



## Community Workshop: Legal Aid Services & Family Law

Nanaimo Conference Centre | Nanaimo  
101 Gordon Street | Nanaimo, BC | V9R 5J8

Tuesday | February 15 | 2011

### AGENDA

Time	Session	Speaker	Facilitator
07:30-8:30	<b>Breakfast &amp; Registration</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	N/A
08:30-08:45	<b>Opening Prayer &amp; Welcome</b>	<ul style="list-style-type: none"> <li>Chief Doug White III and Geraldine Manson</li> </ul>	Donna
08:45-08:50	<b>Introduction of Amelia</b>	<ul style="list-style-type: none"> <li>Baljinder Gill</li> </ul>	
08:45-10:30	<b>Update on Recent Developments in Family Law &amp; Child Protection Law</b>	<ul style="list-style-type: none"> <li>Michael Bradshaw - Duty Counsel</li> <li>Linda Thiessen - Recent developments of family law &amp; LSS family law services</li> <li>Jo-Anne L.A. Kahan - Lawyer</li> </ul>	Brad
10:30-10:45	<b>Break</b>		
10:45-12:15	<b>Small Group Discussion – Interactive scenarios based on Amelia’s Story</b>	<ul style="list-style-type: none"> <li>Mike Delaney</li> </ul>	Kathryn, Brad, Donna, Maggie, Branka, John
12:15-1:15	<b>Lunch</b>		
1:15-2:45	<b>An Overview of LSS services and Resources</b>	<ul style="list-style-type: none"> <li>Denice Barrie (Local Agent)</li> <li>Branka Matijasic (Intake demo session)</li> <li>Mike Delaney – Aboriginal Services &amp; Resources</li> <li>John Simpson - PLEI</li> </ul>	Kathryn
2:45-3:00	<b>Break</b>		
3:00-4:15	<b>Other Community Services &amp; Resources</b>	<ul style="list-style-type: none"> <li>World Café – Clicklaw, Citizens Advocacy, TRAC, Access Pro Bono, Legal services community workers, Native court worker</li> </ul>	Mike
4:15-4:30	<b>Closing</b>	<ul style="list-style-type: none"> <li>John</li> </ul>	

#### Community and Publishing Services

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www.legalaid.bc.ca



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### AGENDA

Time	Session	Speaker	Facilitator
08:00-9:00	<b>Breakfast &amp; Registration</b>		
09:00-9:20	<b>Explanation of Community Engagement Session</b>	Mike Delaney	Mike
9:20-9:30	<b>Participants identify top 5 barriers to accessing legal aid in their communities</b>		
9:30-9:45	<b>Each table will discuss one barrier each with an LSS facilitator</b>		
9:45-10:15	<b>Each table will begin to report back their findings and solutions to the entire group</b>		
10:15-10:30	<b>Break</b>		
10:30-11:40	<b>Remaining tables will report back their findings and solutions to the entire group</b>		Baljinder John Mike Brad Kathryn Maggie Donna Dave
11:40-12:00	<b>Follow up plan for community engagement</b>		
	<b>Closing and evaluations</b>		
12:00-1:00	<b>Lunch</b>		

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## Legal Services Society

### Aboriginal Services & Resources and Community Engagement

#### | Goal |

To engage rural, remote and Aboriginal communities and to adapt current LSS programs and services to accommodate circumstances and situations unique to Aboriginal Peoples and their cultures.

#### | Gladue in a Nutshell |

Gladue rights apply to all Aboriginal people whether they are status or non-status Indian, First nations, Metis or Inuit and whether they live on or off reserve. Gladue refers to the special consideration that judges must give Aboriginal offenders during sentencing or the setting of bail. Gladue rights inform the judge that they must keep in mind the fact that Aboriginal offenders face special circumstances and all options other than jail must be considered. The sentence should be designed to help the offender address the issues that got them into trouble with law in the first place. This is called a **Community Sentence** designed to rehabilitate the offender and help the whole community heal.

Gladue does not mean that an offender will automatically be given a community sentence. In some circumstances, the judge may have no option but to sentence a person to jail. The judge should continue to apply the same Gladue principles when deciding the length of imprisonment or bail conditions.

LSS is raising awareness and providing training to lawyers, community organizations and intermediaries, to develop a better understanding of Gladue rights. The LSS publishing team is also in process of publishing a **Gladue Primer**, as part of our initiative to educate the community and service providers. For more information, please contact Pamela Shields, who is our Aboriginal Services Program Manager, at 604.601.6000 or by [e-mail](#).

#### | First Nations Court |

The court is led by Judge Buller-Bennett and sits in New Westminster once every month. Aboriginal offenders who plead guilty can be heard by Judge Buller-Bennett at the

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sentencing stage and she will work with the community and the offender to develop a "healing plan."

First Nations Court hears criminal and related child protection matters. The goal is to take a First Nations Perspective and justice is viewed with a holistic and restorative approach.

LSS is raising awareness and providing support to the court. A Legal Information Outreach Worker (LIOW) works with the court to enhance the intake application process and provide information to offenders and the communities they impact. LSS also works closely with the First Nations Clinic and the Native Court Worker Program.

Expanded Duty Counsel Service is provided by LSS for First Nations Court. Please contact Rob Fredrickson at 604.825.1861.

## | Legal Aid |

Legal Aid coverage is available for all Aboriginal clients, but they have to be financially eligible and the issue must be one that is covered by LSS. If you have a client looking for criminal, family and / or CFCSA matter, please encourage them to apply for legal aid. A legal aid intake worker will determine their eligibility and will provide them with assistance.

For Aboriginal People, if the offence interferes with the offender's ability to follow a traditional livelihood of hunting and fishing, this may be covered by legal aid.

## | Duty Counsel |

LSS has duty counsel service available in all courthouses throughout the province. They also have **Expanded duty counsel services**, which Aboriginal clients can access. LSS have expanded duty counsel in other court houses as well. LIOWs can be found in the following locations to help with the application process and to provide legal information and resources.

- Shewey, Vancouver
- First Nations Court New Westminster
- Williams Lake
- Port Hardy

## | **Aboriginal Community Legal Workers** |

Aboriginal Community Legal Workers are paralegals who are supervised by a lawyer and can provide legal advice. We have two Aboriginal Community Legal Workers in the following locations.

- Donna Moon, Nanaimo
- Maggie Matilipi, Port Hardy

## | **Publications and Fact Sheets** |

### **Aboriginal Child Protection Fact Sheets**

- Understanding Aboriginal Child Protection / Removal Matters
- Understanding Aboriginal Delegated Agencies
- Understanding Court Orders and Hearings

### **Wall Charts / Wallet Cards**

- Aboriginal Child Protection Process: Information for Aboriginal Parents and Communities
- Your Right to Get a Lawyer (Aboriginal child protection wallet cards)

### **Aboriginal Criminal Law Fact Sheets**

- Are You Aboriginal? Do You Have a Bail Hearing? Are You Being Sentenced for a Crime? Do You Know About First Nations Court?

### **Aboriginal Publications**

- Benefits, Services, and Resources for Aboriginal Peoples
- How to Make a Will and Settle an Estate: A Guide for First Nations People Living on Reserve
- Social Assistance on Reserve in BC

### **Binders**

- Aboriginal People and the Law in British Columbia (binder)

### **Aboriginal Resource Website**

This is work in progress that will enhance our website by highlighting reference links to additional resources outside of LSS that will assist Aboriginal People address their legal issues.

It will also contain a Frequently Asked Question (FAQ) Section which is a list of questions and /or common legal issues faced by Aboriginal communities along with the resources that exist to address those issues.

The Aboriginal Resource Website will be broken down as follows:

- Aboriginal Legal Issues
- Aboriginal publications
- Who can help
- Gladue rights
- First Nations Court

To order publications, please follow the LSS Publications link:

[http://www.lss.bc.ca/publications/subject.aspx?s\\_id=2](http://www.lss.bc.ca/publications/subject.aspx?s_id=2)

## | Additional Resources |

Gladue and First Nations Court Fact Sheet:

[http://www.lss.bc.ca/publications/pub.aspx?p\\_id=350](http://www.lss.bc.ca/publications/pub.aspx?p_id=350)

Are You Aboriginal? Do you have a bail hearing? Or are you going to be sentenced for a Crime? This publication is on line or can be ordered from the Legal Aid Ontario at:

[www.legalaid.on.ca](http://www.legalaid.on.ca)

Toll free: 1-800-668-8258

In Toronto: 416-979-1446

### **Mike Delaney**

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## Family coverage

### | General Policy |

To qualify for legal aid representation, an applicant must:

- Be financially eligible, and
- Have a family law problem covered by the family coverage guidelines:
  - need an initial, or a change to the current, custody or access order where there is a risk of harm or violence to the client or to his or her child or children;
  - have custody of a child or children who have been unlawfully held by the access parent/party;
  - have been permanently or repeatedly denied access to a child or children;
  - need a physical restraining order or other legal assistance to protect themselves or their child or children from harm or violence;
  - need a non-removal order to prevent the other parent from permanently moving their child or children out of the province. The threat must be real and imminent, and involve a permanent change of residence;
- Be eligible for coverage provided through the exception review process.

### | Who is covered |

When the legal issue involves children, an applicant must be a:

- parent (including a same-sex parent),

OR

- party to the proceeding who is a:
  - member of the children's immediate or extended family,
  - relative or individual who has lived with the children in a parental or custodial relationship,

OR

- member of the community who has a cultural or traditional responsibility towards the children (this applies to emergency referrals only).

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal aid representation.

## | Exception |

Youth under the age of 18 who are wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

## | Exception reviews |

An application dealing with a matter under the Family Relations Act can be sent for an exception review if:

- the applicant has a mental or physical disability and is unable to represent him or herself. There must be a significant barrier that will create an injustice if the applicant is not represented;

OR

- a significant injustice can only be avoided by the appointment of counsel;

OR

- the applicant is traumatized by past abuse such that he/she is unable to represent him or herself.

Considerations:

- the applicant's issue is a matter of significance;
- the outcome will benefit the applicant if the case is successful;
- there will be a reasonable likelihood of success for the applicant if the case goes to court;
- the applicant does not have other viable options, other than legal representation, to deal with the issue.

# CFCSA

## | General Policy |

To qualify for legal representation, an applicant must:

- be financially eligible; and
- have a CFCSA problem covered by the CFCSA coverage guidelines.

An applicant must be:

- a parent (including parents in a same-sex relationships),



OR

- a party to the proceeding who is a:
  - member of the children's immediate family,
  - relative or individual who has lived with the children in a parent or custodial relationship,

OR

- member of the community who has a cultural or traditional responsibility towards the children.

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal representation.

Where an applicant is financially eligible and his or her children have been removed or are at risk of being removed, coverage is provided.

An applicant is not eligible for legal aid if he or she is in the care of the Ministry of Children and Family Development (MCFD). In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

If legal representation is denied, an applicant may request a coverage review or a financial eligibility review.



## Important information about bed bugs provided by TRAC

- 1 Tenant must tell landlord about the bed bug problem as soon as it is possible, if the tenant is informing about the problem after the infestation, landlord can charge the cost from the tenant.
- 2 Tenant must ask the landlord to provide the treatment
- 3 It is always good to present the problem in writing
- 4 If landlord is bringing somebody to look at your house for treatment, tenant has to let them in, if they don't allow that person to come in, the tenant can be evicted
- 5 Tenant must comply with the treatment. Tenant can be evicted if does not cooperate. If landlord can get the treatment done fast, Tenant might not want to insist on proper written notice (i.e delay treatment)
- 6 If landlord does not respond in timely manner, tenant should put it in writing at that stage(Page 32 Tenant survival guide)
- 7 If Tenant is going is going for hearing, they can make a request to issue a order for rent reductions, repairs and proper treatment.
- 8 In the case of fixed term lease, you cannot break the lease until you let the land lord know.
- 9 Tenant should not throw out the beds. Tenant can buy encasements instead for both boxspring and mattress. Bed bugs can die inside the casements. Lot cheaper than buying new beds.

### Community and Publishing Services



## Legal Aid Services and Family Law

### | New Family Law Rules – BC Supreme Court |

- The Family Justice Reform Working Group report in 2005 outlined a new vision for family law in BC touching on a range of family justice services and processes that should be available to people in BC experiencing family breakdown
- One of the recommendations of the report was creating simpler family court rules to provide a more accessible and streamlined process for family cases in Supreme Court
- The rules were drafted by a committee of senior judges and family lawyers and came into effect July 1st, 2010
- LSS has worked with the Attorney General to develop resources to help the public understand and follow the new family rules

### | Community Advocate Support Line (CASL) service |

- A senior lawyer provides legal advice, information and support to advocates working on behalf of clients
- Assistance is offered on legal matters such as housing, welfare, family law, employment insurance and employment law, benefits such as CPP disability, consumer and debt and bankruptcy issues

### | The Simplified Family Tariff and proposed Simplified CFCSA Tariff |

- A priority of LSS has been to streamline administrative processes so that lawyers can focus more resources on client services
- One initiative was to simplify the tariff which outlines how lawyers are paid when they handle a family legal aid case
- The simplified tariff makes it easier for LSS and lawyers to explain to clients the range of services that are included in a legal aid referral
- The simplified family tariff came into effect June 29, 2010 and it provides a basic number of hours to the lawyer and much more discretion for the lawyer to decide how to use those hours to benefit the client suited to the client's particular needs

### | The proposed new Family Relations Act – highlights of the White Paper |

- The Attorney General began a review of the Family Relations Act in 2006
- Goals of this review were to modernize the law, support cooperative approaches to resolving family law issues and create a statute that is easy to understand

- The review began with research into family law reform underway in other jurisdictions and recommendations for reform made by family law experts
- The Attorney General has issued the White Paper to allow the public an opportunity to comment on the proposed new family law
- Feedback from the White Paper will be considered and used to finalize the new family law before the bill is introduced in the Legislative Assembly of BC

### **| Lead Family Duty Counsel in Prince George |**

- The Family Duty Counsel Program has become part of core funding by LSS for family law
- Brief next step advice is offered in court to people with family law problems who do not qualify for representation through a legal aid referral
- LSS has contracted with lawyers in 8 locations in BC to provide this service
- These lawyers will act as a liaison for clients and the court registry and local lawyers to problem solve and help administer the program locally
- Beatrix Josephy has been contracted to provide this service in Kamloops beginning October 1st, 2010