the Court.

- 
- 3) The Act could create real hardship within First Nation communities. For any order other than an EPO, or where a Court has granted a Confidentiality Order, an applicant must send a copy to the First Nation.
- The First Nation Council can make submissions about the cultural, social and legal context surrounding the application and to present the community's views about whether the order should be made.

4) Court orders will impact reserve communities, and First Nations will be asked to implement orders under the Act, without any additional resources to be able to do this.



The background features a large, light blue circle representing a globe. Overlaid on the globe is a stylized tree in a light yellow-green color, with its branches extending across the upper half. A single, larger leaf in a light blue color is positioned in the lower right quadrant, partially overlapping the globe and the tree.

5) In the Provisional Rules, there is no recognition of Indigenous laws or ways of resolving problems, and no options to explore alternative dispute resolution that might result in greater community involvement and solutions with a greater chance of holding over time.

6) Complexities of housing situations on reserve:

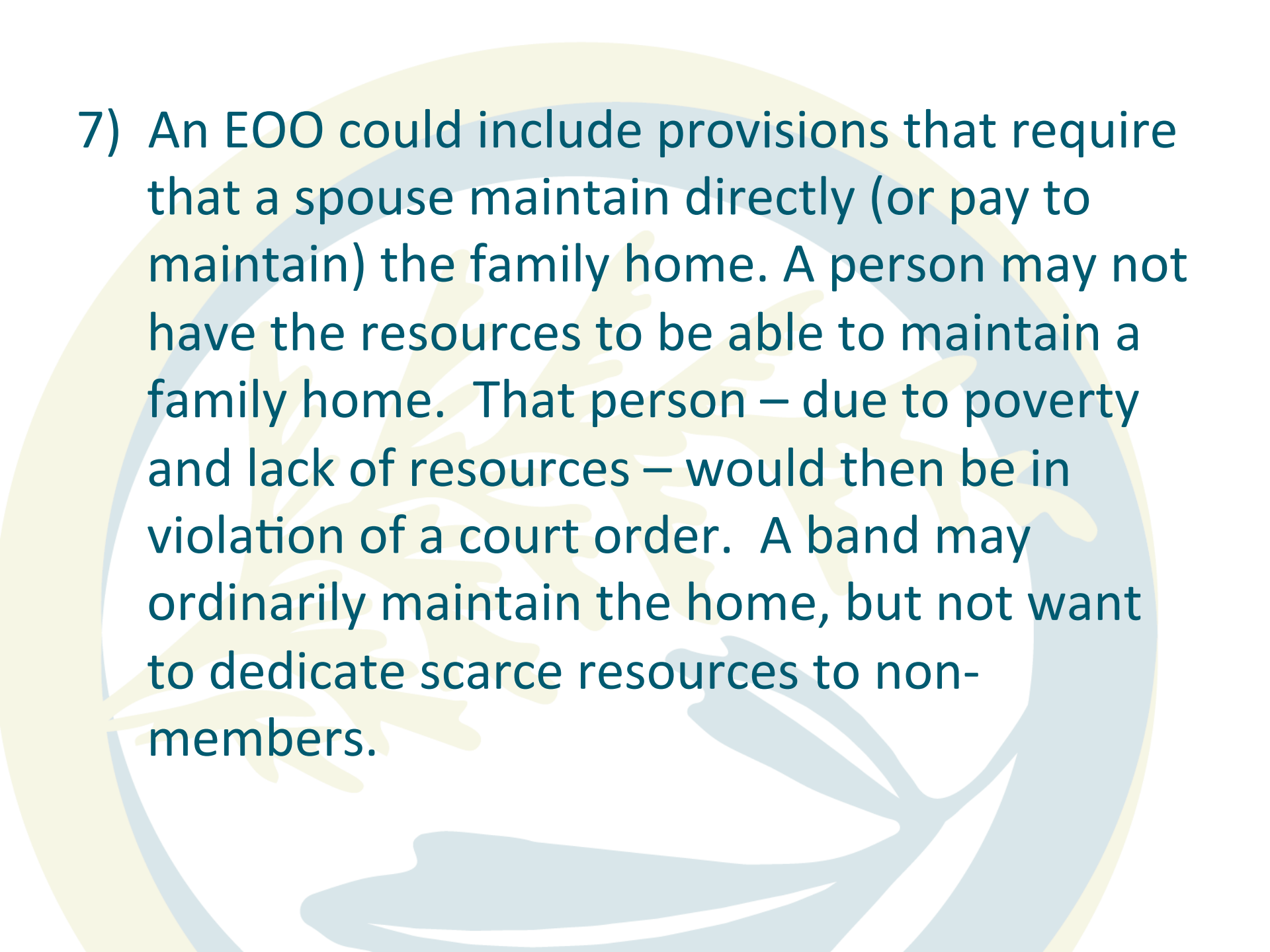
The “matrimonial home” of a couple whose relationship has broken down, might simultaneously be the home of an aging grandparent; an unemployed aunt; or, a barely-adult teenager starting their own family. Decisions made under the Act have the potential to consider only the interests of one couple, and not others who live within the home.

Different reserves have very complex systems of land ownership. Some interests are held under Certificate of Possession, some are held under custom, there are combinations of these interests; many people live in social housing which is owned and maintained by the First Nation.

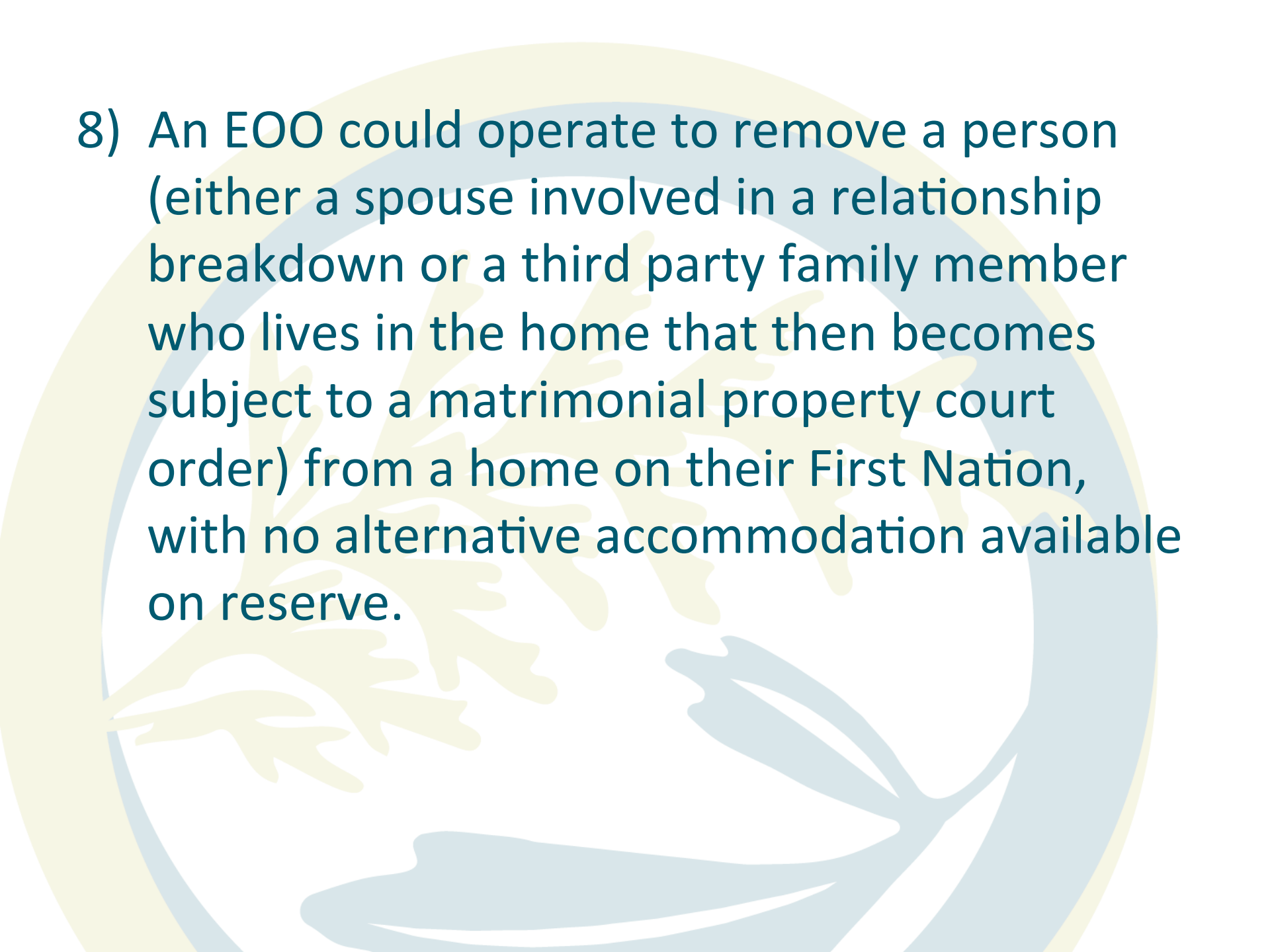


For example:

A couple may live in a house but have no right to the house itself (for example, band owned social housing, or a home that they are borrowing from a family member). An EPO could grant temporary occupation of social housing on reserve to a non-member. The First Nation might be in a position of having to maintain the home, but have no way of forcing the occupant to pay rent, or, the EPO might displace others on a housing waiting list who have the next right of occupation.

The background features a large, light yellow circle. Overlaid on this circle are several stylized, blue, hand-like shapes that appear to be reaching out or holding each other, creating a sense of support or community.

7) An EOO could include provisions that require that a spouse maintain directly (or pay to maintain) the family home. A person may not have the resources to be able to maintain a family home. That person – due to poverty and lack of resources – would then be in violation of a court order. A band may ordinarily maintain the home, but not want to dedicate scarce resources to non-members.

A stylized background graphic featuring a yellow tree with multiple branches on the left and a blue fish on the right, both enclosed within a circular frame. The tree is rendered in a simple, flat style with yellow branches and leaves. The fish is depicted in a similar flat style with blue scales and a white underbelly. The entire graphic is set against a light blue background.

8) An EOO could operate to remove a person (either a spouse involved in a relationship breakdown or a third party family member who lives in the home that then becomes subject to a matrimonial property court order) from a home on their First Nation, with no alternative accommodation available on reserve.

First Nation Councils asked to enforce orders?

- Councils may be asked to enforce orders – if they do not enforce, the party who has the order can go to court and seek to have a monetary payment made instead by the party against whom the order was made
- Penalties include fines and prison

Will Provincial law apply?

- Provincial laws can be used to determine how to divide the overall value of all matrimonial property (house, cash, cars, etc.)
- Either spouse can ask a court to determine their share of the matrimonial property
- Court can order one spouse or common-law partner to pay the other a sum of money to make an equal division of the matrimonial property