

AGENDA
Law Foundation of BC and Legal Services Society
Provincial Training Conference

PROVINCIAL TRAINING CONFERENCE 2014 - Radisson Hotel, 8181 Cambie Road, Richmond, BC V6X 3X9 (Aberdeen skytrain)				
TUESDAY, OCTOBER 28, 2014 - 8:00 am - 5:00 pm and Dinner at 6 pm				
8:00 -	Registration and materials pick-up			
8:30 - 9:00	Opening, welcome (Mark Benton QC and Wayne Robertson QC), and announcements			
9:00 - 10:30	<p>Update on Legal Issues at the Residential Tenancy Branch</p> <p>This session will provide an update on changes to residential tenancy law in the last year. The Executive Director of the Residential Tenancy Branch will speak about the work of the branch, trends in dispute resolution, service improvements, and changes to the Dispute Resolution Rules and policy, as well as other updates to policy. You will also hear from CLAS about developments in the law regarding verbal tenancy agreements, roommates and the availability of relief beyond the RTB.</p> <p><i>Cheryl May, Executive Director, Residential Tenancy Branch</i> <i>Kaity Cooper, lawyer, CLAS</i> <i>Kendra Milne, lawyer, CLAS</i></p> <p>BALLROOM AB</p>	<p>Family law resources and services</p> <p>This session will provide important updates about PLEI resources, self-help resources, and additions to LSS advice and representation services.</p> <p><i>Alex Peel, Legal Services Society</i> <i>Kathryn McCart, People's Law School</i> <i>Dave Nolette, Justice Education Society</i> <i>Nate Russell, Liaison lawyer, Courthouse Libraries BC</i> <i>Jimmy Yan, Marie-Noel Campbell, Access Pro Bono</i></p> <p>CAMBIE ROOM</p>	<p>Getting to the Roots of Tolerance</p> <p>An interactive workshop that builds awareness of issues impacting Indigenous people within a practice framework. Participants will engage in activities and discussion about the root of inequities for Indigenous people and also gain understanding of some of the most common stereotypes impacting Indigenous people. The overarching narrative framework that informs and embeds these stereotypes is also highlighted, assisting participants to connect the systemic nature of social inequalities. Participants have opportunities to learn and apply useful concepts and language to interrupt these social realities. A brief introduction to the Indigenous Cultural Competency On-Line Training program will also be provided.</p>	
BREAK 10:30 AM - 10:45 AM				
10:45 - 12:15	<p>Residential Tenancy Systemic Advocacy Panel</p> <p>This session will provide an update on the results of systemic advocacy in tenancy law in the last year and a discussion of ways advocates can contribute to systemic efforts going forward. The session will include discussion of proposed amendments to the Residential Tenancy Act and the Residential Tenancy Branch Ombudsperson Complaint Kit.</p> <p><i>Kaity Cooper, lawyer, CLAS</i> <i>Kendra Milne, lawyer, CLAS</i></p> <p>BALLROOM AB</p>	<p>Protection Orders Update</p> <p>An update on protection orders and a discussion about practice issues that have arisen over the past year.</p> <p><i>Amanda Rose, lawyer</i></p> <p>CAMBIE ROOM</p>	<p><i>Rain Daniels, Facilitator, Provincial Health Services Authority (PHSA) Indigenous Cultural Competence Program</i></p> <p>BALLROOM C</p>	
LUNCH 12:15 - 1:45	<p>Civil Resolution Tribunal Update: An update for advocates about the Civil Resolution Tribunal and its plans for the coming year. <i>Shannon Salter, Chair, Civil Resolution Tribunal</i></p>			
1:45 - 3:15 pm	<p>Child Protection Legal Update</p> <p>An update on changes to child protection legislation over the past year and how it will affect your clients and your work as an advocate</p> <p><i>Dannielle Dunn, lawyer (Ministry counsel)</i> <i>Amanda Rose, lawyer (parents' counsel)</i></p> <p>BALLROOM AB</p>	<p>Addressing Energy Poverty: Seeking Protections for Low Income BC Hydro Ratepayers</p> <p>In the face of significant increases to BC Hydro rates, BCPIAC is attempting to get some rate relief for low income ratepayers. This workshop is an opportunity to hear about BCPIAC's strategy for the upcoming BC Hydro rate design application at the BC Utilities Commission, and how you can help BCPIAC gather evidence about the impact of increasing rates on your clients.</p> <p><i>Sarah Khan, lawyer, BCPIAC</i> <i>Erin Pritchard, lawyer, BCPIAC</i></p> <p>BRIDGEPORT ROOM</p>	<p>Laying the Groundwork: How to effectively prepare your client's case</p> <p>This workshop presents a structured approach for preparing your cases. The course will help you assess the merit of your files, manage your client's expectations, and prepare effectively for negotiation, written advocacy or a tribunal hearing in any area of law. This course will also provide some instruction on how to read and understand statutes</p> <p><i>Kaity Cooper lawyer, CLAS</i> <i>Kendra Milne, lawyer, CLAS</i></p> <p>CAMBIE ROOM</p>	<p>Resources for Poverty Law Advocates: new resources and new formats</p> <p>Learn about new resources, often with innovative approaches or formats, that will help you do your work as an advocate. See the new advocapedia, wikibooks, PLSAsk (an online referral service), TRAC's new website, and virtual services from JES.</p> <p><i>Nicky Dunlop, advocapedia</i> <i>Kathryn McCart, People's Law School</i> <i>Dave Nolette, Justice Education Society</i> <i>Nate Russell, Liaison lawyer, Courthouse Libraries BC</i> <i>Andrew Sakamoto, TRAC</i></p> <p>BALLROOM C</p>
3:30 - 5:00	<p>Child Protection - Important rights and benefits</p> <p>A session about the supports available from MCFD. Some issues that will be considered are transition grants, the role of extended family, support for Aboriginal clients, independent living, and agreements for young adults.</p> <p><i>Katrina Harry, lawyer</i> <i>Melanie Mark, Associate Deputy Representative, Advocacy, Aboriginal and Community Relations</i> <i>Amanda Rose, lawyer</i></p> <p>BALLROOM AB</p>	<p>Procedural Fairness: Understanding what it means and what to do when it is denied</p> <p>Throughout our work we come across examples of government decision-makers and tribunals making unfair decisions. In this session, we will be focusing in on the types of decisions that make the process, whether it is in the context of written submissions or an oral hearing, unfair. We will provide some examples of breaches of procedural fairness by government decision-makers and tribunals and think through some strategies we can use to identify and challenge this type of unfairness.</p> <p><i>Sarah Khan lawyer, BCPIAC</i> <i>Lobat Sadrehashemi, lawyer, BCPIAC</i></p> <p>BRIDGEPORT ROOM</p>	<p>CONTINUED -</p> <p>Laying the Groundwork: How to effectively prepare your client's case</p> <p>CAMBIE ROOM</p>	<p>Advocacy Resources and Services for Seniors : How BCCEAS can help you help your clients</p> <p>An update on resources and services BCCEAS has to help advocates working with seniors who qualify for the service. BCCEAS has expertise on issues affecting seniors such as: financial and other abuse, fraud, power of attorney, and residential care. Various legal services are available to seniors and their advocates: staff lawyers at the Elder Law Clinic can take on cases requiring a lawyer, a legal advocate, and a phone service with translation and TTY services.</p> <p><i>Kevin Smith, lawyer, BCCEAS</i></p> <p>BALLROOM C</p>
6:00	DINNER: food, celebration and music by Tambai marimba			

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WEDNESDAY, OCTOBER 29, 2014 8:30 am - 4:30pm				
8:30 - 9:00	LSS Update on New Projects to Improve Access to Justice: Justice Innovation and Transformation Initiatives and the My Law BC Website <i>Sherry MacLennan, Director, Public Legal Information and Applications and David Griffiths, Manager, Legal Services Society</i>		PLENARY BALLROOM AB	
9:00 - 10:30	Welfare updates and practical strategies – Part 1 - General This session will be hosted by a panel of lawyers and advocates who will provide some updates on welfare policies, and discuss strategies for dealing with systemic problems. Topics will include the new annualized earnings exemption for clients on PWD, using Tax Free Savings Accounts for disability trusts, how to prepare Ombudsperson complaints, systemic litigation update, and more. <i>Robin Loxton, advocate, Disability Alliance BC (DABC - formerly BC Coalition of People with Disabilities)</i> <i>Kendra Milne and Alison Ward, lawyers, CLAS</i> <i>Sarah Khan, Erin Pritchard and Lobat Sadrehashemi, lawyers, BCPIAC</i> BALLROOM AB	Police accountability BC has a long history of difficult relationships between police and marginalized people, including Indigenous peoples. BC has a variety of police oversight and accountability mechanisms that apply to municipal police, and the RCMP. The newly-formed Independent Investigations Office, the provincial Office of the Police Complaints Commissioner, and the Commission for Public Complaints Against the RCMP each have different functions within this system, as do the courts and the provincial coroner. This session will provide information on the system, how the pieces work together, and what clients can expect when they interact with the police accountability system. <i>Josh Paterson, Executive Director, BC Civil Liberties Association (BCCLA)</i>	Family Law Act case update An overview of the new case law evolving under the Family Law Act and important developments in family law relevant to the work of legal advocates. <i>JP Boyd, Executive Director, Canadian Research Institute for Law and the Family</i> BALLROOM C	
BREAK 10:30 AM - 10:45 AM				
10:45 - 12:15	Welfare updates and practical strategies – Part 2 – Service quality issues This session will focus on barriers that people in need of welfare are encountering as a result of recent changes at MSDSI, including the Integrated Case Management system, office closures, centralized phone queue, the Myselfserve portal, and call time limits. Drawing on service quality problems identified by advocates, we will discuss strategies to deal with these systemic issues, including practical tips for how advocates can support systemic work if they are not already involved in it. <i>Kendra Milne and Alison Ward, lawyers, CLAS</i> <i>Sarah Khan, Erin Pritchard and Lobat Sadrehashemi, lawyers, BCPIAC</i> BALLROOM AB	Technology and Advocacy Learn how technology can make your work easier and more efficient. The course is for advocates with limited technology skills or resources. It will provide information about things such as keyboard shortcuts, techniques to make word and excel work better and faster, and free online software that will help you organize your work. <i>Andrew Sakamoto, Executive Director, TRAC, Tenants Resource and Advisory Centre</i> CAMBIE ROOM	Custody and Guardianship An overview of the relationship between custody under the Divorce Act and guardianship under the Family Law Act, as well as the factors, including violence, which contribute to decisions on guardianship, parenting arrangements and contact. <i>JP Boyd, Executive Director, Canadian Research Institute for Law and the Family</i> BALLROOM C	
LUNCH 12:15 - 1:45	PovNet lunch <i>Penny Goldsmith, Nicky Dunlop</i>			
1:45 - 3:15	Effective Advocacy for Mental Health Consumers / Survivors This workshop will address the behavioural, cognitive and other challenges that come with working with persons with mental health issues. It will provide information, resources and tools on mental health generally, and will address issues such as reducing barriers to service, the gendered and multicultural aspects of mental health, effective case management and improving responses to challenging behaviours. <i>Kristi Yuris, Manager, The Kettle</i> BALLROOM AB	Debt Learn the legal concepts and practical knowledge you need to help your clients with various debt and consumer law problems. This workshop explores questions like: Who is liable for what debts? What defences may be available, and how can you assert them? What protection do impoverished clients have against collection by FMEP, or other creditors? When may bankruptcy be a good option for a client? What about special types of debts, like student loans? Bring your questions and your thinking caps! <i>Alison Ward, lawyer, CLAS</i> <i>Manjeet Chana, lawyer</i> BRIDGEPORT ROOM	Can You Convince Me? How to develop persuasive written arguments An interactive workshop designed to help you synthesize your cases in order to create clear, convincing, and focused written submissions. Note: this course does not focus on technical business writing skills; instead it focuses on how to tell your client's story in a persuasive way. <i>Kendra Milne, lawyer CLAS</i> <i>Devyn Cousineau, lawyers, CLAS</i> CAMBIE ROOM	Risk Assessment across Communities: Working effectively with clients dealing with violence This workshop will provide in-depth information and tools to understand the important of risk assessment and safety planning in situations involving domestic and sexual violence against women and children. <i>Harjit Kaur, Gisela Ruebsaat, Debby Hamilton, Ending Violence Association</i> BALLROOM C
BREAK 3:15 - 3:30 PM				
3:30 - 5 PM	CONTINUED Effective Advocacy for Mental Health Consumers / Survivors BALLROOM AB	CONTINUED Debt BRIDGEPORT ROOM	CONTINUED Can You Convince Me? How to develop persuasive written arguments CAMBIE ROOM	Helping clients with Affidavits when there is violence involved Practical advice from a family law lawyer and an advocate working in the area about how advocates can help clients facing violence when they are drafting their affidavits <i>Ram Sidhu, advocate, SOURCES</i> <i>Uphar Dhaliwal, lawyer</i> BALLROOM C

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THURSDAY, OCTOBER 30, 2014 8:30 am - 3:45 pm				
8:30 - 10:00	<p>Rights on Reserve: A legal overview of issues that arise on reserve</p> <p>This workshop will provide a legal overview for issues that arise on reserve. Topics covered include, for example: Income Assistance, Family Law, Status & Band Membership, and Housing.</p> <p>Amber Prince, legal advocate, Atra Rhaea Bailey, lawyer Katrina Harry, lawyer</p> <p>BALLROOM AB</p>	<p>Social Security Tribunal: Where are we now?</p> <p>An update on the experience of advocates going to the SST for CPP appeals. The session will incorporate discussion on best approaches to working on these issues with the SST.</p> <p>Peter Beaudin, advocate, Disability Alliance BC Ashley Silcock, advocate, Disability Alliance BC</p> <p>BRIDGEPORT ROOM</p>	<p>Legal Services Society (LSS) Update</p> <p>Understand what the new client intake and management tool will mean for your clients and find out how LSS manages demand for service within its budget. This is an opportunity to discuss issues arising in your advocacy work with LSS staff.</p> <p>Kathryn Spracklin, Manager, Strategic Planning and Policy, Branka Matijasic, Manager, Intake and Referral Services, Lynn McBride, Community Engagement Coordinator</p> <p>CAMBIE ROOM</p>	<p>Professional responsibility and file management</p> <p>This session will examine the ethical duties associated with being an advocate, such as confidentiality and avoiding conflicts. These concepts will be reviewed and then applied to sample fact patterns. File management will cover practical pointers for efficiency in managing paperwork and fulfilling administrative responsibilities.</p> <p>Michael Seaborn, Program Director, Law Foundation of BC</p> <p>BALLROOM C</p>
BREAK 10 AM - 10:15 AM				
10:15 - 11:45	<p>Working effectively with clients dealing with violence: skills and information for non-family law advocates</p> <p>A session that will talk about screening tools, questions to ask, cultural issues, safety plans and resources for advocates to help clients affected by violence.</p> <p>Andrea Vollans, advocate, YWCA Dalya Israel, WAWAW Vicky Law, Battered Women's Support Services Grace Tait, Musqueam Indian Band Lisa Rupert, YWCA Sital Kaur, South Vancouver Neighbourhood House</p> <p>BALLROOM AB</p>	<p>Rights in the Workplace</p> <p>Learn about the rights of workers to minimum employment standards, freedom from discrimination and a safe workplace. This session will provide an overview of workers' rights as well as practical advice for how and where to enforce them.</p> <p>Devyn Cousineau, lawyer, CLAS</p> <p>BRIDGEPORT ROOM</p>	<p>Wills and Estate Act (WESA) update</p> <p>An update on how changes in the Wills and Estate Act are working in practice and how these might affect your clients.</p> <p>Mary Childs, lawyer</p> <p>CAMBIE ROOM</p>	<p>CONTINUED</p> <p>Professional responsibility and file management</p> <p>BALLROOM C</p>
LUNCH 11:45 - 1:45	<p>Law Foundation lunch (2 hours)</p> <p>Law Foundation funded advocates will meet in the main meeting room. Other advocates have a longer lunch break until 1:45.</p>			
1:45 - 3:15	<p>Resisting Burn Out with Justice-doing</p> <p>Those working with people struggling with poverty, violence and oppression are often told that they will "burn out". Contrary to this is the story of sustainability; how our collective work sustains us, nourishes our hope, invites us to honour the resistance and strength we witness in the people we work alongside, and allows us to work congruently with our ethics. This experiential workshop will address our Collective Ethics, and Collective Care as opposed to self-care, and how they might access support when burnout attacks.</p> <p>Vikki Reynolds, consultant and instructor</p> <p>BALLROOM AB</p>	<p>Manufactured Home Parks: Practical Advice</p> <p>Learn about the differences between the Manufactured Home Park Tenancy Act (MHPTA) and the Residential Tenancy Act, as well as practical steps for dealing with evictions at a manufactured home park. We'll cover potential sales of manufactured homes, what landlords can or cannot do with a tenant's belongings, and when a campground may be covered by the MHPTA.</p> <p>Josh Prowse, lawyer, CLAS Amita Vulimiri, lawyer, CLAS</p> <p>BRIDGEPORT ROOM</p>	<p>Legal Research</p> <p>An opportunity to learn about the latest, best tools for doing legal research and keeping up-to-date on changes to the law. Learn the basics of doing research on CanLII and some of the special features that will make your life easier.</p> <p>Meghan Maddigan, Liaison Lawyer, Courthouse Libraries BC</p> <p>CAMBIE ROOM</p>	<p>Conditional Permanent Residence for Spouses: The Dangers of Making Immigration Status Conditional on Living with a Spouse</p> <p>In October 2012 the federal government amended Canada's immigration regulations by introducing the status of "conditional permanent residence" for spouses. Some spouses must, as a condition of their permanent residence status, co-habit continuously in a conjugal relationship with their spouse for a period of two years after they receive their permanent residence. In this session we will take a closer look at who is impacted by these changes, the abuse/neglect exception provided for in the legislation, and the possibility of a legal challenge to the provision.</p> <p>Lobat Sadrehashemi, lawyer, BCPIAC</p> <p>BALLROOM C</p>
CLOSING 3:15 - 3:30 - PLENARY IN BALLROOM AB A1				

Provincial Training Conference
Sponsored by the Law Foundation and Legal Services Society
October 28th to October 30th, 2014

Radisson Hotel Vancouver Airport
8181 Cambie Road
Richmond, BC V6X 3X9

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Provincial Training Conference
Sponsored by the Law Foundation and Legal Services Society
October 28th to October 30th, 2014

Radisson Hotel Vancouver Airport
8181 Cambie Road
Richmond, BC V6X 3X9

SPEAKERS (alphabetical by speaker's last name)

Rhaea Bailey - Barrister & Solicitor

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Rhaea is Metis from Fort Chipewyan, Alberta but has been raised in BC. Rhaea is a graduate of UBC Law and she was called to the bar in 2010. Rhaea currently practices primarily family and child protection law.

Peter Beaudin - Pension Plan Disability Benefits Advocate

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Peter is a Canada Pension Plan Disability Advocate with Disability Alliance BC. He assists individuals with application, reconsideration requests, and provides representation before the Social Security General Division and Appeal Division. Peter's background includes advocacy in human rights, labour, immigration, and landlord/tenant law. He has also been a community and union organizer.

John-Paul Boyd - Executive Director

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John-Paul is a member of the bars of British Columbia and Alberta and presently serves as the executive director of the Canadian Research Institute for Law and the Family, an independent non-profit organization affiliated with the University of Calgary.

Before joining the Institute in 2013, John-Paul spent thirteen years in private practice in Vancouver, serving as a litigator, arbitrator, mediator and parenting coordinator. John-Paul is frequent speaker on family law topics for the National Judicial Institute, the National Family Law Program and the Canadian Bar Association. His written work has been published by the UBC

Law Review, Canadian Family Law Quarterly, the Department of Justice, the Advocate and the Legal Services Society of British Columbia.

John-Paul is the founding author of the public legal education wikibook JP Boyd on Family Law, published by Courthouse Libraries BC, and its syndicated companion blog, the first law blog to be cited in a Canadian court judgment. In a 2012 report of the Public Legal Education and Information Working Group, John-Paul was named as one of the six major providers of public legal education on family law in British Columbia, along with organizations such as the Legal Services Society and the Ministry of Justice.

Marie-Noel Campbell - Program Coordinator

Access Pro Bono Society of BC
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Marie-Noel is a Co-Founder and Coordinator of the Access Pro Bono Mental Health Program (the "Program"). Ms. Campbell acts as a pro bono advocate for patients detained under the BC Mental Health Act. She has also drafted a guide on how to represent patients detained under the Mental Health Act and trained over 150 lawyers, law students and community workers volunteering with the Program.

Manjeet Chana - Barrister & Solicitor

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Manjeet was called to the BC Bar in 2000. She worked in private practice for three years and then became a staff lawyer with the LawLINE, a telephone legal advice and information line operated by Legal Services Society until 2010. Since 2010, Manjeet has been working with the Legal Services Society on a part-time contract basis. On short-term contracts in 2012 and 2013, Manjeet has also worked with the Community Legal Assistance Society, both with the UBC Law Students' Legal Advice Program as Supervising Lawyer and with Alison Ward on CASL when needed. Over the past year and a half, she also co-facilitated online family law course sessions through the Justice Education Society. Manjeet is a past presenter at the annual Provincial Training Conference for Advocates and is happy to be a speaker at the Debt session with Alison this year.

Mary Childs - Barrister & Solicitor

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Mary is a partner and co-founder of Ethos Law Group LLP, an all-female law firm whose clients include individuals as well as charities, not-for-profits, cooperatives and social enterprises. She has taught law at universities in both the United Kingdom and Canada, and sits on the Lawyer Education Committee of the Law Society of British Columbia. For several years she has provided summary legal advice to women at weekly clinics hosted by Atira Women's Resource Society, in conjunction with Pivot Legal Society.

Kaity Cooper - Barrister & Solicitor

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Kaity has worked as a staff lawyer at Community Legal Assistance Society in Vancouver since March 2012. Kaity helps clients with various legal problems including those in the areas of housing, workers' rights, human rights and income assistance.

Devyn Cousineau - Barrister & Solicitor

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Devyn works to empower her clients to understand and exercise their legal rights. She focuses her current practice on advancing the rights of workers.

Devyn joined CLAS in 2008, after clerking at the BC Court of Appeal and Supreme Court of Canada. She has fought for her clients before administrative tribunals and at all levels of court, including the Supreme Court of Canada in a landmark case which affirmed the right of all children to an education.

In 2014-2015, Devyn will be working in partnership with the West Coast Domestic Workers' Association and the BC Federation of Labour to provide mobile legal clinics to migrant workers across the province.

Devyn is the supervisor of the legal advocacy program at North Shore Community Services, and a member of the legal committees of West Coast LEAF and the Employment Standards Coalition. She sits as a workers' representative on WorkSafeBC's Policy and Practice Consultative Committee. She has published and presented for the Continuing Legal Education's Human Rights Conference on the subjects of trans rights, discrimination in tenancy and disability management programs.

Rain Daniels - Facilitator, PHSA Indigenous Cultural Competence Program

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Rain is Anishinaabe, a member of the Saugeen Nation, and resides on Coast Salish territory in Vancouver. Rain has a Masters Degree in Adult Education and is a facilitator with the PHSA Indigenous Cultural Competency training program.

Rain has worked with both Indigenous and non-Indigenous people and communities for the last 24 years, including front-line work, community development, and in facilitating, training, and teaching capacities. Relationship building between Indigenous and non-Indigenous people through a decolonizing anti-racism framework is her main focus. Rain is also a facilitator in SFU's Certificate in Dialogue and Civic Engagement Program.

Uphar Dhaliwal - Barrister & Solicitor

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Uphar is a family law lawyer working in the Abbotsford area.

Nicky Dunlop - Training Coordinator

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Penny had the fortune of spending many years working as a Legal Advocate in both Williams Lake and in the Downtown Eastside of Vancouver. During her time as an advocate Penny also worked with youth who were living in various degrees of homelessness. After leaving front line work Penny spent a glorious year as the Executive Director of TRAC, a resource she relied on greatly as an advocate and never hesitated to refer clients to for housing issues. When Penny's son Rhys was born, her family decided to relocate to Vernon in search of a more laid back life. They've more than found that and are loving the Okanagan. One of the many benefits of their move was being able to reconnect to an organization that Penny worked for on and off and she has been back in saddle with PovNet for the last few years. It's an organization she is happy and proud to be a part of and hope she has a place there for years to come.

Dannielle Dunn - Barrister & Solicitor

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Danielle is the Counsel for the Director of Child, Family and Community Service since 2000. She is currently the Director's Counsel in the Tri-cities, the instructor at the JIBC, 'Legal Skills for Child Welfare Workers'.

Penny Goldsmith - Executive Coordinator

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Penny has worked in the anti-poverty community for over thirty years, as an advocate, and as a writer and editor of public legal education materials in plain language. For the past seventeen years she has been the executive co-ordinator of PovNet, an online information resource, communication network and teaching tool for anti-poverty front line workers and poor and otherwise marginalized people. She maintains a strong commitment to continuing to be part of a network that builds accessible and affordable online communities. She is also the owner of a small publishing house, Lazara Press, where she publishes and distributes progressive books and posters.

David Griffiths - Manager, Legal Services

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David has been a lawyer since 1985. He grew up in Vancouver and went to law school at McGill in Montreal. While in Quebec he learned enough French to declare himself functionally bilingual. He was defence counsel in the first bilingual jury trial in BC. David practiced criminal law and family law in the Downtown Eastside for fifteen years before joining the Legal Services Society. David is now the Manager of Legal Services at the Legal Services Society. He is responsible for all tariff services at LSS including criminal law, family law, child protection, immigration and judicial appeals. David lives in Vancouver where he regularly "borrows" Lois Shelton's cat.

Debby Hamilton - CCWS Regional Coordinator

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Debby has over 25 years experience in frontline, leadership and community coordination antiviolence work, in rural and urban settings. Her work was primarily for women and children impacted by intimate partner violence and sexual assault. Prior to joining the EVA BC's Community Coordination for Women's Safety as Regional Coordinator, Debby was Executive Director of Vernon Women's Transition House Society, an agency that provides a broad range

of services for women, children and girls who have experienced violence. Debby received her Bachelor of Social Work from the University of Victoria in 1999.

Debby is also cofounder of the North Okanagan Integrated Case Assessment Team, a provincial pioneer in interagency case assessment and safety planning for highest risk domestic violence, and North Okanagan Sexual Assault Response Team.

Katrina Harry - Barrister & Solicitor

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Katrina is Shuswap from Esketemc First Nation, near Williams Lake, BC. She completed degree in psychology from UBC in 2001 and graduated from UBC law in 2004. Katrina was called to the bar in BC in 2006. She started practicing in child protection more than five years ago, representing families and children in child protection matters. Katrina has also written or reviewed numerous publications for Legal Services Society over the years, relating to children in care, their families, family law, relationship violence, and other on-reserve matters.

Dalya Israel - Manager of Victim Services and Outreach Programs

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Dalya has a BA in Women's Studies from the University of British Columbia with a focus on Critical Studies in Sexuality. She started with WAVAW as a volunteer in 2002 and has had the great honor of working full time for WAVAW since 2005. Dalya is WAVAW's Manager of Victim Service, Volunteer and Outreach programs. She is very passionate about supporting the women WAVAW serves to access Justice in meaningful ways after a sexual assault.

Harjit Kaur - Program Manager

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Harjit is a Registered Clinical Counsellor in BC. She has worked in the Violence Against Women sector as a counsellor, advocate, researcher, and trainer for more than 20 years. Her work in the anti-violence sector involved working across diverse populations and communities in the Vancouver Lower Mainland region.

She has been in her current position as Program Manager at EVA BC for the last 8 years. During this time, she has been involved in many projects including consultations, training, project management, research and resource development. She is currently working on the Forced Marriages Project with MOSAIC and sits on the Advisory Committee of MOSAIC's Honour-Based Violence Project.

Sarah Khan - Barrister & Solicitor

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Sarah develops and litigates constitutional, administrative law and human rights cases in the areas of income assistance, disability benefits, employment standards and employment insurance, and access to legal aid. She also represents a coalition of social justice organizations in BC Utilities Commission proceedings, arguing for lower rates and higher quality of service for low-income electricity and natural gas ratepayers and basic auto insurance policyholders.

From 2010 to 2013, Sarah worked as an associate with Henshall Scouten, a law firm in Vancouver, where she practiced civil litigation.

She is a board member of West Coast Environmental Law and Willing Hearts International Society Canada.

Sarah received her law degree from the University of Victoria.

Vicky Law - Legal Advocate

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Vicky was called to the bar in Ontario in June 2013 and became a member of the Law Society of BC in May 2014. Prior to working at Battered Women's Support Services (BWSS), Vicky offered legal representation to women who have experienced violence at the Barbra Schlifer Commemorative Clinic, a non-profit organization in Toronto. Currently, Vicky is the legal advocate at BWSS, providing support to women who have experienced violence and are involved in the legal system.

Robin Loxton - Co-Director, Advocacy Access

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Robin has been a community advocate for over 25 years. Much of his work has been helping people access provincial disability benefits.

Sherry MacLennan - Director, Public Legal Information and Applications

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Sherry joined LSS as a staff lawyer in 2000. Since becoming director in 2009, Sherry has overseen the integration of information and referral services in the application process, the expansion of public legal education and information services to include community partners and enhanced Aboriginal services.

Meghan Maddigan - Legal Community Liaison

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Meghan is the Legal Community Liaison staff helping the legal community connect the dots between the world of practice and a broad range of legal information resources. Meghan is responsible for coordinating training at the Library and bringing professional, practice oriented training around the province.

**Melanie Mark - Associate Deputy Representative
Advocacy, Aboriginal and Community Relations**

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Melanie worked as a Child and Youth Advocate from the RCY's inception in April 2007 until January 2013, when she assumed responsibility for the RCY's advocacy mandate, Aboriginal relations, community outreach and youth engagement. Melanie has nearly 20 years experience working directly with children and youth in a variety of roles. She is responsible for building and maintaining effective collaborative relationships with all levels of government, First Nations and Metis organizations, and community leaders. Melanie is of Nisga'a, Gitksan, Cree and Ojibway descent and holds a Bachelor of Arts degree from Simon Fraser University.

Branka Matijasic - Intake & Referral Services Coordinator

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Branka joined the Legal Services Society in 2005. While at LSS, she has worked in a number of capacities but always within the Intake department. She is currently managing Intake and Referral services department which administers legal aid applications in more than 50 locations throughout BC.

Cheryl May - Executive Director

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Cheryl was appointed Executive Director in the spring of 2012 and is responsible for Residential Tenancy Branch services and provincial government policy related to the rental housing sector and adjudication of disputes between landlords and tenants.

Cheryl's interest in housing is long standing and within the provincial government she has led work on issues related to homelessness and social housing, strata properties, and the regulation of real estate agents and mortgage brokers.

Prior to entering government, Cheryl worked as a social worker and advocate in not-for-profit housing programs for women and youth.

Lynn McBride - Community Engagement Coordinator

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Lynn coordinates the community engagement project at Legal Services Society (LSS), providing support and training to 26 LSS Community Partners throughout BC. She has presented on community engagement to community groups at numerous regional workshops, and has extensive experience facilitating adult education workshops.

Kathryn McCart - PLE Service Coordinator

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Kathryn is the Public Legal Education and Information Coordinator at People's Law School and has been on the frontline services of People's Law School since 1986. Kathryn and her team organize legal education events at community centres, libraries, neighbourhood houses and community organizations and provide referral services to the public. Before working in public legal education, Kathryn worked as a library technician at the BC Hydro and UBC Libraries.

Kendra Milne - Barrister & Solicitor

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Kendra has been a lawyer at CLAS since 2007. Her legal practice covers a wide range of administrative schemes with a specific focus on legal issues that impact housing and income security. In particular, she works to ensure that BC's tenancy and income assistance systems operate equitably and provide adequate supports for people living in poverty. In Kendra's spare time, she likes to spend time with her partner and mystery mutt, bake from scratch like her grandma taught her, and dance (what she lacks in skill, she makes up in enthusiasm).

Dave Nolette - Communications & Web Manager

Justice Education Society
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Dave brings over 15 years of web development experience to the Justice Education Society. He is a recognized expert at applying digital technologies to improve access to justice.

Sital Parmar - Domestic Violence Worker

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Sital works in the community directly with women experiencing violence and has been for over 7 years. This involves safety planning with women who leave, women who have children and connecting them to other services.

Josh Paterson - Executive Director

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Josh joined the BCCLA as its Executive Director in January 2013. Josh's legal career has focused on protecting some of the most marginalized people in Canada from human rights violations, civil liberties restrictions, discrimination and environmental injustice.

Prior to joining BCCLA, he was the Aboriginal and Natural Resources Lawyer at West Coast Environmental Law, where he led that organization's highly effective legal work protecting the rights of people in northern and coastal BC.

Josh is Adjunct Professor of Law at the University of British Columbia Faculty of Law. He holds law and master's degrees from the University of Toronto, and clerked at Ontario's Superior Court of Justice.

Alex Peel - Publications Development Coordinator

Legal Services Society
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Alex is the Publications Development Coordinator at the Legal Services Society of BC (legal aid). For the past four years she has worked with communities throughout BC to get free legal publications to British Columbians. Legal aid BC provides free information in print and online about family law, family violence, child protection, criminal law, Aboriginal law, and some civil law.

Amber Prince - Legal Advocate

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Amber has been with Atira for the past 8 years and provide advocacy for women in the downtown eastside. The issues she most commonly works with women on are: income assistance, disability law, housing, family law, and information and privacy issues. Amber is of Cree and mixed European ancestry and a member of the Sucker Creek First Nation in Alberta.

Erin Pritchard - Barrister & Solicitor

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Erin joined BC Public Interest Advocacy Centre as a staff lawyer after completing her articling year there in 2012/13. Erin is involved in both BCPIAC's anti-poverty and regulatory work, and has a particular interest in administrative and human rights law. She has represented clients before various administrative tribunals, and in the Provincial Court of BC. Prior to her employment with BCPIAC, Erin worked as a legal advocate with Together Against Poverty Society (TAPS) in Victoria.

Josh Prowse -

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Joshua works as a staff lawyer with the Community Legal Assistance Society. His work is focused on housing, employment, and workers' compensation issues. In his spare time, Joshua enjoys riding his bicycle and hosting a radio show on Vancouver Co-op Radio.

Vikki Reynolds - Consultant

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Vikki is a Consultant, Instructor and Supervisor specializing in team development, resisting burnout and organizational change.

Amanda J. Rose - Lawyer

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Amanda trained as a lawyer in the UK and then again in Canada. She has a background as a mental health worker, and then as a legal advocate for the Kettle Association. Her interest areas are primarily in family and child protection. She also has a strong interest in appeal work. Outside of work, she spends a lot of time with her bulldog, Chief Justice Lumpy *CJ.

Gisela Ruebsaat - CCWS, Legal Analyst

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Gisela, called to the BC Bar in 1983, has worked as policy writer and trainer for both government and the community, with a focus on coordinated interdisciplinary responses to victimization. For the Ontario Attorney General, she worked on key justice reform initiatives including: court reform, youth justice, immigrant services, human rights, race relations and women's issues. In BC, she co-authored the Keeping Women Safe Report used as the blueprint for the 2010 provincial violence against women in relationships protocol on high risk cases. Gisela has delivered province-wide training on privacy and safety issues for provincial anti-violence organizations and is winner of the Ontario government Silver Medal Award and the BC Building a Safer Future Award for her work in the communications and anti-violence fields. Gisela currently works as Legal Analyst for EVA BC's Community Coordination for Women's Safety Program.

Lisa Rupert

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With more than 20 years of front-line and management experience working in housing and violence prevention, Lisa is the Director of Housing Services and Violence Prevention at YWCA Metro Vancouver, where she oversees seven housing communities for more than 430 low-income single mothers and their children. Throughout her career, Lisa has worked on projects that have influenced policies to support women leaving abuse. Through a collaborative approach and ongoing advocacy for the clients she serves, Lisa has created and implemented programs, facilitated workshops, been an active media spokesperson and a dedicated volunteer on housing and violence prevention services across Metro Vancouver.

Nat Russel - Liaison Lawyer

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Nate is a lawyer and works for Courthouse Libraries BC as a liaison to the legal profession. He practiced family law and civil litigation, and, prior to that, worked in media and internet development in the late '90s and early '00s. He is project coordinator for Clicklaw Wikibooks, and managing editor for over 30 contributors to JP Boyd on Family Law. He writes regularly for the Advocate magazine, and the national law blog www.slaw.ca — with topics ranging from legal information technology, social media, and various legal topics. Nate develops technology-related training programs for Courthouse Libraries BC's CPD offerings. He is a 2005 graduate of Dalhousie Law School.

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Lobat is a staff lawyer at BC Public Interest Advocacy Centre who practices in the areas of human rights, constitutional, regulatory and poverty law. Lobat graduated from the University of Toronto's Joint Law and Master of Social Work program and was called to the BC and Ontario bars in 2006. During law school she held summer fellowships at the Centre for Equality Rights in Accommodation and the Barbara Schlifer Commemorative Clinic. Lobat articulated and practiced refugee and immigration law at Lorne Waldman and Associates in Toronto. In Vancouver, Lobat continued to practice refugee and immigration law in private practice and at Pivot Legal Society. While at Pivot Legal Society Lobat also co-lead the child welfare reform campaign, co-authoring two reports on BC child protection system: "Broken Promises" a report about the child welfare system from the perspective of low-income mothers and "Hands Tied" a report on the experiences of social workers in the child welfare system. Through the Jane Doe Legal Network, Lobat provided legal advice and workshops for women without status who had experienced violence.

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Andrew earned a Bachelor's Degree in Communication from Simon Fraser University and has been the Executive Director at TRAC Tenant Resource & Advisory Centre for the past two and a half years. He is by no means an expert on technology, but enjoys learning about how technology can be used to improve workplace efficiency and the delivery of public legal education and information.

Shannon Salter - Chair

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Shannon is the Chair of the Civil Resolution Tribunal. Ms. Salter earned her BA (2001) and LLB (2005) from the University of British Columbia, and her LLM from the University of Toronto (2011). She clerked with the British Columbia Supreme Court, practiced at Farris LLP for several years and has served as a vice chair of the Workers' Compensation Appeal Tribunal since 2011. Ms. Salter is also a commissioner of the Financial Institutions Commission, vice president of the British Columbia Council of Administrative Tribunals, and a past board member of the College of Registered Nurses of British Columbia. She teaches administrative law at the UBC Faculty of Law as an adjunct professor and has been actively involved in providing pro bono legal advice through Access Pro Bono BC.

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Michael joined the Foundation in 2008. He has a BA in Psychology from the University of Waterloo and a Law Degree from the University of Calgary. He was called to the Bar in British Columbia in 1996. He has enjoyed two successive careers prior to working at the Foundation. First, he worked as an outdoor instructor with a variety of Outward Bound schools around the world. He then practiced law as a partner in a small, general practice on northern Vancouver Island, primarily in the areas of family and criminal law (both as prosecution and defense). In 2004 Michael spent a year in Africa, volunteering with the United Nations High Commissioner for Refugees, and working in refugee camps in Kenya. Following his return he wrote a book on those experiences.

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Kevin Smith has worked in the area of 'elder law' in BC for the past four years. This includes issues of legal capacity, adult guardianship, elder abuse and neglect including financial exploitation, and rights of older adults in seniors' housing such as assisted living and residential care. Prior to this Kevin worked in 'poverty law' in Ontario's legal clinic system for 30 years.

The last fifteen years in Ontario he was the Executive Director of the Parkdale clinic, a 'teaching clinic' for students of Osgoode Hall Law School, and the Co-Director of Osgoode's Intensive Program in Poverty Law.

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Kathryn is responsible for development of the society's strategic goals and performance measures for its annual service plan and oversees development of the policies that govern LSS's operations, including legal aid eligibility, tariff, and administrative policies. She also manages the statistical research and data analysis that guide the society's decision-making.

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Grace is works with the Musqueam Band as a Co-ordinator. She works on family violence and other issues.

Kathryn Thomson - Researcher

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Kathryn is a PhD Candidate in the Faculty of Law at the University of Victoria. She is also a lawyer and have worked primarily in the areas of law reform and legal process. Kathryn will be conducting research with legal advocates in BC over the next 6 months. Her research examines the effectiveness of technologies in assisting individuals in access justice. Her research aims to understand how advocates and their clients use technology and the impact of technology on effect to access justice.

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Andrea works primarily with women leaving abuse to navigate family law, child protection and other associated legal areas. Andrea primarily assists ongoing family law issues involving children and intimate partner violence. Andrea has done a lot of advocacy around working with mothers without legal status, as well as women facing court-related abuse and harassment.

Amita Vulimiri - Barrister & Solicitor

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Amita is a staff lawyer at CLAS, and works in the areas of housing, income security and workers' rights.

Before becoming a lawyer, Amita worked as a legal advocate with the St. Paul's Advocacy Office and with North Shore Community Resources, where she represented low income clients on administrative law issues. She has also practiced family and criminal law, working primarily with clients receiving legal aid, and has worked in Nairobi, Kenya with the Canadian Bar Association's Young Lawyers International Program.

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Alison has run the Community Advocate Support Line (CASL) since its inception in 2006. She works at the Community Legal Assistance Society (CLAS) in Vancouver where, through CASL, she collaborates with and advises advocates throughout BC on poverty law and family law issues. She is also a PovNet board member.

Jimmy Yan - Project & Information Officer

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Jimmy joined Access Justice in 2003 and served as its System Architect, Project Manager, and Acting Executive Director prior to its merger with Pro Bono Law of BC. He is a regular commentator on Fairchild Radio on issues of public legal education and information. Jimmy holds a M.Ed. in Law, Justice and Ethics. He is also a Research Assistant of the Centre for Education, Law and Society in the Faculty of Education at Simon Fraser University and a CELS educational advisor to the Chinese community.

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Kristi is a graduate of Simon Fraser University and UBC Law. She has been an advocate in some capacity for most of her adult life, working with women escaping violence, prisoners, people with HIV/AIDS and people with mental health issues.

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October 28, 29, 30, 2014

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TAB 1: Aboriginal Issues

- **Getting to the Roots of Tolerance (Day 1)**

Orange sheet

- **Rights on Reserve: a legal overview (Day 3)**

TESTIMONIALS

"I want everyone I work with to do this course - it is outstanding! I already felt like I had a lot of knowledge around Aboriginal issues, but this course weaves information together so effectively and I learned many new things."

- S.H.

"I felt very comfortable throughout and not judged for my feelings and thoughts."

-R.M.

"It shook my foundation."

-K.B.

"The course showed me a better way and provided insight into some of my current thinking and actions."

-C.F.

"It is one thing to learn about stereotyping, prejudice, discrimination and racism, it is another to see what it would be like to be the recipient of this in a clinical setting where respectful medical assistance should be the norm."

-L.M.

"This has been one of the most helpful educational experiences in my career!"

-B.C.

"The wonderful thing about learning from experience is that, although it can do nothing about the past, it will be invaluable for the present and the future."

- Zweibel, 2003

"The history of our people needs to be told. We need to present accurately what happened in the past, so that we can deal with it in the future... I don't like what has happened over the last 500 years. We can't do much about that. But what are we going to do about the next 500 years? What are we going to do about the next ten years?"

-Georges Erasmus (Dene), 1990

"In the event of medical error we must always see the opportunity to forgive the error... but we should not forgive an unwillingness to learn from it."

-Sir Liam Donaldson, 2008



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INDIGENOUS CULTURAL COMPETENCY TRAINING



PHSA Aboriginal Health

CONTACT US

Cheryl Ward, ICC Provincial Lead

icc@phsa.ca

www.culturalcompetency.ca

To Register, please visit:

<https://phsa.culturalcompetency.ca/register/phsa>

For Post-Training Support, please visit:

<https://phsa.culturalcompetency.ca/post-training-support/>

INDIGENOUS CULTURAL COMPETENCY (ICC) TRAINING PROGRAM

The *Indigenous Cultural Competency (ICC)* training program will be of interest to service providers who work directly or indirectly with Indigenous people in British Columbia. We currently offer three foundational courses and three advanced courses. This unique facilitated and self-paced online training program will increase your knowledge of Canada's Indigenous people, enhance self-awareness, and strengthen the skills you need to work more effectively with Indigenous people. Cohorts of 25 move through the ICC modules in a self-paced timeframe that enables time for different learning styles. Each student contributes insights to the cohort and works one-on-one with the facilitator to further their learning.

The mandate for this training comes from Action Item 19 of the Transformative Change Accord First Nations Health Plan: *First Nations and the Province will develop a curriculum for cultural competency for health authorities.*

Our goal is to provide you with the knowledge, awareness, and skills to promote positive interactions which will enable you to strengthen partnerships and relations with Indigenous people. ICC training provides important foundational training for all Canadians, especially those working with Indigenous people.

ICC FOUNDATIONAL TRAINING

ICC Core Health is an introductory training course for non-Aboriginal health professionals. Learning is self-paced over an eight-week window and typically takes between eight and ten hours to complete, though this could be longer or shorter depending on your style of learning. Upon completion of the course you will gain an appreciation for the diversity of Indigenous groups in B.C.; be able to recognize the impacts of colonization (including the link to the existing health disparities of Indigenous people); enhance your understanding of the role of self-awareness in cultural competency; and develop strategies to build collaborative relationships with Indigenous clients and patients.

ICC Core Mental Health is intended for non-Aboriginal mental health professionals. Learning is self-paced over an eight-week window and typically takes between nine and eleven hours to complete. This training includes many of the same topics that are covered in the ICC Core Health training, with a specific focus on mental health. Upon completion of the course you will have expanded on your knowledge, awareness, and skills. You will also have the ability to see the colonial impacts on Indigenous mental health and understand how services can be made relevant to Indigenous people.

ICC Core - Bystander to Ally is intended for non-health professionals working in organizations such as justice, policing, child and family services, education, business, and government. Learning is self-paced over an eight-week window and typically takes between eight and ten hours to complete. The course will provide you with opportunities to develop anti-racism skills, including exploring how you can become an effective ally while witnessing racism, bias, or stereotyping directed towards an Indigenous person.

Future trainings include justice modules, and a national course. ICC is currently partnering with the Southern Ontario Aboriginal Health Access Centre to deliver ICC training in Ontario.



ADVANCED ICC TRAINING

Post-Training Mental Health builds on the foundation provided in *ICC Core Health* with a focus on learning about mental health in an Indigenous context. You will have opportunities to deepen your understanding of pertinent issues including service utilization; the impact of Indian residential schools; cultural competence in mental health care; perspectives on health and wellness; and their implications for healing. Learning is self-paced over a four-week window and takes approximately three hours to complete.

Unpacking Our Colonial Relationship is intended for anyone who has completed one of the foundational training courses. This advanced level course examines how events of the past have shaped the present and provides counter narratives to the most commonly held beliefs about Indigenous people. You will have opportunities to deepen your understanding of many topics including "discovery", assimilation, pathology, colour-blindness, multiculturalism, and reconciliation. Learning is self-paced over an eight-week window and typically takes between eight and ten hours to complete.

From Bystander to Ally explores how you can become an effective ally while witnessing racism, bias, or stereotyping impacting service to an Indigenous person. You will learn how to assess situations, identify the presence of bias or racism, and develop strategies that are effective. It is our hope that you will find these tools useful, and in using them, you will be a powerful agent for change. Learning is self-paced over a six-week window and typically takes between three and four hours to complete.

Additional Supports: upon completion of Advanced training, an ICC facilitator is available to provide additional group training at your place of work to assist advancing cultural competency and integrate learning.

Rights on Reserve: A legal overview of issues

PRESENTED BY AMBER PRINCE, KATRINA HARRY, RHAEA BAILEY

Law Foundation of BC & Legal Services Society Conference
October 30, 2014

Overview:

- Introduction
- Social assistance & tenancy on Reserve, by Amber Prince
- Wills & estate issues on Reserve, by Rhaea Bailey
- Family law & property on Reserve, by Katrina Harry

Social Assistance on Reserve: Applying

On reserve, social assistance is dealt with federally rather than provincially.

Aboriginal and Northern Affairs Development Canada (AANDC) provides monies to Band Councils or other agencies on reserve to provide social assistance on reserve. The Band Council or agency given the funding is called the "Administering Authority."

Usually the starting place is to see a "Social Development Worker" with the Administering Authority who will assist with income assistance applications.

Both AANDC and the Administering Authority follow the "Social Development Policy and Procedure Guide" in determining when and how to provide social assistance, available here: <http://www.fnsds.org/income-assistance/social-assistance-online-manual>

Social Assistance on Reserve: Appealing

If social assistance or benefit is refused by the Social Development Worker / Administering Authority on reserve, this is the appeal process:

1. ask the Social Development Worker / Administering Authority for a "Request for Administrative Review Form". The Review Form must be completed within 20 business days of the denial.



2. AANDC will appoint a person to make a decision on the request for review.



3. The AANDC decision can be further appealed to an AANDC "Appeals Committee."



4. A further right to appeal may be possible by seeking a "Judicial Review" through the Federal Court of Canada

Social Assistance Resources:

More specific helpful information about social assistance on reserve can be found in *Social Assistance on Reserve*, by the Legal Services Society, available here:
<http://resources.lss.bc.ca/pdfs/pubs/socialAssistanceOnReserve.pdf>.

Chapter 16 of *Aboriginal People and the Law in BC*, by the Legal Services Society, available here:
<http://resources.lss.bc.ca/pdfs/pubs/Aboriginal-People-and-the-Law-in-BC-eng.pdf>.

People with Disabilities on Reserve by Disability Alliance BC (formerly Coalition of People with Disabilities) <http://www.disabilityalliancebc.org/docs/hs15.pdf>

Tenancy on Reserve: Jurisdiction

- Tenancies on reserve also fall under federal jurisdiction & the *Residential Tenancy Act* does not apply.
- This has been a confusing area because the Residential Tenancy Branch has in the past accepted some disputes on Reserve. However the BC Court of Appeal recently ruled that the RTB has no jurisdiction over tenancies on reserve. For more info on jurisdiction see:
 - *Sechelt Indian Band v. British Columbia*, 2013 BCCA 262, <http://canlii.ca/t/fxscv>; and
 - *Residential Tenancy Branch Policy Guideline: Jurisdiction*, <http://www.rto.gov.bc.ca/documents/GL27.pdf>.

Tenancy on Reserve: Exceptions

- If the landlord on reserve is not Aboriginal. In that case there may be limited jurisdiction for the Residential Tenancy Branch to be involved.
- Also some First Nations in BC have made treaty agreements which mean their lands are no longer categorized as "reserve lands."

Example: the Nisga'a and Tsawwassen lands are now categorized as "Treaty Settlement Lands" and are no longer reserve lands. In Treaty Settlement Lands, the Residential Tenancy Act and Residential Tenancy Branch do apply.

For more information about tenancy on Reserve and Treaty Settlement Lands, see this link by the Tenant's Resource Advisory Centre (TRAC): <http://www.tenants.bc.ca/main/?aboriginalreserveland>.

Tenancy disputes on Reserve

If working with a landlord or tenant on Reserve there are a few things to consider:

- Is there a written agreement / contract regarding the tenancy?
- Does the Band have any tenancy policies?

The Band Council or delegated body can make a decision about a dispute if the parties cannot agree.

The Band Council or delegated body has a duty to follow principles of "administrative fairness" and "natural justice." Tenancy decisions by a Band Council must be appealed within 30 days to the Federal Court if you disagree with the decision.

Resources:

- The First Nations Legal Clinic (now known as the Indigenous Community Legal Clinic): <http://www.law.ubc.ca/ils/clinic.html>.

- The Tenant's Resource Advisory Centre: <http://www.tenants.bc.ca/main/>.

Wills & Estates on Reserve: Jurisdiction

In the case of a "Status Indian" who ordinarily resides on reserve or Crown lands, the applicable law is the *Indian Act* and the *Indian Estate Regulations* (see sections 45 & 46). AANDC must also approve a will before it takes legal effect.

AAND also has the authority to declare a will null and void in whole or in part in some circumstances, such as:

- Where the will-maker did not have capacity or was under duress

- The terms of the will impose a hardship on people the will-maker has a responsibility to provide for such as a spouse or dependent children

- The will disposes of Reserve land "in a manner contrary to the interest of the Band or the *Indian Act*"

- The terms of the will are "so vague, uncertain or capricious that proper administration and equitable distribute of the estate of the deceased would be difficult or impossible to carry out."

- The terms of the will are against the public interest.

Wills & Estates on Reserve: When there no Will

If a status Indian on reserve dies without a will (or the will has been deemed invalid), other sections of the *Indian Act* and the *Indian Estates Regulations* will apply (see sections 48-50 of the *Indian Act*).

Section 48 of the *Indian Act* sets out how an estate will be distributed when there is no will as follows:

The first \$75,000 of the estate is inherited by a surviving spouse if there is one.



Any amount above \$75,000 is divided among the surviving spouse and the deceased's children. Example: if the estate is worth \$150,000 and there is a surviving spouse and two children, the spouse receives \$100,000 and each child gets \$25,000.



If there are children but no surviving spouse, the estate is divided equally among the children.



If there is no surviving spouse or children, the estate is distributed equally among the surviving parents of the deceased.

Wills & Estates on Reserve: Distribution con't when there is no will

If there are no surviving parents, children, or spouse, the estate is distributed among the siblings (brothers and sisters) of the deceased.



Where a sibling is deceased, his or her children (the deceased's nieces or nephews) may inherit their parent's share of the deceased's estate.



If the deceased has no surviving spouse, children, parents, siblings or nieces / nephews, the deceased's estate will be held by AANDC "for the benefit of the Band," and the rest of the estate is distributed among the heirs (see section 48(8) of the *Indian Act*).

Wills & Estates on Reserve: The surviving spouse & children

Whether or not there is a will, AANDC has jurisdiction over the estate of a status Indian who lived on reserve (or crown land).

If a family member dies on reserve, the first step is to contact the Decedent Estates Office at AANDC. The mandate of this office is to assist with the management of Indian Estates on reserve. For more information about this office, see: <http://www.aadnc-aandc.gc.ca/eng/1100100032519/1100100032520>.

The newly enacted federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* has also impacted wills and estates law on reserve. The Act can be found here: <http://laws-lois.justice.gc.ca/eng/acts/F-1.2/page-13.html#h-18>.

Wills & Estates on Reserve: New Act

The *Family Homes on Reserves and Matrimonial Interests or Rights Act* provides that:

A surviving spouse or common law partner of a status Indian on reserve is entitled to 1/2 of the "matrimonial interests or rights" on the death of their spouse or common law partner (section 34).

Surviving spouses who are non-members of the First Nation are also entitled to 1/2 of the "matrimonial interests or rights" on the death of their spouse or common law partner (also section 34).

When a spouse or common law partner dies, a surviving spouse (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 (section 14)

The surviving spouse may also apply to extend the 180-period of exclusive occupation of the matrimonial home.

Wills & Estates on Reserve: New Act con't

Under the *Family Homes on Reserves and Matrimonial Interests or Rights Act* a court can vary the amount owed to the survivor if:

- (1) the spouses had previously made agreements upon relationship break down,
- (2) a court order resolved issues related to relationship break down, or
- (3) if the amount to be paid to the survivor would be "*unconscionable, having regard to, among other things, the fact that any children of the deceased individual would not be adequately provided for*" (section 46).

Also, if a surviving spouse obtains an interest or right under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, the survivor may not also benefit from the deceased individual's will (section 37).

Wills & Estates on Reserve: When the Surviving Spouse is not status / a band member

A beneficiary who is **not** status Indian or a Band member is **not** entitled to inherit land on reserve.

If a will-maker leaves land to a person without Indian status or Band membership, AANDC must put the land up for sale, with the sale open only to Band members. The money from the sale will go to the beneficiary.

However, if a will-maker wants to prevent land from being sold, there are other options. The will-maker can, e.g., lease the home & lands to the surviving spouse to ensure their spouse can continue to live there after the will-maker's death. For more information about wills on reserve and options available, see: <http://www.afoabc.org/downloads/writing-your-own-will-kit.pdf>.

Surviving spouses and common law partners who are non-members of the Band also have new rights under the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, including:

- Entitlement to apply for 50% interest of the "matrimonial interests or rights" on the death of their spouse or common law partner;
- An automatic right to occupy the family home for a minimum of 180 days after the death of their spouse or common law partner; and
- Entitlement to apply for exclusive occupation of the matrimonial home for longer than the 180-day period.

Wills & Estates on Reserve: Making a Will

There are some helpful self-help resources available on making a will on reserve. See for example:

<http://www.afoabc.org/downloads/writing-your-own-will-kit.pdf>

<http://www.aadnc-aandc.gc.ca/eng/1100100025002/1100100025004>

<http://resources.lss.bc.ca/pdfs/pubs/A-Guide-to-Wills-and-Estates-on-Reserve-eng.pdf>

- ❖ Whether you have assisted someone with a will or not, it is a good idea to have a lawyer review the will to ensure it is valid, properly expresses the will-maker's intentions, and complies with the law.

Wills & Estates on Reserve: Challenging a will

If AANDC declares a will invalid, a person can appeal AANDC'S decision to the Federal Court (see s. 47 of the *Indian Act*). The appeal will need to be made within 2 months of AANDC declaring the will invalid and the value of the estate must be at least \$500.

Anyone concerned about the way a will is being dealt with either by the Band Council, the Executor, or AANDC may also want to seek legal advice from a lawyer knowledgeable about this area of the law.

RESOURCES:

- Indigenous Community Legal Clinic: <http://www.lss.bc.ca/assets/aboriginal/UBCFirstNationsLegalClinic.pdf>.
- Access Pro Bono: 604-878-7400 / <http://accessprobono.ca/willsclinic>
- Lawyer Referral Service: 604.687.663.1919 / 1.800.663.1919

Family law on Reserve: Intro

Generally, family law will apply the same way for Aboriginal and non-Aboriginal peoples. The BC *Family Law Act* and the *Divorce Act* will apply to Aboriginal peoples even if they live on reserve.

However this section will highlight a few key differences.

Family Law on Reserve: Customary Marriage

Marriage of Aboriginal peoples by traditional custom has been recognized as legal in a number of court cases:

- *Manychief v. Poffenroth*, 1994 CanLII 9130 (ABQB), <http://canlii.ca/t/2bc8v>; and
- *Baker v. Saskatchewan Government Insurance*, [1998] S.J. No. 376 (Q.B.), <http://canlii.ca/t/1ntfk>

To be recognized in Canadian law a customary marriage must be (1) voluntary (2) intended to last for life (3) monogamous and (4) viewed as valid in the community with the custom.

Family Law: Spouses

A spousal relationship is created through:

- (1) customary marriage
- (2) a (monogamous) marriage deemed valid in Canadian law (Canadian marriage or other country)
- (3) a "marriage-like" relationship of 2 people for at least 2 years (aka "common law marriage")
- (4) For the purpose of spousal support only, where there is a marriage-like relationship for less than 2 years but the parties have at least 1 child together.

Family Law: Spousal Support & Child Support

It is important to note that there is a 2 year time limit (after separation or divorce) for applying for **spousal support** in BC. Clients with family law issues should be referred to a lawyer asap.

If the person paying **spousal support** or **child support** is a Status Indian living and working on reserve, they will not be paying income tax. In this situation the courts have the direction to "gross up" or adjust the payor's income upwards in calculating support payments

The Spousal Support Advisory Guidelines are a useful tool in determining **spousal support** on and off-reserve: http://www.justice.gc.ca/eng/rp-pr/fl-lf/spousal-epoux/spag/pdf/SSAG_eng.pdf.

Child support on and off-reserve is calculated by using the *Federal Child Support Guidelines*, which are available here: <http://laws-lois.justice.gc.ca/eng/regulations/sor-97-175/index.html>

Family Law: Property on Reserve

When property is on reserve, provincial family laws do not apply.

In *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285, <http://canlii.ca/t/1ftsn>, the Supreme Court of Canada held that provincial family laws could not apply to grant a wife ½ interest in the properties her husband held with Certificates of Possession under section 20 of the *Indian Act*.

However, the BC Supreme Court can award compensation for the purpose of adjusting the division of family assets. Courts can order compensation based on a division of personal property and the value of the interest in land on the breakdown of a marriage.

It is difficult to predict what compensation would be awarded because it is difficult to estimate the market value of land on reserve.

Even if compensation is awarded enforcement on reserve can be difficult because the *Indian Act* states that "reserve lands are not subject to seizure under legal process."

Family Homes on Reserves and Matrimonial Interests or Rights Act

This new Act makes several important changes to family law on reserve:

- Protects spouses from having family homes sold without their consent;
- Provides spouses / common law partners with equal entitlement to occupy the family home unless & until they cease to be spouses or common law partners;
- Provides a formula for dividing the value of a home;
- Allows a court to order that a spouse or common law partner be excluded from the family home on an urgent basis (such as in situations of violence);
- Allows a court to provide short to long-term occupancy of the family home to only 1 spouse / common law partner;
- Allows a court to make an order that can be used to enforce a validly-written family law agreement between the spouses / common law partners; and
- Permits a surviving spouse to stay in the home 180 days after their spouse dies, even if they have no interest in the home or are not a member of the Band / First Nation.

Family law & children

The BC *Family Law Act* makes the “best interests” of the child the only consideration when decisions about parents & children are involved. S. 37 of the *Family Law Act* sets out the factors that will be considered in determining a child’s best interests.

The impact of family violence on a child’s safety, security or well-being is one factor that may be considered.

The BC *Family Law Act* does not specifically state that Aboriginal culture or heritage is a factor in determining a child’s best interest. However there have been several court cases that have recognized the importance of “aboriginal ancestry” and “cultural identity.”

See:

D.H. v. D.M., [1999] 1 S.C.R. 761, <http://canlii.ca/t/1fqng>

Van de Perre v. Edwards, 2001 SCC 60, <http://canlii.ca/t/51z8>

Family law & guardianship

Under the BC *Family Law Act*, only a parent who has lived with a child prior to separation or who has otherwise regularly cared for their child is considered the child’s **guardian**. A guardian has responsibilities which are set out in s. 41 of the *Family Law Act*, such as day-to-day decision-making.

Stepparents do not become guardians automatically but can apply to become one upon separation. A step-parent may become responsible for children support if they have contributed to a child’s care and provided financial support for at least 1 year, and application is made within 1 year.

Anyone can apply to adopt a child and will have the same obligations as a guardian. Adopted Aboriginal children retain Indian Status & are still eligible for band membership.

Guardianship & First Nations

Where there is an application for guardianship of a "treaty First Nation child" in a BC, ss. 208 & 209 of the *Family Law Act* stipulate that:

The First Nation government must be served with notice of the application;

The First Nation government has standing in the court proceeding; and

The court must consider the laws and customs of the First Nation in making its decision.

S. 208 of the *Family Law Act* applies specifically to Nisga'a children. Section 209 of the *Family Law Act* deals with other treaty First Nation children.

The current treaty First Nations in BC are the Tsawwassen First Nation and the Maa-nulth First Nation. The Yale First Nation also ratified a treaty on March 12, 2011, and is awaiting ratification from Canada. For an update of treaty negotiations in BC, see: <http://www.bctreaty.net>.

Guardianship & the *Indian Act*

In limited circumstances the *Indian Act* can also apply to the guardianship of an Aboriginal child.

Under s. 52 of the *Indian Act*, the Minister of AANDC is given the authority to appoint a person to be a guardian of the child for the administration of any property that child is entitled to receive.

AANDC's authority will only be exercised when both parents die without leaving a will that passes guardianship to some other person, or when there are serious concerns about the parents' ability to properly care for the child.

Custom Adoption

Canadian courts have recognized custom adoptions for many years. In a case called *Re Tagornak*, [1984] 1 C.N.L.R. 185, the Court set out criteria to determine whether a custom adoption has taken place:

- (1) The consent of both the natural and adoptive parents;
- (2) The child's placement with the adopting parents must be voluntary;
- (3) The adoptive parents must be Aboriginal or otherwise have a right in the community to rely on Aboriginal custom;
- (4) There must be a rationale for the specific Aboriginal custom adoption in question.

The BC *Adoption Act* also specifically recognizes custom adoption as having the same legal effect as an adoption under BC law. Therefore a recognized custom adoption will be the same as any other legal adoption with the same rights and responsibilities attached to it.

For more information about custom adoption and adoption of Aboriginal children in general see:
<http://familiesofaboriginalchildreninbc.blogspot.ca/2009/09/custom-adoption.html>.

Family law resources

Family Law Line

Phone: 604-408-2172 (select the Family Law Line option)

* Lawyers available through the Legal Services Society to provide free family law advice by phone.

Family Duty Counsel, Available in various cities / towns in BC

For more information, see:

http://www.legalaid.bc.ca/legal_aid/whereProvincialCourtDutyCounsel.php and

http://www.legalaid.bc.ca/legal_aid/whereSupremeCourtDutyCounsel.php

* Up to 3 hours or 3 appointments with a family law lawyer for advice & assistance for those who financially qualify.

Jane Doe Family Law Clinic for Women, in Vancouver

Phone: 604-255-9700 ext. 146

* Lawyer available to provide free legal advice about family law and for parents involved with MCFD.

TAB 2: Debt and Consumer Issues

- Addressing Energy Poverty: Seeking Protection for Low Income BC Hydro Rate Payers (Day 1)

- Powerpoint
- Advocacy FactSheet Dealing with BC Hydro
- Complaint to the BC Ombudsman

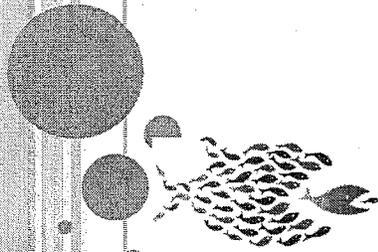
Orange sheet

- Debt Issues (Day 3)

1. Credit/Debt law handout by Manjeet Chana	1 to 11
2. Debt Repayment and Bankruptcy Solutions Credit Counseling Society of BC	12 to 13
3. Creditor Communication checklist and debt letters Credit Counseling Society of BC	14 to 20
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7. Bankruptcy Assistance Program (“BAP”) information	
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b) <i>McIntosh v. Laronde</i> , [1998] O.J. 5988	108 to 111
12. Enforcement by the Family Maintenance Enforcement Program, Alison Ward	112 to 115
a. Notice of Motion in maintenance enforcement proceedings	116 to 122
b. Statement of Income and Expenses	123 to 125
13. Regulation of Cell Phone contracts	126 - 127
14. Student Loans, by Alison Ward	128 – end

DEVELOPING ENERGY ASSISTANCE PROGRAMS FOR LOW INCOME BC HYDRO RATEPAYERS

October 28, 2014



BCPIAC
Public Interest Advocacy Centre

Presented by:
Sarah Khan & Erin Pritchard

AGENDA

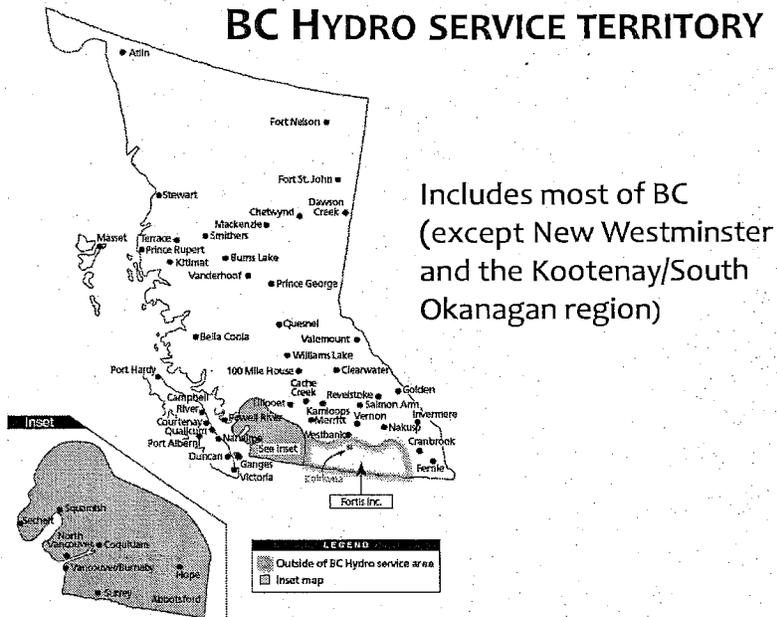
1. BC Hydro: Background
2. Basic Utilities Regulation Principles
3. Issues Facing BC Hydro's Low Income Customers
4. BC Hydro's Upcoming Rate Design Application
5. How You Can Help!

Otter breaks inspired by *Discount rates: A boring thing you should know about (with otters!)* By David Roberts

BC HYDRO: BACKGROUND

- BC Hydro is a provincial Crown corporation with a mandate to generate, purchase, distribute and sell electricity
- Its customers are divided into three main “classes”:
 - Residential
 - Commercial (SGS/MGS) (small businesses, annual peak demand up to 150 kW)
 - Industrial (LGS) (e.g. mills, mines, etc.)

BC HYDRO SERVICE TERRITORY



BASIC UTILITIES REGULATION PRINCIPLES

(...briefly, we promise.)

BC HYDRO IS A NATURAL MONOPOLY

Monopolies exist when:

- One entity can provide a service or product more economically than many small ones
- Barriers to participation exist (e.g. large financial investment required)

Natural Monopolies exist when:

- Cost and price are kept lower by having only one electricity supplier
- No other practical substitute exists for electricity generation and distribution
- Ratepayers need electricity and can't get it from other suppliers



MONOPOLIES: THE GOOD, THE BAD, AND THE UGLY

- Monopolies like BC Hydro prevent unnecessary and expensive duplication of infrastructure



- However: no competitors = little or no motivation to keep cost and price under control
- Regulation is a substitute for competition

UTILITIES REGULATION IN BC

The **BC Utilities Commission (BCUC)** regulates the following electricity, natural gas and auto insurance monopoly utilities:

- **BC Hydro**
- **FortisBC Energy**
- **FortisBC Inc.**
- **Pacific Northern Gas, and**
- **ICBC's compulsory basic automobile insurance**

HOW THE BCUC REGULATES UTILITIES IN BC

- BCUC regulates:
 - rates that all classes of ratepayers are charged
 - shareholder rate of return
 - scope and budget of capital projects
 - operation and maintenance of the system
 - system reliability and safety
 - utilities' compliance with regulatory requirements

- *Utilities Commission Act* requires that rates must not be unjust, unreasonable, insufficient, or unduly discriminatory

- Must find applications to be “in the public interest” to approve

HOW BC HYDRO PAYS FOR ITS COSTS

- As a regulated monopoly, BC Hydro pays for its costs through the money it collects from ratepayers

- BC Hydro is regulated by the BCUC, but also by “special directions” from the government

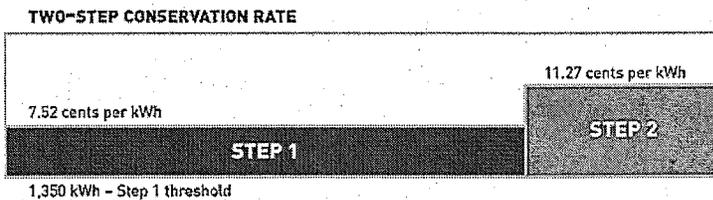
- For example, Special Direction No. 6 issued in March 2014 required (among other things) that the BCUC set BC Hydro's revenue requirement (i.e. rate increases) for 2015 and 2016

BCPIAC'S ROLE IN BC HYDRO'S REGULATION

- BCPIAC intervenes in BC Hydro applications at the BCUC on behalf of fixed and low income energy consumers
- We currently represent the BC Old Age Pensioners Organization, Active Support Against Poverty, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, Tenant Resource and Advisory Centre, and Together Against Poverty Society, known collectively in regulatory processes as "BCOAPO et al."
- We argue for keeping rates as low as possible, and ensuring that residential customers do not pay more than their fair share of costs

BC HYDRO'S RESIDENTIAL RATES

- Two tier residential inclining block rate



- This has a much higher impact on customers in single detached homes – only 55% of residential customers, but accounts for 69% of residential consumption

BC HYDRO RATE INCREASES: HISTORICAL AND FORECAST

Year	Rate Increase
2011	8%
2012	3.9%
2013	1.44%
2014	9%
2015	6%
2016	4%
2017	3.5%
2018	3%

BC HYDRO'S LOW INCOME CUSTOMERS

BC HYDRO INFORMATION ON LOW INCOME ACCOUNTS

- Anecdotally, about 10% of residential accounts are low income households
- Low income accounts amount to 7% of total consumption
- On average, low income accounts have lower consumption than the average accounts
 - Exception: older, drafty homes with electric heating

NO RATE RELIEF AVAILABLE FOR LOW INCOME CUSTOMERS

- Cumulative rate increase over 8 years will be 39%
- Income assistance rates have not been increased since 2007, and minimum wage is only \$10.25/hr (increased to this in 2012 following a decade long freeze)
- Increased energy costs without a corresponding increase in income means many residential customers will be unable to pay their bills—and may face power disconnections

NO RATE RELIEF AVAILABLE FOR LOW INCOME CUSTOMERS (CONT'D)

- There is currently no rate relief available for low income ratepayers who cannot pay their power bills
- The only exceptions are assistance through MSDSI
 - Utility security deposit supplement (repayable)
 - Crisis supplements (non-repayable)

OTHER BC HYDRO POLICIES THAT AFFECT LOW INCOME CUSTOMERS

- Connection fees (\$12.40 + tax)
- Disconnection for non-payment
- Reconnection fee (min. \$125)
- Late payment charges
- Security deposits
 - For customers with poor credit history, or no credit history with BC Hydro
 - Can be up to 2-3x the average estimated monthly bill
- Equal payment plans
 - Great in theory, but...

BARRIERS TO SETTING A SPECIFIC LOW INCOME RATE

- Two Canadian court cases have addressed the jurisdiction of a utilities commission to consider an income-based rate assistance program:

In *Advocacy Centre for Tenants Ontario v. Ontario Energy Board* (2008), the Ontario Superior Court of Justice held that the OEB has the jurisdiction to implement a low income affordability program.

In *Dalhousie Legal Aid Service v Nova Scotia Power Inc.* (2006), the Nova Scotia Court of Appeal reached the opposite conclusion, holding that Nova Scotia's Utility and Review Board did not have the jurisdiction to reduce power rates based on income.

"The rates and charges 'shall always... be charged equally' to persons of similar circumstances and conditions in respect of service. The statute does not endow the Board with discretion to consider the social justice of reduced rates for low income customers." (para. 27)

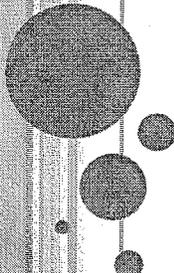
- These differing results can be largely explained by the wording of the enabling statute in each case.

LEGAL ATTEMPTS IN BC HAVE NOT BEEN SUCCESSFUL

- Legal attempts to try to get low-income rates in BC have not worked because the *Utilities Commission Act* (UCA) requires rates to be "non-discriminatory"
- In 2008, BCPIAC argued that BC Hydro should implement a "lifeline rate", but the proposal was denied by the Commission as it found that the majority of low income customers would be better off (or at least no worse off) under the residential inclining block rate
- What is considered discriminatory in the rate-setting context is different than in the human rights context – more focused on formal equality: all members of a rate class must be treated the same.

SO WHAT CAN WE DO ABOUT IT?

- o Different processes for resolving different types of issues
 - See the BCPIAC factsheet about BC Hydro



BC HYDRO'S UPCOMING RATE DESIGN APPLICATION

BC HYDRO'S 2015 RATE DESIGN APPLICATION

- BCPIAC will be advocating for some form of rate relief for low income customers in **BC Hydro's 2015 Rate Design Application**
- We will also ask for amendments to BC Hydro's policies on:
 - connection fees
 - disconnection for non-payment
 - reconnection fee (min. \$125)
 - Equal Payment Plans
 - security deposits
 - For customers with poor credit history, or no credit history with BC Hydro
 - Can be up to 2-3x the average estimated monthly bill

WHAT IS RATE DESIGN?

- **Revenue Requirement:**
 - How much does the utility need to collect from its ratepayers to cover its costs for the year or years?
- **Rate Design:**
 - What proportion of the Revenue Requirement should each customer group (residential, commercial, industrial, etc.) pay to receive service? (\$/GJ or \$/kWh)
 - Each customer should pay their fair share or close to it.

WHAT BCPIAC WILL BE ASKING FOR IN THE RDA

- We will ask for BC Hydro to explicitly acknowledge in its Electric Tariff that **low income customers require some accommodation**
- Specifically, we are investigating several options:
 - the introduction of some form of lifeline rate for low income customers
 - separate residential rates for people who use electricity to heat their homes
 - a significant reduction or elimination of the reconnection charge following a disconnection for non-payment
 - direct bill assistance



EXAMPLES FROM OTHER JURISDICTIONS

- US LIHEAP
- Ontario low income energy assistance
- These are primarily government initiatives achieved through political advocacy as opposed to being required by courts and regulatory bodies



OUR PLAN – AND WHY IT MIGHT WORK!

- We will have to show that low income people make up a significant portion of residential ratepayers (around 10%) and that these people are suffering hardship as a result of increasing rates
- BC Hydro does not collect customers' income data, so they have no data on how many ratepayers are low income and how many ratepayers use electricity to heat their homes
 - BC Hydro has anecdotal data from customer surveys
 - We probably don't want customers to be required to give income data to BC Hydro
 - We are going to have to present that data ourselves

EVIDENCE AND NEGOTIATION

- **CCPA Climate Justice Report (2011)** contains information about low income ratepayers in BC
 - The Report considers electricity conservation and pricing policies through the lens of energy poverty, and makes recommendations for an approach that would both reduce GHG emissions and improve quality of life for everyone
 - It defines “**energy poverty**” as existing “when households have to spend a disproportionate amount of their income just to meet basic energy needs, especially necessities like home heating”
 - We plan to update this report and present it as expert evidence in the Rate Design Application

EVIDENCE AND NEGOTIATION (CONT'D)

- Negotiate with other intervenor groups such as COPE Local 378 (they have already clearly stated that they will support some rate relief for low income ratepayers) , commercial customers, industrial customers, and environmental groups
- We would like to present a witness panel at the RDA hearing, made up of about three low-income ratepayers and two social justice advocates

... WE NEED YOUR HELP!

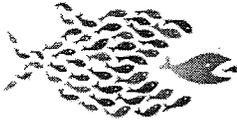
- Do you have examples of clients who are having trouble paying their BC Hydro bills and why?
- Is there a profile of a particular client that is having difficulty?
- Are the problems province wide or more noticeable in colder regions?
- Examples of BC Hydro advocacy that you have done

WE NEED YOUR HELP! (CONT'D)

- Would you be willing to sit on the witness panel?
 - Ideally we are looking for two advocates and three directly affected low income ratepayers to talk about why people are having trouble paying their bills and how it is negatively affecting them
 - The hearing will not take place until early 2016 at the earliest, so lots of time to prepare
 - We are gathering information now as we are involved in the pre-application workshops and have the opportunity to influence how BC Hydro will frame its application
- Do you know of any other advocates/clients who might be willing to assist?

WE NEED MORE OF YOUR HELP!

- Energy Saving Kits – has anyone heard of these?
 - How can we make them more useful?
- Anyone interested in being a spokesperson for low-income utilities issues?
- Any other groups you think would be interested in joining the groups we represent at the BCUC?
- Any other ideas for what we can do?



ADVOCACY FACTSHEET: DEALING WITH BC HYDRO

This factsheet describes your rights and responsibilities to help you advocate for yourself and for others. It is based on the BC Hydro Electric Tariff, which sets out the terms and conditions of your contract for service with BC Hydro.

The Electric Tariff can be found at www.bchydro.com/youraccount/content/electric_tariff.jsp

We have reviewed this factsheet with BC Hydro to ensure it is accurate.

Topics covered in this factsheet include:

- BC Hydro Contact Information
- Applying for Electricity Service
- Security Deposits
- Billing
- Payments Options
- Disconnection or Refusal
- Problems with Paying Bills
- Late Payment Fees and Other Charges
- BC Hydro and BC Employment & Assistance
- Reducing Electricity Costs
- Telemarketers
- Complaints about BC Hydro

BC Hydro Contact Information

General Inquiries – BC Hydro Customer Service

In Greater Vancouver: 604-224-9376
Other areas, toll free: 1-800-BCHYDRO (1-800-224-9376)

This number offers automated service in English, French, Mandarin, Cantonese, Korean and Punjabi, 24 hours a day, 7 days a week. Representatives are available Monday to Friday, 7:00 a.m. to 8:00 p.m. and Saturday, 9:00 a.m. to 5:00 p.m. (Pacific Time).

Emergencies & Power Outages

1-888-POWERON (1-888-769-3766) all areas or ***HYDRO (*49376)** on your cell phone

Website: www.bchydro.com

You can register for online access to your BC Hydro account or check your account online by visiting www.bchydro.com/youraccount

Applying for Electricity Service

Do I have to set up my own electricity service?

Yes, unless you are renting. If you rent, your landlord might pay BC Hydro directly for the power you consume. Talk to your landlord to find out whether or not you need to apply for your own electricity account with BC Hydro. Note that your landlord cannot charge you more for electricity than you would pay directly to BC Hydro.

For more information on your rights and responsibilities as a renter, contact the **Tenant Resource & Advisory Centre (TRAC)** info-line.

In Greater Vancouver: 604-255-0546
Other areas, toll free: 1-800-665-1185

Tenant Survival Guide
www.tenants.bc.ca/main/?tenantsurvivalguide

TRAC Factsheets (includes "Can my landlord turn off my heat?", "Heat Demand Letter")
www.tenants.bc.ca/main/?factsheets

Who do I contact?

To apply for a new BC Hydro account or modify an existing account, apply online at www.bchydro.com/services/applymodify or phone BC Hydro at **604-224-9376** (Greater Vancouver) or **1-800-224-9376** (other areas, toll free).

What do I need to do?

When you apply for service, BC Hydro may require you to do any of the following:

- provide information acceptable to BC Hydro (usually for a credit check)
- provide references
- provide landlord's name & phone number (if you are renting)
- provide a security deposit (see below)
- complete and sign a service agreement
- provide identification acceptable to BC Hydro

Note that even if you have not signed an application or a contract with BC Hydro, a contract is established if you start using electricity.

Is there a charge to set up service?

You are required to pay a \$12.40 + HST **account charge** when you move or set up a new account. This fee will appear on your first bill. Note that you do not have to pay an account charge if you are just changing your account from your spouse's name to your name due to separation, divorce or death and are at the same address.

Does BC Hydro require advance notice to open my account?

BC Hydro requires at least 24 hours' notice in order to open or transfer an account.

What do I need to do before I move out of my home?

When you move out of your current home, you must give BC Hydro at least 24 hours' notice before you leave. If you do not tell BC Hydro that you will be leaving your home, you could be held responsible for electricity that is used or damage that is done to BC Hydro's property (such as the meter) after you leave.

What do I do if my house is not connected?

If your home is not currently connected to BC Hydro's distribution system (for example, if it is a brand new house), you will also have to pay a **service connection charge**, which includes a service connection and a meter. The amount of the service connection charge will depend on the type of electrical service being connected and whether or not a BC Hydro technician is required to work outside of normal hours. If BC Hydro has to extend its distribution system to reach your home (for example, if new power lines must be built down a road to reach your house), there could be further costs to you. You will also require an electrical permit, normally completed by your electrician, before your home can be connected to BC Hydro's system.

For a map of BC Hydro's service area, visit:

www.bchydro.com/youraccount/main/popup/pop_bch_service_area.html.

Who do I contact if my house is not connected?

Phone BC Hydro at **1-877-520-1355** (all areas, toll-free) Monday to Friday, 8:00 a.m. to 4:00 p.m. or visit www.bchydro.com/getconnected.

Security Deposits

Will I have to pay a security deposit?

If you are a new customer who has not established satisfactory credit, or if you are an existing customer who has not maintained a satisfactory payment history, BC Hydro will ask you to choose one of the following options to secure your account:

1. Give BC Hydro permission to obtain credit information from a credit reporting agency which confirms you have an overall good credit history
2. Provide a security deposit
3. Provide a credit reference letter from another utility or telephone company that confirms you have good credit history with them

How much will the security deposit be?

The amount of the deposit is based on your billing plan. If you are billed for electricity on a monthly basis, the security deposit will be equal to two times your estimated average

monthly bill. If you are being billed bi-monthly, the security deposit will be equal to three times your estimated average monthly consumption.

When will my security deposit be returned?

BC Hydro will return your security deposit to you once you have maintained an account and paid every amount due on time for one year from the date the deposit was received.

What will happen to my security deposit if I do not pay a bill on time?

A security deposit is held to secure the account and is applied against any amount owing on the customer's *final* invoice. Bills are expected to be paid by the due date and BC Hydro does not take part of the security deposit to pay the outstanding bill.

Will my security deposit earn interest?

Your security deposit, if paid in cash, will earn interest and this interest will be shown on each invoice issued to you.

Billing

How will I be billed for electricity?

BC Hydro has two main types of billing arrangements: "Regular Billing" and the "Equal Payment Plan".

What is Regular Billing?

BC Hydro will bill you at regular intervals for the amount of electricity you use, which is measured by a meter connected to your home. Usually, a representative from BC Hydro will read the meter once every two months. If, for any reason, BC Hydro is unable to read your meter, they will estimate your bill, and your next bill will be adjusted if the estimation is too low or too high.

What is the Equal Payment Plan Payment?

If BC Hydro is satisfied with your credit history, you can choose to sign up for the Equal Payment Plan. Under this plan, BC Hydro will bill you in equal monthly installments that are based on an estimate of your electricity consumption during a 12-month period. At the end of each year, your actual consumption is compared to the billed amounts and an adjustment is made.

What are the advantages of the Equal Payment Plan?

This plan may make it easier to budget for your monthly expenses because your electricity bill will be the same each month for one full year. However, if your consumption is higher than the monthly installments invoiced during the year, BC Hydro may increase your monthly installment amount to try to avoid a large amount owing when you reach the plan's anniversary month.

What if I use a different amount of electricity than BC Hydro estimated?

At the end of the 12-month period, you may have to pay extra, or BC Hydro may have to credit your account, depending on how the estimate compared with the amount of electricity you actually consumed. If you have a credit at the anniversary month, this will be applied to your account or you can request a refund cheque mailed to you.

Payment Options

You have 21 days from your billing date to pay your bill. Allow five business days for processing. You can avoid a late payment charge by paying your bill before the due date shown on your monthly bill. For more information on late payment and disconnection, see below or visit:

https://www.bchydro.com/youraccount/content/ways_to_pay.jsp

How can I pay my bill?

You can pay your BC Hydro bill in any of the following ways:

1. Through your financial institution: you can pay your bill online through your secure banking website, over the phone, at automated teller machines, or in person at your bank or credit union branch.
2. Pre-authorized Payment Plan: you can arrange with BC Hydro to pay your bill using pre-authorized, automatic withdrawals from your bank account. For information on how to set up preauthorized payment, visit:
https://www.bchydro.com/youraccount/content/ways_to_pay.jsp
3. Mail your cheque or money order to: BC Hydro, PO Box 9501 STN Terminal, Vancouver, BC, V6B 4N1. Do not mail cash or post-dated cheques.
4. Government Agents: if you're outside the Lower Mainland, you can pay your bill with cash, cheque or debit card, with no service fee, at Government Agents of B.C. To find out where the closest Government Agent's office is located, contact Enquiry B.C. Metro Vancouver 604-660-2421, Greater Victoria 250-387-6121 and for all other locations at **1-800-663-7867** (all areas, toll-free) or visit www.servicebc.gov.bc.ca/locations
5. Credit card: you can use your Visa or MasterCard to pay your bill through a third-party payment service called "Kurba" which charges a fee based on the amount of your payment. Credit card payments may be completed online or by phone. For additional details, contact BC Hydro at **1-800-224-9376** (all areas, toll-free). To make a payment, contact Kurba at 1-888-995-1018 (all areas, toll-free)

Disconnection or Refusal

Can BC Hydro cut off my electricity or refuse to connect me?

BC Hydro may refuse to provide service or may discontinue service without notice to any customer who:

1. Fails to pay for electrical service at any residence
2. Breaches the terms and conditions of their contract with BC Hydro
3. Refuses to provide reference information and identification acceptable to BC Hydro, either when applying for service or at any subsequent time
4. Lives with someone who has unpaid bills, if those bills were incurred while the two people were living together

Can BC Hydro suspend or terminate my service for other reasons?

BC Hydro can suspend or terminate service without notice for any of the following reasons:

1. To prevent fraudulent use of electricity
2. To protect its property
3. To protect service to other customers
4. If the customer fails to comply with the terms of their contract with BC Hydro
5. If the government orders BC Hydro to do so

Is there a charge for reconnection?

Prior to your power being reconnected, you will be required to pay the overdue balance including any outstanding security deposit balance plus a **minimum reconnection charge**. BC Hydro does not guarantee same day reconnection if you are disconnected. Minimum reconnection charges are as follows (these vary according to whether you live in an urban or remote location):

\$125.00+HST

If the customer request for reconnection allows BC Hydro to make the reconnection during regular working hours

Problems with Paying Bills

What if I can't pay my bill?

Maintain regular contact with BC Hydro if you are having trouble paying your bill. If you can't pay the amount owing before your bill is due, you may be able to defer a payment by contacting BC Hydro at 1-800-224-9376 (all areas, toll-free) or online at https://www.bchydro.com/youraccount/content/ways_to_pay.jsp. If any payment arrangements are made to assist you with paying the balance due, ensure that you follow through on your commitments to avoid further collection action.

If you do not contact BC Hydro by the "**pay by**" date on your bill, BC Hydro may add a late payment charge and a security deposit may be required on your account.

Once your bill is overdue, BC Hydro may send you a **reminder notice**. Depending on your credit history with BC Hydro, you may be notified that your account has been approved for disconnection by seven days after your bill is due. If you receive a **notice of disconnection**, contact BC Hydro immediately to discuss a payment arrangement. If you do not contact BC

Hydro, your service may be disconnected and you will be subject to a reconnection charge and collection action (see above).

Late Payment Fees and Other Charges

What if my cheque bounces?

If your cheque is returned because of insufficient funds (NSF) or for any reason, BC Hydro will charge you a fee for each dishonored cheque. The fee is approximately \$20.00.

What if I pay my bill after the due date?

If you do not pay your bill by the due date, and the unpaid amount is \$30 or more, BC Hydro will charge you a late payment charge of 1.5% per month (19.6% annually). The late payment charge will be added to your bill. Late payment charges do not apply to customers being billed under "Equal Payment Plan or any customers who pay their bills by pre-authorized bank debits. It is important to remember that even though a late payment charge has been billed, BC Hydro still considers the account to be overdue and you are subject to collection action.

Follow these tips:

- If you can, make larger payments during the summer while you are using less electricity.
- Consider going on Equal Payment Plan billing
- Make changes around your home to conserve electricity (see below).

The Legal Services Society (LSS) has published a manual on "**Consumer Law and Credit/Debt Law**" for paralegals, lawyers, and advocates whose clients face consumer or debt problems. This manual provides information on debtors' rights and options, including chapters on bankruptcy, collection agents, creditors, harassment, credit cards, debtor's remedies, and other consumer and debtor resources.

Download "Consumer Law and Credit/Debt Law" from the LSS website:
www.lss.bc.ca/publications/pub.php?pub=17

To find an advocate in your community, visit www.povnet.org or www.clicklaw.bc.ca

BC Hydro and BC Employment and Assistance

If you are on BC Employment and Assistance (BCEA), BC Hydro has a particular policy that will apply to you.

What if I am on welfare, and I cannot pay the amount I owe?

When you are BC Hydro customer who is also a BCEA recipient and you are facing having your electricity disconnected (or it is already disconnected) because you cannot pay the total amount owing, BC Hydro will, with your permission, make acceptable payment

arrangements directly with BCEA through your financial assistance worker.

To make a payment arrangement, contact BC Hydro or your BCEA financial assistance worker.

If you, as a BCEA recipient, contact BC Hydro and state that you cannot immediately pay the amount required by BC Hydro to stop disconnection, BC Hydro must give you three full working days to contact the Ministry before disconnecting your electricity service.

Please note that if you do not contact BC Hydro before your service is disconnected, the reconnection will not occur until the required balance (including the reconnection charge) is paid in full or acceptable arrangements are made directly with BCEA.

BC Hydro account information is confidential; therefore, in order to discuss your account with the BCEA financial assistance worker, BC Hydro requires your permission (either verbally or in writing).

If the financial assistance worker asks for your notice of disconnection and you do not have one, provide the worker with your BC Hydro account number so they can contact BC Hydro directly at 1-800-224-9376 (all areas, toll-free).

You may also be eligible for a one-time **crisis assistance grant** through BC Employment and Assistance. If you face an unexpected, emergency need that could affect the health of yourself or your family, or the safety of a child, you may be eligible for this one-time grant to cover the cost.

You are more likely to receive assistance from the Ministry if you have already contacted BC Hydro to try to sort out your electric bill. For more information, contact a financial assistance worker at your local Employment and Income Assistance Office. For a directory of regional offices, see here: <http://www.hsd.gov.bc.ca/contacts/region.htm>

BC Hydro is aware that a customer's financial circumstances can change, causing the customer to need the assistance of BCEA. When you are facing a disconnection from an amount incurred from *before* you were a BCEA recipient and your BCEA financial assistance worker confirms to BC Hydro that you are now a recipient (and the date you became a recipient), BC Hydro has two options for payment arrangements:

1. Defer making payment arrangements until a later date (reviewed every 6 months), or
2. Pay the amount in installments added to your Equal Payment Plan (see above).

Reducing Electricity Costs

How can I reduce my bill?

You can reduce the amount of electricity you consume in many ways. Consider these top five conservation tips:

1. Turning down the heat, especially at night or when no one is home

2. Replacing the five most used incandescent light bulbs to Compact Fluorescent Lights (CFLs)
3. Using a dishwasher without the dry cycle
4. Sealing air leaks in outside walls, doors, and windows
5. Washing clothes in cold water, and hanging clothes to dry 50% of the time

Power Smart

Power Smart for Home offers tips, product discounts, and in-depth advice to help you make your home more efficient, reducing energy consumption and your BC Hydro bill. For more information, contact BC Hydro's PowerSmart program by telephone (Greater Vancouver: **604-431-9463** or other areas, toll free: **1-877-431-9463**) or online at www.bchydro.com/powersmart

BC Hydro offers two Power Smart programs to help low income households save energy and money. Program eligibility is based on account verification and income qualification. For more information on BC Hydro's **Energy Saving Kit Program** and **Energy Conservation Assistance Program**, visit www.bchydro.com/powersmart/residential/ps_low_income.html

What if I think my meter is not working properly?

If you doubt the accuracy of the meter that measures the electricity you are using, it is important that you (or an advocate or support person) *begin* by contacting BC Hydro. With the BC Hydro representative, they may escalate the meter accuracy concerns to a government meter test inspector. There will be a fee for this service if the meter is tested and is registering correctly. However, if the Inspector finds that the meter is inaccurate, BC Hydro will pay the fee. To find out how to contact the Inspector, call Enquiry BC at **1-800-663-7867**.

What if BC Hydro bills me for the wrong amount?

If it is determined that you have been billed incorrectly (For example, there is a major difference in the amount of electricity you consume and the amount BC Hydro bills you for), BC Hydro can adjust the amount you owe. This is called "back billing." If you have been over-billed, BC Hydro must refund all money that was incorrectly collected, for the entire period of the error. If you have been under-billed, BC Hydro can adjust the amount billed to a maximum of six months and will offer you reasonable terms of payment. However, if there are reasonable grounds to believe you have tampered with your electricity service or used it in any unauthorized way, you will be responsible for further costs.

Telemarketers

BC Hydro is warning its customers to be aware of a potential scam where telemarketers claim to be calling from BC Hydro to sell energy-saving devices called "Hydro Power Savers." In some instances, telemarketers also incorrectly claim they are in possession of the customer's power consumption information.

BC Hydro does not endorse "Hydro Power Savers" and has seen similar potential scams in other provinces, including Alberta. In addition, customers' power consumption information is strictly confidential and is not shared with third parties.

As part of the calls, the alleged telemarketers are reportedly claiming that the “Hydro Power Savers” can save customers money on their bills. Customers who have been contacted by telemarketers about “Hydro Power Savers” are encouraged not to enter into any agreement for purchase.

The Better Business Bureau has included “power saving scams” as one of the Top Ten Scams for 2012. Customers who would like to file a complaint can visit the website of the Better Business Bureau serving Mainland British Columbia (BBB) at www.mbc.bbb.org or call the BBB at **604-682-2711** (Greater Vancouver), **1-888-803-1222** (BC interior), or **250-386-6348** (Vancouver Island).

Report misleading advertising to the Competition Bureau website:
www.competitionbureau.gc.ca

Complaints about BC Hydro

How can I make a complaint about BC Hydro?

It is important that you (or an advocate or support person) *begin* by contacting BC Hydro about your complaint.

Steps:

1. Call BC Hydro at **1-800-224-9376** (all areas, toll-free) and describe your concerns to the *customer service representative*.
2. If you are not satisfied with the customer service representative’s response to your concerns, then ask to speak to a *Supervisor*.
3. If you are not satisfied with the Supervisor’s response, then ask to speak to a *manager*. If a manager is not available at that time, BC Hydro’s policy is to return your call within 24 hours. If your concern is disconnection of your service, BC Hydro’s policy is that a manager will call you back, usually within one hour.

It is important that you communicate your concerns and complaints to BC Hydro because when BC Hydro receives customer feedback, it is receiving a signal that it needs to improve its customer service.

After I’ve spoken to a BC Hydro manager, what if I am still not satisfied?

If you are not satisfied with BC Hydro’s response to your complaint, you can contact the **BC Utilities Commission**. Prior to accepting a complaint, the Commission must be satisfied that you have made a serious attempt to settle the dispute with the utility. You can find more information about the Commission on their website: www.bcuc.com or by calling **1-800-663-1385**.

The Commission is available to assist the public in the resolution of complaints with utilities in the following areas:

- Utility Practices/Procedures
- Customer Billings

- Service Disconnections
- Gas Mains/Powerline Extensions
- Third-Party Billings
- Easement/Right-of-Way Maintenance

If your problem is not time sensitive, send a written complaint. The Commission will forward the complaint to BC Hydro and ask them to respond.

Ideally, your written complaint should contain the following information:

1. name of the complainant;
2. complainant's address;
3. utility account number;
4. the key elements of the dispute;
5. names of utility staff/officials contacted;
6. dates contacts were made; and
7. reasons, from the customer's viewpoint, why the problem was not resolved.

Send your complaint to the Commission at:

BC Utilities Commission
Box 250, 900 Howe Street, 6th Floor
Vancouver, BC V6Z 2N3

If you are in need of immediate assistance (for example, if you think your service is likely to be disconnected), contact the Commission by phone.

Greater Vancouver: 604-660-4700
Other areas, toll-free: 1-800-663-1385

If you believe that BC Hydro has treated you unfairly, you can also complain to the **Office of the BC Ombudsperson**. The Ombudsperson cannot require BC Hydro to take any particular action, but the Ombudsperson can investigate your complaint and make recommendations about how BC Hydro can improve its practices. For more information, see the Ombudsperson's website www.ombudsman.bc.ca or call **1-800-567-3247** (all areas, toll-free).

Complaint to the BC Ombudsperson Regarding the BC Ministry of Social Development and Social Innovation (MSDSI)

INSTRUCTIONS

1. Fill out this 3 page complaint form and submit to the Ombudsperson's Office:

VIA FAX:
(250) 387-0198

OR

VIA MAIL:
PO Box 9039 Stn Prov Govt,
Victoria, BC V8W 9A5

2. Please copy the BC Public Interest Advocacy Centre (BCPIAC) with your complaint:

VIA FAX:
(604) 682-7896

OR

VIA EMAIL:
skhan@bcpiac.com
(Sarah Khan)

OR

VIA MAIL:
208 – 1090 West Pender St
Vancouver BC V6E 2N7

CONTACT INFORMATION

Name: _____

Address: _____ City: _____

Postal Code: _____ Phone Number: _____

Email: _____ Best contact time: _____

THIS COMPLAINT RELATES TO

- | | |
|---|--|
| <input type="checkbox"/> Delay or other problems with an Immediate Needs Assessment | <input type="checkbox"/> Issues with the 1-866 phone line (for example: inability to reach a worker, worker ending a call before the problem is resolved, not being offered an interpreter when you need one etc.) |
| <input type="checkbox"/> Delay or other problems with the Ministry calling the client after initial application | <input type="checkbox"/> Not being given the opportunity to meet with a Ministry worker in person (when requested) |
| <input type="checkbox"/> Issues with the Integrated Case Management system (for example: system crashes, delay in documents being attached to a file, etc.) | <input type="checkbox"/> Other (explain in "Describe Complaint" section below) |

MSDSI Office: *(if there is a specific office involved)*

Names and positions of any Ministry staff members involved:

Do you have any specific barriers?

DESCRIBE COMPLAINT *(attach additional description if necessary)*

Explain what happened: *(be clear and concise; include dates when possible)*

Explain why this was unfair:

What hardship did the situation cause? *(e.g. late rent, not enough money for food, other)*

What steps did you take to resolve the problem? *(e.g. Did an advocate help? Was a supervisor involved? Was there an appeal?)*

Outcome of the attempt(s) to resolve the problem:

What outcome do you want, or what do you want the Ombudsperson to do?

ATTACH DOCUMENTS

Attached are copies of all relevant documents: *(make sure your documents are organized and clearly labelled)*

- My correspondence to the Ministry
- Correspondence I received from the Ministry
- Other (list below)

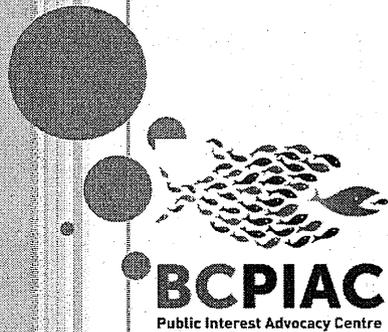
CONSENT

I, _____, consent to sending a copy of this complaint to the BC Public Interest Advocacy Centre (BCPIAC). I understand that it will be used to try to improve service at the Ministry of Social Development and Social Innovation. I understand that my name will not be used by BCPIAC unless I am contacted and grant permission, and that BCPIAC will not disclose any additional information about my complaint without my consent.

Your signature: _____ **Today's Date:** _____

DEVELOPING ENERGY ASSISTANCE PROGRAMS FOR LOW INCOME BC HYDRO RATEPAYERS

October 28, 2014



Presented by:
Sarah Khan & Erin Pritchard

AGENDA

1. BC Hydro: Background
2. Basic Utilities Regulation Principles
3. Issues Facing BC Hydro's Low Income Customers
4. BC Hydro's Upcoming Rate Design Application
5. How You Can Help!

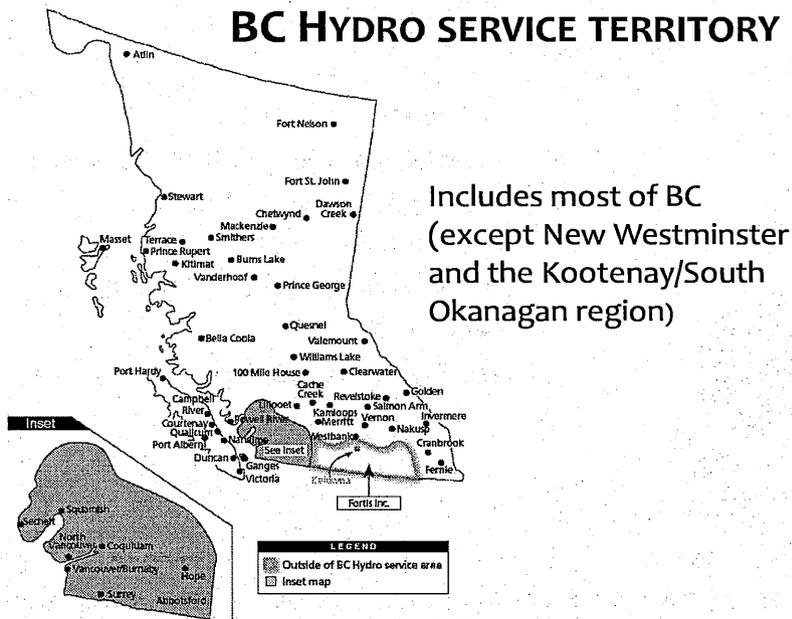
Otter breaks inspired by Discount rates: A boring thing you should know about (with otters!) By David Roberts

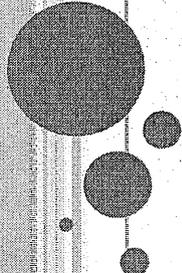
BC HYDRO: BACKGROUND

- BC Hydro is a provincial Crown corporation with a mandate to generate, purchase, distribute and sell electricity
- Its customers are divided into three main “classes”:
 - Residential
 - Commercial (SGS/MGS) (small businesses, annual peak demand up to 150 kW)
 - Industrial (LGS) (e.g. mills, mines, etc.)



BC HYDRO SERVICE TERRITORY





BASIC UTILITIES REGULATION PRINCIPLES

(...briefly, we promise.)

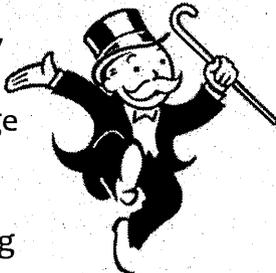
BC HYDRO IS A NATURAL MONOPOLY

Monopolies exist when:

- One entity can provide a service or product more economically than many small ones
- Barriers to participation exist (e.g. large financial investment required)

Natural Monopolies exist when:

- Cost and price are kept lower by having only one electricity supplier
- No other practical substitute exists for electricity generation and distribution
- Ratepayers need electricity and can't get it from other suppliers



MONOPOLIES: THE GOOD, THE BAD, AND THE UGLY

- Monopolies like BC Hydro prevent unnecessary and expensive duplication of infrastructure



- However: no competitors = little or no motivation to keep cost and price under control
- Regulation is a substitute for competition



UTILITIES REGULATION IN BC

The **BC Utilities Commission (BCUC)** regulates the following electricity, natural gas and auto insurance monopoly utilities:

- **BC Hydro**
- **FortisBC Energy**
- **FortisBC Inc.**
- **Pacific Northern Gas, and**
- **ICBC's compulsory basic automobile insurance**



HOW THE BCUC REGULATES UTILITIES IN BC

- BCUC regulates:
 - rates that all classes of ratepayers are charged
 - shareholder rate of return
 - scope and budget of capital projects
 - operation and maintenance of the system
 - system reliability and safety
 - utilities' compliance with regulatory requirements

- *Utilities Commission Act* requires that rates must not be unjust, unreasonable, insufficient, or unduly discriminatory

- Must find applications to be “in the public interest” to approve

HOW BC HYDRO PAYS FOR ITS COSTS

- As a regulated monopoly, BC Hydro pays for its costs through the money it collects from ratepayers

- BC Hydro is regulated by the BCUC, but also by “special directions” from the government

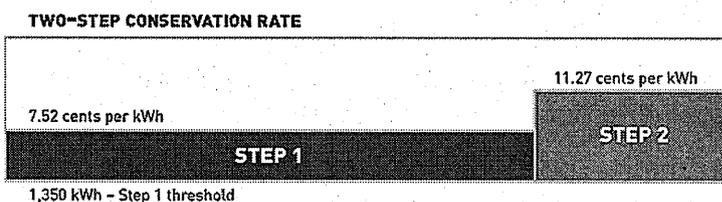
- For example, Special Direction No. 6 issued in March 2014 required (among other things) that the BCUC set BC Hydro's revenue requirement (i.e. rate increases) for 2015 and 2016

BCPIAC'S ROLE IN BC HYDRO'S REGULATION

- BCPIAC intervenes in BC Hydro applications at the BCUC on behalf of fixed and low income energy consumers
- We currently represent the BC Old Age Pensioners Organization, Active Support Against Poverty, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, Tenant Resource and Advisory Centre, and Together Against Poverty Society, known collectively in regulatory processes as "BCOAPO *et al.*"
- We argue for keeping rates as low as possible, and ensuring that residential customers do not pay more than their fair share of costs

BC HYDRO'S RESIDENTIAL RATES

- Two tier residential inclining block rate



- This has a much higher impact on customers in single detached homes – only 55% of residential customers, but accounts for 69% of residential consumption

BC HYDRO RATE INCREASES: HISTORICAL AND FORECAST

Year	Rate Increase
2011	8%
2012	3.91%
2013	1.44%
2014	9%
2015	6%
2016	4%
2017	3.5%
2018	3%

BC HYDRO'S LOW INCOME CUSTOMERS

BC HYDRO INFORMATION ON LOW INCOME ACCOUNTS

- Anecdotally, about 10% of residential accounts are low income households
- Low income accounts amount to 7% of total consumption
- On average, low income accounts have lower consumption than the average accounts
 - Exception: older, drafty homes with electric heating

NO RATE RELIEF AVAILABLE FOR LOW INCOME CUSTOMERS

- Cumulative rate increase over 8 years will be 39%
- Income assistance rates have not been increased since 2007, and minimum wage is only \$10.25/hr (increased to this in 2012 following a decade long freeze)
- Increased energy costs without a corresponding increase in income means many residential customers will be unable to pay their bills—and may face power disconnections

NO RATE RELIEF AVAILABLE FOR LOW INCOME CUSTOMERS (CONT'D)

- There is currently no rate relief available for low income ratepayers who cannot pay their power bills
- The only exceptions are assistance through MSDSI
 - Utility security deposit supplement (repayable)
 - Crisis supplements (non-repayable)

OTHER BC HYDRO POLICIES THAT AFFECT LOW INCOME CUSTOMERS

- Connection fees (\$12.40 + tax)
- Disconnection for non-payment
- Reconnection fee (min. \$125)
- Late payment charges
- Security deposits
 - For customers with poor credit history, or no credit history with BC Hydro
 - Can be up to 2-3x the average estimated monthly bill
- Equal payment plans
 - Great in theory, but...

BARRIERS TO SETTING A SPECIFIC LOW INCOME RATE

- Two Canadian court cases have addressed the jurisdiction of a utilities commission to consider an income-based rate assistance program:

In *Advocacy Centre for Tenants Ontario v. Ontario Energy Board* (2008), the Ontario Superior Court of Justice held that the OEB has the jurisdiction to implement a low income affordability program.

In *Dalhousie Legal Aid Service v Nova Scotia Power Inc.* (2006), the Nova Scotia Court of Appeal reached the opposite conclusion, holding that Nova Scotia's Utility and Review Board did not have the jurisdiction to reduce power rates based on income.

"The rates and charges 'shall always... be charged equally' to persons of similar circumstances and conditions in respect of service. The statute does not endow the Board with discretion to consider the social justice of reduced rates for low income customers." (para. 27)

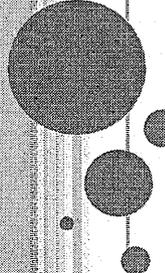
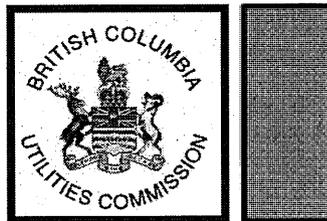
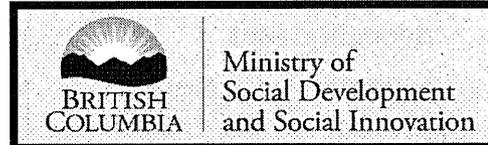
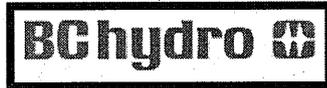
- These differing results can be largely explained by the wording of the enabling statute in each case.

LEGAL ATTEMPTS IN BC HAVE NOT BEEN SUCCESSFUL

- Legal attempts to try to get low-income rates in BC have not worked because the *Utilities Commission Act* (UCA) requires rates to be "non-discriminatory"
- In 2008, BCPIAC argued that BC Hydro should implement a "lifeline rate", but the proposal was denied by the Commission as it found that the majority of low income customers would be better off (or at least no worse off) under the residential inclining block rate
- What is considered discriminatory in the rate-setting context is different than in the human rights context – more focused on formal equality: all members of a rate class must be treated the same.

SO WHAT CAN WE DO ABOUT IT?

- o Different processes for resolving different types of issues
 - See the BCPIAC factsheet about BC Hydro



BC HYDRO'S UPCOMING RATE DESIGN APPLICATION

BC HYDRO'S 2015 RATE DESIGN APPLICATION

- BCPIAC will be advocating for some form of rate relief for low income customers in **BC Hydro's 2015 Rate Design Application**
- We will also ask for amendments to BC Hydro's policies on:
 - connection fees
 - disconnection for non-payment
 - reconnection fee (min. \$125)
 - Equal Payment Plans
 - security deposits
 - For customers with poor credit history, or no credit history with BC Hydro
 - Can be up to 2-3x the average estimated monthly bill

WHAT IS RATE DESIGN?

- **Revenue Requirement:**
 - How much does the utility need to collect from its ratepayers to cover its costs for the year or years?
- **Rate Design:**
 - What proportion of the Revenue Requirement should each customer group (residential, commercial, industrial, etc.) pay to receive service? (\$/GJ or \$/kWh)
 - Each customer should pay their fair share or close to it.

WHAT BCPIAC WILL BE ASKING FOR IN THE RDA

- We will ask for BC Hydro to explicitly acknowledge in its Electric Tariff that **low income customers require some accommodation**
- Specifically, we are investigating several options:
 - the introduction of some form of lifeline rate for low income customers
 - separate residential rates for people who use electricity to heat their homes
 - a significant reduction or elimination of the reconnection charge following a disconnection for non-payment
 - direct bill assistance

EXAMPLES FROM OTHER JURISDICTIONS

- US LIHEAP
- Ontario low income energy assistance
- These are primarily government initiatives achieved through political advocacy as opposed to being required by courts and regulatory bodies

OUR PLAN – AND WHY IT MIGHT WORK!

- We will have to show that low income people make up a significant portion of residential ratepayers (around 10%) and that these people are suffering hardship as a result of increasing rates
- BC Hydro does not collect customers' income data, so they have no data on how many ratepayers are low income and how many ratepayers use electricity to heat their homes
 - BC Hydro has anecdotal data from customer surveys
 - We probably don't want customers to be required to give income data to BC Hydro
 - We are going to have to present that data ourselves

EVIDENCE AND NEGOTIATION

- **CCPA Climate Justice Report (2011)** contains information about low income ratepayers in BC
 - The Report considers electricity conservation and pricing policies through the lens of energy poverty, and makes recommendations for an approach that would both reduce GHG emissions and improve quality of life for everyone
 - It defines “**energy poverty**” as existing “when households have to spend a disproportionate amount of their income just to meet basic energy needs, especially necessities like home heating”
 - We plan to update this report and present it as expert evidence in the Rate Design Application

EVIDENCE AND NEGOTIATION (CONT'D)

- Negotiate with other intervenor groups such as COPE Local 378 (they have already clearly stated that they will support some rate relief for low income ratepayers), commercial customers, industrial customers, and environmental groups
- We would like to present a witness panel at the RDA hearing, made up of about three low-income ratepayers and two social justice advocates

... WE NEED YOUR HELP!

- Do you have examples of clients who are having trouble paying their BC Hydro bills and why?
- Is there a profile of a particular client that is having difficulty?
- Are the problems province wide or more noticeable in colder regions?
- Examples of BC Hydro advocacy that you have done

WE NEED YOUR HELP! (CONT'D)

- Would you be willing to sit on the witness panel?
 - Ideally we are looking for two advocates and three directly affected low income ratepayers to talk about why people are having trouble paying their bills and how it is negatively affecting them
 - The hearing will not take place until early 2016 at the earliest, so lots of time to prepare
 - We are gathering information now as we are involved in the pre-application workshops and have the opportunity to influence how BC Hydro will frame its application
- Do you know of any other advocates/clients who might be willing to assist?

WE NEED MORE OF YOUR HELP!

- Energy Saving Kits – has anyone heard of these?
 - How can we make them more useful?
- Anyone interested in being a spokesperson for low-income utilities issues?
- Any other groups you think would be interested in joining the groups we represent at the BCUC?
- Any other ideas for what we can do?



ADVOCACY FACTSHEET: DEALING WITH BC HYDRO

This factsheet describes your rights and responsibilities to help you advocate for yourself and for others. It is based on the BC Hydro Electric Tariff, which sets out the terms and conditions of your contract for service with BC Hydro.

The Electric Tariff can be found at www.bchydro.com/youraccount/content/electric_tariff.jsp

We have reviewed this factsheet with BC Hydro to ensure it is accurate.

Topics covered in this factsheet include:

- BC Hydro Contact Information
- Applying for Electricity Service
- Security Deposits
- Billing
- Payments Options
- Disconnection or Refusal
- Problems with Paying Bills
- Late Payment Fees and Other Charges
- BC Hydro and BC Employment & Assistance
- Reducing Electricity Costs
- Telemarketers
- Complaints about BC Hydro

BC Hydro Contact Information

General Inquiries – BC Hydro Customer Service

In Greater Vancouver: 604-224-9376
Other areas, toll free: 1-800-BCHYDRO (1-800-224-9376)

This number offers automated service in English, French, Mandarin, Cantonese, Korean and Punjabi, 24 hours a day, 7 days a week. Representatives are available Monday to Friday, 7:00 a.m. to 8:00 p.m. and Saturday, 9:00 a.m. to 5:00 p.m. (Pacific Time).

Emergencies & Power Outages

1-888-POWERON (1-888-769-3766) all areas or ***HYDRO (*49376)** on your cell phone

Website: www.bchydro.com

You can register for online access to your BC Hydro account or check your account online by visiting www.bchydro.com/youraccount

Applying for Electricity Service

Do I have to set up my own electricity service?

Yes, unless you are renting. If you rent, your landlord might pay BC Hydro directly for the power you consume. Talk to your landlord to find out whether or not you need to apply for your own electricity account with BC Hydro. Note that your landlord cannot charge you more for electricity than you would pay directly to BC Hydro.

For more information on your rights and responsibilities as a renter, contact the **Tenant Resource & Advisory Centre (TRAC)** info-line.

In Greater Vancouver: 604-255-0546
Other areas, toll free: 1-800-665-1185

Tenant Survival Guide
www.tenants.bc.ca/main/?tenantsurvivalguide

TRAC Factsheets (includes "Can my landlord turn off my heat?", "Heat Demand Letter")
www.tenants.bc.ca/main/?factsheets

Who do I contact?

To apply for a new BC Hydro account or modify an existing account, apply online at www.bchydro.com/services/applymodify or phone BC Hydro at **604-224-9376** (Greater Vancouver) or **1-800-224-9376** (other areas, toll free).

What do I need to do?

When you apply for service, BC Hydro may require you to do any of the following:

- provide information acceptable to BC Hydro (usually for a credit check)
- provide references
- provide landlord's name & phone number (if you are renting)
- provide a security deposit (see below)
- complete and sign a service agreement
- provide identification acceptable to BC Hydro

Note that even if you have not signed an application or a contract with BC Hydro, a contract is established if you start using electricity.

Is there a charge to set up service?

You are required to pay a \$12.40 + HST **account charge** when you move or set up a new account. This fee will appear on your first bill. Note that you do not have to pay an account charge if you are just changing your account from your spouse's name to your name due to separation, divorce or death and are at the same address.

Does BC Hydro require advance notice to open my account?

BC Hydro requires at least 24 hours' notice in order to open or transfer an account.

What do I need to do before I move out of my home?

When you move out of your current home, you must give BC Hydro at least 24 hours' notice before you leave. If you do not tell BC Hydro that you will be leaving your home, you could be held responsible for electricity that is used or damage that is done to BC Hydro's property (such as the meter) after you leave.

What do I do if my house is not connected?

If your home is not currently connected to BC Hydro's distribution system (for example, if it is a brand new house), you will also have to pay a **service connection charge**, which includes a service connection and a meter. The amount of the service connection charge will depend on the type of electrical service being connected and whether or not a BC Hydro technician is required to work outside of normal hours. If BC Hydro has to extend its distribution system to reach your home (for example, if new power lines must be built down a road to reach your house), there could be further costs to you. You will also require an electrical permit, normally completed by your electrician, before your home can be connected to BC Hydro's system.

For a map of BC Hydro's service area, visit:

www.bchydro.com/youraccount/main/popup/pop_bch_service_area.html.

Who do I contact if my house is not connected?

Phone BC Hydro at **1-877-520-1355** (all areas, toll-free) Monday to Friday, 8:00 a.m. to 4:00 p.m. or visit www.bchydro.com/getconnected.

Security Deposits

Will I have to pay a security deposit?

If you are a new customer who has not established satisfactory credit, or if you are an existing customer who has not maintained a satisfactory payment history, BC Hydro will ask you to choose one of the following options to secure your account:

1. Give BC Hydro permission to obtain credit information from a credit reporting agency which confirms you have an overall good credit history
2. Provide a security deposit
3. Provide a credit reference letter from another utility or telephone company that confirms you have good credit history with them

How much will the security deposit be?

The amount of the deposit is based on your billing plan. If you are billed for electricity on a monthly basis, the security deposit will be equal to two times your estimated average

monthly bill. If you are being billed bi-monthly, the security deposit will be equal to three times your estimated average monthly consumption.

When will my security deposit be returned?

BC Hydro will return your security deposit to you once you have maintained an account and paid every amount due on time for one year from the date the deposit was received.

What will happen to my security deposit if I do not pay a bill on time?

A security deposit is held to secure the account and is applied against any amount owing on the customer's *final* invoice. Bills are expected to be paid by the due date and BC Hydro does not take part of the security deposit to pay the outstanding bill.

Will my security deposit earn interest?

Your security deposit, if paid in cash, will earn interest and this interest will be shown on each invoice issued to you.

Billing

How will I be billed for electricity?

BC Hydro has two main types of billing arrangements: "Regular Billing" and the "Equal Payment Plan".

What is Regular Billing?

BC Hydro will bill you at regular intervals for the amount of electricity you use, which is measured by a meter connected to your home. Usually, a representative from BC Hydro will read the meter once every two months. If, for any reason, BC Hydro is unable to read your meter, they will estimate your bill, and your next bill will be adjusted if the estimation is too low or too high.

What is the Equal Payment Plan Payment?

If BC Hydro is satisfied with your credit history, you can choose to sign up for the Equal Payment Plan. Under this plan, BC Hydro will bill you in equal monthly installments that are based on an estimate of your electricity consumption during a 12-month period. At the end of each year, your actual consumption is compared to the billed amounts and an adjustment is made.

What are the advantages of the Equal Payment Plan?

This plan may make it easier to budget for your monthly expenses because your electricity bill will be the same each month for one full year. However, if your consumption is higher than the monthly installments invoiced during the year, BC Hydro may increase your monthly installment amount to try to avoid a large amount owing when you reach the plan's anniversary month.

What if I use a different amount of electricity than BC Hydro estimated?

At the end of the 12-month period, you may have to pay extra, or BC Hydro may have to credit your account, depending on how the estimate compared with the amount of electricity you actually consumed. If you have a credit at the anniversary month, this will be applied to your account or you can request a refund cheque mailed to you.

Payment Options

You have 21 days from your billing date to pay your bill. Allow five business days for processing. You can avoid a late payment charge by paying your bill before the due date shown on your monthly bill. For more information on late payment and disconnection, see below or visit: https://www.bchydro.com/youraccount/content/ways_to_pay.jsp

How can I pay my bill?

You can pay your BC Hydro bill in any of the following ways:

1. Through your financial institution: you can pay your bill online through your secure banking website, over the phone, at automated teller machines, or in person at your bank or credit union branch.
2. Pre-authorized Payment Plan: you can arrange with BC Hydro to pay your bill using pre-authorized, automatic withdrawals from your bank account. For information on how to set up preauthorized payment, visit: https://www.bchydro.com/youraccount/content/ways_to_pay.jsp
3. Mail your cheque or money order to: BC Hydro, PO Box 9501 STN Terminal, Vancouver, BC, V6B 4N1. Do not mail cash or post-dated cheques.
4. Government Agents: if you're outside the Lower Mainland, you can pay your bill with cash, cheque or debit card, with no service fee, at Government Agents of B.C. To find out where the closest Government Agent's office is located, contact Enquiry B.C. Metro Vancouver 604-660-2421, Greater Victoria 250-387-6121 and for all other locations at **1-800-663-7867** (all areas, toll-free) or visit www.servicebc.gov.bc.ca/locations
5. Credit card: you can use your Visa or MasterCard to pay your bill through a third-party payment service called "Kurba" which charges a fee based on the amount of your payment. Credit card payments may be completed online or by phone. For additional details, contact BC Hydro at **1-800-224-9376** (all areas, toll-free). To make a payment, contact Kurba at 1-888-995-1018 (all areas, toll-free)

Disconnection or Refusal

Can BC Hydro cut off my electricity or refuse to connect me?

BC Hydro may refuse to provide service or may discontinue service without notice to any customer who:

1. Fails to pay for electrical service at any residence
2. Breaches the terms and conditions of their contract with BC Hydro
3. Refuses to provide reference information and identification acceptable to BC Hydro, either when applying for service or at any subsequent time
4. Lives with someone who has unpaid bills, if those bills were incurred while the two people were living together

Can BC Hydro suspend or terminate my service for other reasons?

BC Hydro can suspend or terminate service without notice for any of the following reasons:

1. To prevent fraudulent use of electricity
2. To protect its property
3. To protect service to other customers
4. If the customer fails to comply with the terms of their contract with BC Hydro
5. If the government orders BC Hydro to do so

Is there a charge for reconnection?

Prior to your power being reconnected, you will be required to pay the overdue balance including any outstanding security deposit balance plus a **minimum reconnection charge**. BC Hydro does not guarantee same day reconnection if you are disconnected. Minimum reconnection charges are as follows (these vary according to whether you live in an urban or remote location):

\$125.00+HST

If the customer request for reconnection allows BC Hydro to make the reconnection during regular working hours

Problems with Paying Bills

What if I can't pay my bill?

Maintain regular contact with BC Hydro if you are having trouble paying your bill. If you can't pay the amount owing before your bill is due, you may be able to defer a payment by contacting BC Hydro at 1-800-224-9376 (all areas, toll-free) or online at https://www.bchydro.com/youraccount/content/ways_to_pay.jsp. If any payment arrangements are made to assist you with paying the balance due, ensure that you follow through on your commitments to avoid further collection action.

If you do not contact BC Hydro by the "**pay by**" date on your bill, BC Hydro may add a late payment charge and a security deposit may be required on your account.

Once your bill is overdue, BC Hydro may send you a **reminder notice**. Depending on your credit history with BC Hydro, you may be notified that your account has been approved for disconnection by seven days after your bill is due. If you receive a **notice of disconnection**, contact BC Hydro immediately to discuss a payment arrangement. If you do not contact BC

Hydro, your service may be disconnected and you will be subject to a reconnection charge and collection action (see above).

Late Payment Fees and Other Charges

What if my cheque bounces?

If your cheque is returned because of insufficient funds (NSF) or for any reason, BC Hydro will charge you a fee for each dishonored cheque. The fee is approximately \$20.00.

What if I pay my bill after the due date?

If you do not pay your bill by the due date, and the unpaid amount is \$30 or more, BC Hydro will charge you a late payment charge of 1.5% per month (19.6% annually). The late payment charge will be added to your bill. Late payment charges do not apply to customers being billed under "Equal Payment Plan" or any customers who pay their bills by pre-authorized bank debits. It is important to remember that even though a late payment charge has been billed, BC Hydro still considers the account to be overdue and you are subject to collection action.

Follow these tips:

- If you can, make larger payments during the summer while you are using less electricity.
- Consider going on Equal Payment Plan billing
- Make changes around your home to conserve electricity (see below).

The Legal Services Society (LSS) has published a manual on "**Consumer Law and Credit/Debt Law**" for paralegals, lawyers, and advocates whose clients face consumer or debt problems. This manual provides information on debtors' rights and options, including chapters on bankruptcy, collection agents, creditors, harassment, credit cards, debtor's remedies, and other consumer and debtor resources.

Download "Consumer Law and Credit/Debt Law" from the LSS website:
www.lss.bc.ca/publications/pub.php?pub=17

To find an advocate in your community, visit www.povnet.org or www.clicklaw.bc.ca

BC Hydro and BC Employment and Assistance

If you are on BC Employment and Assistance (BCEA), BC Hydro has a particular policy that will apply to you.

What if I am on welfare, and I cannot pay the amount I owe?

When you are BC Hydro customer who is also a BCEA recipient and you are facing having your electricity disconnected (or it is already disconnected) because you cannot pay the total amount owing, BC Hydro will, with your permission, make acceptable payment

arrangements directly with BCEA through your financial assistance worker.

To make a payment arrangement, contact BC Hydro or your BCEA financial assistance worker.

If you, as a BCEA recipient, contact BC Hydro and state that you cannot immediately pay the amount required by BC Hydro to stop disconnection, BC Hydro must give you three full working days to contact the Ministry before disconnecting your electricity service.

Please note that if you do not contact BC Hydro before your service is disconnected, the reconnection will not occur until the required balance (including the reconnection charge) is paid in full or acceptable arrangements are made directly with BCEA.

BC Hydro account information is confidential; therefore, in order to discuss your account with the BCEA financial assistance worker, BC Hydro requires your permission (either verbally or in writing).

If the financial assistance worker asks for your notice of disconnection and you do not have one, provide the worker with your BC Hydro account number so they can contact BC Hydro directly at 1-800-224-9376 (all areas, toll-free).

You may also be eligible for a one-time **crisis assistance grant** through BC Employment and Assistance. If you face an unexpected, emergency need that could affect the health of yourself or your family, or the safety of a child, you may be eligible for this one-time grant to cover the cost.

You are more likely to receive assistance from the Ministry if you have already contacted BC Hydro to try to sort out your electric bill. For more information, contact a financial assistance worker at your local Employment and Income Assistance Office. For a directory of regional offices, see here: <http://www.hsd.gov.bc.ca/contacts/region.htm>

BC Hydro is aware that a customer's financial circumstances can change, causing the customer to need the assistance of BCEA. When you are facing a disconnection from an amount incurred from *before* you were a BCEA recipient and your BCEA financial assistance worker confirms to BC Hydro that you are now a recipient (and the date you became a recipient), BC Hydro has two options for payment arrangements:

1. Defer making payment arrangements until a later date (reviewed every 6 months), or
2. Pay the amount in installments added to your Equal Payment Plan (see above).

Reducing Electricity Costs

How can I reduce my bill?

You can reduce the amount of electricity you consume in many ways. Consider these top five conservation tips:

1. Turning down the heat, especially at night or when no one is home

2. Replacing the five most used incandescent light bulbs to Compact Fluorescent Lights (CFLs)
3. Using a dishwasher without the dry cycle
4. Sealing air leaks in outside walls, doors, and windows
5. Washing clothes in cold water, and hanging clothes to dry 50% of the time

Power Smart

Power Smart for Home offers tips, product discounts, and in-depth advice to help you make your home more efficient, reducing energy consumption and your BC Hydro bill. For more information, contact BC Hydro's PowerSmart program by telephone (Greater Vancouver: **604-431-9463** or other areas, toll free: **1-877-431-9463**) or online at www.bchydro.com/powersmart

BC Hydro offers two Power Smart programs to help low income households save energy and money. Program eligibility is based on account verification and income qualification. For more information on BC Hydro's **Energy Saving Kit Program** and **Energy Conservation Assistance Program**, visit www.bchydro.com/powersmart/residential/ps_low_income.html

What if I think my meter is not working properly?

If you doubt the accuracy of the meter that measures the electricity you are using, it is important that you (or an advocate or support person) *begin* by contacting BC Hydro. With the BC Hydro representative, they may escalate the meter accuracy concerns to a government meter test inspector. There will be a fee for this service if the meter is tested and is registering correctly. However, if the Inspector finds that the meter is inaccurate, BC Hydro will pay the fee. To find out how to contact the Inspector, call Enquiry BC at **1-800-663-7867**.

What if BC Hydro bills me for the wrong amount?

If it is determined that you have been billed incorrectly (For example, there is a major difference in the amount of electricity you consume and the amount BC Hydro bills you for), BC Hydro can adjust the amount you owe. This is called "back billing." If you have been over-billed, BC Hydro must refund all money that was incorrectly collected, for the entire period of the error. If you have been under-billed, BC Hydro can adjust the amount billed to a maximum of six months and will offer you reasonable terms of payment. However, if there are reasonable grounds to believe you have tampered with your electricity service or used it in any unauthorized way, you will be responsible for further costs.

Telemarketers

BC Hydro is warning its customers to be aware of a potential scam where telemarketers claim to be calling from BC Hydro to sell energy-saving devices called "Hydro Power Savers." In some instances, telemarketers also incorrectly claim they are in possession of the customer's power consumption information.

BC Hydro does not endorse "Hydro Power Savers" and has seen similar potential scams in other provinces, including Alberta. In addition, customers' power consumption information is strictly confidential and is not shared with third parties.

As part of the calls, the alleged telemarketers are reportedly claiming that the "Hydro Power Savers" can save customers money on their bills. Customers who have been contacted by telemarketers about "Hydro Power Savers" are encouraged not to enter into any agreement for purchase.

The Better Business Bureau has included "power saving scams" as one of the Top Ten Scams for 2012. Customers who would like to file a complaint can visit the website of the Better Business Bureau serving Mainland British Columbia (BBB) at www.mbc.bbb.org or call the BBB at **604-682-2711** (Greater Vancouver), **1-888-803-1222** (BC interior), or **250-386-6348** (Vancouver Island).

Report misleading advertising to the Competition Bureau website:
www.competitionbureau.gc.ca

Complaints about BC Hydro

How can I make a complaint about BC Hydro?

It is important that you (or an advocate or support person) *begin* by contacting BC Hydro about your complaint.

Steps:

1. Call BC Hydro at **1-800-224-9376** (all areas, toll-free) and describe your concerns to the *customer service representative*.
2. If you are not satisfied with the customer service representative's response to your concerns, then ask to speak to a *Supervisor*.
3. If you are not satisfied with the Supervisor's response, then ask to speak to a *manager*. If a manager is not available at that time, BC Hydro's policy is to return your call within 24 hours. If your concern is disconnection of your service, BC Hydro's policy is that a manager will call you back, usually within one hour.

It is important that you communicate your concerns and complaints to BC Hydro because when BC Hydro receives customer feedback, it is receiving a signal that it needs to improve its customer service.

After I've spoken to a BC Hydro manager, what if I am still not satisfied?

If you are not satisfied with BC Hydro's response to your complaint, you can contact the **BC Utilities Commission**. Prior to accepting a complaint, the Commission must be satisfied that you have made a serious attempt to settle the dispute with the utility. You can find more information about the Commission on their website: www.bcuc.com or by calling **1-800-663-1385**.

The Commission is available to assist the public in the resolution of complaints with utilities in the following areas:

- Utility Practices/Procedures
- Customer Billings

- Service Disconnections
- Gas Mains/Powerline Extensions
- Third-Party Billings
- Easement/Right-of-Way Maintenance

If your problem is not time sensitive, send a written complaint. The Commission will forward the complaint to BC Hydro and ask them to respond.

Ideally, your written complaint should contain the following information:

1. name of the complainant;
2. complainant's address;
3. utility account number;
4. the key elements of the dispute;
5. names of utility staff/officials contacted;
6. dates contacts were made; and
7. reasons, from the customer's viewpoint, why the problem was not resolved.

Send your complaint to the Commission at:

BC Utilities Commission
Box 250, 900 Howe Street, 6th Floor
Vancouver, BC V6Z 2N3

If you are in need of immediate assistance (for example, if you think your service is likely to be disconnected), contact the Commission by phone.

Greater Vancouver: 604-660-4700
Other areas, toll-free: 1-800-663-1385

If you believe that BC Hydro has treated you unfairly, you can also complain to the **Office of the BC Ombudsperson**. The Ombudsperson cannot require BC Hydro to take any particular action, but the Ombudsperson can investigate your complaint and make recommendations about how BC Hydro can improve its practices. For more information, see the Ombudsperson's website www.ombudsman.bc.ca or call **1-800-567-3247** (all areas, toll-free).

Complaint to the BC Ombudsperson Regarding the BC Ministry of Social Development and Social Innovation (MSDSI)

INSTRUCTIONS

1. Fill out this 3 page complaint form and submit to the Ombudsperson's Office:

VIA FAX:
(250) 387-0198

OR

VIA MAIL:
PO Box 9039 Stn Prov Govt,
Victoria, BC V8W 9A5

2. Please copy the BC Public Interest Advocacy Centre (BCPIAC) with your complaint:

VIA FAX:
(604) 682-7896

OR

VIA EMAIL:
skhan@bcpiac.com
(Sarah Khan)

OR

VIA MAIL:
208 – 1090 West Pender St
Vancouver BC V6E 2N7

CONTACT INFORMATION

Name: _____

Address: _____ City: _____

Postal Code: _____ Phone Number: _____

Email: _____ Best contact time: _____

THIS COMPLAINT RELATES TO

- | | |
|---|--|
| <input type="checkbox"/> Delay or other problems with an Immediate Needs Assessment | <input type="checkbox"/> Issues with the 1-866 phone line (for example: inability to reach a worker, worker ending a call before the problem is resolved, not being offered an interpreter when you need one etc.) |
| <input type="checkbox"/> Delay or other problems with the Ministry calling the client after initial application | <input type="checkbox"/> Not being given the opportunity to meet with a Ministry worker in person (when requested) |
| <input type="checkbox"/> Issues with the Integrated Case Management system (for example: system crashes, delay in documents being attached to a file, etc.) | <input type="checkbox"/> Other (explain in "Describe Complaint" section below) |

MSDSI Office: *(if there is a specific office involved)*

Names and positions of any Ministry staff members involved:

Do you have any specific barriers?

DESCRIBE COMPLAINT *(attach additional description if necessary)*

Explain what happened: *(be clear and concise; include dates when possible)*

Explain why this was unfair:

What hardship did the situation cause? *(e.g. late rent, not enough money for food, other)*

What steps did you take to resolve the problem? *(e.g. Did an advocate help? Was a supervisor involved? Was there an appeal?)*

Outcome of the attempt(s) to resolve the problem:

What outcome do you want, or what do you want the Ombudsperson to do?

ATTACH DOCUMENTS

Attached are copies of all relevant documents: *(make sure your documents are organized and clearly labelled)*

- My correspondence to the Ministry
- Correspondence I received from the Ministry
- Other (list below)

CONSENT

I, _____, consent to sending a copy of this complaint to the BC Public Interest Advocacy Centre (BCPIAC). I understand that it will be used to try to improve service at the Ministry of Social Development and Social Innovation. I understand that my name will not be used by BCPIAC unless I am contacted and grant permission, and that BCPIAC will not disclose any additional information about my complaint without my consent.

Your signature: _____ **Today's Date:** _____

Provincial Advocacy Training Conference 2014
Debt Law: Manjeet Chana and Alison Ward

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Credit/Debt Law



Source: <http://www.sprottmoney.com/news/our-economic-slow-death-jeff-nielson-sprott-money-news>

Did you know?

- To date in 2014, BC is the province with the *second* highest household debt in Canada (Alberta has the highest household debt, Quebec has the lowest);
- More and more seniors (age 65 and older) are carrying debt into retirement. In fact, this group is increasing its debt faster than any other age group; and,
- Seventy percent of all household debt in Canada is made up of residential mortgage debt, while 20% comes from lines of credit, and about 4.5% is credit card debt. Even though Canadians are currently carrying more debt, they are doing a better job of paying it off on time.

I. Joint debtors and guarantors

1. What is the difference between a joint debtor/cosigner and a guarantor?
 - A cosigner, also known as a joint debtor, is someone who enters into a credit contract (for a loan or credit card, for example) together with at least one other party. Each of the debtors is jointly and severally (or fully and separately) responsible for repayment of the whole of the debt.

- A guarantor is someone who promises to be responsible for another person’s debt in case that person defaults on payment of a credit contract.
2. If joint debtors default on a credit contract, who can the creditor pursue for payment?
 - Where two or more debtors have signed the credit contract and where there has been default on the contract by the debtors, the creditor can rely on the promises to pay made in the original credit contract and pursue one or both joint debtors, or one of the debtors before the other, for the whole of the debt. This is because both debtors are equally responsible for repayment of the debt – regardless of who incurred the debt, who has a higher income, or an agreement (such as a separation agreement) between the parties as to who will repay the debt.
 3. When can a creditor demand payment from a guarantor on a credit contract signed by a principal debtor and a guarantor?
 - If the principal debtor defaults on payment of a credit contract, the creditor can then request payment from the guarantor.
 4. Can a creditor who has a judgment against a debtor garnish a joint bank account?
 - A creditor who is enforcing a judgment against a *single* debtor cannot garnish a *joint* bank account because the creditor could be withdrawing monies that belong to the innocent party.
 5. Can a creditor who has a judgment against a debtor register a judgment against the title to a home which is in joint tenancy?
 - A creditor can register a judgment against the property interest of a debtor where that property is in joint tenancy. The Land Title Office makes a notation of the judgment against the interest of the joint tenant who is the judgment debtor.
 6. When is a secondary or additional cardholder responsible for payment of a debt owing on a credit card?
 - Often, primary cardholders can add family members or friends as secondary or additional authorized users to their credit card accounts. Depending on the cardholder agreement, secondary cardholders are usually **not** legally liable for any debt owed to the credit card company. However, some credit contracts do make secondary cardholders accountable for the total card debt -- despite not signing an application (for example, when the primary cardholder requests a secondary card and the credit card company sends a card out in the second individual's name with the primary cardholder's number, and the second individual signs and uses the card).
 - A secondary cardholder **is** held responsible for repayment of the debt when the primary cardholder requests a secondary card and the secondary cardholder signs an application form agreeing s/he is an additional (or joint) card user who, as a joint borrower, accepts full responsibility for any outstanding balances;

- Consider also s. 97(4) of the *Business Practices and Consumer Protection Act* (“BPCPA”), which states that an individual who applies for a credit card without signing an application form is deemed, on **using** the credit card for the first time, to have entered into a credit agreement in relation to that card in the terms of the disclosure statement issued by the credit card issuer.
7. If a credit card is lost or stolen, who pays for any accumulated charges?
- According to s. 99 of the BPCPA, once a card issuer is informed verbally or in writing that a credit card has been lost or stolen, no payment is necessary by a consumer for charges accumulated on the lost or stolen card after the report is made. If someone uses the card before it is reported lost or stolen, a consumer’s liability is limited for unauthorized charges by the BPCPA to a maximum of the lesser of \$50 or the maximum amount set by the credit agreement. This protection does not apply to credit cards used with a confidential PIN to withdraw from a cash machine.
 - If there is both a primary and secondary cardholder (eg. a husband and wife) and both have signed the credit contract, each will be jointly and probably severally liable to pay the \$50 liability, regardless of whose card was lost or stolen.
8. Is a surviving spouse liable for the debts of a deceased spouse?
- A surviving spouse is not personally liable for the debts of a deceased spouse unless a debt was in joint names.

II. Dealing with Debt: Options

9. What are some options a debtor has to deal with his or her debts, whether personally or jointly owed?
- A debtor has various options, including “doing nothing” (where appropriate and which often really involves a “wait and see” approach), communicating directly with the creditor himself/herself or with the assistance of a legal advocate or representative, obtaining assistance through credit counseling (with options, for example, such as debt pooling and consolidation), and/or pursuing an option under the federal Canada *Bankruptcy and Insolvency Act* (“BIA”), such as making a consumer proposal or an assignment into bankruptcy.
10. Who is eligible to make a consumer proposal under the BIA?
- A consumer proposal is a formal process that is carried out through a trustee in bankruptcy and is available to individuals whose total debts do not exceed \$250,000, excluding debts like mortgages secured by their primary residence. With a consumer proposal, the trustee puts together an offer to pay creditors a percentage of what is owed to them over a specific period of time, or offers to

extend the time the debtor has to pay off the debt, or the offer may be a combination of both. Payments are made through the trustee, and the trustee uses that money to pay each of the creditors.

11. What are some pros and cons for a debtor of making a consumer proposal under the BIA?
- The primary advantages of a consumer proposal are that the (1) client keeps all of his or her assets, (2) actions against the client by unsecured creditors, such as wage garnishments, will be stayed (stopped), and (3) the client can deal with his or her financial problems without having to declare bankruptcy.
 - In terms of disadvantages, the proposal will appear on a debtor's credit record for the term of the proposal plus three years after the date of the last payment made. In addition, if payments are 3 months or more in arrears, the consumer proposal is deemed to be annulled, meaning that creditors will be able to take action to collect on the monies owed to them. Otherwise, the maximum term for a consumer proposal is 5 years.
12. When can a debtor make an assignment in bankruptcy?
- Debtors can make an assignment in bankruptcy if they have liabilities to creditors of \$1,000 or more. These liabilities have to be provable claims under the federal BIA and debtors must be:
 - generally unable to pay their credit obligations as the obligations become due; and,
 - not able to file a workable consumer proposal.
 - The most important effect of an assignment is that all legal actions by creditors against the bankrupt are stopped; unless creditors get court permission, they cannot sue a bankrupt or take judgement enforcement proceedings.
13. What property is a person making an assignment into bankruptcy allowed to keep?
- A debtor can keep certain assets, which are called "exempt property". Exempt assets include:
 - post-bankruptcy income tax refunds (unless there is an FMEP garnishment order in place);
 - RRSPs, RRIFs, and DSPs (deferred profit sharing plans) under the *Income Tax Act*, except for contributions made in the last 12 months before the debtor went into bankruptcy; and,
 - the same assets that are exempt from seizure by a bailiff under the *Court Order Enforcement Act* (s. 71) and the *Court Order Enforcement Exemption Regulation* (s. 2), including an exemption value of \$4,000 for household furnishings and appliances; \$5,000 for one motor vehicle (if the debtor is not a maintenance debtor), or \$2,000 for one motor vehicle if the debtor is a maintenance debtor; and \$10,000 for tools and other personal property of the debtor that are used by the debtor to earn income from the debtor's occupation. All essential clothing and medical and dental aids are also exempt. In addition, there is an exemption allowed for equity in a principal residence of a debtor. If within Greater

Vancouver, a debtor has \$12,000 equity exemption, while if living outside of Greater Vancouver, it is \$9,000.

14. What debts will a bankruptcy *not* discharge?
- Section 178 of the BIA provides that a discharge from bankruptcy will not release the bankrupt from certain debts, including:
 - court imposed fines, penalties, or restitution orders;
 - court awards for damages for intentionally inflicted bodily harm or sexual assault;
 - spousal or child support arrears;
 - debt or liabilities arising from certain types of fraudulent conduct by the debtor; and,
 - student loans if the debtor files for bankruptcy before ceasing to be a student or within 7 years of ceasing to be a student. (However, a former student can make a special application to be discharged from his or her student loan after five years on the grounds of hardship).
15. What if a potential bankrupt cannot afford to hire a bankruptcy trustee?
- The Office of the Superintendent of Bankruptcy has a “Bankruptcy Assistance Program” (“BAP”), a very popular program consisting of a small number of volunteer trustees. The BAP assists individuals with hiring a bankruptcy trustee if they cannot afford to do so on their own. Note, it is *not* a free program.
 - A client may be eligible for the BAP if s/he:
 - has contacted at least two trustees (or the sole trustee in the area where there is only one trustee) and tried to obtain their services;
 - is not involved in commercial or business activities;
 - is not in jail; and,
 - does not have surplus income.
 - While the client is still required to pay a trustee’s out of pocket expenses, such as Supreme Court filing fees, a trustee participating in the BAP will work out a fee arrangement with a debtor depending on his or her financial circumstances. A debtor may be required to pay some wages (if working) into his or her bankruptcy estate. If the client owns any non-exempt assets, the trustee can sell them and the monies would go into the debtor’s estate, which the Trustee would look to for payment.
16. When is a bankrupt discharged?
- Currently under the BIA, in the case of a first time bankrupt, the period of time for an automatic discharge is 9 months if there has been no surplus income. First time bankrupts who have surplus income are eligible for an automatic discharge after contributing part of their surplus income to their estate for 21 months.
 - In the case of a second time bankrupt, the period for an automatic discharge is 24 months if there has been no surplus income, and 36 months if there has been surplus income.
17. What is the effect of bankruptcy?

- After discharge, a bankrupt is legally released from paying non-exempt debts incurred before the assignment in bankruptcy was made. However, bankruptcy **does not** cancel the responsibility of anyone who has guaranteed or cosigned a loan. If one of two joint debtors declares bankruptcy, then the non-declaring party becomes liable for the whole of the joint debts and the creditors can pursue repayment of the debts from that person. If the non-bankrupt joint debtor repays part or all of a joint debt, s/he can become a creditor in the bankruptcy.
- A bankruptcy remains on a debtor's credit record for 6 years after the discharge date.
- Under the *Wage Earner Protection Program Act* ("WEPP"), protection is provided to employees of a company or business that has declared bankruptcy. WEPP provides for compensation for amounts owing to employees such as unpaid salaries, commissions, compensation for services rendered, vacation pay, gratuities, bonuses, severance and termination pay.
- To be eligible, an employee must submit an application for payment under WEPP within 56 days of the later of the date of the bankruptcy or end of employment. The maximum amount of the claim that can be paid out to an employee under the WEPP is up to a maximum of the greater of \$3,000 or an amount equal to four times the employee's maximum insurable earnings under the federal *Employment Insurance Act*, which is \$3,738 for 2014.

III. Some Defences to Debt Claims

1. Defence: Frivolous Claim - Shoplifting Civil Demand Letters

Note: See article "Have you been accused of shoplifting?" and sample civil demand letter in materials.

- i. Does someone accused of shoplifting have to comply with a civil demand for payment?
 - Generally, the answer is "no". Someone receiving this type of demand letter can raise, as part of a response letter or defence in a court action that the alleged creditor is making a "frivolous claim" because the demand is made without proof that the monies claimed are actually owed. The general sense of the courts seems to be that the overall costs of investigation and/or loss prevention are already, and properly, being passed on to society at large, so such costs are unlikely to be awarded against an individual in BC Small Claims Court.
- ii. Is a parent of a child caught shoplifting liable to comply with a civil demand for payment?
 - Under common law, the parent of the child caught shoplifting is not liable (unless the parent encouraged the shoplifting or was otherwise directly

involved). However, a parent can be liable under BC's *Parental Liability Act* (which was known as the *Parental Responsibility Act* until March 18, 2013). The key provision of this Act imposes potential financial liability for property damage on a parent of any child who "intentionally takes, damages or destroys property of another person". The maximum award against all parents under this Act is \$10,000.

2. ***Defence: Lack of Capacity***

a. Infant Contracts

- i. Who is an infant?
 - An infant (or minor) is defined in the BC *Age of Majority Act* as anyone under the age of 19.
- ii. Is a contract made by an infant enforceable by an adult against that infant?
 - Pursuant to the British Columbia *Infants Act*, contracts made by an infant are unenforceable against a child under 19. This means is that the adult party to the contract cannot force the infant party to perform the contract because the infant is presumed not to have the necessary mental capacity to make a contract. However, there are exceptions to this. A contract is enforceable against an infant:
 - where a statute specifically allows such a contract to be enforceable (for example, infants can enter into residential tenancy agreements as tenants with landlords according to s. 3 of the British Columbia *Residential Tenancy Act*);
 - where an infant affirms the contract on reaching the age of 19;
 - where an infant performs or partially performs or does not repudiate or reject the contract within one year after reaching 19; or,
 - where the contract signed is a student loan agreement.
- iii. If a contract is unenforceable against an infant, does either the adult or infant party to the contract have any legal remedy?
 - If the contract is unenforceable against an infant, either the adult party or infant party (by litigation guardian) can apply to BC Supreme Court for a remedy. The type of remedy that a Supreme Court can order includes payment of compensation, return of property, or discharge from the contract. In deciding whether to make such an order, the Supreme Court considers all the circumstances surrounding the making of the contract, including whether the infant lied about his or her age.
- iv. What if a third party guarantor signed the contract made by an infant?
 - A third party guarantor (someone who signed the infant's contract agreeing to be responsible for the debt if the infant does not/is unable to pay) will have to

pay the debt owing/perform the contract obligations, regardless of whether the contract is enforceable against the infant.

b. Contracts made by someone with a mental illness

i. What level of capacity is required to enter into a valid contract?

- To enter into a contract in law a person is required to have a level of mental capacity by which he or she understands the nature and effects of the contract being signed.
- Someone who has a serious mental condition (like schizophrenia or Alzheimer's) which makes them incapable of caring for themselves or managing their affairs in general may not have the mental capacity in law necessary to make a valid contract. A contract entered into by this type of person could be void or voidable (proven to be invalid) and a court may decline to enforce a contract made by such a person, even where a creditor did not know of the person's mental incapacity.

ii. What possible legal defences does someone with a mental illness have to the enforcement of a contract?

- Some examples include lack of capacity, mistake (fundamental misunderstanding of an element of a contract), misrepresentation (false statements), unconscionability, unfairness, undue influence (stronger person pressures weaker person), and duress (coercion). These defences are also available to mentally competent individuals.
- Unconscionability exists where the terms of the contract are so unfair and adverse to one party so as to be inequitable. The BPCPA, s. 8, defines unconscionable acts and practices, including a situation where one party (the supplier) takes advantage of a consumer who is unable to reasonably protect his or her own interests because of his or her mental incapacity. If this defence is successful in court, the court may refuse to enforce the contract, refuse to enforce the offending clause or take other measures it deems necessary to have a fair outcome.
- Undue influence exists where an unfair contract has been created by a stronger or more powerful person inducing or pressuring the weaker person to enter into an agreement or transaction.

iii. What are some practical tips for helping someone who has a serious mental condition, has incurred a debt, and is facing demands for payments from a creditor?

- Depending on the mental capacity of the debtor, s/he can take steps on his or her own to deal with the debt or can seek help from a third party (such as a legal advocate). Either the debtor himself/herself or a legal advocate can

write a letter to the creditor explaining the debtor's financial situation, mental condition, and other relevant circumstances surrounding the making of the contract, such as the creditor's knowledge of the debtor's incapacity at the time of the making of the contract. The debtor can raise an applicable legal defence mentioned above (including lack of capacity to understand the nature and effect of the contract signed) and request that the debt be written off. It would be helpful for a debtor to obtain a letter from his or her doctor confirming his or her mental illness and its nature (eg. because of the debtor's dementia he or she did not understand the nature and consequences of the contract) and to attach it to the letter to the creditor requesting a write off.

- If the creditor refuses to write off the debt, the creditor may sue the debtor in court and the debtor can then raise various legal defences in court. The creditor needs to consider, however, whether it is worthwhile to start a court action in light of the defences that might be raised in such a case and also in light of the debtor's financial circumstances (the debtor may be judgment proof).

3. *Defence: Limitation period for debt has passed*

i. Is there a limitation period to start an action on a debt?

- **Before June 1, 2013**, the limitation period for debt was 6 years. **Effective June 1, 2013**, BC's *Limitation Act* (section 6) introduced a **basic 2 year limitation period** that applies to most (*but not all*) claims for injury, loss, or damage. This section governs most debt situations. The new Act also reduces the general "ultimate" limitation period from 30 years to 15 years.
- There are some important exceptions to the new basic limitation period:
 - (1) under the former *Limitation Act*, unsecured debts to the government (e.g. welfare overpayments, BC student loans, and motor vehicle indebtedness owed to ICBC) were generally governed by a 6 year limitation period and under the new *Limitation Act*, most debts to the Province of BC **continue** to be governed by a 6 year limitation period; and,
 - (2) according to s. 16.1(5) of the *Canada Student Financial Assistance Act*, even if an acknowledgement (whether in writing or by partial payment) is made **after** the 6 year limitation period has passed, the acknowledgement restarts the 6 year limitation period and a student loan debt is still owed.
 - (3) the *Limitation Act* does not apply to an action where a specific limitation period is set by another statute (e.g. the *Residential Tenancy Act* sets a two year limitation period to file a monetary claim against a landlord).
- There are transitional rules to help determine when the former Act applies and when the current Act applies: see <http://www.ag.gov.bc.ca/legislation/limitation-act/pdf/LAFlowchart.pdf>.

ii. What if the limitation period has passed?

- Section 6 of the new *Limitation Act* sets out that legal actions for claims (including unsecured debts), cannot be brought more than 2 years after the day on which the claim was discovered. In a debt case, if a creditor starts a court action more than 2 years later, a debtor can raise a “limitations” defence, contending that the creditor’s claim is “statute-barred”.
- Section 27 of the new *Limitation Act* prevents a creditor from also exercising a “non-judicial remedy” once the governing limitation period has expired. In other words, if a limitation period has expired, a creditor is not entitled to start a court action but also cannot exercise an out-of-court remedy.

iii. When is a limitation date extended or restarted under the Act?

- If a debtor acknowledges liability before the end of the applicable limitation period, the whole limitation period restarts. The BC *Limitation Act*, section 24, says that an acknowledgement of liability occurs when it is in writing and signed (by hand or electronic signature) by the debtor to the person with the claim, or when a part payment in respect of a debt is made. In many cases, this means that the limitation date will run from the date when a payment was last made, or a written and signed acknowledgement of liability made, rather than the date when the payments under the agreement were first in default, or when the claim was first discovered.
- If there is some question as to whether a debtor might have a limitation defence, the debtor should not make any payments in the meantime, not give any kind of written statement (e.g., in a letter to the creditor) acknowledging his or her liability for the debt, and should consult a lawyer.

iv. How long is a judgment enforceable?

- According to section 7 of the BC *Limitation Act*, creditors have up to 10 years from the day after the judgment becomes enforceable to try to enforce the judgment. The creditor is allowed to take enforcement steps any time during those 10 years, but not after, unless the judgment is “renewed”.

4. **Defence: First Nations Personal Property on Reserve**

i. Can personal property on a First Nations reserve be seized by a creditor or debt collector?

- Because of s. 89(1) of the Canada *Indian Act*, real estate (or real property) and personal property of a First Nations person on a reserve is exempted from seizure by a non-First Nations person.

ii. Are there exceptions to the personal property exemption from seizure?

- According to s. 89(2) of the Canada *Indian Act*, if a First Nations person or Band enters into a conditional sales agreement (where the seller retains

ownership or possession rights and keeps the right to seize the goods) and defaults under the agreement, the seller will likely have to start a court action to get a court order for return of the property. If the court order is granted, a sheriff acting under the authority of the order can go on a reserve and seize the property (for example, a vehicle).

- If the creditor is a First Nations person or a First Nations Band, then goods situated on a reserve are not protected from seizure; goods on a reserve can be seized by a First Nations creditor.

IV. List of Resources

- “Consumer Law and Credit/Debt Law” by Allan Parker, Q.C. (see Legal Services Society (“LSS”) publications at <http://www.lss.bc.ca/publications/pub.php?pub=17>), chapters 3-5, 9, 12, 13, 15, and 19.
- “BC Debtor-Creditor Law and Precedents” by Lyman Robinson.
- “Can’t Pay Your Mortgage” (LSS publication, see <http://www.lss.bc.ca/publications/pub.php?pub=15>).
- “Have you been accused of shoplifting?” originally written by Bruno Drucker, updated by Manjeet Chana.
- Office of the Superintendent of Bankruptcy (“OSB”) website for information about (1) consumer proposals at <http://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br02051.html> and (2) the Bankruptcy Assistance Program at <http://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br02138.html>.
- Service Canada’s webpage about the *Wage Earner Protection Program Act*: <http://www.servicecanada.gc.ca/eng/sc/wepp/>.
- 2013 BC *Limitation Act* information on the Ministry of Justice website: <http://www.ag.gov.bc.ca/legislation/limitation-act/2012.htm>.
- Aboriginal Poverty Law Manual by Legal Services Society (see: <http://www.lss.bc.ca/publications/pub.php?pub=5>)
- Reference to various British Columbia and federal legislation, including but not limited to the *Bankruptcy and Insolvency Act*, *Business Practices and Consumer Protection Act*, *Court Order Enforcement Act*, *Wage Earner Protection Program Act*, *Infants Act*, *Age of Majority Act*, *Limitation Act*, *Mental Health Act*, and the *Indian Act*.



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- Debt Consolidation
- Debt Settlement
- Consumer Proposal
- Bankruptcy
- Getting Out of Debt
- Warning Signs
- Next Steps

Debt Repayment & Bankruptcy Solutions - Credit Counselling for Canadians

Is the stress of being in debt getting to you? You might only be a few months behind on your bills, or you might be so far behind that you don't even open your bills anymore. Whatever your situation, we have experienced, caring Counsellors ready to give you guidance and solutions that will work for you. Our appointments are free and confidential, because nothing should get in the way of getting help with your debts.



Click to see video about how we help.

Depending on your situation, there are several options our Counsellors will discuss with you. Some of them include:

Debt Management Program - Consolidate Your Debt Payments & Make a Budget



Click to see video of what a debt management program is and how it works.

There are many different types of debt consolidation. A debt repayment program through the Credit Counselling Society means that we help you get on track with your money so that you only need to make one payment each month. The amount of the payment is based on what you can afford and you do not borrow more money to pay off what you already owe.

Your Counsellor will work with you to figure out what you can afford for a payment each month, while still maintaining a reasonable lifestyle. While you are repaying your debts through our program, your creditors will substantially lower or eliminate interest charges. All of your credit card payments will be consolidated into one affordable monthly payment. In the end, this allows you to repay all of your debts, get back on track and save thousands of dollars in interest.

Debt Repayment Strategies

If you prefer to resolve your situation on your own, we're happy to provide you with guidance and information

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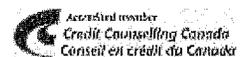
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"I just went online and paid [off my debt management program], what a great feeling! It's the best present to myself I could ever have... I want to thank [my counsellor] and CCS for all your help over the years. It has truly been a life altering event,"
- LUCIE





THIS MONTH'S NEWSLETTER

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so that you know what to do. Sometimes this means showing you how to communicate effectively with your creditors to gain their cooperation during a difficult time, providing advice about consolidation loans, or explaining what to look for as you consider other options.

Speaking with one of our Counsellors doesn't obligate you to anything. And a little good advice can go a long way!

Debt Settlement Programs

A debt settlement means that you pay back part of what you owe. If this option is right for you, one of our Debt Settlement Specialists will negotiate with your creditors to accept a one-time lump sum payment. Our debt settlement programs are highly successful because creditors recognize the Credit Counselling Society as a trusted, reputable non-profit organization. Speak with one of our Counsellors to find out if offering your creditors a settlement is the right option for you.

Bankruptcy Trustee Referral Program

Bankruptcy is a legal process for dealing with your debts. While no one really wants to go bankrupt, sometimes your situation gets to a point where you need to at least consider if bankruptcy is a good option for you or not. There are long term implications to declaring bankruptcy and it's not the right option for everyone.

After looking at your financial situation, if bankruptcy is one of your options, your Counsellor will explain the process, your responsibilities and the consequences of declaring bankruptcy. That way you have the information you need to make an informed decision.

Learn More

You can quickly learn more about how we help by watching these short videos:

How We Help



Global News interviews Julia Fletcher after she pays off \$10,000 in debt interest free due to help from the Credit Counselling Society. Watch



CTV News shows how Dan Robison paid off \$30,000 in debt with no interest with the help of the Credit Counselling Society. See story

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Global TV News - 2014 Financial Recovery Plan



Yahoo! Finance Money Minute - Top 3 Money Lessons from 2013



CTV News Consumerwatch - Are Credit Card Cheques Worth It?

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Dealing with Creditors

Communicating with Creditors

Creditor Communication Checklist

Debt Letters

Creditor Communication Check List | Debt Letters

To help things proceed as smoothly as possible, if you send a letter to your creditors making a special request, it would be a good idea to follow this checklist:

1. Make a list of all of your current sources of income.
2. List all of your weekly and monthly expenses – include all of your spending. Don't forget to include a monthly estimate of your necessary seasonal expenses.
3. Consider your assets – what may be at risk if you are not able to pay.
4. Find out if any of your debts are co-signed, joint or guaranteed. If you are not able to pay, the other person(s) may have to.
5. Gather your supporting information. Prepare a brief summary of your expenses.
6. Write a letter to your creditors to briefly outline your situation. See further note below.
7. Fax or mail your letter and supporting information to your creditors. Keep proof that they received it.
8. Follow through with all commitments you outlined to your creditors in a timely manner. Make a note on your calendar if you need to send a payment or when you need to provide an update as to your situation.

Remember, we are always happy to answer your questions and provide assistance or more information. Get help now and stop the collection calls.

Caution: The sample letters below may not be appropriate for all types of situations. Please read this note before using these sample letters.

Sample Debt Letters

See: Sample letter "reduced payment"

See: Sample letter "no ability to make payment"

See: Sample letter "forgiveness of debt"

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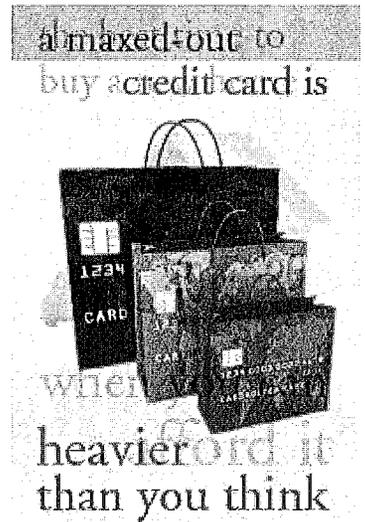
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98%

98% of our clients surveyed report they would recommend our services to others.



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- Debt Letters
- Reduced Payment Request Letter
- Can't Make Payments Now Letter
- Forgiveness of Debt Letter

Sample Letter To Your Creditors | Template

Reduced Payment Request Letter

(Click here to learn how to use this letter properly and to learn how to communicate effectively with your creditors.)

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Caution: This sample letter may not be appropriate for all types of situations. It is also important when communicating with creditors to use the term "alleged debt." Here's why. Please read this note before using this sample letter.



[Today's Date]

[Creditor Name]
[1 Downtown Street]
[City, Province Postal Code]

"I just went online and paid [off my debt management program], what a great feeling! It's the best present to myself I could ever have... I want to thank [my counsellor] and CCS for all your help over the years. It has truly been a life altering event."
- LUCIE

WITHOUT PREJUDICE

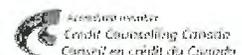
ATTENTION: CREDIT DEPARTMENT
RE: ACCOUNT # 1234 567 890 SMITH, JOHN

Dear [Creditor]:

Due to a [lay-off], I am temporarily out of work and am experiencing financial difficulty.

Due to my financial hardship and in order to meet necessary household expenses plus credit payments, I am asking each creditor to accept a reduced payment for the next (#) months on my debt. By that time I hope to be back to work. If my situation improves sooner I will notify you at that time.

I would appreciate your consideration in this matter as I am not able to meet the regular payment of [\$]. I will pay you [\$] per month during



this emergency.

I request that my account not be placed with a collection agency as I wish to deal with you directly. Over the next 90 days, I ask that you also please consider withholding interest on my debt.

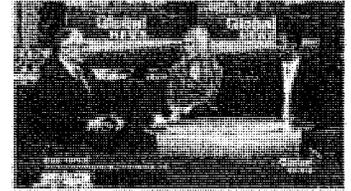
You can be sure that I will resume regular payments on my debt as soon as I am able. I will notify you when my situation improves. Please only contact me in writing at the address below and I will respond to your letters in a timely manner.

Sincerely,

[your name]
[complete mailing address]
[phone number]
[account number]

Remember, we are always happy to answer your questions and provide assistance or more information. Get help now and stop the collection calls.

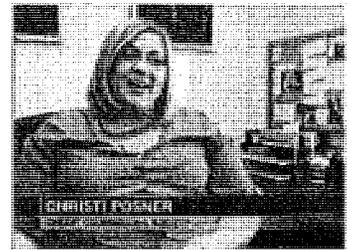
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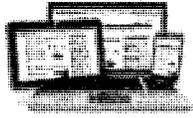


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Debt Letters
Reduced Payment Request Letter
Can't Make Payments Now Letter
Forgiveness of Debt Letter

Sample Letter To Your Creditors | Template

No Ability To Make Payments Now Letter

Click here to learn how to use this letter properly and to learn how to communicate effectively with your creditors.

Caution: This sample letter may not be appropriate for all types of situations. It is also important when communicating with creditors to use the term "alleged debt." Here's why. Please read this note before using this sample letter.



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60% of the people we help say they sleep better at night after receiving help from us.

[Today's Date]

[Creditor Name]
[1 Downtown Street]
[City, Province Postal Code]

WITHOUT PREJUDICE

ATTENTION: CREDIT DEPARTMENT
RE: ACCOUNT # 1234 567 890 SMITH, JOHN

Dear [Creditor]:

I am writing to inform you that my current income from [CPP, OAS, Disability Pension, Government Assistance, etc] is not enough for me to be able to make any payments towards my alleged debt at this time.

I respectfully request that you contact me by letter only going forward; please do not contact me by telephone. I will respond to any letters you send to me in a timely manner.

If at anytime I am in a position to resume payments on the alleged debt, I will contact you immediately to make appropriate arrangements.

I thank you for your patience and understanding during this difficult time.

This communication is provided solely for the purposes of notifying you to communicate in writing only and does not constitute an

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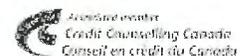
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acknowledgement of the alleged debt described above.

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10 Tips for Paying Off Credit Card Debts

Sincerely,

[your name]
[complete mailing address]
[phone number]
[account number]

Remember, we are always happy to answer your questions and provide assistance or more information. Get help now and stop the collection calls.



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Sample Letter To Your Creditors | Template

Letter to Creditors Requesting That They Forgive Debt / Compassionate Write-Off

(Click here to learn how to use this letter properly and to learn how to communicate effectively with your creditors.)

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Caution: This sample letter may not be appropriate for all types of situations. It is also important when communicating with creditors to use the term "alleged debt." Here's why. Please read this note before using this sample letter.

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credit card is



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than you think

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[Today's Date]

[Creditor Name]
[1 Downtown Street]
[City, Province Postal Code]

WITHOUT PREJUDICE

ATTENTION: CREDIT DEPARTMENT
RE: ACCOUNT #123456789 SMITH, JOHN

Dear [Creditor]:

My current income from [CPP, OAS, Disability Pension, Government Assistance, etc.] is not enough for me to be able to make any payments towards my alleged debt at this time. Due to my [medical condition/disability/age] I do not foresee any changes to my financial situation or employment status that would put me in a position to make payments any time in the future.

Please find attached [doctor's letter(s), counsellor's letter, case worker's letter of support, description of condition and explanation how this affects your ability to work, any information you feel supports your statement of inability to pay now and in the future], as well as a copy of my [proof of income] and a monthly expense sheet.



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I respectfully request that you forgive my alleged debt, as my condition precludes any employment, and my current and future income does not support any debt repayment.

Please respond to my request in writing to the address below at your earliest convenience. Thank-you in advance for your understanding of my situation.

This communication is provided solely for the purposes of notifying you to communicate in writing only and does not constitute an acknowledgement of the alleged debt described above.

Sincerely,

[your name]
[complete mailing address]
[phone number]
[account number]

Remember, we are always happy to answer your questions and provide assistance or more information. Get help now and stop the collection calls.

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Step 7: Attend bankruptcy counselling sessions

Steps 8 - 9: Reporting to OSB & ending discharge process

Step 10: After bankruptcy discharge

How Does Bankruptcy Work? - Overview of the Bankruptcy Process or Procedure in Canada | Steps 1-10

Learn the basics about how bankruptcy works in Canada with this guide. Find out about the rules and process of how to file or apply for bankruptcy in order to eventually be discharged.

The **bankruptcy process in Canada** (declaring bankruptcy) is a big step and not one to take lightly. Once you assign yourself into bankruptcy, it is extremely difficult to change your mind.

Do yourself a favour and make sure that you have explored alternatives to bankruptcy before you decide to **go bankrupt**. No matter how difficult your money problems may seem today, something this important with long term consequences that you might not be fully aware of, is worth considering carefully.

Jump to a page in this topic

Step 1: Find out if you need to declare bankruptcy

Step 7: Attend bankruptcy counselling sessions

Step 2: File paperwork with trustee

Steps 8 - 9: Reporting to OSB & ending discharge process

Step 3: Your assets will be sold

Step 10: After bankruptcy discharge

Steps 4 - 6: Creditors find out

Common Questions About the Bankruptcy Process

- **Should I file** for bankruptcy **or go bankrupt?**
- **How do I claim or declare** bankruptcy?
- What is bankruptcy **discharge?**

Bankruptcy and Income Taxes

Part of the bankruptcy process includes your trustee filing your income tax return for you. If you did not file a tax return for the year prior to declaring bankruptcy, your trustee will do that first. Then they will file a return for the period of January 1 until the day prior to you filing for bankruptcy. Any refunds or tax credits from the government will be sent

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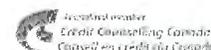
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60% of the people we help say they sleep better at night after receiving help from us.



to your trustee and form a part of your estate. Find out more about bankruptcy and income taxes from CRA (Canada Revenue Agency).

Contact Us for More Information About the Bankruptcy Process and Alternatives to Bankruptcy in Canada

If you are struggling to pay your debts and need more information about **bankruptcy alternatives** and the **bankruptcy process**, contact us today by phone at 1-888-527-8999, by email or chat with us online right now. One of our Credit Counsellors will answer your questions and provide you with guidance and information so that you can make an informed decision.

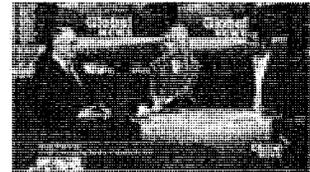


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Note: This summary of the steps involved in the personal bankruptcy process is based on information from the Office of the Superintendent of Bankruptcy website.

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Step 10: After bankruptcy discharge

Declare Bankruptcy - Find Out If You Need To | Bankruptcy Process Step One

This is part 1 of 10 in the bankruptcy process.

You might not need to **declare bankruptcy**. Bankruptcy may not eliminate all of your debts, so it's best to speak with a trustee to find out if bankruptcy will solve your debt problems. A reputable trustee will explain a number of debt relief options for you to consider. They can refer you to a **non-profit credit counsellor** if you have additional questions about options that a trustee cannot help you with.

If the trustee does not refer you to a credit and debt counsellor for information about other options to help with your debt problems, contact us and we'll be happy to answer your questions.

Common Questions and Answers About Bankruptcy

The most popular questions (with links to the answers) that we get asked are:

- Should I file for bankruptcy?
- When to file for bankruptcy?
- Who can / can I / can you file for bankruptcy?
- What happens when you declare bankruptcy?
- Can I keep my house if I declare bankruptcy?
- Can I declare bankruptcy twice?
- Can I keep my credit cards?
- Can I declare bankruptcy for free?

One of the benefits of speaking with a **Credit Counsellor** is that you will get help to resolve the issues that caused your debt problems in the first place. By dealing with the issues that got you into debt, you're better able to take steps to make sure it doesn't happen again.

If you need help finding a **bankruptcy trustee**, contact us now. We keep our referral list up to date with trustees who we know do a great job helping their clients. A trustee can also tell you if you can include **medical bills** in your bankruptcy.

Continue on to step 2: How to **Declare Bankruptcy** - Work with your trustee to fill out bankruptcy forms, learn about your responsibilities and pay the fees necessary to go bankrupt.

- Can I **keep my house** if I **declare** bankruptcy?
- What are the **files necessary** to go bankrupt?

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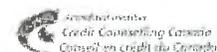
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"Our counsellor was the best person I have ever dealt with. With this being a sensitive situation, he did not come across as judgmental, and he was extremely helpful. His advice has been crucial to us, and we will be forever grateful to

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him."
- TERRI & MARK

Contact Us for More Information About Declaring Bankruptcy and Exploring Your Alternatives

If you are struggling to pay your debts and need more information about **declaring bankruptcy and exploring your alternatives**, contact us to get help determining your options. One of our Credit Counsellors will answer your questions and provide you with guidance and information so that you can make an informed decision. Contact us today by phone at 1-888-527-8999, by email or chat with us online right now.

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Step 10: After bankruptcy discharge

Get Help Filling Out Bankruptcy Forms With a Trustee

It is up to the trustee to file the **bankruptcy paperwork and forms**, but it is up to you to provide the trustee with the information they request. Once the paperwork is filed, you are officially considered bankrupt. You stop making payments on your unsecured debts, if your wages are being garnished, that will stop and if your creditors are suing you, the lawsuits will be stopped.

Your responsibilities during the bankruptcy filings and overall process:

- Tell your trustee about all of your assets and liabilities (debts)
- Tell your trustee if you have sold any property or assets in the few years prior to claiming bankruptcy
- Give all of your credit cards to your trustee
- If you move, provide your new address to your trustee in writing
- Generally assist and be cooperative as the trustee administers your estate
- Attend meetings and 2 financial counselling appointments as determined by your trustee
- Submit monthly income and expense statements to your trustee as required

You will also need to pay the application fee to register for bankruptcy. Many trustees will accept monthly payments from you, so you will need to ensure that you **make payments to your trustee on time** and as required.

Common Questions About How to File or Apply for Bankruptcy

- What is the **meaning or definition** of **filing** for bankruptcy?
- Is it **cheap to file** for bankruptcy or can I **file for free**?
- Can you **file** for bankruptcy and **keep your house**?
- What happens with **student loans** if I file for bankruptcy?
- What happens if I **file** for bankruptcy **after a divorce**?
- Does **DIY** (do it yourself) bankruptcy **exist**? | Can I **file** for bankruptcy **online**?

Continue on to step 3: Your Assets Will Be Sold - Provinces vary as to what assets you can keep. Your trustee will sell surplus assets and use the money towards paying creditors off. Surplus income guidelines apply as well.

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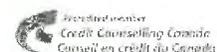
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Contact a Trustee for More Information About Filling Out Bankruptcy Forms

If you are struggling to pay your debts and need more information about **filling out the forms to go bankrupt**, contact a trustee. If you would like information about debt help **or bankruptcy alternatives**, contact us today by phone at 1-888-527-8999, by email or chat with us online right now. One of our Credit Counsellors will answer your questions and provide you with guidance and information so that you can make an informed decision.

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- The Bankruptcy Process Overview
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Selling or Keeping Assets in Bankruptcy and Allowable Income Guidelines

Each province has certain assets a bankrupt person may keep. Beyond those limits, your assets will need to be sold. This is the trustee's responsibility.

Once you file for bankruptcy, your excess assets are assigned to your trustee so that they are able to sell them. You are not allowed to sell them. The money the trustee receives from the sale is held in trust for your creditors and paid to them as part of the process to settle your estate.

In addition to surplus asset guidelines, there are also surplus income guidelines. Depending on your total income and your personal and family situation, your trustee will advise you how much of your income is above the allowable income guideline in your bankruptcy. You will be required to pay a percentage of your surplus income to your trustee, typically on a monthly basis.

Common Questions About Bankruptcy and the Selling of Assets

- What is a bankruptcy trustee?
• Are liens discharged in bankruptcy?
• Are all debts discharged in bankruptcy?
• What does order of discharge of debtor mean in bankruptcy?

Continue on to steps 4-6: Creditor Notifications, Creditor and / or OSB Meeting - Your creditors are notified of your bankruptcy and a meeting may be called to give directions to your trustee. You may have to meet with the OSB under oath to discuss details of your bankruptcy.

Contact a Trustee for More Info About Bankruptcy Assets or Us for Bankruptcy Alternatives

If you are struggling to pay your debts and need more information about bankruptcy assets contact a trustee. If you would like more information about bankruptcy alternatives you can contact us today by phone at 1-888-527-8999, by email or chat with us online right now. One of our Credit Counsellors will answer your questions and provide you with guidance and information so that you can make an informed decision.

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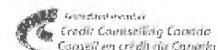
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Creditors Notified of Bankruptcy - Possible Meeting With Creditors and or OSB

Most people who go bankrupt do not need to meet with their creditors or the OSB office to explain their circumstances. However, in the event that your situation is not straightforward, you might need to go through these additional 3 steps to obtain your discharge from bankruptcy.

Your trustee will provide further information if you need to meet with your creditors.

Step 4: Your Creditors Find Out That You Decided to Go Bankrupt

Your trustee will notify your creditors. If you are required to meet with them, your trustee will advise you of the process.

Step 5: A Creditor Meeting May Be Called

Not everyone will meet with their creditors. However, if a meeting is called, you will need to attend. The purpose of the meeting is so that creditors can obtain information about the bankruptcy and give directions to your trustee.

Step 6: If Required, Attend a Meeting With an Officer of the OSB

The OSB office plays an important role in your bankruptcy process. Sometimes they have questions or concerns that you must respond to under oath. The intent of the examination is to find out about "your conduct, the causes of the bankruptcy and the disposition of your property." It is in your best interest to enter into the bankruptcy process with fully honest intentions.

A Common Question About Creditors and the Bankruptcy Process

- Can creditors foreclose my home in bankruptcy?

Continue on to step 7: Attend Two Bankruptcy Counselling Sessions - Meet with a trustee or a designated RQIC (Registered and Qualified Insolvency Counsellor) in order to be discharged from bankruptcy. Discuss and create a plan so that you will not get into financial trouble again. This could be making a monthly budget or learning how to manage credit.

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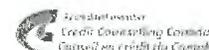
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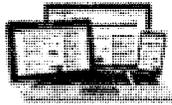
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60% of the people we help say they sleep better at night after receiving help from us.



Creditor Bankruptcy Notifications, Bankruptcy Counselling Info and Bankruptcy Alternatives

If you are struggling to pay your debts and need more information about **creditors being notified of your bankruptcy** or the 2 mandatory **bankruptcy counselling** sessions (in order to obtain discharge) **contact the OSB**. For information about **bankruptcy alternatives**, contact us today by phone at 1-888-527-8999, by email or chat with us online right now so that you can make an informed decision.



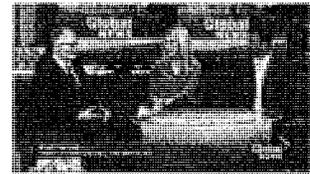
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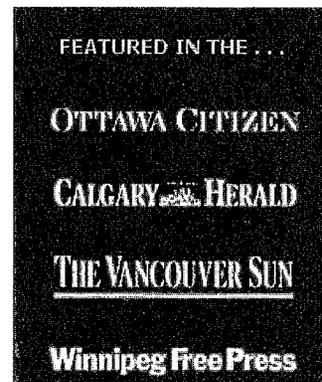
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Attend Two Bankruptcy Counselling Sessions - Learn How to Budget and Manage Credit

Part of obtaining your discharge is attending these **2 required credit and bankruptcy counselling sessions**. They may be with your trustee or they may be with someone they designate. The first session is in about the second month of your bankruptcy process and the second session will be scheduled at about the sixth month.

The purpose of these sessions is to help you learn how to manage your budget, future credit and financial affairs better so that you do not find yourself in serious financial difficulty again.

Everyone who conducts bankruptcy counselling sessions must be licensed through the *Bankruptcy and Insolvency Act*, and have obtained the RQIC designation. This means that they are a **"Registered and Qualified Insolvency Counsellor."** Obtaining the license requires writing and passing an exam and then gaining at least 100 hours of supervised bankruptcy counselling experience.

A Common Question About Bankruptcy Counselling

- Where can I get **pre-filing** and **pre-bankruptcy** credit counselling services?

Continue on to steps 8-9: The Bankruptcy Discharge Process is Commenced Once you meet the discharge requirements and make any surplus payments the OSB will grant you automatic, conditional or suspended discharge and give you a certificate of bankruptcy discharge. If you do not meet the requirements discharge can be refused.

Contact us Today for More Information About Bankruptcy Counselling and Alternatives

If you are struggling to pay your debts and need more information about **bankruptcy counselling or bankruptcy alternatives**, contact us today by phone at 1-888-527-8999, by email or chat with us online right now. One of our Credit Counsellors will answer your questions and provide you with guidance and information so that you can make an informed decision.

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- The Bankruptcy Process Overview
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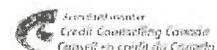
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Bankruptcy Process

Step 1: Find out if you need to declare bankruptcy

Step 2: File paperwork with trustee

Step 3: Your assets will be sold

Steps 4 - 6: Creditors find out

Step 7: Attend bankruptcy counselling sessions

Steps 8 - 9: Reporting to OSB & ending discharge process

Step 10: After bankruptcy discharge

Bankruptcy Discharge Canada - Meet Requirements, Make Surplus Payments and Obtain Certificate

The Canadian bankruptcy discharge process or timeline can take 9 months for first time bankruptcies and up to 36 months for second time bankruptcies to complete.

Your **trustee** understands that you would like to obtain your **bankruptcy discharge** as quickly as possible, and will do all they can to help you do that successfully. Your cooperation is key to fulfilling your bankruptcy requirements.

Step 8: Report to the OSB - Trustee Petitions to Approve or Deny Bankruptcy Discharge

Sometimes a debtor's actions, either before or during their bankruptcy, are cause for concern. Because your trustee is an officer of the **Bankruptcy Court**, it is up to them to alert the OSB to anything you have done that may jeopardize your application to be discharged from your bankruptcy. For example, something like maxing out your credit cards before declaring bankruptcy may make you **ineligible for bankruptcy** or make your application more difficult than it needs to be.

Step 9: The Bankruptcy Discharge Process - First Time and Second Time Bankruptcies

To be eligible for an **automatic discharge**, you must meet certain requirements.

For a **first bankruptcy**, you are eligible after 9 months if:

- no one from the OSB office, your trustee or a creditor is opposing your discharge,
- you have attended the required financial counselling sessions, and
- you were not required to **pay surplus income** into your estate

If this was your first bankruptcy and you were required to make payments to your estate from your surplus income, you are eligible for an automatic discharge after 21 months if:

- no one from the OSB office, your trustee or a creditor is opposing your discharge,
- you have attended the required financial counselling sessions, and
- you made your surplus income payments as required

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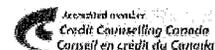


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Automatic Discharge - No Court Hearing | Confirmation Paperwork is Processed and Delivered

For a **second bankruptcy**, if surplus income payments are not required, the automatic discharge can take place after **24 months** and with surplus income payments, after **36 months**, providing all other conditions have been met.

For those who receive an **automatic discharge**, there is no Court hearing and your trustee will send you a copy of the paperwork (and **discharge certificate**) that confirms your discharge.



THIS MONTH'S NEWSLETTER

10 Tips for Paying Off Credit Card Debts

Discharge Certificate or Document

Keep your **discharge certificate** in a safe place. In the years following the completion of your bankruptcy process, you may want to apply for new credit or need to prove that you are no longer going through bankruptcy. Having your discharge document available to show that you have been discharged from bankruptcy can be necessary.

Absolute, Conditional, Suspended or Refusal of Bankruptcy Discharge

If you aren't granted an automatic discharge, the **Bankruptcy Court** will look at your circumstances. The Court will then make a decision and the result will be one of these 4 options:

- an **absolute discharge** for debts included in your bankruptcy
- a **conditional discharge**, which means that the Court will impose conditions or requirements on you. When you complete what the Court has stipulated, or a settlement has been reached, you are granted an absolute discharge.
- a **suspended discharge**, which is an absolute discharge that doesn't come into effect until a certain future date
- the court can also **refuse bankruptcy discharge**

Common Questions About Bankruptcy Discharge and Life After Bankruptcy

- What will my **life** be like **after** bankruptcy?
- Why do I need to keep a **record** of my bankruptcy **discharge**?

Continue on to step 10: Life After Bankruptcy - Bright Financial Future - Rebuild credit, learn how to make smart financial decisions and begin to heal emotionally.

Get More Info About Bankruptcy Discharge or Contact Us for Debt Help and Bankruptcy Alternatives

If you would like more information about bankruptcy discharge check out the OSB website. If you are struggling to pay your debts and want to **explore bankruptcy alternatives** you can contact us to get help determining your options. One of our Credit Counsellors will answer your questions and provide you with guidance and information so that you can make an informed decision. Contact us today by phone at 1-888-527-8999, by email or chat with us online right now.

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Bankruptcy Process

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Steps 8 - 9: Reporting to OSB & ending discharge process

Step 10: After bankruptcy discharge

Life After Bankruptcy - Rebuild Credit for a Bright Financial Future

Other than debts excluded from your bankruptcy, after receiving your discharge, you are no longer legally obligated to repay the debts you owed when you filed for bankruptcy. If your debts were joint with someone, you declaring bankruptcy only means that you are no longer legally responsible for what is owed. The other person's liability is not affected. This means that they still need to pay what is owing. There are some things you need to know about credit after bankruptcy and how to build a bright financial future.

Rebuild and Fix Credit After Bankruptcy - Improve Your Credit Score or Credit Report

Creditors will know you filed for bankruptcy for at least 6 years.

After you have been discharged from bankruptcy (step 9 in the bankruptcy process), you can start to rebuild credit again. Not all creditors will be willing to grant you credit, however, taking some slow, careful steps will start to reflect positively on your credit report or credit score. Over time, your credit rating will become positive and show that your finances are stable.

There is no quick way to "fix your credit" or erase the bankruptcy notation on your credit report. With a first bankruptcy, it will be there for at least 6 years from when you obtained your discharge, and longer for a second or third bankruptcy.

Note: This summary of the steps involved in the personal bankruptcy process is based on information from the Office of the Superintendent of Bankruptcy website.

Common Questions About Rebuilding Credit After Bankruptcy

- Bankruptcy Chapter 7 - 13 discharge (USA)
• Bankruptcy blog
• How do I get an awesome credit score?

Rebuild Credit After Bankruptcy - Manage Money and Stay Out of Debt

Learn how to fix, rebuild or repair your credit rating or credit score. We will show you how to get an awesome credit report.

If you need more information about how to rebuild credit after bankruptcy you can contact us by phone at 1-888-527-8999, by email,

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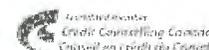
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"Our counsellor was the best person I have ever dealt with. With this being a sensitive situation, he did not come across as judgmental, and he was extremely helpful. His advice has been crucial to us, and we will be forever grateful to

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him."
- TERRI & MARK

or chat with us online right now. One of our Credit Counsellors will answer your questions and provide you with guidance. If you have just gone through bankruptcy and need some emotional support and financial coaching, contact us for **free credit counselling services**. We will help you get back on track and show you **how to manage money** so you can avoid bankruptcy and financial trouble and keep it that way. You *can* have a **bright financial future!**

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- Stop Collection Calls
- Dealing with Creditors
- Debt Consolidation
- Debt Settlement
- Consumer Proposal
- Bankruptcy Alternatives
- Getting Out of Debt
- Warning Signs
- Next Steps

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Dealing with Debt

A Consumer's Guide



Canada



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
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MANDATE AND MISSION

OF THE OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY

The Superintendent of Bankruptcy is mandated to “supervise the administration of all estates and matters under insolvency legislation.”

To fulfill its legislative mandate, the Office of the Superintendent of Bankruptcy (OSB) has undertaken the mission “to contribute to a fair and efficient marketplace by protecting the integrity of the Bankruptcy and Insolvency system for the benefit of investors, lenders, consumers and public interest.”

The OSB intends to achieve this mission by concentrating its efforts on the following four strategic objectives:

1. maintain an efficient and effective regulatory framework;
2. promote awareness of the rights and responsibilities of the stakeholders in the insolvency system;
3. ensure trustee and debtor compliance with the legislative and regulatory framework; and
4. be an integral source of information on Canadian insolvency matters.

INTRODUCTION

Many Canadians face a financial crisis at some time. Most debt problems are easy to solve. Others need professional assistance. The best way to deal with your financial problems is to admit to them and take control before they get out of hand.

This booklet can help you decide whether you have a serious debt problem. It also gives some suggestions for solving your difficulties and avoiding them in the future. The information in this booklet is meant for individuals only and does not apply to corporations.

Readers are reminded that this booklet is not meant to be used for legal purposes. Its only aim is to give information to individuals who are having financial difficulties.

RECOGNIZE THE DANGER SIGNALS

You have a debt problem, or are going to have one, if:

- you continually go over your spending limit or you use your credit cards as a necessity rather than a convenience;
- you are always borrowing money to make it from one payday to the next;
- your wages have been garnisheed to pay for outstanding debts;
- you pay only interest or service charges monthly and do not reduce your total debt over many months;
- creditors pressure you for payment, threaten to sue or repossess your car, furniture or television, or hire a collection agency to recover the money for them; or
- utility companies cut off service because your bills have gone unpaid.

POSSIBLE **SOLUTIONS**

Contact your creditors

Explain why you can't make your payments and suggest making lower payments over a longer period of time. You may be surprised by how many creditors are willing to accept such arrangements.

Credit counselling

Credit counselling services are available, but may be different from province to province. Contact a local family or community counselling office or a credit counselling association to find out how to get in touch with such a service. If you have difficulty making a budget and sticking to it, counselling may help you.

Debt consolidation loan

You can ask a bank or financial institution about combining or "consolidating" your debts into one loan. In such a case, the bank or financial institution will pay off all your debts and, in return, you make single monthly payments to the bank or financial institution. Make sure to shop around because interest rates are different. It is important to stop buying on credit. Continuing to use credit could make your debt load too great for you to handle.

Consolidation order

If you live in Alberta or Saskatchewan, you may apply for a consolidation order. A consolidation order sets out the amount and the times when payments

are due to the court. The court will distribute your payments to your creditors. This part of the *Bankruptcy and Insolvency Act* (Part X: Orderly Payment of Debts) lets you pay off your debts over three years and frees you from creditor harassment and wage garnishment. Unlike bankruptcy, you do not lose your assets.

Voluntary Deposit scheme

For residents of Quebec, the Voluntary Deposit scheme (better known as the “Lacombe Law”) is similar to a consolidation order. You must make a monthly payment based on your income and number of dependants, to the court. This service is usually available at the local courthouse.

Consumer proposal

Under the *Bankruptcy and Insolvency Act* you may make a consumer proposal to your creditors to reduce the amount of your debts, extend the time you have to pay off the debt, or provide some combination of both. Consumer proposals are explained in more detail on page 19.

Bankruptcy

If none of the above methods solves your debt problem, you may choose to declare bankruptcy. Bankruptcy should be a last resort if you cannot meet your financial obligations through affordable payments over a specific period of time.

Bankruptcy is a legal process performed under the *Bankruptcy and Insolvency Act*. Because of your inability to pay your debts, you assign all of your assets, except those exempt by law, to a licensed trustee in bankruptcy. This process relieves you of most debts, and legal proceedings against you by creditors should stop. Bankruptcy is explained in more detail on page 23.

WHAT YOU SHOULD KNOW

Administrator of consumer proposals

An administrator of consumer proposals is a trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy. British Columbia (1-800-663-7867), Saskatchewan (1-306-933-6520) and Nova Scotia (1-800-670-4357) provide administration of consumer proposals. You may wish to contact the appropriate provincial department. With regard to trustees in bankruptcy, their names may usually be found in the Yellow Pages under the headings of "Bankruptcy" or "Trustees in Bankruptcy."

Assets acquired during bankruptcy

You must assign to your trustee all assets acquired during your bankruptcy, including lottery winnings and inheritances, so they can be divided among your creditors.

Assets and property

In a bankruptcy, you must assign all your assets to the trustee, except for exempt property, such as basic furniture and tools-of-trade needed to make your living. Exempt property can vary from province to province. Your trustee can tell you what these are.

Bankrupt

This is the legal status of a person who declares bankruptcy.

Bankruptcy and Insolvency Act (the Act)

This is the federal law that regulates bankruptcy and insolvency in Canada.

Bankruptcy Court

This is a court in which a judge or registrar will decide on a bankrupt's application for discharge and other insolvency matters. Discharges are explained in more detail on page 26.

Co-signers

Your bankruptcy does not cancel the responsibility of anyone who has guaranteed or co-signed a loan on your behalf. For example, if your parent co-signed a loan for you, that parent would be liable to pay the loan in full even if you decide to file for bankruptcy.

Creditor

A creditor is a person, institution or business to whom you owe money. Secured creditors are creditors that have taken certain measures to protect themselves and hold a mortgage, pledge, lien or similar instrument on, or against, your assets. If secured creditors are not repaid, they can enforce their claims by recovering the assets on which they hold security.

Unsecured creditors are creditors that do not have any security for the debt owing to them.

Credit rating and re-establishment of credit

Credit bureaus collect information about consumers' financial affairs and sell the information to their clients, such as credit lenders, employers and insurance companies. These agencies obtain information from various sources, for example:

- from the consumer who provides information when filling out an application for credit or a loan;
- from public records that provide information related to such matters as bankruptcy, court judgments and conditional sales contracts that are registered with provincial authorities;
- from credit lenders and collection agencies that provide credit files on a monthly basis. These files contain information such as the account number, the outstanding balance and a nine-point rating scale, indicating, for example: R1 — that payment was made on time; R2 — that payment was made 30–60 days late; and R9 — a bad debt or one that has been placed for collection (also applies to bankruptcy).

It should be noted that your credit rating is set by your creditors. Credit bureaus only pass that information on to their clients.

Generally, information concerning your bankruptcy could show up on your file for a period of 6 to 7 years after your discharge. If you have been bankrupt before, this period could be extended to as much as 14 years. This period could vary from one province to another.

The decision as to whether or not to grant credit to an applicant is made by the credit lender, not the credit bureau. It is the lender's individual credit scoring system that determines access to credit.

Should you wish to improve your credit rating after obtaining your discharge from bankruptcy, you could, for instance, contact your banker and request a meeting. For this meeting, you could bring your paycheque stubs, your budget and your discharge papers. You could explain that you have obtained your discharge and ask the banker how you can earn your way back to a good credit rating.

Debtor

A debtor is a person who receives a loan or an advance of goods and services in exchange for a promise to pay at a later date.

Income tax returns

You must complete two income tax returns for the calendar year in which you become bankrupt. The pre-bankruptcy return covers the period from the beginning of the year to the date of your bankruptcy. You will be required to provide your trustee with details and documentation to support this return. The post-bankruptcy return covers the period from the date of bankruptcy to the end of the calendar year.

Income tax refunds for both the pre- and post-bankruptcy periods become part of your bankruptcy.

Inspector

Inspectors are appointed by creditors to represent them before the trustee during the administration of proposals and bankruptcies. They are expected to assist the trustee by virtue of their experience and are required to supervise certain aspects of the trustee's administration.

Insolvent person

An insolvent person has a debt of \$1000 or more and is unable to meet financial obligations when they become due, or has ceased to do so, or whose total assets, if they were sold, would not be enough to pay for all of that person's financial obligations.

Legal action

Although legal actions or most garnishments against you stop on the date you declare bankruptcy or file a consumer proposal, criminal actions and some civil matters, such as actions in matrimonial matters, are not affected by a bankruptcy or proposal. You must give the trustee or administrator copies of all legal documents that you have received before and after the date you became bankrupt or filed a proposal. In a proposal, no creditor can, without permission of the court, start or continue any legal action until the proposal is either withdrawn, refused or annulled, or until the administrator has been discharged. In the case of a bankruptcy, no creditor can, without permission of the court, start or continue any legal action until the trustee has been discharged.

Mediation

Mediation is a way of resolving conflict between two or more individuals. In the context of a bankruptcy, an impartial and independent person — the “mediator” — will help the individuals involved in a dispute to settle their disagreement instead of going to court. Generally, the mediator is an employee from one of the Superintendent of Bankruptcy’s Division offices. Mediation is more flexible, speedier and less costly than formal court proceedings. It allows people affected by the bankruptcy to be directly involved in deciding how their disagreement will be settled.

In bankruptcy, mediation is available to resolve two types of disputes:

- i. when the trustee and the bankrupt are not in agreement with the amount that the bankrupt, who has surplus income, is required to pay creditors; and

- ii. when opposition to the discharge is based on the fact that the bankrupt has failed to comply with the requirement to make surplus income payments, or if the bankrupt could have made a viable proposal and has chosen bankruptcy rather than a proposal as a solution to debt.

When mediation takes place, the bankrupt and the trustee (or trustee's representative) must be present. If a creditor requests mediation, that creditor must also be present.

For more information on mediation, you may ask your trustee to provide you with a free copy of the brochure entitled "All About Bankruptcy Mediation" prepared by the Office of the Superintendent of Bankruptcy or you may consult the OSB's website at: osb.ic.gc.ca.

Official Receiver

The Official Receiver is a federal government employee in the Office of the Superintendent of Bankruptcy and an officer of the court with specific duties under the *Bankruptcy and Insolvency Act*. The Official Receiver, among other things, accepts the documents that are filed in proposals and bankruptcies, examines bankrupts under oath, and chairs meetings of creditors.

Payments and surplus income

Immediately after becoming bankrupt, you should no longer be required to make payments to your creditors. However, you have a duty to inform your trustee of any material change in your financial situation, such as an income tax refund, a new job or the birth of a new family member.

The trustee determines whether you have any surplus income, taking into consideration the standards issued by the Superintendent of Bankruptcy, your total income, and your personal and family situation. Surplus income is the amount of total income a bankrupt receives that exceeds the amount needed to maintain a reasonable standard of living. If the trustee concludes that you have surplus income, the trustee will set the amount you must pay into the bankruptcy estate. This amount may be adjusted during the administration of your bankruptcy if there is a change in either your total income or personal or family situation.

The Superintendent of Bankruptcy's standards are set out in Directive No. 11, which is available on the OSB's website at: osb.ic.gc.ca.

If you do not agree with the amount set by the trustee, the trustee must request mediation. Similarly, a creditor may request mediation if that creditor does not agree with the amount of the surplus income payment set by the trustee. If mediation does not resolve the dispute, the trustee, under certain circumstances, will have to apply to court to have the matter decided.

Failure to make the required payments may affect your discharge (that is, the date of your release from bankruptcy).

Pressure from creditors

One of the objectives of the Act is to relieve you of pressure from your creditors. If you receive phone calls or letters from creditors, tell them that you are bankrupt, or have made a proposal, and refer them to your trustee or administrator of consumer proposals.

Superintendent of Bankruptcy

The Superintendent of Bankruptcy is a federally appointed official by the Governor in Council who oversees the administration of estates under the *Bankruptcy and Insolvency Act* in Canada.

Trustee in bankruptcy

A trustee in bankruptcy is a person licensed by the Superintendent of Bankruptcy to administer proposals and bankruptcies. The trustee represents your creditors and is an officer of the court. However, the trustee can give you information and advice about both the proposal and bankruptcy processes and make sure that your rights, as well as those of the creditors, are respected.

WHERE TO GO FOR HELP

If you want more information on making a consumer proposal to your creditors, contact an administrator of consumer proposals— usually a trustee in bankruptcy. If you wish more information on declaring bankruptcy, you should contact a trustee in bankruptcy. The names of trustees and administrators of consumer proposals in your area are usually listed in the Yellow Pages under “Bankruptcy” or “Trustee in Bankruptcy,” or provincial government services. If you cannot secure the services of a trustee, contact the nearest Office of the Superintendent of Bankruptcy at Industry Canada (see Appendix II, on page 35).

ASSESSMENT AND COUNSELLING

Before you decide whether to make a consumer proposal or declare bankruptcy, the administrator of consumer proposals or the trustee, as the case may be, will perform an assessment. The purposes of this assessment are to evaluate your financial situation, to explain the options available to you, and to discuss with you the merits and the consequences of your choice.

Should you decide to make a consumer proposal or declare bankruptcy, the *Bankruptcy and Insolvency Act* requires that counselling be provided to you. Counselling must be given by a counsellor registered with the Office of the Superintendent of Bankruptcy. Counselling consists of two sessions. During the first counselling session, you will be provided with information concerning money management, spending and shopping habits, warning signs of financial difficulties, and obtaining and using credit. In the second session, the counsellor will help you to discover and understand the causes of your insolvency or bankruptcy, and will assist you in establishing a rehabilitation plan by helping you to develop recommendations and alternatives for a financial action plan. You must attend these two sessions. Counselling may also be provided to someone who is related to you or has a financial relationship with you. If you feel that you need additional help or assistance, you may ask for a third counselling session.

If you made a proposal and refuse or neglect to use this service, the administrator of consumer proposals cannot issue a certificate of full performance of consumer proposal. If you declared bankruptcy and refuse or neglect to use this service, you will not be eligible for an automatic discharge.

CONSUMER **PROPOSAL**

What is a consumer proposal?

A consumer proposal is an offer made by a debtor to his or her creditors to modify his or her obligations to them. For example, you may propose to your creditors that you will pay a lower amount each month, but over a longer period of time. Or you may propose that your creditors accept being paid a percentage of what you owe.

How does a consumer proposal benefit you?

Your unsecured creditors will not be able to take legal steps to recover their debts from you (such as seizing assets or garnisheeing wages) unless the proposal is withdrawn, rejected or annulled, or if the administrator is discharged before the proposal was fully performed. However, creditors may continue to pursue recovery of debts that would not be released by an order of discharge in a bankruptcy (except if the proposal explicitly provides for the compromise of such claims and the creditor votes in favour of the proposal).

Who can make a consumer proposal?

Any natural person who is insolvent, including a bankrupt, whose debts do not exceed \$250 000, excluding a mortgage for the person's principal residence, can make a consumer proposal. When a bankrupt wishes to make a proposal, the proposal must first be approved by the inspectors and the bankrupt must have obtained the assistance of a trustee who will be the administrator of the consumer proposal. If the person's debts exceed \$250 000, the proposal will be made under Division I of Part III of the Act.

It is also possible to make a joint consumer proposal. Two or more consumer proposals may be joined where they could reasonably be dealt with as one proposal because of the financial relationship of the consumer debtors involved. It must be emphasized that joint consumer proposals can be made only if the total debt of all the consumer debtors does not exceed \$500 000.

How does someone make a proposal? What is the procedure?

The procedure begins when you seek the help of an administrator who might be a trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy. This individual will assess your financial situation and give you advice about what kind of a proposal may be best for you and your creditors. The administrator will ask you to sign the required forms, which will then be filed with the Official Receiver.

What happens after a proposal is filed with the Official Receiver?

Within 10 days after filing your proposal with the Official Receiver, the administrator is required to send the Official Receiver a report. The report contains the administrator's opinion about whether the proposal is fair and reasonable, and whether he or she believes you will be able to perform it. It also contains a list of your creditors.

At the same time, the administrator must send to each of your creditors a copy of your proposal, of your statement of affairs (which contains the list of your assets and liabilities; list of your creditors; information related

to your personal affairs; and budget information) and of the administrator's report on your proposal. If there is a meeting of the creditors, the administrator will ask the creditors to accept or reject the proposal.

How does a proposal get accepted?

Your creditors will have up to 45 days to consider whether to accept or reject your proposal. A creditor may send a notice to the administrator accepting or rejecting the proposal. If creditors do not respond, they will be considered to have accepted the proposal. If a sufficient number of creditors accept the proposal, then it will become binding on you and your creditors, and you will have to meet its terms.

What happens if the proposal is rejected?

If the proposal is rejected, you will no longer be protected by the Act. The administrator will, within 5 days, notify you, all your creditors and the Official Receiver of the rejection. Your creditors will now be able to take legal steps to recover their debts from you. If you were bankrupt when you made this proposal, the administration of your bankruptcy will continue.

What if my proposal is accepted, and I fully meet the terms?

When the proposal is fully performed, the administrator must give a certificate of full performance to you and the Official Receiver, and you will be relieved of the debts that were in the proposal.

What if I stop making the payments and default on the performance of the proposal?

If you fail to keep the terms of your proposal, it may be annulled or deemed annulled. If you were insolvent prior to making the proposal, you return to the same situation and your creditors would have a claim against you for the amount owed to them before the proposal, minus any amount you paid them during the proposal. If you were bankrupt when the proposal was made and then your proposal is subsequently annulled or deemed annulled, you will be considered bankrupt on the date of the annulment.

Administrators of consumer proposals are given discretion to “revive” a consumer proposal that would otherwise be *deemed annulled*. In fact, administrators can rectify the default by providing notice to the creditors. It is especially beneficial in situations where the debtor faces a temporary problem meeting payments, for example, due to illness or temporary unemployment, but otherwise is making good faith efforts to comply with the terms of the proposal. Also, courts have the power to make an order reviving a consumer proposal on any terms the court considers appropriate.

Does it cost anything to make a proposal?

Yes. There is a filing fee to be paid to the Superintendent of Bankruptcy. In addition, the administrator is entitled to be paid. These fees are prescribed by the *Bankruptcy and Insolvency Rules*, which may be consulted on the OSB’s website at: osb.ic.gc.ca.

BANKRUPTCY

What is bankruptcy and what are the benefits to the debtor?

Bankruptcy is a legal process, regulated by the Act, by which you may be discharged from most of your debts. The purpose of the Act is to permit an honest, but unfortunate, debtor to obtain a discharge from his or her debts, subject to reasonable conditions.

When you declare bankruptcy, your assets are given to a trustee in bankruptcy who then sells them and distributes the money among your creditors. Once you declare bankruptcy, your unsecured creditors will not be able to take legal steps to recover their debts from you (such as seizing assets or garnisheeing wages).

It is also possible to file a "joint assignment." A joint assignment allows two bankrupts, involved in a close financial relationship, to file for bankruptcy together and to see their assets combined and their files dealt with as one file. This is available to debtors if their debts are substantially the same and the trustee believes it is in the best interest of the debtors and creditors.

What are the duties of a bankrupt?

Once you are legally a bankrupt, you are required to perform the duties of bankrupts as outlined in Appendix I, which begins on page 29. The trustee will inform you of these duties.

How does one declare bankruptcy?

First, you meet with a trustee in bankruptcy who will assess your financial situation and explain the options available to you as described earlier. If you decide to declare bankruptcy, the trustee will help you complete several forms that you will have to sign. You are considered a bankrupt only when the trustee files these forms with the Official Receiver.

What kind of forms will I have to sign?

You will have to sign at least two forms. One is an "Assignment" and the other is your "Statement of Affairs." In the assignment you state that you are handing over all of your assets to the trustee for the benefit of your creditors. In the statement of affairs you list your assets, liabilities, income and expenses. As well, you will have to answer several questions about your family, your employment and the disposition of your assets.

Before you sign the forms, make sure you understand these legal documents that become part of your bankruptcy file. Although the trustee prepares them from the information you provide, they are your statements. You are responsible for the accuracy of their contents. Review them carefully before you sign. Once these documents have been filed with and accepted by the Official Receiver, you become legally bankrupt and, at this point, the process cannot be reversed without a court order. Keep copies of notices and all other documents the trustee sends you.

What happens after the forms are filed with and accepted by the Official Receiver and I become bankrupt?

Generally, a meeting of creditors is not necessary but there may be instances where such a meeting will be held. Creditors or the Official Receiver may request one. If a meeting of creditors is called, you must attend this meeting. You may also be required to go to the Official Receiver's office to answer several questions under oath about your financial affairs.

What happens at the first meeting of creditors?

If a meeting is called, the trustee will give a report about your assets and liabilities and the creditors may ask you questions related to your financial file. The creditors will then vote to either confirm the trustee's appointment, or substitute a trustee of their choice. The creditors will then have an opportunity to vote for the appointment of inspectors. They may also give directions to the trustee related to the administration of the estate.

What does the examination with the Official Receiver involve?

The Official Receiver may send you a notice instructing you to appear before him or her for an examination under oath. The Official Receiver will then ask you a number of questions about the causes of your bankruptcy, your conduct, the disposition of your assets and the nature of your debts.

When is a bankrupt discharged?

If you are a first-time bankrupt, you will be automatically discharged nine months after the date of bankruptcy if you have no surplus income. You will be automatically discharged after 21 months after the date of bankruptcy if you are required to make surplus income payments to the estate.

For a second bankruptcy, you will automatically be discharged after 24 months after the date of bankruptcy if you have no surplus income and 36 months after the date of bankruptcy if you are required to make surplus income payments to the estate.

Bankrupts with personal income tax debt in an amount of \$200 000 or more representing 75 percent or more of total unsecured claims, are not eligible for an automatic discharge.

An automatic discharge happens only if notice of opposition to the discharge is not given by the Superintendent of Bankruptcy, the trustee or a creditor.

If notice of opposition to the discharge is given and it is based on the fact that the bankrupt did not pay the required amount of surplus income, or the bankrupt, who could have made a viable proposal, has chosen bankruptcy rather than a proposal as a solution to debt, the trustee must ask the Official Receiver for mediation.

If mediation fails to resolve the issue or if an opposition is filed for other reasons, the trustee will have to obtain a date for a court hearing. The parties opposing the discharge will have to give their reasons to the court, which will make a decision. It should be noted that a first-time individual bankrupt who refuses or neglects to receive the required counselling sessions will not qualify for an automatic discharge.

What kind of discharge orders can a judge or registrar issue?

At a hearing for a discharge, the court decides whether to postpone the hearing to a later date, refuse the discharge or issue any of the following orders:

i. Order of Absolute Discharge

This official document relieves you of the debts incurred before you declared bankruptcy, taking into consideration the exceptions provided in the Act.

ii. Order of Conditional Discharge

The court may impose certain conditions that must be met before your discharge becomes absolute. For example, the court may require you to pay an amount to your trustee for distribution to your creditors.

iii. Order of Suspended Discharge

The court orders a delay so that the discharge will not be effective until a certain date.

Your discharge may be delayed by an opposition by a creditor, the trustee or the Superintendent of Bankruptcy on such grounds as an ongoing criminal investigation or a breach of your duties as specified in the *Bankruptcy and Insolvency Act*.

What is the effect of a bankruptcy discharge?

The bankrupt is released of most debts. Some debts are not released, however, such as an award for damages in respect of an assault; a claim for alimony, spousal or child support; any court fine; a debt arising out of fraud or misleading representation; or debts or obligations for student loans if the bankruptcy occurs while the debtor was still a student or within seven years after the bankrupt ceased to be a student.

How does bankruptcy affect employment?

For the most part, bankruptcy should not affect your employment. However, there are some special cases. For example, you may have difficulty being bonded. Your trustee will be able to give you more information on other possible restrictions or prohibitions.

Does it cost anything to go bankrupt?

Yes. There is a filing fee to be paid to the Superintendent of Bankruptcy. In addition, the trustee is entitled to be paid. These fees are prescribed by the *Bankruptcy and Insolvency Rules*, which may be consulted on the OSB's website at: osb.ic.gc.ca.

APPENDIX I

Excerpts from the *Bankruptcy and Insolvency Act* concerning bankruptcies

DUTIES OF BANKRUPT

Section 158

A bankrupt shall

- (a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;
 - (a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;
- (b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;
- (c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

- (d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;
- (e) make or give all the assistance within his power to the trustee in making an inventory of his assets;
- (f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;
- (g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of bankruptcy, both dates included;

- (h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;
- (i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;
- (j) submit to such other examinations under oath with respect to his property or affairs as required;
- (k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;
- (l) execute such powers of attorney, conveyances, deeds and instruments as may be required;
- (m) examine the correctness of all proofs of claims filed, if required by the trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;
(n.1) inform the trustee of any material change in the bankrupt's financial situation;
- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and
- (p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

BANKRUPTCY OFFENCES*Section 198*

1. Any bankrupt who

- (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,
- (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting,
- (d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
- (e) after or within one year immediately preceding the date of initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,
- (f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or

- (g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

2. A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable

- (a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
- (b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

FAILURE TO DISCLOSE FACT OF BEING UNDISCHARGED
Section 199

An undischarged bankrupt who

- (a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or
- (b) obtains credit to a total of \$1,000 or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

APPENDIX II

Division Offices of the Superintendent of Bankruptcy

NOVA SCOTIA

Maritime Centre
1505 Barrington Street, 16th Floor
Halifax, Nova Scotia B3J 3K5
Tel.: 1-877-376-9902 | Fax: 902-426-7275

QUEBEC

702-1550 d'Estimauville Avenue
Québec, Quebec G1J 0C4
Tel.: 1-877-376-9902 | Fax: 418-648-4120

Sunlife Building
1155 Metcalfe Street, 10th Floor
(Postal address: Suite 950)
Montréal, Quebec H3B 2V6
Tel.: 1-877-376-9902 | Fax: 514-283-9795

ONTARIO

Place Bell Building
160 Elgin Street, 11th Floor, Suite B-100
Ottawa, Ontario K2P 2P7
Tel.: 1-877-376-9902 | Fax: 613-996-0949

25 St. Clair Avenue E, 6th Floor
Toronto, Ontario M4T 1M2
Tel.: 1-877-376-9902 | Fax: 416-973-7440

Federal Building
55 Bay Street N, 9th Floor
Hamilton, Ontario L8R 3P7
Tel.: 1-877-376-9902 | Fax: 905-572-4066

Federal Building
451 Talbot Street, Suite 303
London, Ontario N6A 5C9
Tel.: 1-877-376-9902 | Fax: 519-645-5139

MANITOBA

400 St. Mary Avenue, 4th Floor
Winnipeg, Manitoba R3C 4K5
Tel.: 1-877-376-9902 | Fax: 204-983-8904

SASKATCHEWAN

1945 Hamilton Street, Suite 600
Regina, Saskatchewan S4P 2C7
Tel.: 1-877-376-9902 | Fax: 306-780-6947

123 Second Avenue S, 7th Floor
Saskatoon, Saskatchewan S7K 7E6
Tel.: 1-877-376-9902 | Fax: 306-975-5317

ALBERTA

Standard Life Tower
639 Fifth Avenue SW, Suite 400
Calgary, Alberta T2P 0M9
Tel.: 1-877-376-9902 | Fax: 403-292-5188

Canada Place Building
9700 Jasper Avenue, Suite 725
Edmonton, Alberta T5J 4C3
Tel.: 1-877-376-9902 | Fax: 780-495-2466

BRITISH COLUMBIA

300 West Georgia Street, Suite 2000
Vancouver, British Columbia V6B 6E1
Tel.: 1-877-376-9902 | Fax: 604-666-4610



Industry Canada

Home > Bankruptcy > Office of the Superintendent of Bankruptcy Canada > You Owe Money

Office of the Superintendent of Bankruptcy Canada

You Owe Money — Understanding Consumer Proposals

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turn to next page).*

[Your options at a glance](#)

[Definitions](#)

[Order a publication](#)

If you are an individual and your total debts do not exceed \$250,000 (not including debts such as a mortgage secured by your principal residence), a consumer proposal might be the right choice for you.

What is a consumer proposal?

A consumer proposal is a formal, legally binding process that is administered by a bankruptcy trustee. In this process, the trustee will work with you to develop a "proposal"—an offer to pay creditors a percentage of what is owed to them, or extend the time you have to pay off the debts, or both. The term of a consumer proposal cannot exceed five years.

Payments are made through the trustee, and the trustee uses that money to pay each of your creditors.

When is a consumer proposal appropriate?

Tip: To find a trustee, search the [Trustee Registry](#).

To find out if a consumer proposal (or a different option) is the right choice for you, set up a meeting with a trustee to discuss your personal circumstances.

The trustee will evaluate your financial situation and explain the pros and cons of the [various options](#) that could help you solve your financial problems.

If you decide to submit a consumer proposal, the trustee will work with you to develop a proposal that works for both you and your creditors.

Below is an explanation of what happens when you file a consumer proposal.

Your responsibilities

If you file a consumer proposal, you must

- give the trustee a complete list of all of your assets (property) and liabilities (debts);
- attend the first meeting of creditors, if a meeting is requested (see below);
- attend two counselling sessions;
- advise the trustee in writing of any address change; and
- generally assist the trustee in administering the proposal.

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How a consumer proposal works

1. The trustee will file the proposal with the Office of the Superintendent of Bankruptcy (OSB). Once your proposal is filed, you stop making payments directly to your unsecured creditors. In addition, if your creditors are collecting your salary (garnishing your wages) or have filed lawsuits against you, these actions are stopped.
2. The trustee will submit the proposal to your creditors. The proposal will include a report on your personal situation and the causes of your financial difficulties.
3. Creditors then have 45 days to either accept or reject the proposal. They can also do this either prior to or at the meeting of creditors, if one is held.

When is a meeting of creditors held?

A meeting of creditors is held if one is requested by one or more creditors provided they are owed at least 25% of the total value of the proven claims.

A request for a meeting must be made by the creditors within 45 days of the filing of the proposal. The OSB can also direct the trustee to call a meeting of creditors at any time within that same period.

The meeting of creditors must be held within 21 days after being called. At the meeting, the creditors vote to either accept or refuse the proposal.

If no meeting of creditors is requested within 45 days of the filing of the proposal, the proposal will be deemed to have been accepted by the creditors—regardless of any objections received.

Understanding the vote to accept or refuse the proposal

At the meeting of creditors, a creditor's acceptance or refusal of a proposal counts as a vote, provided it is received at or before the meeting. (If there is no meeting, an objection does not count as a vote on the proposal.)

The number of votes corresponds to the total dollar value of the proven claims. The vote is decided by a simple majority of this dollar value (i.e., 50% plus 1). For example, if the proven claims total \$150,000, and if the creditors who vote to accept the proposal are together claiming at least \$75,001, then the proposal will be deemed accepted and all other unsecured creditors must accept it as well. (In the event there is no quorum of creditors at the meeting, the proposal will be deemed accepted.)

If your proposal is accepted, the OSB (or any other interested party) has 15 days to ask the trustee to apply to the court to have the proposal reviewed. If no such request is made, the proposal will be deemed to have been approved by the court.

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If your consumer proposal is accepted

If your consumer proposal is accepted, you will

- be responsible for paying either a lump sum or periodic payments to the trustee;
- be required to adhere to any other conditions in the proposal;
- retain your assets (provided you make your payments to your secured creditors); and
- be required to attend two financial counselling sessions.

If your consumer proposal is not accepted

If your consumer proposal is not accepted, you can

- make changes to the proposal and resubmit it;
- consider other options for solving your financial problems; or

- declare bankruptcy.

How will a consumer proposal affect my credit rating?

Generally, a person who declares bankruptcy or submits a consumer proposal is assigned the lowest possible credit score.

Information that affects your credit score is usually removed from your records after a certain period of time, depending on the type of information and where you live. Similarly, depending on which province you live in, the proposal will be on your credit report for the duration of the proposal's term, plus a few years after.

Your ability to obtain and use credit after a consumer proposal depends on convincing lenders of your personal financial maturity and ability to repay the debt; there are no guarantees—no one is required to give you credit.

Once you have fulfilled the terms of your consumer proposal, you will receive a "certificate of full performance." To ensure your credit record is updated, send a copy of this document to the major credit-reporting agencies. Be sure to keep all of your proposal-related documents for reference by future lenders.

Learn more about [credit reports, scores and ratings](#)

If you meet the conditions of your proposal

If you meet the conditions in full, you will be legally released from the debts included in the proposal.

However, if you are making monthly payments and miss three payments, or if your payment schedule is less frequent but your last payment is more than three months past due, the proposal will be deemed annulled. This means your creditors will be able to take action to collect the money you owe them, unless the court has ordered otherwise, or unless an amendment to the consumer proposal has been filed. A consumer proposal that has been deemed annulled may be revived under certain conditions.

Any questions?

Feel free to [contact us](#) if you have

- questions about the consumer proposal process;
- a [complaint](#); or
- a problem with your trustee.

The OSB keeps records of all complaints and can investigate any complaint. If you have a complaint against your trustee, we can review and investigate your complaint and attempt to reach an acceptable resolution with your trustee.



Directive / Instruction

N° 20

BANKRUPTCY ASSISTANCE PROGRAM

PROGRAMME D'ACCÈS À LA FAILLITE

Issued: August 14, 2009

Date d'émission : le 14 août 2009

(Supersedes Directive No. 11 issued on July 23, 1993, on the same topic)

(La présente instruction remplace et annule l'instruction n° 11 sur le même sujet émise le 23 juillet 1993.)

Interpretation

Interprétation

1. In this Directive,

1. Les définitions qui suivent s'appliquent à la présente instruction :

“Act” means the *Bankruptcy and Insolvency Act*;

« BSF » désigne le bureau de division du Bureau du surintendant des faillites dans la localité du débiteur;

“BAP” means the Bankruptcy Assistance Program;

« débours » renvoie aux débours tels que définis au paragraphe 128(2) des Règles;

“OSB” means the Division Office of the Office of the Superintendent of Bankruptcy in the locality of the debtor;

« Loi » désigne la *Loi sur la faillite et l'insolvabilité*;

“Out-of-pocket expenses” refers to the expenses delineated in subsection 128(2) of the Rules;

« PAF » s'entend du Programme d'accès à la faillite;

“Rules” means the *Bankruptcy and Insolvency General Rules*.

« Règles » renvoie aux *Règles générales sur la faillite et l'insolvabilité*.

Authority and Purpose

2. This Directive is issued pursuant to paragraph 5(4)(c) of the Act.

3. The purpose of this Directive is to set out the framework of a program that will permit a debtor who has insufficient funds to cover the cost of an administration of a bankruptcy to have access to the bankruptcy system. This Directive sets out the procedure and criteria for eligibility.

Procedure

4. Debtors initially contacting the OSB for advice relative to their financial affairs will be provided with a list of trustees participating in the BAP.

5. If unable to obtain the services of a trustee after consulting at least two (2) trustees, or the sole trustee in the area where there is only one trustee, the debtor may again contact the OSB if the debtor considers that bankruptcy remains a potential solution. At such time, a registration form detailing the debtor's name, address and telephone number and the name(s) of trustee(s) previously contacted will be prepared.

6. On a rotational basis, the designated Bankruptcy Analyst will deliver the registration form to a participating trustee, who becomes the designated trustee to administer the assignment.

7. The debtor will contact the trustee designated by the designated Bankruptcy

Autorité et objet

2. La présente instruction est émise en vertu de l'alinéa 5(4)c) de la Loi.

3. La présente instruction a pour objet de présenter le cadre du programme qui permet aux débiteurs n'ayant pas les fonds suffisants pour couvrir les frais d'administration d'une faillite d'avoir accès au système de faillite. Elle énonce les modalités et les critères d'admissibilité à ce programme.

Modalités

4. Un débiteur demandant initialement conseil au BSF parce qu'il ne peut faire face à ses obligations se verra remettre une liste de syndicats qui se sont engagés à rencontrer les exigences du PAF.

5. Si le débiteur est dans l'impossibilité d'obtenir les services requis après avoir consulté deux (2) syndicats, ou le syndic lorsqu'il y en a un seul dans le secteur, le débiteur pourra recommuniquer avec le BSF s'il estime que la faillite demeure une solution envisageable. Un formulaire renfermant le nom, l'adresse, le numéro de téléphone du débiteur et le nom des syndicats contactés sera alors préparé.

6. Sur une base rotative, l'analyste des faillites désigné transmettra le formulaire d'enregistrement à un syndic participant qui deviendra de fait le syndic désigné pour administrer la cession.

7. Le débiteur communiquera avec le syndic désigné par l'analyste des faillites désigné afin

Analyst in order to fully discuss the alternatives to bankruptcy and the consequences of declaring bankruptcy or making a proposal.

8. Provided that the debtor is eligible for the BAP pursuant to sections 14 and 15 below, and decides to declare bankruptcy, the designated trustee will prepare the necessary documentation for the filing of the assignment.

9. If the assignment is not filed within thirty (30) days of the debtor's assessment, the trustee is obliged to report this fact to the designated Bankruptcy Analyst. In remote geographical areas, a slightly longer period of time may be acceptable, subject to the approval of the designated Bankruptcy Analyst.

10. Trustees must be available for service throughout the entire year and agree to ensure that files accepted under the BAP will receive the same level of service as similar files accepted outside of the program.

11. The application for a bankrupt's discharge is not to be delayed due to the lack of full payment of a trustee's fee. Trustees, however, are entitled to payment in full of their out-of-pocket expenses.

12. In cases where third-party deposits or guarantees are taken by the trustee, such arrangements must be made in accordance with Directive No. 16, *Third-Party Deposits and Guarantees*.

de discuter pleinement des solutions de rechange à la faillite et des conséquences de la faillite ou du dépôt d'une proposition.

8. Si le débiteur est admissible au PAF aux termes des paragraphes 14 et 15 ci-après et s'il décide de faire faillite, le syndic désigné devra préparer la documentation nécessaire en vue de déposer la cession.

9. Si la cession n'est pas déposée dans les trente (30) jours suivant l'évaluation du débiteur, le syndic devra en faire rapport à l'analyste des faillites désigné. Dans les régions éloignées, une période de temps plus longue pourrait être acceptable, sous réserve de l'approbation de l'analyste des faillites désigné.

10. Les syndics doivent pouvoir offrir le service tout au long de l'année et doivent s'assurer que tous les dossiers acceptés en vertu du PAF seront traités de la même manière que les autres dossiers similaires acceptés par les syndics hors du programme.

11. La demande de libération du failli ne doit pas être retardée parce que les honoraires du syndic n'ont pas été entièrement versés. Toutefois, les syndics ont droit au paiement intégral de leurs débours personnels.

12. Dans les cas où des dépôts ou garanties de tierces personnes sont acceptés par le syndic, il faut que l'instruction n° 16, *Dépôts et garanties de tierces personnes*, soit respectée.

13. If the debtor does not meet with the trustee at the trustee's office or does not proceed with an assignment after the assessment, the designated trustee will return the registration form indicating the reasons for the non-assignment to the OSB.

Eligible Debtors

14. Following attempts to secure the services of a trustee, insolvent individuals wishing to make an assignment in bankruptcy and who contact the OSB may be accepted into the BAP, except individuals:

- (a) who are incarcerated;
- (b) who were previously or are currently involved in commercial activities where the administration of the bankruptcy could give rise to an appreciable amount of administrative or investigative work for the trustee; or
- (c) who are required to make surplus income payments in accordance with the Directive No. 11R2, *Surplus Income*.

15. Where a debtor's income increases after being accepted into the BAP, the debtor will be required to make payments on the surplus income where required pursuant to the Directive No. 11R2, *Surplus Income*.

13. Si le débiteur ne se présente pas au bureau du syndic ou s'il décide de ne pas faire cession de ses biens suite à l'évaluation, le syndic désigné retournera le formulaire d'enregistrement en donnant les raisons du désistement au BSF.

Débiteurs admissibles

14. Après avoir essayé d'obtenir les services d'un syndic, toute personne insolvable qui désire faire une cession et qui communique avec le BSF pourra être admissible au PAF, sauf les personnes :

- a) qui sont incarcérées;
- b) qui participaient ou participent à des activités commerciales dans le cadre desquelles l'administration de la faillite pourrait entraîner un travail de gestion ou d'enquête important pour le syndic; ou
- c) qui sont tenues de faire des paiements au titre du revenu excédentaire conformément à l'instruction n° 11R2, *Revenu excédentaire*.

15. Lorsqu'un débiteur voit ses revenus augmenter après son admission au PAF, le débiteur doit effectuer des paiements au titre du revenu excédentaire lorsqu'il est tenu de le faire en vertu de l'instruction n° 11R2, *Revenu excédentaire*.

Eligible Trustees

16. A participating trustee, once designated, must agree to accept and process assigned eligible debtors except in those situations where the trustee will be in a conflict of interest. For the purpose of this Directive, conflicts of interest shall be governed by the applicable provisions of the Act and the Rules.

17. All trustees requesting to participate in the BAP will be eligible to do so subject to the following provisions:

- (a) they fully agree to adhere to all the requirements of the BAP;
- (b) new trustees requesting to participate in the BAP will be added to the list of participating trustees every January 1 and July 1;
- (c) any trustee withdrawing from the BAP, either voluntarily or involuntarily, will not be permitted to return to the program for a period of two (2) years from the withdrawal date. Subsequent readmittance into the program would be at the discretion of the designated Assistant Superintendent; and

Syndics admissibles

16. Un syndic participant au programme, lorsque désigné, doit accepter tous les débiteurs admissibles demandant de l'aide en matière de faillite, sauf lorsque l'acceptation placerait le syndic dans une situation de conflit d'intérêt. Aux fins de la présente instruction, les situations de conflit d'intérêt seront régies selon les dispositions applicables de la Loi et des Règles.

17. Tous les syndics demandant de participer au PAF seront admissibles, sous réserve des dispositions suivantes :

- a) ils conviennent de se conformer à toutes les exigences du PAF;
- b) les nouveaux syndics demandant de participer au PAF verront leur nom ajouté à la liste des participants le 1^{er} janvier et le 1^{er} juillet de chaque année;
- c) tout syndic se retirant du PAF, de façon volontaire ou non, ne pourra être réadmis au programme avant l'expiration d'un délai de deux (2) ans. Sa réadmission à l'intérieur du programme sera laissée à la discrétion du surintendant adjoint désigné; et

(d) should any trustee withdraw from the program due to exceptional circumstances (e.g. sickness), the designated Assistant Superintendent would decide as to when the trustee would be admitted back into the BAP.

d) advenant que le syndic se retire du programme en raison de circonstances exceptionnelles (p. ex., maladie), il reviendra au surintendant adjoint désigné de déterminer quand celui-ci pourra être admis de nouveau au PAF.

18. To prevent undue advantage to any participating trustee, periodic rearrangement of the trustee list will be made by the OSB.

18. Afin d'éviter un avantage indu en raison de l'ordre des syndics sur la liste, ladite liste sera réaménagée périodiquement par le BSF.

19. Trustees participating in the program, subject to section 21 of this Directive, shall be resident trustees having a principal office unless bankruptcy service is otherwise unavailable in a particular area.

19. Les syndics participant au programme devront, sous réserve de l'article 21 de la présente instruction, être des syndics locaux possédant un bureau principal, à moins que les services d'un syndic ne puissent être retenus dans une région particulière.

20. Only one name for each trustee office will be permitted in the listing. A non-resident trustee may be listed as a participating trustee in areas not served by a resident trustee.

20. Un seul nom de syndic par bureau sera inscrit sur la liste. Le nom d'un syndic possédant un bureau secondaire peut être inscrit sur la liste des syndics participants lorsque la région où est situé ce bureau n'est desservie par aucun autre syndic.

21. Trustees not complying with the spirit or conditions of the BAP may see their name deleted from the list of participating trustees by the Superintendent of Bankruptcy.

21. Les syndics ne se conformant pas aux exigences et à l'esprit du PAF pourront voir leur nom retiré de la liste par le surintendant des faillites.

Coming into Force

Entrée en vigueur

22. This Directive comes into force on September 18, 2009.

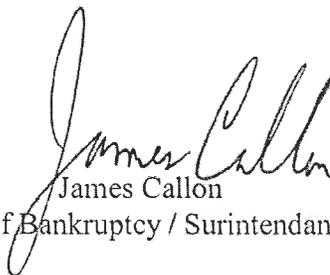
22. La présente instruction entre en vigueur le 18 septembre 2009.

Enquiries

23. For any questions pertaining to this Directive, please contact your local OSB office.

Demandes de renseignements

23. Pour toute question se rapportant à la présente instruction, veuillez communiquer avec le bureau du BSF le plus proche.



James Callon
Superintendent of Bankruptcy / Surintendant des faillites



Industry Canada

**Office of the Superintendent
of Bankruptcy Canada**

400 St. Mary Avenue, 4th Floor
Winnipeg, Manitoba
R3C 4K5
osb.ic.gc.ca

Industrie Canada

**Bureau du surintendant
des faillites Canada**

400, avenue St. Mary, 4^e étage
Winnipeg (Manitoba)
R3C 4K5
bsf.ic.gc.ca

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Dear Sir/Madam:

Re: Bankruptcy Procedure

Further to your recent request, we have enclosed a booklet entitled Dealing with Debt and a list of trustees. Please read the booklet to further understand the bankruptcy process. You may also find additional information in the "Resources for: Debtors" portion of our website at www.osb-bsf.ic.gc.ca.

Contact a trustee and schedule an appointment for an initial interview. If, after having interviews with two trustees, you are unable to obtain their services, and you still feel bankruptcy is your only option, you may qualify for the Bankruptcy Assistance Program.

The Bankruptcy Assistance Program is designed to facilitate access to bankruptcy trustees. You may be eligible for help if you:

- have contacted at least two trustees and tried, unsuccessfully to obtain their services;
- are not involved in running a business;
- are not in jail; and
- you do not have "surplus income", the definition for which the trustee will explain to you.

You will need to have the two trustees you spoke with sign the attached form stating the reason they have refused service.

The Bankruptcy Assistance Program is not a free service. Trustees incur out of pocket expenses (e.g. filing fees, counselling fees, taxes, etc.) during the bankruptcy. In a Bankruptcy Assistance Program file the trustee is entitled to expect to be reimbursed for these out of pocket expenses (or more, based upon your ability to pay). The trustee will explain these details to you. For more information about the Bankruptcy Assistance Program, refer to Directive No. 20 on our website.

If you require any further information or have any questions, please feel free to contact our office.

Yours truly,

Ashleigh Benham
Office of the Superintendent of Bankruptcy Canada
Ashleigh.benham@ic.gc.ca
Ph. 204-983-5960 or 1-877-376-9902
Fax: 204-983-8904

Canada



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
du système
d'insolvabilité

Bankruptcy Assistance Program –
Trustee list

Vancouver and Burnaby Trustee

Campbell Saunders Ltd.
6080 – 8171 Ackroyd Road
Richmond BC V6X 3K1
604-821-9882

MacKay & Company Ltd
1100 – 1177 West Hastings Street
Vancouver BC V6E 4T5
604-689-3928

Evancic Perrault Robertson Ltd.
216 – 3030 Lincoln Ave.
Coquitlam BC V4B 6B4
604-941-7739

D. Kwasnicky & Associates Inc.
#211 – 3030 Lincoln Avenue
Coquitlam BC V3B 6B4
604-464-7272

Vancouver Island

Smythe Ratcliffe Insolvency Inc.
1497 Admirals Rd, Suite 209
Victoria BC V9A 2P8
250-382-2668

Chase Sekulich
101-400 Tenth Ave
Campbell River BC V9W 4E3
250-287-8331

Smythe Ratcliffe Insolvency Inc.
8C 2220 Bowen Road
Nanaimo BC V9S 1H9
250-751-2668

Okanagan

BDO Dunwoody Ltd.
300 – 1632 Dickson Avenue
Kelowna BC V1Y 7T2
250-763-6700

Kootnays

Deloitte & Touche Inc.
500 – 299 Victoria Street
Prince George BC V2L 5B8
250-561-1111 fax 250-562-4950

G Moroso & Associates Inc.
241 Columbia Ave
Castlegar BC V1N 1G3
604-786-6331

BDO Canada Ltd.
Suite 510 – 550 Victoria St
Prince George BC V2L 2K1
250-563-5157/1-888-660-6401



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

400 St. Mary Avenue, 4th Floor
 Winnipeg, Manitoba
 R3C 4K5
osb.ic.gc.ca

Industrie Canada
Bureau du surintendant
des faillites Canada

400, avenue St. Mary, 4^e étage
 Winnipeg (Manitoba)
 R3C 4K5
bsf.ic.gc.ca

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BANKRUPTCY ASSISTANCE PROGRAM
Trustee Refusal of Service

DEBTOR'S NAME: _____

ADDRESS: _____

TELEPHONE: _____

Date: _____

Trustee's Name and Firm, if applicable **Signature**

REASONS FOR NON-SERVICE BY THE TRUSTEE:

- _____ Debtor refused to pay fees
 - _____ Debtor has no ability to pay fees
 - _____ Debtor does not qualify for the Bankruptcy Assistance Program
- Details:

Other Comments:

PLEASE RETURN TO:

Office of the Superintendent of Bankruptcy
Attention: Ashleigh Benham
4th Floor 400 St. Mary Ave
Winnipeg, MB R3C 4K5
or/ashleigh.benham@ic.gc.ca
Ph: 1-877-376-9902 or 204-983-5960
Fax 204-983-8904



“Have you been accused of shoplifting?”

An update and summary of cases

This article first appeared in the March 2001 issue of the Legal Services Society's Community Law Matters. It was updated in August 2009 by the original author, Bruno Drucker (lawyer with the former LawLINE of the Legal Services Society). It has been updated in October 2014 by private bar lawyer Manjeet Chana.

Background:

Many advocates will be familiar with the civil recovery “demand letters” sent by stores to individuals who have been stopped for shoplifting. In these demand letters, the stores ask the individual to pay them compensation related to the store’s shoplifting costs, such as paying for store security, etc. The frequency of these letters seems to rise and fall and then rise again. Stores using these demand letters over the past number of years have collected millions of dollars. The letters come from stores like Safeway, Walmart, Shoppers Drug Mart, Hudson’s Bay and sometimes collection agents or company lawyers. The letter’s content is always similar and ends with a demand for payment from \$225.00 to \$800.00 or more, and an implied threat of “serious consequences” if payment is not made.

The public is generally advised to ignore such letters. In the unlikely event you are served with a Notice of Claim (i.e., filed at the Small Claims Court), **immediately seek legal advice**; do not ignore court documents.

There have been instances of demand letters reaching the courts in provinces across Canada. In general terms, the court cases seem to say:

- **About parental liability for children who are caught shoplifting:** The demand letters are usually sent to the child’s parents. Under common law, the parent of the child caught shoplifting is not liable (unless the parent encouraged the shoplifting or was otherwise directly involved). Note: Some provinces, including BC as of 2001, have laws that specifically make parents liable if their children commit a tort (i.e. shoplift). For more information see: “**Parental Responsibility for the Acts of Children**,” Canadian Bar Review 79:3, December 2000, p. 369. **See also the BC Parental Liability Act, S.B.C., 2001, Chapter 45, which was called the BC Parental Responsibility Act until March 18, 2013.** Note that “child” is defined in this Act to include a person who is under the **age of 18**;
- **About liability of the child caught shoplifting:** While it is technically possible to sue a child for compensation related to shoplifting/trespass, it is most unlikely. Proving a child’s liability is difficult. And then, even if the court issues an order for money, it is still difficult to collect payment from a child who has no personal assets. As of 2001, the BC Parental Liability Act (as it is now known) allows parents to be sued for torts committed by their children in certain situations. Reported cases are rare - see BC cases of *M.O. v. E.N.* as well as *S.T. and V.T. v. S.H. and G.H.* (case descriptions below).

- **About the overall costs of investigation and/or loss prevention:** The general sense of the courts seems to be that these costs are already, and properly, being passed on to society at large (i.e. security costs are probably being passed on to consumers by being included in the price of goods). Such costs are not likely to be awarded against an individual in Small Claims Court *unless* there are special circumstances. An example of special circumstances might be investigation or security costs directly related to ongoing theft by a particular store employee.

What court cases have actually said:

It may be helpful to summarize what actual court cases have said so far. Some collection agents, and even lawyers, have been known to misquote these cases. Here follows a short summary of the cases most often referred to in shoplifting situations:

- ***Deborah C. Bond v. Harold J. Arkin and Zellers Inc. (also cited as: D.C.B. v. Zellers Inc.) (1996) 138 D.L.R. (4th) 309***

This was a decision of Judge Jewers, hearing an appeal from Small Claims Court. Judge Jewers' decision was then confirmed by Judge Twaddle in the Manitoba Court of Appeal. The case involved a shoplifting by Ms. Bond's child. Ms. Bond received a demand letter in connection with her child's shoplifting. Ms. Bond sent \$225 to Zellers, and then discovered she should have ignored the demand letter. Ms. Bond sued Zellers for return of the \$225. The Small Claims Court dismissed Ms. Bond's claim for return of the money. Then the Court of Queen's Bench ordered Zellers to pay back the money, saying there was no general rule that parents are responsible for their children's action (unless the parent was in some way negligent). This was confirmed by the Court of Appeal.

- ***Great Pacific Industries Inc, operating as Overwaita Food Group v. Aida Sarroca (1996), Surrey Registry No. C34195, BC Prov. Ct.***

This case is usually cited by stores as proof that a shoplifter can be sued for investigation costs. In this case, judgment of \$2,490.69 was awarded to Overwaita to compensate for \$125 stolen cash, plus \$2,356.69 of surveillance costs incurred. Stores will not tell you, however, that the facts of this case involved special circumstances: the theft over time of cash from a till by a store employee (i.e. a situation quite distinct from the usual shoplifting scenario).

- ***Hudson's Bay Co. v. White (1997) 22 O.T.C. 366***

Mr. White shoplifted gloves worth about \$200. The gloves were retrieved and no criminal charges were laid. The Bay claimed over \$2,000 in security-related costs, plus punitive damages. The court awarded only a nominal \$100 in damages for "trespass" (i.e. for Mr. White having entered the store for the unauthorized purpose of shoplifting). The court specified that the costs of fighting crime were already borne by everyone in society, and could not be recovered from shoplifters on an individual basis by way of Small Claims Court. The decision was then appealed to the Ontario Court of Justice (General Division) Divisional Court. The Appeal Court replaced the nominal award of

\$100 with a punitive award of \$300. The appeal decision was three sentences long and gave no further explanation for the increased award.

- ***Chopra v. T. Eaton Co.* [1999] 9 W.W.R. 711**

This case did not involve shoplifting, but did involve a claim related to “trespass” and “private arrest.” Mr. Chopra was at the customer service desk of an Eaton’s store seeking a cash refund from the credit balance of his account. An argument ensued and two security staff tried to escort Mr. Chopra out of the store. Mr. Chopra pushed the security staff away in an effort to exit the store unassisted. Security staff responded with a headlock and informed Mr. Chopra he was under arrest. Mr. Chopra was handcuffed to a chair in the security office and his wallet removed from his pocket without permission. Mr. Chopra’s requests for water and to call his wife were ignored. Police were only called after two hours. Mr. Chopra sued Eaton’s for battery (i.e. assault) and for false imprisonment. Eaton’s counter-claimed against Mr. Chopra for “trespass.” The judge found the behaviour of the security staff outrageous. The judge awarded Mr. Chopra general and aggravated damages of \$23,000, plus \$10,000 in punitive damages.

- ***Southland Canada Inc. v. Zylke* (1999) 256 A.R. 55**

A 7-Eleven store sued two people found guilty of shoplifting. The claims were for \$250 each, relating to the cost of store security. The claims went to a judge for assessment after both shoplifters were noted in default (i.e. the shoplifters failed to reply to the court proceeding). The judge noted that the shoplifters had already been subjected to the criminal process, and that the people who “should be defraying the cost of the security program are those who are not punished by the criminal process.” The judge dismissed the claims by 7-Eleven. The judge did leave the door open for future claims based on “trespass to land,” and did stress that any such claim “must be properly pled and the entirety of the circumstances giving rise to the relief sought must be favorable to the [store] before serious consideration will be given to them by this Court” (i.e. the store will need to show special circumstances).

- ***Myles Parless, by his guardian ad litem v. Port of Call Holdings et al*, 2000 BCSC S48**

This case involved a money claim for “false arrest” against a Thrifty’s security guard. The security guard had apprehended a youth for apparently drinking chocolate milk (not paid for). The Court referred to *Karogiannis v. Poulus and T. Eaton Co* [1976] 6 W.W.R. 197 (B.C.S.C.), and to *Morguard Properties Ltd. Et al v. City of Winnipeg* (1983), D.L.R. (4th) 1 (S.C.C.) The court said a private arrest by a security guard for the purpose of “investigation” is unlawful. A private arrest (i.e. detaining someone) is only permitted where the security guard has reasonable grounds to believe the person being detained has already committed an indictable offence.

- ***M.O. v. E.N.* [2004] B.C.J. 2350**

This appears to be the first reported decision under the BC *Parental Responsibility Act* (the law as it was known when it was passed in 2001). This was a first time theft by a 14 year old boy whose mother was a single parent. The boy stole a laptop computer from a schoolmate and was eventually prosecuted in Youth Court. The judge called it an “isolated incident” and found the single mom made “reasonable efforts to discourage her son from engaging in the activity that caused the property loss”. The judge also found that the son was overall reasonably supervised by his mom. Nevertheless, the judge ordered the single mom to pay compensation equal to 50% of the value of the stolen laptop.

- ***S.T. and V.T. v. S.H. and G.H., 2008 BCPC 226*** (CanLII)

This case involved a claim by parents (the Claimants) whose residence was broken into. A 15 year old boy, diagnosed with ADHD and having drug addiction issues, stole jewelry from and vandalized the home of the Claimants. Pursuant to the BC *Parental Responsibility Act* (as it was then called), the Claimants sued the parents of the boy for the portion of damages, approximately \$5,000, not covered by insurance. The Court noted that every effort was made by the Defendants to accommodate the boy's disability by providing social, psychological, medical intervention coupled with private counseling sessions and opportunities to attend to substance abuse programs. Ultimately, the Court found that the Defendant parents exercised reasonable supervision at the material time, and made reasonable efforts to prevent and discourage the child from engaging in the kind of activity that caused the loss. The court noted that the intent of the *Act* is to hold parents accountable where there is a derogation of duty, and that was not the case in the circumstances.

Where the nature of a shoplifting demand letter is misleading, bear in mind section 123(a) of the BC *Business Practices and Consumer Protection Act*, which states that a person attempting to collect a debt “must not supply any false or misleading information.” Consider (1) drawing this law to the attention of the writer of the demand letter and (2) contacting and reporting the matter to Consumer Protection BC (<http://www.consumerprotectionbc.ca/>).

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✻ P [REDACTED] M [REDACTED], B.A., LL.B., B.C.L.
BARRISTER AND SOLICITOR

[REDACTED] ROAD, SUITE [REDACTED]
TORONTO, ONTARIO, [REDACTED]
TEL (416) [REDACTED] FAX (416) [REDACTED]

WITHOUT PREJUDICE

October 12, [REDACTED]

PRIVATE AND CONFIDENTIAL

Mr. [REDACTED]
[REDACTED] BC [REDACTED]

Dear Mr. [REDACTED]

Re: Zellers Inc. and [REDACTED]
Recovery of Civil Damages/Our Case Number Z [REDACTED]

I am external legal counsel for Zellers Inc. (the "Retailer") with respect to civil recovery matters. It is alleged that on June 14, [REDACTED], a young person under your care and custody, (namely [REDACTED]) took unlawful possession of merchandise from the Retailer's premises located at [REDACTED] Mall, [REDACTED], BC. The retailer takes the position that it has the right to claim damages from the said young person and/or you as a result of such action based on theft, damages and conversion. The Retailer's right of civil recovery and payments made to the Retailer are separate and distinct from any criminal proceedings which may be instituted by the police.

The Retailer also takes the position that it has the right to claim damages from you as parent or guardian of the young person for failing to provide reasonable supervision of the young person. You have a right to be represented by a lawyer with respect to this claim.

The Retailer is prepared to settle its claim for damages in return for a payment of \$475.00 (the "Settlement Amount"), received on or before November 11, [REDACTED]. If this amount is not paid, I may receive specific instructions, whether or not to arrange for a law firm in your jurisdiction to commence legal proceedings before a civil court for all damages, plus interest, legal expenses, and other administrative costs incurred by the Retailer in connection with this matter. These latter amounts may increase if payment is not made by the noted date. This settlement amount is based on the costs associated with the detection, apprehension, recovery of goods and damages associated with shoplifting, hereafter referred to as Recovery Costs. Retailers have calculated the average Recovery Costs to be approximately \$900.00. The settlement amount is significantly lower than the Recovery Costs, however, should the retailer be compelled to prove costs in Court, they would rely on the higher or actual amount of Recovery Costs in any civil claim filed.

Should you choose to settle the Retailer's claim by payment of the Settlement Amount, payment should be made by cheque or money order, made payable to "CIVIL RECOVERY" on behalf of the Retailer, with your name and the above case number noted thereon. The payment should be sent in the enclosed postage paid envelope or to the following address: P.O. Box [REDACTED], Ontario [REDACTED].

I have been advised that Canadian retailers estimate shoplifting amounts to an annual expense exceeding \$4.0 billion. Experience indicates that pursuing shoplifters for such losses reduces the number of shoplifting incidents, resulting in savings which can then be passed on to consumers. *The Hudson's Bay v. White* supports the position that shoplifters, in certain cases, are liable for punitive damages.

Any questions in regard to this matter are to be made in writing, and addressed to the undersigned.

Yours truly,


P. M. [REDACTED]

[REDACTED]

Limitation Periods for unsecured debt issues

(This document was copied in large part from Chapter 33 of the Legal Service Society's Consumer Law and Credit/Debt law, and was updated by Alison Ward, lawyer, CLAS, October 22, 2014)

A limitation period, or limitation date, refers to the legal deadline within, or by, which someone must start a lawsuit against someone else. If someone does not start a lawsuit within the applicable limitation period, then the other party may have a "limitation defence" against their claim. In other words, if someone starts a lawsuit against someone else after a limitation period or date has passed, the other person can ask the court to dismiss (throw out) the lawsuit for this reason.

This area of the law is complex. The applicability of limitations defences can turn on fine distinctions of law. In BC, this area of the law became more complex on June 1, 2013, when a new provincial *Limitation Act* S.B.C. 2012, c. 13, came into effect. The new *Limitation Act* repeals and replaces the former *Limitation Act*, R.S.B.C. 1996, c. 266. However, the former *Limitation Act* will continue to apply to some cases after June 1, 2013.

There are complicated transition rules about using the new *Limitation Act* and the former *Limitation Act*. The summary provided below is only a very brief outline of basic principles. A lawyer should be consulted for an opinion in specific cases. **Also note that the *Limitation Act* does not apply to an action where a specific limitation period is set by another statute** (e.g. the *Residential Tenancy Act* sets a two year limitation period to file a monetary claim against a landlord).

Unsecured debts under the former BC Limitation Act

The **former** British Columbia *Limitation Act* provided there was a general limitation period of 6 years for an unsecured creditor to sue someone in relation to most debts. In other words, a court action could not be brought by a creditor more than 6 years after the debt became due and owing, unless the debtor had acknowledged responsibility for the debt in writing in the meantime, OR made a payment toward the debt in the intervening period. Either of those things renewed the running of the limitation period (i.e. the 6 years started again from that date).

Unsecured debts under the new Limitation Act:

The new *Limitation Act*, section 6, introduces a basic two-year limitation period that applies to **most** (*but not all*) claims for injury, loss, or damage as of June 1, 2013. This section will govern most debt situations. However, note there are some important exceptions: including debts to the provincial government and Canada student loans (see below for more information).

Section 6 of the new *Limitation Act* provides that legal actions for claims, including unsecured debts, cannot be brought later than two years after the date on which the claim was "discovered." Sections 8 to 20 of the new Act set out the rules for discoverability of a claim.

Transitional Rules: when does the former Act apply? When does the new Act apply?

Although the new *Limitation Act* came into force on June 1, 2013, the former *Limitation Act* will continue to apply to some cases after that date. Figuring out whether the new or former *Limitation Act* applies to a particular case will be very important, as there are big differences in the limitation periods created by each act.

For a summary of the transition rules from the former *Limitation Act* to the new *Limitation Act*, see <http://www.ag.gov.bc.ca/legislation/limitationact/pdf/LAFflowchart.pdf> (copy attached).

As that chart illustrates, the first step in deciding which Act applies is to determine the date on which a claim was discovered, or the right to bring the action arose. This is not always easy. In general, a creditor does not have the right to sue a debtor so long as the debtor is keeping up on the payments under the agreement. A creditor's right to bring a legal action arises when the debtor has defaulted on his or her contractual obligation to pay. Most consumer-related credit arrangements, ranging from mortgages to credit cards, require some form of periodic payment. If the periodic payment is missed, the obligation is usually in default and the creditor can sue.

If the creditor's right to sue a debtor first arose on or after June 1, 2013, then the new *Limitation Act* (two-year limitation period) will generally apply.

- For example, if someone owes periodic payments on a credit card and their periodic payment is first missed on July 12, 2013, the new *Limitation Act* would apply. The creditor now has the right to sue them.

However, if the creditor's right to sue a debtor first arose before June 1, 2013, then the former *Limitation Act* (and general six-year limitation period) may still apply. This is because the new *Limitation Act* only applies to claims that were "discovered" on or after June 1, 2013.

- For example, if someone stopped paying their credit card bill on July 30, 2008, and the creditor was aware of that right away, the six-year limitation period under the former *Limitation Act* continues to apply. The former *Limitation Act* applies because the creditor discovered the claim before June 1, 2013.

When is a limitation date extended or restarted under the Act?

There are important provisions in both the new *Limitation Act* and the former *Limitation Act* that can extend a limitation date. Sections 24 of the new *Limitation Act*, and section 5 of the former *Limitation Act*, provide that the applicable limitation period (two years or six years) starts all over again if there has been an "acknowledgement" of the debt. Both *Limitation Acts* define "acknowledgement" to include:

- (a) making a partial payment; and
- (b) the person – or their agent - acknowledging liability for the debt in a signed, written statement made to the creditor.

This means that in many cases, the limitation date will run from the date when a payment was last made, or a written and signed acknowledgement of liability made, rather than the date when the payments under the agreement were first in default, or when the claim was first discovered.

If there is some question as to whether a client might have a limitation defence, advocates should tell the client not to make any payments in the meantime, and not to give any kind of written statement (e.g., in a letter to the creditor) acknowledging the client's liability for the debt.

Some important exceptions where the new *Limitation Act* does not apply

A. Debts to the Provincial Government

Under the former *Limitation Act*, unsecured debts to the government (e.g. welfare overpayments) were generally governed by a 6 year limitation period.

Under the new *Limitation Act*, most debts to Province of BC will **continue** to be governed by a six year limitation period. This is because, when the new *Limitation Act* was introduced, another provincial statute called the *Financial Administration Act* was amended. A copy of section 86.1 of the *Financial Administration Act* is attached. In essence, it says that when the BC government or "tax payer supported government reporting entity" has a claim in debt, a 6 year limitation period applies. This same 6 year limitation period applies to claims by ICBC for "motor vehicle indebtedness."

B. Canada Student Loans

The B.C. *Limitation Act* does not apply to Canada Student Loans as the *Canada Student Financial Assistance Act* sets specific limitation periods that apply to federal student loans. Generally that limitation period is 6 years. However, section 16.1(5) of the *Canada Student Financial Assistance Act*, says that even if an acknowledgement of a student loan (whether in writing or by partial payment) is made **after** the 6 year limitation period has passed, that acknowledgement restarts the 6 year limitation period from the very beginning, and the debt is still owed.

Effect of the expiry of a limitation period under the new *Limitation Act*

The former *Limitation Act* (section 9) provides that once a limitation date has passed, a person's "cause of action" (legal right) against the other party is "extinguished." In the case of unsecured debts, after a limitation date has passed under the former *Limitation Act*, it follows that the existence of an indebtedness is also extinguished, along with the creditor's legal rights. In short, after a limitation date for suing in respect of an unsecured debt has passed under the former *Limitation Act*, a person can say that they are simply no longer indebted to a creditor. Because the indebtedness no longer exists, the creditor is legally barred both from subsequently suing the person in court, and from exercising any legal remedy outside the court system to collect that debt.

The new *Limitation Act* treats this issue somewhat differently. Section 27 of the new *Limitation Act* says:

Non-judicial remedies

27 (1) *In this section, "non-judicial remedy" means a remedy that a person is entitled, **by law or by contract**, to exercise in respect of a claim without court proceedings.*

*(2) If a claimant is prevented from commencing a court proceeding in relation to a claim as a result of the expiry of a limitation period under this Act, **the claimant is not entitled to exercise against the person against whom the claim is or may be made, or against any other person, any non-judicial remedy that the claimant would, but for this section, be entitled to exercise in relation to the claim.***

So, once a limitation period under the new *Limitation Act* has expired, a legal right is not legally *extinguished* in the same way as it was under the former *Limitation Act*. Theoretically then, the debt may still exist and a debtor may remain indebted to a creditor.

However, under the new *Limitation Act*, it is clear that if a creditor fails to sue a debtor in court by a limitation date (i.e. fails to exercise a *judicial* remedy by the limitation date), the same creditor is legally barred not only from subsequently starting a court action, but ALSO from exercising any legal remedy outside the court system (i.e. non-judicially) to collect that debt.

Let's take the example of someone who owes a debt to ICBC in respect of a car accident in which the person was found to be at fault but does not pay ICBC voluntarily. The accident happened after June 1, 2013 so the new *Limitation Act* applies to the situation. A six year limitation period applies to "vehicle indebtedness" under the new *Limitation Act*, by virtue of section 86.1 of the *Financial Administration Act*. If ICBC fails to sue the person before the passage of the six year limitation date, it could be argued that section 27 of the new *Limitation Act* then also legally prohibits ICBC from withholding that person's driver's license or from refusing them insurance on account of "vehicle indebtedness," which are powers that ICBC would otherwise have under section 26 of the *Motor Vehicle Act*. In other words, section 27 of the new *Limitation Act* appears to provide that those non-judicial (outside of court) remedies for collecting the debt in question, would no longer be available to ICBC if the limitation date for suing in respect of the same debt has passed.

In this sense, the *effect* of the former and new *Limitation Acts* is the same, however – as you have just seen - the arguments that lead to this same outcome are framed somewhat differently under the new and former Acts.

FINANCIAL ADMINISTRATION ACT
[RSBC 1996] CHAPTER 138
(accessed from www.bclaws.ca on October 23, 2014)

Limitation period for government claims

86.1 (1) In this section:

"**claim**" has the same meaning as in the *Limitation Act*;

"**government claim**" means a claim in debt, or any other claim for payment or recovery of money in a specified or ascertainable amount, by

- (a) the government,
- (b) a corporation or other organization within the taxpayer-supported government reporting entity, or
- (c) a corporation or other organization that is not within the taxpayer-supported government reporting entity but that was within the taxpayer-supported government reporting entity on or after the date on which the act or omission on which the claim is based took place and before the expiry of the limitation period created by this section applicable to the claim,

and includes a claim by the Insurance Corporation of British Columbia for vehicle indebtedness;

"**limitation period**" has the same meaning as in the *Limitation Act*;

"**taxpayer-supported government reporting entity**" has the same meaning as in the *Budget Transparency and Accountability Act*;

"**vehicle indebtedness**" has the same meaning as in section 93.1 of the *Insurance (Vehicle) Act*.

(2) Subject to subsection (3), the *Limitation Act* applies to government claims, and, for that purpose,

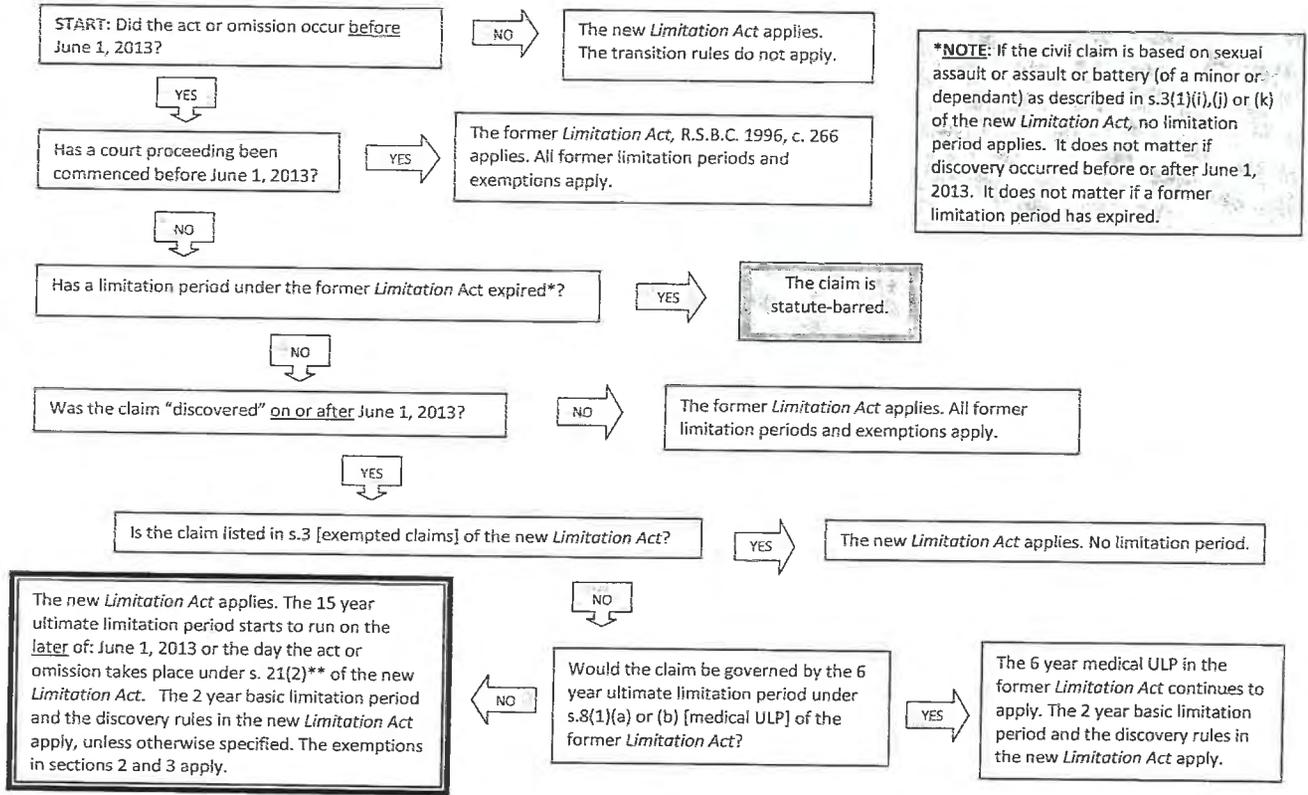
- (a) a reference to a claim in that Act is deemed to be a reference to a government claim, and
- (b) the references in section 6 of that Act to 2 years and a 2 year limitation period are, when applied to the **government claim**, deemed to be references to 6 years and a 6 year limitation period respectively.

(3) Subsection (2) does not apply to a government claim for which a limitation period has been established under an enactment other than the *Limitation Act*.

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Transition Rules Flowchart for the new *Limitation Act*

This document was developed by the Civil Policy and Legislation Office, Ministry of Justice. It is posted as educational material to support the transition to the new *Limitation Act*. It is not intended to constitute legal advice and should not be relied upon for those purposes.



***NOTE:** If the civil claim is based on sexual assault or assault or battery (of a minor or dependant) as described in s.3(1)(i),(j) or (k) of the new *Limitation Act*, no limitation period applies. It does not matter if discovery occurred before or after June 1, 2013. It does not matter if a former limitation period has expired.

Note: The new *Limitation Act* is a default statute. If another provincial statute contains a limitation period, the new *Limitation Act* does not apply, except to the extent provided for in the other provincial statute. The new *Limitation Act* is not yet in effect. Until June 1, 2013 the former *Limitation Act* continues to apply.

**Special ULP start dates for claims involving conversion, fraud, fraudulent breach of trust, future interest in trust property, demand obligations, security realization or redemption, contribution or indemnity, a minor, or a person under a disability.

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*Sample letter to ICBC asserting expiry of a limitation period under the former *Limitation Act*

Client name
Client address

July 13, 2012

Insurance Corporation of British Columbia
151 West Esplanade
North Vancouver, BC V7M 3H9

Dear Sir/Madam:

Re: Your Account Number: XXX XXX XXX
Renewal of Driver's License and Issuance of Insurance

I am writing to you regarding the above matter relating to a 1993 motor vehicle accident I was involved in.

As I understand, ICBC is claiming a "MV Indebtedness", effective May 14, 1998, for approximately \$134,000.00 (the alleged "Debt") relating to the 1993 accident. As you likely know, one option that ICBC had to pursue collection of the alleged Debt was to start a court action. According to the BC *Limitation Act*, if an action is not brought within the 6 year limitation period for an alleged debt, the right to start a cause of action is extinguished. In my case, ICBC failed to start a recovery action in court within the 6 year limitation period. As a result, the expiry of the limitation period for the recovery of the alleged Debt extinguished the alleged Debt itself and therefore, I do not owe ICBC any monies. Furthermore, by not starting a court action within the limitation period, ICBC failed to prove the alleged Debt, failed to establish that the settlement giving rise to the alleged Debt was reasonable and entered into in good faith, and failed to give me an opportunity to have a court decide the issue of the claimant's contributory negligence, if any. And finally, ICBC has in essence confirmed the extinction of the alleged Debt by its inaction.

As a result of the above, I ask that no further notices be sent to me requesting payment as I do not owe any debt to ICBC. Should ICBC have a response to the above, I request that such response, with reasons, be provided to me in writing **within 14 days of receipt of this letter** by your office.

Finally, I request that I be granted a driver's license and insurance coverage effective immediately upon my application at a local motor vehicle branch.

Yours truly,

Client name

Benefits protected by statute from attachment and set-off

*Prepared by Alison Ward, lawyer, Community Legal Assistance Society, updated October 22, 2014

*NOTE: The discussion in this paper **does not apply to situations where FMEP or the government (Federal or Provincial) is the creditor.** Statutory benefits are not usually protected from collection when the creditor collecting a debt is the government, and special rules apply when the creditor is FMEP.

You've probably all heard clients ask the question: "I owe money to the bank. Can they take away my welfare benefits? Or my EI? Or my child tax benefit?"

Do you know the answer to this question? Do you think it's a simple answer? If you think it's simple, think again.....

Some benefits issued by government are paid under legislation that provides those benefits with statutory protection from some collection actions by creditors. Some other monies, such as RRSPs, and some private pension monies are also given protection from enforcement by statute. The focus of the discussion on this paper is what protection, exactly, is given to benefits paid by government under legislation that provides them with protection from some collection action.

Let's look at two examples.

1. Section 29 of the *BC Employment and Assistance Act* says:

29 (1) Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.

(2) Subsection (1) does not prevent income assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the Financial Administration Act or a prescribed enactment.

2. Section 42 of the *Employment Insurance Act* says:

Benefits not assignable

42. *(1) Subject to subsections (2) and (3), benefits are not capable of being assigned, charged, attached, anticipated or given as security and any transaction appearing to do so is void.*

(2) Any amounts payable under this Act by any person and required to be credited to the Employment Insurance Operating Account may be recovered out of any benefits payable to that person, without affecting any other mode of recovery.

(3) If the Government of Canada, a provincial or municipal government or any other prescribed authority pays a person an advance or assistance or a welfare

payment for a week that would not be paid if unemployment benefits were paid for that week, and unemployment benefits subsequently become payable to that person for that week, the Commission may, subject to the regulations, deduct from those or any subsequent benefits and pay to the government or the prescribed authority an amount equal to the amount of the advance, assistance or welfare payment paid, if the person had, on or before receiving the advance, assistance or welfare payment, consented to the deduction and payment by the Commission.

What this type of statutory protection means, exactly, is a rather complicated area of law.

What benefits have statutory protection?

The Acts that govern the following types of benefits give them some statutory protection:

1. Income Assistance, PPMB benefits and supplements: refer to section 29 of the *B.C. Employment and Assistance Act* at <http://www.hsd.gov.bc.ca/PUBLICAT/VOL1/Part3/3-2.htm#29>
2. PWD benefits and supplements: refer to section 20 of the *B.C. Employment and Assistance for Persons with Disabilities Act* at <http://www.hsd.gov.bc.ca/PUBLICAT/VOL1/Part3/3-4.HTM#20>
3. CPP benefits: refer to section 65 of the *Canada Pension Plan* at <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-8/latest/rsc-1985-c-c-8.html>
4. OAS, GIS and survivor's benefits: refer to section 36 of the *Old Age Security Act* at <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-o-9/latest/rsc-1985-c-o-9.html>
5. Federal Child Tax benefits: refer to section 122.61(4) of the *Income Tax Act* at <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-1-5th-suppl/latest/rsc-1985-c-1-5th-suppl.html>
6. Employment Insurance benefits: refer to section 42 of the *Employment Insurance Act* at <http://www.canlii.org/en/ca/laws/stat/sc-1996-c-23/latest/sc-1996-c-23.html>
7. Workers Compensation benefits: refer to section 15 of the *B.C. Workers Compensation Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96492_00
8. Crime Victim Assistance Act benefits: refer to section 21 of the *B.C. Crime Victim Assistance Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_01038_01#section21
9. Child care subsidy funds: refer to section 8 of the *B.C. Child Care Subsidy Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96026_01#section8

10. Some private employment pension benefits: refer to section 63 of the B.C. *Pension Benefits Standards Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96352_01#section63
11. Funds in RRSPs, Registered Retirement Income funds (RRIFs) and Deferred Profit Sharing Plan (DPSPs) (all as defined in the federal *Income Tax Act*) have some protection: refer to section 71.3 of the *Court Order Enforcement Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96078_01#section71.3

Each of these statutes offers some statutory protection to the benefits issued under them. Each statute creates that protection using slightly different wording, which can be confusing.

One thing they have in common though, is that the above benefits are generally protected from being taken **at source** by creditors serving a garnishing order on the body that issue these benefits. For example, if a bank gets a garnishing order against Mr. Smith, and serves the garnishing order on CPP, CPP will not act on it. Such benefits cannot be garnished at source.

A trickier question arises once statutorily protected benefits are deposited in bank accounts.

Issue: Once statutorily protected funds are in a bank account, are they still exempt from garnishment or set-off?

Terminology:

What is a garnishing order?

A **GARNISHING ORDER** is an order made by a court that says that someone who owes money to the debtor must pay it to the creditor. In practice the money is paid to the court. The court holds onto the money and if there are no problems will then release it to the creditor.

What is set-off?

A **SET-OFF** happens without the need for a court order. It can happen when you owe money to a person or Bank for one purpose, and they owe you money for another. For example, if you have a CIBC account with \$3000 in it, and you owe \$1000 in old debt on a CIBC visa card. In that situation a CIBC might take money from your bank account to apply to your visa debt. This can only happen if you agreed to allow the bank to do this in the credit card agreement, or other loan contract.

The Problem

Once statutorily protected benefits are placed in a bank account:

- a) a creditor may be able to obtain a garnishing order from the Court against funds in the bank account. Note that in general, joint accounts cannot be garnished if the creditor has a claim against only one of the joint account holders (this is true whether or not the funds in the account have statutory protection); and
- b) an institutional creditor such as the Bank may set off the money in the bank account against other debts the person owes to the Bank (without a court order).

Possible Solutions

If either of these things (a or b, above) happens, the person whose benefits were taken may have a legal remedy. They can argue that the funds should be returned to them because they are still statutorily protected benefits, even though they had been put in the bank.

How and where you would make this argument depends on whether the funds were taken through a garnishing order, or set off.

a) **Funds taken by a Garnishing Order from Court:**

The person can apply to the Court Registry that made the garnishing order, to have the garnishing order set aside, and the money returned to the person, on the grounds that the monies seized are statutorily protected benefits that are exempt from garnishment.

See the case of *Metropolitan Toronto (Municipality) v. O'Brien*, [1995] O.J. No 4896 (copy **attached**) for a precedent from the Ontario Court of Justice holding that OAS and CPP benefits are still exempt from garnishment once deposited into a bank account.

b) **Funds taken by Set –Off**

The first step in this situation is to contact the bank manager or customer service department. Explain to them that the funds taken represent statutorily protected benefits, and must be returned to the person. You may want to send the Bank representative a copy of the legislation that states that the funds are protected. You may also want to send the Bank a copy of a precedent case, *McIntosh v. Laronde*, [1998] O.J. 5988 (copy **attached**). In *McIntosh v. Laronde*, the Ontario Court of Justice found that Ontario welfare benefits that were deposited into a bank account, did not lose their statutory protection. The creditor who had had the funds from her bank account seized, was ordered to pay the money back to the income assistance recipient.

While you may start by dealing with the bank over the phone, it is best to follow up by sending them a letter outlining your position that the client's money must be returned, and the legal reasons for your opinion. Your argument will be easier to make if the only deposits to the bank account in question were from protected government programs. If protected benefits and other non-protected monies (such as child support or wages) were deposited to the account, it will be more difficult to argue that 100% of the funds that were set-off are protected.

If the creditor won't return the funds, and the funds are income assistance or other benefits with statutory protection from attachment or set-off, the person can apply to the Provincial (Small Claims) Court for an order that the funds be returned to them on the basis that they are protected from set-off and seizure. If there is no pre-existing court file between the creditor and the debtor, the client would have to start by completing a Notice of Claim, naming both the creditor and the bank as defendants. The client could then bring on an Application to a Judge to try and get the Court to deal quickly with their issue. Courts in BC have made decisions to return statutorily protected benefits that were set off from bank accounts; unfortunately as far as I am aware, none of these decisions have been reported. You will therefore want to rely on the Ontario cases cited above to support your client's claim for return of their protected funds.

Where the funds that are set off against are income assistance or PWD benefits, you may also consider having your client apply to MSDSI for a crisis supplement to tide them over until their benefits are (hopefully) returned to them.

Because a client whose welfare benefits have been set off against will often be eligible for a crisis supplement (i.e. their resulting needs are unexpected as the set off itself was unexpected), MSDSI has a financial interest in assuring that wrongful set offs against welfare benefits do not occur. At least in Vancouver, Community Relations and Service Quality Manager ("CRSQ") at MSDSI has been willing to intervene with banks where set offs have occurred against welfare benefits, to assert that those funds are protected by their governing legislation, as set out above. Therefore, it may be very useful in dealing with such situations, to make the CRSQ for your region aware of any wrongful set off against welfare benefits. You can do this by copying MSDSI's CRSQ for your region on any letter you write to the bank or credit union involved, and asking the CRSQ to intervene directly with the bank or credit union if you find the bank or credit union is not responsive to your efforts to resolve the problem on your client's behalf.

Re
**Municipality of Metropolitan Toronto and O'Brien;
Canadian Imperial Bank of Commerce, Garnishee
[Indexed as: Metropolitan Toronto (Municipality) v.
O'Brien]**

23 O.R. (3d) 543

[1995] O.J. No. 4896

Ontario Court (General Division),

O'Brien J.

April 21, 1995

Debtor and creditor -- Garnishment -- Old age security and Canada Pension Plan payments electronically transferred into judgment debtor's bank account -- Moneys exempt from garnishment -- Old Age Security Act, R.S.C. 1985, c. O-9, s. 36(1) -- Canada Pension Plan, R.S.C. 1985, c. C-8, s. 65(1).

The Municipality of Metropolitan Toronto ("Metro") provided O, who was totally blind and confined to a wheelchair, with food, lodging, and other services at a home for the aged. O did not pay for the services, and Metro obtained a default judgment in the amount of \$12,218.90 against him. To enforce its judgment, Metro served a notice of garnishment on a branch of the CIBC where O had a bank account. The bank manager advised Metro that it would not be remitting any funds since the money in O's account was exempt from seizure as Old Age Security and the Canada Pension Plan payments, which had been electronically transferred into O's account. Metro applied for an order under rule 60.08 of the Rules of Civil Procedure requiring CIBC to pay all amounts it paid from O's account since the notice of garnishment was served.

Held, the motion should be dismissed with costs.

Both the Old Age Security Act and the Canada Pension Plan provide that benefits payable shall not be assigned, charged, attached, anticipated or given as security and any transaction purporting to do so is void. This exemption from seizure was not lost merely because of the modern convenience of electronic depositing. The only money in O's bank account came from pension funds, and the account was thus exempt from garnishment.

Cases referred to

Bonus Finance Ltd. v. Smith, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544, 16 C.B.R. (N.S.) 87 (H.C.J.); Foley v. Hill (1848), [1843-60] All E.R. Rep. 16, 2 H.L. Cas. 28; Wayfarer Holidays Ltd. v. Hoteles Barcelo (1993), 12 O.R. (3d) 208, 18 C.P.C. (3d) 36 (Gen. Div.)

Statutes referred to

Canada Pension Plan, R.S.C. 1985, c. C-8, s. 65(1)
Old Age Security Act, R.S.C. 1985, c. O-9, s. 36(1)
Pension Benefits Act, 1965, S.O. 1965, c. 96, ss. 21(1)(b), 22b [enacted 1967, c. 72, s. 1]
Rules and regulations referred to
Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 60.08(16)

MOTION under rule 60.08 of the Rules of Civil Procedure requiring payment pursuant to a notice of garnishment.

Jacqueline P. Wigle, for creditor.

Rita A. Chrolavicius, for debtor.

Anne C. Thomas, for garnishee.

O'BRIEN J.: -- Metropolitan Toronto ("Metro") seeks an order under rule 60.08 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 requiring C.I.B.C. to pay all amounts it paid from the debtor's account in one of its branches since notice of garnishee was served on it October 30, 1992.

The issue involved is the exemption from garnishee, of funds payable to the debtor under the Old Age Security Act, R.S.C. 1985, c. O-9, and the Canada Pension Plan, R.S.C. 1985, c. C-8.

Metro obtained default judgment against the debtor in the amount of \$12,218.90 for food, lodging and other services rendered to the debtor while he was a resident of Cummer Lodge, a home for the aged operated by Metro. The debtor was in that institution from May 1990 until May 1992. He now resides in a similar facility operated by Extendicare Nursing Homes, a privately operated facility.

The debtor is confined to a wheelchair and is totally blind. His only source of income is from Old Age Security benefits, Canada Pension Plan and Guaranteed Income Supplement. He has no assets. He deposes he has \$112 remaining each month for personal and telephone expenses after paying his nursing home costs.

When he was in the Metro facility his only income was from two disability pensions and totalled \$1,126 per month.

He apparently entered into an agreement with Metro to pay for some or all of the cost of his care while in the Metro facility. Metro obtained a default judgment against him on September 28, 1992 on the basis payment was not made. Metro then served a notice of garnishment on the garnishee in connection with an account the debtor had with that bank. Service on the garnishee was October 21, 1992; at that time the balance in the debtor's account was minus 43 cents.

The garnishee responded to the notice of garnishee by writing to Metro on November 30, 1992. The bank's manager advised it would not be remitting funds pursuant to the notice as all funds credited to the debtor's account were pension funds from Old Age Security and Canada Pension Funds and were exempt

from seizure. He agreed to remit any funds other than from those sources, which were deposited. He has since deposed there were no such funds.

Since that time the maximum balance in the debtor's account has never exceeded the sum of \$1,124. The funds are received from the plans and deposited electronically in the debtor's account, according to his instructions; monthly payments are made to the Extendicare facility where he now resides. There is never any significant surplus of funds in his account.

Exemptions under the Applicable Acts

Both Acts provide benefits payable shall not be assigned, charged, attached, anticipated or given as security and any transaction purporting to do so is void.

These provisions are contained in the Acts as follows: Old Age Security Act, s. 36(1); Canada Pension Plan, s. 65(1).

Metro's counsel concedes the exemptions apply so long as the money is in the possession of the debtor, and also concedes the funds are not subject to garnishee at the source from the Federal Government. She argues, however, the exemption is lost when the funds are electronically deposited with the garnishee.

Counsel relies on a number of authorities which hold that when a customer pays money into a bank account the money ceases to be that of the customer and in its place the relationship of creditor/debtor is created which merely entitles the customer to the return of an equivalent amount when demanded: see *Foley v. Hill* (1848), [1843-60] All E.R. Rep. 16 at p. 19, 2 H.L. Cas. 28.

Counsel argues that when the deposit was made in this case the money ceased to be the debtor's and any exemption from garnishee was lost.

I do not accept that argument. The funds payable to the debtor in this case are pension funds intended to be paid to him over an extended period and are designed to provide for his infirmity and disability. I reject the submission that the exemption, otherwise available, is lost merely because of the modern convenience of electronic depositing. Such a result in my view would be unreasonable on the facts of this case. Here, the bank records clearly indicate the only money ever deposited into the debtor's account with the garnishee bank came from pension funds, exempt from garnishee.

A somewhat analogous situation was dealt with in *Bonus Finance Ltd. v. Smith*, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544 (H.C.J.), per Houlden J. In that matter, a judgment creditor attempted to garnishee pension funds payable from a fund registered under the Pension Benefits Act, 1965, S.O. 1965, c. 96. Crown Trust was the administrator of the trust funds. Section 21(1)(b) of the Act provided pension benefits did not confer on the employee (the judgment debtor) any right or interest in the pension benefits capable of being assigned or alienated and s. 22b provided moneys payable under the plan were exempt from seizure or attachment.

Houlden J. refused the garnishee order relying on the exemption provisions contained in the Act.

I conclude the exemption continued in this case notwithstanding the deposit.

I dismiss this application on this basis.

If I am wrong on this point, I would also dismiss the application on the basis of discretion available under rule 60.08(16) and on the basis the relief sought is an equitable remedy. On the facts of this case I conclude it would be inequitable to grant the garnishee order: see *Wayfarer Holidays Ltd. v. Hoteles Barcelo* (1993), 12 O.R. (3d) 208 at p. 212, 18 C.P.C. (3d) 36 (Gen. Div.).

In my view, the garnishee acted commendably in refusing to honour the garnishee and taking the risk that by paying the monthly pension funds out to a nursing home it would face this type of application.

The garnishee could have taken the position that it was bound to keep the money until the garnishee proceedings were dealt with. At the very least this would have caused great inconvenience to the debtor, and might well have led to his removal from the home. The garnishee notice was served in October 1992. This matter was finally heard in April 1995.

The arrangements under provincial legislation were not explored in detail on this motion, it may be the legislation prevents expulsion of a resident for non-payment; that is not clear.

The garnishee notice was served by Metro on October 30, 1992. The matter was finally heard April 12, 1995.

The motion is dismissed. Costs payable to debtor and garnishee fixed at \$1,500 each.

Motion dismissed.

McIntosh v. Laronde**Between****James R. McIntosh, respondent, and
Mabel Laronde, appellant**

[1998] O.J. No. 5988

165 D.L.R. (4th) 178

31 C.P.C. (4th) 256

File No. DV253/96 Sudbury

Ontario Court of Justice (General Division)
Divisional Court - Sudbury, Ontario**Campbell, Farley and Desotti JJ.**

Heard: April 1, 1988.

Judgment: May 22, 1998

(9 pp.)

Creditors and debtors — Seizure or attachment of debtors' property — Exemptions — Disability allowance.

This was an appeal by the debtor from the dismissal of her motion to set aside the seizure of her monthly family benefits disability allowance. This was the debtor's sole source of income and the money was deposited directly into her account. The creditor seized \$198.04 from this account. The motions judge dismissed the debtor's motion on the ground that section 143.1(1) of the Courts of Justice Act protected against garnishment of social assistance but not against seizure.

HELD: Appeal allowed. The creditor was ordered to repay the money that had been seized. The debtor's social benefits did not lose their character as social benefits and did not become subject to seizure merely because they were deposited in a bank account. Protection from creditors continued after the benefit was paid into a bank account provided that the bank account's purpose was to receive the benefit. The exemption was not lost merely because of the modern convenience of electronic depositing. Any other interpretation would undermine the underlying social purpose of welfare legislation.

Statutes, Regulations and Rules Cited:

Courts of Justice Act, R.S.O. 1990, c. F.2, s. 143.1(1).

Family Benefits Act, R.S.O. 1990, c. F.2, s. 5(1)(b).

Counsel:

James McIntosh, in person.

Trevor Leech, for the appellant.

The judgment of the Court was delivered by

1 CAMPBELL J.:— This case raises the general issue; to what extent is a welfare recipient protected against seizure, by creditors, of funds received under a provincial welfare disability allowance?

2 The specific question is this: when a family benefits disability allowance is deposited electronically into a bank account, and the allowance is the sole source of the funds in the account,

are the funds in the bank account immune from seizure under s. 5(1)(b) of the Family Benefits Act, R.S.O. 1990, c. F2?

3 The Act provides as follows:

- 1.

In this Act,
"allowance" means an allowance provided on the basis
of need under this Act and the Regulations.

- recipient" means a person to whom an allowance is provided.
- 5(1)

An allowance,

- (a)

is not subject to alienation or transfer by the recipient; and

- (b)

is not subject to attachment or seizure in satisfaction of any
claim against the recipient.

4 Mabel Laronde's sole income is a monthly family benefits disability allowance of \$690.46 deposited directly by electronic means in her bank account by the Ontario Ministry of Community and Social Services. All the money in the account comes from her disability allowance. No other funds are paid into the account. An examination of the account shows the deposit of \$690.46 on the last day of every month, followed by the withdrawal of modest sums during the month for the expenses of daily living. The evidentiary record discloses very little about Ms. Laronde's personal circumstances. We are told that she is in her early sixties, that she has some sort of disability, and lives with her sister in a small apartment in rent-geared-to-income housing in North Bay. During some months Ms. Laronde's expenses are lower than others and she accumulates a small surplus in the account for "rainy day" purposes. Sometimes she withdraws cash from the account and if she does not spend it all at once she re-deposits what she does not then spend. During some months her expenses are higher and the balance in the account reduces. At the time her account was seized, on December 22, 1995, she had a balance of \$198.04 in her account.

5 Ms. Laronde and her sister became indebted to James R. McIntosh, a North Bay lawyer, as a result of some estate litigation and they ended up owing him a balance of \$9,789.20 for his unpaid legal account. Again, the evidentiary record is sparse but it appears that she and her sister and some other beneficiaries of an estate ended up each having a fractional right to a family cottage on an island in Lake Temagami which is for some reason exempt from seizure. There is no evidence as to the exact nature of Ms. Laronde's interest in the family cottage and no evidence that she has any assets other than her welfare bank account and whatever rights she has in relation to the cottage. What is clear from the record though is that she has established her entitlement to the family benefits disability allowance through need.

6 Mr. McIntosh,, after a number of unsuccessful demands for payment, filed a notice of execution with the Sheriff who notified Ms. Laronde's bank. On December 22, 1995, the bank froze the \$198.04 in Ms. Laronde's bank.

7 Ms. Laronde, through the local legal aid clinic, moved unsuccessfully in motions court to have the notice of seizure set aside, on the grounds that the seizure violated s. 143.1(1) of the Courts of Justice Act, R.S.O. 1990, c. F.2, as amended, which provides that no family benefits allowance may be garnisheed, even if it has been paid into a bank account. The learned motions judge, [1996] O.J. No. 2231, dismissed the motion on the grounds that s. 143.1(1) protects against garnishment but not against seizure.

8 Although it is arguable that the function of a garnishment is to effect a seizure and that a purposive interpretation of s. 143.1(1) protects against seizure as well as garnishment, it is not necessary to decide that point because a close examination of the record shows that the appellant, in addition to s. 143.1(1), relied also on s. 5(1)(b) of the Family Benefits Act, although this supplementary argument might not have been made clear to the learned motions judge. In our view this case is governed by s. 5(1)(b) of the Family Benefits Act and by the principle enunciated by O'Brien J. in *Metropolitan Toronto (Municipality) v. O'Brien* (1995), 23 O.R. (3d) 543. Although that case involved the exemption from garnishment of an old age security benefit, nothing turns on the difference. The principle is that protection from creditors continues after the benefit is paid into a bank account provided that the bank account's purpose is to receive the benefit. O'Brien J. held that the exemption is not lost merely because of the modern convenience of electronic depositing:

- Metro's counsel concedes the exemptions apply so long as the money is in the possession of the debtor, and also concedes the funds are not subject to garnishee at the source from the Federal Government. She argues, however, the exemption is lost when the funds are electronically deposited with the garnishee.
- Counsel relies on a number of authorities which hold that when a customer pays money into a bank account the money ceases to be that of the customer and in its place the relationship of creditor/debtor is created which merely entitles the customer to the return of an equivalent amount when demanded: see *Foley v. Hill* (1848), [1843-60] All E.R. Rep. 16 at p. 19, 2 H.L. Cas. 28.
- Counsel argues that when the deposit was made in this case the money ceased to be the debtor's and any exemption from garnishee was lost.
- I do not accept that argument. The funds payable to the debtor in this case are pension funds intended to be paid to him over an extended period and are designed to provide for his infirmity and disability. I reject the submission that the exemption, otherwise available, is lost merely because of the modern convenience of electronic depositing. Such a result in my view would be unreasonable on the facts of this case. Here, the bank records clearly indicate the only money ever deposited into the debtor's account with the garnishee bank came from pension funds, exempt from garnishee.
- A somewhat analogous situation was dealt with in *Bonus Finance Ltd v. Smith*, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544 (H.C.J.), per Houlden J. In that matter, a judgment creditor attempted to garnishee pension funds payable from a fund registered under the Pension Benefits Act, 1965, S.O. 1965, c. 96. Crown Trust was the administrator of the trust funds. Section 21(1)(b) of the Act provided pension benefits did not confer on the employee (the judgment debtor) any right or interest in the pension benefits capable of being assigned or alienated and s. 22b provided moneys payable under the plan were exempt from seizure or attachment.
- Houlden J. refused the garnishee order relying on the exemption provisions contained in the Act.
- I conclude the exemption continued in this case notwithstanding the deposit.

9 We agree that social benefits do not lose their character as social benefits and do not become subject to seizure merely because they are deposited in a bank account. We would only add that any other interpretation would defeat the object and purpose of the statutory exemption, which is to ensure that the modest sums made available to disability pensioners to let them subsist from day to day should not be seized by creditors.

10 The use of bank account and electronic deposits is an administratively convenient and secure way to make welfare payments. Any other interpretation would also undermine the underlying social purpose of welfare legislation like the Family Benefits Act, so well expressed by Brennan J. in *Goldberg v. Kelly* (1970), 90 S. Ct. 1011 at p. 1019, 397 U.S. at p. 265:



- We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to "promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it;

11 If mere deposit in a bank account subjects welfare payments to seizure, the use of bank accounts and electronic deposits would cease to be a convenience for welfare authorities and the recipients and would become a hazard for many recipients of public assistance who already have enough difficulty managing their money. It would require very express statutory language to remove from this vulnerable class of people the protection afforded by s. 5(1)(b) of the Family Benefits Act.

12 The appeal is therefore allowed and it is ordered that Mr. McIntosh repay to the appellant the \$198.04 together with interest of \$27.68 plus filing fees of \$1 80.00 for a total of \$405.72.

CAMPBELL J.

FARLEY J.:— I agree.

DESOTTI J.:— I agree.

Enforcement by the Family Maintenance Enforcement Program against Wages, Bank Accounts, and Statutory and other Benefits

*Prepared and updated October 22, 2014 by Alison Ward, lawyer, CLAS, based on materials prepared by Kathryn Ferriss, lawyer, Legal Services Society

Overview

The Family Maintenance Enforcement Program (“FMEP”) is a public body created by the *Family Maintenance Enforcement Act* (“FME Act”). FMEP’s job is to enforce existing court orders (or filed separation agreements) for child and spousal support. FMEP does **not** have the authority to change the amount of child or spousal support that someone is required to pay by a court order or filed separation agreement: only a family Court can change that amount, in response to the payor filing an application to reduce ongoing maintenance and cancel or reduce arrear owing under the current court Order or agreement.

The FME Act and Regulation give FMEP greater powers than most other creditors. For example, FMEP may place a hold on the driver’s license of someone who is behind in paying child or spousal support, or prevent them from getting a passport. This handout does not deal with these non-monetary powers of FMEP: we will examine only FMEP’s ability to collect money (from wages, bank accounts, and statutory and other benefits), and what options a debtor affected by FMEP’s enforcement may have.

Resources:

Family Maintenance Enforcement Act:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96127_01

Family Maintenance Enforcement Act Regulation:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/346_88

FMEP website: <http://www.fmep.gov.bc.ca/> including

Handbook for lawyers: <http://www.fmep.gov.bc.ca/resources/lawyers/guide/>

List of topics and fact sheets on enforcement:

<http://www.fmep.gov.bc.ca/resources/information/>

FMEP’s Financial Collection Powers

If a support order is registered with FMEP and the payor is behind in payments required by the order, FMEP can attach monies including the payor’s wages, statutory benefits, and funds in bank accounts. FMEP does this through a court document called a Notice of Attachment, issued under section 15 of the FME Act. Note that FMEP is authorized by its legislation to attach some benefits, such as CPP, EI and WCB benefits, which are otherwise exempt from garnishment and attachment.

Notices of Attachment

The *Family Maintenance Enforcement Act* has been determined by the courts to be “social legislation” in that “it is designed to address the evil of widespread default in payments required to be made by family maintenance payment orders.” Therefore it has a purpose different from the *Court Order Enforcement Act (COEA)* and garnishment cases under the COEA should not be applied to attachment or garnishment cases under the FME Act without ensuring that “such an application would be consistent with the fairness and with the social purposes of the *Family Maintenance Enforcement Act*.” *BC (Maintenance Enforcement Director) v. I.W.A. Forest Industry Pension Plan (Trustees of)* (1991), 61 BCLR (2d) 264 (BCCA).

BC Employment and Assistance

Benefits from the Ministry of Social Development and Social Innovation (“MDSI”) are not attachable at source, although once the money is placed in a bank account, FMEP may argue it can be legally attached. However, FMEP will generally not take enforcement action against someone on welfare, except to attach the persons’ income tax return or GST rebate.

Attachment of Federal Benefits (EI, OAS and CPP)

The Family Maintenance Enforcement Act Regulation, sections 13 and 13.1, authorize FMEP to attach certain federal benefits at source, namely EI, OAS and CPP benefits.

Section 13(6) specifies that 75% of these federal benefits are exempt from attachment under a Notice of Attachment. Attachment of federal benefits causes a considerable delay in the payor receiving his or her first cheque. As well, even if the payor receives his or her cheque with the FMEP deduction showing on his pay stub, it takes even longer for FMEP to receive any money from the federal government on behalf of this recipient. Until FMEP actually receives the money from the Federal government, FMEP will have no record of the money that was deducted from the payor’s benefits.

Sometimes, family maintenance enforcement programs from other provinces file attachment or garnishment proceedings against federal benefits payable to a payor living in B.C. If this is the case, the Provincial Court of BC will have no jurisdiction to deal with those proceedings, and the payor will have to contact the enforcement program in the other province, to pursue any variation in the amount of federal benefits exempt from attachment.

Attachment of Wages

Section 13 of the FMEA Regulation sets out how much of a payor’s wages are exempt from attachment by FMEP. Note that the back of FMEP’s Notice of Attachment form has an easier explanation of how the exemptions are calculated.

Attachment of Other Debts owed to the Payor

Debts owed to the payor from other sources, such as ICBC, bank accounts and income tax refunds, are fully attachable by FMEP under section 15 of the FME Act. There are no exemptions.

Possible Remedies for Payors

Setting Aside a Notice of Attachment

The payor may apply to set aside a Notice of Attachment issued by FMEP, but only if the Notice of Attachment is based on a “material error.” For example, the amount of arrears stated on the Notice is incorrect, or the person identified in the Notice of Attachment is not actually the payor. Often, even if the payor succeeds in this type of application, FMEP will simply withdraw the attachment proceedings and file a corrected application or notify the attachee of the correction required.

Section 16(2) of the FME Act requires that, before applying to Court to set aside a Notice of Attachment, the payor must first apply to FMEP itself to withdraw the Notice of Attachment. If FMEP refuses to withdraw the Notice of Attachment, the payor may then apply to Court under section 16(4) of the Act. In such an application, the following documents must be submitted to the Court Registry:

- Notice of Motion in Maintenance Enforcement Proceedings (Form 24). A copy of that form is attached. You can also find that form at <http://www.ag.gov.bc.ca/courts/forms/pfa/pfa067a.pdf>
- Affidavit in support of Motion (optional but recommended)

Changing the amount attached

Where a payor’s wages or federal benefits have been attached, the payor can make an application under section 13.1 of the Family Maintenance Enforcement Regulation for an increase in the amount of their wages or benefits that are exempt from attachment by FMEP. The payor must first request that increase in writing from FMEP.

Per section 13.1(3) of the FMEA Regulation, to succeed in such an application the payor must show that an increase in the exemption is needed for them to meet their basic needs for food, clothing and shelter. The payor will first need to complete a Statement of Income and Expenses (copy attached, or found at <http://www.ag.gov.bc.ca/courts/forms/pfa/pfa822.pdf>) Once the Statement of Income and Expenses has been completed and the relevant documents attached, it must be sent to FMEP with a letter explaining the payor’s financial situation and setting out any proposal that the payor wishes to make.

FMEP will not usually agree to reduce the amount attached if the reduction would mean they are collecting less than the monthly amount due under the current maintenance order. However, FMEP will sometimes suspend the attachment so that the payor can make an application to the appropriate court to vary the existing support order and/or apply to cancel or reduce arrears.

If FMEP declines to increase the amount of wages or benefits exempted from attachment, then the payor can apply to Provincial Court for an increase in the exemptions for wages and federal benefits set out in section 13 of the FMEA Regulation. Such an application is made to the Provincial Court Registry where FMEP is enforcing.

The payor will have to complete:

- a) a Notice of Motion in Maintenance Enforcement Proceedings (Form 24, attached and linked above – be sure to tick the box beside “an order changing the amount exempt from attachment” rather than “an order setting aside an attachment order of notice of attachment”);
- b) a Statement of Income and Expenses (attached and linked above); and
- c) Affidavit in support (optional but recommended)

The process to follow in applying to decrease the amount of wages or benefits attached by FMEP is set out in Rule 17 of the Provincial Court (Family) Rules at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/417_98_00

Again, the Court can only increase the exemption for wages or federal benefits if convinced that the increase is needed to allow the payor to meet their basic needs for food, clothing and shelter, as set out in section 13.1(3) of the FMEA Regulation.

TO BRING A NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

Rule 17(3)

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Step 1

COMPLETE the NOTICE OF MOTION. You may use a typewriter or print clearly and firmly. If you accessed this form from the Ministry of Justice website, you may also complete it at the computer and then print it. You may wish to submit written evidence in support of your notice of motion. To do so, complete and swear an AFFIDAVIT. Similarly, if you would like to present evidence from another witness, you may ask the witness to complete an Affidavit and have it sworn, then return it to you. Obtain a date and time for your hearing from the registry.



Step 2

FILE the NOTICE OF MOTION by taking or mailing it and any attached documents to the registry where the file is located, as shown on court documents received by you.

The staff will apply the registry stamp and they will return the copies you need for your records and for serving on the other party and anyone else who must be notified.



Step 3

MAKE ARRANGEMENTS TO SERVE the party or parties, and any one else who must be served, with a copy of the notice of motion and any attached document(s) such as affidavit(s). This must be done at least 7 days before the date of the court hearing.

You may either:

- mail a copy of the notice of motion to the last address for service which the party or parties has given to the court;
- fax a copy of the notice of motion, if the other party's address for service included a fax number;
- or
- have another person who is at least 19 years of age leave a copy of the notice of motion directly with the person (this is called personal service).

The purpose of service is to be sure the person(s) affected know what you are asking for and the court date. Normally only any parties must be served, but if you are asking for an order which would affect a person who is not a party, you must serve that person as well.



Note: Even if you are unable to serve affidavit(s) at least 7 days before the hearing, the court may allow you to use the as evidence anyway.

If the party, or anyone else who must be served, does not appear, be ready to prove that you served him or her, or that you were unable to do so. To prove service:

If you mailed or faxed the notice of motion, **COMPLETE** an **AFFIDAVIT OF SERVICE** on the back of the 'proof of service' copy of the notice of motion.

If you had someone personally serve the notice of motion, **COMPLETE** the **AFFIDAVIT OF PERSONAL SERVICE** on the back of the 'proof of service' copy of the notice of motion.

Court File Number:

Copy the court file number, FMEP number (if any) and court location from the support/maintenance order.



Case Name:

Copy the names of the parties as they appear on the support/maintenance order.



Filed by:

You must be sure that the address for service you give is correct because this is where any further notices or information will be sent to you. If you are a party and your address changes at any time, you must file a NOTICE OF CHANGE OF ADDRESS form with the court registry, and serve a copy of it on the other party.



IMPORTANT NOTE: If you do not want the other party to know your residential address, advise the court registry in writing and provide another address at which you can receive information and notices. Failure to accept service at address provided could result in a final order being made in your absence.



Notice to:

Provide the name, address and telephone number of the party or parties to be served and of any other person who must be served with this notice. Examples are:

- if you are asking for a document to be produced by a person who is not the other party, that person must be served.
- if the creditor is enrolled with the Family Maintenance Enforcement Program, the Director of Maintenance Enforcement must be served.
- if you are the debtor's employer, and you are applying to terminate a notice of attachment, both parties and the Director of Maintenance Enforcement must be served.

You may also include the fax number, if you know it.



Date and Time:

Contact the registry to obtain a date and time for the court hearing which is acceptable to both parties and the court.



What are you asking for?

Check the appropriate box(es) and fill in any required information.



Estimated Duration

Do not complete this section if you are representing yourself.



Information for the person served.



Sign your name and state today's date.

State name of lawyer, if any.

How to Complete this Form

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NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

In the Provincial Court of British Columbia

Court File Number:
FMEP Number:
Court Location:

Case name
as it appears on the order you want enforced.

In the case between:

NAME

And:

NAME

Your current address for service.

Filed by:

NAME

APPLICANT

ADDRESS FOR SERVICE

CITY

PROVINCE

POSTAL CODE

PHONE

FAX

Address for service of other party and anyone else who must be served.

Notice to:

NAME

RESPONDENT

ADDRESS FOR SERVICE

CITY

PROVINCE

POSTAL CODE

PHONE

FAX

Where and when is the hearing? Obtain a date and time from the registry.

I will apply to this Court at COURT LOCATION

on DATE at TIME for:

What are you asking for? Check the appropriate box(es) and fill in any required information.

- an order for access to information, as follows: _____
- an order extending the time for filing a statement of finances.
- an order requiring the debtor to file a statement of finances or prescribed documents.
- an order requiring the debtor to pay an amount on failing to file a statement of finances or prescribed documents.
- an order for payment by an attachee.
- an order determining liability under a notice of attachment or determining a related issue.
- an order changing the attached order dated: DATE _____
- an order changing the amount exempt from attachment.
- an order setting aside an attachment order or notice of attachment.
- an order discharging or postponing the registration of a maintenance order registered against land.
- an order requiring NAME _____ to attend a default hearing or a committal hearing before the Court and to file with the Court, by a date specified by the Court, financial information, financial statements or other prescribed documents under s. 39 of the Family Maintenance Enforcement Act.
- a restraining order, under s. 46 of the Family Maintenance Enforcement Act.
- an order that a corporation is jointly and separately liable with the debtor for payments required under the maintenance order under s.14.2(2) of the Family Maintenance Enforcement Act.
- an order under section 29.2 (2) of the Family Maintenance Enforcement Act that the Director of Maintenance Enforcement direct the Insurance Corporation of British Columbia to disregard a notice not to issue or renew the driver's licence of a debtor or a notice not to issue or renew the licence and corresponding number plates for any motor vehicle or trailer owned by a debtor.
- another order (specify): _____
- The hearing is expected to take: DURATION _____

Estimated Duration
Only the Applicant's lawyer, if any, should provide an estimate.

Information for the person served.

Sign your name and state today's date.

Notice: If you do not appear, the Court may make an order in your absence.

Any affidavits in support of this motion are attached.

State name of lawyer, if any.

Dated _____

Party's lawyer

Signature

NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

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NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

In the Provincial Court of British Columbia

Court File Number:
FMEP Number:
Court Location:

Case name

In the case between:

NAME

And:

NAME

Filed by:

NAME

APPLICANT

ADDRESS FOR SERVICE

CITY

PROVINCE

POSTAL CODE

PHONE

FAX

Notice to:

NAME

RESPONDENT

ADDRESS FOR SERVICE

CITY

PROVINCE

POSTAL CODE

PHONE

FAX

Who is bringing this notice of motion to the court? Note this person's address for service.

Where and when is the hearing? If you wish to respond to this motion you must appear at this date, time and place and tell the judge your position regarding this motion.

What order is being asked for?

If you would like to present evidence from another witness, you may use an affidavit to do that. Get an affidavit from the registry. Have it completed and sworn. File the affidavit and serve a copy on the other party. Even if you are unable to serve the affidavit at least 7 days before the court date, the court may permit you to use it as evidence anyway.

I will apply to this Court at COURT LOCATION

on DATE **at** TIME **for:**

- an order for access to information, as follows: _____
- an order extending the time for filing a statement of finances.
- an order requiring the debtor to file a statement of finances or prescribed documents.
- an order requiring the debtor to pay an amount on failing to file a statement of finances or prescribed documents.
- an order for payment by an attachee.
- an order determining liability under a notice of attachment or determining a related issue.
- an order changing the attached order dated: DATE _____
- an order changing the amount exempt from attachment.
- an order setting aside an attachment order or notice of attachment.
- an order discharging or postponing the registration of a maintenance order registered against land.
- an order requiring NAME _____ to attend a default hearing or a committal hearing before the Court and to file with the Court, by a date specified by the Court, financial information, financial statements or other prescribed documents under s. 39 of the Family Maintenance Enforcement Act.
- a restraining order, under s. 46 of the Family Maintenance Enforcement Act.
- an order that a corporation is jointly and separately liable with the debtor for payments required under the maintenance order under s.14.2(2) of the Family Maintenance Enforcement Act.
- an order under section 29.2 (2) of the Family Maintenance Enforcement Act that the Director of Maintenance Enforcement direct the Insurance Corporation of British Columbia to disregard a notice not to issue or renew the driver's licence of a debtor or a notice not to issue or renew the licence and corresponding number plates for any motor vehicle or trailer owned by a debtor.
- another order (specify): _____
- The hearing is expected to take: DURATION _____

Notice: If you do not appear, the Court may make an order in your absence.

Any affidavits in support of this motion are attached.

Dated _____

Party's lawyer

Signature

NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

In the Provincial Court of British Columbia

Court File Number:	120
FMEP Number:	
Court Location:	

Case name

In the case between:

NAME

And:

NAME

Who is bringing this notice of motion to the court? Note this person's address for service.

Filed by:

NAME

APPLICANT

ADDRESS FOR SERVICE

CITY

PROVINCE

POSTAL CODE

PHONE

FAX

Notice to:

NAME

RESPONDENT

ADDRESS FOR SERVICE

CITY

PROVINCE

POSTAL CODE

PHONE

FAX

Where and when

is the hearing? If you wish to respond to this motion you must appear at this date, time and place and tell the judge your position regarding this motion.

I will apply to this Court at COURT LOCATION

on DATE at TIME for:

What order is being asked for?

If you would like to present evidence from another witness, you may use an affidavit to do that. Get an affidavit from the registry. Have it completed and sworn. File the affidavit and serve a copy on the other party. Even if you are unable to serve the affidavit at least 7 days before the court date, the court may permit you to use it as evidence anyway.

- an order for access to information, as follows: _____
- an order extending the time for filing a statement of finances.
- an order requiring the debtor to file a statement of finances or prescribed documents.
- an order requiring the debtor to pay an amount on failing to file a statement of finances or prescribed documents.
- an order for payment by an attachee.
- an order determining liability under a notice of attachment or determining a related issue.
- an order changing the attached order dated: DATE _____
- an order changing the amount exempt from attachment.
- an order setting aside an attachment order or notice of attachment.
- an order discharging or postponing the registration of a maintenance order registered against land.
- an order requiring NAME _____ to attend a default hearing or a committal hearing before the Court and to file with the Court, by a date specified by the Court, financial information, financial statements or other prescribed documents under s. 39 of the Family Maintenance Enforcement Act.
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- an order that a corporation is jointly and separately liable with the debtor for payments required under the maintenance order under s.14.2(2) of the Family Maintenance Enforcement Act.
- an order under section 29.2 (2) of the Family Maintenance Enforcement Act that the Director of Maintenance Enforcement direct the Insurance Corporation of British Columbia to disregard a notice not to issue or renew the driver's licence of a debtor or a notice not to issue or renew the licence and corresponding number plates for any motor vehicle or trailer owned by a debtor.
- another order (specify): _____
- The hearing is expected to take: DURATION _____

Notice: If you do not appear, the Court may make an order in your absence.

Any affidavits in support of this motion are attached.

Dated _____

Party's lawyer

Signature

NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

In the Provincial Court of British Columbia

Court File Number:	121
FMEP Number:	
Court Location:	

NOTICE OF MOTION IN MAINTENANCE ENFORCEMENT PROCEEDINGS

Case name
as it appears on the order you want enforced.

In the case between:
NAME _____

And:
NAME _____

Your current address for service.

Filed by:
NAME _____

ADDRESS FOR SERVICE _____ CITY _____

PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

APPLICANT

Address for service of other party and anyone else who must be served.

Notice to:
NAME _____

ADDRESS FOR SERVICE _____ CITY _____

PROVINCE _____ POSTAL CODE _____ PHONE _____ FAX _____

RESPONDENT

Where and when is the hearing? Obtain a date and time from the registry.

I will apply to this Court at COURT LOCATION _____

on DATE _____ **at** TIME _____ **for:**

What are you asking for? Check the appropriate box(es) and fill in any required information.

- an order for access to information, as follows: _____
- an order extending the time for filing a statement of finances.
- an order requiring the debtor to file a statement of finances or prescribed documents.
- an order requiring the debtor to pay an amount on failing to file a statement of finances or prescribed documents.
- an order for payment by an attachee.
- an order determining liability under a notice of attachment or determining a related issue.
- an order changing the attached order dated: DATE _____
- an order changing the amount exempt from attachment.
- an order setting aside an attachment order or notice of attachment.
- an order discharging or postponing the registration of a maintenance order registered against land.
- an order requiring NAME _____ to attend a default hearing or a committal hearing before the Court and to file with the Court, by a date specified by the Court, financial information, financial statements or other prescribed documents under s. 39 of the Family Maintenance Enforcement Act.
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- an order that a corporation is jointly and separately liable with the debtor for payments required under the maintenance order under s.14.2(2) of the Family Maintenance Enforcement Act.
- an order under section 29.2 (2) of the Family Maintenance Enforcement Act that the Director of Maintenance Enforcement direct the Insurance Corporation of British Columbia to disregard a notice not to issue or renew the driver's licence of a debtor or a notice not to issue or renew the licence and corresponding number plates for any motor vehicle or trailer owned by a debtor.
- another order (specify): _____
- The hearing is expected to take: DURATION _____

Estimated Duration
Only the Applicant's lawyer, if any, should provide an estimate.

Information for the person served.

Notice: If you do not appear, the Court may make an order in your absence.

Sign your name and state today's date.

Any affidavits in support of this motion are attached.

State name of lawyer, if any.

Dated _____

Party's lawyer

Signature

TO COMPLETE A STATEMENT OF INCOME AND EXPENSES

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COMPLETE THE STATEMENT OF INCOME AND EXPENSES. You may use a typewriter or print clearly and firmly.



Step 1

CHECK the boxes, record your income and attach pay stubs, if applicable.



Step 2

RECORD the details of your employment.



Step 3

CALCULATE your monthly expenses. Your expenses must be recorded as monthly amounts. If you pay any expenses once a year, divide the yearly amount by 12 to calculate the monthly amount.

Add all your expenses to find your Total Expenses.



Step 4

CALCULATE your monthly payments. Record the total monthly payment for each type of debt. (You need not include your mortgage payment or car payment, as you have already included it under Expenses). Also record the amount you still owe, the date of your last payment, and your reason for borrowing, such as holidays, major purchases, or meeting monthly expenses.

NOTE: Do not include under Monthly Debt Payments, any expenses taken into account under Monthly Expenses (for example if you used a credit card to purchase home furnishings, only record under MONTHLY EXPENSES (Home Furnishing) OR MONTHLY DEBT PAYMENTS (Credit Card – Balance Owing) NOT BOTH.



Step 5

ONCE completed, this Statement of Income and Expenses must be delivered to either the Court, the Director of Maintenance Enforcement or any other person that the Court has designated, and as frequently as the Court has ordered. **PLEASE CHECK YOUR COURT ORDER** for details.

STATEMENT OF INCOME AND EXPENSES

In the Provincial Court of British Columbia
Under the Family Maintenance Enforcement Act

Court File Number:	124
FMEP Case Number:	
Court Location:	

Case name
as it appears on an order.

In the case between:

NAME	CREDITOR
And:	
NAME	DEBTOR

Your current address for service.

Filed by:

NAME		
ADDRESS	CITY	
PROVINCE	POSTAL CODE	PHONE
British Columbia		

Dates for reporting period

This statement of income and expenses is for the period from _____ to _____

INCOME

You must report all income which you received during the period covered by this report, but do not report the same income twice (for example, self-employed and business income).

Indicate whether you have received income from any of these sources. If your answer is "Yes", provide the information requested.

Employment Income (Attach pay stubs)	<input type="checkbox"/> Yes <input type="checkbox"/> No	Gross Amount	\$ 0.00
Self Employment	<input type="checkbox"/> Yes <input type="checkbox"/> No	Gross Amount	\$ 0.00
Commissions/Bonuses	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Tips/Gratuities	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Other Business Income	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Unemployment Insurance (attach cheque stubs)	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Income Assistance (attach cheque stubs)	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Pension/Disability Payments	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Rental Income	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Workers' Compensation Payments	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Investment Income	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
Other Income (eg. inheritance, sale of assets, insurance settlement, etc.)	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00
(If Yes, please specify) _____			
*Gross Income of a spouse	<input type="checkbox"/> Yes <input type="checkbox"/> No		\$ 0.00

Total Income:

\$ 0.00

*Please note that spouse includes your

(a) Husband or wife, and (b) a man or a woman who is living with you in a marriage-like relationship

Check boxes and provide information about employment.

Details of Employment (if you reported employment income, you must complete this section.)

Employer Name _____
 Employer Address _____
 Employer telephone number _____

Is your employment Full Time Part Time Permanent
 Casual Ongoing Terminated

Other employment information _____

Do you expect any changes in your address, employment or other sources of income or in your expenses during the next reporting period? Yes No

If yes, provide details: _____

STATEMENT OF INCOME AND EXPENSES

Check appropriate box

My salary/wages are paid: Daily Weekly Every two weeks
 Bi-monthly Monthly
 Other (specify) _____

Expenses:

How many people do you support in your present household? _____
 Has there been any change in your expenses since the last report? Yes No

If you answer "Yes" or if this is your first report, please complete the Monthly Expenses section of this form.

Note: Do not include under Monthly Debt Payments, any expenses taken into account under Monthly Expenses.

MONTHLY EXPENSES

MONTHLY DEBT PAYMENTS

Provide information where applicable

	Total
Rent	\$ 0.00
Mortgage	\$ 0.00
Property Taxes	\$ 0.00
Utilities (heat, light and water)	\$ 0.00
Phone	\$ 0.00
Cablevision	\$ 0.00
Home Repair & Furnishings	\$ 0.00
House/Tenant Insurance	\$ 0.00
Life Insurance	\$ 0.00
Food	\$ 0.00
Restaurant Meals	\$ 0.00
Sundries & Personal Grooming	\$ 0.00
Clothing	\$ 0.00
Laundry & Dry Cleaning	\$ 0.00
Motor Vehicle (lease or loan) (licence, insurance, fuel & service)	\$ 0.00
Transportation (public)	\$ 0.00
Medical & Dental	\$ 0.00
Newspapers & Subscriptions	\$ 0.00
Entertainment	\$ 0.00
Alcohol & Tobacco	\$ 0.00
Gifts	\$ 0.00
Church & Charities	\$ 0.00
Maintenance Payments	\$ 0.00
Child Care & Babysitting	\$ 0.00
School Expenses	\$ 0.00
Children's Activities & Lessons (list) _____	\$ 0.00
_____	\$ 0.00
Children's Allowance	\$ 0.00
Other (list) _____	\$ 0.00
_____	\$ 0.00

Credit Card \$ _____
 Balance Owing: \$ _____ /MO.
 Date of last Payment: _____
 Reason for borrowing: _____

Bank or Finance Company \$ _____
 (do not include amount owing on mortgage)
 Balance Owing: \$ _____ /MO.
 Date of Borrowing: _____
 Date of last Payment: _____
 Reason for borrowing: _____

Department Store \$ _____
 Balance Owing: \$ _____ /MO.
 Date of last Payment: _____
 Reason for borrowing: _____

Other (Attach list if necessary) \$ _____
 Balance Owing: \$ _____ /MO.
 Date of Borrowing: _____
 Date of last Payment: _____
 Reason for borrowing: _____

Total Expenses \$ 0.00

Sign your name and state today's date.

Dated _____

Signature of Party

IT IS AN OFFENCE TO GIVE FALSE INFORMATION.

FAILURE TO PROVIDE the Statement of Income and Expenses may lead to action being taken under section 22 of the *Family Maintenance Enforcement Act*. This may include an order for your imprisonment, or an order for you to pay the creditor an amount of up to \$5,000.00

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Canadian Radio-television and Telecommunications Commission

[Home](#) > [Consumers](#) > [Phone and Internet Services](#) > [The CRTC Wireless Code](#)

The CRTC Wireless Code

Learn



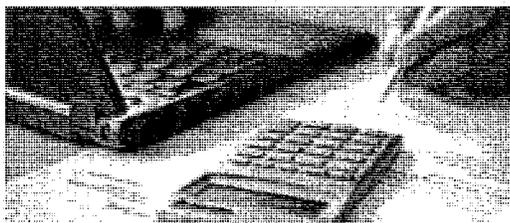
Curious to find out what kind of complaints have been received under the Wireless Code? Check out the [Commissioner for Complaints for Telecommunication Services \(CCTS\) Annual Report](#).

Complain



[Submit a complaint about your wireless service to the Commissioner for Complaints for Telecommunication Services \(CCTS\)](#).

Interact



Do you want to cancel your contract? Start by letting us help you [calculate your cancellation fees](#).

About the Wireless Code

The CRTC created the Wireless Code (read the [simplified Wireless Code](#) or the [Telecom Regulatory Policy 2013-271](#)) to make it easier for you - as an individual or a small business - to understand the contracts for your cell phone and other mobile devices.

The Wireless Code explains your rights and responsibilities as a consumer of wireless services

It establishes new standards that all wireless service providers must follow. The Wireless Code applies to all new contracts signed as of December 2, 2013. It also applies to existing contracts that are renewed or extended, or where the key terms are amended, as of December 2, 2013. In addition, the code will apply to all wireless contracts as of June 3, 2015, regardless of when they were signed. However, the **June 3, 2015 date is currently under appeal.**

Understand your Consumer Rights

What are the benefits of the Wireless Code?

- Watch a **video** to see how the Wireless Code affects you and your service provider; and
- Read our **infographic** for a quick summary of the benefits.

Not sure if the Wireless Code applies to you based on the type of mobile contract you have?

- **Determine when the Wireless Code applies to you;** and
- **Use our checklist** to see the key differences between prepaid and postpaid contracts.

Confused about your cancellation fees?

Calculate your cancellation fees.

Do you think your service provider is violating the terms in the Wireless Code?

The **Commissioner for Complaints for Telecommunications Services (CCTS)** exists to investigate your complaints.

Accountability to our Consumers

Tracking the Implementation Process:

We created an **Implementation Report Card [PDF]** that summarizes the results from all wireless providers.

The Report Card is based on **Compliance Reports** that each company filed in 2014 to demonstrate their compliance with the Wireless Code's requirements.

Decisions Related to the Code:

- Read the **Telecom Regulatory Policy 2013-271** to understand how and why the Wireless Code was created;
- Read more about the **Decisions** related to the Wireless Code.

Public Opinion Research

As part of its commitment to ensuring that the Wireless Code is working for you, the CRTC is doing public opinion research. The research done so far examines Canadians' experiences with their wireless service providers *before* the Wireless Code came into effect.

These research reports are available on the **Public Opinion Research Reports website.**

- **Wireless Code Public Opinion Research – Executive Summary** (7 April 2014)
- **Wireless Code Public Opinion Research – Quantitative Research Report** (7 April 2014)

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Student loans

*Prepared by Alison Ward, lawyer, Community Legal Assistance Society, and last updated October 27, 2014

1. Effect of bankruptcy on student loans

Bankruptcy normally erases most (but not all) debts. Section 178 of the federal *Bankruptcy and Insolvency Act* ("BIA") specifies which debts are not erased by a discharge from bankruptcy.

Student loans are treated differently than most debts in bankruptcy. Sections 178(1)(g) and 178(1.1) of the *Bankruptcy and Insolvency Act* provide that student loans will not be discharged from (i.e. forgiven through) bankruptcy if the person either:

- a) declared bankruptcy while they were still a full-time or part-time student; OR
- b) declared bankruptcy within seven years of the date they ceased to be a full-time or part-time student.

This means that if someone files for bankruptcy within seven years of leaving school, their student loan debt can remain owing even after the debtor has been discharged from all the other debts she declared in her Assignment in Bankruptcy. However, if a person files for bankruptcy more than seven years after they ceased to be a student, their student loans will usually be automatically discharged during the bankruptcy process, and the loans will no longer be owed.

There is a kind of exception to this seven year rule: it is found in section 178(1.1) of the *BIA*, as follows:

178 (1.1) At any time after five years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

*(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; **and***

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

Under section 178(1.1), a person whose student loans were not discharged from bankruptcy because of the rules in section 178(g), can apply to the Supreme Court in Bankruptcy to have their student loans discharged from bankruptcy if:

- a) the person ceased to be a full-time or part-time student at least five years ago;
- b) the person satisfies the judge that they have acted in good faith in relation to their student loan debt (e.g. they did not refuse to pay the loan when they could have afforded to do so, etc.); and
- c) the person satisfies the judge that they have, and will continue to, experience financial difficulty to such an extent that the person will be unable to pay the student loan debt.

When does someone “cease to be” a full or part-time student?

This is a key question, as student loans are discharged like most other debts unless the person declared bankruptcy *within 7 years of the date they ceased to be a full-time or part-time student*.

How do you figure out when that 7 year period ends? Let’s say someone (Peter) completed an undergraduate degree in June 2001, graduating with student loans of \$38 000. Peter works for four years at a low wage job, then returns to university for teachers’ college from 2006 to June 2008, with \$20 000 worth of student loans from teachers’ college. Unfortunately Peter can’t find a job as teacher, and files an assignment in bankruptcy on August 1, 2008, 2 months after finishing teachers’ college. Peter has never made any payments on any of his student loans. Can he have any of his student loans discharged? After all, it is more than 7 years since he finished his undergraduate studies. But only two months since he finished teachers’ college.

This question came up in two BC Supreme Court cases in 2013¹², and led the Court to clarify the state of the law in BC. The answer (in *Re Mallory*) was that the undergraduate student loans could be discharged. The Court found that the particular legislation (including loan agreement) under which the student loan in question is advanced determines when an individual “cease to be a student” for the purposes of that loan. That is, there can be multiple dates under which a person ceases to be a student for the purposes of BIA section 178 (not only one date in their lifetime). The same reasoning would apply to determining when someone has ceased to be a student for 5 years,

Summary

Despite these many rules, a debtor with student loan debt can still declare bankruptcy at any time, and can include their student loans in their Assignment in Bankruptcy. A debtor who does that will be protected from further court action by the student loan provider, unless the student loan provider gets special permission from court to sue the debtor in relation to their student loans. Where the debtor has been out of school for less than 7 years, the debtor should be made aware that the student loans will not be discharged along with other debts, but *may* be discharged (upon application to court) once the student has ceased to be a student (in relation to particular loans) for at least 5 years, for the financial hardship exception in section 178(1.1) of the *BIA*.

2. Limitation periods for student loans

a) Canada Student Loans

The limitation period that applies to federal student loans is found in sections 16.1 and 16.2 of the *Canada Student Financial Assistance Act*.

The federal government cannot sue on student loans if 6 years have passed since the date when the right to sue arose, unless the debtor has acknowledged the debt (either before or after the end of the 6 year limitation period).

¹ *Dreger (Re)*, 2013 BCSC 200 (CanLii) at <http://canlii.ca/t/fw2mx>

² *Mallory, (Re)*, 2013 BCSC 202 (CanLii) at <http://canlii.ca/t/fw2mz>

A person can acknowledge a federal student loan debt by:

- a) Making a signed written acknowledgment of the money owing; or a signed written promise to pay;
- b) Making a partial payment of the money owing; or
- c) Acknowledging the money owing in the course of bankruptcy proceedings or other proceedings dealing with the payment of debts.

If a person acknowledges a federal student loan debt as outlined above, the 6-year limitation clock is normally re-started on the date of the last acknowledgment. This is true even if the acknowledgment comes **after** the original 6-year limitation period has expired, which is unusual as most limitation periods cannot be re-started after the initial limitation period has expired.

b) BC student loans:

Limitation periods for BC student loans became more complicated with the introduction of the new provincial *Limitation Act*, S.B.C. 2012, c. 13 on June 1, 2013. Some BC student loans will still be governed by the former *Limitation Act* R.S.B.C. 1996, c. 266, while others may be covered by the new *Limitation Act*.

i) Former Limitation Act:

BC student loans where the right to sue arose before June 1, 2013, will still be governed by the former *Limitation Act* (e.g. where, for example, payments were first in default before June 1, 2013).

For these loans, the BC government cannot sue on BC student loans after **6 years** from date when the right to sue on the debt arose (subject to acknowledgment of the debt within the 6 years). See sections 3(5), 5 and 9 of the former BC *Limitation Act*

Under the former *Limitation Act*, a person can acknowledge a BC student loan debt by:

- a) Making a signed, written acknowledgment of the money owing;
- b) Making a partial payment of the money owing; or
- c) Acknowledging the money owing in the course of bankruptcy proceedings

Unlike the case with federal student loans, an acknowledgment that is made after the 6 year limitation period expires on a BC loan does not revive the government's right to sue under the former *Limitation Act*.

ii) New Limitation Act

BC student loans where a claim was discovered on or after June 1, 2013, will be governed by the new *Limitation Act* (e.g. where, for example, payments are *first* in default on or after June 1, 2013).

For these loans, the BC government cannot sue on BC student loans after **6 years** from the day on which the claim is discovered (subject to acknowledgment of the debt within the 6 years). See sections 24 and 38 of the BC *Limitation Act* and section 86.1 of the BC *Financial Administration Act*

A person can acknowledge a BC student loan debt by:

- a) Making a written, signed (by hand or electronic signature) acknowledgment of the money owing;
- b) Making a partial payment of the money owing; or
- c) Acknowledging the money owing in the course of bankruptcy proceedings.

It is unclear whether an acknowledgement of a BC student loan made *after* the 6 year limitation period under the new Limitation Act will revive the government's right to sue under the new Limitation Act. We will have to wait and see how judges interpret the legislation (*but bear in mind that the earliest a 6 year limitation period under the new Act can expire is June 2, 2019*).

For student loans from other provinces

These are governed by the local provincial legislation. Ask a lawyer if you need to know about limitations on a provincial student loan from a province other than BC.

Limitation periods and government's right of set-off

The government can set-off income tax refunds and other federal money against both provincial and federal student loan debts. See sections 16.1(2) and 16.2(4) of the *Canada Student Financial Assistance Act* and s. 38 of the BC *Financial Administration Act*.

For federal loans, the government keeps this right of set-off forever, even after the limitation date has expired.

For BC student loans governed by both the former and the new *Limitation Act*, it can be argued that the B.C. government only keeps its right of set-off until the six year limitation period expires. This is based on:

- a) Under the former Limitation Act, section 9 and the definition of "action" in section 1 "action" includes any proceeding in a court and any exercise of a self help remedy

b) Under the new *Limitation Act*, section 27, which says:

27(1) In this section, "**non-judicial remedy**" means a remedy that a person is entitled, by law or by contract, to exercise in respect of a claim without court proceedings.

(2) If a claimant is prevented from commencing a court proceeding in relation to a claim as a result of the expiry of a limitation period under this Act, the claimant is not entitled to exercise against the person against whom the claim is or may be made, or against any other person, any non-judicial remedy that the claimant would, but for this section, be entitled to exercise in relation to the claim.

3. Student loan forgiveness and Repayment Assistance Program

In July 2012, all "direct lend" BC student loans (meaning government financed student loans that were cashed by a student on or after August 1, 2000) were automatically moved to the National Student Loans Service Centre (NSLSC) in Mississauga, Ontario. Previously, the NSLSC administered only Canada student loans, and BC administered BC student loans. Now, however, both these BC and Canada student loans are managed as a single Canada-B.C. integrated loan by the NSLSC.

If you are dealing with student loans that were cashed before August 1, 2000, different rules may apply.

Canada Student Loans are governed by the *Canada Student Financial Assistance Act and Regulation*, which provides specific terms on which loans can be forgiven, reduced or managed. In BC, there is no specific legislation that applies to student loans issued by BC. Rather, all debt forgiveness and reduction/repayment programs that apply to BC student loans, are determined only by *policy* set by the BC government.

The BC government's current policy manual regarding BC student loans is available on the Student Aid BC website at https://studentaidbc.ca/sites/all/files/school-officials/policy_manual_13_14.pdf The policy is a 272 page document that details eligibility criteria for BC student loans, outlines repayment terms and loan forgiveness programs, and describes the appeals policy that applies to BC student loans There is also a general description of those policies on the Student Aid BC website at <https://studentaidbc.ca/repay/understand-loan-repayment>

Based on that policy, and the federal student loans legislation, there are programs in place that may let your client apply for forgiveness of some or all of her loan, put the debt in remission, get interest relief, or otherwise get help with an unmanageable student loan debt.

Canada and BC student loans and disability forgiveness

Both BC and Canada Student Loans can be forgiven based on permanent disability.

Canada student loans criteria for disability forgiveness

Most Canada student loans can be forgiven for severe permanent disability under sections 11 and 11.1 of the *Canada Student Financial Assistance Act*.

Section 11.1 says:

*11.1 All obligations of a borrower in respect of a loan made under an agreement entered into under section 6.1 terminate if the Minister is satisfied, on the basis of information specified by the Minister and provided by or on behalf of the borrower, that the borrower, by reason of the borrower's **severe permanent disability**, is **unable to repay the loan and will never be able to repay it**.*

“Severe permanent disability” is defined in section 2 of the *Canada Student Financial Assistance Regulation*, as follows:

*“severe permanent disability” means a functional limitation caused by a physical or mental impairment that **prevents** a borrower from performing the daily activities necessary to participate in studies at a post-secondary school level and in the labour force and is expected to remain with the person for their expected life*

This test of “severe permanent disability” applies to Canada Student Loans issued from August 1, 1995 on. Disability forgiveness for these loans is available regardless of when a person’s disability arose, and whether or not their loan is in good standing.

For federal student loans negotiated between August 1, 1995 and July 31, 2000, the student loan must also still be held by the financial institution that issued it. People in that category who want to apply for forgiveness of their loan based on permanent disability must contact the financial institution that holds their loan, ask for an application form, and submit the completed application to that financial institution.

BC Student Loans criteria for disability forgiveness

BC’s program for student loan forgiveness based on disability is called the “BC Provision for Students with Severe Disabilities” (see page 139 of the Student Aid BC policy manual linked above).

If a student with both Canada and BC student loans is approved by the Canada Student Loans program for the federal permanent disability benefit program, that student does not need to apply separately for disability forgiveness of their BC student loans. Instead, they are automatically eligible for the Provision for Students with Severe Disabilities, and their outstanding BC loan balance will be reduced to zero.

If a student only has BC student loans (and no Canada student loans), they must apply for the BC Provision for Students with Severe Disabilities. The criteria are the same as those for the federal permanent disability benefit program, described above, and the application is made through the National Student Loan Service Centre.

BC student loan's policy provides that if a person has had their BC student loans forgiven through the BC Provision for Students with Severe Disabilities, they are not eligible for any further BC student loans.

Repayment Assistance Plan ("RAP") for borrowers with low incomes

The Repayment Assistance Program (RAP) program replaced the former 'interest relief' and 'debt reduction in repayment' programs that ended as of August 1, 2009. Students currently in either program will continue until the end of their current agreement, at which point they are eligible to apply for the Repayment Assistance Plan.

The RAP program applies to all integrated BC – Canada student loans.

As the CanLearn Website says, "under the Repayment Assistance Plan (RAP), you can:

- You can make affordable payments based on your gross family income and family size. Your loan payments would never exceed 20% of your gross family income.
- Your monthly student loan payments will either be reduced, or you will not have to make any payments.
- You have a maximum repayment period of 15 years (or 10 years for qualified borrowers with a permanent disability).
- Enrolment is not automatic and you would have to re-apply for this plan every 6 months.

To qualify for RAP, you must:

- be a resident of Canada (or on an international internship or a reservist deployed abroad),
- be at least 6 months has passed since you graduated or left school,
- your loan must not be in default,
- have not been restricted from the Canada Student Loans Program for further assistance; and
- meet the income threshold set for the program."

Most of the rules regarding RAP are found in sections 1 and 2 (definitions) and sections 19 to 26 of the *Canada Student Financial Assistance Regulation*. A copy of those sections is attached, or you can find them on www.canlii.org

It appears that eligibility for RAP can only be backdated by 6 months (see *Canada Student Financial Assistance Regulation, section 20.2*). Therefore, if a borrower is interested in applying for RAP, it is advisable to do so as soon as possible.

You can find a copy of the Repayment Assistance Plan application form at <http://www.canlearn.ca/eng/common/publications/forms.shtml> A copy is also attached.

There are two forms of RAP:

- a) RAP for non-disabled borrowers; and
- b) RAP for borrowers with a permanent disability

a) RAP for non-disabled borrowers

The attached printouts describe the basics of this program.

- No borrower should have a repayment period of more than **15 years**;
- Monthly payment amounts are based on the borrower's family size and family income (not just the interest rate and amount of principal);
- Borrowers will not make payments of more than 20% of their family income, if the loan is covered by RAP; and
- In some cases, a borrower may not have to make any monthly payments until their monthly income increases. From my quick reading from the Canada Student Financial Assistance legislation, it appears that a single person with a monthly income of under \$1 684 would not have to make any monthly payments under RAP (however they would have to apply to RAP to have that put in effect). For a family unit of 2, the income threshold is \$2 631, for a family of 3; \$3, 399; for a family of 4; \$4 009. See Schedule 1 to the Canada Student Financial Assistance Regulation, and sections 19(2) and 20(2) of that Regulation.

There is a "repayment assistance estimator" available online at <http://tools.canlearn.ca/cslgs-scpse/cln-cln/rae-ear/rae-ear-1-eng.do> to calculate what kind of payments someone might be eligible to make through RAP.

b) RAP for borrowers with a permanent disability (RAP-PD)

The attached printout also describes the basics of this program. To qualify for this form of RAP, a borrower must have a "permanent disability."

The term "permanent disability" is defined in section 1 of the *Canada Student Financial Assistance Regulation* as:

"a functional limitation caused by a physical or mental impairment that restricts the ability of a person to perform the daily activities necessary to participate in studies at a post-secondary school level or the labour force and is expected to remain with the person for the person's expected life"

This program differs from RAP for non-disabled borrowers mainly in that:

- An applicant must submit a RAP for Borrowers with a Permanent Disability Expenses Form with their RAP application (copy of expense form is attached or available at <http://www.canlearn.ca/eng/common/publications/forms.shtml>)
- borrowers with a permanent disability should never have a repayment period longer than **10 years** (instead of 15); and

- Monthly payments amounts are based on family income, family size, **and** disability-related expenses (allowable uninsured medical expenses, special care and other expenses directly related to the disability).
- If a loan is covered by RAP-PD, a borrower should not have to make payments of more than 20% of their monthly family income, after monthly, uninsured disability-related expenses have been deducted from their family income; and
- In some cases, a borrower may not have to make any monthly payments until their monthly income increases. From my quick reading from the Canada Student Financial Assistance legislation, it appears that a single person with a monthly income, *minus monthly disability-related expenses not covered by public health care or private insurance*, of under \$1 684 would not have to make any monthly payments under RAP (however they would have to apply to RAP to have that put in effect). For a family unit of 2, the income threshold is \$2 631, for a family of 3; \$3, 399; for a family of 4; \$4 009. See Schedule 1 to the *Canada Student Financial Assistance Regulation*, and sections 19(2) and 20(2) of that Regulation.

iii) Resources

The following websites have a number of helpful fact sheets regarding student loans:

- BC Ministry of Advanced Education site on student loan repayment:
<https://studentaidbc.ca/repay/welcome.htm>
- HRSDC's Canlearn site at www.canlearn.ca

TAB 3: Employment

- **Identifying and Enforcing Workers' Rights (Day 3)**
 - Article
 - Powerpoint

Provincial Training Conference for Legal Advocates - 2014

Identifying and enforcing WORKERS' RIGHTS

These materials were prepared by Devyn Cousineau, staff lawyer at the Community Legal Assistance Society, for the Provincial Training Conference for Legal Advocates, October 2014

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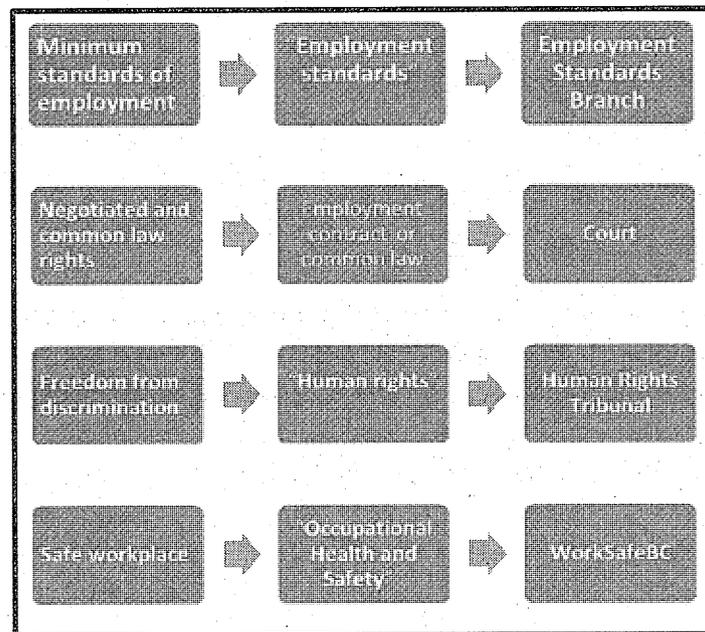
I. OVERVIEW

There are a number of protections afforded to workers to ensure that they work under safe, fair and non-discriminatory conditions. Identifying those protections, and helping workers to enforce them, requires a basic understanding of the laws governing employment standards, human rights, workers' compensation and employment contracts.

Broadly speaking, workers are entitled to:

1. **Minimum standards of employment.** These are called "employment standards" and are enforced by the **Employment Standards Branch**.
2. **Negotiated and common law rights.** These are found in their **employment contract** or in **judge-made law**, which is enforced by a **court**.
3. **Freedom from discrimination.** This is called "**human rights**" and is enforced by the **Human Rights Tribunal**.
4. **A safe workplace & workers' compensation.** This is also referred to as "**occupational health and safety**", and is enforced by **WorkSafeBC**. Worksafe BC also administers **workers' compensation**.

This paper will provide an introduction to these four areas of law.



II. MINIMUM STANDARDS OF EMPLOYMENT (“EMPLOYMENT STANDARDS”)

Legislation	<i>Employment Standards Act</i> <i>Employment Standards Regulation</i>
Enforced by	Employment Standards Branch
Limitation period	6 months

The *Employment Standards Act* sets out minimum rules of employment for most non-unionized “employees” in British Columbia.¹ In this section, I will provide an overview of some of its most basic protections. There are more outlined in the *Act*. The table of contents for the *Act* is attached as Schedule A to this paper. Please read it to see the full scope of rights afforded by this *Act*.

A. Important Definitions

“Employee” is defined in s. 1 of the *Act* as including:

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer's business,
- (d) a person on leave from an employer, and
- (e) a person who has a right of recall

For example: Before starting work at a fast food restaurant, Maria is told she needs to complete two days of training. She is not paid for that training. Is she an employee?

This definition is important to refer to when there is a question of whether a worker is an “employee” (as opposed to, for example, an independent contractor). Note that a person is an “employee”, and entitled to the rights under the *Employment Standards Act*, during a training period.

Employees also include temporary foreign workers and domestic caregivers.²

¹ Note that different rules apply to the following sectors: high technology, agriculture, taxis, trucking, log harvesting, silviculture and the oil and gas sector. If you have a question that arises in one of these areas, you can check the individual fact sheets available at <http://www.labour.gov.bc.ca/esb>

² “Domestics” are also defined in s. 1 of the *Act*. Section 14 requires that domestics have a written employment contract.

“Employer” is also defined in s. 1. It includes a person:

- (a) who has or had control or direction of an employee, or
- (b) who is or was responsible, directly or indirectly, for the employment of an employee.

Again, this can be important where a person is disputing that they are an “employer” for the purposes of the *Act*.

B. Hiring

There are rules about how employees can be recruited and hired.

Twelve is the minimum working age in BC (s. 9). Workers between 12 – 14 years old must obtain a parent’s written consent to work.³ Workers above 15 do not need consent. In some situations, with the Branch’s permission, children younger than 12 can work.

One way that workers might be recruited is through “employment agencies”. Employment agencies are defined in s. 1 of the *Act* as meaning a “person who, for a fee, recruits or offers to recruit employees for employers”. A person who operates an employment agency must be licensed under the *Act* (s. 12).

Employment agencies can only charge the *employer* for the service of recruiting workers. It is illegal to charge a worker any kind of fee for obtaining employment (s. 10). This is an extremely common breach of the *Act* for foreign workers, who often pay thousands of dollars to be placed in a job.

It is illegal to misrepresent key aspects of the job you are hiring for, including the availability of a position, the type of work, the wages and the conditions of employment (s. 8). If an employee is induced to a job by false representations, she can apply to the Employment Standards Branch to be reimbursed for any reasonable expenses she incurred because of the misrepresentation (s. 79(2)). Again, this is not an uncommon scenario for foreign workers.

C. Wages

Employers are required to pay the minimum wage for all employees (s. 16). The minimum wage is set out in s. 15 of the *Employment Standards Regulation*.

If the parties have agreed on a wage that is higher than the minimum wage, the Branch will enforce the agreed-upon wage.⁴

(Minimum wage: \$10.25 per hour
Up to 8 hours per day or 40 hours
per week)

³ The Employment Standards Regulation, s. 45.1-45.4, provides additional rules about the working conditions for children between 12-14 years old.

⁴ See the Branch’s Interpretation Guidelines Manual, s. 16, available online: <http://www.labour.gov.bc.ca/esb/igm/esa-part-3/igm-esa-s-16.htm>

After the employee works 8 hours in a day, then they must be paid "overtime" as follows:

- After 8 hours in a day: wages are calculated x 1.5 (\$15.38)
- After 12 hours in a day: wages are doubled (\$20.50)

Overtime also kicks in after 40 hours of work in one week, as follows:

- From 40-52 hours: wages are calculated x. 1.5 (\$15.38)
- Over 52 hours: wages are doubled (\$20.50)

For the purpose of calculating weekly hours, only the first 8 hours worked by an employee in each day are counted (s. 40(3)).

See sections 35 and 40 of the Act.

In addition, workers are entitled to at least 32 consecutive hours free from work each week. Hours worked during these 32 hours must be paid at time and a half (s. 36). Workers should also get 8 consecutive hours free from work between shifts, except for in emergencies.

"Averaging agreements"

Employees may not be entitled to overtime if they have agreed to an "averaging agreement", which is an agreement to average an employee's hours of work over a period of up to four weeks. If you are representing a client who may be entitled to overtime, make sure to confirm there is no averaging agreement in place. If there is such an agreement, check s. 37 of the Act to make sure it complies with the Act.

*Ms. Hardworker earns minimum wage. She works Monday – Saturday from 7:00 am – 8:00 pm.
This is her wage chart*

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Daily hours	OFF	13	13	13	13	13	13
(weekly*)		(8)	(16)	(24)	(32)	(40)	(52)
Regular pay (\$10.25)		8	8	8	8	8	0
1.5x pay (\$15.37)		4	4	4	4	4	8
Double pay (\$20.50)		1	1	1	1	1	5
Total		\$163.98	\$163.98	\$163.98	\$163.98	\$163.98	\$225.46

*weekly hours calculated only with the first 8 hours on each day

It is illegal for employers to require or allow an employee to work "excessive hours" or hours detrimental to the employee's health or safety (s. 39).

Employees can make a request to their employer, in writing, that their overtime be banked as time, at the same rate as set out above (s. 42).

Finally, employees are entitled to a minimum daily pay of two hours. So, for example, if an employee reports for work and then only works for 30 minutes, she should be paid for two hours (s. 34).

D. Deductions

Employers are required to make certain deductions by law, including income tax, EI and CPP. They may make certain other deductions, but only if the employee agrees in writing (see ss. 21-22). This might include money to meet a credit obligation, including to the employer. For example, where the employer is also providing housing, the employee can (but doesn't have to) agree *in writing* for rent to be deducted from wages.

An employer must not make deductions for any of the following:

- Employer's business costs, including damage to company property, the cost of a dine-n-dash, missing inventory.
- The cost of a uniform or special clothing, which must be bought and maintained by the employer (s. 25).⁵

Approach all deductions with skepticism, and be rigorous in ensuring they are compliant with the *Act*.

E. Breaks

Workers are entitled to a 30 minute meal break after working for five consecutive hours (s. 32). Those breaks may be unpaid. But if an employee is required to work or be available for work during that time, then it must be paid time.

There's no statutory entitlement to coffee breaks.

F. Vacation and statutory holidays

After an employee works for one year, they are entitled to two weeks of vacation (s. 57). This goes up to three weeks after five years of employment.

After only five days of employment, a employees are entitled to vacation pay (s. 58).

Employees also become eligible for the perks of statutory holidays after they've worked for 30 days.⁶ On statutory holidays, employees are entitled to a day off with an average day's pay. If they work on a statutory holiday, they are entitled to be paid overtime plus an average day's pay (ss. 44-48). Yahtzee!

G. Leaves

Employers are required to provide the following unpaid leaves:

- **Pregnancy leave** (up to 17 weeks, or more in certain circumstances) (s. 50)
- **Parental leave** (35 weeks for birth mother who took pregnancy leave, 37 weeks for other parents) (s. 51)

⁵ Note that "special clothing" is defined in s. 1 of the Act.

⁶ They must also have worked 15 of the previous 30 days (s. 44).

- **Family responsibility leave** (up to five days, to attend to the care of a child or other member of immediate family) (s. 52)
- **Compassionate care leave** (up to eight weeks, to care for a gravely ill family member) (s. 52.1)
- **Bereavement leave** (up to three days, to deal with death of an immediate family member) (s. 53)
- **Jury duty** (for the period of the duty) (s. 55)
- **Reservists' leave** (while deployed to a Canadian Forces operation) (s. 52.5)

Employers cannot retaliate against an employee for taking any of these leaves. Their job, or a comparable position, must be available for them when they come back (s. 54).

H. Terminating employment

An employee can leave her job at any time for any reason. There is no obligation to provide the employer with notice (though it's often considered courteous).

An employer can also terminate employment at any time for any non-discriminatory reason. If they do this, their only obligation is to give the employee "notice". "Notice" can be working notice or paid notice. The amount of notice an employee is entitled under the *Act* depends on their length of service.

Note that the notice periods set out in the *Act* are the minimum notice periods. Workers are also entitled to "notice" under the common law, which is enforced by courts. Courts will consider an employee's length of service, position, age, and other factors affecting their prospects of re-employment to award a period of "reasonable notice". This is generally much higher than the statutory minimums. If you are consulted by a worker who has been a long-term employee, or has any other interesting aspects to her case, you may want to consult a lawyer about the prospect of a wrongful dismissal suit.

If an employer has "cause" to fire an employee, then they do not have to give notice. "Cause" will generally be truly egregious instances of misconduct, including theft, gross incompetence, a significant breach of the rules or wilful misconduct. In such cases, the employee can be fired effective immediately. The employee can dispute the allegation of cause.

If an employer unilaterally changes key aspects of an employee's job, they may be entitled to treat their job as at an end and seek notice. This is also referred to as "constructive dismissal".

NOTICE PERIODS UNDER ACT (s. 63)

Length of Service	Notice
0-3 months	No notice
3-12 months	1 week
1-3 years	2 weeks
3-4 years	3 weeks
4-5 years	4 weeks
5-6 years	5 weeks
6-7 years	6 weeks
7-8 years	7 weeks
Over 8 years	8 weeks

I. Complaints to the Employment Standards Branch

**ONLY THE EMPLOYMENT
STANDARDS BRANCH
CAN ENFORCE RIGHTS
UNDER THE ACT**

Only the Employment Standards Branch has the power to enforce the rights under the *Act*. This is a very, very important point, especially because of the brutal and strictly enforced **six month** time limit for filing a complaint (s. 74).

This means that, unless your client has an entitlement to things like overtime or vacation pay in a written employment contract, she will not be able

to collect unpaid entitlements unless she makes an Employment Standards complaint.

If you think that your client may be entitled to a remedy under the *Act*, immediately start the process of making a complaint to the Branch.

Step 1: Self-Help Kit

The Branch requires all workers, with limited exceptions, to complete its Self-Help kit before filing a complaint. It's found online at www.Labour.gov.bc.ca/esb. The hope is that the parties are able to resolve the issue on their own.

If the employer doesn't respond after 15 days, or there is less than 30 days before the time limit expires, then the employee can file a complaint.

The following employees do not have to complete the Self-Help process:

- Employees under the age of 19;
- Employees alleging a contravention of a leave provision of the *Act*;
- Employees with language or comprehension difficulties that would make the use of the Kit difficult;
- Farm workers, textile or garment workers or domestic workers; or
- Employees whose employer is insolvent or which has been locked out by its landlord.

An employee also does not have to complete the Self-Help Kit if she has already sent a letter to the employer setting out the problem and requesting a resolution.

This may be something you do on your client's behalf.

Step 2: File a complaint

Complaints must be made:

- *Within 6 months of the last day of employment; or*
- *Within 6 months of the breach of the Act*

Complaints must be made *in writing* to the Employment Standards Branch (s. 74). Complaint forms are available online.

You should attach evidence to support the complaint. This could include things like pay stubs, statement of hours worked, emails, etc.

The Branch will review the complaint to determine whether to proceed to an investigation. The complaint may not be investigated if, among other things: it's out of time, the *Act* doesn't apply, the complaint is frivolous or moot or there's not enough evidence to prove the complaint (s. 76(3)). If none of the conditions set out in s. 76(3) are met, then the Branch will investigate the complaint.

Step 3: Investigation

The Branch conducts its own investigation of the complaint. It will put each side's version of the story to the other side, to get a response. It can obtain records from the employer or summons witnesses. It can gather the evidence necessary to make a determination.

Step 4: Mediation

The Branch can facilitate a mediation, in hopes of settling the complaint. These can be in person or over the phone. This could be a good opportunity to get a sense of the other side's arguments. But I would be weary of negotiating away an employee's legitimate entitlements to wages.

Step 5: Hearing

The Branch conducts hearings in person and over the phone.

Step 6: Determination & remedies

Branch decisions are called "Determinations".

The Branch has the power to make the following types of orders against the employer:

- Comply with the Act.
- Post a notice in a location decided by the Branch, setting out a determination or information about the Act.
- Pay all wages owing to an employee, to a maximum of six months (see s. 80).
- In the case of false representation, breach of leave provisions or retaliation: reinstate or hire an employee and compensate her for out of pocket expenses incurred because of the contravention.
- In the case of excessive hours, limit hours of work.

See s. 79 generally.

MANDATORY PENALTIES FOR EACH CONTRAVENTION OF THE ACT

First determination	\$500
Second determination*	\$2,500
Third determination*	\$10,000

*within 3 years

In addition, employers are liable for mandatory penalties for each breach of the Act (s. 98). The amount of those penalties is set out in s. 29 of the *Regulation*.

Step 7: Enforcement

Branch orders can be filed as an order of court, and enforced as such.

The Branch has the power to enforce the requirements of the Act, for example by seizing assets of the employer or obtaining garnishing orders.

J. Appeal and judicial review

A determination by the Branch can be appealed to the Employment Standards Tribunal on the following grounds:

- The Branch erred in law;
- The Branch failed to observe the principles of natural justice; or
- Evidence has become available that was not available at the time the determination was being made (see s. 112).

An appeal must be filed within 30 days of being served with the determination by registered mail, or 21 days if served in person.

A party can file for judicial review of the decision of the Employment Standards Tribunal within 60 days of a decision being rendered.

K. Conclusion on Employment Standards

The *Employment Standards Act* covers a broad range of rights held by some of BC's most vulnerable workers. I've highlighted some of the most basic rights here, but you should take a look at the *Act* for yourself, for a better sense of the breadth of its coverage. In addition, the Branch has tremendous online resources, including fact sheets and an "Interpretation Guidelines Manual", which sets out its interpretation of the *Act*. Be sure to check those resources when you are assisting someone with a complaint.

Employment standards are something that may be enforced in conjunction with other rights. For example, if a person is filing a human rights complaint, then they may also have an employment standards complaint for unpaid wages. It is important to remember that there are certain rights that *only* the Employment Standards Branch can enforce, and that the tight timeline makes it necessary to act quickly.

III. NEGOTIATED OR COMMON LAW DISMISSAL RIGHTS

Law	Employment contract Common law (judge-made law)
Enforced by	Up to \$25,000: Provincial Court (Small Claims) Over \$25,000: BC Supreme Court
Limitation period	2 years

In addition to rules set out in legislation, it is possible for parties to negotiate other provisions in an employment contract. And when it comes to dismissal, courts have developed rules governing employment relationships. I'll discuss each of these briefly.

A. Employment contracts

ALWAYS ask a client if they have a written employment contract and scrutinize it carefully before you advise on a course of action. Employment contracts can govern all manner of subjects, including: hours of work, wages, overtime, rights on termination, vacation, etc. If the contract has been breached by the employer, the employee can sue for damages.

Terms of a contract cannot be worse than the minimum standards set out in the *Employment Standards Act*.

Remember, though, that unless it's explicitly stated in the employment contract, the minimum standards set out in the *Employment Standards Act* do not form part of the contract between employer-employee. This means that if you want to rely on the *Act*, you must go to the Employment Standards Branch.

B. Common law – wrongful dismissal

As stated above, courts have developed their own laws governing how an employee can be dismissed. This is called the "common law".

The same basic framework applies: an employee can be terminated at any time for any non-discriminatory reason. If there is "cause" for dismissal, the employer owes the employee nothing. If there is no "cause", then the employer must provide notice: working notice or paid notice.

Where an employee has been terminated with insufficient notice⁷, there are two main advantages to filing a wrongful dismissal suit in court:

1. Longer notice periods.
2. Damages for bad faith dismissal.

Longer notice periods

Under common law, courts have awarded longer notice periods to dismissed employees than the statutory minimums. The factors that courts consider are:

- The age of the employee
- The nature of their position
- The length of their service
- The availability of similar work

Based on these factors, the difference between the statutory minimum notice period and common law notice period will be greater for longer-term employees, or employees in more senior positions. If you encounter someone who was a long-term employee, or relatively high up in the business, consider referring them to an employment lawyer for advice about a wrongful dismissal suit.

A note on mitigation

Workers have to take active steps to find new work after they've been terminated. You should advise workers to engage in an active job search, and keep all evidence of that job search (ie. cover letters, notes of interviews, resumes, etc).

Damages for bad faith dismissal

In addition, however, the common law provides that an employer must act in **good faith** in the manner of dismissal. Good faith means that an employer must be open, candid and forthright with an employee when they're firing her. They should turn their minds to her situation and try to be sensitive to it.

Bad faith in the manner of dismissal might include things like:

- Making false allegations of misconduct against an employee
- Needlessly humiliating the employee while firing them
- Being unduly sensitive to the employee's vulnerable situation

Where the employer does not act in good faith in the manner of dismissal, and the employee suffers as a result, the employee may be entitled to additional damages.

⁷ Note that, because the courts generally award longer notice periods than the *Employment Standards Act*, a person can have insufficient notice even where the employer complied with the minimums under that *Act*.

These may be:

- **Aggravated damages**, where the client has suffered mental distress arising from how she was fired. If you encounter a client who has suffered mental distress arising from dismissal, you should refer her to a doctor for an opinion.
- **Punitive damages**, where the manner of dismissal was particularly egregious and warrants rebuke.

These categories of damages can be difficult to prove, but the awards can be very large.

If someone consults you about a termination that appears to have been made in a bad faith manner, the client may need to get advice from an employment lawyer about proceeding with a court action.

C. Conclusion on negotiated rights and common law dismissal

You may want to consider referring a client for legal advice where the circumstances of their termination seem particularly egregious, or where you think they may be entitled to a longer notice period at common law.

IV. FREEDOM FROM DISCRIMINATION (“HUMAN RIGHTS”)

Legislation	<i>Human Rights Code</i>
Enforced by	Human Rights Tribunal
Limitation period	6 months

Every worker has the right to be free from discrimination in employment. Section 13 of the *Human Rights Code* confers this basic protection. It says:

Discrimination in employment

13 (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

(2) An employment agency must not refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

- (a) as it relates to age, to a bona fide scheme based on seniority, or
- (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of a bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan, whether or not the plan is the subject of a contract of insurance between an insurer and an employer.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

Let’s break this down.

A. Discrimination in “employment”

Section 13 of the *Code* prohibits discrimination in “employment”. This could capture discrimination against an employee by an employer, a co-worker or even a customer. The employer has an obligation

to provide a discrimination-free workplace. The Tribunal takes a very broad view of what constitutes an employment relationship.

B. What is discrimination?

Generally speaking, discrimination under the *Human Rights Code* is when a person is treated poorly because of a “protected characteristic”, and the employer cannot justify it.

The test for discrimination

1. *Employee must prove:*
 - a. *They have a “protected characteristic”*
 - b. *They were treated poorly*
 - c. *They were treated poorly because of the protected characteristic*
2. *Employer must prove that the poor treatment was a “bona fide occupational requirement”.*

The “protected characteristics” in employment are:

- | | |
|------------------------------|--|
| – Race | – Colour |
| – Ancestry | – Place of origin |
| – Political belief | – Religion |
| – Marital status | – Family status |
| – Physical disability | – Mental disability |
| – Sex (incl. pregnancy) | – Sexual orientation |
| – Age (over 19) ⁸ | – Conviction of a criminal or summary conviction offence unrelated to employment |

“Poor treatment” (usually called “adverse treatment”) would include things like:

- | | |
|-------------------|--------------------------------------|
| – Harassment | – Dismissal |
| – Being underpaid | – Being given bad shifts or bad work |
| – Not being hired | |

⁸ “Age” is defined in s. 1 of the *Code* as over 19 only. In other words, people under 19 years old are not protected from discrimination on the basis of age.

It is critical that the poor treatment be related to the protected characteristic in some way. So long as the protected characteristic is one factor in the poor treatment, that is enough to establish discrimination. Sometimes you will have to infer a link from the evidence.

Harassment

I often find myself advising clients who complain of harassment that “it’s not illegal to be a jerk”. This is because harassment is not, on its own, enough to establish discrimination. It only becomes illegal when the harassment has some link to a protected characteristic. For example, sexual harassment is always sex discrimination. Harassment on the basis of race or disability would also be discrimination. Harassment with no link to a protected characteristic is just legally being a jerk.⁹

Accommodation

Employees with disabilities are entitled to “accommodation”. This means workplace rules, standards and conditions should be modified to include them wherever possible, up until it would cost the employer “undue hardship”. Make sure to critically examine claims that a person with a disability can’t do a certain job. Often, the work can be modified to accommodate the worker so that she can continue to work.

C. Making a complaint

Complaints of discrimination must be made to the Human Rights Tribunal. The time limit is **6 months**, though the Tribunal has discretion to accept late-filed complaints in certain circumstances (s. 22).

Once you file a complaint, the Tribunal will screen it to make sure it is within its jurisdiction to decide. If it is, then you will receive notification that the complaint is accepted for filing. After receiving that notice, the client can apply to the BC Human Rights Coalition within 30 days for representation.

The Tribunal will encourage parties to mediate and settle their complaints. In addition, the respondent has the opportunity to apply for early dismissal of the complaint (s. 27). This is often where a lot of work happens, to protect the complaint from early dismissal.

If the parties cannot settle it, and the complaint is not dismissed early, then the Tribunal will eventually hold a hearing and make a decision.

⁹ But note occupational health and safety laws prohibit bullying and harassment in the workplace, regardless of whether it is discriminatory. This is discussed briefly below.

D. Decisions and orders

Following a hearing, the Tribunal will issue a written decision.

If it finds there has been discrimination, the Tribunal can order the employer to:

- Stop contravening the *Code* (this order is mandatory);
- In systemic cases, to take steps to fix the effects of the discriminatory practice, including by adopting a program to improve the conditions of disadvantaged individuals or groups;
- To pay an employee for wages or salaries lost because of discrimination. This would include wages lost after a termination;
- To pay an employee for expenses they've incurred because of the discrimination; and
- To compensate an employee for injury to their dignity, feelings and self-respect.

This last remedy – damages for injury to dignity – is particularly important. The Employment Standards Branch cannot award any damages like this. So if you think there is a discriminatory element to some practice that affected your client, she should seek a remedy at the Human Rights Tribunal.

Orders of the Tribunal can be registered as an order of court and enforced as such. The Tribunal will not help you with enforcement.

E. Judicial review

A decision of the Human Rights Tribunal can be judicially reviewed by a court. A person seeking a judicial review must file a petition within 60 days of the impugned decision.

F. Conclusion

It can be hard to identify potential instances of discrimination. Red flags may be raised where the timing of a decision to terminate someone, or change their job, is linked suspiciously with an injury/illness, pregnancy or other disclosure of a protected characteristic. Singling someone out for poor treatment may be linked to factors like race, colour or disability where it's reasonable to infer that those characteristics were a factor.

That said: where you suspect that a client has been discriminated against, file a human rights complaint. The process is fairly user-friendly (though does often involve a lot of lawyers) and – provided the client doesn't act improperly – does not carry any risk of costs. The remedies can be substantial, and there is some prospect of the client receiving free representation from the Human Rights Coalition and/or CLAS.

V. WORKPLACE SAFETY & WORKERS' COMPENSATION

Law	<i>Workers' Compensation Act</i>
Enforced by	WorkSafeBC
Limitation period (for compensation claim)	One year¹⁰

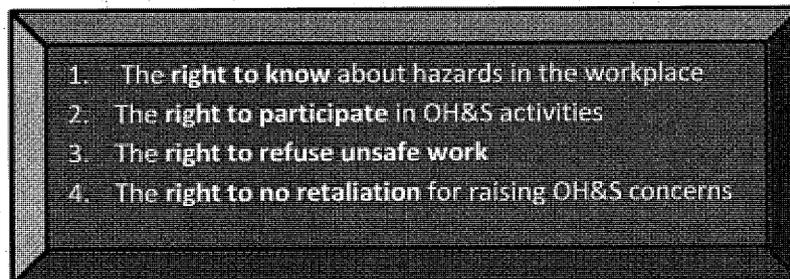
WorkSafeBC administers two aspects of worker safety in BC:

1. Occupational health and safety: this is the “prevention arm” of WorkSafeBC, which enforces laws governing health and safety in each work place.
2. Workers’ compensation: this is money that workers are entitled to when they are injured in the course of doing their job.

I will cover both of these topics only very briefly.

A. Occupational health and safety

All workers have four fundamental safety rights:



Employers have a responsibility to ensure the health and safety of all workers at the worksite (s. 115). There are specific, detailed, rules governing safety at various types of worksites.

A note on bullying and harassment

Bullying and harassment is now recognized as a threat to occupational health and safety, and is prohibited under the Act.

“Bullying and harassment” is defined to include “any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated”. It does not include reasonable actions taken by a supervisor relating to the management or direction of the workplace (Policy D3-115-2).

¹⁰ See s. 55 of the Act, which allows the Board to accept claims made outside this time limit where there are “special circumstances”.

Therefore, under the definition it is not bullying or harassment where a supervisor engages in performance management or disciplines a worker.

Employers should develop policies to e bullying and harassment in the workplace, with an aim to preventing it wherever possible but also providing a way for a worker to complain when it occurs. This would include investigating allegations.

If a worker observes bullying or harassment in her workplace, she should see whether the employer has a bullying/harassment policy in place. If she feels comfortable raising the issue with the employer, then she should. She can also make a complaint to WorkSafeBC. A prevention officer may, where appropriate, check the employer's bullying/harassment policies and have the employer follow the policies through. IN extreme circumstances, the prevention officer can issue penalties against non-compliant employers.

Where a worker is bullied or harassed and develops a "mental disorder" as a result, she may be entitled to claim workers' compensation. I discuss this very briefly below.

Resources

If a worker has concerns about health and safety in her workplace, she can contact the WCB Prevention information line (604.276.3100 or 1.888.621.7233) to speak with someone about their concerns. The BC Fed Health and Safety Centre is also a tremendous resource. See: www.healthandsafetybc.ca.

B. Workers' compensation

Where a worker is injured at work, or develops a disease from their working conditions, they must report their injury to WorkSafeBC. They will be entitled to compensation for wage loss arising from the workplace injury or disease. They have no right to sue their employer in court for their injury.

A worker can make a claim for workers' compensation on the phone, online or on paper. The employer is notified but it is not (supposed to be) an adversarial process. WorkSafeBC plays an active role in investigating and deciding claims.

A note on mental disorders arising from bullying and harassment

It may be possible for workers to make a claim for injuries suffered as a result of bullying or harassment (defined above). This would fall under the category of claims for "mental disorders". The requirements for a successful claim are:

1. A diagnosed psychological injury;
2. Related to work, either by:

Examples of bullying/harassment:

- *Verbal aggression or insults*
- *Derogatory names*
- *Vandalizing worker's belongings*
- *Sabotaging work*
- *Spreading malicious gossip*
- *Physical assaults or threats*
- *Personal attacks*
- *Targeted social isolation*

- a. Being a reaction to one or more traumatic events arising in the course of employment;
or
- b. Being predominantly caused by a significant work-related stressor, or cumulative series of such stressors.

See s. 5.1 of the Act.

Note the requirement for a diagnosed injury. Generalized stress will not be enough; there must be a diagnosis from a psychiatrist or psychologist for a condition such as PTSD or depression.

Resources

The workers' compensation system is complex and beyond the scope of this paper. The Workers' Advisers Office may offer representation in the following circumstances:

1. A worker wants advice and assistance on a potential appeal from a decision of WorkSafeBC.
2. WorkSafeBC refused or failed to provide a worker with a decision on an issue of entitlement under the *Workers Compensation Act*.
3. A worker raised an issue of health and safety in the workplace and the employer retaliated against them.
4. WorkSafeBC declined to accept a worker's claim for "Discriminatory Action" under sections 150 & 151 of the Act.

See their website at: <http://www.labour.gov.bc.ca/wab/>.

C. Conclusion on occupational health and safety & workers' compensation.

WorkSafeBC administers an enormous and sophisticated bureaucracy that governs workplace safety and workers' compensation. This is the world that workers need to navigate when dealing with those issues.

VI. CONCLUSION

When advising a worker, it is important to understand the source of the protections afforded to them, and the different decision-makers that exist to enforce those protections. You often need to act on fast time-lines, and may need to make complaints at more than one venue.

Helping workers to make these protections meaningful, however, is extremely fundamental and important work. Thank you for doing it.

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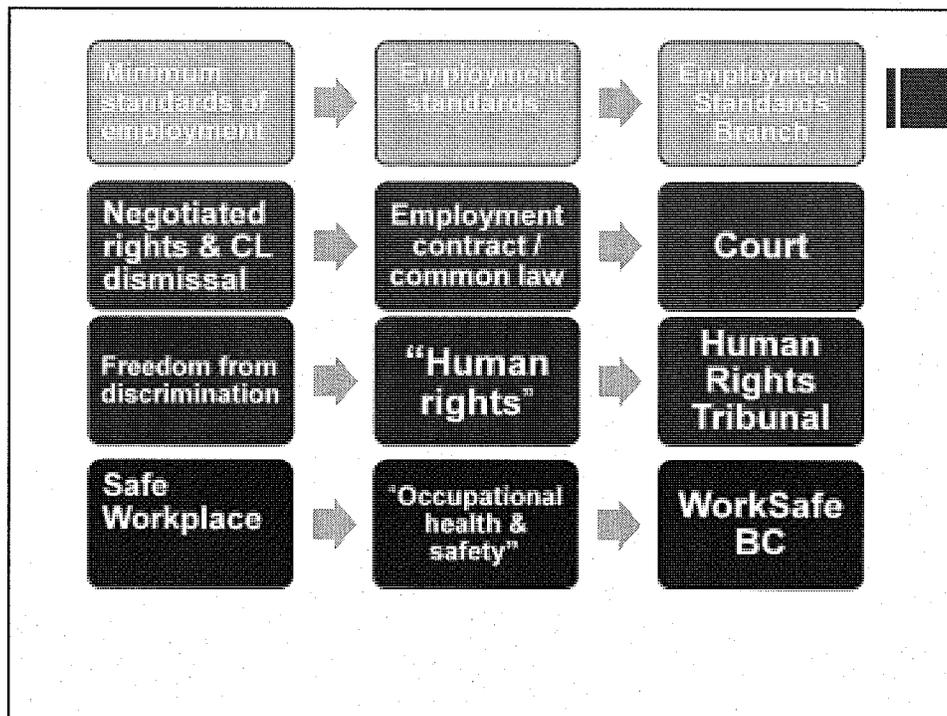
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Identifying & enforcing WORKERS' RIGHTS

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Employment Standards

Minimum standards for every worker



Employment Standards

- *Employment Standards Act*: basic rules for employment
- “Employment Standards Branch”: enforces these rules
- 6 month time limit
- Rules cover:
 - Recruitment & hiring
 - Wages
 - Working hours
 - Breaks
 - Days off and vacation
 - Ending employment



Definitions

- **Employee:** includes anyone receiving or entitled to wages for work performed for another
 - Includes: training, leaves, recall rights
- **Employer:** has or had control of employee, or was responsible for employment



Recruitment & Hiring

- Minimum age to work in BC?
- Recruitment or placement fees were paid to a Canadian recruitment agency: **ILLEGAL**
- Different from fees paid for help with immigration

Photo courtesy of Dan Izzers/Flickr

No false representations

- **No false representations:** employers cannot influence worker to take a job by misrepresenting the type of work, wages or conditions of employment
- **Remedy:** file a complaint within 6 months at Employment Standards Branch to recover any money spent because of the misrepresentation

Wages & overtime

- Do you know what minimum wage is in BC?
- After 8 hours in a day: wages are calculated x1.5 (\$15.38)
- After 12 hours in a day: wages are doubled (\$20.50)
- Overtime also starts after 40 hours of work in one week**
 - Up to 12 hours more: 1.5x wages
 - Over 12 hours: double wages
- Exception: written "averaging" agreements
- Can "bank" overtime

**Wages are different for farmworkers or people who serve liquor*

***Weekly hours are counted using the first 8 hours in each day*

Overtime Calculation

Ms. Hardworker works Monday – Saturday from 7:00 am to 8:00 pm.

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Daily hours (weekly)	OFF	13 (8)	13 (16)	13 (24)	13 (32)	13 (40)	13 (52)
Regular Pay (\$10.25)		8	8	8	8	8	
1.5x Pay (\$15.37)		4	4	4	4	4	12
2x Pay (\$20.50)		1	1	1	1	1	1
Total		\$163.98	\$163.98	\$163.98	\$163.98	\$163.98	\$204.94

Payment & Deductions

- Payment must be made 2 times every month
- Cash or cheque
- Wage statement
- Deductions from wages:
 - Income tax, CPP, EI
 - With a written agreement: room and board, money borrowed from employer

Photo courtesy of Kate Dollarhyde/Flickr

Deductions

Deduction	Yes	No	Only with written agreement	Maximum amount
RRSP				
Income Tax				
Canada Pension Plan (CPP)				
My uniform				
Business supplies				
Cost of equipment / damaged				
A training course				
Room and board				

Breaks

- At least 30 minutes after 5 hours of work
- If worker has to be available for work during meal break: must be paid time
- Coffee breaks?

Photo courtesy of Darren Staffen/Flickr

Example: Ms. Hardworker is only allowed to take a meal break while her employer's daughter is napping. She has to stay in the house for the break.

Vacations and vacation pay

- **Vacation time:** after 1 year worked, get 2 weeks vacation
- **Vacation pay:** after 5 days worked, 4% vacation pay

Photo courtesy of Jaymie Koroluk/Flickr

Statutory holidays

- **Statutory holiday:** a day off with pay
 - Must have been employed for at least 30 days and
 - Worked for at least 15 of 30 days before the holiday
- If entitled to statutory holiday, wages are overtime wages + an average day's pay
- Employer and employee can agree to substitute another day off for statutory holiday

*New Year's day
Family Day
Good Friday
Victoria Day
Canada Day
B.C. Day
Labour Day
Thanksgiving Day
Remembrance Day
Christmas Day*

Statutory holiday: Calculation of wages

Ms. Hardworker worked 13 hours on Canada Day. She did not agree to substituting another day off. Her statutory holiday pay should be:

Overtime Wages: \$15.37 (1.5x regular wage) x 12 hours:	\$184.44
\$20.50 (2x regular wage) x 1 hour:	\$ 20.50
Average day's pay: \$10.25 x 8 hours:	\$ <u>82.00</u>
Total Statutory Holiday Pay:	\$ 286.94

Leaves

- 7 types of protected leaves
- No retaliation for taking a protected leave
- Note potential for overlap with discrimination claim

Leaving employment

- An employee can leave their job at any time
- An employer can terminate an employee if there is:
 - "Cause" OR
 - A reasonable period of notice OR
 - Compensation for length of service.

Examples of "cause" theft, gross incompetence, significant breach of rules, wilful misconduct

Photo courtesy of Daniel Oines/Flickr

Leaving Employment: Minimum Compensation for Length of Service

Length of service	Minimum notice
3 – 12 months	1 week
12 months – 3 years	2 weeks
After 3 years	3 weeks + 1 week per year
Maximum	8 weeks

Notice can be paid or
working notice

Forced to quit ("constructive dismissal")

- Where employer substantially changes working conditions without consent, can treat contract at an end.
- See s. 66 of *ESA*

Ms. Happyworker's employment contract guarantees her 40 hours of work per week. One day her boss tells her that she will only be scheduled for 20 hours of work per week going forward.

**Can treat
employment
at an end,
collect
severance**

What can you do? Employment Standards Complaint

Employment Standards Branch Complaints

- ONLY THE ESB CAN ENFORCE STATUTORY RIGHTS
- Timeline
 - 6 months from date of violation or termination
 - STRICT
- Can collect:
 - Wages, including overtime, going back 6 months before last day worked or complaint
 - Illegal recruitment fees
 - Severance pay owing
 - Expenses from false representations

Employment Standards Branch

- Self-help kit
 - Exceptions: farmworker, domestic worker, garment worker, language difficulties, under 19, allegations re: leave provisions
- File complaint, with evidence
 - Employee can request identity be kept confidential (s. 75)
 - No retaliation: s. 83
- Investigation (Employment Standards Officer)
- Mediation
 - Settlement agreement enforceable (s. 78)
- Hearing
- Determination
- Enforcement
 - ESB enforces orders, collects wages

Penalties for employers

Mandatory penalties for employers:

Fine	Violation
\$500	Each law violated for the first time
\$2,500	Each law violated for second time in 3 years
\$10,000	Each law violated for third time in 3 years

Fines payable to Employment Standards Branch.

Appeal and Judicial Review

- Can appeal to Employment Standards Tribunal for:
 - Error in law
 - Failure to observe natural justice
 - New evidence
- 30 day time limit
- EST can vary or cancel determination, or refer matter back
- Can judicially review decision of the Tribunal – 60 day limit



Contract & common law dismissal rights



Employment contract enforceable

- Provisions may overlap with *Employment Standards Act*
- Choice of forum – ESB, Small Claims, Supreme Court

Common law dismissal

- Entitled to “reasonable notice” or pay in lieu
- Length depends on: age, position, ability to find new work, labour market, length of service
 - Up to (roughly) 24 months
- Must mitigate
- Good faith in manner of dismissal
 - Aggravated and punitive damages
- Only at court: Small Claims (under \$25K or Supreme Court (over \$25K))

Where to go?

ESB

- No filing fees or charges
- Procedurally informal
- Investigation
- Mediation
- No monetary limit
- Reinstatement*
- Enforcement
- Appeal rights
- No risk of court costs

Court

- 2 year limitation period
- Higher severance
- Damages for bad faith dismissal
- Robust ‘discovery’
- Can deal with counter-claims
- Ability to recover costs

Human Rights

Rights to be treated equally and have differences accommodated

Human rights means

No discrimination regarding employment

because of

race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age, criminal conviction unrelated to employment

Test for discrimination

1. Employee must prove:
 - a. Protected characteristic
 - b. Adverse treatment
 - c. Link between characteristic & treatment ("because of")
2. Employer must prove "bona fide occupational requirement"

Examples of discrimination

- Racist remarks
- Sexual harassment
- Preferential treatment or scheduling
- Termination because of pregnancy
- Termination because of disability
- Failure to "accommodate"

Photo courtesy of Lee/Flickr

Two notes

- Harassment: not illegal to be a jerk
 - But be alert to claim for workers' compensation
- Accommodation
 - Undue hardship
 - Must participate in process

Human Rights Tribunal: File a Complaint

- Timeline
 - 6 months
 - Some discretion for late-filed complaints
- File written complaint: www.bchrt.bc.ca
- Remedies include:
 - Lost wages and expenses
 - Damages for "injury to dignity"
 - Order that employer stop discriminatory practices



Where does it go next?

- Judicial review – within 60 days
- Note – parties can judicially review any decision of Tribunal; can cause delays



Safe workplace

Nobody has to do unsafe work

Safe Workplace

- Right to know about hazards in the workplace
- Right to participate in Joint Health and Safety Committees
- Right to refuse unsafe work
- Right to no retaliation for raising safety concerns

Bullying & harassment

- “any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated”
- Excludes: reasonable actions relating to management or direction of workplace
- Where bullying occurs:
 - Check for policy
 - Raise with employer
 - Complain to WorkSafeBC
 - Make a claim if develops “mental disorder”

Questions about workplace safety?

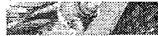
BC Federation of Labour

604.430.1421
1.888.223.5669

WorkSafe BC

1-888-621-7233
604.276.3100
ssquery@worksafebc.com

Photo courtesy of Peter Dondel/Flickr



Workers' Compensation

- Where worker is injured at work, or develops disease from working conditions, **MUST** report to WorkSafeBC
- Entitled to workers' compensation
- WorkSafeBC plays active role



Mental disorders from bullying or harassment

- Need:
 - Diagnosed psychological injury
 - Related to work, either as:
 - Reaction to one or more traumatic events
 - Predominantly caused by significant work-related stressor



Fact pattern

Shanti has worked as a manager at McDonalds for 13 years. On May 30, 2014, she went on a maternity leave. While she was on leave, she got a text from her employer saying she'd been replaced. She could pick up her severance cheque for 7 weeks' pay. As a result of this text, Shanti fell into a depression for which she took medication. What are her options?

Photo courtesy of Amira A/Flickr

Shanti's options

Employment Standards

- Violation of leave protection (s. 54)
- Can ask for reinstatement
- Entitled to 8 weeks severance
- Limitation period?
- No injury to dignity or additional damages

Court

- Wrongful dismissal
- Likely higher severance
- Punitive or aggravated damages?

Human Rights

- Discrimination on basis of sex?
- Reinstatement (rare)
- Injury to dignity award

TAB 4: Family and child protection

- **Protection Order Update (Day 1)**

- Powerpoint

Orange sheet

- **Child Protection: Legal Update (Day 1)**

- Updates on Case Law
- Parents Rights, Children's Rights
- Domestic Violence Amendments to the CFCSA

Orange sheet

- **Child Protection: Important Rights and Benefits (Day 1)**

- Aboriginal Child Protection
- Powerpoint Representative for Children and Youth
- Agreements with Young Adults FAQs (Representative for Children and Youth)
- Youth Agreements
- Useful Tips for Youth and Young Adults
- UN Rights of Persons with Disabilities
- Aboriginal Parenting after Separation
- Cross Ministry Transition Plannint Protocol
- Children in Care have these Rights
- LSS materials on child guardianship
- LSS materials on applying for a court appointed lawyer

Orange sheet

- **Family Law case update (Day 2)**

- Reconstructing Domestic Relations: Improvements and Innovations in BCs new Family Law Act

Separating sheet

- powerpoint

Orange sheet

- **Custody and Guardianship (Day 2)**

- Disentangling Custody and Guardianship under the Divorce Act and the Family Law Act

Separating sheet

- Powerpoint

Orange sheet

- **Information for advocates helping clients draft affidavits when there is violence (Day 2)**
 - Affidavit Cheat Sheet

Protection Orders

Amanda Rose
family law lawyer

Who Can Apply for a Protection Order?

section 183(1)

- A family member who is claiming to be an “at-risk family member”
- A person on behalf of the “at-risk family member”
- The court can make the order on its own initiative

Definitions

section 182

- **“at risk family member”** means a person whose safety and security is or is likely at risk from family violence carried out by a family member
- **“residence”** means a place where an at-risk family member normally or temporarily resides, including a place that was vacated because of family violence.

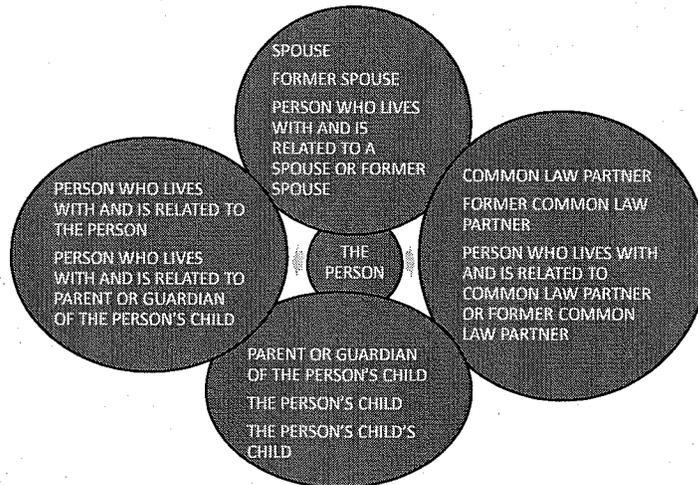
Definition of “Family Member”

section 1

“family member”, with respect to a person, means

- (a) the person's spouse or former spouse,
 - (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
 - (c) a parent or guardian of the person's child,
 - (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
 - (e) the person's child,
- and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

Definition of "Family Member"



Protection Order Applications

Sections 183 and 186

183. A Protection Order may be brought as a stand-alone application.

That is, a proceeding for parenting arrangements or property division or a divorce does not have to be started at the same time.

186. A Protection Order may be made on a without notice basis.

If brought on a without notice basis, the Court can set aside the Order, or change or terminate the Order.

When will the court grant a Protection Order?

section 183(2)

A court may grant a Protection Order if the court determines that

- (a) family violence is likely to occur, and
- (b) the other family member is an at-risk family member

Definition of "Family Violence"

section 1

"family violence" includes:

- (a) *physical* abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) *sexual* abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) *psychological or emotional* abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, *direct or indirect exposure* to family violence;

Orders that can be made

section 183(3)

- no direct or indirect communication;
- no attending or entering place regularly attended by the at-risk person (residence, school, workplace, etc.);
- no following the at-risk person;
- no possessing weapons;
- directions to police to remove person from property, accompany person to remove belongings, seize weapons;
- requirement to report to court;
- *Any terms or conditions the court considers necessary to protect the safety and security of the at-risk family member, or implement the order*

A Protection Order expires in one year unless otherwise ordered:
section 183(4)

Factors to be considered (1)

section 184

In determining whether to make an order under this Part, the court must consider at least the following **risk factors**:

- (a) any history of family violence by the family member against whom the order is to be made;
- (b) whether any family violence is repetitive or escalating;
- (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
- (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

Factors to be considered (2)

section 184

- (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
- (f) the at-risk family member's perception of risks to his or her own safety and security;
- (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

Realities of Family Violence

section 184(2-4)

- **Mutual Protection Orders:** Court must consider whether to make the order against *one person only*, taking into account: the history of/potential for family violence, extent of injuries/harm, and respective vulnerabilities.
- **Self-defence:** The *person who initiates an incident of family violence* is not necessarily the person against whom order should be made.
- **Protection Order may be made, even if...** The Court may make an order *regardless* of whether the family member has complied with a previous order; the family member is temporarily absent from home; the at-risk family member is in shelter/safe house; criminal charges have been laid, the at-risk family member has history of returning; or there's a order restricting communication under s. 225

Protection Orders – Children

section 185

If a child is a family member, the court must consider, in addition to the factors set out in section 184,

- (a) whether the child may be exposed to family violence if an order under this Part is not made, and
- (b) whether an order under this Part should also be made respecting the child if an order under this Part is made respecting the child's parent or guardian.

Protection Orders Trump

section 189

Where there is a conflict or inconsistency with a Protection Order and another Order made under the *FLA* – such as for parenting responsibilities or parenting time – then that Order is suspended until either

- a) the other Order or the Protection Order is varied so there is no conflict or inconsistency, or
- b) the Protection Order is terminated.

Restraining Orders

section 255 (transition provision)

- A restraining Order made under the *FRA* (s. 37, 38, 124 or 126) remains in force in accordance with the terms of the Order.

Enforcement – same as for Protection Orders

Strategic Considerations

- Provincial Court or Supreme Court
 - Any property related Orders
 - Hearing dates
- Notice or Without Notice
- Scope of Protection Order
- Other Orders – exclusive occupancy, property
- MCFD
- Bail or Probation Order or Peace Bond
- Extension

Enforcement of Protection Orders

Protection Orders

- may *not* be enforced under the *FLA* or *Offence Act*: section 188(1)
- are enforceable as an offence under section 127 of the *Criminal Code*.

Protection Orders from another Canadian jurisdiction are enforceable under the *Enforcement of Canadian Judgments and Decrees Act*: section 191

Enforcement of under the *FLA*

Under the *FLA*, section 188:

A police officer having reasonable and probable grounds to believe that a person has contravened a term of a Protection Order may

- a) take action to enforce the order, whether or not there is proof that the order has been served on the person, and
- b) if necessary for the purpose of paragraph (a), use reasonable force

Enforcement under the *Criminal Code* (1)

Under the *Criminal Code*, section 127:

(1) Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money is, unless a punishment or other mode of proceeding is expressly provided by law, guilty of

- (a) An indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

...

Enforcement under the *Criminal Code* (2)

The police have to lay charges for the breach.

The Crown has to decide to prosecute, and may not do so in cases of "minor" or singular breaches.

The at-risk family member has no control over the criminal process and may not always be notified of occurrences.

Actual service of the Protection Order seems essential given that *mens rea* (a guilty mind) has to be established.

The standard of proof is *beyond a reasonable doubt*.

The at-risk family member may have to testify and be subjected to cross-examination.

OTHER ORDERS TO “PROTECT”

**Exclusive Occupancy
Conduct Orders
Restraining Order against Property**

Exclusive Occupancy

section 90

The Supreme Court may grant an order that a *spouse* has

- a) exclusive occupancy of the family residence, or
- b) possession of specified personal property stored at the family residence

The test is the same as under section 124 of the *FRA*, namely:

- a) the practical impossibility of sharing the residence, and b)
- the balance of convenience.

Note: The Provincial Court cannot grant such an Order because the subject matter involves “property”, which is outside of the Provincial Court’s jurisdiction.

Controlling Litigation Abuse

Sections 222 and 223

222. At any time during the proceeding, the Court can make orders to:

- a) facilitate settlement of the family law dispute or an issue in dispute,
- b) manage behaviours that might frustrate the resolution of a family law dispute, or
- c) prevent the misuse of the court process

223. The court may make one or more of the following:

- a) dismiss or strike out all or part of the party's claim
- b) adjourn the proceeding
- c) require all matters to be heard by the same judge
- d) require leave of the court for any application

Dispute Resolution and Counselling

Section 224

(1) The Court may do one or both of the following:

- a) require the parties to participate in family dispute resolution
- b) require one party or more parties or, without the consent of the child's guardian, a child to attend counselling, specified services or programs.

(2) In making any of the above orders, the Court may allocate payment of the above among both parties, or require one party alone to pay the fees for the dispute resolution, counselling, services or programs.

Restricting Communication

Section 225

225. Unless a Protection Order is more appropriate, the court may make an order restricting communications between the parties, including the manner of communications.

Financial Abuse

Sections 226 and 91

226. The Court may do one or more of the following:

- a) require a party to pay the rent, mortgage, taxes, utilities or other expenses related to the residence
- b) Prohibit a party from terminating specified utilities
- c) Require supervision for the removal or personal belongings from a residence

91. The Supreme Court (but not the Provincial Court) may make an order prohibiting a party from disposing of or transferring property in which the applicant *may* have an interest.

Enforcing Conduct Orders

Section 228

If a party fails to comply with a Conduct Order (sections 222 to 227), the Court may do one or more of the following:

- make a further conduct order;
- draw an adverse inference;
- order reimbursement for expenses as a result of the non-compliance;
- require payment of up to \$5,000 to the other party, the spouse or child;
- fine the person up to \$5,000

Case Law Update

What's been Happening?

Given the expanded definition of family violence, we are seeing an increase in protection orders being made. In particular, some interesting cases have been decided:

* Protection Orders can be made even without physical violence. The courts have recognized that threats and words and emotional abuse constituted violence. *Morgadinho v. Morgadinho 2014 BCSC*

- *One act of violence* is sometimes enough to provide a basis that it could occur in the future .

Dawson v. Dawson 2014 BCSC

Case Law Update

- A parent can seek an order of protection against their adult child
- “Risk” of violence is subjective (however, the court still has to assess objectively the overall circumstances)
E(JR) v. 07-BcyLtd 2013 BCSC 2038.
- The court can consider “any circumstances” that might lead to an increase in the risk of family violence – in this case, they made a property division order that the husband was likely to be angry about, so they continued the protection order.
- Protection orders can still be continued EVEN if the Crown drops criminal charges or choose not to charge, and MCFD does not consider allegations substantiated. *“Fitzgibbon v. Fitzgibbon 2014 BCCA 403”.*

Updates in the Caselaw

The *Family Law Act* made some significant changes to our previous legislation. Some of those affect Child Protection cases. They include:

1. **The removal of the term “Custody”.** The Family Law Act does NOT have the word custody in it. The Child Family and Community Services Act does. When a child is removed from a parent pursuant to the Child Family and Community Services Act, the Judge/Director can only “return” the child to the “parent apparently entitled to custody “ (set out in several sections of the CFCSA Act)

The concept of guardianship now incorporates “custody”, but where does that leave us when determining who a child can be returned to?

Under the old legislation, the *Family Relations Act*, if parents had Joint Custody, the case law was that the parent who had primary care was the parent apparently entitled to custody. Judge Smith ruled in *The Director of Child Family and Community Service and WI and LMR 2014 BCPC 164* that the Court was required to make an order giving “primary parenting responsibility” to the other parent, before a child could be returned. This was even when the parents were both “presumed guardians”.

What this case means: I would suggest this means that an order specifying primary parenting responsibilities needs to be made before a return is made. So for parties that don’t have any orders, this could mean that no return could be made until there are orders in place.

2. **The *presumption of Guardianship (s39 of the Family law Act)*.** The FRA did not have this presumption, and the concept of guardianship and parenting responsibilities are relevant to MCFD’s ability to return a child to the other parent.
3. **Consideration of the FLA definitions (ie, best interests of the children, family violence etc.)** when it comes the Court making an order under the FLA when there is a corresponding CFCSA hearing. Given the expanded definitions under the FLA, this has impacted to some extent the outcome when a parent is applying for guardianship to be able to have a child returned to them under the CFCSA.

Intervention by the Ministry when there is no removal

There are some cases that we hear about anecdotally where MCFD directs a parent to withhold access, even where there are existing FLA orders in place. To be clear, **MCFD do not have the power to do this.**

Commonly, you will hear of “safety plans” and requests from a social worker. They are all voluntary, until such time as MCFD legally apprehend the child.

In MLJ v RDJ 2013 BCDC 1358

THE FACTS

In this case, the Mother withheld access to Dad, breaching a court order. She was advised to do so, at the request of MCFD, who were investigating a protection report. MCFD did not take any steps under the CFCSA to remove or supervise the children (or under the FLA), but directed mom to deny dad access.

A s211 report was completed 4 months later, and eventually MCFD agreed that the children should go back to the regular schedule with dad.

Dad then sought costs against MCFD and mom, for him having to enforce the order. The Court criticized MCFD and said

[28] In the case before me, there were two parents entitled to custody, both the respondent and the claimant. The MCFD took no formal action and thereby denying the respondent due process. With no authority, it removed the child from his care. The director counseled the claimant to breach a court order and provided no legal framework for the respondent to challenge its actions. To paraphrase an excerpt in Black's Law Dictionary, fifth edition, at p. 449, due process of the law provides notice to a person and an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. The respondent was denied this basic procedural fairness.

AND

[30] I find nothing in my review of the CFCSA that gives the director the power to limit contact between a parent and child without removing the child and initiating protection proceeds. The CFCSA does provide jurisdiction for the director to apply for leave to intervene in a proceeding under the Family Law Act in the Supreme Court under s. 97.1 of the CFCSA, but this was not done.

Intervention in Family Law Act proceedings

97.1 *A director may apply under section 204 (2) of the Family Law Act to the court, as defined in that Act, for leave to intervene in a proceeding under that Act if the director considers it is in the best interests of a child to do so.*

In other words: MCFD cannot be intervening or "directing" parents to breach a current family law order without taking action under the CFCSA or FLA. To do so denies the other parent their procedural rights.

This is a common problem that other parent's counsel report. This is the first cited case I have seen on this issue.

Parent's Rights:

- The Right to counsel. Charter protected, affirmed in 2010, parents forced Legal Aid to provide counsel, even though they were slightly over the financial guidelines.

Message: if parents are denied on child protection issues for legal aid, appeal it to legal aid first. If that doesn't work, approach pro-bono.

- The right to disclosure – s64 of the CFCSA sets this out. This has also been somewhat of a practical problem, unfortunately provision of the file is sometimes incomplete and arrives the day before a hearing. It makes it difficult to prepare for hearings/case conferences.

*Parents can be awarded costs if the Director doesn't comply properly.

- To have someone present during meetings with a social worker – If its their lawyer, it needs to be organized in advance, and MCFD often want their lawyer to be present (busy schedules can mean this can in effect, delay meetings).

Children's rights

- Set out in s70 of the CFCSA.
- They can obtain counsel – need to apply through the AG office, or through the Representative for Children and Youth

- **Rights of children in care**

70 (1) Children in care have the following rights:

(a) to be fed, clothed and nurtured according to community standards and to be given the same quality of care as other children in the placement;

(b) to be informed about their plans of care;

(c) to be consulted and to express their views, according to their abilities, about significant decisions affecting them;

- (d) to reasonable privacy and to possession of their personal belongings;
- (e) to be free from corporal punishment;
- (f) to be informed of the standard of behaviour expected by their caregivers or prospective adoptive parents and of the consequences of not meeting the expectations of their caregivers or prospective adoptive parents, as applicable;
- (g) to receive medical and dental care when required;
- (h) to participate in social and recreational activities if available and appropriate and according to their abilities and interests;
- (i) to receive the religious instruction and to participate in the religious activities of their choice;
- (j) to receive guidance and encouragement to maintain their cultural heritage;
- (k) to be provided with an interpreter if language or disability is a barrier to consulting with them on decisions affecting their custody or care;
- (l) to privacy during discussions with members of their families, subject to subsection (2);
- (m) to privacy during discussions with a lawyer, the representative or a person employed or retained by the representative under the *Representative for Children and Youth Act*, the Ombudsperson, a member of the Legislative Assembly or a member of Parliament;
- (n) to be informed about and to be assisted in contacting the representative under the *Representative for Children and Youth Act*, or the Ombudsperson;
- (o) to be informed of their rights, and the procedures available for enforcing their rights, under
 - (i) this Act, or
 - (ii) the *Freedom of Information and Protection of Privacy Act*.

(2) A child who is removed under Part 3 is entitled to exercise the right in subsection (1) (l), subject to any court order made after the court has had an opportunity to consider the question of access to the child.

(3) This section, except with respect to the Representative for Children and Youth as set out in subsection (1) (m) and (n), does not apply to a child who is in a place of confinement.

Out-of-home living arrangements

71 (1) When deciding where to place a child, the director must consider the child's best interests.

(2) The director must give priority to placing the child with a relative or, if that is not consistent with the child's best interests, placing the child as follows:

(a) in a location where the child can maintain contact with relatives and friends;

(b) in the same family unit as the child's brothers and sisters;

(c) in a location that will allow the child to continue in the same school.

(3) If the child is an aboriginal child, the director must give priority to placing the child as follows:

(a) with the child's extended family or within the child's aboriginal cultural community;

(b) with another aboriginal family, if the child cannot be safely placed under paragraph (a);

(c) in accordance with subsection (2), if the child cannot be safely placed under paragraph (a) or (b) of this subsection.

Domestic Violence Amendments to the *Child, Family and Community Service Act*

Prepared for the 2014 Provincial Legal Advocate Conference

**Dannielle Dunn
Lawyer
Somers and Company ***

Introduction:

The *Child, Family and Community Service Act*, RSBC 1996, Chapter 46 (the "CFCSA") is the governing legislation for child protection in British Columbia. The CFCSA was amended in 2013. One of the most significant changes to the CFCSA was the addition of domestic violence to section 13. Section 13 describes when a child is in need of protection.

The Representative for Children and Youth strongly recommended changes in legislation and policy after the investigation and subsequent report into the tragic deaths of three children in Merritt. In her 2012 report, *Honouring Kaitlyne, Max and Cordon: Make Their Voices Heard Now*, Mary Ellen Turpel-Lafonde stated that the B.C. government must demonstrate a renewed and serious commitment to protect children living with domestic violence, and provide a comprehensive strategy to do so. The CFCSA was amended and a new act governing family relationships, the *Family Law Act*, came into force in 2013. The *Family Law Act* takes into account the complexity and harm of family violence in a way that its predecessor the *Family Relations Act* never did.

The Changes (in *Italics*):

The CFCSA:

When protection is needed

13 (1) A child needs protection in the following circumstances:

- (a) if the child has been, or is likely to be, physically harmed by the child's parent;

- (b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
- (c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
- (d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
- (e) if the child is emotionally harmed by*
 - (i) the parent's conduct, or*
 - (ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;*
- (f) if the child is deprived of necessary health care;
- (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
- (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
- (j) if the child's parent is dead and adequate provision has not been made for the child's care;
- (k) if the child has been abandoned and adequate provision has not been made for the child's care;
- (l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

(1.1) For the purpose of subsection (1) (b) and (c) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,

- (a) encouraged or helped to engage in prostitution, or
- (b) coerced or inveigled into engaging in prostitution.

(1.2) For the purpose of subsection (1) (a) and (c) but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides

Commentary:

There are 2 new circumstances that a child could be in need of protection as a result of domestic violence. A child who is physically harmed, or likely to be physically harmed, as a result of violence in the home has always been protected under section 13. Now, the CFCSA states that a child is at greater risk of physical harm when the child is living in a situation of domestic violence. This amendment is an acknowledgement of the increased risk that the child could be harmed during an incident of domestic violence even if the violence is not directed at the child.

The second amendment broadens the emotional harm ground under section 13, acknowledging that a child could be emotionally harmed not just by a parent's conduct but also by living in a situation where there is domestic violence.

In order to meet the definition of emotional harm, the child must exhibit one or more of the conditions in section 13(2).

Section 13

...

- (2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe
- (a) anxiety,
 - (b) depression,
 - (c) withdrawal, or
 - (d) self-destructive or aggressive behaviour.

Emotional harm is a defined term and it is not simply a common sense approach. The amendments to the CFCSA do not change this requirement, and a child cannot be found in need of protection for being at risk of emotional harm.

Evaluating the effectiveness of the changes:

The changes are still fairly recent to establish their effectiveness. The CFCSA has highlighted domestic violence but not to the extent the *Family Law Act* has. The powers under the CFCSA are extremely intrusive and it has a very different purpose than the *Family Law Act*. The Director is obligated to choose the least disruptive measure available to protect the child. The actions taken by the social worker will be based on a case-by-case basis and the focus is the protection of the child, which *may* conflict, with the protection of the victim. The Courts will be tasked with interpretation questions like, what is the definition of domestic violence.

In terms of effectiveness, the amendments have brought awareness to the fact that children are at risk of harm in domestic violence situations. If children are at risk, then it truly is an issue that affects us all.

*The views reflected in this document are solely those of the author's.

Aboriginal Child Protection

For the Law Foundation of BC and
Legal Services Society Provincial
Training Conference

By Katrina Harry

What is child protection?

Child protection refers to making sure that children:

1. Are kept safe
 2. Have their physical and emotional needs met
 3. Get medical care
 4. Are protected from physical, emotional, and sexual abuse.
- *Child, Family, Community Services Act (CFCSA)*
 - Is the law about child protection matters
 - ❖ The Ministry of Children and Family Development is known as the “Ministry” in today’s workshop
 - ❖ Director’s counsel-Ministry’s lawyer

What is a delegated agency?

- A delegated agency is part of the Ministry
- They are an effort to restore the responsibilities of child protection and family support to Aboriginal communities
- 23 in BC

What does a delegated agency do?

An Aboriginal delegated agency may offer the following services:

- support services for the whole family,
- help with preparing voluntary care agreements for children,
- help with writing, monitoring, and reviewing your child's plan of care,
- help with writing special needs agreements for your child if your child has special needs,
- monitoring how your child is doing while he or she is in care,
- help for youth who are moving towards independence.

Social Workers Guidelines

- The child's safety always comes first
- The best place for children is usually with their families
- Aboriginal children should stay in their communities
- The child's opinions should be considered
- Support services should be offered to help parents better care for their child

The CFCSA and Aboriginal children

CFCSA's guiding principles include:

- “the cultural identity of aboriginal children should be preserved”
- “aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children”
- “If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests”

Child Protection and Aboriginal organizations

- That Aboriginal organization may be:
 - -A band
 - -Friendship centre
 - -Treaty first nation
 - -Aboriginal community
 - -Aboriginal organization as listed in the CFCSA regulation or a Nisga'a Lisims government.
- Parents are advised to talk to their lawyer or social worker right away to make sure that the right people in the child's Aboriginal organization are informed at the appropriate time of decisions that affect the child.
- Client can apply to the court to exclude their Band/Organization as a party; not likely to be granted

Band/Organization as a Party

- Entitled to notice of the proceedings
- Have to dispense of their signature when orders are made
- If they do participate, it's very helpful if they have community resources for the child (foster care homes)

Involvement of Aboriginal Community Supports

- Warriors Against Violence
- Aboriginal Family Preservation Worker
- Elder

Section 54.01

- Alternative to CCO
- Application made by the Director
 - Previously, the new caregiver had to apply for a transfer of custody
- Caregiver receives financial support
 - Unlike an application under the FLA

Voluntary Care Agreements, Section 8 Agreements

- Ensure cultural aspects are included in the agreement
- Not all Aboriginal practices are appropriate

Follow up information from Melanie Mark

As mentioned the **best way to reach an advocate is to call 1-800-476-3933** and ask to speak to an **Intake Analyst**. We always encourage adults to help support young people to call us directly - in this instance we encourage you to call 1-800-476-3933 with the child, youth or young adult present as this will streamline the process and immediately connect the young person with an advocate.

Please check out our **Rep4Rights App!**

<https://play.google.com/store/apps/details?id=ca.rcybc.rep4rights>

<https://itunes.apple.com/US/app/id917102028>

Resources:

<https://www.rcybc.ca/about-us/mandate/advocacy>

<https://67.231.22.34/get-help-now/contact-us>

https://www.rcybc.ca/sites/default/files/documents/pdf/rcy-championsforchange-final_july_20.pdf

<https://www.rcybc.ca/about-us/faq>

http://www.mcf.gov.bc.ca/child_protection/publications.htm

<https://www.ombudsman.bc.ca/how-to-make-a-complaint>

The B.C. Representative for Children and Youth

*Provincial Training Conference
Hosted by Law Foundation of B.C. and
Legal Services Society
October 28, 2014- Melanie Mark*

**B.C.'s
Representative:
Mary Ellen
Turpel-Lafond**



What does RCY do?

RCY works to improve outcomes for children, youth and eligible young adults receiving government services in British Columbia.

The context of our work - Child Poverty

In 2011, B.C.'s child poverty rate was 11.3 per cent, tied with Manitoba for the highest rate among provinces and well above the national average of 8.2 per cent; about 93,000 BC children live in poverty.

Source: Statistics Canada

In June 2013, over 35,000 children lived in families who received income assistance.

Aboriginal children are more than twice as likely to live in poverty than non-Aboriginal children.

The context of our work Special Needs and Mental Health

About 5.7 per cent, or 51,000 children and youth in B.C., have significant special needs. In 2013, MCFD reported that it served 13,118 children and youth with special needs

(Source: RCY Report, System of Services for Children and Youth with Special Needs, February 2008 and MCFD)

The average prevalence for mental health disorders in children and youth is 15 percent meaning that in BC approximately 135,000 children and youth experience mental health issues

(Source: Child and Youth Mental Health, MCFD website)

The context of our work Domestic Violence and Substance Abuse

Children and youth are increasingly being exposed to domestic violence.

(Source: Taking Action on Domestic Violence in BC, MCFD, September 2012)

In a 2002 survey of MCFD workers, staff estimated that 70 percent of their child protection cases included substance abuse by the mother

(Source: RCY Report – Children at Risk: The Case for a Better Response to Parental June 2014)

An Aboriginal Focus

Aboriginal children are overrepresented in the child-serving and youth justice systems.

In July 2014, 51% of B.C. children and youth in care are Aboriginal. 50% of those children in care are served by delegated Aboriginal agencies.

Aboriginal children are 7.6 times more likely to be in care than non-Aboriginal children. (Aboriginal CIC report, MCFD Jan. 2012)

Children in Care and Out of Care Options

There are approximately 8,200 children and youth currently in care.

Child in Care (CIC)	Extended Family Program (EFP)	Out of Care (OOC)	Youth Assessment, Case in the Home of a Relative (YAH)	Child in the Home of a Relative (CIHR)	Child Out of Parental Home Program (COHP)**
8,368	562	458	695	1,821	1,500

* Figures as of March 31, 2014.

** Estimated average

Source: Ministry of Children and Family Development

Roughly 50% of the 700 youth who age out of care each year are on income assistance within six months.

Young Adults with Developmental Disabilities

In 2010/11, there were 631 youth who turned 19 years old and transitioned to Community Living BC services.

That number is approximately 680 youth for 2012/13.

What is RCY?

- The RCY is an independent office of the legislature
- RCY has a three-fold mandate:
 1. Research, Evaluation, Audit & Monitoring
 2. Critical Injury and Death Reviews and Investigations
 3. Advocacy

Research, Evaluation, Audit & Monitoring

- Examines the child-serving system and makes recommendations for improvement
- Recent reports include:
 - *Much More Than Paperwork (March 2013)*
 - *Still Waiting-First-hand experiences with the Youth Mental Health system in BC (April 2013)*
 - *On Their Own: Examining the Needs of B.C. Youth as They Leave Government Care (April 2014)*
 - *Finding Forever Families - A review of the provincial adoption program (June 2014)*

Critical Injury and Death Reviews and Investigations

- Review critical injuries and deaths of children and youth with a focus on prevention
- Recent reports:
 - *Who Protected Him? (February 2013)*
 - *Out of Sight (September 2013)*
 - *Lost in the Shadows: How the lack of Help meant a loss of hope for one First Nation's Girl (February 2014)*
 - *Children at Risk: The case for a better response to parental addiction (June 2014)*

Advocating for children and youth (<19)

RCY can get involved with any designated service that falls under:

- *CFCSA & Youth Justice Act*
- Mental health and addiction services, family support, adoption, guardianship, services for children and youth with disabilities, early childhood development and child care services, and services for youth in their transition to adulthood.
- CIHR

Advocacy

- Information, assistance, support and advice
- Enhanced support to empower children, youth and young adults to speak on their own behalf
- Direct advocacy - where an advocate will speak on behalf of the child, youth or young adult
- Since inception 12,500 cases have been opened, approximately 200 new cases per month

RCY Advocacy

RCY advocacy is different from legal representation.

The fundamental task of the advocate is to operate for the benefit of the child, i.e. in the interests of the child

While the RCY normally seeks the informed consent of children, youth, and young adults before advocating on their behalf, the RCY may in certain circumstances, independently advocate in the absence of such consent to ensure that standards and legislation are met to meet the best possible outcomes for Aboriginal children and youth.

Advocates are not decision-makers or case managers

The scope of advocacy is broad and may include:

- Requesting reasons or reconsideration regarding a decision or plan.
- Reviewing planning processes and decisions to ensure the views of children are heard and considered and their rights upheld
- Working with families and other advocates to provide information, assistance, advice, coaching and support
- Empowering self-advocacy and encouraging meaningful participation.
- Encouraging timeliness in planning and decision-making

Guiding Principles

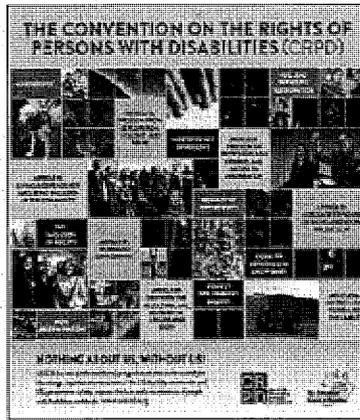
**UNCRC
(1991)**



**UNDRIP
(2007)**



**UNCRDP
(2010)**



New Mandate

As of September 30, 2013, the Representative can now provide advocacy services to young adults from their 19th to 24th birthday, who have a diagnosis of: developmental disabilities, autism or fetal alcohol spectrum disorder and are CLBC eligible.

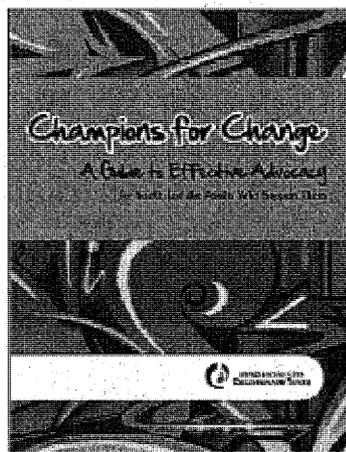
The new mandate incorporates approximately 4,000 young adults in B.C.

Advocating for Young Adults (19-24)

RCY can advocate for young adults with respect to prescribed services delivered by Community Living BC if they:

- Are eligible to receive CLBC services, or its Personalized Supports Initiative,
and
- Received a reviewable service within 15 months of their 19th birthday

Instruments for Action



- Principles of Administrative Fairness

- Strong understanding of provincial legislation policy, and standards

e.g. Child, Family and Community Services Act s.70 rights

e.g. CLBC policy and procedures

RCY Right to Information

10(1) In this section, "officer of the Legislature" has the same meaning as in the Freedom of Information and Protection of Privacy Act, but does not include the representative.

(2) The representative has the right to any information that

(a) is in the custody or control of

(i) a public body other than an officer of the Legislature, or

(ii) a director, and

(b) is necessary to enable the representative to exercise his or her powers or perform his or her functions or duties under this Act.

Note: Consent is not a requirement under section 10.

What is a Public Body?

"Public body" has the same meaning as in the Freedom of Information and Protection of Privacy Act (FOIPPA) and means:

a ministry of the government of British Columbia, an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2, or a local public body:

(a) a local government body,

(b) a health care body,

(b.1) a social services body,

(c) an educational body, or

(d) a governing body of a profession or occupation, if the governing body is designated in, or added by regulation to, Schedule 3 but does not include the office of a person who is a member or officer of the Legislative Assembly, or the Court of Appeal, Supreme Court or Provincial Court.

Confidentiality Section 23 of RCYA

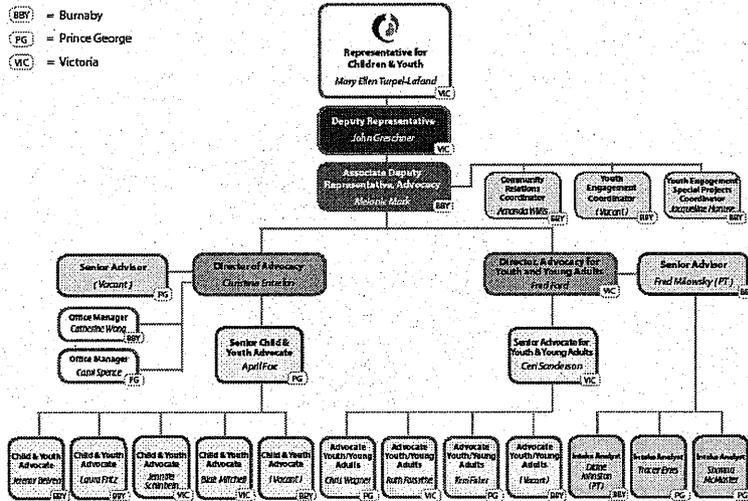
- The Representative or any person appointed by the Representative must maintain confidentiality.
- The Representative or any person appointed by the Representative must not give or compelled to give evidence in a court or judicial proceeding.
- Exceptions authorized under this Act:
 - The disclosure is necessary for the Representative to perform her functions as set out in this act.
 - The public interest in disclosure outweighs the privacy interests of any individual who information is publically disclosed

Providing Information to the RCY

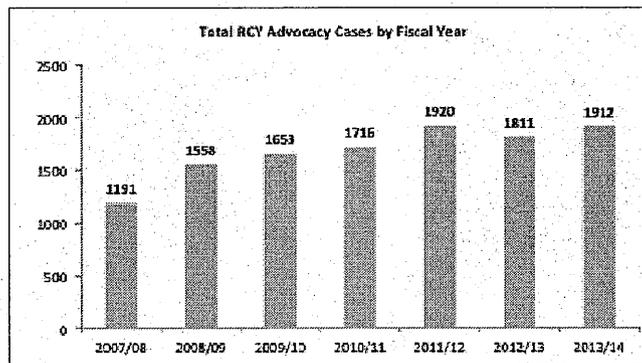
27 Protection for persons giving information to or assisting Representative

A person must not discharge, suspend, expel, intimidate, coerce, evict or impose a financial or other penalty on or otherwise discriminate against another person because the other person gives information to the representative or otherwise assists the representative in an investigation or other proceeding under this Act.

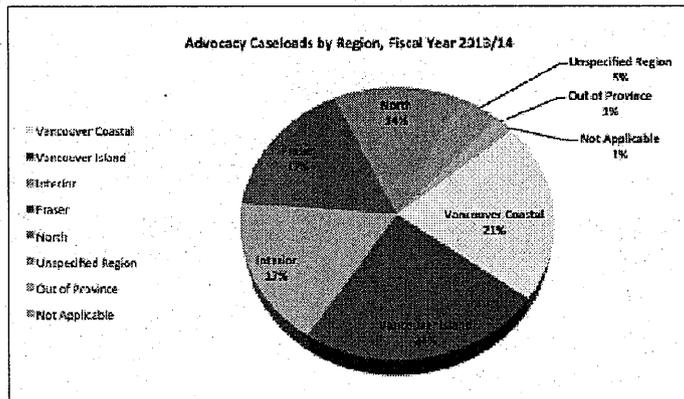
RCY Organizational Structure



Total Advocacy Cases by Fiscal Year

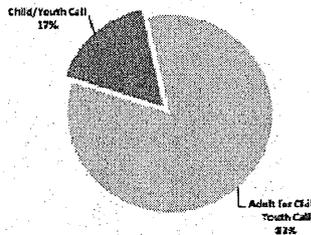


Advocacy Cases by Region Fiscal year 2013/14

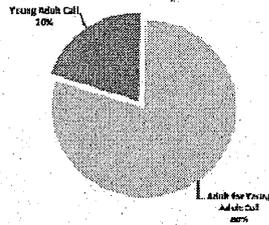


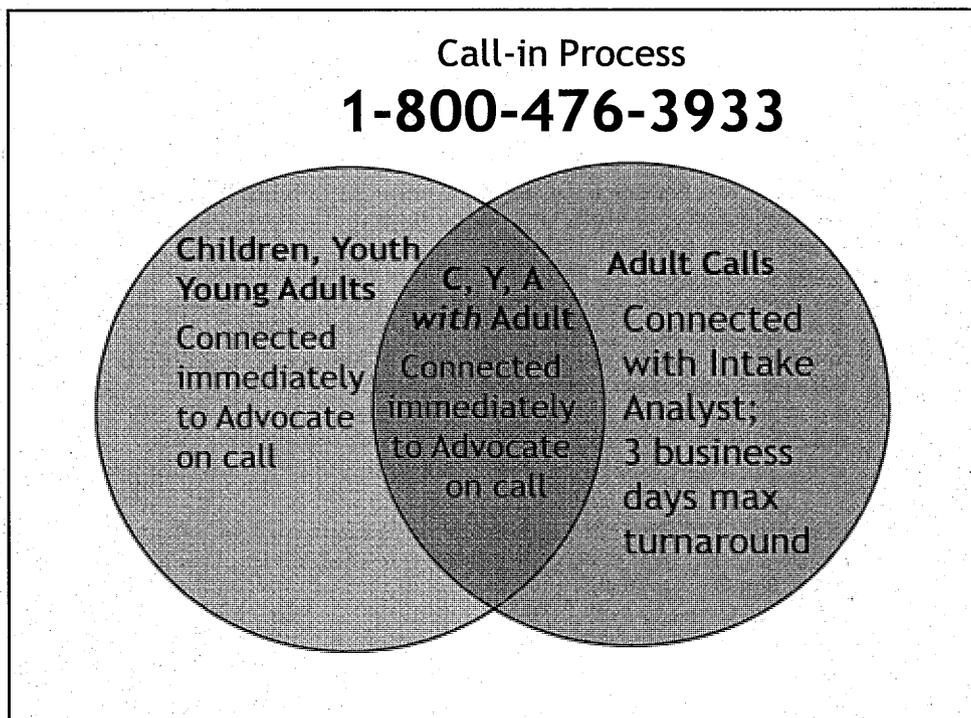
Advocacy Cases by Caller Fiscal year 2013/14

RCY Child/Youth Advocacy Cases by Type of Caller
Fiscal Year 2013/14



RCY Young Adult Advocacy Cases by Type of Caller,
Fiscal Year 2013/14





Case example - Youth Agreement

“B”, an Aboriginal youth, age 17 was physically abused at home. At the time of his call to the RCY, he was living with his sister. The youth was not aware who his SW was, of his safety plan and his sister could not afford to continue to support him.

The advocate assisted the youth to connect with MCFD. The advocate discussed with the youth the option of a youth agreement and supported the youth through the process of applying for a YAG.

Outcome: the youth will remain with his sister under a Youth Agreement.

Case example - Teen mom

"C", age 17, is residing in an Aboriginal resource for young mothers. She just delivered her baby and has the support of a Mental Health Counsellor, an addictions counsellor, health nurses and other supportive people in her life. C has a history of drugs; however she has not used drugs since prior to her pregnancy. MCFD is considering removal because of her own history and her parent's history.

An advocate became involved to ensure C's views, needs and interests were considered in decision making. MCFD's close monitoring was questioned, when there were no protection issues in the present and sufficient supports in place. The youth feels MCFD is biased in their assessments which are based on her's and her family's previous history.

Outcome: Child Protection agreed that C has supports in place, has been drug free and has managed parenting responsibilities. The protection file was closed.

Case Example-Supporting a Youth's Transition to CLBC

An 18 year old youth's parents contacted RCY after they had moved their developmentally disabled son back home from a staffed resource due to serious concerns for the quality of care being provided. Once the son was back home, MCFD told the parents there would be no further supports until the youth turned 19 years old and was then eligible for services from CLBC. No transition planning supports were offered by MCFD.

The Representative's staff held discussions with MCFD and CLBC regarding working together to find or develop a common resource, with a goal of keeping the youth in the same resource when he turned 19 to facilitate a seamless transition.

Outcome:

MCFD created a resource for the youth and then collaborated with CLBC to transfer the resource from MCFD to CLBC when he turned 19 years old.

Supporting a young adult in having their special needs met

A 22 year-old youth with Autism Spectrum Disorder (ASD) had been held at the Forensic Psychiatric Hospital since the age of 18. He was initially incarcerated for a minor incident at a group home where he resided. He has spent most of the past four years in an isolation cell, has been denied Autism treatment and services (not available in FPH) and has been assaulted and injured by other residents who do not understand his disability. No transition plan was developed by MCFD prior to the youth's 19th birthday or by CLBC after he turned 19, to plan for support services as an adult or facilitate his return to community.

The Representative's advocacy team worked with CLBC to focus on the rights of this young man to live in community rather than in an institution

Outcome:

A behaviour support plan and a detailed transition plan were developed. Community living arrangements, a service provider and in-home supports were identified to enable the young man to return to his community.

Contact Us

RepLine: 1-800-476-3933

Email: intake@rcybc.ca

Website: www.rcybc.ca



B.C. Representative for Children and Youth



@RCYBC NEW! @RCYBCyouth



@Rep4Youth



RCYBCyouth

QUESTIONS

?

Agreements with Young Adults FAQs

Questions about Application forms

- Who can apply for an Agreement with Young Adults?
- Where can I get an application form?
- What should be included in the section “Program and Support needs”?
- When should the application form be submitted?
- Where is the application sent?
- How long will it take before I hear back about my application?

Questions about the “Plan”

- What do you mean by preparing a plan?
- Are the costs of tuition, books and supplies covered?
- What if the tuition is more than the maximum amounts available (i.e., more than what is available through the Youth Education Assistance Fund - YEAF)?
- How long is the Agreements with Young Adults program available for?
- Can there be intervals between AYAs or do the 24 months have to be consecutive?
- Can the educational, vocational and/or vocational plan be done in a different community?
- Will I be required to make a financial contribution towards the Agreement?
- What about wanting to complete high school?

Questions about the Youth Education Assistance Fund

- What is the Youth Education Assistance Fund (YEAF)?
- Where can I find more information about the YEAF program?
- What is the relationship between Agreements with Young Adults and the Youth Education Assistance Fund (YEAF)?
- If the post-secondary school is not a “designated school” under the Student Aid BC guidelines; is YEAF still available?
- Where can I find more information about other scholarships and bursaries?

Supports Available

- What kind of assistance and support can AYAs provide?

Rehabilitation Programs

- What is a Rehabilitation Program?
- I believe that a rehabilitation program would benefit me, what should I do?

Agreements with Young Adults FAQs

- If I have completed a Residential Treatment Program for Alcohol and Drug use and now require post-treatment support (relapse prevention), how can an Agreement help to provide this continued support?

Aboriginal Young Adults

- Are Agreements with Young Adult's available for Aboriginal Young Adults living on reserve?

If you have any other questions, please contact your local Ministry of Children and Family Development Office.

Applications

Who can apply for an Agreement with Young Adults?	To apply for an Agreement, you must be one of the following: <ul style="list-style-type: none"> • at least 19 and not yet 24 and on your 19th birthday in: <ul style="list-style-type: none"> ➤ the continuing custody of a director or permanent custody of the Superintendent; ➤ the guardianship of a director of adoption or of a director under the Family Relations Act; or, ➤ a Youth Agreement
Where can I get an application form?	As of July 1, 2008, application forms will be available in Ministry of Children and Family Development offices and on the Ministry of Children and Family Internet site under Services for Youth.
What should be included in the section on "Program and Support needs"?	Your application should clearly state what goals will be achieved and supports you require to achieve those goals. For more information, see below: "What kind of assistance and support can AYAs provide?"
When should the application form be submitted?	You should submit your application 4-6 weeks prior to the start of your educational or vocational program to ensure financial assistance is available. If you want to participate in a rehabilitation program (for mental health or addictions concerns), your application may be reviewed sooner.
Where is the application sent?	Application forms should be dropped off or mailed to the MCFD office nearest to where you live.
How long will it take before I hear back about my application?	A Ministry of Children and Family Development social worker will respond within two weeks. Your application is the starting point for an assessment of your needs and development of goals to inform your plan. The social worker will assist with development of the plan as well as provide ongoing monitoring.

Agreements with Young Adults FAQs

The “Plan”

What do you mean by preparing a plan?	You will be asked to prepare a written plan explaining your goals and the support you will need to reach them. Your plan must involve a minimum of 60 per cent of a full-time educational or vocational program course load, or 40 per cent if you have a permanent disability; or a minimum of 15 hours a week participation in a rehabilitation program; or a combination of educational/vocational and rehabilitation program time equal to a minimum of 15 hours a week. The plan also includes expectations – what the ministry expects of you and what MCFD and the social worker will do or contribute to your plan.
Are the costs of tuition, books and supplies covered?	The AYAs primarily provide assistance for living expenses while you participate in educational, vocational or rehabilitation programs. Where the program of study is eligible for YEAF funding, the program costs like tuition, books and supplies would be funded by YEAF. If assistance for program costs is not available through YEAF, (e.g., high school completion rather than post-secondary, or young adult was in a Youth Agreement rather than in permanent care), an AYA can help with program costs in addition to living expenses. <u>Youth Education Assistance Fund (YEAF)</u> .
What if the tuition is more than the maximum amounts available (i.e., more than what is available through the Youth Education Assistance Fund - YEAF)?	Other sources of assistance can be explored if tuition, books and supplies are in excess of what is available through YEAF. These other sources may include: bursaries; scholarships; grants; student loans; estate and trust funds; Public Guardian grants; and family assistance. Options also include part-time employment.
How long is the Agreements with Young Adults program available for?	AYAs last for up to six months at a time. The total of all AYAs cannot be more than 24 months and cannot extend past your 24 th birthday.
Can there be intervals between AYAs or do the 24 months have to be consecutive?	There can be intervals between AYAs as long as the total period of support does not exceed 24 months and does not go beyond your 24 th birthday. For example, you could attend a training program for six months with AYA support, work for a year without an AYA, then go back to school and enter into another AYA.
Can the educational, vocational and/or vocational plan be done in a different community?	Yes, if the program you wish to take is located in a different community – you can still be supported through the Agreement with Young Adult service. Application should still be made in the community you are currently living in.

Agreements with Young Adults FAQs

<p>Will I be required to make a financial contribution towards the Agreement?</p>	<p>A contribution may be expected depending on the amount of AYA assistance required and your anticipated employment income during an AYA. A social worker will assist you in determining whether a contribution is appropriate.</p>
<p>What about wanting to complete high school?</p>	<p>The Agreement with Young Adults can provide funding to pay for living expenses while you complete your high school education. An AYA can also pay for any cost associated with High School Courses</p>

Scholarships/Bursaries & Grants

<p>What is the Youth Education Assistance Fund (YEAF)?</p>	<p>The Youth Education Assistance Fund (YEAF) is administered in partnership between the Victoria Foundation, the Ministry of Advanced Education and MCFD. YEAF provides bursaries for former youth in permanent care between 19 and 23 years of age who are attending university, college, a university-college, an institute, or designated private school. Since its inception in 2002, YEAF has distributed almost \$3 million to over 400 young adults. The bursary amount is established each year (\$5500 in 08/09) to primarily assist with the costs for tuition, books and fees.</p>
<p>Where can I find more information about the YEAF program?</p>	<p>Information on the YEAF program can be found on the MCFD web site at www.mcf.gov.bc.ca/other_services/yeaf/index.htm</p>
<p>What is the relationship between Agreements with Young Adults and the Youth Education Assistance Fund (YEAF)?</p>	<p>AYAs may provide assistance for living expenses while you participate in educational, vocational or rehabilitation programs. Where your program of study is eligible for YEAF funding, program costs like tuition, books and supplies would be funded by YEAF. If assistance is not available through YEAF, (e.g., high school completion rather than post-secondary, or if you were in a Youth Agreement rather than in permanent care), an AYA can help with program costs in addition to living expenses.</p>
<p>If the post-secondary school is not a “designated school” under the Student Aid BC guidelines; can YEAF still be available?</p>	<p>You do not have to qualify for student aid to qualify for the YEAF, but the Post Secondary school <u>must</u> qualify as a designated school under <u>StudentAidBC</u> in order to receive funding through the YEAF program. To ensure that the school meets the criteria for a YEAF the school can be searched on the Ministry of Advanced Education website. Your social worker can help you search out this information.</p> <p>If your program does not qualify for YEAF then an AYA can cover the costs of programs up to \$5500/year.</p>

Agreements with Young Adults FAQs

Where can I find more information about other scholarships and bursaries?	The Ministry of Advanced Education has information on many different types of scholarships, bursaries and grants available to those wanting to further their education. www.aved.gov.bc.ca/studentaidbc/welcome.htm
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Supports Available

What kind of assistance and support can AYAs provide?	<p>AYAs can offer:</p> <ul style="list-style-type: none"> • Financial support to cover basic needs like food and shelter (including any dependent children) • Babysitting and child care • Health care premiums • Tuition fees and related costs like books, supplies and uniforms if assistance is not available through the Youth Education Assistance Fund (YEAFF) • Guidance from MCFD social workers and/or community support workers
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Rehabilitation Programs

What is a rehabilitation program?	If you have personal challenges that are creating obstacles that are preventing you from becoming self-sufficient, an AYA may support you to participate in a recognized rehabilitation program such as a mental health or addictions program.
I believe that a rehabilitation program would benefit me, what should I do?	You should complete an application form for the Agreement with Young Adult service and discuss your plan with a social worker.
If I have completed a Residential Treatment Program for Alcohol and Drug use and now require post-treatment support (relapse prevention), how can an Agreement help to provide this continued support?	A post-treatment support plan can be part of your Plan. However, you should work out a strategy with your social worker that will allow for the maximum benefit from the Agreements with Young Adults program.

Aboriginal Young Adults

Are Agreements with Young Adults available for Aboriginal Young Adults living on reserve?	Yes, if you are a member of a First Nations Band and have a plan that is consistent with AYA criteria, your Band or Tribal Council may be able to assist you with the required funding. If your Band or Tribal Council is unable to provide funding, an AYA can be provided to you from MCFD whether you are living on or off-reserve.
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Youth Agreements

What is a Youth Agreement?

A youth agreement is a legal agreement between you and the Ministry of Children and Family Development (MCFD). The purpose of the agreement is to help you gain independence, return to school, and/or gain work experience and life skills, and protect your right to be:

- healthy and independent
- protected from abuse, neglect or harm
- given guidance by a parent or adult
- supported in your cultural identity
- supported to make safe, healthy choices, and
- helped to gain self-confidence.

The ministry may be able to help you if you feel you are at risk and:

- between the ages of 16 to 18, and
- there is no parent or other person willing to take responsibility for you, or
- you cannot return home to your family for reasons of safety.

How does it work?

- The agreement lets you live independently.
- It helps you gain skills and experience so you can continue to live independently.
- It gives you access to supports and services to help you cope with alcohol or drug problems or mental health issues.
- It lends you support to help you strengthen your relationships with friends and family.

The agreement may help you with:

- a place to live
- your physical and mental health
- your education, and
- managing your money effectively.

Now what?

- Together with a youth worker, you will see whether a youth agreement is a good idea for you.

- If it does seem like a good idea, the youth worker will help you write your own plan for independence. It will spell out what the ministry's responsibilities will be and what your responsibilities will be. A youth worker will work with you to make sure you can meet your responsibilities.
- Some examples of what your responsibilities might be are:
 - attend counseling (alcohol and drug or mental health),
 - take educational courses
 - have regular visits with your family or some members of your family, or
 - learn to shop for and cook inexpensive, healthy meals.

Are you in need of such assistance?

You can phone or visit the nearest Ministry of Children and Family Development office.

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Underage Applicants

Overview

Effective: December 01, 2003

Parents carry the primary responsibility for their dependent children. Children may be eligible for income assistance apart from the family only after reasonable efforts have been made to have the parent or guardian support them.

A referral to the Ministry of Children and Family Development is required when an applicant is under 17 years of age or there are child protection concerns.

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- [Acts and Regulations](#)
- [Policy](#)
- [Definitions](#)
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- [Procedures](#)
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- [Rate Tables](#)
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- [Child in the Home of a Relative](#)
- [Designation Application](#)
- [Employment Plan](#)
- [Family Bonus Supplement](#)
- [Family Maintenance Program](#)
- [Income and Exemptions](#)
- [Living Arrangements](#)
- [No Employment Obligations](#)

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"Useful Tips" For Youth & Young Adults

A Guide to Independent Living



Work

Life Skills

Identity

Education



Education

Health

SEX



Money
Money

Career

Housing



Ministry of Children and Family Development
Government of British Columbia
2013

A Guide for youth and young adults supported by the Ministry of Children & Family Development or Delegated Aboriginal Agencies"

Dedication: This book is dedicated to all the BC youth in care or youth supported in a Youth Agreement - past, present and future.

Updated 2013

Original Authors (1999): Brian Hill and Jacqueline McAdam-Crisp

Thanks to the youth and adults who helped make this possible.

The Information Is Best Viewed ONLINE
Take advantage of the various "[web links](#)" leading to more detailed information!

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Acknowledgements

Affiliation of Multicultural Societies and Service agencies of BC (1999)

Youth Quest (1999)

Central Okanagan Child and Family Resources (1999)

BC Federation of Foster Parent Associations (1999)

Vancouver Aboriginal Child and Family Services (1999)

Coastal Community Services (1999)

InterCultural Association of Greater Victoria (1999)

Victoria Youth in Care Network (1999)

YM/YWCA Supported Independent Living Program (1999)

Federation of BC Youth in Care Networks (1999 & 2013)

Delegated Aboriginal Agencies (2012)

Public Guardian and Trustee of BC (2012)

Ministry of Health (2013)

Ministry of Social Development and Social Innovation (2013)

Provincial Reference Group (2012 - Sue Douglas, Sonja Ruffell,

Shirley Lippmann, Jacquelyn Tucker)

Child Welfare & Youth Services Policy (Mona Herring, James Wale, John Green)

Caring for First Nations Children Society (2012)

Surrey Youth (2012)

Victoria Youth (2012)

& Paul

INTRODUCTION

Here is a whole bunch of what BC youth in care or on Youth Agreement and others receiving services from the Ministry of Children and Family Development or a Delegated Aboriginal Agency think is useful information to help you on the road to being successful as an adult.

Preparing to leave care or a Youth Agreement can be really exciting and difficult at the same time. Moving out on your own can be great. It can be a time of discovery as new and different doors to your future open up.

However, moving out on your own and becoming an adult also means you will have to begin making more of your own decisions and you might find yourself needing to take on more responsibility as many of the supports you received while in care or Youth Agreement may no longer be there.

This may leave you feeling frustrated and a little lonely at times. Hopefully, you were provided with the necessary tools and made positive connections with others to help you be successful after those services stop. For example, you should have a chequing and savings account, have an idea about how to cook and do laundry, and know how to have fun, stay active and keep yourself healthy.

If you ever find yourself in doubt about how to do something or who to contact for assistance, this Useful Tips guide is a great resource. And, remember, there are lots of people out there who are willing to help, answer questions or just listen. Don't be afraid to ask!

Emergency Numbers

Emergency	911
Helpline for children & youth	310-1234, toll-free across BC
Family Violence Line	1-800-563-0808
Victims Info Line	1-800-563-0808
Suicide-Specific Calls:	1-800-SUICIDE (1-800-784-2433)

Resources

BC Association of Aboriginal Friendship Centres 	abdc.bc.ca/uaed/other-aboriginal-research-practice-networks/b/bc-association-of-aboriginal-friendship-centres/
Federation of BC Youth in Care Networks	1-800-565-8055
Representative for Children and Youth	1-800-476-3933
The Facts of Life:	1-800-739-7367 https://www.optionsofsexualhealth.org/
Health Link - www.healthlinkbc.ca/contact.stm	Phone: 811 - health info at your fingertips
Justice BC - Criminal Justice Info & Support	http://www.justicebc.ca/en/cjis/
Erase Bullying	http://www.erasebullying.ca/

If you need HELP!

Call one of the numbers below if you need help. Or, ask people you know where to get help.

Crisis Centre: http://www.crisiscentre.bc.ca/	604.872.3311 -- 1.800.SUICIDE (1-800-784-2833)
YouthInBC.com	24 hour distress line 604.872.3311 or 1.866.661.3311
Here to Help: Mental Health Support 24 hrs a day To get help and support via email - bcpartners@heretohelp.bc.ca or use their contact form	http://www.heretohelp.bc.ca/ Distress Line Network at 310-6789 (free and no area code is needed) discussion forum http://www.heretohelp.bc.ca/forum/index.php
www.mindcheck.ca : here you will find a database of interactive self-care websites specific to youth dealing with anxiety, depression, shyness and stress.	

Mental Health info line	1-800-661-2121
Kelty Mental Health Resource Centre; http://keltymentalhealth.ca/treatment/finding-help for: Addictions Anger Management Anxiety Attention Deficit Hyperactivity Disorder Concurrent Disorders Depression Eating Disorders Mood Disorders Obsessive Compulsive Disorder Psychosis Schizophrenia Self Help and Prevention Self-harm Stress Management Substance Use Trauma	

LGBTQQ (Lesbian, *Gay*, *Bisexual*, *Two spirited*, *Transgendered*, *Questioning*, *Queer* or *Intersexed*) - [Prideline](http://www.qmunity.ca/adults/prideline/) (<http://www.qmunity.ca/adults/prideline/>) **For: 1 800 566-1170 (toll-free)** QMUNITY's peer support/ information/ referral phone line - operates weeknights from 7 p.m. to 10 p.m. serving all BC communities. Prideline offers: information on social and community events; tourist information; referrals to social service agencies, support groups; queer-friendly doctors or therapists; and, peer support services. Call them for things like coming out, relationship conflict, work place problems, parenting issues; same sex domestic violence; and, suicide.

Attn **LGBTQQ** youth: "however bad things are, however isolated and alone you may feel - it gets better"
Dan Savage

Thousands of video clips describing how "it gets better"
<http://www.youtube.com/user/itgetsbetterproject>

HelpLine for Children	
Kids Help Phone www.kidshelpphone.ca/ Ready to talk? 1-800-668-6868	If you are not ready to talk, Asking Online might be the place for you. http://www.kidshelpphone.ca/Teens/AskUsOnline.aspx
Legal Aid http://www.lss.bc.ca/	604-408-2172 (Greater Vancouver) 1-866-577-2525 (elsewhere in BC).
Representative for Children & Youth - supports children, youth and families who need help in dealing with the child-serving system	Email: To make a general comment to the Representative for Children and Youth, click here or if you want to talk to someone about being treated unfairly phone: 1-800-476-3933
Safe Kids BC http://www.safekidsbc.ca/teens.htm	310-1234 (no area code needed)
Legal Rights for Youth	http://legalrightsforyouth.ca/

Youth Against Violence http://www.youthagainstviolenceline.com/	1-800- 680-4262 TTY 604-875-0885 or Text 604-836-6381 (deaf/hard of hearing)
Youth in BC www.youthinbc.com/	24 hour: 604-872-3311 or 1-866-661-3311
Youth Space: youthspace.ca/	Online Help / email help
Suicide-Specific Calls:	1-800-SUICIDE (784-2833)
Aboriginal People Crisis Line - www.albernihosting.com/kuu-us/ 	24/7 - 1-800-588-8717
Prince George - Crisis Prevention, Intervention & Information Centre for Northern BC www.northernbccrisissuicide.ca/	24/7 250-563-1214 or 888-562-1214 Youth Line (4-11pm): 250-564-8336 or 1-888-564-8336
Williams Lake & Area: Crisis & Counseling Program	After Business Hours Only 250-398-8224 1-800-704-4264 Toll Free
Vernon & Area - PIN Crisis Intervention Society (Vernon) www.peopleinneed.ca/	Vernon (250-545-2339) Salmon Arm (250-833-1488) Enderby (250-838-0880) Revelstoke (250-837-6601)
Kelowna & Area: Kelowna Crisis Line (Kelowna) www.kcr.ca/page/community-services	250-763-9191
East Kootenay: East Kootenay Crisis Line (Cranbrook) www.kootenays.cmha.bc.ca/	24/7: 250-426-8407 or 1-800-667-8407
West Kootenay- Boundary Regional Crisis Line (Trail) www.trailfair.ca/ProgramPages/CLine.html	24/7 Crisis Line: 250-364-1718 or 1-800-515-6999
Fraser Region: Fraser Health Crisis Line (Surrey) www.scss.ca/fraser-health-crisis-line	24/7 Crisis Line 604-951-8855 1-877-820-7444
Abbotsford: Central Fraser Valley Telecare Crisis Line (Abbotsford)	24/7 604-852-9099 in Abbotsford Mission 1-888-852-9099
Transition Homes for Women fleeing abuse	www.bchousing.org/Options/Emergency_Housing/

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KIDS HELP PHONE

If you are using a computer this site is great!

www.kidshelpphone.ca/

Post a question, get all kinds of info, and check out surveys, quizzes and more.

CTRL + mouse click ⇒



Topics Included in the Kids Help Phone Site

<ul style="list-style-type: none">• Bullying• Dating• Emotional health• Family• Friends• Sexual orientation	<ul style="list-style-type: none">• Money, jobs & laws• Physical health• School• The Internet• Violence and Abuse
--	---

Kids Help Phone: 1-800-668-6868

Transitioning to Adulthood

Starting at age 14, social workers and caregivers will begin to prepare young people to take on more and more responsibility. For



example, at age 14 you should have a chequing and savings account; have gained some cooking skills; do your own laundry; be able to keep your room neat and tidy; know how to have fun and be able to keep yourself healthy by being active.

Becoming an adult is a process. The goal of being a teen is to learn how to become less dependent on adults and to become more self sufficient. Learning often means trying different things out and spreading your wings. Life experience is often the best teacher of all.

If you are in government care, you should discuss your future with your worker. Talk about things like your career goals, furthering your education, gaining employment and financial independence, improving or maintaining your health, gaining a better understanding of your culture, having a long-term relationship with an adult mentor, gaining lifeskills, and anything else that you can think of that will help you live safely, happily and in good health.

Those of you in a Youth Agreement will most likely be working on a Plan for Independence that will address most if not all of the above.

If you would like, you can do one of the checklists found in the back of this booklet in the [appendix](#) to see where you are at in terms of gaining the necessary skills and knowledge to increase your chances of becoming successfully independent.

Checklist to see where you are at ...

Simply click on your age and you will be taken to the checklist

Checklist: [Age 14 or 15](#)

Checklist: [Age 16 or 17](#)

Checklist: [Age 18](#)

If you don't have a computer - go to the Appendixes at the back of this book

Philosophy Corner: We all know our weaknesses. We need input from others to learn our strengths.

Attention Aboriginal Youth

Throughout the information provided, you will find resources and information specific to you if you are Aboriginal. Another resource available to you is the "[*Guide to Aboriginal Organizations and Services in British Columbia*](#)". The Guide provides a listing of 800 community-based services and organizations—most of which are Aboriginal controlled. It is based on the most current information available at the time of printing.

<http://www.gov.bc.ca/arr/services/guide.htm>

Sections that are marked with a  indicate topics specific to Aboriginal Youth.

Examples of what you would find in the "[*Guide to Aboriginal Organization and Services in BC*](#)" directory include information on:

- First Nation Communities
- Treaty Offices
- Tribal Councils/Affiliations
- Treaty First Nations Governments
- Métis Nation British Columbia and Chartered Communities
- Métis Aboriginal Skills and Employment Training Strategy (ASETS) Offices
- Métis Organizations
- Arts and Culture
- Business and Economic Development
- Child and Family Service Agencies
- First Nation Child and Family Service Agencies
- Urban Aboriginal Child and Family Service Agencies.
- Communications and Media
- Education
- Employment, Job Search and Placement
- Aboriginal Skills and Employment Training Strategy (ASETS) Offices
- Family and Youth Services



- Urban Native Youth Association (UNYA)
- Friendship Centres
- Health Services
- Housing Services
- Languages
- Legal Services
- Native Courtworker and Counselling Association of BC
- Treatment and Healing Services
- Non-Residential
- Women's Organizations
- Youth Organizations and Resources
- Urban Native Youth Association (UNYA)



Online Safety

The internet can offer incredible opportunities and can open doors we never knew existed. But beware - not every door has good intentions. There are people out there that exploit, lure, recruit, bully, scam, and hate. There is a lot to be said about online safety - but perhaps the most important rules include:

1. Don't give out personal information - You wouldn't tell some 40-year-old man or woman you met at the mall your name and where you live, would you? So why would you tell *CoolGuy985* or *HotChick16*?
2. Your username and password belong to you ... and only you - with your username and password, someone can post things that get you lots of trouble.
3. The internet has a great memory ... so keep its memory of you clean.
4. Be good online ... just like you are offline - you cannot hide behind a screen name and get away with it.
5. If something feels creepy, it probably is creepy! Trust your gut instincts.

[Safe Online Outreach Society](http://www.safeonlineoutreach.com/) (SOLOS) Abbotsford, BC - educate children, youth and adults about online safety. <http://www.safeonlineoutreach.com/>

[CYBERTIP](http://www.cybertip.ca/): protect children/youth from online sexual exploitation by receiving and analyzing tips from the public about potentially illegal material, as well as activities regarding the online sexual exploitation of children. www.cybertip.ca/

KNOW YOUR RIGHTS

What are my rights?

This may be the most important part of this guide. Take the time to review the rights that you have.

All children and youth have rights which are outlined in the United Nations [Convention on the Rights of the Child](http://www2.ohchr.org/english/law/crc.htm) (www2.ohchr.org/english/law/crc.htm). In addition to these, children and youth in care have rights outlined in a law called the [Child, Family and Community Service Act \(Section 70\)](#).

You don't have to earn these rights and they cannot be taken away from you.

The easiest way to remember your right is the 4 Bs:

Be Safe - this is about being and feeling safe, which includes being protected from abuse, neglect, racism, exploitation and other forms of discrimination.

Be Healthy - this is about having a healthy body and mind, which includes things like access to food, clothing, and shelter, proper medical and dental care.

Be Yourself - this is about having what you need to be free and proud to be yourself. This includes things like the opportunity to participate in your culture and language, social and recreational activities, and education.

Be Heard - this is about being able to express your feelings, thoughts and opinions when important decisions are being made about you.

www.mcf.gov.bc.ca/foster/pdf/know_your_rights.pdf

Tenant Rights: What responsibilities do you have when you rent an apartment and what rights do you have as a tenant? [Tenant Survival Guide](http://www.tenants.bc.ca/) (<http://www.tenants.bc.ca/>)

Workplace Rights: What responsibilities do you have with a job - workplace rights can be found in the [BC Employment Standards Act](http://www.bclaws.ca/) (<http://www.bclaws.ca/>)

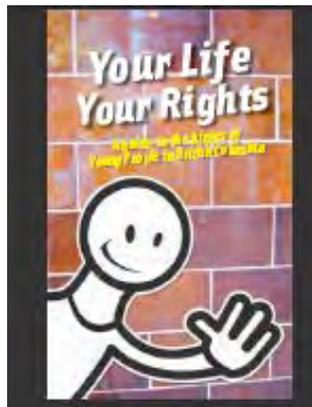
Rights for persons with a disability - you have special rights under the United Nations [Convention on the Rights of Persons with Disabilities](http://www.un.org/disabilities) (<http://www.un.org/disabilities>)

Rights of Indigenous Peoples : If you are Aboriginal, the [Declaration on Rights of Indigenous Peoples](http://www.un.org/esa/socdev/) is intended to help eliminate human rights violations against the 370 million indigenous people. (<http://www.un.org/esa/socdev/>)

Youth Rights in the Justice System: Youth involved in the youth justice system have all the legal rights of those involved in the adult justice system. In fact, they are given even greater protection. <http://www.justicebc.ca/en/cjis/youth/rights/index.html>

Rights of Victims of Crime: B.C.'s [Victims of Crime Act](#) sets out the rights of [victims](#).

Mental Health Act provides authority, criteria and procedures for voluntary and involuntary admission and treatment for individuals with extreme mental health disorders. It includes rights and protections for individuals.



Produced by the Federation of BC Youth in Care Networks "[Your Life - Your Rights: A Guide to the Rights of Young People in BC](#)" - explains your rights as a youth when accessing government services (including child welfare, youth justice and the health and mental health systems). Developed by the Federation of BC Youth in Care Networks in consultation with young people across BC. Knowing your rights can help you stick up for yourself. What rights do you have if you are still in care? What rights do you have as an employee, as a tenant, as someone who receives government services?

fbcyicn.ca/files/rights-book/know-rights-online.pdf

To find out more about what your rights are: UN Convention on the Rights of the Child:

www2.ohchr.org/english/law/crc.htm

Child, Family and Community Service Act. If you are in care, you can find out about your rights in Section 70 of the Act:

www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20c%20--/child%20family%20and%20community%20service%20act%20rsbc%201996%20c.%2046/00_96046_01.xml

Know Your Rights - A Guide to Rights for Young People In Care:

www.mcf.gov.bc.ca/foster/pdf/know_your_rights.pdf

[Federation of BC Youth in Care Networks](#)
1-800-565-8055

[Representative for Children & Youth](#) 1-800-476-3933

[Ombudsperson of BC](#): 1-800-567-3247

Victim Services [VictimLink BC](#)
1 800 563-0808

[Tenants Rights Info Hotline](#):
1-800-665-1185

[Employment Standards](#)

In Victoria call: 250 387-6121
In Vancouver call: 604 660-2421
Elsewhere in B.C. call: 1 800 663-7867

[BC Human Rights Tribunal](#)
(604) 775-2000

Philosophy Corner: People learn more from making "mistakes" than from their successes. Behind every crisis is an opportunity for learning.

What if I feel my rights are not being respected?

You have the right to be heard! Use your voice and tell someone about your concern or problem.

Talking to your worker is often the quickest and easiest way to solve a problem. If you're not comfortable with this, or if you can't sort out the disagreement, that's okay. There are many other ways to make a complaint. What's important is that you speak up.

You can:

- Contact MCFD or Delegated Aboriginal Agency by phone, letter, fax or in person. Please call toll-free 1 877-387-7027 to be connected with your local ministry office or your DAA. To call a toll-free Telephone Device for the Deaf (TTY) in Vancouver call 604 775-0303 and elsewhere in BC call 1 800 661-8773.
- Send an email to ihavesomethingtosay@gov.bc.ca (please include your name, city, email, phone number, what your concern or feedback is, how and when we can reach you).
- Tell any MCFD or DAA worker you want to make a complaint and they will give you the contact information for the complaints specialist.
- Make a complaint yourself at any time by contacting a complaints specialist. You can call the MCFD Client Relations Branch toll-free at 1 877 387-7027 for help in contacting a complaints specialist.
- Fill out the [online complaints form](#).

For more information www.mcf.gov.bc.ca/complaints/youth.htm

Who else can help me?

An advocate is someone who will help you use your voice. You are your own best advocate, but sometimes we need extra help getting our voice heard so you can have someone to speak on your behalf if you need help.

Your advocate could be a trusted friend, foster parent, careprovider, relative, teacher or worker. If you want to know more about "advocacy" check out the booklet created by the Representative for Children and Youth called "[Champions for Change - A Guide to Effective Advocacy for Youth and the Adults Who Support Them](#)"

(www.rcybc.ca/Images/PDFs/Reports/RCY-ChampionsForChange-FINAL%20JULY%2020.pdf)

Being In Care

You are 'in care' if the Ministry of Children and Family Development or a delegated Aboriginal Agency is responsible for making sure that you are cared for. You can come into care several ways including:

- If your parent(s) sign a Voluntary Care Agreement;
- If your parent(s) sign a Special Needs Agreement; or,
- You are removed from your home because of concerns about your safety

If you have been removed from your home, there is a court hearing shortly afterwards. Until a decision is made - a decision in which your opinion counts very much - you are placed in a foster home, group home or with someone well known to you. The most important thing is that it has to be with someone who the Social Worker believes can protect you from harm.

Did you know that you have the right to go to court with your Social Worker?

In the court room, the social worker presents a plan for how you will be looked after. If the judge agrees with the Social Worker, a court order may be made. In some cases, this is a Temporary Custody Order (TCO). This gives the Ministry or Delegated Aboriginal Agency the responsibility to make sure that where you live is safe. Sometimes this means you will stay with other family members, family friends, foster parents, or in a group home. Initially, the plan will be short-term and will focus on seeing if with supports and services circumstances can change allowing you to return home safely.

If you remain in care for a longer period, a plan will be made with you that will address your immediate and longer term needs. The goal is always to ensure that you are safe, healthy and happy and have your needs met.

Remember that you have the right to participate in making this plan and that your opinions counts. This doesn't mean that you'll always get what you want, but if you don't, you have a right to know why.

When it gets to a point that it does not look like a return home is in your best interests, your worker will usually apply for a "Continuing Custody Order". Being in continuing custody means that government has taken responsibility for your care and well-being until such time as you are either:

- Adopted; or,
- a family member you trust and like steps forward to care for you; or,
- you turn 19 years of age.

Whether you are in a "Temporary Custody Order", "Voluntary Care Agreement", "Special Needs Agreement" or in "Continuing Custody Order" you will have a social worker who has the responsibility to make sure that you are properly taken care of. The Social worker is there to hear your ideas and concerns and he or she has responsibility for what is known as your "Plan of Care".

Your "Plan of Care" includes things like:

- what it is like for you where you are staying;
- what your goals and ambitions are and what supports and services you need;
- how school is going for you and if anything can be done to help;
- making sure your health needs are met;
- how you can be supported with your interests (sports, music, hobbies);
- figuring out with you if you need to see a doctor, therapist, counsellor, elder, or community resource;
- Making sure that you know what your rights as a child/youth in care are;
- opportunities to gain life skills;
- making sure that there are opportunities for you to learn about and participate in your culture and/or religion;
- where it is ok, to make sure you have a connection with your family and extended family;
- supporting you in making connections to adults you look up to;
- addressing any anxieties or fears you may have; and,
- helping to make sure that you feel good about yourself;



If you ever have any questions about being "in care", just ask your social worker.

There are also ways to be cared for without being "in care". The following page discusses ways that a child/youth can be cared for, either temporarily or permanently, by someone they already have a relationship with, including information about the Extended Family Program and how if you are in permanent care, custody can be transferred to another person (e.g. a relative or another person known to you).

Care by Relative or Family Friend



Research has shown that when a parent(s) is unable to care for their child/youth for a period of time, the child/youth is usually better off being cared for by someone they know such as an uncle, aunt, older brother/sister, grandmother, grandfather, a very good friend of the family or someone with a similar cultural connection.

That means if there is someone in the family or someone who a child/youth knows really well, then the social worker would rather look at that before any other option (e.g., Foster Care). The Extended Family Program is intended to do just that. Through this program, when a child/youth is temporarily unable to live with their parent(s), financial and other supports can be provided to a caregiver to help ensure that the child/youth's needs are met and to help ensure that extended family members feel supported while caring for the child/youth. Similar arrangements for living with extended family can be made through a temporary court order.

When things are ok again, chances are you will be able to return to your family.

If it turns out that a child/youth won't be able to return to their parent(s)' home, a permanent transfer of custody to the caregiver might be the best option. This can only happen with the child/youth's consent.

For information about alternatives to foster care, including the Extended Family Program and a Fact Sheet for Youth about Section 54.01 (Permanent Transfer of Custody):

http://www.mcf.gov.bc.ca/alternativestofostercare/pdf/fs_web_kinship_care_youth.pdf

Youth Agreements

A [Youth Agreement \(www.mcf.gov.bc.ca/youth/agreements.htm\)](http://www.mcf.gov.bc.ca/youth/agreements.htm) can be a support for youth aged 16-18 in need of assistance, who are homeless and who can no longer live in their family home. Provided through either Ministry of Children and Family Development (MCFD) or a Delegated Aboriginal Agency (DAA), a Youth Agreement is a legal agreement that can provide supports to a youth to make changes in their lives while living independently. The program is an alternative to foster care.



Youth Agreements are just one of the many options a social worker may consider when assessing a youth's situation and supporting their need for assistance. A social worker will only consider independent living in a Youth Agreement if returning to family is NOT an option and if there is no-one else (like extended family) for the youth to live with. Research has shown that youth are usually better off being cared for by someone they know such as an uncle, aunt, older brother/sister, grandmother, grandfather, a good friend of the family or someone with a similar cultural connection.

Circumstances differ from one youth to another. Each situation is unique. For some youth, the goal may be about how to move back home. For others, it may be about getting help with problematic substance use (alcohol or drugs) or mental health concerns. Some youth may need help getting reconnected to school, while others need help finding employment. Whatever the situation, a Youth Agreement is intended to help youth confront and overcome risky behavior, develop life skills, and to make healthy connections to family and community.

A Youth Agreement ensures basic needs are met, which includes such things as: food, a safe place to live and utilities (e.g., heat, light, hot water), clothing and basic transportation (e.g., bus pass). It can sometimes provide assistance with some start-up costs such as basic furnishings.

Youth in a Youth Agreements can receive medical coverage.

www.health.gov.bc.ca/msp/infoben/carecard.html

Financial support in a Youth Agreement is based on need. Since each person and community is unique, there are no fixed financial rates. For example, rent in Prince Rupert may be quite different than rent in Victoria. It is important that you identify what you think your needs are when you are preparing to talk to a worker about a **Youth Agreement**.

A young person in a Youth Agreement is not in the care of the Ministry of Children and Family Development or DAA - rather it is a legal agreement where the Ministry or DAA agrees to provide supports as long as the youth lives up to their commitments in pursuing their goals and managing risk.

I was living on the street with nowhere to go - my parents didn't want me at home anymore - if it were not for Youth Agreements, I don't know what would have happened to me.

When a Youth Agreement is Right for You

If a Youth Agreement seems like the best way to go, a social worker will help prepare a "Plan for Independence" (PFI) for the Agreement. The PFI will spell out what your goals are and commitments, and how you plan to address the risky behaviour going on in your life. In many cases, a youth worker from a community agency works with the youth to help in reaching goals.

Examples of goals in a Plan for Independence:

- Attend counselling (e.g., mental health or alcohol and drug)
- Attend school (e.g., complete Grades 10-12)

Your Responsibilities in a Youth Agreement

Your responsibilities include:

- Being an active participant when developing goals and identifying your needs;
- Following up on what you say you are going to do;
- Have regular visits with members of your family (when appropriate);
- Actively develop independent living skills;
- Asking questions when not sure of something
- Meet regularly with your Social Worker and/or youth support worker;

By the way, if you don't follow up on your responsibilities or if you don't do what you say you are going to do ... your social worker could end the agreement.

www.mcf.gov.bc.ca/for_youth.htm

Federation of BC Youth in Care Network (FBCYICN)

FBCYICN is a youth-driven, provincial, non-profit organization dedicated to improving the lives of young people in and from government care in BC, between the ages of 14 and 24.

Together as youth members, alumni, staff, board and allies, we:

ADVOCATE: unite youth in and from care to voice their issues, experiences and ideas to break down barriers, challenge stigma and push for changes—both individual and systemic

CONNECT: create opportunities for youth in and from care to build relationships with the people and organizations that help them thrive and build a movement

EMPOWER: support youth in and from care to realize their capacities and the goals and skills they choose for themselves through meaningful youth engagement and leadership opportunities

FBCYICN was created in 1993 by young people in care. All youth in or from government care, ages 14-24, from around BC are welcome!!

Some examples of cool opportunities--

Steering Committee Meetings: We host three, youth-led, weekend youth-conferences each year where young people in and from care and their adult allies come together to network, provide direction to FBCYICN, participate in skill-building workshops and recreation, and advise external decision makers...and have tons of fun!

Local Youth in Care Networks: "Locals" are groups of young people (14-24) who are in or from government care that come together in their community for support so they don't feel alone in their experiences! Locals give young people an opportunity to meet new people, do fun activities, develop skills and unite their voices to make change to the system. There are Locals all around the province—contact us to find out if there's one near you or if you want to start your own!

Power Pages Magazine: This provincial magazine is filled with awesome youth artwork, writing and photography; it is a platform for young people in and from care to express themselves, unite their voices, connect with each other, and learn about relevant opportunities and services. We distribute copies to more than 5,000 young BC people, service providers and caregivers.

Education Bursaries and Transition Kits: We support young people in their

transitions from high school and care with educational and transitions bursaries (the Dream Fund and the Transition Kits Bursary).

Volunteer + Leadership Opportunities: Interested young people help to run our organization, build on their skills and give back to the movement; they are matched with meaningful volunteer and leadership opportunities according to their interests, knowledge and skills, including: hiring and selection committees, board of directors, youth staff positions, facilitator and MC roles, event photographers and office assistants.

All youth in and from care in BC ages 14-24 are welcome to become youth members. There are no membership fees and a young person can renew their membership every two years or cancel their membership at anytime.

Top 5 Reasons to Become a Member:

1. By uniting our voices, we are part of a movement. By coming together, we're able to impact decisions affecting the needs, issues, and ideas of youth in and from care.
2. Because we are youth-driven, you have an influence in decision-making. Being part of a youth-driven organization means your voice and opinion matter. We want, and ask for, your feedback and input.
3. You are celebrated as part of our family. We honour our members as family and celebrate your accomplishments and milestones.
4. You get first dibbs on cool opportunities. You are given priority when it comes to representing FBCYICN, travelling to conferences, and participating in our programs.
5. Membership is free! If you live in the lower mainland and/or are able to visit our office in New Westminster we give you a personalized tour of the office on your first visit. Regardless of where you live, you get a Welcome Kit and an FBCYICN T-shirt at your first Steering Committee Meeting.

If you have any questions about our organization or any of these opportunities, please be in touch!

info@fbcyicn.ca

1-800-565-8055

www.fbcyicn.ca

Preparing for Life after 19

The hope is by the time you turn 19 you know:

- How and where to get [identification](#);
- [Where you are going to live after](#) age 19 that will match your available income;
- How to get your own [medical coverage](#) and medical care;
- How the [Agreements with Young Adults program](#) can help you further your education and career goals if leaving care or ending a Youth Agreement on turning 19.
- How to stay healthy and active; have fun; know [safe sex practices](#); etc.
- Information about self-care skills (e.g., hygiene, nutrition, cooking, housekeeping);
- [Money management skills](#) (e.g., budgeting, credit, banking, income tax).
- At least two adults who you can turn to.
- How to find [work](#) that meets your career goals.
- What services and resources are available to you.

Note: Click on the Words in [Blue](#) to link to the information about the topic in this Guide.

If you really want to see what some of your strengths and needs are to help prepare you for turning 19, check out the "*Youth Planner*". Your Social Worker can download this from the following youth services site.

(icw.mcf.gov.bc.ca/yserv/docs/ia/independence_planner.docx)

(The above link can only be accessed by your Social Worker)

Youth Planner



PRINT DOUBLE SIDED

This workbook can help identify goals for Youth involved with an MCFD service plan such as Youth Agreements or Independent Living. Identified goals can be included in the "Plan for Independence".

<ul style="list-style-type: none">• Self-Care & Health - General• Self-Care & Health - Mental Well-Being• Self-Care and Health - Substance Use• Life skills• Living Arrangements	<p>Independence</p> <ul style="list-style-type: none">• Money Management• Pregnant & Parenting Youth• Transportation & Identification• Your Rights• Legal	
<p>Mastery</p> <ul style="list-style-type: none">• Education• Job - Career• Just for Fun• Presentation skills and interpersonal competence	<p>Belonging</p> <ul style="list-style-type: none">• Supportive Adults• Family, Friends & Community• Cultural/Spiritual	<p>Generosity</p> <ul style="list-style-type: none">• Giving Back

To the Youth: You may complete this booklet either with or without an adult. However, to help identify your strengths, it may be advantageous to include an adult who knows you.

Transitions Kit Bursary

The Federation of BC Youth in Care has a province-wide bursary that provides youth in/from care (14-24) with a \$150 transition kit - items that will support young people transitioning to independence.

FBCYICN "in care" definition includes: continuing custody orders (or permanent care), temporary custody orders (temporary care), youth agreements, kith and kin agreements (now extended family plan), voluntary care agreements, correctional facilities (secure and open custody) and various specialized government agreements.

This bursary does not replace the transition money given to some young people in care; it is meant to supplement it. Transition money varies for many reasons including care status and need. **This bursary is a competitive process and only 2-3 applicants per region will be selected.**

Applicants will not receive money directly. If selected to receive this

bursary, FBCYICN will purchase a transition kit based on what you indicate on your wish list and they will ship directly to you. When this is not possible, alternate arrangements will be made.

Eligibility requirements (must meet all these requirements):

- Currently are or were previously in government care in BC
- Youth 14 -25 years old (cannot be older than 25)
- Has not received a transition kit from FBCYICN before
- Either currently living on their own or will be in eight months

Applicants will be notified by an FBCYICN staff member approximately 2-3 weeks after the application deadline.

For more information about this bursary or to submit an application, please contact the FBCYICN at 604-527- 7762 or Toll-free: 1-800-565-8055 or

E-mail: info@fbcyicn.ca

CLICK HERE FOR THE [Transition Kit Application Form](#)



Power Pages is a magazine published by the Federation of BC Youth in Care for young people, service providers and caregivers in BC and other Networks across Canada. It offers a platform for young people to talk about their experiences, unite their voice and and learn about opportunities and services available through MCFD and other community partners. [Sign up and get it for Free!](#)

IDENTIFICATION (ID)

You will need the right ID to do lots of things, like getting a job or opening a bank account. Here's some info on how to get some very useful ID. If you're in care, your social worker will support you to get the right ID. It's a great idea to let them take a photocopy of your ID in case you lose it.



Click on any of the links below to go directly to the information:

- [Birth Certificate](#)
- [Certificate of Canadian Citizenship](#)
- [Social Insurance Card](#)
- [British Columbia Identification Card \(BCID\)](#)
- [BC Services Card](#)
- [Status Card](#)
- [Métis Nation BC citizenship card](#)
- [Care Card](#)
- [Passport](#)

Birth Certificate

If you are in care, a copy of your birth certificate is likely with your Social Worker or with the [Public Guardian and Trustee of BC \(PGT\)](#). You can get it from your Social Worker or PGT when you need it, and you should get it when you leave care. Do not lose your birth certificate!! It can be a major hassle to get a new one from "[Vital Statistics](#)" and it costs money!! The following link will connect to birth certificates from any Province in Canada.

<https://www.canadianbirthcertificate.com/?gclid=CIufjeOx2bQCFeGDQgodSzwAHw>

If you do need to get your birth certificate, you will need the following if you were born in BC you:

- Your full name, date and place of birth.
- The full names of both your parents. This includes your birth mother's

maiden name (the last name she was born with).

- City/province/state/country where your 'birth parents' were born.

If you don't know this information ask your social worker to help you get it.

There is a fee for a copy of a BC birth certificate. www.vs.gov.bc.ca/births/index.html

If you are in care or a Youth Agreement, the fee will be covered by your Social Worker.

Certificate of Canadian Citizenship

Are you a Canadian citizen who was born outside of Canada? This link will give you the information you need to get proof of citizenship.

www.cic.gc.ca/english/citizenship/proof.asp

If you are a Canadian Citizen, your Certificate of Canadian Citizenship is your basic piece of ID in Canada. If you are still in care, there should be a copy of this ID in your file at the Ministry. Make sure you get it when you leave care.

Call 1-888-242-2100 to find out how to get a new copy of your Certificate of Canadian Citizenship. There is a charge for a new certificate. Check with your Social Worker to see if he/she will be able to reimburse you.

If you are in continuing care or a Youth Agreement and NOT a Canadian Citizen, discuss the process of becoming one with your Social Worker. Not being a Canadian Citizen means that you (for example) will not be eligible for Medical benefits when you turn 19, will have to pay more for tuition if you plan on going to University or College and you won't be able to work in Canada!

Record of Landing or Confirmation of Permanent Residence

A Record of Landing or Confirmation of Permanent Residence is a document issued by the Government of Canada that contains historical documentation of you at the time you received permanent resident status in Canada.

Social Insurance Number (SIN)

A social insurance card is another really useful piece of I.D. You need a social insurance number get a job and get tax refunds.

You can apply for a Social Insurance Card (SIN) your local [Service Canada Centre](#) or by mail. Your



SIN card is free. It is free you have had a legal name

change. Anyone over 12 years old can apply for a SIN card without their guardian being present with them.

You may want to check with the [Public Guardian and Trustee's office](#) as they may have a SIN card on file for you and can provide it to you on request.



to
at
1st
if

There is a charge for a replacement card.

To get a social insurance number, you need one of these pieces of ID

- ◆ a Canadian birth certificate; a Canadian passport; a Canadian Citizenship Certificate or a Record of Landing (for landed immigrants).

For more info call 1 800 206-7218 or go to: www.servicecanada.gc.ca/eng/sc/sin/

British Columbia Identification Card (BCID)

BCID is useful because it has your picture on it if you don't have a driver's license. www.icbc.com/driver-licensing/BCID

BC ID will not be replaced by the BC Services Card.



You need official picture ID for lots of things — like opening a bank account. When you apply for a BCID, you must present at least one piece of primary identification and another piece of either primary or secondary identification. You need to apply in person to either the "[Motor Vehicle Branch](#)" (<http://www.icbc.com/driver-licensing/find-licensing>) or a "[Service BC office](#)" (<http://www.servicebc.gov.bc.ca/locations/>)

Primary & Secondary Identification

Primary Identification	Secondary Identification
B.C. driver's licence or learner's licence	Bank card
B.C. identification card (BCID)	Birth certificate from foreign country
Birth certificate	Credit card
Canadian citizenship card	Driver's licence (Canadian or U.S.)
Canadian passport	Employee ID card with photo
Canadian record of landing	Health card issued by a Canadian province or territory
Canadian immigration identification record	Native Status card
Permanent resident card	Naturalization certificate
Secure certificate of Indian Status (New Design only)	Passport (Canadian or foreign, including U.S. passport card)
	Social insurance card
	Student card (school ID)
	Vehicle registration

Status Card



A "Secure Certificate of Indian Status" also referred to as a "Status Card" is an easy way to show that you have First Nations status. If you are already a "Registered Status Indian", then you can apply for a Status Card through any First Nation Band Office or through "Aboriginal Affairs and Northern Development Canada".

If you are in care or Youth Agreement and do not know whether or not you are "status," your social worker can find this out and help you become registered if you have status.

To apply for a status card, call Aboriginal Affairs and Northern Development Canada in Vancouver at (604) 666-7891 - or - call the BC Association of Friendship Centres at 1-800-990-2432. www.bcaafc.com/

"Status" is defined in the [Indian Act](#) (created in 1876) and has been updated many times since then. Status can be held only by those who fit the definition as laid out in the Indian Act.

Status Indians have certain rights and benefits that may not be available to Non-Status Indians or Métis people. This may include on-reserve housing benefits, education and exemption from federal, provincial and territorial taxes in specific situations.

The Indian Register contains the names of all Status Indians and has information such as dates of birth, death, marriage and divorce, as well as records of persons transferring from one band (or First Nation community) to another.

For more information E-mail: CNAP-NACC@ainc-inac.gc.ca or Phone: (toll free) 1-800-567-9604 or www.ainc-inac.gc.ca/br/is/scs/scis-eng.asp

Métis Nation BC Citizenship Card



"Métis" means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of Historic Métis Nation ancestry, and is accepted by the Métis Nation.

"Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis.

Métis Nation BC (MNBC) citizenship is only available to Métis individuals residing in the province of British Columbia. Proof of current residency is required for a MNBC provincial citizenship card.

By reviewing genealogy records and any supporting documentation, the Métis Nation BC (MNBC) will determine whether or not a person making application qualifies. For more information <http://mNBC.ca/>

CareCard



Sample CareCard

Each BC resident enrolled with the Medical Services Plan (MSP) has a personal health number. This number is shown on a CareCard. You need your CareCard whenever you need any kind of health care service. If you are in care, your CareCard will likely be with your caregivers. If you are not

in care, it will likely be with your parents. CareCards are being replaced by the BC Services Card (see below). CardCards will continue to be accepted until February 2018.

BC Services Card



The BC Services Card is replacing the CareCard and is used as identification to access health care services. If you are in care you can get your BC Services Card from any ICBC driver licensing office when you are 18 $\frac{1}{2}$ yrs old. You will need to bring both primary

and secondary ID (see section "Primary and Secondary ID in "Table of Contents"). The BC Services card will need to be renewed every 5 years.

1 Visit an ICBC driver licensing office. Remember to bring your ID and your CareCard, if you have it.

2 Confirm you are a B.C. resident and have your photo taken.

There are three different types of the BC Services Cards:

- [BC Driver's Licence & Services Card](#)
- [Photo BC Services Card](#)
- [Non-Photo BC Services Card](#)

There is no fee to obtain or replace a BC Services Card. However, if you are combining your BC Services Card with your driver's licence, fees that apply to the regular driver's licence renewal process will apply.

For more information visit BCServicesCard.ca



PASSPORT



A Canadian passport is the only universally accepted travel and identification document available to Canadians for the purpose of international travel, which means that you need it to cross the border out of or back into Canada. U.S. law requires all travellers to present a valid passport or other approved secure document when entering the United States.

If you are over the age of 16 you need to apply as an adult. All children under the age of 16 who travel alone or with an adult need their own passport to travel, and [parents](#) or [guardians](#) will need to sign on your behalf.

Border agents in virtually all countries around the globe are cracking down on unauthorized cross-border travel involving minors. This is all part of a worldwide effort to curb child abductions, estranged-parent “kidnappings”, and other illegal forms of exploitation.

If you are in care, you require a “border crossing letter” - this is completed by your Social Worker.

If you are in a Youth Agreement and going to another country - whoever is taking you will need a verifiable, [notarized](#) letter from your parents and/or legal guardians to prove that this person has the authority to take you out of the country. The letter should specify where you are going, how long you will be staying and who will be responsible for you. If your birth parents or adoptive parents are separated or divorced, the letter needs to be signed by the parent who has custody - and, if possible, the signature of your other birth parent as well.

For information on how to get a passport as well as fees, please go to PASSPORT CANADA: www.ppt.gc.ca/index.aspx?lang=eng



It is a real drag to lose I D!!

Make photo copies of all your I D and ask someone that you trust to hang onto this for you (agency staff, family member, AYA worker, etc.).

GETTING YOUR LEARNERS PERMIT & DRIVERS LICENCE



Graduated licensing in BC is a two-stage program to help you become a safe driver for life—and reduce your risk of

crashing while learning. As a new driver, it typically takes 36 months to get your driver's licence.

To qualify for a learner's (Class 7L) licence in BC, you must:

- be 16 or older, and
- pass a knowledge test and a vision screening test at a driver licensing office.

There is nothing wrong with starting to study for your learner's test even when you are fifteen. You would prepare for your learner's permit test by:



- studying [Learn to drive smart](#) (formerly *RoadSense for Drivers*), and
- taking the [online practice knowledge test](#).

When you come in for your test, you must bring a form called the "[Parent/Guardian Consent in support of a Minor's Driver's Licence](#)" (MV2606A) signed by your Social Worker. You will have to pay to take the test and then pay again to get your learner's permit. Check this site to find the current fees: icbc.com/driver-licensing/fees

Most social workers will want to know what your plan is for learning how to drive. For example, who is going to teach you? Can you show that you are a responsible person? How will you contribute towards the cost of taking lessons?

If you are not living with, or dependent on, a parent or guardian and under 19 years of age, a form called a "[MV2606B - Application to Dispense with Parental Consent](#)" can be filled out by social workers /other acceptable [guarantors](#). They will not have to accompany you to a driver licensing office.

To be a "guarantor" a social worker or employment assistance worker must have been your worker within the past 6 months and can confirm that you are not in care of the Ministry.

There are situations where social workers might not approve of you getting a learner's permit. For example, if you misuse drugs and alcohol, they may be worried for your safety and that of others if you are driving around. Getting a licence is not a right; it comes with responsibility, and part of your role is to show that you can be responsible.

Your Learner's permit is valid for 2 years. During this time, you must drive with a qualified supervisor and follow other "L" restrictions.

You'll be able to take your novice (N) (Class 7N) road test after you've had your learner's (Class 7L) licence for at least 12 months. You will be tested on your ability to perform various driving manoeuvres in a safe, smooth and controlled manner.

After a minimum of 24 months, most N drivers are eligible to take the Class 5 or Class 6 road test. If you pass it, you get your full-privilege, Class 5 or Class 6 driver's licence.

The "BC Services Card" can combine your driver's license and you will have the option of including your Medical Services Plan coverage (previously CareCard).

DID YOU KNOW THAT

By completing an ICBC approved driving course, you could get

- a **six-month reduction** in the novice stage, &
- **two credits** towards your high school grad.

Challenged with a Disability?



If you are challenged with a disability and want to get your learner's permit and driver's license, you should discuss this with your Social Worker and Doctor. A wide variety of technological aids are available to help overcome many obstacles to driving.

MONEY MONEY MONEY

A Poem about Money

"**Money** Money Money Money Money MoneyMoney
Money Money MoneyMONEY Money Money Money Money
.....Money ..Money MONEY MoneyMoney Money Money Money
Money Money Money **Money** Money Money Money Money Money"



Learn to budget and manage your money now. It will definitely pay off for you in the long run. Check out these games: www.practicalmoneyskills.com/games/

Knowing about "money" (sometimes called "financial literacy") is a very important life skill to have.

Ask any adult what they wished they could have learned more about when they were younger and chances are they will say "I wish I knew more about MONEY".

You have a choice - you could either live a life of stress because you let bills pile up while you spend all your money from paycheque to paycheque ...

Or

You can make sure your bills are paid and by putting some money away in a savings account - you can plan for the future.

Knowing how to manage money effectively can make a huge difference in your life.

The following is not going to be able to teach you everything you will need to know about money but it is a start.

First of all ... you should know where your money goes. Knowing this is a great first step.



Humorous video clip shows how day to day purchases can add up over time: www.youtube.com/watch?v=HSxvS10FNp8

Step 1: Start by making a budget for yourself.

A budget is a tool to help you organize your money. It helps you understand where your money comes from and where it goes. It's easy to spend a couple bucks on a donut and pop or to grab some fast food because, at the time, it's only a few bucks. But when you start to add those costs up over time, they can become a huge expense and a big part of the reason that you don't have enough money for the things you really want! A budget not only helps you look at where your money is going, it helps you plan for future goals that could include buying a house or car, go travelling, or saving for some new clothes. Below is a sample budget.

Expenses per Month	
Rent	\$500.00
Utilities (Heat, electricity)	\$100.00
Transportation (Bus Pass)	\$52.00
Food	\$200.00
Clothes	\$50.00
Toiletries	\$15.00
Recreation	\$43.00
Savings	\$40.00
Total Expenses	\$1,000.00

The trick is to learn the difference between things you “NEED” and things you “WANT”. So if we look at the budget above, what do you see as “NEEDS” (things you absolutely need to have)?

What are your “WANTS” (*don't really need* - but gee - would be great to have)?

To work on a budget about housing costs ... click [HERE](#)



Video - seven young people talk about their attitude and perspective about money. www.youtube.com/watch?v=CxalNaRrhlg

Think about making a budget plan for yourself on the following page. Remember to keep asking yourself if this is something you need to spend money on - or is this something you “want” to spend money on.

TIP ---- budget some money to save right into your overall budget. That is how you get your “wants”. You have to save for them. Think about starting to put just 10% of what you make or your allowance into a savings account

Budget Worksheet

Amount of money you make in a month	\$ _____
Expenses per Month	Cost
TO PUT IN MY SAVINGS	
Rent	
Utilities (Heat, electricity, water)	
Cable and Internet	
Phone	
Transportation	
Food	
Personal Needs (e.g., haircuts, toiletries, clothes,)	
Laundry	
Recreation	
Other: _____	
Total Expenses	

Subtract your total expenses from your total income = _____

If you are having trouble figuring this out, consider keeping track of all your expenses. Each time you make a purchase keep your receipt and enter the purchase in a notebook / calendar. Once a week, add up all your receipts.

OR

Check out online tools/apps that are available to help you do this.

(e.g., <https://www.mint.com>)



Website and video clips - learn more about money:
practicalmoneyskills.ca/

Credit

There are two ways to buy something – cash and /or credit. If you use credit, like a credit card or “lay-away plan”, you are promising to pay later for some or all of something. **Think twice before using credit to buy things!** Having credit is not the same as having free money.



Are you breathing? Then chances are extremely good you can get a credit card, and another one, and another one 😊. This doesn't mean it is a good idea though. 😞 It's hard to pay for something after you have it.

Unlike other people who lend money, credit card issuers don't pay that much attention to how much you know about money or your ability to manage credit. They simply depend on you using the credit card and, as a result - owing them money with interest rates that range from 9% to 29% a year!

Each month, you will receive a monthly bill giving details of what you spent, how much you owe, how much interest is added on, the payment date and the minimum payment amount.

The only way to win when it comes to credit cards is to pay all of what you owe when you get your statement each month. If you don't pay it all it simply means that you will end up paying more money than what you originally bought it for.



This cartoon uses humour to explain how credit cards and interest rates work. www.youtube.com/watch?v=83wtyEqD1fc



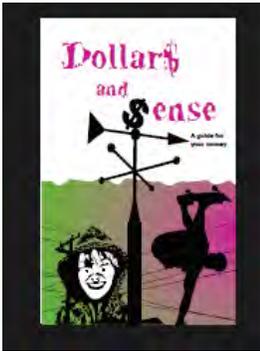
Great overview for understanding credit card fees: www.fcac-acfc.gc.ca/eng/resources/publications/paymentoptions/CCFees/CCFees_toc-eng.asp

Your CREDIT RATING

Perhaps now or perhaps later, you will probably want to borrow money to get a student loan or buy a car or house. When you ask for a loan, the bank will look at your “credit rating”. Your credit rating tells the lender how much you currently owe to other companies or people? How much you borrowed in the past; Whether or not you paid something on the debt each month; how quickly you paid the lender back; how much you currently spend; how much you have left over. The lender needs to be sure that you will pay them back!

The trick to getting a credit rating, is you need to borrow money or use a credit card so that you can show that you are a good credit risk – in other words - that you can be responsible in paying your debts.

If you fail to make a monthly payment for example, your credit rating goes DOWN. If you fail to make another monthly payment – your credit rating goes down even more. If this happens, you can forget about buying a house or car until such time as your credit rating improves. It takes longer to improve your credit rating than it does to lower your credit rating.



"Dollar\$ and \$ense"

Check out this easy to read booklet developed for youth by youth with the Public Guardian & Trustee of BC. We all need money - some people are better at managing it than others. Take a look at this booklet and become someone who knows about money.

www.trustee.bc.ca/

Check out ... www.themoneybelt.ca/theCity-laZone/eng/ab-eng.aspx - this is an easy and fun learning program developed young people by the Financial Consumer Agency of Canada (FCAC). It can be completed virtually anywhere.



for

 Especially for Aboriginal Youth - check out "[First Nations Financial Fitness: Your Guide for Getting Healthy, Wealthy, and Wise](#)"¹.
(www.afoabc.org/downloads/2011-financial-literacy-handbook.pdf)



¹ developed in collaboration with the Aboriginal Financial Officers Association of BC, VanCity, the Public Guardian and Trustee, First Nations Technology Council, Vancouver Aboriginal Child and Family Service Society and funded by Aboriginal Affairs and Northern Development Canada.

Banking

An account at a credit union or bank helps you keep track of your money, lets you cash your cheques and makes it easy to pay bills. If you cash your cheques in places other than your bank you can expect to pay interest plus a service fee. Many banks offer a low or no service fee bank account to children and youth.



The Difference between a Bank and Credit Union:

<http://www.youtube.com/watch?v=-rEW6ff3Zao>

Opening an Account: To open an account, you need one piece of picture ID (BCID, driver's license, BC Services Card, passport) and one other piece of official ID (birth certificate, social insurance number, CareCard, etc.). Of course, you need some money to put in the account. You will have some choices to make when you are opening your account. Here are some questions you can ask when looking into opening an account. Some banks require you to bring your parent/guardian to open an account.

What kind of accounts should I have?

How can I make deposits and withdrawals with this kind of account?

What is the minimum deposit to open an account?

On-line access and keeping your passwords private, safe & secure?

What service fees would I have to pay with this kind of account?

What is the maximum daily amount I can take out of my account using my banking card?

Are there hidden fees?

If you absolutely have to 3 Ways to Cash a Cheque without having a bank account.

1. Bring photo ID and the cheque to the bank shown on the cheque.
2. Ask a friend with an account to cash it for you. After you sign the back of the cheque your friend can cash it. ** Not recommended - only do this with someone you trust! They could keep the money once you give them the signed cheque. And only do this if you're sure the cheque won't bounce. If the cheque bounces and your friend has already given you the cash, you might be in a tough situation.
3. Go to a cheque cashing store. Ask first about charges for cashing your cheque. You will need photo ID.

If it is a government cheque you can usually get it cashed anywhere

The best plan is to get yourself a bank account!

- What type of savings or chequing account is right for you? www.fcac-acfc.gc.ca/eng/resources/toolCalculator/banking/index-eng.asp
- An overview of reasons why you may want to open an account: vimeo.com/27353696
- How to open an account: vimeo.com/27343193



Video clip - An introduction to banking: vimeo.com/27346969



Tips specific to saving: www.milliondollarjourney.com/my-saving-strategies.htm

Beginning at age 18, file your tax return every calendar year whether you were employed during that time or not. Completing your tax return is something all Canadians need to do and it can actually put money in your pocket!

- The BC Government will subsidize your health insurance cost for you if you are earning a low income. For proof of your income, you need to file an income tax return for the year you turn 18.

Savings: \$50 or more each month!

- When you turn 19, you may qualify for a GST credit from the federal government. To receive the GST credit, you have to apply for it on your Income Tax return. **If you don't send one in – you won't get it. You may apply any time during the year.** To make sure you get it when you turn 19 – file an income tax return in the year you turn 18.

Savings: \$100 or more every three months!

TOTAL = \$1000 + per year

What Do I Need To File My Income Tax Return?



To file an income tax

return, you will need tax information slips, such as T3s, T4s, T4As or T5s. These are mailed to you before the end of

February by the companies or agencies (employers) who paid you a salary or wage during the year. If you don't get a T4 in the mail from where you worked, call and

If you are a youth with disabilities and have a Registered Disability Savings Plan (RDSP) the Public Guardian & Trustee has been filing your taxes for you as of age 16.

ask them to send you one. You can go to any [Canada Revenue Agency office](http://www.cra-arc.gc.ca/cntct/prv/bc-eng.html) (CRA) (<http://www.cra-arc.gc.ca/cntct/prv/bc-eng.html>) with proof of address and ID and they will print these off for you.

- If you are in a Youth Agreement or an Agreement with Young Adult, you can expect to receive a T5.
- Save your receipts sometimes you can claim expenses (e.g., education costs, charitable donations, medical expenses). These are subtracted from your total income, and the result could mean a bigger income tax refund.



Do I pay Income Tax if I am Aboriginal?

It depends. There are several factors that are considered in determining whether or not your Employment Income is taxable. This includes whether or not you are a registered member of your Band, where you live (on or off reserve) and where you work (on or off reserve). Canada Revenue Agency (CRA) has prepared a guide to help you determine in what situations your Employment Income is tax exempt: www.cra-arc.gc.ca/brgnls/gdlns-eng.html.

Is it difficult to complete an Income Tax Return?

No, it is not hard to do your own income tax return. Income tax forms and a general guide are available at [postal outlets](#) or [Service Canada](#) centres. When completed, it will show how much income you earned last year, how much tax you have to pay or how much tax will be refunded to you. You simply follow the instructions, whether you are doing it with a pencil or using computer software. There are easy online programs, like www.ufile.ca you can use for free or almost free!. There are also organizations that provide volunteers Tax Preparation Clinics (www.cra-arc.gc.ca/tx/ndvdl/vlntr/clncs/bc-eng.html)

A private accounting firm can complete the return for you, but they will charge a fee for doing so. For example if you were due to receive a \$500 refund from your income tax, the company will give you less (usually about \$50 - \$75 less) - keeping that as a fee for their service.

You can receive your tax refunds and benefits by mail or have them deposited directly into your bank account.

When do I File My Income Tax Return?

If you must pay income tax for a (calendar) year, the deadline for completing your tax return is April 30. You will get charged interest if you make a payment after April 30. If you don't owe the government money, then you can file the return later and still get your refund. Usually, income tax is deducted from each pay cheque you get.

After you file your income tax return, you will get a Notice of Assessment in the mail from the CRA. This document gives you a

How does the CRA know how much money I made each year? Employers report all the income they have paid to you to the Canada Revenue Agency (CRA). Make sure that your employer is deducting income tax - if not now you will have to pay later!

breakdown of taxes you paid, income earned, refund received, etc. It also tells you how much you can contribute to your Registered Retirement Savings Fund (RRSP).

If you haven't filed a tax return for a few years, you can file for up to three years in the past to get any benefits coming to you (such as tax refunds or tax-free benefits – but not GST credits).

Registered Retirement Savings Plan (RRSP)

This is a great way to save money for your future. The sooner you start – the earlier you will be able to retire. You can even borrow money from your RRSP for a down payment on your first home or help pay the costs towards post-secondary education. Every dollar you invest in an RRSP is a dollar that can be deducted off your income at tax time. This will result in having to pay less tax and probably getting a nice refund. When you retire, money withdrawn from an RRSP is taxable. However this will depend on how much money you get when you retire.

The average amount of income tax we pay is about 30% - this means that for every \$100 you earn – the government takes \$30. But if you put a \$100 into an RRSP – you get to claim this hundred at tax income time and get your \$30 back. If you put \$1000 into an RRSP - you get about \$300 back!

Tax Free Savings Account (TFSA)

Another way to save money is through a TFSA. Unlike an RRSP, there is no tax deduction for the amount deposited into a TFSA (maximum of \$5,500 per year). But there is no tax on any interest or growth in a TFSA, and money withdrawn from a TFSA is not taxable.



Information about investing: vimeo.com/27305376

Change of address?

If you move, make sure you inform each employer you have moved so they can mail your T4 to you. T4's are usually mailed in February of each year. Make sure you provide the CRA and all other federal and provincial government offices with which you have been in direct contact with your new address so they can continue sending checks etc. to you.

The Public Guardian & Trustee (PGT)



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

*Rights, Choices
and Security for
All British Columbians*

The Public Guardian & Trustee is a corporation established under the *Public Guardian and Trustee Act*. In part, the purpose of the PGT is to serve Children and youth under the age of 19 by protecting their legal and financial interests. This includes collecting benefits to which you may be entitled, investing and managing money and acting on your behalf in legal matters when required.

The Public Guardian and Trustee (PGT) (www.trustee.bc.ca/) may hold funds in trust for a child/youth. A child/youth may be entitled to money as compensation for injuries from an insurance policy or from monies left to them by a family member. Money is given to the PGT in trust and then invested and administered on your behalf.

By law, as a child or youth - the Public Guardian and Trustee must hold your money until you reach the age of 19 or when it's specified in the trust or court document. The amount you receive will include any interest earned, less any portion you have received and the fees the PGT is required to charge by law.

This is not a reflection on your abilities or those of your family - rather to protect what is rightfully yours.

You can be involved in decisions about how your money is managed and encourage you to talk to your parents, social worker or Guardianship and Trust Officer at the PGT about your trust and seek any information you need.

Some youth in care have money kept "in trust" for them by the Public Guardian and Trustee until they turn 19. Ask your social worker if there is any money in trust for you.

Contact Information:

Public Guardian & Trustee
Child and Youth Services
700-808 West Hastings Street
Vancouver, BC V6C 3L3
Trust Management Ph: 604.775.3480
Legal Intake Ph: 604.660.3040
Fax: 604.775.2429



Neat Videos about Money²

- The story of Jennifer —a young woman who is well established and on her way to reaching her financial and life goals. She shares her recipe to becoming financially fit. vimeo.com/27457233
- An overview of an online learning financial fitness program called “Money Matters”. www.aspect.bc.ca/online-store/your-money-matters
- Learn more about cash flow: www.servicecanada.gc.ca/eng/faq/index.shtml#jobs
- A great overview of financial literacy: www.youtube.com/fcacan#p/c/0/LdhSVzr11Bw
- Payday Loans Explained: www.fcac-acfc.gc.ca/eng/consumers/creditloans/paydayLoan/index-eng.asp
- Before You Sign A Contract: 10 Things You Need to Know: www.fcac-acfc.gc.ca/eng/resources/publications/rightRespons/TSContracts-eng.asp
- A family dealing with real life challenges related to money and what happens when one person in the family makes poor decisions. vimeo.com/27301108 - ---- the same family and money challenges but shows a better way to solve money problems vimeo.com/27309881
- Tips on how to deal with debt collectors: www.fcac-acfc.gc.ca/eng/resources/publications/budgetMoneyMgmt/TSCollAgency-eng.asp
- Easy practical tips on saving money even if you're broke: www.ehow.com/how_5015788_easily-month-even-youre-broke.html
- This website provides some great activities and games for teaching money concepts: www.moneyandstuff.info/activities.htm#understanding

² Thanks to Aboriginal Financial Officers Association of British Columbia who created the publication “[First Nations Financial Fitness: Your Guide for Getting Healthy, Wealthy, and Wise](#)”



EMPLOYMENT/CAREER

I owe, I owe - it's off to work I go.

Although this may be the case, studies have shown that work does much more than pay bills. In fact, working improves one's overall mental and physical health and this in turn will lead to a happier and more successful you.

A job is what you do to get money. But ... we change constantly and so does the world around us - including the working world. It would be extremely rare if your job today were to be the same from the beginning to the end of your working life. In fact, chances are you will have anywhere from 7 - 10 different jobs in your lifetime.

You should always look for something you enjoy doing. Follow your heart. Dreaming about your future can help you understand what you really want in life. Knowing what you want and keeping it in your mind can give you the motivation you need to deal with life's challenges. Never be afraid to dream big.

Although you may not always have much choice when you're looking for work think of your first jobs as being stepping stones on the path of your career.

Career planning

Career planning is looking ahead and deciding what kind of work you want to do down the road. You can get help with career planning from high school counsellors, Service Canada Centres and on the internet.

1. Start by reading the **Career Profiles** (www.workbc.ca/Careers/Career-Profiles/Pages/Career-Profiles-List.aspx) , descriptions of more than 500 careers. **The Build a Career** (www.buildacareer.ca/) application will help you find which of these many career options you may be best suited to.
2. Once you have identified potential career choices, **the Career Pathfinder** (www.workbc.ca/Jobs/JobSeekers/CareerExplorer.aspx) tool will tell you more about each one and the educational requirements for it.
3. **The Education Planner** (www.educationplanner.ca/) will help you learn more about the educational programs available throughout BC for various

careers. It also provides links to help you explore what career or education path is best for you.

OR TRY SOME OF THESE

Career Navigator: Access different CAREER quizzes.

www.jobsetc.gc.ca/toolbox/quizzes/quizzes_home.do?lang=e

Interest Quiz: Know Yourself www.canlearn.ca/eng/preparing/explore/kys.shtml

Check out this page to discover your strengths and learn what careers suit your interests.

Career Options www.canlearn.ca/eng/preparing/explore/cao.shtml

Explore an extensive list of careers, employment requirements and hiring prospects.

Educational Requirements www.canlearn.ca/eng/preparing/explore/cao.shtml

Investigate the type of education required for your dream career and discover the schools that offer related programs.

How to find a Job

Having a job you don't like just means there is something much better out there in the world for you to do!

You don't always have much choice when you're looking for a job – sometimes you have to take any work you can get. But it is worth thinking about what kind of work you want to do. Doing something you like will help you keep your job and do it well. Discover who you are and what you like doing!

Check the things you would like in a job.

- | | | |
|---|---|--|
| <input type="radio"/> working alone | <input type="radio"/> having freedom | <input type="radio"/> using numbers |
| <input type="radio"/> working with people | <input type="radio"/> moving around | <input type="radio"/> handling money |
| <input type="radio"/> working inside | <input type="radio"/> working at a desk | <input type="radio"/> helping people |
| <input type="radio"/> working outside | <input type="radio"/> using tools | <input type="radio"/> solving problems |

Shoot for the moon. Even if you miss, you'll land among the stars.

~Les Brown

- Go to “WorkBC” (www.workbc.ca/Pages/Home.aspx) – 85 WorkBC Employment Services Centres and 114 satellite offices are open across the province of BC. This one-Stop-Shop offers a full suite of employment programs. You will meet with an employment advisor who will help you identify supports and services you need to find – and keep – a job. Depending on your situation, you can get help with a resume, take additional training, or build new skills.

- **Ask Around:** Ask friends, family, youth workers, business owners, people you meet on the street. A lot of jobs are filled by word of mouth. Have you heard the expression ... "it's not what you know ... it's who you know"
- **Go Online:** There are probably more job postings online than anywhere else
- **Newspaper Ads:** Look in the classified ads in newspapers (free ones too). You can check out newspapers at your public library.
- If you live in a larger community, chances are you will be able to access a local youth employment centre
-  **Aboriginal Training and Employment Program (ATEP)** - connects Aboriginal people to employment opportunities through job-related training and support services. www.aved.gov.bc.ca/atep/welcome.htm
- **Service Canada Centres:** These centres have computer banks of work available. They also tell you about any job-finding programs in your area. Check out the Service Canada job bank home page www.jobbank.gc.ca/intro-eng.aspx?OpPage=50&Stdnt=No
- **To find employment if living in the lower mainland ... go to www.lmer.ca/**
- **Provincial employment programs - GO TO...**
www.labourmarketservices.gov.bc.ca/eas_directory/eas_directory_interactive_map.html
- **Student/Youth Job Search**
www.jobbank.gc.ca/res_eng.aspx?CommGrouping=GBC005&Student=Only
- **Just for Youth and Students:**
www.servicecanada.gc.ca/eng/audiences/youth/employment.shtml
- **Job Match - Advertise your job profile to employers and receive a list of matching jobs.** seekers.jobbank.gc.ca/common-commun/login-connection.aspx?redirect=true&target=6&lang=en-CA
- **Job Alert: Receive by email a list of job openings that match your search criteria.** seekers.jobbank.gc.ca/common-commun/login-connection.aspx?redirect=true&target=0&lang=en-CA
- **Resume Builder : Choice of layouts and resume tips**
seekers.jobbank.gc.ca/common-commun/login-connection.aspx?redirect=true&target=1&lang=en-CA

You can also

- Look for “help wanted” signs in windows and bulletin boards in community centres, Laundromats, grocery stores – and/or put up your own signs in these places to let people know what kind of work you’re looking for. Some people have even turned their resumes into big posters and have worn them around town. It works!



- **Volunteer:** Go help in a community organization, or even work for free for a business for a while. Volunteering is an excellent way to gain skills, experience and contacts that will help you find a job. Information about places you have volunteered is great to put on your resume or on a scholarship application. How about volunteering some of your time during your summer holidays?
- **Look Good:** It might not be fair, but people will judge you by how you look. When you go out looking for work, make sure you are clean and dressed neatly – even if you’re just picking up an application form. If you don’t have a nice outfit to wear talk to your social worker.



How to Get the Job

Once you know about a job you’re interested in, you now have to get the person hiring for the job interested in you. You have to help them see you’re the right person for the job. This could mean going regularly to the place you want to work to see if they still need someone or calling the person hiring to let them know you are still interested. If you show interest --- often the employer will as well.

Make a Resume: A resume tells people about you. In most parts of BC you can get free help making a resume. Look for [Service Canada Centre](#) in the Blue Pages of the phone book or look on-line. Give them a call and ask where you can get help with a resume in your area. Whenever you try to develop a one-size-fits-all resume to send to all employers, you almost always end up with something employers will toss in the recycle bin. Employers want you to write a resume specifically for them. They expect you to clearly show how and why you are the best for the job. Remember it is the resume that gets you the interview. **Sample Resume on the following Page.**

Write a Cover Letter: This is your opportunity to shine! Include a “cover letter” with your resume when you apply for a job. A cover letter gives that personal touch. Keep it short (one page at the most). In the cover letter, you can add any extra info that is not in your resume and lets you say you think this would be a great place to work. Some people even offer to work for free for a few days to let the employer see what good workers they are.

Your Name

123 Maple St., City, Province, Country, Code 111-444-5555

Experience

1. Volunteer work

2. **Company, City,** (Start with the most recent: Time Period Employed = From - To)
Position, e.g. Labourer, Receptionist

List all relevant job information, e.g.: What the job involved? Avoid using phrases like "responsible for -" Instead, use action verbs: "Resolved customer complaints"

Employers want to see what you've accomplished. So, rather than something like "Worked with children in a day-care setting" better to say something like ...

"Developed three daily activities for preschool-age children and prepared them for a 10-minute holiday program performance".

Education

(Details of schools, colleges, universities attended, starting with earliest. Include information of Diplomas, degrees etc.)

Date Where, e.g. Maple High, Maple City

What - e.g. High School Certificate, degrees etc.

Skills & Characteristics

E.g. Computer skills, Languages etc.

Anything else of interest or relevance

References - Available upon request

Make sure you have spelled everything correctly and given the employer a way to get a hold of you!!

References: References are people who will put in a good word for you when you're looking for a job. Employers check references to make sure you are OK. You should always ask people first if they agree to be a reference for you. Try to get references who are respected members of your community (e.g., people you have worked for, teachers, youth workers) and who know you well and can speak positively to your

strengths and weaknesses. Best you **don't use your friends or family as references**. Get reference letters if you can. These can be easily attached to any application or cover letter.

Filling out Application Forms: Even though you may have a resume, sometimes you need to fill out a form to apply for a job. The info you need to put on a form is mostly the same as what you have on your resume. Fill in the form carefully. If you make a mistake, ask for another form – **don't make a mess crossing things out**. And,

- Remember to add any volunteer work you have done, and --- whatever you do **don't** say something untrue on the application – this could lead to being fired!



On-Line Applications: If submitting an application on-line, it is a good idea to include a cover letter (see above).

Some Common Interview Questions

1. Tell me why you applied for this job.
2. Tell me something about your previous work experience.
3. What do you know about this company/organization?
4. How would you describe yourself?
5. How well do you work under pressure?
6. What skills or talents do you have to offer this company/ organization?
7. Tell me about a time that you did something with others that was successful.
8. What are some of your strengths and weaknesses?

Job Interview

Congratulations! Your resume got you a job interview. A job interview is a big step in your job search. The employer is taking the time to meet you and see if you're right for the job. It's up to you to continue to make a good impression.

Before the interview, think how to answer questions the employer might ask. For example, practice answering questions such as: "What did you do to prepare for this interview?"; "Tell me a little about yourself?" or, "Give me an example of a time you worked well with others?" or "Tell me about a time you showed some initiative". What is an area you really need to work at?

You can practice an interview with someone you trust. Your friend is the employer and asks you questions just like in a real interview. Try to be serious but have some fun too! When you are done, talk about how the "interview" went. Trying this a few times will make you ready for the real interview.

It is a good idea to do some research and find out what the company is all about.

Get an Unfair Advantage and ACE Your Next Interview:

jobsearch.about.com/od/interviewquestionsanswers/a/jobintquest.htm

An interview is also a chance for you to ask questions. If the employer

doesn't tell you about the hours or pay, you can ask about it at the end of the interview.

Make sure you're looking good when you go to an interview and always arrive 5-10 minutes early. Try to check out how others look at the work place - then dress to fit in. Take a list of your references. Then go for it! It's your chance to shine.

TRICK Question: An executive was interviewing a young person for a position in his company. He wanted to find out something about this persons personality so he asked, "If you could have a conversation with someone living or dead - who would it be?" The young person quickly responded, "The living one of course." 😊

List 4 reasons why someone should hire you

- 1.
- 2.
- 3.
- 4.

- I
- ... work well with others
- ... am a hard worker
- ... do things without being told (initiative)
- ... am honest
- ... am willing to learn
- ... have good communication skills
- ... like solving problems
- ... enjoy working with my hands
- ... good with computers
- ...customer service skills
- ...forklift experience

How to Keep a Job

Once you've got a job - you've got to keep it. Getting fired can feel real bad. It can also make it harder to find another job. There are some basic things you need to be successful in any job.

Check off the job skills you already have. It will pay to work on the ones you don't check.

- ❖ being on time
- ❖ learning from mistakes
- ❖ dealing with frustration
- ❖ can follow instructions
- ❖ keeping things tidy
- ❖ getting things done
- ❖ cooperating with others
- ❖ admitting mistakes

Remember: **don't be late for work!** - a mouse trap placed on top of your alarm clock will prevent you from going back to sleep after you hit the snooze button.

One of the best things to do is show initiative. This means you do things you see need doing without being told. Your employer will think you are just amazing if you are able to do this.

Employment Standards

You have rights as a worker. For example, you have the right to make the minimum wage for most jobs in BC; You have the right to take a break for meals and "coffee breaks". You have the right to a work place free of racism, homophobia and sexual harassment. To find out more about your rights as a worker: www.labour.gov.bc.ca/esb/esaguide/

If you have any problems with an employer, (like not getting paid!) you are required to try and resolve the problem directly with your employer by using the Employment Standards [Self-Help Kit](#).

If an employer does not respond to you within 15 days, you as the employee you may file a complaint with the [Employment Standards Branch](#).

Don't forget that when you get a job

Pay yourself first

Put some money away into a savings account or better yet, open up an RRSP account!

(Check out the "[Money Money Money](#)" section for more info)

If you put away \$80/mth

in 1 year you will have about \$1,000 saved
in 2 years you will have about \$2,000 saved
in 5 years you will have over \$5,000 saved

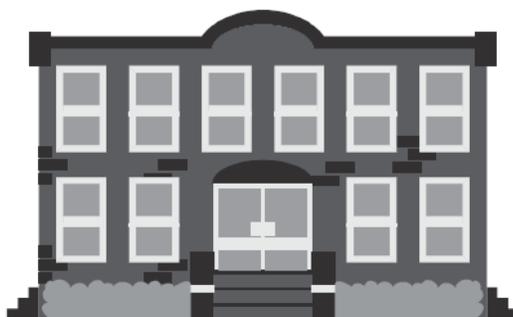


Some great Video Clips inside this document

www.afoabc.org/downloads/2011-financial-literacy-handbook.pdf

In Case you missed it --- check out the Employment Program of BC

www.workbc.ca/Pages/Home.aspx



Education is basic to getting a good job. Skills, diplomas and degrees can help you get the kind of work you want.



While you may not think so now – completing secondary school means that more doors will be open to you. Many people don't really know exactly what they want to do for a career until later on in life. It would be a real drag if at age 25, you find something you really want to do and then find out you need first to complete secondary school.

If you are having difficulty with anything at school, you need to speak up and get help. Here are some ideas to get the help you need:

- Talk to friends who are in school about who could help you (a counsellor, or a teacher) so you have someone to talk with about your learning needs and goals.
- Talk with your social worker, your caregiver, or another trusted adult about meeting with your school principal to support you in discussing your learning needs and goals.

If you would like to go back to school and need help with how to do that, here's some ways to get started:

- Check out the educational options available to you in returning to school. School districts offer a number of educational options, including alternate education programs, on-line learning programs, specialty academic programs, and secondary school apprenticeship programs.

If you are 18, and you need a graduation certificate to get the job you want, consider completing the Adult Dogwood program.

TIP: Finish your GRADE 12 while you don't have to pay for rent or food.

Do you want to read and write better?
If so, call 1-888-732-3234 - Someone at
Literacy BC www.literacybc.ca/ will tell you
about a program near you. Or check out ...
directory.literacybc.ca/index2.htm

Recent studies have shown that, on average, people with a high school diploma earn \$7,000 more per year than those without. Over your lifetime, that could add up to as much as \$170,000 or more.

Do you want to finish high school as an adult?

If so, contact the Continuing Education Program in your local school district and they will tell you how to enrol.

Are You Thinking About going Back to School?

Are you thinking about getting a better job or a promotion? Are you bored and looking for a way out of your current situation? Then perhaps going back to school is what you need to do.

School can be expensive, but help is out there. If you need financial aid, do your research ahead of time. Find out how much money you need and how you might get it. Student loans aren't the only option - you can also look into bursaries or scholarships - or if you are in care or were a Youth Agreement, check out the [Agreements with Young Adults Program](#) or the [Youth Educational Assistance Fund](#).

Investing in your education is one of the smartest things you will ever do. Data collected in 2007 shows a 25-year-old male with a bachelor's degree earns about \$22,000 per year more than one with a high-school diploma.

Is this a good time for you to go back to school? Do you have the time you'll need to go to class, read, and study?

<http://adulthood.about.com/od/studyskills/tp/10waystogetthemostoutofcollege.htm>

Depending on your goal, you might have lots of options open to you, or very few. Is the school you need available to you, and can you get in? Remember, getting your degree or certificate might be possible [online](#).

Consider which school best matches what you want to achieve, and then find out what their admission process requires.

- [Choosing the Right School](#)
- [Be Sure Your School Is Accredited](#) (to check - <http://adulthood.about.com/od/intro/a/accreditation.htm>)

It is important you apply early if you are planning on attending post-secondary (University or a Vocational institute). For example, if you are hoping to start school in the Fall, you should apply in winter or early spring.

For some trades, there may even be a wait period of up to 2 years before you can get in. So, even if you are just thinking about it ... put your application in now – you can always change your mind.

College and University



Every college and university puts out a “course calendar.” These course calendars describe the different programs and how to apply.

Your public library should have calendars for colleges and universities in BC. Your public library should have a computer where you can get more info on the internet site of the Post-Secondary Application Service of British Columbia (pas.bc.ca/).

If you're in high school, the guidance counsellor should be able to help you out too.

All of BC's publically funded Post-Secondary Institutions offer a variety of Aboriginal programs, courses and services. There are two institutions in the Province specific to Aboriginal students ...

Nicola Valley Institute of Technology (NVIT)

NVIT is BC's Aboriginal public post-secondary institute. Programs such as Social Work, Natural Resource Technology, and Aboriginal Community Economic Development are offered. (www.nvit.ca/default.htm)

Native Education College (NEC)

NEC, located in Vancouver, is an Aboriginal-controlled college governed by the NEC Native Education Society. (www.necvancouver.org/)

Additionally, BC's 25 publically funded post-secondary institutions employ Aboriginal post-secondary coordinators who provide support services to students, including:

- Transition services and referrals
- Mentoring and crisis management



Note: Aboriginal Gathering Places have been established at almost all public post-secondary institutions in BC. They are unique spaces that reflect the culture and traditions of Aboriginal students.

Training Programs

Apprenticeships: Apprenticeship is a form of post-secondary education. It combines paid, work-based training (about 85% of training), with technical training in a classroom or shop setting (about 15% of training). To earn a certificate or ticket, and become a certified tradesperson you must successfully complete the training and pass examinations. An apprenticeship can range from one to five years, but most require four years to complete. If you want to find out more www.red-seal.ca/w.2lc.4m.2@-eng.jsp

BladeRunners: Provides training and entry-level employment opportunities for “at-risk youth”. The program provides life skills training, job readiness skills, certification courses (e.g., Workplace Hazardous Materials Information System (WHMIS) Workers Compensation Board (WCB) Awareness, First Aid Level 1), job coaching and support, and workplace communication. This program can help youth get and keep full-time employment in construction and other industries.

www.bladerunners.info/

Employment Skills Access Program (ESA): Unemployed individuals who do not receive “Employment Insurance” (EI) benefits can access tuition-free training at public post-secondary institutions to assist in finding work.

www.workbc.ca/docs/ProgramInventory-ESA-Funding.pdf

Workforce Exploration Skills Training (WEST) Program: A tuition-free bush camp training program. Learn about mining, exploration, and other resource industries delivered in a hands-on learning environment (available if you are unemployed and not receiving EI benefits). sem.nwcc.bc.ca/courses.cfm

Youth Skills BC – Entrepreneurship Pilot Program: Want to start up your own business? Learn how to develop a business plan and launch a business. Youth must be unemployed and not receiving Employment Insurance (EI) benefits.

www.ethoscmg.com/ymb.html

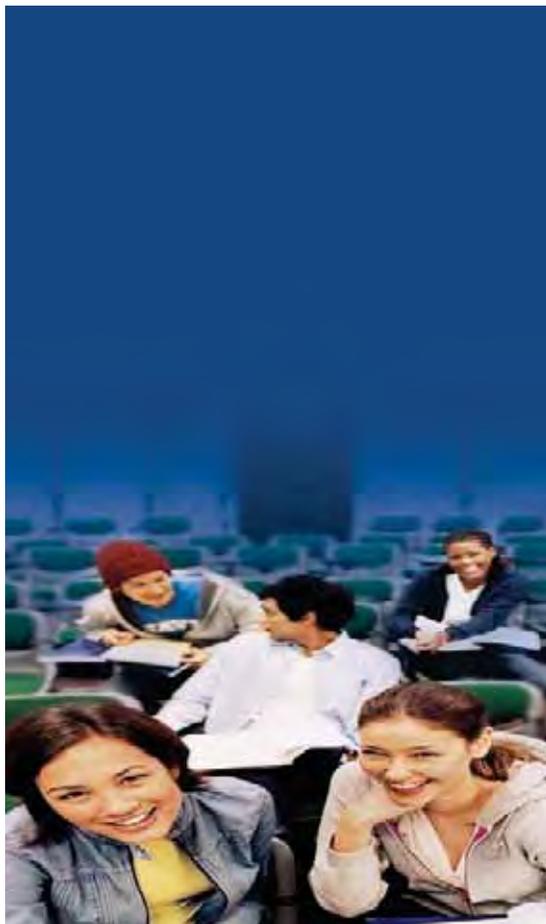
Get Youth Working: Employers can receive \$2800 to hire youth for three months! Great for both employers and youth seeking employment. Can also provide \$1,000 for training. www.getyouthworking.ca/

Workplace Training Program: Want to learn about the [retail](#) and Tourism business? This program is delivered throughout the Province and provides youth with workplace-based training. camosun.ca/business-services/contract-training/new-funding.html



For more information on Aboriginal specific Trades initiatives and programs: www.itabc.ca/Page1027.aspx

The Agreements with Young Adults Program (AYA)



AYAs provide financial assistance and support services to youth formerly in care or Youth Agreement and who want to:

- Finish high school;
- Earn a diploma or certificate;
- Learn a trade;
- Attend college or university; and/or
- Complete a rehabilitative program.

Who Can Apply?

Youth who are at least 19 and not yet 24, and if on your 19th birthday you were:

- In the continuing care of a director under the *Children Family and Community Service Act* of BC;
- Under the guardianship of a director, through the *Family Relations Act* of BC; or
- In a Youth Agreement.

When Can I Apply?

You can apply any time between your 19th and 24th birthday.

How Can An AYA Help?

An AYA can provide support services or financial assistance, or both, to assist you while you're enrolled in your program. This may include, for example: rent, utilities, food and transportation allowance.

If I Apply For An AYA, What would I Be Expected To Do?

Complete an [application form](http://www.mcf.gov.bc.ca/youth/pdf/CF0707_JUN08.pdf) (www.mcf.gov.bc.ca/youth/pdf/CF0707_JUN08.pdf) with a written plan explaining your goals and the support you will need to reach them. Your social worker may be able to provide assistance in developing this plan. The plan must involve:

- A minimum of 60 per cent of a full-time educational or vocational program course load, or 40 per cent if you have a permanent disability; or, a minimum of 15 hours a week participation in a rehabilitative program; or a combination of the above.

You will be expected to attend class regularly and maintain a satisfactory level of performance.

Will I Be Expected To Contribute To My Living Expenses While On An AYA?

A contribution may be expected depending on whether or not you are working. It will depend on the amount of AYA assistance you need and your employment income during that period. A social worker will help you determine whether a contribution is appropriate or required.

How Long Do These Agreements Last?

AYAs last up to six months at a time. The total of all AYAs cannot add up to more than 24 months and agreements cannot extend past your 24th birthday.

How Long Will It Take To Get Financial Support?

If you provide all required information, financial support should be available within four to six weeks.

For more information or assistance, go to any Ministry of Children and Family Development or Delegated Aboriginal Agency office in your area or view information online: www.mcf.gov.lx.ca/youthlaya.htm

Scholarships and Bursaries

[BC Aboriginal Student Awards](#)  - Awards of \$1,000 - \$3,500 are available for Aboriginal people enrolled in year one or two of a post-secondary program that is a minimum of nine weeks in length.

[First Citizens' Fund Student Bursary Program](#)  - This program provides financial assistance to Aboriginal students enrolled in post-secondary education programs. It is funded by the Province of BC and delivered by the BC Association of Aboriginal Friendship Centres. The maximum level of assistance is \$700/year for Band or Tribal Council funded students and \$2000/year for non-funded students.

(www.bcaafc.com/programs/firstcitizensfund/31-studentbursary)

[Teacher Education Awards](#)  - A financial awards program for Aboriginal students enrolled in a teacher education program. The first awards will be made in 2012.

[Ken Dryden Scholarship](#) - Ken Dryden one of the greatest hockey goalies of all time helped start this. This scholarship gives cash to Canadian youth in and from care going to college or university. To find out more about it, call the Federation of BC Youth in Care Network at 1-800-565-8055 or the National Youth in Care Network (NYICN) toll free 1.800.790.7074.

[Youth Education Assistance Fund](#) www.mcf.gov.bc.ca/other_services/yeaf/index.htm

The Youth Education Assistance Fund (YEOF) provides grants to 19 to 23 year olds, who were formally under the continuing custody of a Director under the Child, Family and Community Service Act. The bursary is available to support attending university, college, a university-college, an institute or designated private school. The bursary amount in 2012 was \$5,500.

Approved applicants will receive a grant cheque from the Victoria Foundation. You can apply once a year, up to a maximum of four years or until you turn 24. The money you receive can be used for tuition, books or living expenses. This is a non-refundable, taxable grant. You will get a T4A form for your taxes. You can apply and receive funds at any time during the education year.

To receive the grant, you must be attending a designated post-secondary school. The institution does not have to be in BC. A designated post-secondary school is an accredited school approved by the Ministry of Advanced Education.

You must be registered in courses that are part of a program leading to a degree, diploma or certificate. This includes academic, vocational and trade programs. The program must be at least 12 weeks in length. You will need to take at least 60 per cent of a full time course load or 40% of a full time course load if you have a permanent disability.

The Youth Education Assistance Fund (YEAF) makes a difference in the lives of young adults who have spent time in the care of the Ministry of Children and Family Development or a Delegated Aboriginal Agency.

[Public Guardian and Trustee - Educational Assistance Fund](#): Successful applicants are awarded annual bursaries ranging in value up to a maximum of approximately \$3,300.00 to further educational or vocational goals. The bursary is only available if you don't have enough to cover expenses such as fees, books, rent, food and/or transportation. You must be at least 19 years old and have been in the permanent or continuing care of the government. The deadline for applications for each year is April 15th. For more detailed information, please go to:

www.trustee.bc.ca/services/estate/edu_assistance.html

Contact Info: Estate and Personal Trust Services
700-808 West Hastings Street, Vancouver BC V6C 3L3
Ph: 604.660.4444 Fax: 604.660.0964
E-mail: estates@trustee.bc.ca

[Federation of BC Foster Parents Association](#) Applications are accepted in May of each year. (<http://www.bcfosterparents.ca/bursaries.php>)

- MAURICE GRAYDON BURSARIES: awarded annually for youth currently and formerly in care who wish to continue their education. The bursaries are for \$500 each.
<http://www.bcfosterparents.ca/bursaries/MG.Bursary.Application.pdf>
- MERV DAVIS BURSARY is for any child in care residing in Coquitlam, Maple Ridge, Port Coquitlam, Port Moody or Pitt Meadows, For those reaching 19 years of age and interested in extending his/her education, whether to finish high school, attend business or vocational school, college or university.
- WILLIAM CURTIS MEMORIAL FUND - Any child/youth in care who resides in British Columbia and has reached the age of 19 years; who shows an interest in extending his/her education, (whether to finish high school, attend business or vocational school, college or university)

For More Information, call the BCFFPA Office at 1-800-663-9999

Other Links to Bursaries/Scholarships

http://icw.mcf.gov.bc.ca/ysevr/docs/adults/scholarships_bursaries_resource_guide.pdf

http://www.mcf.gov.bc.ca/yeaf/other_funding.htm

<http://www.scholarshipscanada.com/index.asp>

Federation of BC Youth in Care Network Dream Fund

Offers financial support to young people interested in career training and/or education opportunities. The Dream Fund is distributed to successful applicants three times a year.

There are two different kinds of Dream Fund [bursaries](#) for youth in/from care; both applications are due the second Friday of March, July and October.

Education Achievement Bursary

Provides young people with up to \$2500 in funding for post-secondary school per academic year. This bursary can be for all accredited schools.

Eligibility

- You are a former [youth in care](#) either under a [continuing custody order](#) (CCO) or [temporary custody order](#) (TCO), [Voluntary Care Agreement](#) (VCA) or [Special Care Agreement](#) (SNA) or supported through a [Youth Agreement](#).
- You are a Canadian Citizen or a Permanent Resident.
- You are 14 and over and under the age of 25.
- You are currently enrolled or planning to enrol in a secondary, post-secondary academic, technical or vocational program, a recognized public post-secondary institution, or a registered private post-secondary institution.
- You have a cumulative total of 1 year in government care or were supported in a youth agreement.

Note: A list of registered private post-secondary institutions in BC can be found on The Private Career Training Institutions Agency (PCTIA) website: www.pctia.bc.ca

Required Documents:

1. Maximum 2 page description of your educational goals and future aspirations for the next 2 – 3 years.
2. Maximum 1 page description of your challenges and obstacles
3. Maximum 2 page description of achievements and successes
4. Two reference letters; these can be from a school teacher, advisor, counsellor, worker, or employer (these signed letters can be printed and mailed or faxed (see contact info below) OR scanned and sent as an e-mail attachment to dreamfund@fbcyicn.ca).

Click [here](#) to print and submit the Education and Achievement application by mail.

Reach for Success Bursary

\$500 per year and can be used for a variety of workshops, courses and other skill building activities.

Eligibility:

- You are a former [youth in care](#) either under a [continuing custody order](#) or [temporary custody order](#), [Voluntary Care Agreement](#) or [Special Care Agreement](#) or supported through a [Youth Agreement](#).
- You are a Canadian Citizen or a Permanent Resident.
- You are 14 and over and under the age of 25.
- You are currently enrolled or are planning to enrol in a personal or professional development course or activity.
- You have a cumulative total of 1 year in government care or on a youth agreement

Required Documents: One reference letter; this can be from a school teacher, advisor, counsellor, worker, employer, family member, or other supportive adult in your life (this or these signed letters can be printed and mailed or faxed (see contact info below) OR scanned and sent as an e-mail attachment to dreamfund@fbcyicn.ca).

Click [here](#) to print and submit the Reach For Success application by mail.

Contact Info:

Federation of BC Youth in Care Networks (fbcyicn.ca/about/)
625 Agnes Street
Suite 500
New Westminster, BC
V3M 5Y4

Phone: 604.527.7762 or toll-free: 1.800.565.8055 Fax: 604.527.7764



Student Grants and Loans

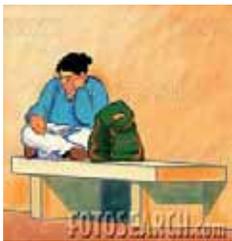
The [BC Student Assistance Program](#) has info on student loans and grants. You can call them at 1-800-561-1818. Just remember, you'll have to pay back loans one day!

You can find out about more scholarships from a web site of Student Awards (www.studentawards.ca). A lot of colleges and universities have bursaries for their students. Ask about them - you never know!

Canada Student Grants for College and University Students

Students enrolled in a recognized college or university may be eligible to receive the following student grants:

- [Grant for Students from Low-Income Families](#): \$250 per month of study for up to \$3,000 per academic year
- [Grant for Students from Middle-Income Families](#): \$100 per month of study for up to \$1,200 per academic year
- [Grant for Students with Dependants](#): \$200 per month of study, per dependent child
- [Grant for Part-Time Studies](#): Up to \$1,200 per academic year
- [Grant for Part-Time Students with Dependants](#): Up to \$1,920 per academic year
- [Grant for Students with Permanent Disabilities](#): \$2,000 per academic year
- [Grant for Services and Equipment for Students with Permanent Disabilities](#): Up to \$8,000 per academic year



*if you had your request for a Student Loan turned down - you can ask for a reassessment. Go to ...

<https://www.aved.gov.bc.ca/studentaidbc/apply/appeal.php>

HOUSING

What Type of Housing Are You Looking For???

ROOM AND BOARD

- ◆ furnished room in house
- ◆ food and utilities provided

ROOM TO RENT/SHARED ACCOMMODATION

- ◆ room in a house you rent for yourself
- ◆ may include hydro, TV, internet and phone.

HOUSEKEEPING ROOMS/SRO

- ◆ room with cooking utilities (toaster oven/microwave)
- ◆ may share fridge and bathroom.
- ◆ probably will not include hydro, TV, internet and phone.
- ◆ sharing of bathroom facilities with other tenants



SHARING CAN SOMETIMES BE A DRAG...OR
SOMETIMES IT CAN BE GREAT.

APARTMENT, CONDO, OR TOWNHOUSE

- ◆ your own space but expensive
- ◆ usually does not include hydro, TV, internet or phone

HOUSE

- ◆ Usually need to share
- ◆ You get your own space
- ◆ usually does not include hydro, TV, internet or phone
- ◆ opportunities to plant a garden and mow the lawn



Talk to your social worker, there may be a housing program in your community.

Deciding What Type of Housing You Want

Room And Board	
Advantages: <ul style="list-style-type: none"> • can cut down on costs! • You get fed & meals might be excellent • Usually furnished 	Disadvantages: <ul style="list-style-type: none"> • Not as much privacy • Meals may not be great
Room to Rent/Shared Accommodation	
Advantages: <ul style="list-style-type: none"> • You <i>won't be alone</i> • sharing household tasks (cleaning, meals) 	Disadvantages: <ul style="list-style-type: none"> • You might not get along • Your roommate might eat your food • You have to share the common space
House Keeping Room/Single Residence Occupancy (SRO) (SRO tenants typically share bathrooms and/or kitchens)	
Advantages: <ul style="list-style-type: none"> • Can be inexpensive • Usually close to downtown 	Disadvantages: <ul style="list-style-type: none"> • Sharing a bathroom • Not necessarily safe
Apartment/Condo/Townhouse	
Advantages: <ul style="list-style-type: none"> • Privacy • Usually quite safe 	Disadvantages: <ul style="list-style-type: none"> • Can be expensive • lonely • Other tenants can be noisy
House	
Advantages: <ul style="list-style-type: none"> • You <i>won't be alone</i> • sharing household tasks (cleaning, meals) • planting a garden • Sharing of expenses 	Disadvantages: <ul style="list-style-type: none"> • Might not get along with the others • Your roommate might eat your food • You have to share the common space, • People could be moving in and out • it can be expensive -especially if there is a high roommate turn over

Ask others if they prefer one living situation over another

The Classified Ads - Everything is shortened in the classifieds to save space. The following is a list of terms you need to know to understand the classifieds.

appl. = appliances	Avail = available	B.R. = bedroom
bach. = bachelor suite	bsmt. ste = basement suite	Char. = character suite
D/D = damage deposit	F/P = fireplace	F/S = fridge & stove
furn = furnished	Grd Flr = ground floor	H.T. = heat
H/W = hot water	L.R. = living room	Laund = laundry
lge = large	Kit = kitchen	N.S. = Non smoker
Pkg = parking	Res.Mgr. = Resident Manager	Sep. Ent. = separate entrance
sm = small	Ste = suite	Util inc. = utilities included
W/D = washer/dryer	W/W = Wall to wall carpet	a/c = air conditioning
Mod = modern	Crpt = carpet	Vw = view

Pick the ones important to you, so you know what to look for:

Handy Dandy Housing Checklist: Date of viewing: _____

Location: _____ Address: _____

Phone: _____ Landlord's name: _____

Rent: _____ Damage Deposit: _____

Housing Costs:

- Heat (oil, natural gas, or electric). If not included, \$ per month _____
- Hydro (electricity/heat). If not included, \$ per month _____
- Cable
- Laundry - If not available, are the laundry facilities far away? ____ min.
- Fridge. ♦ is it working well? ♦ is it clean?
- Stove ♦ is it working well? ♦ is it clean?
- Phone ♦ Are the phone jacks in appropriate places?

What's In the Apartment?

- Is the bedroom area suitable for you?
- Is the living area enough for you?
- Is the kitchen big enough?
- Is there enough cupboard space in the kitchen?
- Cupboards are checked and there are no rodent feces?
- Do you have your own bathroom? If no, how many people share _____
- Is there a shower? Is there a bath tub?
- Is there good water pressure
- Is there enough storage space?
- Is it a secure save space?
- Are the door and windows sealed to prevent drafts?
- Are the different areas of the apartment well maintained?
- Are the cable outlets in appropriate places for the TV and internet?
- Proper locks on the door?

If no, what areas are not maintained? _____

Other Stuff

- Is the lease or rental agreement month to month? If not, how many months do you have to sign the lease for?_____
- Does the landlord seem responsible?
- Is the landlord willing to fix things?
- Is there public transport nearby?
- Does the neighbourhood look safe?
- Is the area safe? Is the area properly lit for coming home on a dark winter night?
- Are there proper locks on the doors and windows and/or a security system?
- Is the location quiet enough for you? (i.e. Street noise, neighbours, children)
- Is the outside well maintained?
- Is there a smoke detector?

other _____

other _____

Rate the following statements. The highest score is 5 and means you strongly agree with the statement. The lowest score is 1.

Is the housing situation worth the rent?	1	2	3	4	5
Do you like the place?	1	2	3	4	5
If you are sharing, will you all get along?	1	2	3	4	5

..... and more things

If you have a pet, are you allowed pets at this apartment?

If you pay in cash - make sure you get a receipt!

Watch out for hidden costs - for example are all utilities included? Cable?

Try to check out the neighbours a bit (are they noisy?)

Damage Deposit

When you rent a place, you often have to pay a “DAMAGE DEPOSIT” (also known as a Security deposit). This is usually equivalent to half a month or full month’s rent.

Try to find out if the landlord is usually pretty good about giving the damage deposit back.

To avoid a problem, make sure you get a receipt for any money you give to your landlord. If at all possible give cheques, this way you always have proof you paid. In the memo section of the cheque write the purpose of the cheque i.e. rent for June or damage deposit.

You have rights as a tenant

Check out the [Tenant Survival Guide](#) -

[http://www.tenants.bc.ca/ckfinder/userfiles/files/TRAC%20Tenant%20Survival%20Guide%20-%20English%20\(web\).pdf](http://www.tenants.bc.ca/ckfinder/userfiles/files/TRAC%20Tenant%20Survival%20Guide%20-%20English%20(web).pdf)

The Guide is intended to give tenants a basic understanding of residential tenancy law in British Columbia. This can help you prevent or resolve any conflicts with a landlord. It provides links to a number of useful resources around the province.

[What if I am being evicted?](#)

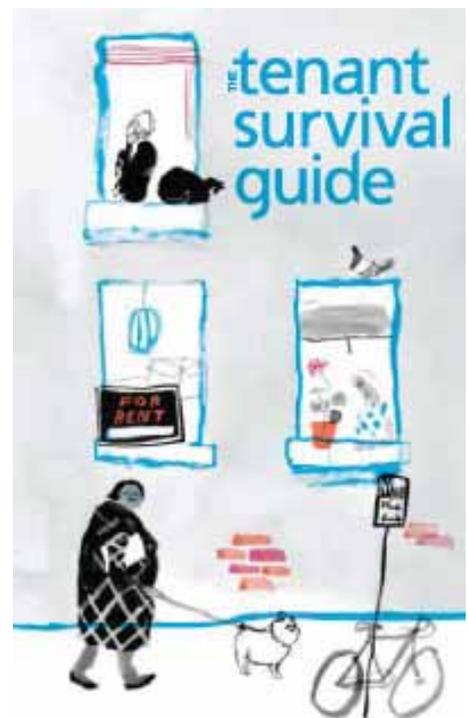
[I have mold! What do I do?](#)

[Can friends stay overnight?](#)

[Do I have to make repairs?](#)

[What's the rent increase cap?](#)

[How do I get my security/damage deposit back?](#)



Figuring out How Much Living in your own place will Cost?

Expenses	Start-Up Costs	Regular Monthly Expenses
Rent		
Damage deposit		
Utilities: hydro, gas/oil, phone, water		
Start-up Costs: bed, table, chairs, sofa,		
Kitchen supplies, cleaning supplies		
Cable/internet		
Food groceries, meals out		
Transportation: transit pass, taxi, car payments, car insurance, gas		
Recreation: movies, concerts, sports, travel		
Personal Care: medicine, soap , shampoo, make up		
Clothing		
Laundry		
Child Care: babysitting/day care, diapers		
Other		
Totals for start-up and monthly expenses	=	=

Start-Up Costs	
Plus Monthly Expenses	+
Total Expenses for First Month	=

House Hunting

Looking for a place to rent can be a frustrating task. For example, there may not be many safe and affordable places to rent, and landlords can be reluctant to rent to youth.

Here are some ways that might help you.

- ❖ Check out “craigslist” (geo.craigslist.org/iso/ca/bc) or “kijiji” (bc.kijiji.ca/)
- ❖ Do a google search
- ❖ Look in your local newspaper and/or any weekly paper in your community under “For Rent” in the classified ads. Lots of people do this so the disadvantage is landlords often have a large pool of interested renters to choose from.
- ❖ Walk around neighborhoods that interest you and look for “For Rent” signs. If there is a telephone number available and you have a cell phone – this can be a quick way to introduce yourself and if you are lucky – get a chance to view the suite/apartment.
- ❖ Look in the yellow pages of the telephone book or Google “Property Management”. Landlords may use a Property management company to take care of finding renters on their behalf. Telling a Property Management company exactly what you are looking for just might get you what you want.
- ❖ Some youth serving agencies (e.g., “Boys and Girls Clubs”, Aboriginal Friendship Centres), schools and universities provide housing registries. A registry is a listing of apartments, houses/ suites and “youth friendly” landlords.
- ❖  If you are living on-reserve, you may want to talk with your Band’s housing coordinator to see what the housing eligibility requirements and wait lists are like in your community, your social worker can help you with this.

To be safe, it may be a good idea to check out places with a friend! This way, you have an extra pair of eyes to help determine if this is the place for you,



Resources available to Aboriginal Youth

Aboriginal Housing Initiative

For Aboriginal people living off-reserve, a list of the housing developments created through the initiative can be accessed here:

www.bchousing.org/Initiatives/Creating/AHI/List

Aboriginal Housing Provider List

A list of off-reserve Aboriginal housing for households and individuals with Aboriginal ancestry, including First Nations, Métis, Inuit and those who self identify as Aboriginal.

www.bchousing.org/Find/aboriginal/AHL

What NOT to do when you go to meet the Landlord

Let's face it. Lots of landlords don't like the idea of renting to young people. You really need to put your best foot forward and of course you don't want to make a bad impression when meeting the landlord for the first time. Following are some things you should NOT do.

- ☒ Do not be late for your appointment.
- ☒ Do not go look at the place with a whole bunch of your friends – the landlord won't be excited at the prospect of lots of parties.
- ☒ Do not smoke
- ☒ Do not wear dirty clothes
- ☒ Do not talk about staying up late with friends, playing loud music

On the flip side

- ✓ Bring an adult with you to look at the place.
- ✓ Be prepared to give a small deposit on the place – this way you will have secured the place temporarily at least until you will bring the rest of damage/security deposit.
- ✓ Carry an "Intent to Rent" form with you (you can get this from your social worker).

Stuff you might need for your place

- Table & chairs
- Bed
- Sharp kitchen knife
- Sofa
- 1 pillow & case
- Dish towel
- Dresser
- towels
- Plates, bowls, cups
- Bookcase
- Alarm clock
- Frying pan
- Sheets
- Cutlery
- Pot with lid
- blanket or sleeping bag
- Can/bottle opener
- Tool kit (duct tape, hammer, screw driver etc)

Roommate Stuff

Consider the following - it might help you avoid a roommate nightmare!!!!

Cleaning

- ◆ Who does the dishes (and how often do they get done), can often be a problem, especially if you are eating separately, or if one roommate has a lot of friends over to eat. Easiest way (you have heard this before) is to do the dishes right after eating.
- ◆ If your place is clean when you move in, it is easier to keep it clean. If it is dusty and run down, cleaning could be a big job ... and something roommates often disagree about.

TIP: Making a cleaning checklist can help you stay on track and organize the cleaning.

Roommate Romance?!

- ◆ Getting involved with a roommate can wreck a good living arrangement. Be clear with yourself and your roommate about your boundaries.
- ◆ It's possible your roommate may date your friends. How would you feel about this?
- ◆ Make sure you feel safe around your roommates. Unwanted romantic or sexual attention can make you feel unsafe in your own home!

Having friends over?

- ◆ If one or both of you has a boy/girl friend, how do you feel about this person spending the night ... and how often is reasonable?
- ◆ If you are a non-smoker, how do you feel about having friends smoke in the house? (Best to just make a NO SMOKING rule)

Do you share in all costs – or keep everything separate?

- ◆ Some things like dish washing detergent, soaps, and cleaning supplies are difficult to keep separate. You need to decide if you will keep bills or if you trust the other person to buy their share.
- ◆ Food in the fridge. You need to have this discussion early on as this can present problems. You may be a light eater and your room-mate might never feel full. Friends will come over and ask if there is anything to eat.

Moving In & Moving Out

- A property condition report when you move in. Take some photos with your cell phone as well.
- Keep a record of your tenancy agreement and property condition report.
- Providing post-dated cheques simplifies having to pay each month and your cashed cheque is your receipt and proof you paid your rent.
- *If something needs repair, let the landlord know right away so you won't be charged later.*
- If you are planning to move out, you must give notice in writing. This is usually given on the 1st of the month before you move out.
- When you move out, it is your responsibility to clean your apartment and arrange for all belongings to be out by midnight of the last day of your tenancy.
- Let hydro, cable and the telephone company know you are moving.
- Getting your damage deposit back depends on you leaving your place in the same condition you moved in (If this is not done, you may lose your damage deposit).
- If you are on income assistance, you have to pay back your damage deposit to the Ministry.
- The [Residential Tenancy Office](http://www.rto.gov.bc.ca/) can give information if you have problems with your landlord. You can call 1-800-665-8779 or call the 24 hour info line at 1-800-661-4886 (www.rto.gov.bc.ca/)

UTILITIES (Phone, Heat, Lights, Cable)

Cell Phone verses a Land-Line Phone

Here are some things you should consider.

<p style="text-align: center;">Land Lines</p> 	<p style="text-align: center;">Cell Phones</p> 
<p>Cheaper - never have roaming fees, only charge for long distance calls and even then, some companies offer low cost long distance plan packages. - however - can be expensive if you move around a lot because of the connection and disconnection fees</p>	<p>Can be expensive - or cheaper Depends on your plan. Careful about the 2 - 3 year terms!</p>
<p>They never run out of battery juice. They are plugged 24/7.</p>	<p>Need charging - you could miss out on important calls - but you can Email, text message, play games, take pics, listen to music, and yak.</p>
<p>Are green and healthy with no toxic batteries, safe for kids and pregnant women.</p>	<p>They go where you go. This means if you're expecting a call from a potential employer the likelihood of you being available for the call increases</p>
<p>Are seldom stolen.</p>	<p>Can be easily stolen or lost.</p>

Make an informed decision.

- If you decide on a cell phone, think about "pay as you go". You simply buy a time card provides you with a certain number of minutes. When your minutes are up - you buy a new card. This way you will know exactly what your phone is costing you. The disadvantage to this is its quite expensive if you use your phone a lot.
- Some cell phone companies offer unlimited talk and text options - look into those plans.
- If you decide to go with a cell phone "plan" - check into whether there are weekend charges, roaming charges and long distance charges? Is there a free phone in the deal? Free texting? How long do you have to sign up for (1 yr, 2 yrs or 3 yrs)? How much per month? What is included in this monthly charge? What are all the hidden fees?

Note: It can cost you anywhere from \$200 to \$300 to get out of a contract if you decide to go with another provider.

Protect Your Personal Information

If you lose your cell phone or it gets stolen, all the information stored can be accessed. One layer of protection you can use is to password protect your phone. Also not a great idea to store too much personal information on your cell phone like your address, bank account information etc. etc.

What a Phone Line Costs

Depending on where you live, a phone line costs \$45.00 to connect and about \$24 - \$30/month service charge. Some cable companies can provide phone service.

If you add voice mail, call waiting, *69 etc., this may cost you extra.

Decide what you need and what your budget can handle. If you end out in a position where you can't pay the monthly fee - your credit rating will be affected.

Long Distance

You may want to block the ability to call long distance. Especially if you have a land phone in your name and you live with others. As another alternative, try [SKYPE](#). It's Free. If you and the person you want to call both have a SKYPE account - you can talk long distance - whenever you want to - not just on special occasions. And, if you know people who don't use Skype you can call them at really low rates.

You can also "[gmail](#)" chat & video for free and for those people with an I phone or an I pad you can facetime directly between each for free.

Home Heating

Your place will either be heated electrically, with natural gas or have oil heating. If electrical you will need BC Hydro. If natural gas, ask your landlord who the provider is. If oil, you will need to have the oil filled up on a regular basis by an oil heating company in your community. It's no fun running out of oil in the middle of winter.

How to Get BC Hydro

This is for your lights and heat if the heating is electrical. You can Google the number for BC Hydro or look in the White Pages of the phone book under [BC Hydro](#). Or use this: www.bchydro.com/. If you have never had a BC Hydro account, you will be asked for the following information:



- Drivers licence, BCID, BC Service Card,
- Date of birth
- Employer phone # (if you are not currently working you may be able to use someone else as a reference.)
- Address of one friend or family member

What it Costs

There is a hook up charge. Check with BC Hydro to find out how much. Your monthly bill depends on how much electricity you use. Before you rent a place, find out what the hydro bill was from the last renters, landlord or BC Hydro. You may want to consider checking out the BC Hydro "Power Smart" pages for ideas on how to reduce your monthly bill - www.bchydro.com/powersmart/

How to Get Cable TV

First you will need to find out who the cable provider is and then usually a simple telephone call will be all you need to do. In BC the two biggest providers are Shaw and Telus. Both have advantages and disadvantages. Ask trusted adults and check out their websites for more information.

Bundle your Internet, Phone and Cable

Many providers of cable provide phone and internet and will often offer great deals to get you to sign up. There can be some hidden fees. There may be a contractual obligation so if you move, you may be faced with a large bill.

Remember!!!

Don't forget to pay your bills on time!!!!

If you don't pay them every month you can end up with a big debt... and ruin your credit rating and make it hard to get these services in the future.

Shaw Cable: www.shaw.ca/

Telus: telus.com/

Self care skills means you know how to take care of yourself. This includes things like "[hygiene](#)". Having good hygiene means you don't stink because you shower or bathe regularly, you wear clean clothes, you throw your waste or left over food in the garbage, you take your garbage out as soon as it's full, you brush your teeth regularly, comb/brush your hairy, wash your hands after having gone to the bathroom, you do your dishes – etc. etc.

Other self care skills include: being able to cook nutritious meals; knowing how to keep yourself safe; exercise; proper amount of sleep; stress management; etc.

The Art of Doing Laundry

Laundry is the washing and drying of your clothes. Here are some useful tips when doing your laundry.



- Check the labels on your clothes to see whether or not they can be machine washed, hand washed, or must be dry cleaned. Drycleaning can be expensive.
- Sort laundry by color. Whites, light gray and white background prints will go in one pile. Deep colored clothes – black, red, navy, brown, dark gray – go in another pile.
- Front loading washing machines are better than top loading machines.
- Separate towels and sheets from the clothes you wear. In the dark colors, separate t-shirts and jeans from lighter weight items like blouses or shirts.
- Washing by fabric type allows you to use different water temperatures and keeps drying cycles simple.
- Check that all pockets are empty. Especially tissue paper, pens, wallets and cell phones!
- If you want to keep the shape of your clothes ... close all zippers and buttons.
- Unless your clothes are caked with dirt and heavily stained, wash using cold water. This helps preserve the colour.
- Bed linens and towels if washed at the highest temperature tends to be harsh on the fabric – if you must, luke warm is ok, but cold is easiest on the fabric.
- Depending on the washing machine, soap can be put in first or after the clothes. Some machines have a special place to put the soap in. If the

machine doesn't have a special place, put the soap into the washing machine before putting your laundry in. This will help prevent soap stains.

- If you need to go to a Laundromat, bring your soap with you. Buying those little packages is expensive.
- More soap *doesn't necessarily mean* your clothes will be cleaner.
- Load items one at a time, making sure they are not in a wad. To protect fabric finishes and reduce the "washed out" look, turn knitted items, corduroy, textured fabric and sweatshirts inside out.
- If you are washing brand new jeans, 1/8 of a cup of salt in the washing machine will "set" the color more permanently.
- Program your phone or laptop for 25 minutes so you don't forget about your washing.

Drying your laundry

- You can save money by drying your clothes on a clothesline - and the added benefit is they will smell sooooo fresh.
- If using a dryer, put in a dry towel with your washed laundry - this helps dry them quicker. *Take your clothes out immediately after drying and hang them up - they will look great and hardly wrinkled.*

Stain Removal: Everything you would ever want to know about stain removal:

laundry.about.com/od/stainremoval/a/stainsaz.htm

Ironing/Steaming: For that extra nice look ... get rid of the wrinkles. Both an iron and steamer work great but the steamer is faster.

Household Cleaning Supplies

- LEMON JUICE - Removes grease from mirrors and tables;
- WHITE VINEGAR (mix with water) - Removes grease, prevents mould formation, cleans windows and floors;
- TABLE SALT - Disinfects and scours;
- SODIUM BICARBONATE (Baking Soda) - Scours, cleanses, deodorizes, removes spots, softens fabric and unclogs drains when mixed with vinegar (great for the fridge);
- Paper towels/rags/sponge;
- Dish detergent;

- Bar of soap;
- Broom and dust pan;
- Garbage bags;
- Laundry detergent;
- Fabric softener (sheets);
- Mop & water bucket;

Tips for Keeping your Place Clean & Tidy

- Pick any day/evening of the week to do your cleaning and try to stick to it.
- Don't put things down** – put them away.
- Do up your dishes after you have eaten.
- Keep shoes at the door;
- Once a week:
 - Dust;
 - Vacuum;
 - Wash the Floors;
 - Clean the toilet and inside and out;
 - Scrub the bath-tub
- Change your bed sheets at least once every two weeks
- Steam clean your rugs and sofa at least once a year

Don't be Trashy – Recycle!

Recycling is one of the best ways for you to have a positive impact on the world in which we live. Recycling is important to both the natural environment and us.

All of the following are considered recyclable. It depends on where you live - what is picked up.

- Polycoated containers (milk and milk substitute cartons, drink/soup/juice boxes, gable top containers)
- Rigid plastic packaging from consumer goods, food (e.g. salads, baked goods), empty CD/DVD/VHS protective cases

- ❑ Rigid plastic containers, including milk jugs, yogurt and margarine containers, shampoo/liquid soap bottles, cleaning product containers, pill/vitamin bottles, clean plant pots
- ❑ Plastic and metal lids (including coffee and beverage lids)
- ❑ Glass bottles and jars
- ❑ Aluminum and tin cans
- ❑ Foil and foil plates (no food residue)
- ❑ **No plastic bags, Styrofoam or batteries.**

Note: You can in fact recycle plastic bags – just don't put them in the Blue Box take them to any large grocery store. Plastic bags are not accepted by recycling companies, because they get wrapped up in the machinery and cause shut-downs at the recycle plant.

Note: Why not batteries? Most batteries contain trace amounts of mercury and other potentially toxic stuff.

Hazardous Household Waste

The average home uses more than 20 pounds of hazardous household waste each year.

Toilet cleaners, tub and tile cleaners, oven cleaners, and bleach. Some typical chemicals found in most cleaners include sodium hydroxide, hydrochloric acid, butylcellosolve (2-butoxyethanol), formaldehyde, bleach (sodium hypochlorite), ammonia, acid, petroleum distillates, sulphuric acid, lye (potassium hydroxide), and morpholine.



Substances in cleaning agents can cause nausea, vomiting, inflammation and burning of the eyes, nose, throat, and respiratory system, and are linked with neurological, liver and kidney damage, blindness, asthma, cancer and poisonings. Be safe, if you are going to use heavy duty cleaners, wear gloves.

A healthy diet gives you energy and helps you feel good. Eating well can be tough on a tight budget, but if you plan your meals, you can make them healthy. Here are some tips to help you choose the best foods for your health and your wallet.

Check out Canada's Food Guide www.hc-sc.gc.ca/fn-an/food-guide-aliment/index-eng.php for lots of information on healthy eating. Healthy eating means eating

- regular meals,
- a variety of foods from each food group, and
- the right amount of food so you don't feel too hungry or too full.

Using the Nutrition Facts table found on food labels: The Nutrition Facts table tells you the amount of different nutrients, like fat, protein, and fibre, found in that food. Learn how to use a Nutrition Facts table with the Health Canada Nutrition Labelling tools www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/cons/dv-vq/interact-eng.php. For foods without labels like fresh meat, poultry and fish, or vegetables and fruit, you can search for nutrition information at www.eatwise.ca/.

Watch out for too much sodium and sugar! Two ingredients that can make foods less healthy. Sodium is found in salt, which is added to lots of foods. Foods high in sodium include: chips, crackers, pretzels, pepperoni sticks, and spreadable cheese. www.healthyfamiliesbc.ca/sodium-sense Choose lower sodium varieties of these foods, or limit how often you eat them.

Sugar is also added to many foods like desserts, baked goods and condiments, and it's really high in sugary drinks. Sugary drinks include: pop, fruit drink, punch or beverage, energy drinks, iced tea, lemonade, and blended coffee or tea drinks.

www.healthyfamiliesbc.ca/home/articles/sugary-drinks-how-much-sugar-are-you-drinking When you're choosing drinks, pick ones that are lowest in sugar. Better yet, choose the healthiest ones that have no added sugar: water or milk.

Learn how to cook - Cooking meals from "scratch" is healthier and cheaper than relying on convenience or fast foods. Consider joining a community kitchen to learn cooking skills. Maybe there are cooking classes in your community. For simple recipes look on YouTube.

Plan what you need to buy, so you can plan what you have to spend. Eating healthy is easier and cheaper if you plan your meals. When you plan the meals you want to make and make a list before you go grocery shopping, you will:

- know which foods to buy when you're at the store,

- stay within your food budget, and
- be less likely to buy things you don't need—which can really blow your budget.

Go to the *Healthy Families BC* website to watch videos on how to plan meals and how to make the best choices in the grocery store

www.healthyfamiliesbc.ca/home/articles/topic/grocery-shopping.

The *Health Canada* website has tips on how to grocery shop www.hc-sc.gc.ca/fn-an/food-guide-aliment/using-utiliser/shopping-epicerie-eng.php and how to plan meals www.hc-sc.gc.ca/fn-an/food-guide-aliment/using-utiliser/plan-eng.php.

The *Healthy Canadians* website includes plenty of healthy eating, meal planning and cooking ideas healthycanadians.gc.ca/eating-nutrition/healthy-eating-saine-alimentation/index-eng.php.

Meal plan budgeting www.healthyfamiliesbc.ca/home/blog/eating-cheap or *Healthy Eating Cheap and Easy* for quick tips on meal planning, grocery shopping, recipes and food ideas

www.health.gov.bc.ca/library/publications/year/2002/HealthyEatingdoc.pdf.

Some good handouts to help you make budget-friendly food choices can be found at www.eatrightontario.ca/en/Articles/Budget/Food-choices-when-money-is-tight---Budget-friendly.aspx.

Healthy eating plus physical activity go hand in hand: Being physically active for at least 30 minutes per day plus eating right keeps you energized and strong and helps you maintain a healthy body weight. Physical activity and a healthy diet help your immune system to fight off bugs so you don't get sick. A healthy lifestyle also gives you the energy to manage stress. This helps release tension and actually helps you sleep better, too!

To give you some ideas for what kinds of activity to do and for how long check out www.csep.ca/CMFiles/Guidelines/CSEP_PAGuidelines_adults_en.pdf and www.phac-aspc.gc.ca/hp-ps/hl-mvs/pa-ap/04paap-eng.php.

For more information on physical activity, go to the Physical Activity Line www.physicalactivityline.com/.

Tips for Grocery Shopping

- Start learning about what and how to buy before you move out. Adults have been buying groceries for a long time and they know how to get the best deals.
- Make a shopping list - and stick to it when you shop.
- Try not to shop when you are hungry - have something to eat before you go.
- Most of what you need for good nutrition is in the outside aisles of the grocery store.
- The most expensive stuff is usually at eye level ... look above and below to find the cheaper brands.
- The store brand is often less expensive.
- Coupons from the newspaper can help you cut costs.
- Buy day old bread and keep it in the fridge or freezer so it doesn't go stale.
- Check the "best before" labels.
- **SECRET!** Read the fine print - often the large sticker sale price is more expensive than another brand that not on sale. Use the calculator on your cell phone if you have one to compare because sizes are often different for this reason. Compare nutritional values and try to pick the brand that is the healthiest (lower in saturated fats, sugar and sodium)

Keep your foods fresh and safe.

Some foods carry bacteria on them, so cooking and storing foods properly means your food also stays safe. Keep cold foods cold by putting them in the fridge as soon as you get home. Keep hot foods hot by serving them right after they're cooked. If there are any leftovers, put them in the fridge right away. For more information on food storage, go here www.healthyfamiliesbc.ca/home/articles/food-safety-%E2%80%93-store-it-right.

Depending on what you make for your meals, Health Canada has lots of food safety tips to help you keep your food safe. To learn about how foods should be cooked and stored go to www.hc-sc.gc.ca/fn-an/securit/kitchen-cuisine/index-eng.php.

You can also learn how to "Be Food Safe" using this website www.befoodsafe.ca/en-home.asp

Healthy Home Eating Tips

- If you wake up one morning and see a slice of pizza left on the counter over from last night, it is a good idea to throw it out and have something else instead. Once out for two hours, the pizza begins growing bacteria.....gross! And be sure to keep your refrigerator at 4.4° C (40°F) or colder.
- Make sure you cook food thoroughly. Beef, veal, and lamb: 63 °C (145 °F). Pork and ground beef: 71 °C (160 °F). Poultry: 74 °C (165 °F).
- Don't try to hard-boil eggs in the microwave - they'll explode and possibly cause injury.
- Use a kettle for heating water. Putting water in the microwave causes it to overheat, and it can explode out of the cup once taken out. Possibly directly into your face.
- Keep appliances as far away from the sink to avoid an unwanted shock, literally.
- Dull knives can slip and leave you with a nasty cut, invest in a sharpener, and never try to catch a falling knife.
- Use wood cutting boards. Studies have shown that plastic cutting boards, with their cracks and crevices from use, encourage bacteria growth and salmonella poisoning.
- Beware of the plastics in your kitchen, from bottled water to plastic storage containers. Chemicals from plastic can leach into your food and drink. Replace plastic containers with glass, ceramic or stainless-steel storage containers.
- The sponge may be the dirtiest tool in your kitchen you are using to keep your kitchen "clean." Sponges are bacterial incubators.
- Reduce waste by composting. Not easy when you live in an apartment. Composting is the collection of food scraps, garden or grass clippings, weeds and other organic matter being decomposed and returned to the earth.
- Non-stick cookware (Teflon) - replace it with stainless steel, cast iron, copper and glass. Chemicals in Teflon have been linked to the production of hazardous fumes at high temps that will kill a bird if it's in the same room.
- Baking soda is great! It neutralizes and buffers either an acidic or an alkaline substance. You can use it in the refrigerator to neutralize acidic odors & use it to maintain a neutral pH for laundry water, which boosts your detergent's power.

Recipes (Easy)

Omelets

1. Crack 2 eggs (large or extra-large) into zip lock bag and shake to combine them.
2. Cut-up into small portions things like cheese, ham, bacon, onion, green pepper, tomato,
3. Throw it into the bag
4. Place the bags into rolling, boiling water for exactly 13 minutes.
5. Open the bags and the omelet will roll out easily.

Shake and Bake Chicken

Ingredients

- Chicken
- Shake and Bake
- Goes great with RICE (one cup of rice to two cups of water)

Preparation

- Read the Shake & Bake box
- If you use a cookie sheet, cover with a piece of aluminum foil to make cleaning easier.

Super-Easy Microwave Peanut Butter Fudge

Ingredients

- 1 (16 ounce) can vanilla frosting
- 1 (18 ounce) jar [peanut butter](#)

Directions:

1. Empty entire jar of peanut butter in a mixing bowl.
2. Heat vanilla frosting in its container (make sure you pull off all the foil lining) in microwave for about 60 seconds or until completely melted.
3. Pour the melted frosting in the bowl with the peanut butter and mix well.
4. Quickly pour the mixture into a 9x13 pan, allow fudge to set!

- No Bake Oatmeal Cookie Balls - <http://www.tasteandtellblog.com/no-bake-oatmeal-cookie-balls/>
- 5 minute dinners: <http://www.cloverleaf.ca/en/recipes/tag/take5/>
- Microwave Chocolate Cake in a Mug (5 minutes to make)
<http://www.groupprecipes.com/72684/microwave-cake-in-a-coffee-mug.html>
- 20 Meals in 20 Minutes - <http://family.go.com/food/pkg-quick-easy-recipes/20-minute-recipes-pg/view-all/>
- www.allrecipes.com
- www.joyofbaking.com

HEALTH

Health Clinics

If you need something looked at quickly you can use a walk-in clinic. If it's an emergency, you can go to Emergency at the hospital. They are open 24 hours a day.



Eligible First Nations Children & Youth



Health Canada provides eligible Inuit and First Nations people with a range of medically necessary health-related goods and services when not covered through private insurance plans or provincial/territorial health and social programs.

[Non-Insured Health Benefits](#) (NIHB) include prescription drugs, over-the-counter medication, medical supplies and equipment, short-term crisis counselling, dental care, vision care, and medical transportation.

Health Care Services

In BC, medically required health costs are covered by the Provincial government. Your BC Services Card or CareCard is your ticket to this health care. You will need your personal health number when you visit a doctor or go to Emergency at the hospital.

To help cover the costs of health care, there is a monthly MSP premium fee for everyone eligible for health care. The basic monthly rate for one person is over \$65 (see MSP when you turn 19 for additional information).

If you are in care or a youth agreement, you can get the following services:

- Medically required services provided by a physician, or a specialist (such as a surgeon, anesthetist, psychiatrist or ophthalmologist when referred by a physician);
- Maternity care;
- Diagnostic services, including x-rays and laboratory services, provided at approved diagnostic facilities when ordered by a registered physician, podiatrist, dental surgeon or oral surgeon;
- Dental and oral surgery, when medically required to be performed in hospital; and,
- Medically required eye exams

Check with your social worker, as you may also be able to receive up to a total of 10 visits per year for any combination of the following therapies: physiotherapy,

chiropractic, naturopathy, massage therapy and non-surgical podiatry services. MSP contributes about \$23 for each visit.

Pacific Blue cross processes all dental claims on behalf of MCFD youth. Dental coverage is available to a maximum of \$700/year and needs to be approved in advance. If dental treatment is expected to exceed \$700, an exemption must be requested in advance. Unless you will be participating in the Agreements with Young Adults program, when you turn 19 – your dental and extended health coverage will stop. This means that you will have to pay yourself. If you are working, most companies offer a benefit package that includes dental and extended health.

Medical Services Plan (MSP) before you turn 19 (**IMPORTANT!**)

1. Your social worker knows your Personal Health Number.
2. When you turn 18½ years old, with the support of your social worker, you should apply for:
 - a. Medical Services Plan (MSP) Regular Premium Assistance;
 - b. Fair PharmaCare in preparation for when you turn 19;
 - c. A BC Services Card at any ICBC driver licensing office; and,
 - d. Complete your income tax return.
3. At age 18½ years old, go to any [ICBC driver licensing office](#) in person with primary and secondary ID to get your BC Services Card (see Table of Contents for description of Primary and Secondary ID).
 - a. *If you hold a current driver's licence, please wait until you receive a notification from ICBC when it is time to renew your driver's licence.* You can apply for your BC Services Card and renew enrolment in MSP at this time.
4. You need to show your CareCard or BC Services Card for medical services.
5. You will have your own MSP account effective the first day of the month after your 19th birthday.

For more information about MSP, link to the Ministry of Health site at

<http://www.health.gov.bc.ca/insurance/bcresidents.html>

For information about getting the new [BC Services Card](#) go to [BCServicesCard.ca](#)

What happens if I don't apply for these things?

1. Failure to apply for Regular Premium Assistance means that you will be billed at the full rate each month for health premiums.
2. Failure to apply for Fair PharmaCare means that you will likely have to pay the full price for your eligible prescription drugs.
3. Failure to file your income taxes means that the Ministry of Health won't be able to determine whether you are eligible for Fair PharmaCare or Regular Premium Assistance.

If you are in care or a Youth Agreement, with the support of your social worker, you should apply for [Regular Premium Assistance](#) and [Fair PharmaCare](#) when you are 18 ½ years old. Also, when you are 18 ½ years old you are advised to get your BC Services Card from any [ICBC driver licensing office](#).

You will have your own MSP account effective the first day of the month after your 19th birthday.

If you are not in care and under your parent(s)' MSP and attending school, you can continue to stay on their plan as a dependent. You will no longer be covered under your parent(s)' plan when you:

- marry or live together in a marriage like relationship;
- start full-time employment; or,
- turn 19 years of age (unless you are going to school, in which case, your parent's plan can cover you up to age 25)

NOTE: You should still file an income tax return in the year you turn 18 so that you receive the GST credit when you turn 19 and you should definitely file an income tax return if you worked that year. Filing a tax return is also required for ongoing Fair PharmaCare coverage (see next section).

Whether you are in care or have a youth agreement, you will automatically have six months of premium-free coverage (you won't have to pay). After the initial six months, Regular Premium Assistance will NOT be provided unless you complete an application and an income tax return has been filed showing that your net earnings qualify you for Regular Premium Assistance.

Any time that you require medical services (like seeing a doctor) you will need to show your BC Services Card.

CareCards will continue to be accepted until February 2018.

Regular Premium Assistance Application Form:
<https://www.health.gov.bc.ca/exforms/msp/119fil.pdf>

Fair PharmaCare

BC PharmaCare will help you with the cost of eligible prescription drugs and certain medical supplies. You must first be enrolled in the [Medical Services Plan of BC](#) (MSP).

Most BC residents are covered under Fair PharmaCare; a plan that provides assistance based on income and requires a one-time registration. Assistance is available to single people or to families.

If you have not filed a tax return for an earlier year, you can state your income on an Affidavit form. For future years, you will need to complete a tax return each year.

To obtain an Affidavit form, please call Health Insurance BC using the contact information below.

Be sure to register. If you have filed a tax return, you can register for Fair PharmaCare online at <https://pharmacare.moh.hnet.bc.ca/>.

If not, register by calling Health Insurance BC. From Vancouver: 604-683-7151. From the rest of B.C.: call toll-free 1-800-663-7100.

Once you are eligible for Fair PharmaCare coverage, you pay only the eligible prescription and medical supply costs not covered by Fair PharmaCare. The Fair PharmaCare plan covers 70% of eligible costs after you meet an annual deductible. After you reach your family maximum, the plan pays 100% of eligible costs. If you have low net income, you may not need to meet a deductible.

How to Get a Doctor

It is a good idea to have a regular doctor. Finding a doctor you feel comfortable with may take some time. To begin, ask people you trust who their doctor is, or phone a clinic or hospital in your area and ask them to refer you to a doctor. You can ask for a male or female doctor. You can also access the "Physicians Directory" @ www.cpsbc.ca/node/216, an online resource that provides information about individual physicians, including contact information and qualifications, and whether or not they are accepting new patients (family physicians only).



If they are taking new patients, just phone and set up an appointment to meet. Have some health questions ready when you meet your doctor. Check the doctor out! Do you feel ok with him or her? Does the doctor give you clear info? If not, you might want to keep looking until you find a doctor you're comfortable with.

How to Get a Dentist

No one likes to go to the dentist.

As a child/youth in care, regular check-ups and cleaning is paid for. You should try and see a dentist about every six months unless the dentist tells you otherwise. You will usually have a maximum of about \$700/year available to have work done (e.g., cavities filled).



Orthodontics (putting braces on your teeth to ensure they are straight) may be covered but will need prior approval.

If you haven't seen a dentist lately ... make sure you see one before you turn 19! Unless you have benefits like "dental" with an employer, you are going to be very shocked how much you have to pay out of your own pocket to have dental work done.

Many employers will offer a "benefit package" that will help cover dental costs. This will usually kick in after you have worked for them for at least three months.

Talk to your friends and ask them if they know of a good dentist - or check around in your neighbourhood and see if there is a dentist nearby. Or ... check this link and you will find dentists who are taking new patients.

www.bcdental.org/Find_a_Dentist/DentistSearch.aspx

"Teeth are always in style."

— Dr. Seuss

A few words about SEX

You read about it, see it on TV, and hear about it from your friends.

What is most important is when you do decide it is ok to have sex, you feel good about that decision and you protect yourself. You should never feel you are being pressured or that you are being used and you should always be able to use a condom.

If you are not sure about your sexuality --- don't worry about it...Others also struggle with this. Click this link if you want to learn more.

<http://www.healthlinkbc.ca/kb/content/special/te7288.html>

People express their sexuality in different ways. You can be attracted to the opposite sex, to the same sex or feel that you are the opposite sex. Words such as heterosexual, bi-sexual, gay, lesbian, transgendered and "two spirited" are meant to describe *one's* gender identify. Whatever your gender identity is, no-one has the right to discriminate against you. Whatever you may feel your sexual orientation or gender

identity is - you have the right to feel loved and to love and in doing so - to feel safe.

When you do decide to have sex, you should know how to protect yourself against unwanted pregnancy or sexually transmitted infection (STI).

Safe Sex and Sexually transmitted infections (STIS)

A Sexually Transmitted Infection (STI) is any disease you get from having unprotected sex with a person who has the infection. But there are also *some* STI's you can get if you share tattooing, piercing or drug use equipment, such as HIV and/or Hepatitis B & C infections.

It's important to protect yourself by always using a condom and not sharing drug use equipment.

Smartest Resource: <http://smartsexresource.com/>

How Much Do You Know About STIs?

1. Genital Herpes: Genital Herpes is a virus that causes painful sores around the genitals. It is usually spread by skin to skin contact with the sore during sex. Oral sex can also cause genital herpes. This virus can be spread when there are no obvious sores.

<http://www.healthlinkbc.ca/healthfiles/hfile08d.stm>

2. Crabs, Scabies or Pubic Lice: Pubic lice (or crabs) and scabies are spread by skin-to-skin contact with someone who has lice. Pubic lice cannot jump or fly. Lice are most

You don't have to have sex. Many people wait until they are married.

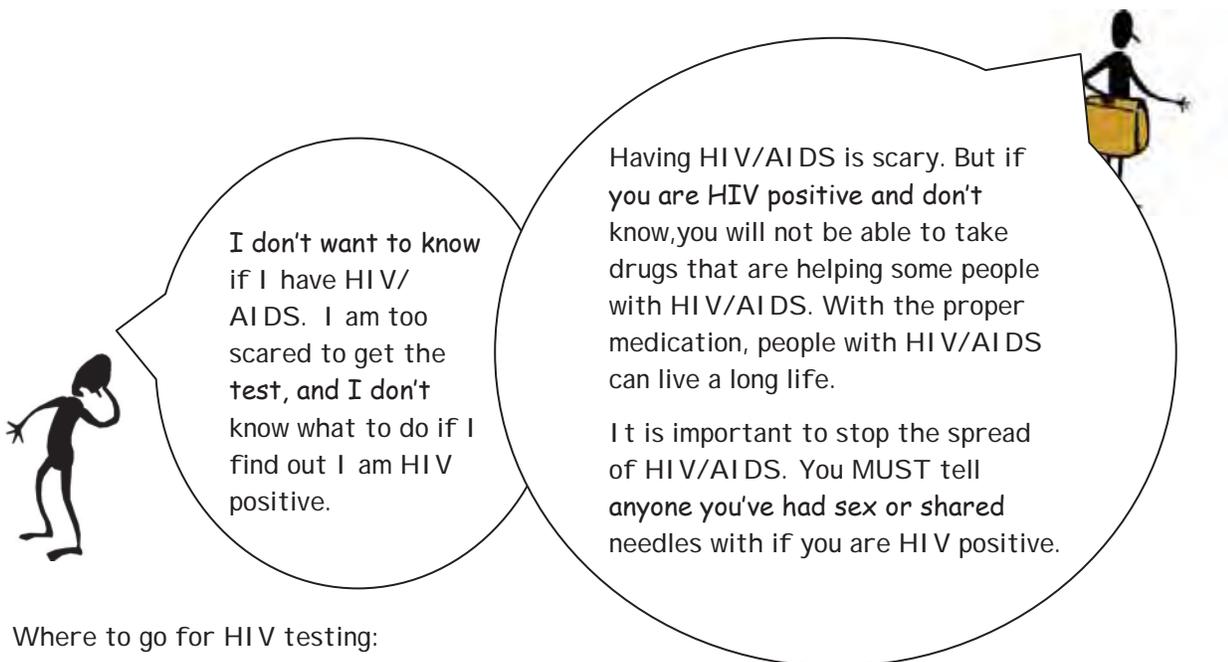
A Surrey Youth

often spread through sexual contact and may spread by sharing clothing, bedding or towels of someone who has pubic lice. Condoms do not prevent the spread of pubic lice. This can be treated with special creams, lotions or shampoos and are available at most drug stores. <http://www.healthlinkbc.ca/healthfiles/hfile08h.stm>

3. HIV/AIDS: The human immunodeficiency virus (HIV): AIDS spreads through sharing body fluids such as blood, semen, or vaginal fluids with a person who is infected. This can occur during sexual contact or when sharing drug use-equipment. A pregnant woman can give HIV to her unborn baby, and mothers can give it to their babies through breast feeding. HIV is the first stage of the virus that may develop into AIDS. A doctor or medical practitioner can order a simple blood test to determine if you have HIV. When someone has HIV/AIDS, that person is "HIV positive."

HIV is the first stage of the virus that later turns into AIDS. A doctor or medical practitioner can order a simple blood test to determine if you have HIV/AIDS.

<http://www.healthlinkbc.ca/healthfiles/hfile08m.stm>



Where to go for HIV testing:

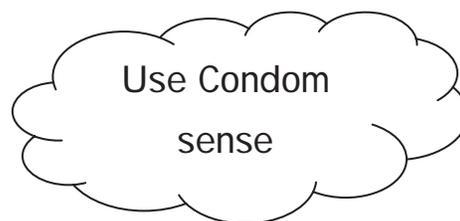
<http://www.hiv101.ca/Resources/TestingLocations.aspx>

4. Pelvic Inflammatory Disease (PID): PID is an infection of the upper reproductive organs in women, and it is often sexually transmitted. Any woman can get PID. Those who are at higher risk of getting PID include younger women, women who have unprotected sex with someone with a sexually transmitted infection such as chlamydia or gonorrhea, and women who have had PID infection before. Women who have PID often do not have any symptoms. PID can result in long term pelvic pain and infertility.

<http://www.healthlinkbc.ca/healthfiles/hfile08c.stm>.

5. Hepatitis B: Hepatitis B is a liver disease caused by infection with the hepatitis B virus. This causes the liver to become swollen and inflamed and can result in permanent damage, such as scarring or liver cancer. The hepatitis B virus is highly contagious and can be spread through blood and bodily fluids such as blood, semen and possibly saliva. You cannot get it from casual contact such as hugging, kissing, sneezing, coughing, or sharing food or drinks. It is often spread from person to person through intravenous drug use or sexual contact. You can have Hepatitis B and not know, but you can still give it to other people. Hepatitis B can be prevented by a vaccination.

<http://www.healthlinkbc.ca/kb/content/major/hw40968.html#tp13734>



6. Gonorrhoea and Syphilis: These two diseases can be very serious. They used to be called VD or venereal disease. Syphilis can show up as a painless sore (looking like a pimple) on the genitals, but can also appear on the lips, breast or anus. A person can have syphilis and not know it. If untreated, it will increase and can cause damage to the brain, heart and other organs in the body. A person with gonorrhoea may or may not have symptoms. But even without symptoms, the infection passes easily from one person to another. Untreated gonorrhoea can lead to complications such as PID in women and infertility in men. Syphilis and Gonorrhoea can be spread to the baby during the birthing process, so it's important to get tested and treated early.

<http://www.healthlinkbc.ca/healthfiles/hfile08a.stm>

7. Chlamydia: Chlamydia is one of the most common STI's. It can spread silently and cause infertility in women (the inability to have children). It can give an unborn child infection of the eyes or lungs. The infection may occur in the opening to the uterus, also known as the cervix, the fallopian tubes, the urethra, which is the tube that carries urine from the bladder, and the rectum. An infected person can transmit chlamydia any time, whether or not symptoms are present. An infected person is contagious until he or she has been treated. <http://www.healthlinkbc.ca/healthfiles/hfile08l.stm>

8. Human Papillomavirus (HPV) and Genital Warts: Genital warts are caused by infection from HPV and are spread by having sex with someone who is infected with HPV, whether they have visible warts or not. Genital warts are growths on or around the genitals or anal area. They sometimes look like a small cauliflower or they may be flat and hard to see. You can be infected with the virus but not have any visible warts. Treatment for genital warts does not get rid of the HPV infection, and transmission of

the infection can still occur using a latex or polyurethane condom will provide some protection, but only to the skin covered by the condom. Girls born in 1994 or later can get vaccinated to protect them against HPV. The vaccine is free and available through the school system.

<http://www.healthlinkbc.ca/healthfiles/hfile08k.stm>

9. Hepatitis C: Hepatitis C is a disease caused by a virus that infects the liver. It is spread by contact with an infected person's blood. You can get Hepatitis C if you share needles for piercing, tattooing or drug use. . You cannot get hepatitis C from casual contact such as hugging, kissing, sneezing, coughing, or sharing food or drink. Most people who have hepatitis C infection feel well, have no symptoms, and do not know they have the disease, but the virus can cause liver damage, cancer and longstanding illness.

<http://www.healthlinkbc.ca/healthfiles/hfile40a.stm>

To completely avoid getting STI's:

- ◆ Abstain from having sex or intimate body contact.

To Decrease Your Chances Of Getting An STI :

- ◆ Use condom sense - always use a latex or polyurethane condom.
- ◆ Never share needles for drugs, tattoos or body piercing.
- ◆ Limit the number of sexual partners you have.
- ◆ Have yourself and your partner tested for STI's often
- ◆ Drugs and alcohol impair judgment and make unsafe sex more likely.

<http://www.healthlinkbc.ca/kb/content/special/tw9064.html>

Honey, I have had all the tests..
I won't give you anything



REMEMBER: Not everything can be tested for!

Possible symptoms of STI's:

- 1 Sores on the genitals, followed by a rash spreading all over the body.
- 2 Discharge from the vagina or penis.
- 3 Burning feeling when peeing.
- 4 No symptoms at all (now that's comforting!!)

If you are worried that you may have an STI - See a Doctor or go to a public health unit.

For More Info: www.smartsexresource.com or <http://www.healthlinkbc.ca/>

What to do if

Are you feeling worried or upset because of a sexual experience you had and don't know what to do? If your situation is similar to any of these, find out what your options are.

- [The condom broke](#)
- [We didn't use protection](#)
- [I'm worried I might have something](#)
- [I might be pregnant](#)
- [Someone I slept with is positive](#)
- [I blacked out last night](#)
- [I was forced to have sex](#)

Birth Control

TIP: If you don't know the different types of birth control or need more information ... remember you can call "Options for Sexual Health" at 1-800-sex-sense

Try this little quiz. Draw a line from each word to the percent chance pregnancy can occur. What percentage of people do you think will become pregnant using these forms of birth control?

Birth control method	Chance of becoming pregnant
1 Condom	3%
2 Diaphragm	.01%
3 Pill	0%
4 Sponge	85%
5 I.U.D.	12%
6 Chance	28%
7 Withdrawal	24%
8 Spermicides	3%
9 Abstinence (Example)	21%
10 Rhythm method	18%
11 Implant Contraceptive	18%



The answers are at the bottom of the page. How did you do?³

Remember! You Have a Choice! You don't have to have sex - this is the best form of birth control.

IMPORTANT

The morning-after pill can be used as a form of birth control if you have unprotected sex or if a condom breaks. In BC, the morning after pill is either Plan B or NorLevo. The

³ Answers:

1) 12%; 2) 18%; 3) 3%; 4) 28%; 5) 3%; 6) 85%; 7) 18%; 8) 21%; 9) 0%; 10) 24%; 11) .01%

morning after pill works best if taken within 5 days of heterosexual sexual intercourse. If you have had unprotected sex or the condom broke, you can ask about the morning-after pill at your doctor's office, the local birth control/health clinic or the pharmacy.

What do I need to know about Pregnancy?

Pregnancy can occur:

- ◆ the first time you have sex
- ◆ if you have sex without using birth control
- ◆ if birth control or contraceptives fails

The first signs of pregnancy are usually a missed period ... but you can become pregnant if your body is preparing to start your period and you have never had one.

Contact your doctor, public health office or the birth control clinic in your area to get information about the different forms of birth control and other questions you may have.

Do You Need A Pregnancy Test???

A pregnancy test kit can be obtained at the drug store if you have the money. If you cannot afford a pregnancy test, you can have it done through your doctor or local birth control/health clinic.

What to Do If Your Pregnancy Test Is Positive



If your pregnancy test is positive and you were not planning on having a baby, you will have to decide what to do. It may be wise to talk with a trusted adult, a counsellor at the local birth control/health clinic, a public health nurse or have your doctor refer you. It is important you get the proper support and care at this time.

Pregnancy options: <http://youthinbc.com/category/resources/sex-sexual-health/>



INCOME ASSISTANCE

After you turn 19 you may need some help with living expenses, as well as help finding work. The Ministry of Social Development and Social Innovation offers programs, services and financial assistance (\$) that can help you meet daily needs, get training or education, or find a job.

If you are in care or a Youth Agreement, and approaching the age of 19 years old, talk to your social worker if it does not look like you will be able to support yourself. Your Social Worker can help you make the necessary connections to an Employment and Assistance Worker.

You may be eligible to get assistance if you are:

- ☐ ♦ not working, or earning very little
- ☐ ♦ waiting for other income, such as employment insurance
- ☐ ♦ unable to find work

People who can work are expected to look for work before they receive assistance and, where able, people receiving income assistance are expected to complete an “Employment Plan” (EP), look for work, and participate in employment programs.

If it is determined you have an immediate need, your eligibility will be determined on an urgent basis.

Hardship assistance may be issued in some situations when an individual is not eligible for income assistance. See the Self Service Assessment and Application for more information at: <https://www.iaselfserve.gov.bc.ca/>.



You can also have up to two thousand dollars, a motor vehicle (where the value does not exceed \$10,000) and own your own home to be eligible for assistance.

How to Apply

- Go to the Self Service Assessment and Application at <https://www.iaselfserve.gov.bc.ca/HomePage.aspx> or
- Call toll free 1-866-866-0800 to set up an appointment for an eligibility interview. Interviews are typically scheduled three weeks after your initial enquiry;
- Obtain a copy of the Work Search Guidelines and the Work Search Activities Record;
- Prior to the eligibility interview, you will be expected to conduct a three-week work search (unless exempt) and complete an orientation session;
- Attend an interview with an employment and assistance worker to determine your eligibility.

What is the Five or Three-Week Work Search?

Prior to the eligibility interview date, you are expected to look for employment. New applicants (those who have never been in receipt of income assistance or disability assistance before), are required to show that they have completed a satisfactory five week work search. *Former recipients* who have only ever received hardship assistance are required to complete a five-week work search.

Former recipients who have previously received either income or disability assistance and who are now reapplying for assistance are required to complete or demonstrate that they have completed a satisfactory work search lasting three weeks.

In cases where either the applicant or spouse is a former recipient, the length of the work search required for both is three weeks.

You are exempt from the work search if you have reached 65 years of age, if you are fleeing from an abusive spouse, partner or relative, or if you or any person in your family unit has an immediate need for food, shelter or urgent medical attention or is a person with disabilities. <http://www.eia.gov.bc.ca/bcea/wsg/wsg.pdf>

What to bring to the Eligibility Interview

If you do not find employment during your work search period, and you return to the ministry for an eligibility interview, ministry staff will:

- verify the information you provide;
- determine your eligibility for income assistance;
- assess your readiness for employment; and,
- work with you to develop an Employment Plan.

You must bring: proof of your work search activities; a current résumé; a record of employers contacted; identification; and other documentation as required.

<http://www.eia.gov.bc.ca/bcea/EngChecklist.htm>

The application form is a legal document which lists your income, assets, family situation, and expenses. When you sign the form, you agree that all the information is correct. The ministry has legal authority to confirm the information you have given.



You may want to bring someone with you to your appointment (such as a school counsellor or youth worker). This person can help you understand the process if it feels scary.

Employment Programs

Employment programs help those on income assistance to find and keep jobs. There are some exceptions to the requirement to seek work while on assistance, such as a single parent with a child under the age of three, or a person with a disability or persistent multiple barriers. If you feel you should be temporarily exempt from being required to seek work, talk to your employment and assistance worker. For more information about EMPLOYMENT PROGRAMS check out the "JOBS" section in this booklet.

Other Assistance

As an income assistance recipient, you may be eligible for other forms of assistance including: <http://www.eia.gov.bc.ca/fs.htm>

- | | |
|--|--|
| <ul style="list-style-type: none">• Disability Assistance• Identification Fees• Damage deposit• Emergency Moving Assistance• Pre-Natal Supplement• Diet Assistance• Christmas Supplement• School Start-Up Supplement• Camp Fees for children | <ul style="list-style-type: none">• Crisis Supplement• Co-Operative Housing Association Share Purchase Supplement• Community Volunteer Supplement• Assistance with Transportation Costs for medical appointments, paternity testing and/or court attendance• Guide Animal Supplement |
|--|--|

Contact this Ministry by calling toll-free: **1-866-866-0800**

For more information on these programs visit the [Online Resource](#).

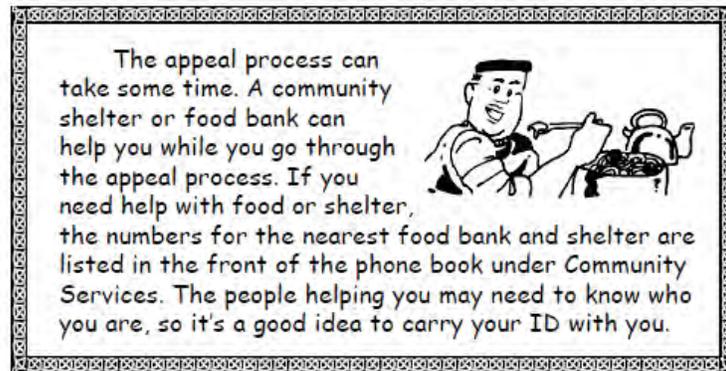
www.gov.bc.ca/meia/online_resource/

Appealing a Decision

You have the right to appeal a decision if:

- ❖ you apply for income assistance and don't get it
- ❖ a decision is made to give you fewer benefits
- ❖ you get cut off income assistance

Ask your worker for an Appeal Kit. The worker will fill out the first section, and tell you how the process works and how long things will take.



Are You Confused? Sometimes people mix up independent living, youth agreements and income assistance. Youth in care can be supported on "independent living". When in a Youth Agreement, the person is not in care but can receive supports. If your friend gets a different amount of money than you, it might be because they are in a different program.

Persons with Disability Assistance (PWD)

The official definition of a person with disabilities is that you must be at least 18 years of age with a severe physical or mental impairment that is expected to continue for at least two years. You may be restricted in your ability to perform daily living activities and may require assistance from another person, an assistive device or an assistance animal.

Your condition may include mental health disorders or illnesses/conditions that interfere with normal daily living.

If you believe that you would qualify or want to find out more, talk to your social worker. Your social worker can help you with the [PWD Designation Application form](#) (<http://www.eia.gov.bc.ca/forms/pdf/HR2883.pdf>) which is completed by you and your doctor.

The application form can be completed six months before you turn 19.

There is nothing to say that if you have a disability that you cannot work. In fact, the real goal is to help those with a disability to become the best they can be. To assist, there are a range of services to help with active participation in community, to help with any employment goals, and to help build skills and experience for other jobs or volunteer opportunities.

You are allowed to earn up to \$800 and not have your monthly allowance decreased.

Disability Tax Credit

If you are disabled, you can also apply for the [Disability Tax Credit](#) from the Federal Government. Having this tax credit will reduce the amount of taxes you would be required to pay to the Canada Revenue Agency (CRA).

Application for the Disability Tax Credit: <http://www.cra-arc.gc.ca/E/pbg/tf/t2201/t2201-fill-12e.pdf>

ALCOHOL & OTHER DRUGS

Not sure if you or someone you know has a problem? Try this little test.

YES	NO	Have you ever ridden in car driven by someone (including yourself) who was high or had been using alcohol or drugs?
YES	NO	Do you ever use alcohol or drugs to relax, feel better about yourself, or fit in?
YES	NO	Do you ever use alcohol or drugs while you are by yourself alone?
YES	NO	Do you ever forget things you did while using alcohol or drugs?
YES	NO	Do your family, caregiver or friends ever say you should cut down on your drinking or drug use?
YES	NO	Have you ever gotten into trouble while you were using alcohol or drugs?

If you answered YES to 2 or more questions, you may want to consider talking to someone. If you think you have a problem – then you might. The first step in moving forward in your life is realizing that there may be a problem. Many people with problematic substance use issues are in “denial” (not willing to admit there is a problem).

Denial is not a river in Egypt

For help or to talk to someone about drinking or drug use, you can phone 1-800-663-1441 to find drug and alcohol resources in your community. Someone will be on the other end of the line 24 hours a day. Supports are also available if you have experienced living in a family where alcoholism or drug abuse was an issue.

If you or your friends use drugs, it is important to learn how to reduce harm from drug use. Different kinds of drugs have different risks, depending on what they are, what form they come in and how you take them.

Harm reduction is an approach that focuses on the risks and consequences of substance use rather than on the use itself. Harm reduction accepts the fact that many people use substances and thinks that a drug-free society as an unrealistic and impractical way of addressing problematic substance use. Harm reduction philosophy views abstinence as only one potential strategy among many options that can help to reduce “harm”.

You can minimize the risks by learning about harm reduction tips for different drugs:

<http://carbc.ca/KnowledgetoAction/ToolsResources/PromotingSaferUse.aspx>

Some examples of harm reduction include: needle exchange programs; impaired driving prevention campaigns; safer sex practices; etc.

For more information go to <http://www.heretohelp.bc.ca/self-help-resources>

SELF ESTEEM

You can't touch it, but it affects how you feel. You can't see it, but it might be there when you look at yourself in the mirror. You can't hear it, but it's there when you talk about yourself or when you think about yourself.

Self-esteem is about liking yourself.

Sometimes it's easy to think about the parts of yourself you don't like, but try not to get stuck putting yourself down. You are a special person. It's worth reminding yourself that you bring some special things to the world and you really are important.

Self-esteem isn't about bragging, it's about getting to know what you are good at and not so good at. A lot of us think about how much we like other people or things, but don't really think much about whether we like ourselves.

It's not about thinking you're perfect, because nobody is perfect. Even if you think some other kids are good at everything, you can be sure they have things they're good at and things that are difficult for them.

The most important thing to know about self-esteem is that it means seeing yourself in a positive & accepting way - which means that it's the truth. So for example, if you know you're good at playing the piano but can't draw so well, you can still have great self-esteem!

So, take time to enjoy yourself. Celebrate when you have a success! Give yourself a pat on the back once in a while. You deserve it! Give yourself some credit! Look in the mirror and tell yourself you are a valued person!



Be Proud!!

http://kidshealth.org/kid/feeling/emotion/self_esteem.html



List four things you like about yourself (For example, things you've done for yourself or others, skills you have ... etc!).

- 1.
- 2.
- 3.
- 4.



STRESS

Stress is part of life. If you don't deal with it well, stress will make you sick and hurt your relationships. Here's a list of some things that might stress you out. Check the things that make you stressed, and add any others not in the list.

What Stresses You Out?

- Moving
- Getting a new job
- Losing your job
- Breaking up with a boy/girlfriend/partner
- Starting school
- Finishing school
- Starting something new
- Pain from the past
- Studying
- Exams
- Quitting a drug (coffee, cigarettes, alcohol, etc.)
- Dealing with your social worker
- Seeing a Police Officer
- Social gatherings
- Fear of responsibility
- Conflict with family
- Conflict with friends
- _____
- _____

Check out your mental wellbeing and get support for mental health challenges: www.mindcheck.ca

More About Stress

Some ways of dealing with stress don't work out well. If you get wasted, you might feel better for a while ... but when you get sober, you still have to deal with what's causing your stress. Getting drunk or high won't make the cause of your stress go away. And you might get new problems because of what you did when wasted!



Dealing with Stress

You can make choices about how to deal with stress. Here are some ways of coping. Check the ones that you use. Circle the ones you want to try.

- Get enough sleep
- Playing sports/exercising
 - Meditation
- Taking a deep breath (or two)
 - Going for a walk
- Talking with someone you trust
 - Starting a hobby
 - Playing music
 - Singing
- Spending time in the outdoors
 - Writing a journal
 - Doing something artistic
- Going to a support group (i.e. AA, women's group, men's group, parent's group)
 - Getting counselling
- Understanding the source of stress
- Changing things that cause stress (i.e. leave abusive relationship, start spending money wisely)

Dealing with Anger



Everybody gets angry.

What do you do with your anger? Do you hide it? Do you explode? It helps to express your anger in ways that don't hurt you or others. Here are some ideas for dealing with anger. Which ones do you use now?

- ❖ Understand why you are angry (this can include reasons from the past and present)
- ❖ Take a few deep breaths to help calm down
- ❖ Choose the right time to express your anger
- ❖ Let your anger out a bit at a time (so it doesn't explode all at once)
- ❖ Tell someone (as calmly as possible) when you are angry at them and why
- ❖ Express your anger through art or writing
- ❖ Scream at a tree (the tree can take it!)

COMMUNICATION

Are you a good listener? Can you express yourself clearly? Being able to communicate is really important. Read on for some useful info on listening and expressing yourself.



Listening

Listening is important because:

- Helps you to understand what others are saying;
- You can learn new information through listening.
- It's polite, and it helps you to get along with other people.
- Gives you an insight into other person's thoughts and their behaviour, and which in turn makes dealing with them easier. Sometimes just by listening you can help people reason with themselves and deal better with their emotions. And the most important of all it gives you other persons perspective of the problem or the situation.

Some people are naturally good listeners. Others have to work at it. Don't jump into trouble mouth!



It's hard to listen well when you're ...

- Talking
- Full of your own thoughts
- Full of your own feelings (i.e. sadness, anger)
- Too defensive (you don't like hearing what others have to say about you)

It's important to create some space so you can take in what the other person is saying.



Some Ways to Listen Better

- Don't think you already know what the person has to say.
- Pay attention to the person's body language.
- Look at the person in the eye (*this is not polite in some cultures).
- Repeat back what they say to make sure you heard right
- Take notes (this can help when you are getting important info).
- Tell someone if you couldn't hear or didn't understand what they said.
- Wait until the person has stopped talking before thinking of an answer.

"We can each refuse to tolerate language and actions meant to hurt or intimidate, whether directed at us or at others. We can each intervene when hurt happens. We can each say, "No. Not on my watch."

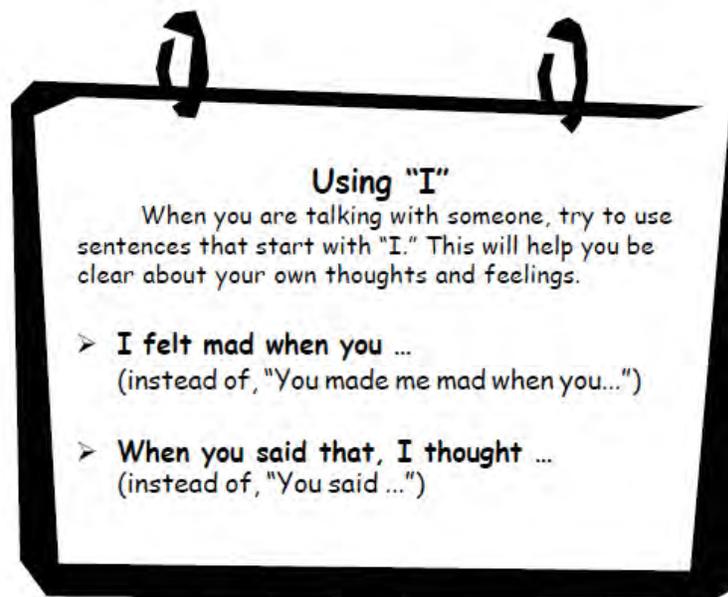
-[Safe Online Outreach Society](http://www.safeonlineoutreach.com/) (<http://www.safeonlineoutreach.com/>)

Expressing Yourself

Expressing your emotions is an important way of coping with stress. How you express yourself is an important part of dealing with people and building positive relationships. Here are some ways to help you get your point across.

- ❖ Take a moment to think first before you speak
- ❖ Be sober (you might think you're clear when you're wasted but ...)
- ❖ Get help from a someone you trust to sort out what you want to say
- ❖ Write down what you want to say
- ❖ Give someone a note or letter
- ❖ Get some practice public speaking (like in a youth group)
- ❖ Have friends who support your right to express yourself

***It's OK to keep your thoughts to yourself, especially if you don't trust someone enough to respect you.**



STICKING UP FOR YOURSELF

Sometimes you need to stick up for yourself. Others might treat you badly or not listen to what you have to say. They might try to talk you into things you don't want to do. Sticking up for yourself means letting other people know what you need and want. It means making up your own mind and choosing your own path.

Good Friends

- give each other freedom to be different
- listen to each other
- don't always need to agree
- aren't selfish – keep each other's interests in mind
- encourage each other to grow – even if it means growing apart



If "friends" don't fit this picture – why listen to them? Friendship is a two-way street. Are you being a good friend?

Peer Pressure

Sometimes friends or "would-be" friends might try to influence how you act or to get you to do something, it's called peer pressure. It's something everyone has to deal with – even adults.

Peers may try to get you to do something you don't want to do – or they can try to talk you out of doing something good for you.

It can be hard to do your own thing. Letting others push you around can lead to problems.

People give in to peer pressure because they want to be liked, to fit in, or because they worry that others might make fun of them if they don't go along with the group. Others go along because they are curious to try something new that others are doing. The idea that "everyone's doing it" can influence some kids to leave their better judgment, or their common sense, behind.



Philosophy Corner: People are not resistant to change – they are resistant to BEING changed.

Practice Saying NO!

Sometimes it's hard to say no.



No
thanks

Maybe it's because you want people to like you. But friends worth having will respect you when you say no. Help them understand you aren't putting them down when you say no. Be as firm as you need to!

Some Ways to say NO ...

- That's OK for you, but I'm not into it.
- Nope, I'm not going there because I
- No. I don't want to, please respect my decision.

You can also say no by staying away from bad situations. If you aren't there, nobody can pressure you.

Practice

to say "yes!"

Think of a
like to make - then

Saying YES!

Sometimes it's good

positive change you would

finish the sentence below.



Yes, I want to ...

Dealing with Conflict

Conflict is a reality of life. Be it with friends, other students, parents, teachers, the employer etc. It is unavoidable – however without it, people would not be challenged to think beyond their everyday, routine boundaries. Conflict helps us know more about the world around us, helps us become more mature and can help make us become more confident.

The three most destructive ways for dealing with conflict are:

- providing information that is not correct;
- emotion (like getting angry); and,
- defensiveness (only thinking you are right without really listening and understanding the other **person's** viewpoint).

How do you deal with conflict?

Tips on Healthy Ways to Deal with Conflict

- Take time out - go for a walk,
- Take a few deep breaths to help you relax
- Just listen and really try to understand **the other person's point of view.**
- Without judging the other person, say what you think or how you feel.
- Rather than just talking about the problem, suggest brainstorming ways to solve the conflict

Dating Violence

Dating violence is more than an occasional argument or bad mood. Everyone has bad days, and while they shouldn't be taking their mood out on other people, it happens. Dating violence is more than that. It's regular violent behaviour, often against a girlfriend or a boyfriend.

Dating violence can be more than just physical abuse (like hitting or shoving). It can also be verbal or emotional abuse. Insults, guilt trips, name calling, belittling, jealousy, pressure to be sexually active and isolation from friends/family could all be considered abuse when they happen regularly.

Every relationship has its problems, whether you're a teenager or adult. But no relationship should ever include violence or abuse – if it does, you need to **get help**.

For Information on Dating Violence or Domestic Violence go to <http://www.domesticviolencebc.ca/dvbc/where/index.page?>

GETTING HELP

[Click here to get numbers for people who can help.](#)

Being on your own doesn't mean you have to be alone. Everybody needs friends and people they can trust. Some people probably help you out in little ways, with a friendly smile or by asking how you are. Others might spend more time with you, helping you with troubles and encouraging you to grow and learn. Think of the people who help you out. Who are they?



- *Friends
- *Family/Foster Family
- *Elder
- *Youth workers
- *Teachers
- *Employer
- *Doctor
- *Counsellor
- *Coach
- *Religious or cultural leader
- *Others _____

Everybody needs a hand once in a while – it's OK to ask for help!



What Do You Need?

When you want to get help, it's really useful to know what you need. Sometimes everything is confusing. Take a bit of time to think about what you need.



- ✚ Food?
- ✚ Shelter?
- ✚ Clothes?
- ✚ Someone who will listen?
- ✚ Someone who will give advice?
- ✚ Information?
- ✚ Encouragement?
- ✚ Someone to stick up for you?
- ✚ Someone to have some fun with?
- ✚ A chance to blow off some steam?
- ✚ Connection with your culture?
- ✚ New skills?

□ _____?

If you want to get involved in counselling services, talk to your social worker, school counsellor or contact your local Child Youth Mental Health office.

http://www.mcf.gov.bc.ca/mental_health/pdf/offices_services.pdf

Having Supportive Adults in your life

Research shows that healthy and supportive relationships reduce stress and improve overall health and sense of well-being. Building a network of supportive friends, or even just one supportive relationship, can be vital to your wellbeing. A supportive adult is a caring, committed adult who can provide emotional support, advice, guidance and help you make the transition to responsible adulthood. Some examples of a supportive adult could be: Parents, relatives, elders, current and former foster parents, neighbours, parents of close friends, your social worker, teachers, religious/cultural leader or any other responsible adults whom you trust and with whom you feel or may have felt safe.

Check out the list below. Give it to adults you know and ask them to circle the one(s) they would be willing to do for you after you turn 19. You could also get them to sign a "Permanency Pact" (at the end of this section).

Hey ... it doesn't hurt to ask

A HOME

Spending the holidays without

Extend an invitation to holiday celebrations, or birthdays. This way you can help a youth fend off the depression that may set in around these important times of year.

A PLACE TO DO LAUNDRY: Offering a place to use laundry facilities can be a great way to keep a regular connection with a youth and provide them with a way to maintain pride in their appearance, regardless of an unstable housing situation.

EMERGENCY PLACE TO STAY: Many young adults will spend at least one night homeless within the first 2-4 years of leaving foster care. The offer of an emergency couch to sleep on or a guest bedroom to stay in can reduce anxiety and keep young people safe during hardships. Have the young person help with housework so they feel like they are contributing something as well.

FOOD / OCCASIONAL MEALS: A friendly, family-style meal every Thursday evening or an invitation to Sunday brunch or a monthly lunch. It provides a chance to connect and to role model family life. An open invite can be very comforting to young students or those on a limited budget.

CARE PACKAGES: Send a regular package of goodies/food, phone card, photos. A regular package to a foster youth who has transitioned from care allows them to fit in with their peers.

EMPLOYMENT OPPORTUNITY: An employer or person in a position to hire can help by providing special consideration when hiring for a new position. A phone call to the youth inviting them to apply, helping with making an application, coaching for a job interview are all ways to help. Offer a youth the chance to help with yard work, housecleaning, babysitting, etc. in order to earn extra money and to establish a work reference.

JOB SEARCH ASSISTANCE: Finding a job can be a daunting task for anyone. Advice, help filling out applications or creating a résumé, rehearsal of interview questions, transportation to interviews, preparation of appropriate clothing, discussion of workplace behaviour, and just plain cheering on can help a youth successfully land a job.

CAREER COUNSELING: An adult working in the youth's field of interest can offer advice which could help to launch a youth's career. Youth particularly benefit from connections and introductions which lead to apprenticeships, job shadows, or other real-world experience. As a supportive adult, you can help youth make these contacts.

HOUSE HUNT: Securing a first apartment is a rite of passage to adulthood. But without guidance, finding housing can turn into an overwhelming experience. Youth leaving care often lack references so going with to look at possible housing really helps. Use apartment hunting as an opportunity to discuss other daily living challenges, like roommates, utilities, selecting a neighbourhood, transportation to job and needed services, etc.

RECREATIONAL ACTIVITIES: Extending an invitation to a youth to go bike riding, go bowling, shoot some hoops or to simply take a walk. This will promote health, relieve anxiety, and provide a comfortable way to connect. Recreational activities like cooking, woodworking, painting or playing guitar can provide a great way for youth to help to develop skills. Other activities include going to a movie, playing cards or chess or Monopoly, taking photographs, going shopping or taking a short trip.

MENTOR: Mentors have proven to be an effective influence on youth. Whether a formal or informal mentor to a former youth in care you can be a role-model, coach and a friend.

TRANSPORTATION: Youth often need help with transportation and may have no one to turn to. As a supportive adult, be a transportation resource, specifying the limits of the offer, i.e. for school, to find employment, for medical appointments, to visit relatives, etc. Perhaps the youth could use some help to figure out how to use public transportation.

FOR THE HOLIDAYS:

a family and with nowhere to go is no fun.

EDUCATIONAL ASSISTANCE: As a supportive adult, you can help by becoming a tutor, an educational advocate, or by simply providing advice when needed. Youth planning to attend college can use help with college applications, finding financial aid, and visits to possible colleges/universities.

RELATIONSHIP / MARRIAGE / PARENTING COUNSELING: Youth coming out of foster care can lack the necessary skills to cultivate and maintain lasting personal relationships. Have frank discussions about life, relationships, marriage, the role of a spouse and how to be a good parent when the time comes.

ASSISTANCE WITH MEDICAL APPOINTMENTS / CHAPERONE: It can be scary attending a medical appointment all alone. As a supportive adult, accompany a youth to a medical appointment or rehearse what questions to ask, interpret a doctor's instructions, or provide advice about obtaining a second opinion.

STORAGE: Sometimes the life of a youth can be transient, moving from location to location before getting settled. Offer a safe place to store valuables and help ensure the youth doesn't lose track of valuables, including photo albums, family keepsakes, and records.

MOTIVATION: Everyone does better with a personal cheering section. As a supportive adult, offer encouraging words and let them see all the potential they have. Shoot for the moon!

SOMEONE TO TALK TO / DISCUSS PROBLEMS: When a youth transitions out of care, there are moments of insecurity, loneliness and anxiety. Provide a listening ear for a youth to vent, offer advice and wisdom, or be a sounding board for ideas. It may be wise to establish "calling hours" to avoid late night or early morning calls.

A PHONE TO USE: Having a phone is simply not always an affordable luxury for a youth starting out on their own. Let the youth use your phone number for messages. For example for prospective employers or landlords. A phone can also be helpful to keep in touch with siblings, parents, former foster parents, or to access resources in the community.

A COMPUTER TO USE: Access to a computer is a valuable tool for a youth for school work, employment or housing search, or contact with siblings or other relatives. A supportive adult can provide this access from a computer at work or at home. You may also want to discuss what is acceptable computer use and establish time limits.

CLOTHING: A youth may need assistance and/or advise in purchasing or preparing clothing for events like a job interview, special occasions, or graduation. Sometimes special opportunities need special gear, like a school ski trip, a costume party, etc. A supportive adult can assist with laundry, ironing, mending, shopping for new clothes, or even purchasing a new item. Improving a youth's personal appearance can boost self confidence.

SPIRITUAL SUPPORT: Youth often develop the same spiritual beliefs as their parents. Youth coming from care may not have had spiritual guidance. A supportive adult can invite a youth to join them as they search for their own spiritual path. The adult can offer to explore religion with the youth and invite them to participate in church or other spiritual activities.

LEGAL TROUBLES: A youth emerging from care who gets into legal trouble usually cannot afford legal advice. A supportive adult can assist by connecting youth to needed legal services. Or, you could provide preventative advice to a youth who may be headed for legal entanglement.

CULTURAL EXPERIENCE: Supportive adults who share a cultural background with a youth may wish to engage them in cultural activities. Even if the cultural backgrounds are different, the youth can be motivated to participate in cultural events. Support can be given to examine the youth's own cultural traditions and beliefs and encouragement given to take pride in their cultural identity.

APARTMENT MOVE-IN: Moving is so much easier with the support of friends, from packing, to manpower, a truck to move, to help setting up the new apartment. The supportive adult can also invite the youth to scout through their garage or storage area for extra furniture or household items that might be useful.

COOKING LESSONS/ASSISTANCE: Meal preparation is often a natural way to engage in meaningful conversation and build a relationship. The supportive adult may decide to take a youth grocery shopping, or help stock the youth's first kitchen with a starter supply of utensils, spices, cleaning supplies and food.

REGULAR CHECK-IN (DAILY, WEEKLY OR MONTHLY): A supportive adult can instigate regular check-ins with a youth transitioning out of care, easing feelings of anxiety and building the confidence that someone is concerned about their safety.

BILLS AND MONEY MANAGEMENT ASSISTANCE: Sorting through bills and balancing a check book can be a daunting task for a youth with a learning disability or challenging math skills. Help the youth understanding how to maintain and obtain credit, deciphering loan applications, and budget.

DRUG AND ALCOHOL MISUSE: Working with young people transitioning out of care to avoid these dangerous pitfalls and offering support if a problem should develop.

MENTAL HEALTH SUPPORT: Some youth in care suffer from mental health challenges. Depression, attention-deficit disorder, eating disorders, and other illness may afflict the youth. Learn something about the disorders that are at issue and find out what you can do to help.

CO-SIGNER: Youth may need co-signers to acquire housing, car loans, or bank accounts. Depending on how responsible the youth has been in the past, you could consider co-signing – but supervise the arrangement until the youth has established a consistent pattern of responsibility.

HELP WITH READING FORMS, DOCUMENTS, AND COMPLEX MAIL: Learning challenges may make complicated reading assignments difficult. Make arrangements to meet and review materials on a weekly basis as needed.

MECHANICAL AND/OR BUILDING PROJECTS: Youth may need help keeping an automobile in good repair. Teaching a youth about the care of their car can help them build self-confidence and skills that can last a lifetime. Helping a youth fix up their apartment or a rented home, or asking for their assistance in projects around your home, can teach new skills which may be put to use throughout life.

HOUSEKEEPING: As a supportive adult, you can discuss cleaning supplies to use for particular household chores, how to avoid disease, and organization of clutter once a youth has transitioned to their own home. Check out the *“Useful Tips for Youth & Young Adults: A Guide to Independent Living”*.

HOME DECORATING: Help a youth decorate their home. This can be a fun and rewarding way to contribute to the youth's sense of pride and self esteem.

VOTING: As a supportive adult, discuss current local, state and national issues, help a youth register to vote or take a youth to the polling location to vote.

VOLUNTEERISM: Volunteering to help others or for a worthy cause is an excellent way to build self-esteem. Supporters can offer to engage a youth in their own good work or embark on a new volunteer effort together.

FINDING COMMUNITY RESOURCES: Navigating through the maze of government agencies and myriad of social service programs is difficult at best even for a resourceful adult. As a supportive adult, you can help the youth make a list of useful resources in the community and offer to visit them together.

SAFETY AND PERSONAL SECURITY: Take a tour of the youth's apartment and make suggestions regarding home safety and develop an evacuation plan. Discuss what to do in an emergency situation. Talk about passwords and the importance of keeping personal information out of others hands. Encourage taking a self-defence class, get CPR certified. Offer to be called when something goes wrong, and offer to be listed as “person to contact in an emergency” on business forms.

BABYSITTING: If the youth is a parent, babysitting services can be the relief needed to keep a young family intact. In addition to providing a time-out, the offer to watch a child while the young parent gets other chores around the house accomplished (laundry, cleaning, etc.), provides an excellent opportunity to role-model good parenting skills.

EMERGENCY CASH: Most of us have experienced a cash shortage at one time or another as a youth. Youth coming from care usually lack this important “safety net”. As a supportive adult, discuss up front your comfort level in supplying financial assistance. Discuss what constitutes an emergency (not enough to cover rent? A medical emergency? Cash for a date? Gas money?).

REFERENCE: Many applications, including those for college, housing and jobs, require a list of references be provided by the applicant. Give a positive reference for a youth and make sure the youth has their current contact information so you can be included on their list of references.

ADVOCACY: Sometimes youth have a difficult time speaking up for themselves in court, at school, with government systems, etc. Help the youth organize their thoughts, speak on their behalf, or assist in writing letters.

You wanted it so here it is!

During one of the consultations with youth in care/Youth Agreement, it was mentioned that Social Workers have a “check list” to assist them in preparing youth in care or youth who are being supported in a Youth Agreement for independence. The youth said that they thought it would be great if they had a checklist as well.

Therefore the following checklists were developed to help keep you (whether or not you are in care or Youth Agreement) informed of things that you should consider while you are preparing for adulthood.

Once you have completed the checklist, ask your social worker for assistance in any of the areas you have identified as needing help with.

Philosophy Corner: “Unless someone like you cares a whole awful lot,
Nothing is going to get better. It's not.” — Dr. Seuss

Checklist for Youth in care - 14 to 15 years old

Checklist for Youth 14 – 15 years old	YES	NO	Not Sure
Would you be able to explain what your rights are as a youth? Brochure on “Know Your Rights”? - Web: www.mcf.gov.bc.ca/foster/pdf/know_your_rights.pdf .			
Have you been provided with a copy of the booklet: “Your Life, Your Rights: A Guide to the Rights of Young People in BC”? fbcyicn.ca/wp-content/uploads/2009/08/know-rights-online.pdf			
Have you been informed of the Federation of BC Youth in Care Networks services and programs for young people? Phone: 1-800-565-8055 Web: www.fbcyicn.ca			
Do you know how to make a complaint if there is something about your care you disagree with? Pamphlet: www.mcf.gov.bc.ca/complaints/pdf/youth_complaints_brochure.pdf			
Do you know how the Representative for Children & Youth could help you? Phone: 1-800-476-3933 Web: www.rcybc.ca (you have a right to be informed about this office)			
Have you completed a “Care Plan” with your Social Worker?			
Do you know why you came into care?			
Can you name three adults who you trust?			
As a youth in care, do you have a “Life Book” with pictures of you and your family in it?			
Do you have your Birth Certificate? (To get one talk to your social worker)			
Do you have BCID? (To get one talk to your social worker)			
Do you have your Social Insurance Card? (To get one talk to your social worker)			
Do you have both a savings and checking account at a bank or credit union?			
Have you been saving money?			
Can you explain what “credit” is?			
Can you cook 3 different meals?			
Do you do your own laundry?			
Do you know what a career is?			
Do you know what sort of career you want to have when you are an adult?			
If you are having difficulty in school, have you been provided with any help?			
Do you plan on graduating from high school?			
Do you plan on going to University or a vocational school?			
Do you have a regular doctor you see?			
Have you seen your doctor within the past year?			
Do you see your dentist regularly (every six months)?			
Have you seen an eye doctor within the past year?			
Do you know how to control your anger?			

Checklist for Youth in Care or Youth Agreement = 16-17 yrs old

Checklist - Youth 16 - 17 years old	YES	NO	Not Sure
Would you be able to explain what your rights are as a youth? Brochure on “Know Your Rights”? - Web: www.mcf.gov.bc.ca/foster/pdf/know_your_rights.pdf .			
Have you been provided with a copy of the booklet: “ <i>Your Life, Your Rights: A Guide to the Rights of Young People in BC</i> ”? fbcyicn.ca/wp-content/uploads/2009/08/know-rights-online.pdf			
Have you been informed of the Federation of BC Youth in Care Networks services and programs for young people? Phone: 1-800-565-8055 Web: www.fbcyicn.ca			
Do you know how to make a complaint if there is something your care you disagree with? Pamphlet: www.mcf.gov.bc.ca/complaints/pdf/youth_complaints_brochure.pdf			
Do you know about the Advocacy Support provided by the Representative for Children & Youth? Phone: 1-800-476-3933 Web: www.rcybc.ca			
Preparing You for Adulthood			
Do you believe you need more help to prepare yourself to become successful as an adult?			
Do you have a clear plan about where you see yourself in 5 years and what you will need to do to get there?			
Do you feel ok about talking to your school counsellor about any questions you may have about your future?			
Do you feel ok about talking to your Social Worker about any questions you may have about your future?			
If you are in care, do you feel ok about talking to your caregiver (e.g. foster parent) about any questions you may have about better preparing yourself for your future?			
Have you completed a “Care Plan” with your Social Worker?			
Permanency Planning	YES	NO	Not Sure
If you are in care, do you know why?			
Are you aware of your medical history?			
If you are in care, do you have a “Life Book” with pictures of you and your family/foster family in it?			
Have you been informed of what counselling services are available in your community?			
Have you thought about taking steps (e.g. visits) to get back with your family or extended family?			
Can you name three adults who you feel close to?			
How many of these three would you be able to ask for help when you become an adult?			
Aboriginal Youth	YES	NO	Not Sure
Have you been involved with the “Roots” program?			
If not currently, would you want to visit or have you considered living in your Aboriginal community?			

Has a “cultural plan” been developed for you?			
Do you participate in Aboriginal cultural activities?			
Identification: Do you have your	YES	NO	
Birth Certificate? (To get one talk to your social worker)			
BCID? (To get one talk to your social worker)			
Social Insurance Card? (To get one talk to your social worker)			
MSP CareCard? (To get one talk to your social worker)			
Pacific Blue Cross Dental Card? (MCFD coverage expires at age 19)			
“Secure Certificate of Indian Status” also known as “Status Card”? (if applicable)? (To get one talk to your social worker)			
Passport (optional)? www.cic.gc.ca/english/information/applications/index.asp			
Do you have your Canadian Citizenship? (To become a Canadian Citizen, talk to your social worker).			
Life Skills	YES	NO	Not Sure
Do you have both a savings and checking account?			
Have you been saving money?			
Do you have a learner’s permit? www.icbc.com/driver-licensing/id			
Can you cook 5 different meals?			
Can you explain what a mortgage is?			
Would you be able to explain “credit”?			
Would you be able to fill out an income tax return?			
Do you have a resume? (for job applications)			
Could you complete a job application form?			
Would you be able to explain how you would look for work?			
Education / Post Secondary Educational and Vocational Training	YES	NO	Not Sure
Would you like to discuss your future with your social worker as far as education goes?			
If you are having difficulty in school, would you like to have more help?			
Do you plan on graduating from high school?			
Would you like help to plan taking post-secondary education or vocational training?			
If you are in care, do you know about the “Youth Educational Assistance Fund” (YEAF) (Not available for youth in a Youth Agreement) www.aved.gov.bc.ca/studentaidsbc/specialprograms/yeaf.htm			
Would you like to know more about the “Agreements with Young Adults” (AYA) program? www.mcf.gov.bc.ca/youth/aya.htm			

Do you know about all available grants or bursaries available to you if you want to go to post-secondary school?			
Public Guardian & Trustee	YES	NO	Not Sure
Do you have a trust account (will you be getting any money when you turn 19)? www.trustee.bc.ca/			
Do you know if the PGT is currently pursuing any legal claims on your behalf (e.g. ICBC Claim, CPP benefits)			
If you are expecting to receive money after you turn 19, do you need to talk to someone about financial planning?			
Health/Medical/Pharmacare Coverage	YES	NO	Not Sure
Do you have your Health Care Passport? (If not ask you social worker for the CF 2601)			
Do you have a record of all the Doctors/Dentists you have seen?			
Do you have a regular doctor you see?			
Have you seen your doctor within the past year?			
Do you see your dentist regularly (every six months)?			
Have you seen an eye doctor within the past year?			
Did you know that if you are 17 and born in January, February or March that you need to file an income tax return so you can qualify for MSP Premium Assistance and the GST rebate when you turn 19?			
Independent Living & Community Support	YES	NO	Not Sure
Do you want help in knowing how to find a place to live?			
Would you like information on how to access “Useful Tips for Youth Turning 19: A Resource Guide for Youth in Care or Youth Agreement”?			
Would d you like information on how to obtain a copy of the “Dollars & Sense” or money guide booklet?			
Are you aware of community resources and low cost or free services (dental clinics, food banks, clothes, toys, furniture)			
Are you aware of informal/formal programs and services to support youth and young adults in the community? Clinics? Crisis line? Alcohol & Drug services? Mental Health services?			
Have you ever checked out the MCFD internet site to see what services for Youth are available? www.mcf.gov.bc.ca/youth/other_services.htm			
Employment	YES	NO	Not Sure
Do you have a job with sufficient income to support yourself upon turning 19?			
Do you have a current resume?			
Are you exploring possible career choices for yourself?			

Do you any work experience?			
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Talk to your Social Worker about how they can help if the following refers to you.

Referral to Ministry of Social Development and Social Innovation (MSDSI) Persons with Disabilities Benefits			
<p>Would you qualify for Persons with Disabilities Benefits (PWD) through Ministry of Social Development and Social Innovation?</p> <p>(e.g. you have a severe mental or physical impairment that is likely to continue for at least 2 years (e.g. anxiety, depression, developmental disability, FASD, difficulty thinking, mental health issues; personality disorders, eating disorders, etc.). If you have any doubts about this, please talk to your social worker.</p>			
Did you know there is a pre-application process to apply for income assistance 6 weeks before your 19 th birthday?			
Freedom of Information			
<p>Have you been informed how to apply for the information contained in your Ministry/DAA file under <i>Freedom of Information and Protection of Privacy Act</i>? Request for “Access to Records” form: icw.mcf.gov.bc.ca/forms/docs/cf_2646.pdf.</p>			
Did you know that you can request your file from the Public Guardian and Trustee of BC			

Justice Involvement:			
If you currently have any Youth Justice involvement – is there anything that you feel you need to know or get help with?			

References:

Transition Planning for Youth with Special Needs:
www.mcf.gov.bc.ca/spec_needs/pdf/support_guide.pdf.

Checklist for Youth in Care or Youth Agreement - 18 years old

Checklist for Youth 18 years old	YES	NO	Not Sure
If you are in care or a Youth Agreement, would you be able to explain what your rights are as a youth? Brochure on “Know Your Rights”? - Web: www.mcf.gov.bc.ca/foster/pdf/know_your_rights.pdf .			
Have you been provided with a copy of the booklet: “Your Life, Your Rights: A Guide to the Rights of Young People in BC”? fbcyicn.ca/wp-content/uploads/2009/08/know-rights-online.pdf			
If you are in care or a Youth Agreement have you been informed of the Federation of BC Youth in Care Networks services and programs? Phone: 1-800-565-8055 Web: www.fbcyicn.ca			
Do you know how to make a complaint if there is something you disagree with? Pamphlet: www.mcf.gov.bc.ca/complaints/pdf/youth_complaints_brochure.pdf			
Do you know about the Representative for Children & Youth and what they do? Phone: 1-800-476-3933 Web: www.rcybc.ca (you have a right to be informed about them)			
Preparing You for Adulthood			
Do you feel you need more help to prepare yourself to become successful as an adult?			
Do you have a clear plan about where you see yourself in 5 years and what you will need to do to get there?			
Do you feel ok about talking to your school counsellor about any questions you may have about your future?			
Do you feel ok about talking to your Social Worker about any questions you may have about your future?			
If you are in care, do you feel ok about talking to your caregiver (e.g. foster parent) about any questions you may have about better preparing yourself for your future?			
Have you completed a “Plan for Independence” or “Care Plan” to help determine what strengths and needs you have? (If not, ask your worker if he/she would download a copy for you)			
Have you completed a “Plan of Care” with your Social Worker?			
Permanency Planning			
If you are in care, do you know why?			
Are you aware of your medical history?			
If you are in care, do you have a “Life Book” with pictures of you and family/foster family in it?			
Have you been informed of what counselling services are available in your community?			
Have you thought about taking steps to get back with your family or extended family?			
Can you name three adults who you trust and would say you feel close to?			
How many of these three adults would you be able to ask for help when you become an adult?			

Aboriginal Youth			
Have you been involved with the “Roots” program?			
If not currently, would you want to visit or would you consider living in your Aboriginal community?			
Has a “cultural plan” been developed for you?			
Do you participate in Aboriginal cultural activities?			
Do you know how to get your “Secure Certificate of Indian Status”? (formerly known as Status Card)			
Identification			
Birth Certificate? (To get one talk to your social worker)			
BCID? (To get one talk to your social worker)			
Social Insurance Card? (To get one talk to your social worker).			
MSP CareCard? (To get one talk to your social worker)			
Pacific Blue Cross Dental Card? (MCFD coverage expires at age 19)			
Native Status Card? (if applicable)? (To get one talk to your social worker)			
Do you have your Canadian Citizenship? (To become a Canadian Citizen, talk to your social worker).			
Passport (optional)? www.cic.gc.ca/english/information/applications/index.asp			
Life Skills			
Have you completed the Youth Independence Planner to determine your strengths and needs? (If not, ask your social worker to download a copy for you) icw.mcf.gov.bc.ca/ysew/docs/ia/independence_planner.docx ?			
Do you have both a savings and checking account?			
Have you been saving money?			
Do you have a learner’s permit? www.icbc.com/driver-licensing/id			
Can you cook 5 different meals?			
Can you explain what a mortgage is?			
Can you explain what “credit” is?			
Would you be able to fill out an income tax return?			
Do you have a resume? (for job applications)			
Could you complete a job application form?			
Would you be able to explain how you would look for work?			
Education / Post Secondary Educational and Vocational Training			
Would you like to discuss your future with your social worker as far as education goes?			
If you are having difficulty in school, would you like to have more help?			

Do you plan on graduating from high school?			
Would you like help to plan taking post-secondary education or vocational training?			
If you are in care, do you know about the “Youth Educational Assistance Fund” (YEAF) (Not available for youth in a Youth Agreement) www.aved.gov.bc.ca/studentaidsbc/specialprograms/yeaf.htm			
Would you like to learn more about the “Agreements with Young Adults” (AYA) program? www.mcf.gov.bc.ca/youth/aya.htm			
Do you know about all available grants or bursaries available to you if you want to go to post-secondary school?			
Public Guardian & Trustee			
If you are in care, do you have a trust account (will you be getting any money when you turn 19)? www.trustee.bc.ca/			
Do you know if the PGT is currently pursuing any legal claims on your behalf (e.g. ICBC Claim, CPP benefits)			
If you are expecting to receive money after you turn 19, do you need to talk to someone about financial planning?			
Health/Medical/Pharmacare Coverage			
Do you have your Health Care Passport? (If not ask you social worker for the CF 2601)			
Do you have a record of all the Doctors/Dentists you have seen?			
Do you have a regular doctor you see?			
Have you seen your doctor within the past year?			
Do you see your dentist regularly (every six months)?			
Have you seen an eye doctor within the past year?			
If you are close to being 19 years old, has your Social Worker explained how MSP (medical coverage works when you are an adult? Web: https://www.health.gov.bc.ca/exforms/msp/enrolment.html			
Did you know that you must file an income tax return in the year you turned 18 so that when 19 yrs old you can get your GST credit or assistance with paying for MSP?			
PharmaCare --- when you get your own MSP did you know you need to register for Fair PharmaCare” Web: https://www.health.gov.bc.ca/exforms/pharmacare/5349fil.pdf			
If you are on any prescribed medication, do you know how it will be funded past 19?			
Independent Living & Community Support			
Do you want any help in finding a place to live?			
Do you know how to get your damage deposit back?			
Do you know how to get signed up for BC Hydro, Phone, and Cable?			
Did you manage to get “start up fund” for your place? (e.g., furniture, and household supplies)			
Will you be able to pay your rent when you turn 19 yrs of age?			

Would you like information on how to access “Useful Tips for Youth Turning 19: A Resource Guide for Youth in Care or Youth Agreement”?			
Would you like information on how to manage money and to access the booklet “ Dollars & Sense ” or “ First Nations Financial Fitness: Your Guide for Getting Healthy, Wealthy, and Wise ”.			
Do you know about resources where you live such as dental clinics, food banks or where to get cheap clothes, furniture?			
Are you aware of how to access programs that could help you out such as the Help Line, Alcohol & Drug programs or Mental Health counselling?			
Employment			
Do you think you are going to have enough money to live on when you leave care?			
Do you have a current résumé?			
Have you decided on a career?			
Do you have any work experience?			
Freedom of Information			
Have you been informed on how to apply for the information contained in your Ministry/DAA file under <i>Freedom of Information and Protection of Privacy Act</i> ? (Request for “Access to Records” form: icw.mcf.gov.bc.ca/forms/docs/cf_2646.pdf .)			
Did you know that you can request your file from the Public Guardian and Trustee of BC?			
Justice Involvement:			
If you currently have any Youth Justice involvement – is there anything that you feel you need to know or get help with?			

If you have any disabilities, or special needs --- Talk to a Social Worker about how they can help

Youth Transitioning to Adult Supports at 19			
Did you know there is a pre-application process to apply for income assistance 6 weeks before your 19 th birthday?			
Referral to Ministry of Social Development and Social Innovation (MSDSI) Persons with Disabilities Benefits			
Would you qualify for Persons with Disabilities Benefits (PWD) through Ministry of Social Development and Social Innovation? (e.g. you have a mental or physical impairment that is likely to continue for at least 2 years (e.g. anxiety, depression, developmental disability, FASD, difficulty thinking, mental health issues; personality disorders, eating disorders, etc.). If you have any doubts about this, please talk to your social worker.			

Transition Planning for Youth with Special Needs:

- www.mcf.gov.bc.ca/spec_needs/pdf/support_guide.pdf.



Summary of the United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is a legal document that describes what countries must do so that people with disabilities can achieve their rights. Below is a summary of these laws and rights. The full Convention can be found here: www.un.org/disabilities.

Each of the rights that the UNCRPD describes has a different number or "article". It is good to know which numbers belong to which rights so that we know exactly where to look for a certain article. Three main "types" of rights are listed below. Following each right is the related Convention articles.

RIGHTS ABOUT BEING RESPECTED AND INCLUDED

You have the right...

- To be respected for who you are and to be treated as a person first (articles 6, 7, 12)
- To make your own choices (article 12)
- To decide where you live and who you live with (articles 19, 28)
- To have the supports you need to live in your home and to be a part of your community (article 19)
- To go where you want (articles 14, 18, 20)
- To have opportunities and to be included in society just like anyone else (articles 5, 6, 7, 9, 10, 12, 14)
- To have equal access to all things in life, including services, information and public buildings (article 21)
- To go to court, take other people to court or take part in what happens in court (article 13)
- To get and give information and to say what you want (article 21)

RIGHTS ABOUT HOW YOU LIVE YOUR LIFE

You have the right...

- To privacy (article 22)
- To personal relationships, a family, marriage and access to family planning (article 23)
- To good health and access to health services (articles 25, 26)
- To lead as independent and healthy a life as possible (articles 17, 19, 20, 25, 26)
- To education - just like anyone - and to carry on learning throughout your life (article 24)
- To work - just like anyone (articles 26, 27)
- To a good standard of living for you and your family (food, clothing, housing and clean water) (article 28)
- To vote and take part in politics (article 29)
- To take part in sports, leisure, arts and cultural activities (article 30)

RIGHTS ABOUT BEING SAFE AND PROTECTED

You have the right...

- To life (articles 10, 11, 12, 14, 17)
- To be free from violence and abuse (articles 16, 17, 28)
- To be protected in emergencies (article 11)
- To not be treated cruelly, and to not be experimented on (articles 15, 16, 17)
- To not be discriminated against (article 5)
- To be free and safe (articles 11, 14, 17, 28)
- To not be imprisoned because of a disability (articles 12, 14, 15, 16, 17)
- To be treated equally under the law, and to own property and control your own money (article 12)
- To have your provincial and federal governments take action to ensure these rights (all articles, especially 4 and 31-50)

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

I. Introduction

The Government of British Columbia is committed to improving cross-ministry collaboration for youth with special needs and their families, in order to facilitate the transition to adulthood.

This *Cross-Ministry Transition Planning Protocol for Youth with Special Needs* has been developed to:

- improve access to existing resources and supports, and;
- ensure that a coordinated transition process occurs for youth with special needs and their families.

This protocol has been jointly developed, and is endorsed, by the following ministries and organizations to advance these commitments:



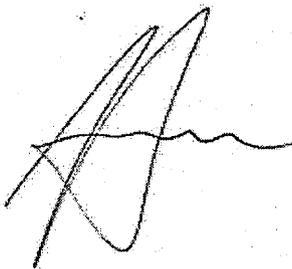
Robin Ciceri, Deputy Minister
Ministry of Advanced Education and Labour Market
Development (ALMD)

Dated this day 30 of October 2009



Mark Sieben, Chief Operating Officer
Ministry of Children and Family Development (MCFD)

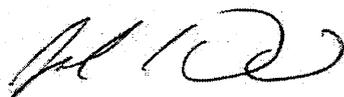
Dated this day 18 of October 2009



James Gorman, Deputy Minister
Ministry of Education (EDUC)

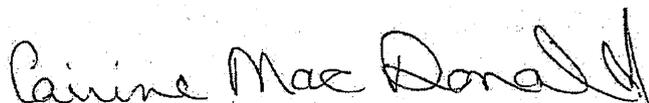
Dated this day 23 of October 2009

Cross-Ministry Transition Planning Protocol for Youth with Special Needs



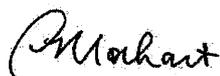
John Dyble, Deputy Minister
Ministry of Health Services (HSERV)

Dated this day 30 of Oct 2009



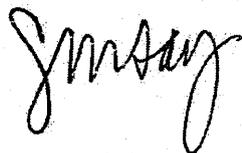
Cairine MacDonald, Deputy Minister
Ministry of Housing and Social Development (HSD)

Dated this day 26 of October 2009



David Morhart, Deputy Solicitor General
Ministry of Public Safety and Solicitor General (PSSG)

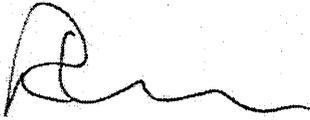
Dated this day 19 of October 2009



Shayne Ramsay, Chief Executive Officer
BC Housing

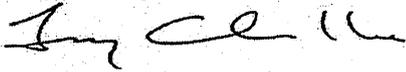
Dated this day 23 of October 2009

Cross-Ministry Transition Planning Protocol for Youth with Special Needs



Rick Mowles, Chief Executive Officer
Community Living BC (CLBC)

Dated this day 26 of October 2009



Jay Chalke, Public Guardian and Trustee (PGT)

Dated this day 20 of October 2009

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

II. Background

Youth are faced with a number of challenges and opportunities when they are planning for the future, which include: consolidating their identity; expressing their sexuality; establishing social networks and relationships; accepting responsibility for decisions and behaviours, as well as their consequences; establishing and accomplishing education and employment goals; achieving financial independence; pursuing independent living arrangements, and; managing legal issues.

For youth with special needs and their families, a coordinated transition process will assist in preparing youth to face these challenges and contribute to his/her success in adulthood.

Transitioning to adulthood involves more than identifying and coordinating services. It also involves setting goals for all areas of adult life, exploring and adopting new adult roles and making decisions about the future. Many youth with special needs require support to make such decisions. Parents and others play a central role in supporting youth to make decisions and plan for their future. A transition process that actively engages the youth and his/her family will lead to the development of a transition plan to coordinate supports and services and assist the youth to achieve his/her full potential.

Transition planning is required for all youth with special needs, to facilitate skills development and the identification of, and access to, opportunities and supports needed in adult life. It is important to develop a transition plan, regardless of the funded government supports that the youth will be eligible to access in adulthood. Transition planning must be individualized, as youth have varying degrees of support and funded service needs.

Transition planning, using a person-centred approach, focuses on the youth within the context of his/her family, community and culture. A transition plan is developed to assist the youth to achieve his/her personal goals and aspirations. A focus on strengths and abilities has been shown to enhance service planning and outcomes. The plan can identify required actions to assist the youth and his/her family to access both informal community supports and formal services in the areas of education, health and social services. The plan must reflect the cultural identity of the youth and his/her community.

Transition planning for Aboriginal youth must consider the youth, his/her family, community, values, and culture. In addition, transition planning for Aboriginal youth requires collaboration with Aboriginal nations, communities, organizations, and the federal government to ensure an integrated and culturally appropriate network of supports and services.

Developing individualized transition plans requires cross-ministry collaboration to ensure a coordinated and comprehensive approach.

This protocol provides the overarching framework to support the transition planning process; cross-ministry support and collaboration is required. At the community level, administrators of signatory ministries and organizations will need to collaboratively develop agreements or other mechanisms to operationalize this protocol.

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

III. Youth Served

A youth with special needs is defined as a young person between the ages of 14 and 25 who requires significant additional educational, medical/health and social/environmental support, beyond that required by youth in general, to enhance or improve his/her health, development, learning, quality of life, participation and community inclusion (adapted from B.C.'s *Cross-Ministry Children and Youth with Special Needs Framework for Action, 2008*).

Youth with special needs have significant limitations in age-appropriate daily activities at home, school and in their communities, in one or more of the following domains:

- cognition and learning
- communication
- sensory domains (vision and hearing)
- movement and mobility
- interpersonal interaction and relationships (social, emotional, behavioural)
- community, social and civic life
- general tasks and demands (including developmentally appropriate activities of daily living, such as self-care)

A broad definition will promote transition planning for youth, regardless of their individual abilities to meet eligibility requirements for adult services. This definition does not expand established program eligibility.

It is estimated that approximately 8.3 % of the youth population in British Columbia will require transition planning support, with 4,400 14-year old youth expected to begin the transition planning process every year.

IV. Purpose

The purpose of this protocol is to:

- Promote a cross-ministry commitment to a collaborative transition planning process for individual youth and their families, which will lead to the development of an individualized transition plan for each youth.
- Outline roles and responsibilities of signatory ministries and organizations in supporting youth and their families through the transition process.
- Ensure cross-ministry collaboration occurs for information sharing to support:
 - individual youth and their families through the transition process, and;
 - system capacity planning.

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

V. Guiding Principles

This protocol promotes a coordinated transition planning process that is:

- youth-centred
- family-focused
- holistic
- strengths-based
- focused on positive cultural identity development for Aboriginal youth
- focused on supporting youth to live as fully and independently as possible
- focused on supporting youths' lifelong wellness and participation and inclusion in their communities
- responsive to the unique cultural identities and diversity of youth
- comprehensive and integrated across service sectors
- innovative and flexible
- evidence-based
- sustainable
- accountable to youth, their families and others involved
- aligned with Jordan's Principle until age 18
- respectful of youths' rights as per the United Nations *Convention on the Rights of the Child* (including the *General Comment No. 11: Indigenous children and their rights under the Convention*) and the *Convention on the Rights of Persons with Disabilities*

VI. Strategies Supporting Youth Transition Planning

1. Transition Planning Process

Appendix A describes the transition planning process for youth with special needs and their families that will lead to the development of an individualized transition plan.

2. Government Supports and Services

Appendix B outlines the supports and services for youth between the ages of 14 and 25 that are available through key ministries, Delegated Aboriginal Child and Family Service Agencies, crown agencies and the Public Guardian and Trustee of British Columbia. Each organization has responsibility for establishing the specific eligibility criteria for the supports and services it provides.

3. Transition Planning Roles and Activities

Appendix C presents a working draft of Roles and Tasks for Transition Planning Team Members. This will serve as the framework for:

- clarifying roles for cross-ministry support and collaboration at the community level;
- developing agreements or other mechanisms to operationalize this protocol (e.g., Ministry of Children and Family Development and Community Living BC operational agreement to ensure that youth transitioning into CLBC services receive transition planning), and;
- developing new, and revising existing, resources such as information guides for youth with special needs, their families and service providers. Signatory ministries and organizations will

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

jointly develop and/or revise these resources, with the input of youth with special needs, their families and service providers.

4. Information Sharing

For the purpose of supporting youth transition planning, signatory ministries and organizations will coordinate and document authority(ies) and processes for sharing information. This will be done in accordance with legislative requirements.

VII. Review

This protocol will be reviewed by administrators of signatory ministries and organizations on an annual basis for three years to:

- assess the effectiveness of cross-ministry collaboration;
- determine whether roles and responsibilities of signatory ministries and organizations are clear, and;
- evaluate the effectiveness of cross-ministry information sharing.

Subsequent reviews will be conducted every three years. Any signatory ministry or organization may ask for a review before the end of the three-year term.

Appendices may be amended by the agreement of administrators from signatory ministries and organizations.

VIII. Dispute Resolution

In any cooperative endeavour involving service providers funded by different ministries, issues and problems may arise. In accordance with the principles that underpin this protocol, dispute resolution will take place as close as possible to the level at which the decisions were made.

For local transition planning issues, youth, family and other transition planning team members will use the service provider's existing complaint/dispute resolution processes, and may also need to involve the responsible ministry, organization or authority. Where planning for First Nations youth under the age of 19 involves a disagreement between the federal and provincial governments regarding access to available health and social services, the child-first approach under Jordan's Principle must apply.

When an issue is not resolved locally, it will be raised to the next decision-making level within the appropriate ministry, organization or authority. As part of this or at subsequent steps in the dispute resolution process, managers and senior administrators may need to discuss issues related to this protocol with their colleagues from relevant ministries, organizations or authorities, in an effort to resolve the dispute as quickly as possible.

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

APPENDIX A: TRANSITION PLANNING PROCESS

Transition planning for youth should begin at age 14 and may continue beyond age 19 to ensure that there is a coordinated and supported process both during adolescence and into adulthood. Youth and their family members are central to the transition planning process and are supported to actively participate. Starting early allows time to create a transition plan that:

- includes informal community supports, and;
- facilitates timely access to adult services for youth who are eligible.

The transition planning process for youth with special needs involves the following.

1. Initiate the Transition Planning Process

The transition planning process is initiated by:

- providing the youth and family with information on transition planning and the process;
- assisting the youth and family to identify possible transition planning team members, and;
- providing the youth and family with information about consent for information sharing with other transition planning team members.

The Ministry of Children and Family Development (MCFD) initiates the process for youth who are 14 years of age and accessing special needs supports and/or services from MCFD.

Delegated Aboriginal Child and Family Service Agencies with guardianship delegation initiate the process for children in their care at age 14.

The Ministry of Education – teachers will begin to develop transition goals, beyond school completion, as part of secondary students' Individualized Education Plans (IEPs), if not already in place.

2. Establish the Transition Planning Team

The transition planning team is comprised of individuals who play a role in the youth's life or who may play a role when the youth becomes an adult. The team includes the youth and his/her parent(s)/foster caregivers, as well as a variety of others (depending on the youth and his/her circumstances). The team may include family, friends, representatives from community and cultural organizations, school staff, ministry staff, and service providers. For Aboriginal youth, the team should include members from appropriate community and cultural organizations. Team members may change over time, depending on the stage of transition planning.

The Ministry of Children and Family Development arranges a meeting of possible transition planning team members for youth accessing special needs supports and/or services from MCFD, in order to formalize the team's membership.

The Ministry of Education includes possible transition planning team members when formalizing transition planning goals as part of the student's IEP. Where there is a need for a formal transition plan in addition to an IEP, the IEP planning team may be reformed with additional members to establish a transition planning team.

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

3. Identify the Transition Coordinator

The transition planning team collectively identifies the most appropriate person to coordinate the transition planning process and subsequent action plan. The Transition Coordinator plays a key role by providing organizational and administrative support to the team, including overseeing the composition of the transition planning team and adjusting membership as needed.

4. Gather Transition Planning Information

The Transition Coordinator works with the youth and his/her family to organize and gather information that will assist in:

- understanding the youth and family's support needs, and;
- developing the transition plan.

Information may be gathered from a variety of sources, including transition planning team members, and past, present and future service providers.

5. Develop the Transition Plan

The transition planning team collaboratively develops an individualized plan to address the youth's needs and the goals identified by the youth and his/her family. The transition planning team assists youth and their families to identify and access required assessments. The transition plan focuses on the youth's abilities and strengths and connects these to his/her dreams, goals and desires. The plan is future-oriented and aligned with the youth's cultural identity. The plan includes actions, milestones and timelines (including a timeline for applying for adult services, as required), as well as individual responsibilities for achieving milestones.

6. Implement the Transition Plan

Once the plan has been developed, the youth is supported in implementing it.

7. Monitor and Review the Transition Plan

The transition planning team determines a schedule to review, evaluate and update the plan at least once per year.

Adapted from the Alberta Children and Youth Initiative: Transition Planning Protocol for Youth with Disabilities (2007) & the British Columbia Transition Planning for Youth with Special Needs: A Community Support Guide (2005).

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APPENDIX B: GOVERNMENT SERVICES AND SUPPORTS

The following is a list of government-funded organizations that can be involved in the transition planning process for youth with special needs (ages 14 to 25 years). This list includes a description of the types of services and/or supports provided that may be available to a youth preparing for, and/or entering, adulthood (depending on whether or not he/she meets the established eligibility requirements).

Organization	Government Services and Supports
BC Housing*	<ul style="list-style-type: none"> • Administration of subsidized housing and programs that offer housing options
Community Living British Columbia*	<ul style="list-style-type: none"> • Community living supports and services for eligible adults with developmental disabilities (ages 19 and older) • Support for developing and implementing Individual Support Plans • A range of supports and funding options that honour choice, including Individualized Funding • Supports, including employment support, individual and group day supports, and home living options for adults who live away from their parents' homes • Family supports, including respite
Ministry of Advanced Education and Labour Market Development	<ul style="list-style-type: none"> • Planning material for youth with special needs transitioning from K12 to post-secondary (financial resource access, assessment requirements, services and technology access) • Contact information regarding post-secondary institutions financial aid and disability services • Grants, scholarships and loan funding for students with permanent disabilities • Adult special education programs with a focus on developing vocational and employment skills
Ministry of Children and Family Development	<ul style="list-style-type: none"> • A range of services for children and youth (ages 0-18) with special needs and their families (e.g. At Home Program, Family Support Services such as respite, Key Worker services for children and youth with Fetal Alcohol Spectrum Disorder, Nursing Support Services, Autism Funding) • Residential services, guardianship and transition planning assistance for children and youth in care - also provided by Delegated Aboriginal Child and Family Service Agencies (DAAs) • Financial support and services for former children and youth in care to advance educational, rehabilitative and/or employment opportunities • A range of specialized mental health services including community-based Child and Youth Mental Health services, Maples Adolescent Treatment Centre (residential and non-residential options for youth with significant psychiatric and behavioural difficulties) and Youth Forensic Psychiatric Services (assessment and treatment services to young offenders). • Provincial Services for the Deaf and Hard of Hearing

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

Organization	Government Services and Supports
	<ul style="list-style-type: none"> • Programs for at-risk or sexually exploited youth, youth custody and community youth justice services
Ministry of Education	<ul style="list-style-type: none"> • Funding to boards of education for children and youth with special needs • Individualized Education Plan development and transition goals as part of that plan • Work experience / pre-employment preparation • Provincially- and locally-developed curriculum
Ministry of Health Services	<ul style="list-style-type: none"> • Home and Community Care may provide health care and support services, including home care nursing, community rehabilitation (occupational and physical therapy), and other community-based services • Primary Care - Transition between Paediatrician and General Practitioner care (including Shared Care/Collaborative Models of Care) • Regional Developmental Disability Mental Health Services – ages 14 and older • Adult Community Mental Health and Addictions Services • Child and Youth Addiction services • Health Authority Specialized Programs (e.g. Vancouver Island Health Authority Neuropsychiatric Clinic) • Acute psychiatry – adult and adolescent units
Ministry of Housing and Social Development	<ul style="list-style-type: none"> • Employment programs • Income Assistance, including Persons with Disabilities (PWD) • Health Supplements and Programs (e.g., medical and dental benefits, volunteer supplements, bus pass, etc)
Ministry of Public Safety and Solicitor General (Crime Victim Assistance Program)	<ul style="list-style-type: none"> • Financial assistance and benefits to victims of an injury due to violent crime • Medical/health related services • Vocational services • Disability aids • Home modification, vehicle modification/acquisition • Income support/lost earning capacity at age 19 for claimant who remains unemployable due to an injury from a violent crime
Public Guardian and Trustee of BC	Child and Youth Services <ul style="list-style-type: none"> • Acts as a co-guardian with the Ministry of Children and Family Development and DAAs for youth under continuing custody orders, and is responsible for the protection of the financial and legal interests of children and youth under continuing custody orders • Management of trust funds as Trustee
	Services to Adults <ul style="list-style-type: none"> • Consultation on situations of abuse, neglect or self-neglect of adults or youth nearing the age of majority, who may not be mentally capable of

Cross-Ministry Transition Planning Protocol for Youth with Special Needs

Organization	Government Services and Supports
	managing their own legal/financial affairs • Acts on behalf of adults who have been deemed mentally incapable, including as a temporary substitute decision-maker regarding health care decisions
	Estate and Personal Trust Services • Administration of Public Guardian and Trustee Educational Assistance Fund for eligible former children and youth in care

** The Ministry of Housing and Social Development provides oversight to two crown agencies: Community Living BC, which funds supports and services to adults with developmental disabilities and their families; and BC Housing, which delivers integrated housing services.*

APPENDIX C: WORKING DRAFT - ROLES AND TASKS FOR TRANSITION PLANNING TEAM MEMBERS

This chart outlines the interactive roles of team members including youth, family, and staff from school, youth services and adult services. It provides a task completion timeline and can be used in conjunction with information guides. Eligibility for, and availability of, services differs according to the youth's age and the specific service.

AGE: 14-15 Develop a Transition Plan	AGE: 16 Continue Transition Planning
YOUTH AND/OR PARENTS/FOSTER CAREGIVERS	
<ul style="list-style-type: none"> Learn about person centered planning, transition planning and related supports and services Begin transition process by establishing a transition team and selecting a coordinator Determine if assessments are needed Ensure youth has legal documentation for identification Learn about long-term financial planning needs (e.g., Will & Estate planning) Learn about and apply for, financial tools (e.g., Registered Disability Savings Plan, Registered Education Savings Plan, trust funds) 	<ul style="list-style-type: none"> Research adult supports and services Plan for post-secondary education/training, vocational skills/ employment preparation, and community inclusion supports Complete required assessments Complete applications for adult supports and services (e.g., CLBC)* Learn about scholarships, grants and bursaries
SCHOOL	
<ul style="list-style-type: none"> Establish annual transition goals as part of the youth's Individualized Education Plan (IEP) Determine if school assessments are current or if additional assessments are required Provide opportunities to learn employment and community participation skills Determine if other agencies or services are required and/or available 	<ul style="list-style-type: none"> Assist the youth/ parent to identify adult supports and services Complete school assessments, if required Assist the youth to learn about post-secondary education, vocational skill training and community participation skills Provide information about the youth, as needed and with consent, to adult service organizations Provide information about scholarships, grants and bursaries Collaborate with relevant service providers
SERVICES FOR YOUTH (CHILDREN & YOUTH WITH SPECIAL NEEDS/CHILD & YOUTH MENTAL HEALTH/YOUTH SERVICES & CHILD WELFARE/PUBLIC GUARDIAN & TRUSTEE)	
<p>All Services for Youth:</p> <ul style="list-style-type: none"> Provide youth/families information about the transition planning process and related adult supports and services For Aboriginal youth include cultural community supports in the plan Determine if assessments are needed Provide information and opportunities to learn employment and community participation skills <p>Ministry of Children and Family Development (MCFD):</p> <ul style="list-style-type: none"> Identify, initiate and arrange transition planning meeting for youth accessing special needs supports and services from MCFD Monitor the status of the transition plan for youth accessing special needs supports and services from MCFD <p>Public Guardian and Trustee (PGT): Work closely with MCFD and Delegated Aboriginal Child and Family Services Agencies (DAAs) to provide information on financial/personal planning and ongoing legal matters</p> <p>Ministry of Public Safety and Solicitor General (PSSG) - Crime Victim Assistance Program (CVAP): Work in collaboration with the Ministry of Housing and Social Development (HSD), CLBC, PGT, Health Authorities and other agencies to determine support needs, coordinate funding agreements and facilitate the transition planning process</p> <p>*Note: For children in care of MCFD or a DAA; PGT, MCFD and DAA staff will be involved in the planning process whenever a parent would be involved.</p>	<ul style="list-style-type: none"> Complete required assessments Assist the youth to learn about post-secondary education, vocational skill training and community participation skills Provide information about the youth, as needed and with consent, to adult service organizations As appropriate, Assist to apply for adult supports and services (e.g., CLBC) Collaborate with school and relevant service providers For Aboriginal youth, include cultural community supports in the plan
SERVICES FOR ADULTS (EMPLOYMENT AND INCOME ASSISTANCE, COMMUNITY LIVING, MENTAL HEALTH, HEALTH SERVICES, HOME AND COMMUNITY CARE, HOUSING)	
<p>All Adult Services</p> <ul style="list-style-type: none"> Hold information events to inform youth/and their families about adult funded supports and services, referral and application processes and eligibility requirements and waitlist policies 	<p>All Adult Services</p> <ul style="list-style-type: none"> Hold information events to inform youth/family about adult funded supports and services, eligibility and waitlist policies <p>CLBC:</p> <ul style="list-style-type: none"> Review requests for CLBC eligibility, determine eligibility and communicate outcome to the youth/family, MCFD and the Ministry of Education Record requests for future support for eligible youth

* Adult funded supports are available at different ages ranging from 17 ½ to 19 years of age. Youth and their families need to determine eligibility and submit applications at different ages for different services. Submitting applications and determining eligibility will allow youth to fully access supports they are eligible for, and allow time to explore other support options for those youth who are not eligible. Early identification also allows adult services to effectively plan supports for the eligible youth in advance of his/her 19th year.

Roles and tasks associated with older youth (17-18 years of age and beyond the age of 19) can be found on the following page.

APPENDIX C: Working draft - Roles and TASKS for Transition Planning Team members

This chart outlines the interactive roles of team members including youth, family, and staff from school, youth services and adult services. It provides a task completion timeline and can be used in conjunction with information guides. Eligibility for, and availability of, services differs according to the youth's age and the specific service.

AGE: 17-18 Continue Transition Planning	AGE: 19 AND BEYOND Continue Transition Planning
YOUTH AND/OR PARENTS/FOSTER CAREGIVERS	
<ul style="list-style-type: none"> Apply for post-secondary education/vocational skills training and adult special education programs Apply for scholarships, grants and bursaries Complete applications for adult supports and services (e.g., Income Assistance Programs for Persons with Disabilities at age 17 ½, Mental Health and Addictions, Home and Community Care and home living options) Learn about legal agreements and tools to be in place when the youth turns 19 (e.g., Representation Agreement) 	<ul style="list-style-type: none"> Enrol in post-secondary school courses/programs Secure employment Access adult supports and services <p>Former Youth in Care</p> <ul style="list-style-type: none"> Apply for financial assistance to continue education, pursue post-secondary education, get job training or take part in a rehabilitative program
SCHOOL	
<ul style="list-style-type: none"> Provide information about post-secondary education, vocational skill training and community inclusion supports Provide opportunities to learn employment and community participation skills Complete school assessments 	<ul style="list-style-type: none"> Connect students to community opportunities and adult supports and services
SERVICES FOR YOUTH (CHILDREN & YOUTH WITH SPECIAL NEEDS/CHILD & YOUTH MENTAL HEALTH/YOUTH SERVICES & CHILD WELFARE/PUBLIC GUARDIAN & TRUSTEE)	
<ul style="list-style-type: none"> As applicable, assist youth/family to learn about range of supports, including housing, and assist the youth to apply for adult funded services Provide information and opportunities to learn employment and community participation skills For Aboriginal youth, include cultural community supports in the implementation of the plan <p>Youth In Care:</p> <ul style="list-style-type: none"> Inform youth about adult supports and funding available With consent, inform adult service organizations of any change in status <p>PGT: Work closely with MCFD and DAAs to provide transition planning support for legal and financial needs, and pursue legal claims on behalf of children and youth in care</p>	<ul style="list-style-type: none"> Connect youth to community opportunities and adult supports and services <p>Former Youth in Care:</p> <ul style="list-style-type: none"> Provide information about financial support and assistance and role of the Public Guardian and Trustee
SERVICES FOR ADULTS (EMPLOYMENT AND INCOME ASSISTANCE, COMMUNITY LIVING, MENTAL HEALTH, HEALTH SERVICES, HOME AND COMMUNITY CARE, HOUSING)	
<p>All Adult Services (as applicable)</p> <ul style="list-style-type: none"> Consult with, and provide information to, the transition planning team about funded adult supports, eligibility and planning <p>CLBC: Meet with eligible youth and their families to explore possible adult supports</p> <p>Home and Community Care: conduct eligibility assessment as required</p> <p>Ministry of Housing and Social Development (HSD): Persons with Disabilities (PWD) benefits start at age 18</p>	<p>All Adult Services (as applicable)</p> <ul style="list-style-type: none"> Provide post-secondary education/vocational training, employment, community inclusion and home living supports with available resources <p>BC Housing: Subsidized housing and programs that offer housing options start at age 19</p> <p>PGT: Support long-term financial and legal planning needs (e.g., Will & Estate planning, transferring responsibility of a legal claim from the PGT to the adult or his/her legal representative)</p> <p>CVAP: Lost earning capacity benefits start at age 19 if claimant remains unemployable due to compensable injury</p>

Adapted from the Manitoba *Bridging to Adulthood: A Protocol for Transitioning Students with Exceptional Needs from School to Community* (2008)

GLOSSARY OF TERMS

Children in Care/Youth in Care: Children under age of 19 years who are in the custody, care or guardianship of a director or a director of adoption as designated under the *Child, Family and Community Service Act (CFCSA)*, the *Adoption Act*, or the *Family Relations Act*. For the purpose of this protocol, the term 'youth in care' is used to refer to those over the age of 14.

Delegated Aboriginal Child and Family Service Agency (DAA): An Aboriginal agency that has responsibility for the administration of all or parts of the *Child, Family and Community Service Act (CFCSA)*, through a delegation agreement with a director under the *CFCSA*.

Individualized Education Plan (IEP): A documented plan developed for a student with special needs that describes individualized goals, adaptations, modifications, and services to be provided, and includes measures for tracking achievement.

Informal Community Supports: Family, friends, neighbours and/or community members who provide social support, which can include advocacy and/or help with monitoring services. Additional support is derived from participation in associations (e.g. social clubs and groups) or community activities that have public participation (e.g. sports teams, horticultural society, faith communities, etc). Formal government-funded services augment, rather than replace informal community supports.

Jordan's Principle: A child-first approach to ensuring that jurisdictional funding disputes do not prevent or delay First Nations children from accessing available health and social services.



REPRESENTATIVE FOR
CHILDREN AND YOUTH

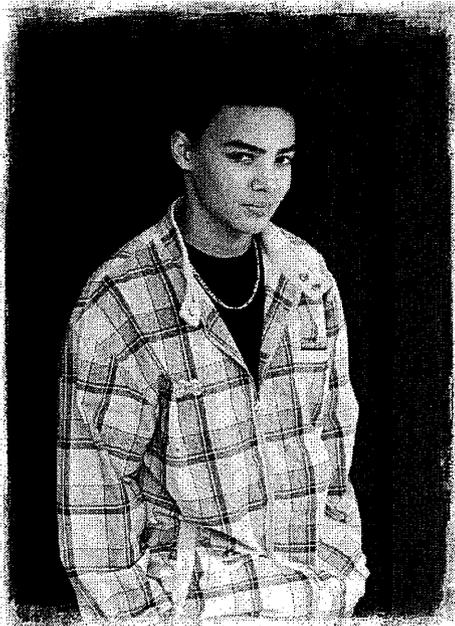
Children and Youth in care have the following rights:

To be fed, clothed and nurtured and to be given the same quality of care as other children in their placement

To be informed about their plans of care

To be consulted and to express their views about significant decisions affecting them

To reasonable privacy and to possession of their personal belongings



To be free from physical and abusive punishment

To be informed of the standard of behaviour expected by their caregivers and the consequences of not meeting their caregivers' expectations



To receive medical and dental care when they need it

To participate in social and recreational activities according to their abilities and interests



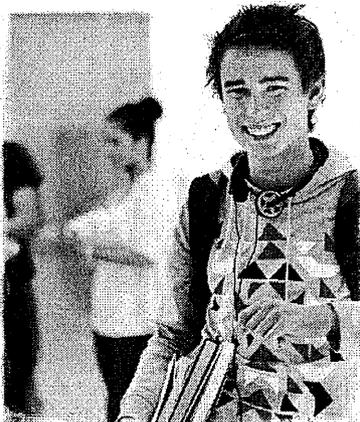
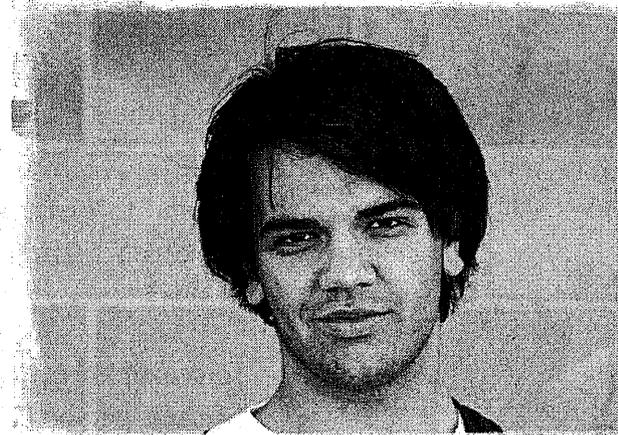
Children and Youth in care have the following rights:



To participate and learn the religion of their choice

To be informed of their legal rights and the ways those rights can be enforced

To receive guidance and encouragement to maintain their cultural heritage



To have an interpreter provided if language or disability is a barrier to consulting with them on decisions affecting their custody or care

To privacy during discussions with members of their families

To privacy during discussions with a lawyer, the Representative or Ombudsman or their staff, or a politician

To be informed about and be assisted with contacting the Representative's office or the Ombudsman.



For more information, contact the Representative

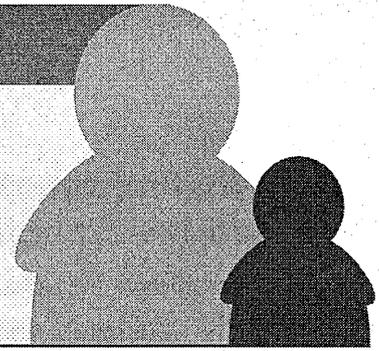
Toll-Free: 1-800-476-3933

E-mail: rcy@rcybc.ca

Website: www.rcybc.ca

How to become a child's guardian

This fact sheet is for any person who wants to become a child's guardian.



Who is a guardian?

When parents live together, both parents are the child's guardians. This means they're equally responsible for the child's care and upbringing. It doesn't matter if they're married or not.

If a child's parents stop living together, they both continue to be the child's guardians. It doesn't matter who moves out or who the children live with. Guardianship can only be removed by a court order, or if both parents agree that one of them will no longer be a guardian.

A parent who never lived with his or her child won't be a guardian unless:

- > he or she has regularly taken care of the child, or
- > there's an agreement that says that he or she is a guardian.

The only way a person who isn't a parent can become a guardian is by a court order or under a will. A person can't become a child's guardian because someone puts it into an agreement. This includes a parent who isn't a guardian.

Who can apply to become a guardian?

Anyone can apply to the court to become a child's guardian. This includes:

- > parents who aren't guardians
- > grandparents,
- > step-parents (step-parents don't automatically become guardians no matter how long they live with a child),
- > siblings,
- > other family members, or
- > other people who are not family members.

However, the court will look very carefully at any person who applies to become a child's guardian, no matter who they are and what their relationship to the child is.



Important: If you want to temporarily look after a relative's or friend's child because the Ministry of Children and Family Development (MCFD) is involved with the family, the Extended Family Program might be a better alternative. MCFD created the Extended Family Program as an alternative to foster care, one that provides resource and financial support to eligible caregivers. People who are or have become a child's guardian aren't eligible to participate in this program. Before you apply to become a guardian, read our fact sheet *Understanding the Extended Family Program* for more information. Or see www.mcf.gov.bc.ca/alternativestofostercare/extended_family.htm. MCFD also has other programs to help care providers get children out of long-term foster care or as an alternative to adoption.

How do I apply to become a guardian?

To apply to become a guardian, you can use one of the self-help guides on the Family Law in BC website about how to apply for a family order (see www.familylaw.lss.bc.ca/guides/index.php#familyOrders). However, there is one extra form you must fill out if you're applying for guardianship.

This form is called a special Affidavit (Form 34 in Provincial Court and Form F101 in Supreme Court). Before you fill it out, you'll have to arrange for the background checks listed in that affidavit.

What information does the affidavit require?

This affidavit includes the following information:

- > the nature and length of your relationship with the child,
- > the child's existing living arrangements,
- > a detailed plan for how you are going to care for the child,
- > information about any other children in your care, and
- > information about any family or child protection court proceedings you have been involved in.

You must also get three types of background checks:

- > a Ministry of Children and Family Development records check,
- > a Protection Order Registry records check, and
- > a criminal records check.

To get the Ministry of Children and Family Development and Protection Order Registry background checks, you must fill out:

- > a Consent for Child Protection Record Check, and
- > a Request for Protection Order Registry Search.

Give them to the court registry where you file your application for guardianship.

To get a criminal records check done, go to the police station or RCMP detachment in the community where you live and request one.

Can I get a temporary order without the affidavit?

If you want to get an order quickly, and you don't have time to get all the required background checks first, you can apply for an interim (temporary) order.

This temporary order will last only 90 days. During this time you'll have to have the background checks done and fill out and file the affidavit.

Where can I find the forms?

You can find the forms online at the following addresses:

- > Affidavit (Provincial Court Form 34): www.ag.gov.bc.ca/courts/forms/pfa/pfa121.pdf
- > Affidavit (Supreme Court Form F101): www.ag.gov.bc.ca/courts/forms/sup_family/F101.pdf
- > Consent for Child Protection Record Check: www.ag.gov.bc.ca/courts/forms/sup_family/s-51-consent-child-protection-record-check.pdf
- > Request for Protection Order Registry Search: www.ag.gov.bc.ca/courts/forms/pfa/pfa914.pdf

Who can help me with my application?

Family duty counsel are lawyers paid by legal aid to help people with lower incomes with their family law matters. For more information, see www.legalaid.bc.ca/legal_aid/familyduty_counsel.php.



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

Order this fact sheet online: www.crownpub.bc.ca
(under Quick Links, click Legal Services Society)

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How to Get a Court-Appointed Lawyer for Your Child Protection Case

A step-by-step guide to making a JG application

- Denied legal aid?
- Can't afford a lawyer?
- Facing a court hearing?



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

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This booklet explains the law in general. It isn't intended to give you legal advice on your particular problem. Because each person's case is different, you need to get legal help. The information in this booklet was up to date as of October 2013.

The Canadian Constitution (Charter of Rights and Freedoms) says everyone has the right to a fair trial.

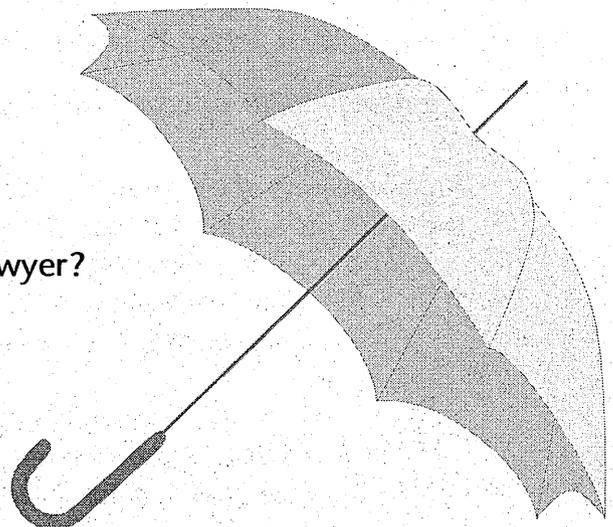
In child protection matters, once someone has been denied legal aid, they have the right to ask the court to appoint a lawyer to ensure they have a fair trial.

This request is called a "JG application." JG is the name of a New Brunswick court case (1999) about the right to have a lawyer in a child protection case.

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Introduction

As soon as a child protection worker (a government social worker) contacts your family on behalf of the Director of Child Protection, talk to a lawyer as quickly as possible. You have the right to do this. You are under investigation and could lose your child.

If you are denied legal aid *and then are refused again after a review*, you can still apply for a free court-appointed (court-ordered) lawyer to take your case. This is called “making a JG application.”

You need a lawyer — the issues are complicated. A lawyer can help you work out an agreement with the

director or help you at hearings. Child protection matters often move quickly, so you need to act fast. You can make the JG application no matter where you are in the court process.

As soon as you can, speak to a **family duty counsel** lawyer at the courthouse. These lawyers are paid by legal aid to give free legal advice to the public. Duty counsel can help you understand the two forms that you need to fill out (provided in this booklet). Duty counsel can give you other free advice but they can't act as your permanent lawyer. (See page 10 for more information.)

More information and support

If you're dealing with the Director of Child Protection (either through the Ministry of Children and Family Development or an Aboriginal delegated agency), get the following free legal aid publications. They're available at your local legal aid office or online at www.legalaid.bc.ca/publications.

Parents' Rights, Kids' Rights: A Parent's Guide to Child Protection Law in BC

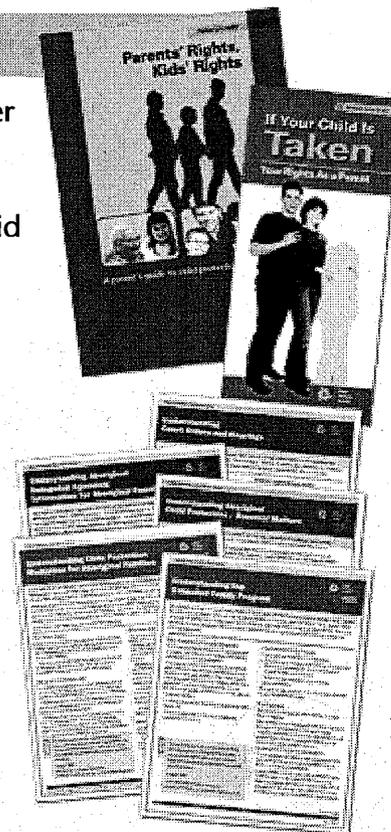
If Your Child is Taken: Your Rights As a Parent

Aboriginal Child Protection Fact Sheets

An advocate is someone who can support you through the child protection process. To find an advocate, see www.povnet.org. You can also ask for a mediation.

At a mediation, the mediator will help you communicate with the ministry.

If you're Aboriginal, you can also ask for a band or community representative to support you during the investigation.



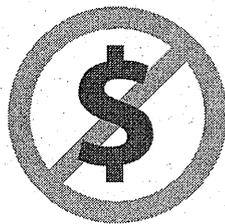
When can I ask a judge to appoint a lawyer for me?

You can ask a judge to appoint a lawyer for you if you:



Were refused legal aid, even after a review

+



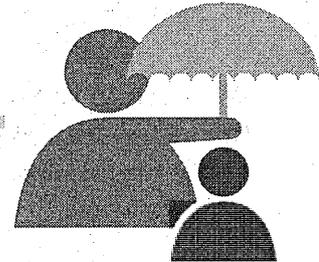
Want a lawyer but can't afford one

+



Have an upcoming court hearing

+



Face complicated child protection issues

You can ask the judge to appoint a lawyer for you whether or not you've already been to court. You should do this *as soon as you know you can apply for one*. If you must appear in court before you've had time to prepare your application, tell the judge, and he or she will give you time to prepare.

Why can a judge appoint a lawyer for me?

The Canadian Charter of Rights and Freedoms says you have the right to a fair trial. Judges have a duty to protect this right. The courts have decided that sometimes a person can't have a fair trial if they don't have a lawyer.

In child protection matters, if you want a lawyer and you've been denied legal aid (even after a review), you have the right to ask the judge to order the government to pay a lawyer for you.

This request is called a **JG application**. JG is the name of an important Canadian court case about the right to have a lawyer in a child protection case.

What do I have to prove to the judge?

For the judge to agree that you need a lawyer to get a fair trial, you'll have to convince the judge of the following four things. You put this information in the forms you need to fill out. Later, you'll explain these four points to the judge at a short JG hearing.

1. You've been denied legal aid

You need to show the judge proof that you've been refused legal aid. Bring the judge the letters from legal aid that show you were refused, and that you asked for a review of their refusal and they turned you down again. If you've lost those letters, ask legal aid for copies.

2. You can't afford a lawyer

You have to show the judge that you can't afford a lawyer. Give the judge a clear picture of your finances. Be prepared to tell the judge about:

- ❑ Your job situation
- ❑ Your monthly income and expenses
- ❑ Your assets (any savings or valuable things you own) and any debts
- ❑ Your dependants

Gather any papers that can show the judge your financial situation. For example, get your bank statement, income tax return, welfare cheque stubs, pay statements, EI or disability payment statements, hydro bills, etc.

If you can, it's helpful to tell the judge how much money you think it would cost to hire a lawyer. Ask one or two lawyers to tell you how much they think their fees would be to help you. Also ask what the retainer (deposit) would be. To find a lawyer who can answer these questions, see "Where can I get legal help?" on page 10.

If you don't provide the judge with enough information about your financial situation, the judge probably won't appoint a lawyer for you.

3. You face a court hearing

Tell the judge what the director has done, and wants to do, about your child(ren). This information is in the Report to Court (the documents that the government social worker should have given you).

4. You can't represent yourself because the hearing is too complex

You have to show the judge that your case is too complicated for you to be your own lawyer. For example:

- ☐ Your case may involve technical legal issues.
- ☐ The trial procedure may be difficult for you to follow.
- ☐ There may be too much evidence (documents or witnesses) for you to handle on your own. This may be especially true if there is a lot of evidence from the director.

A lawyer can explain to you what is complex about your case. To find a lawyer who can answer this question, see "Where can I get legal help?" on page 10.

Let the judge know about your:

- ☐ education level
- ☐ language ability
- ☐ knowledge of the child protection process

This will also help the judge decide if you are able to defend yourself.

How do I start my JG application?

To make a JG application, you first have to fill out two forms. These forms (with instructions) are in this booklet, starting on page 11. They are:

Application for an Order. The form that tells the court that you want to apply for a court-appointed lawyer.

Affidavit. A written statement with your background information that you **swear** to be true. You'll attach documents about your finances and the letters from legal aid to the Affidavit.

Fill out the forms right in the booklet, and then tear out the pages along the dotted lines. See page 6 for more information about how to prepare your forms.

Apply to the court where your hearing will be held

All child protection hearings in BC take place in Provincial Court. Take your JG forms to the courthouse where your upcoming hearing is scheduled. This is also where you'll appear before the judge to make your JG application. (If you've already gone to court, it should be the same courthouse that you went to before.)

Apply as soon as possible

Try to make your JG application as soon as you know you definitely can't get legal aid. The first time you're refused, you must ask legal aid to review their refusal. As soon as they deny you legal aid again, start your JG application.

Prepare the forms for your JG application

Try to meet with duty counsel (see page 10) for help to complete the Application for an Order and the Affidavit. Together, your Application for an Order and your Affidavit will become your JG application.

1. Follow the instructions on the two forms. The instructions are in the left-hand columns on each form.
2. Take the Affidavit to a lawyer, a commissioner, or a notary public to be sworn and signed. This means you swear in front of him or her that the information in the Affidavit is true, and then sign the form. There is often a commissioner at the court registry who can do it for free, but it depends on the availability at each courthouse.
3. Make a copy of the Application and the Affidavit for each person who has a right to be told about the hearing, as listed on the Application. *Be sure to make and keep one copy for yourself.*
4. Take the original and the copies of the Application and the Affidavit to the court registry where your hearing will be held.
5. The court registry staff will look at the forms and may ask you to correct any mistakes and fill in any blanks you missed on the Application. You'll have to make sure any errors or blanks are fixed the same way on each copy of the Application. They'll also give you the date for your JG application hearing.

Next, the staff will stamp each copy of your Application and Affidavit. They'll keep the original copies of both forms. This means the documents have now been **filed** with the court.

6. Take your copies of the Application and the Affidavit and **serve** them on (have them delivered to) everyone listed on the Application. You can *fax the documents* to the:
 - ❑ Attorney General of Canada,
 - ❑ Attorney General of BC,
 - ❑ Ministry of Justice — Legal Services Branch, and
 - ❑ Director's Counsel.

To serve the documents on the **parties** (the other people listed on the Application), you must have the documents *delivered in person*, by someone, other than you, who is over the age of 19.

How do I prepare to go to court?

Once you have a date for your JG hearing, think about what you're going to tell the judge to convince him or her to appoint a lawyer for you. Use your Affidavit to help you organize your thoughts. To convince the judge, you can use:

- your own testimony (what you say to the judge under oath in court)
- your Affidavit
- other documents (letters, forms, bank statements, cheque stubs, etc.)
- witnesses (people who will talk about your situation at the hearing, under oath)

Meet with a lawyer and ask for help

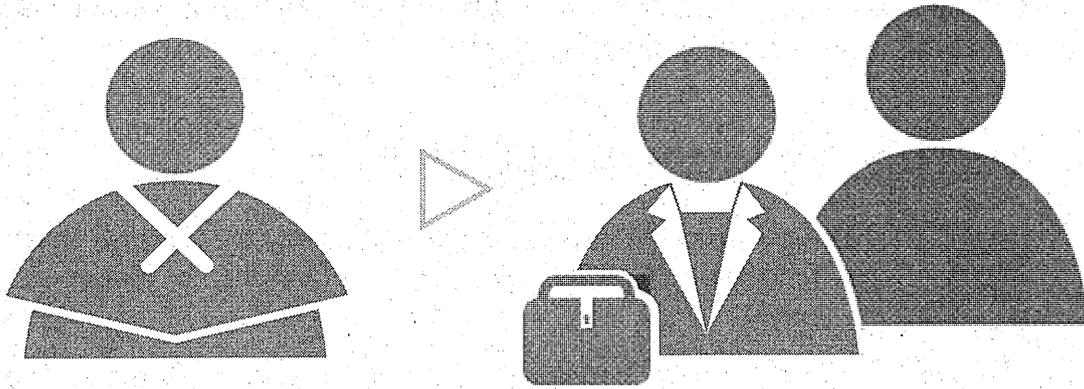
If you can, talk to a lawyer *before* you go to court. Ask a lawyer to go over all four points you need to convince the judge about. Ask the lawyer to explain to you what you can expect in court. This could be a duty counsel lawyer or your own lawyer. To find a lawyer, see "Where can I get legal help?" on page 10.

If you don't see a lawyer

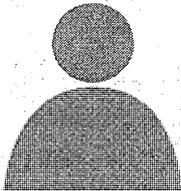
If you can't see a lawyer for help, you can still make a JG application. If you follow the instructions in this booklet, the judge will know what you're asking for.

What happens in court?

The judge will hold a short hearing about your application to have a lawyer appointed for you.



You go first



You'll speak first. Call the judge "Your Honour." Say "Your Honour, I want to make a JG application because I can't afford a lawyer and I can't get legal aid."

You now need to convince the judge of the four points:

1. You've been denied legal aid.
2. You can't afford a lawyer.
3. You have a hearing coming up.
4. You can't defend yourself because the hearing will be too complex for you.

You need to **give evidence** (provide proof) about all of the four points listed above. You can:

- testify (speak) under oath
- refer to your Affidavit
- present your documents

When you have finished, you can ask witnesses to speak (if you have any).

A government lawyer, the other parties' lawyers (if they have them), or the judge may have questions to ask you and your witnesses. Make sure to refer to your documents to make your points.

If the judge says you've made a mistake or that you're missing some documents, *don't give up*. Ask the judge to explain what you should have done in the first place. Ask the judge if you can speak to duty counsel for help, or ask for an **adjournment** (delay) so you can come back to court and apply again.

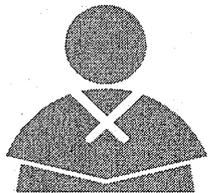
Government lawyer goes next



The government lawyer will then probably try to prove that you can defend yourself because the case isn't complex, or that you can afford a lawyer.

You get a chance to speak again after the government lawyer speaks. Refer only to the parts of your documents or the parts of the earlier testimony (comments) that support the points you're trying to make.

The judge decides



After you and the government lawyer have had your turns, the judge will decide whether you should have your own court-appointed lawyer. Sometimes the judge will **reserve** (delay) his or her decision to consider the evidence and ask you to come back on another day for the decision.

If the judge denies your JG application, you can't appeal it. However, if your circumstances change, you can make another JG application.

How long before I may get a lawyer?

If the judge decides to order the government to pay a lawyer for you, contact legal aid and give them the details of the court order that you got at the courthouse. Legal aid may need a few days to confirm the court order before assigning a lawyer to your case.

Legal aid will call you with the name and phone number of the lawyer. This lawyer will represent you at your court hearing about what the director wants to do. You may have to wait several months for that hearing.

Where can I get legal help?

It's a good idea to talk to a lawyer before your JG application.

- Speak to a family duty counsel lawyer at the courthouse. Duty counsel can give you free advice about the director's application regarding your child(ren), court procedures, and your legal rights (if time permits). Duty counsel can even speak on your behalf the first time you appear in court, but they can't act as your permanent lawyer.

Call legal aid at **604-408-2172** (in Greater Vancouver) or at **1-866-577-2525** (call no charge, outside Greater Vancouver) to find out when duty counsel will be in the courthouse.

You can also visit the legal aid website at www.legalaid.bc.ca and select Legal aid — Advice, and then click on "family law" for information about duty counsel hours at your courthouse. You can call them to schedule an appointment.

You can also call your local courthouse to ask when duty counsel are available. Find your courthouse on the Ministry of Justice website at www.ag.gov.bc.ca. Search "court locations."

- You can hire your own lawyer. Even if you pay for just two meetings to get basic advice about your particular case, it could be worth the cost. Find out at your first meeting what kind of help the lawyer can give you and what it would cost.

If you don't know a lawyer who handles child protection cases, call the Lawyer Referral Service. For \$25 (plus tax), you can have a half-hour appointment with a lawyer. If you decide you want to hire the lawyer, remember to ask how much you can expect to pay. Call the Lawyer Referral Service at **1-800-663-1919** (no charge) or **604-687-3221** in Greater Vancouver.

- You can learn more about the child protection process from the Family Law in BC website at www.familylaw.lss.bc.ca (click "Your legal issue" then "Child protection/removal").

INSTRUCTIONS

Use the same court file number and court location as on the top right corner of your court documents.

Write the child(ren)'s name(s) as they appear on your court documents. Include the children's birth dates (mm/dd/yyyy).

List the full names of the parent(s) and any other people who are parties.

You are the one filing the application. Fill in your name, address, postal code, phone number and fax number (if you have one).

You must give notice to:

- **The Attorney General of Canada**
- **Attorney General of British Columbia**
- **Ministry of Justice — Legal Services Branch**
- **Director's Counsel**, also known as the Ministry lawyer (ask the Ministry lawyer for their contact information).
- **Party** — List the names and addresses of the other parent(s) and other people who are parties. The documents must be delivered in person to the other parties by someone other than you who is 19 or older. Then that person must sign an Affidavit of Service confirming they served the documents.

APPLICATION FOR AN ORDER

Court File Number _____

Court Location _____

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

In the matter of the child(ren):

Date(s) of birth:

The parent(s) of the child(ren) is/are:

This Application is filed by:

Name: _____

Address: _____

Phone number: _____ Fax number: _____

Notice to:

Attorney General of Canada
Department of Justice Canada
British Columbia Regional Office
#900 – 840 Howe Street
Vancouver, British Columbia V6Z 2S9
Fax: 604-666-2760

Attorney General of British Columbia
P.O. Box 9280, Stn Prov Govt
Victoria, British Columbia V8W 9J7
Attn: Duty Counsel
Fax: 250-387-6411

Ministry of Justice — Legal Services Branch
Attention: Duty Counsel
PO Box 9280 Stn Prov Govt
Victoria, British Columbia V8W 9J7
Fax: 250-356-5111

Director's Counsel

Party _____

Party _____

Party _____

Party _____

Check one box to show if your child(ren) is/are Aboriginal or not.

The child is Aboriginal: Yes No

Ask the court registry staff (at the courthouse) about the most appropriate date to schedule your application hearing. Then fill in the blanks for the date, time, and address of the court location for your application hearing.

I will apply to this court on _____ at ____:____ a.m. p.m.
at _____

FOR

- A temporary custody order (under s. 41(1)(c), s. 42.2(4)(b) or s. 49(7)(b))
- A supervision order (under s. 41(1)(a), s. 41(2.1) or s. 42.2(4)(a))
- A continuing custody order (under s. 41(1)(d), s. 42.2(4)(d), s. 49(4), s. 49(5) or s. 49(10))
- An order permitting use of another service method, as set out below (Rule 6(10))
- Extension of a temporary order (section 44)
- A supervision order after expiry of a temporary custody order (section 46)
- An order for access to a child (section 55)
- An order that a child or parent undergo a medical or other examination (section 59)
- An order under section 60 with reference to section _____
- An order under section 60 dispensing with a required consent
- An order varying notice requirements (section 69)
- An order as set out below

Check off the box that says "An order as set out below."

Read your court documents and check the one box that applies.

1. The Director's application is for:
 - interim custody (for 45 days)
 - temporary custody (for ____ months)
 - continuing custody

Write your age and what grade you completed in school (or higher).

2. The applicant wishes to retain counsel to represent them with regard to the order sought by the Director. To that end, the applicant applied to the Legal Services Society for legal aid and legal aid has been refused.
3. The applicant cannot pay for a lawyer.
4. Representation of the client by counsel is essential to a fair trial and to the ability of the applicant to make a full answer and defence. The applicant believes that the order sought is serious and complex. The applicant is _____ years old and her/his level of education is _____.

Constitutional issues to be raised and principles to be argued are:

5. The applicant relies on section 7 of the Charter of Rights and Freedoms, and the common law.
6. Section 7 of the Charter guarantees the applicant the right to a fair hearing in accordance with the principles of fundamental justice and accordingly requires funded counsel to be provided if the applicant wishes counsel, cannot pay a lawyer, and representation of the applicant by counsel is essential to a fair trial: *New Brunswick (Minister of Health and Community Services) v. G.(J)*, [1999] 3 SCR 46.
7. The applicant also relies on section 8(c) of the *Family Court Rules (CFCSA)*.

In support of this application, the applicant relies upon the following:

- a) the Affidavit of the applicant;
- b) such further and other evidence as the court may permit.

Sign and date the form.

Signature of Applicant or Agent

Dated

Write in an address or fax number where you want to receive mail, if different from the one you put on the first page.

Address for service if different from Applicant's:

Fax: _____

Once you have completed this form, make a copy for each person who you must give notice to (see page 1 of your Application for the number of people), plus a copy for yourself.

Take your original and all of the copies to the court registry where you will have your application heard, and have the registry staff stamp each copy.

The registry staff will keep the original of both the Application and Affidavit. This means you have now filed your documents.

Serve all the people who are listed as the people who should receive notice.

INSTRUCTIONS

Use the same court file number and court location as on the **top right corner** of your court documents.

Write the child(ren)'s name(s) as they appear on your court documents. Include the children's birth dates.

List the full names of the parent(s) and any other people who are parties.

Fill in your name and address.

Read your court documents and fill in the **date of removal** of your child(ren).

Read your court documents and check the one box that applies.

Documents are called "Exhibits." Label them "A," "B," "C," etc. and attach them to the Affidavit.

List the reason(s) on your letter(s) from legal aid.

Provide your age and the name of the country you were born in.

Court File Number _____

Court Location _____

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

In the matter of the child(ren):

Date(s) of birth:

The parent(s) of the child(ren) is/are:

AFFIDAVIT

I, _____ of _____ swear/affirm:

1. I know or firmly believe the following facts to be true. Where these facts are based on information from others, I have stated the source of that information and I firmly believe that information to be true.
2. My child(ren) was/were removed from my care on _____.
3. The Director's application is for:
 - interim custody (for 45 days)
 - temporary custody (for ___ months)
 - continuing custody
4. I have been refused legal aid.
5. I have attached the letter from legal aid informing me that my application for coverage was denied as Exhibit "A" to this Affidavit.
6. I appealed legal aid's decision to deny me coverage, but my appeal was denied. I have attached the letter from legal aid informing me that my appeal was denied as Exhibit "B" to this Affidavit.
7. I was denied legal aid because _____.
8. I am currently _____ years old. I was born in _____, and I am:
 - A Canadian Citizen
 - A Canadian Permanent Resident
 - Not a Canadian Citizen or a Canadian Permanent Resident

Check one box only and fill in the blank(s).

Check one box only and fill in the blank(s).

Check one box only and fill in the blank, if needed.

Label your Exhibits ("C," "D," "E," etc.) as needed. If you have not completed your Income Tax Returns, attach any other proof of income such as pay statements, or EI or disability payments, etc., as Exhibits "_____".

Review your:

- cheque stubs
- employment records
- bank statements
- rent
- hydro bill
- other bills
- support payments
- etc.

to find these amounts.

9. My first language is _____, and:

I can read, write, and speak either English or French.

I can't read, write, and speak either English or French without help from someone else, and I need the following kinds of help reading, writing, or speaking English or French: _____

10. The highest level of schooling I have completed is:

Less than high school. The last grade I completed was grade _____.

High school.

Technical or trade school. The institutions I attended and certificates/diplomas I received are: _____.

College or university. The institutions I attended and certificates/diplomas I received are: _____.

11. I am currently:

Unemployed.

Employed as a _____.

12. I have attached my Income Tax Returns and Notices of Assessment from the Canada Revenue Agency for the following years _____ as Exhibit "_____" to this Affidavit. I have attached _____ as Exhibit(s) "_____" to this Affidavit.

13. My financial circumstances are:

a) my income is: \$ _____

b) my monthly expenses are:

Item	Cost

Total: \$ _____

c) my debts total: \$ _____

d) all the things that I own have a value of:

Item	Cost

Total: \$ _____

You do not need to give the lawyers' names.

14. I have contacted at least two (2) private lawyers who practice in or near _____, British Columbia, and who practice child protection law. They estimated it would cost the amounts below to represent me, and asked for retainers as follows:

Lawyer#1 Hearings: \$ _____ Retainer: \$ _____
Lawyer#2 Hearings: \$ _____ Retainer: \$ _____

15. I have not been able to hire a lawyer because I cannot afford one.

List all the expenses/reasons why you have no extra money available.

16. Since my child(ren) was/were removed, I have not been able to save enough money to hire a lawyer to defend me because:

17. I believe my case is serious because I may lose custody of my child(ren).

You can explain why your case is complex, if you want (for example, the amount of documents and witnesses the director will be using).

18. I believe my case is complex. My case is complex because:

19. Other relevant information that I think should be considered:

20. I swear/affirm this Affidavit in support of an application to have a judge order that I be provided with counsel by the Government of British Columbia.

You must sign IN FRONT OF a lawyer, a commissioner for taking oaths, or a notary public. The lawyer, commissioner, or notary fills out the date and place and also signs.

SWORN/AFFIRMED BEFORE ME)

at the city of _____, in the)

province of British Columbia, this)

___ day of _____, 20 ___.)

Signature of applicant

)

)

)

)

A commissioner for taking)

Affidavits within British Columbia)

After you have sworn this document, make a copy for each person who you must give notice to (see page 1 of your Application for the number of people), plus a copy for yourself.

Take your original and all of the copies to the court registry where you will have your application heard, and have the registry staff stamp each copy.

The registry staff will keep the original of both the Application and Affidavit. This means you have now filed your documents.

Serve all the people who are listed as the people who should receive notice.

Also available

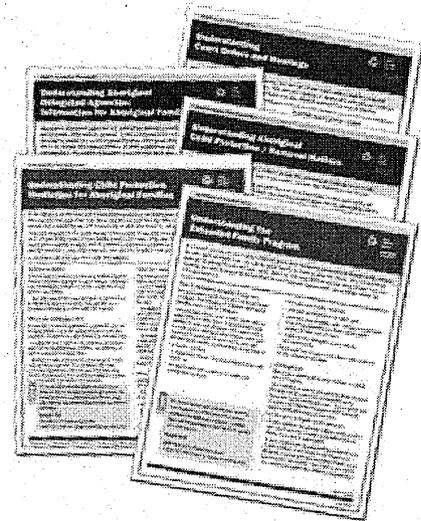
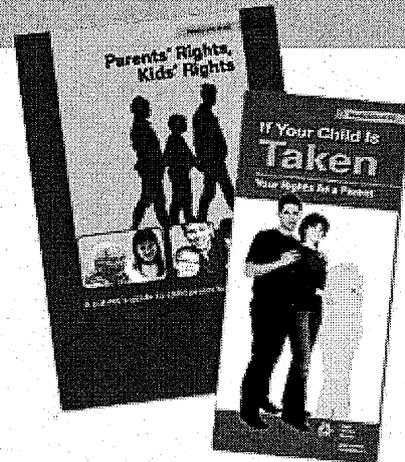
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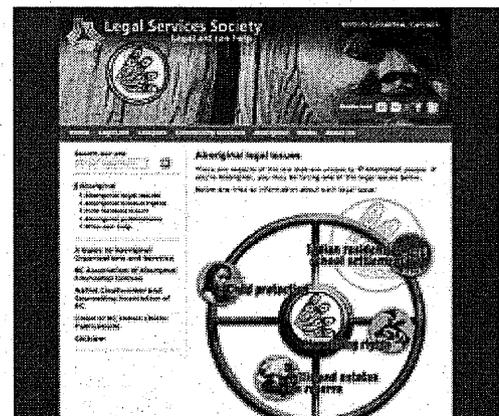
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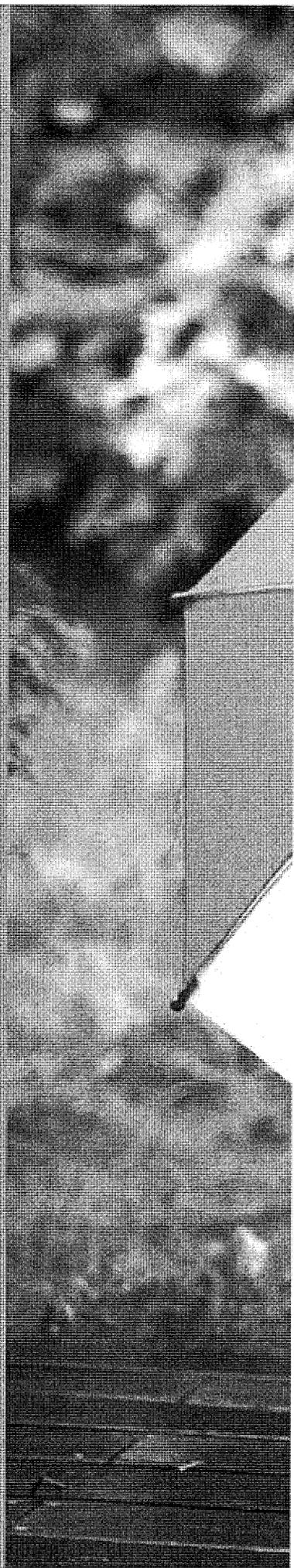
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Reconstructing Domestic Relations: Improvements and Innovations in British Columbia's New *Family Law Act*

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I. FAMILY JUSTICE REFORM IN BRITISH COLUMBIA

Family justice processes in British Columbia have been the subject of a remarkable, and likely unprecedented, degree of attention over the last ten years. The results are diverse and include the entry of paralegals to the provision of family law services, including legal advice, the recognition of collaborative settlement processes and parenting coordination as valued dispute resolution mechanisms, the creation of special court rules for family law proceedings and, most significantly, the overhaul of a legislative regime that had stood for more than thirty years without significant change.

The *Family Relations Act* was introduced in 1972,¹ and consolidated the miscellany of legislation on domestic relations that had preceded it, including the *Divorce and Matrimonial Causes Act*,² the *Wives' and Children's Maintenance Act*³ and the *Equal Guardianship of Infants Act*.⁴ The new act addressed the care of children in terms of guardianship, custody and access, and provided for the maintenance of children, spouses – including unmarried spouses – and parents. The act was significantly renovated in 1978 and provisions for the division of property between married spouses included. The 1978 *Family Relations Act*⁵ remained the bedrock legislation on the law of domestic relations in British Columbia until its repeal in 2013.⁶

Interest in reforming family justice processes and updating the *Family Relations Act* and sprang to life in the early 1990s, resulting in a number of impassioned reports calling for change⁷ and finally, in 2002, the commissioning of the Justice Review Task Force. The Task Force was struck by the Attorney General, on the initiative of the Law Society of British Columbia, and was charged with the task of identifying

¹ *Family Relations Act*, SBC 1972, c. 20

² *Divorce and Matrimonial Causes Act*, RSBC 1960, c. 118

³ *Wives' and Children's Maintenance Act*, RSBC 1960, c. 409

⁴ *Equal Guardianship of Infants Act*, RSBC 1960, c. 130

⁵ *Family Relations Act*, SBC 1978, c. 20

⁶ *Family Law Act*, SBC 2011, c. 25, s. 259

⁷ See, for example the 1992 report of the Family Justice Review Working Group, *Breaking Up Is Hard to Do: Rethinking the Family Justice System in British Columbia*, the ironically titled 1993 report of the Attorney General's Family Justice Committee, *Family Justice Reform: Decisions, Implementation, Action*, and the 1998 report of Associate Chief Judge Schmidt, *A Proposal for Case Management in Family Court and for the Integration of Family Justice Initiatives and the Family Court Process*.

ideas and initiatives that would help to make the justice system “more responsive, accessible and cost effective.” The Task Force established the more narrowly focused Family Justice Reform Working Group a year later, and the Working Group released its major report, *A New Justice System for Children and Families*,⁸ in 2005.

A New Justice System called for sweeping reforms to the family justice system and, among other things, recommended that out-of-court resolution processes be the preferred tools for dealing with family law disputes, with litigation employed only as a last resort, and that court procedures be simplified, with judges more actively managing both court processes and the litigants making use of them.

In 2006, the Attorney General announced a review of the *Family Relations Act*,⁹ and fourteen discussion papers were released for public comment over the course of 2007. The discussion papers were informed by recent developments in the United States, in Australia and in the rest of the Commonwealth, and covered the full breadth of family law issues. Among other things, they discussed the utility of orders for judicial separation, whether unmarried couples should be included the property division regime previously only available to married spouses, whether the act’s provisions for parental support should be repealed, and the merits of making support orders presumptively binding on the payor’s estate.¹⁰ It was clear that all options were on the table.

The review culminated in the 2010 release of a discussion paper of surpassing scope and magnitude, *White Paper on Family Relations Act Reform: A Proposal for a New Family Law Act*.¹¹ The white paper surveyed the major areas of reform government sought to address, which were indeed as comprehensive as the discussion papers suggested, and included draft legislation and explanatory commentary.

After a distressingly long hiatus and a change of premier, both of which suggested that this latest attempt at reform might meet the same inglorious fate as its predecessors, the *Family Law Act* was tabled in the Legislative Assembly as Bill 16 on 14 November 2011. The bill passed third reading on 23 November 2011 and received Royal Assent the very next day. The new act looked very much like the legislation described by the white paper and resonated with the philosophical approach and major themes of *A New Justice System*.

⁸ *A New Justice System* is available on the Task Force’s website at www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf and remains worthwhile reading.

⁹ Then, *Family Relations Act*, RSBC 1996, c. 128.

¹⁰ A summary of replies to the discussion papers is still available online and can be found at www.ag.gov.bc.ca/legislation/family-relations-act/pdf/FRAConsultationSummary.pdf.

¹¹ The white paper is available from the website of the Ministry of Justice at www.ag.gov.bc.ca/legislation/pdf/Family-Law-White-Paper.pdf.

The *Family Law Act* came fully into force,¹² and the *Family Relations Act* was entirely repealed, on 18 March 2013. The shock to the system was sharp but short; the transitional provisions of the new act were brief and primarily concerned the interpretation of agreements and orders about children made under the old act and the continuing effect of the *Family Relations Act* with respect to agreements made, and property litigation commenced, under that act.¹³

II. A NEW APPROACH TO FAMILY LAW

The *Family Law Act* is largely novel to British Columbia law. Although some aspects of the new legislation are a modest update of the *Family Relations Act*, such as the act's treatment of child support and the jurisdictional overlap between the Supreme Court and Provincial Court, the *Family Law Act* establishes new legislative schemes for a number of traditional family law subjects, such as the care of children and the division of property, provides for matters new to the legislation on family law, such as the division of debt and parenting coordination, and repeals a number of subjects of long standing in the *Family Relations Act*, such as its statutory offences and provisions for parental support.

Although the reforms imposed by the *Family Law Act* touch every area of the law on domestic relations in British Columbia, three major themes emerge: an emphasis on and better support for out-of-court dispute resolution processes; enhanced provisions for the court's control of its process and the litigants before it; and, where a dispute involves children, a refocusing of rights and priorities from the parties to their children.

1. An Expanded Approach to Dispute Resolution

Under Part 2 of the new act, the resolution of family law disputes out of court is encouraged. "Family dispute resolution," a term meant to capture all out of court processes, is defined to include "mediation, arbitration, collaborative family law and other processes." In support of these processes, s. 5 imposes a general duty to make "full and true" disclosure when resolving a family law dispute, and the court may, under s. 89, make interim orders for the distribution of property to fund family dispute resolution processes.¹⁴

Pursuant to s. 9, parties must comply with any requirements to attend family dispute resolution as may be prescribed by regulation.¹⁵ The court may also compel

¹² A small number of consequential amendments came into effect on the date of royal assent; see *Family Law Act*, s. 482.

¹³ *Family Law Act*, ss. 251-255

¹⁴ The law developed on the advance distribution of property under the *Family Relations Act* allowed distributions to pay for the cost of experts but not to pay debt or legal fees. See for example *Taylor v. Taylor* (1997), 47 BCLR (3d) 230 (SC) and *Herr v. Herr*, 2006 BCSC 1097.

¹⁵ As at the date of writing, none.

attendance at family dispute resolution by “conduct order”¹⁶ or when a party has refused to exercise or been denied a right to time with a child.¹⁷

Sections 6, 7 and 214 bolster family law agreements by: making such agreements binding on the parties, regardless of consideration, and whether filed in court or not; deeming the parts of agreements subsequently superseded by court order or another agreement to have been severed; and, where an order is drawn from part of an agreement, continuing the effect of the remainder of the agreement. The court may no longer “vary” agreements,¹⁸ but instead may set all or part of them aside and make orders in place of the portions set aside.

2. Enhanced Case Management

Section 199 provides the court with a new set of guiding principles:

- (1) A court must ensure that a proceeding under this Act is conducted
 - (a) with as little delay and formality as possible, and
 - (b) in a manner that strives to
 - (i) minimize conflict between, and if appropriate, promote cooperation by, the parties, and
 - (ii) protect children and parties from family violence.
- (2) If a child may be affected by a proceeding under this Act, a court must
 - (a) consider the impact of the proceeding on the child, and
 - (b) encourage the parties to focus on the best interests of the child, including minimizing the effect on the child of conflict between the parties.

The *Family Law Act* makes a number of provisions that substantially enhance the capacity of the court to manage the proceedings before it; most significantly, these provisions apply equally to matters before the Provincial Court as well as those before the Supreme Court:¹⁹

- (a) under ss. 212 and 213, the court may make and enforce disclosure orders at any stage of a proceeding;
- (b) under s. 221, the court may make an order barring a party from making further applications or continuing a proceeding without leave, where the party has made a trivial application or otherwise misused court processes; and,

¹⁶ *Family Law Act*, s. 224

¹⁷ *Family Law Act*, ss. 61 and 63

¹⁸ A curious remedy available only to the Provincial Court under *Family Relations Act*, s. 121.

¹⁹ Under the previous legislation, it was next to impossible to enforce Provincial Court orders on matters other than support. “Interference” with a right of custody or access was an offence under *Family Relations Act*, s. 128 but the aggrieved party was required to initiate a private prosecution under the *Offence Act*, RSBC 1996, c. 388 to pursue the matter. The court was given no general power to punish for contempt, and could only punish for contempt *in facie*.

- (c) under ss. 222 to 228, the court may make conduct orders to manage parties and court processes where necessary to facilitate settlement, to manage behaviour frustrating the resolution of a proceeding, prevent misuse of court processes, or to “facilitate arrangements” pending the final resolution of a proceeding.

The *Family Law Act* gives both courts significant new enforcement powers, including in respect of the wrongful withholding, or failure to exercise, parenting time or contact.²⁰ Where a particular matter lacks a specific enforcement mechanism, the general enforcement provisions of s. 230 allow the court to require a party to post security, pay the expenses of the other party occasioned by the breach or pay up to \$5,000 for the benefit of another person or as a fine. The extraordinary enforcement provisions of s. 231 allow the court, including the Provincial Court, to jail a party for up to 30 days where nothing else will suffice to secure the his or her compliance.

3. A Child-Centred Approach to the Care of Children

The new legislation shifts the focus of the “right” involved in the care and control of children from the parents to the children themselves and establishes a new terminology to describe the new regime, perhaps in an effort to buttress innovation from the entropic effect of custom.

Under s. 40, the persons responsible for making decisions on behalf of a child are “guardians.” Guardians are charged with exercising “parental responsibilities” in the best interests of the child and must presumptively do so in consultation with other guardians.²¹ The best interests of a child is no longer the “paramount” consideration the court and parents must take into account, but the “only” consideration.

Under s. 37, to determine the best interests of a child, all of the child’s needs and circumstances must be considered, including:

- (a) the child's health and emotional well-being;

²⁰ Under ss. 61 and 63, the court may, *inter alia*, require the parties to attend family dispute resolution, to attend counselling, to provide make-up time, to pay expenses incurred as a result of the withholding or failure to exercise, or order the payment of up to \$5,000 to a party or as a fine.

²¹ For married spouses, important questions arise regarding the congruity of the provisions of the *Family Law Act* and those found at ss. 16 and 17 of the *Divorce Act*, RSC 1985, c. 3 (2nd Supp.), which some judges have found to be “operationally incompatible;” see *Hansen v. Mantei-Henson*, 2013 BCSC 876. However, it is not clear to me that in cases of incompatibility the doctrine of paramountcy must necessarily oust the application of the provincial legislation. Guardianship provided the complete bundle of parental rights in respect of a child under the older common law, whereas custody is a statutory mechanism providing a narrower range of authority. See Boyd, J.-P., “A Regime of Peaceful Coexistence: Disentangling Custody and Guardianship under the *Divorce Act* and the *Family Law Act*,” 71:1 Advocate 55 and 71:3 Advocate 359.

- (b) the child's views, unless it would be inappropriate to consider them;²²
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

The subject matter parental responsibilities concern is extensive and is set out non-exhaustively at s. 41. Parental responsibilities covers every aspect of parenting a child, from determining mode of health care and place of residence, to giving consent and applying for passports.

The time a guardian has with a child is "parenting time." Pursuant to s. 42, during parenting time, a guardian has the parental responsibility of "making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child." The phrase "parenting time" particularly demonstrates the refocusing of rights onto the child from the parent; "parenting time" has the flavour of an obligation or a task to be performed, the beneficiary of which is the child rather than the parent.

The provisions in an order or agreement for parental responsibilities and parenting time are known as "parenting arrangements."

The time someone who is not guardian has with a child, including the time of a parent who is not a guardian, is "contact." A person with contact, including a parent with contact, has no parental responsibilities during his or her time with the child, including the day-to-day care and control of the child.

²² This is a particularly noteworthy provision, as it creates a rebuttable presumption that the views of children will be heard. Under *Family Relations Act*, s. 24, the court was only required to take the views of the child into account "if appropriate."

Under the poorly worded provisions of s. 39, parents who have cohabited are each presumed to be a guardian of their child and a parent who never lived with the child and other parent is not.²³ Any person, including a parent, may be appointed as a guardian of a child under s. 51, and amendments to the rules of both trial courts require such applicants to complete a lengthy prescribed form affidavit and disclose any civil or criminal proceedings which may bear on the well-being of the child and attach current records checks from the police and the child welfare authority.²⁴

III. OTHER INNOVATIONS

The *Family Law Act* is also notable for the breadth and scope of its subject matter, some aspects of which are not just new to British Columbia but new to Canada, and vastly exceeds the ambit of the former *Family Relations Act*.

1. Assisted Reproduction and Parentage

Part 3 of the act sets out a scheme for determining parentage for all purposes of the law in British Columbia except under the *Adoption Act*,²⁵ and also addresses the parentage of children conceived by assisted reproduction.

Assisted reproduction is defined as a means of conceiving a child “other than by sexual intercourse,” and is now governed both by the *Family Law Act*, which largely addresses the effect of assisted reproduction agreements with respect to parentage, and by the federal *Assisted Human Reproduction Act*,²⁶ which *inter alia* governs payment for services related to assisted reproduction and prohibits the creation of human clones and chimera.

Pursuant to ss. 26 and 27 of the *Family Law Act*, the parents of a child are presumed to be the birth mother and biological father. However, s. 24 provides that the donor of gametes is not automatically a parent merely by virtue of the donation; a donor may become a parent if the parties make an agreement, prior to conception, which provides otherwise. Likewise, under s. 29, an agreement may also provide that a surrogate mother – the birth mother – is not a parent.

²³ I say poorly worded because s. 39(1) links the presumption of mutual guardianship to the parents' relationship with each other, not to their relationships with the child:

While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

As a result, not only is a parent who never lived with the child and other parent not presumed to be a guardian, neither is a single parent who has been solely responsible for the care of the child but never cohabited with the other parent.

²⁴ Provincial Court (Family) Rules, BC Reg. 417/98, r. 18.1; Supreme Court Family Rules, BC Reg. 169/2009, r. 15-2.1

²⁵ *Adoption Act*, RSBC 1996, c. 5.

²⁶ *Assisted Human Reproduction Act*, SC 2004, c. 2.

As a result of the operation of ss. 27 and 30 and the definition of “intended parents” at s. 20, a child may have up to five persons who qualify as parents for all purposes of the law: up to two intended parents, the donor of sperm, the donor of ovum and a surrogate mother.

2. Delegation of Guardianship

Pursuant to s. 43 of the act, a guardian who is temporarily unable to exercise certain specified parental responsibilities in respect of a child,²⁷ including day-to-day decision-making, may authorize a person to exercise those parental responsibilities on his or her behalf during the period of incapacity. These provisions will be helpful for guardians enduring a period of illness or convalescence, but will likely prove most useful for guardians who must send their children into the care of a relative elsewhere to study.

Under s. 55, a guardian who is facing a terminal illness or permanent loss of mental capacity may appoint a “standby guardian” to become an additional guardian of a children when the conditions triggering the appointment, specified by the appointing guardian, are met. The standby guardian must exercise parental responsibilities in consultation with the appointing guardian to the extent possible.

3. Relocation and Removal of Children

Division 6 of Part 4 of the *Family Law Act* attempts to cure some of the uncertainty *Gordon v. Goertz* leant to mobility claims²⁸ by providing a test to address a guardian’s wish to relocate, with or without the child, once an order or agreement on parenting arrangements has been made.

Pursuant to s. 66, where a guardian plans to relocate – defined as a change in the residence of a child or guardian “that can reasonably be expected to have a significant impact on the child’s relationship” with a guardian or other persons “having a significant role in the child’s life” – the guardian must give 60 days’ notice to all other guardians and persons with contact. Under s. 68, guardians objecting to the move, and only guardians may object, must file an application for an order prohibiting the relocation within 30 days, failing which the guardian proposing to move may relocate.

Two tests to permit or prohibit a proposed relocation are set out at s. 69. Where the child’s guardians do not have equal or near-equal parenting time, the guardian wishing to relocate must establish that:

²⁷ Making decisions about with whom the child will live and associate; making decisions regarding the child’s schooling and extracurricular activities; giving or refusing consent to medical treatment; requesting and receiving information about the child’s schooling and healthcare from third parties; and, “exercising any other responsibilities reasonably necessary to nurture the child’s development.”

²⁸ *Gordon v. Goertz*, [1996] 2 SCR 27. See the Court of Appeal for British Columbia’s eloquent plea for a reconsideration of *Gordon* at paragraph 59 of *R.E.Q. v. G.J.K.*, 2012 BCCA 146.

- (a) reasonable arrangements have been proposed to preserve the child's relationship with the other guardians, persons with contact and persons with significant roles in the child's life; and,
- (b) the relocation is proposed in good faith.

Where these factors are established, the move is presumed to be in the best interests of the child unless a guardian seeking to prohibit the move is able to show otherwise.

Where the guardian proposing to move and an objecting guardian have an equal or near-equal allocation of parenting time, the guardian proposing to move must establish that:

- (a) reasonable arrangements have been proposed to preserve the child's relationship with the other guardians, persons with contact and persons with significant roles in the child's life;
- (b) the relocation is proposed in good faith; and,
- (c) the relocation is in the best interests of the child.

Under s. 60, the court must consider "all relevant factors" to determine whether a move is proposed in good faith, including the reasons for the relocation, whether the relocation is likely to improve the quality of life of the child or guardian, and any restrictions on a guardian's ability to relocate that may be set out in an agreement or order.²⁹

4. Children's Property

Pursuant to ss. 176 and 178 of the act, a guardian is no longer the presumptive trustee of all of a child's property,³⁰ save for property with a value below \$10,000.³¹ The Supreme Court may appoint a trustee under s. 179 upon consideration of factors set out at s-s. (2), which include the child's views, the wishes of the child's guardians and the opinion of the Public Guardian and Trustee.

Unless an order or trust document provides to the contrary, the trust property and an accounting must be delivered to the child upon the child turning 19, the age of majority.

²⁹ The two critical decisions to date on the tests set out at s. 69 are *T.C. v. S.C.*, 2013 BCPC 217, a decision of Judge Dhillon, and *L.J.R. v. S.W.R.*, 2013 BCSC 1344, a decision of Mr. Justice Betton.

³⁰ Under *Family Relations Act*, s. 25 a guardian was "guardian of the person of the child and guardian of the estate of the child."

³¹ Family Law Act Regulation, BC Reg. 347/2012, s. 24

5. Terminating Support for Certain Minor Children

Under s. 147, all children, defined by s. 146 to include minors and older children unable to withdraw from the charge of their parents or guardians, are entitled to benefit from the payment of child support except for children who:

- (a) are spouses; or,
- (b) have voluntarily withdrawn from the charge of their parents or guardians, for reasons other than family violence or objectively intolerable living circumstances.

A minor who has withdrawn may resume eligibility for child support upon returning to the charge of his or her parents or guardians; similar provisions are not provided for children who become spouses and lose that status prior to their emancipation.

6. Support from the Afterlife

Where a person obliged to pay child support or spousal support has life insurance, the court may, under s. 170 of the *Family Law Act*, require the payor to maintain the premiums on the policy and designate the recipient as the beneficiary of the policy, either permanently or for a specified period of time.

The same section also allows the court, after considering factors set out in s. 171, to order that an obligation to pay child support or spousal support will survive the death of the payor as a debt of the payor's estate. Where an order or agreement is silent on the effect of the payor's death, a recipient may, upon the payor's death, apply under s. 171 for an order that the support obligation continue. In either circumstance, the personal representative of the payor has standing to apply to vary or terminate the support obligation.

7. Property Entitlements

The new act provides for a partnership of acquests property regime at Parts 5 and 6, in which spouses share in property acquired after the commencement of their relationship – the earlier of the date of cohabitation or marriage – rather than the deferred community of property regime prescribed by the *Family Relations Act*. Perhaps more significantly, the act's provisions for the division of property and debt apply to both to married spouses and to persons who have cohabited in a marriage-like relationship for at least two years.

Under s. 84, shareable "family property" is broadly defined as all property owned by either spouse at the date of separation; s. 85 lists property that is excluded from the pool of property that is family property, primarily property acquired before the commencement of relationship, interests in discretionary trusts, and inheritances

and court awards received during the relationship. Pursuant to s. 81, each spouse is presumed to have a one-half interest in family property, regardless of their use or contribution; pursuant to s. 96, excluded property is presumed to remain the property of the owning spouse.

Family property may be divided unequally if an equal division would be “significantly unfair”³² under s. 95, having regard to a list of factors set out at subsections (2) and (3), that include:

- (a) a spouse’s contributions to the career of the other;
- (b) whether family debt was incurred in the normal course of the spouses’ relationship;
- (c) the ability of each spouse to pay a share of the family debt, if the amount of family debt exceeds the value of family property;
- (d) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- (e) whether a spouse acting in bad faith disposed of family property or substantially reduced the value of family property; and,
- (f) the extent to which the act’s objectives for spousal support have been met.

Division 6 of Part 5 dramatically amends the common law of conflicts in British Columbia, and allows the Supreme Court to make orders for the possession of or transfer of title to property located outside the province if certain conditions are met, including that:

- (a) the spouses submit, either in an agreement or during the proceeding, to the jurisdiction of the court in respect of the division of property;
- (b) at least one spouse is habitually resident in British Columbia when the proceeding for the division of property was started; and,

³² “Significantly unfair” is a new concept to the law of domestic relations in British Columbia, and has yet to be interpreted by a court as at the time of writing. A body of case law was developed under the *Family Relations Act* explaining the meaning of “unfair,” in the context of the reapportionment of family assets, and “grossly unfair,” in the context of the cancellation or reduction of arrears of support, and a plain reading of “significantly unfair” suggests a magnitude of unfairness somewhere between the two. The only other British Columbia law that uses the term “significantly unfair” is the *Strata Property Act*, SBC 1998, c. 43, which does so in the non-analogous context of oppressive actions taken by a strata corporation.

- (c) there is a real and substantial connection between British Columbia and the facts on which the proceeding for the division of property is based.

8. Family Violence and the Best Interests of Children

Family violence is expansively defined at s. 1 of the *Family Law Act* as including:

- (a) physical, sexual, psychological and emotional abuse;
- (b) intimidation, harassment, threats and stalking;
- (c) restricting a person's autonomy and withholding the necessities of life;
- (d) damaging property; and,
- (e) in the case of children, direct or indirect exposure to family violence.

Where the court is required to make a decision based on the best interests of the child, the factors set out at s. 37(2) include:

- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

Additional factors are set out at s. 38 which must be considered to assess the significance of the s. 37(2)(g) and (h) factors:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

- (i) any other relevant matter.

The decisions on family violence to date have embraced the imprecision and breadth of the definition at s. 1. In *M.W.B. v. A.R.B.*, for example, the court found litigation harassment to constitute family violence for the purposes of an application involving a child.³³ In *J.C.P. v. J.B.*, the court found a failure to “pay child support on time and in the full amount” to be family violence.³⁴

9. Family Violence and Protection Orders

A person who is at risk of family violence, or a person on that person’s behalf, may apply for a “protection order” under s. 183 of the *Family Law Act*. Such applications may be brought without notice and independent of any other proceeding under the act.

In considering whether to make a protection order, the court is required to consider seven risk factors set out at s. 184(1), including:

- (a) any history of family violence, and whether there is a pattern of repetitive or escalating violence;
- (b) the presence of circumstances increasing the risk of violence, such as substance abuse and mental health issues; and,
- (c) the presence of circumstances increasing the vulnerability of a person, such as pregnancy and age.

A number of factors that the court must not consider are set out at s. 184(4) and include:

- (a) whether the person against whom the protection order is sought was previously protected by a protection order;
- (b) whether criminal charges have been laid against the person against whom the protection order is sought; and,
- (c) whether the person sought to be protected by the protection order has a history of returning to live with the person against whom the protection order is sought.

The available protection orders are enumerated at s. 183 and include orders restricting communication, attending at a place and stalking, reporting requirements, removal from the family home, and seizure of weapons. The court

³³ *M.W.B. v. A.R.B.*, 2013 BCSC 885

³⁴ *J.C.P. v. J.B.*, 2013 BCPC 297

may impose whatever additional terms may be necessary to protect a person or implement the protection order.

Under s. 189, where a protection order – including a restraining order made under the *Criminal Code*³⁵ or a foreign order equivalent to a protection order – conflicts with another order made under the *Family Law Act*, the *Family Law Act* order is deemed to be suspended to the extent of the conflict, until the *Family Law Act* order or the other order is varied to resolve the conflict, or the protection order is terminated.

Interestingly, s. 188(1) provides that protection orders may not be enforced under the provincial *Offence Act* or “by means of any order that may be made” under the *Family Law Act*. The purpose of this provision is apparently to compel police enforcement of protection orders under s. 127 of the *Criminal Code*, which makes breach of a court order an offence. Section 188 continues:

- (2) A police officer having reasonable and probable grounds to believe that a person has contravened a term of an order made under this Part may
 - (a) take action to enforce the order, whether or not there is proof that the order has been served on the person, and
 - (b) if necessary for the purpose of paragraph (a), use reasonable force.

IV. CONCLUSION

The British Columbia bar has greeted the presumption of mutual guardianship and the new language that describes parenting arrangements as a welcome relief from the fraught terminology of the *Divorce Act* and the *Family Relations Act*, and yet concerns remain about the tangled intersections of custody, guardianship and paramourty. Despite this uncertainty, other aspects of the act, such as its comprehensive provisions on relocation applications and the enforcement of parenting time and contact, are greatly appreciated as potentially resolving long-outstanding, previously intractable problems.

The provisions of the *Family Law Act* for the division of property and debt raise further concerns and uncertainties, and have left the bar offering legal advice well papered with qualifications. The new act brings British Columbia more in line with Alberta than Nova Scotia, and yet, unlike Alberta’s *Matrimonial Property Act*,³⁶ entitles unmarried spouses to the same rights as married spouses. Not only is the scheme in the *Family Law Act* based on entirely different principles than the *Family Relations Act*, but a body of case law has yet to develop addressing loss in value of property brought into relationships, certain problems regarding the status of trust property, or the precise meaning of new phrases like “significantly unfair.”

³⁵ *Criminal Code*, RSC 1985, c. C-46.

³⁶ *Family Law Act*, RSA 2000, c. M-8

The introduction of the new act has caused surprisingly little discomfort for the public, except for those in unmarried spousal relationships who had not anticipated an obligation to share property and those involved in litigation at the time of its coming into force. Given the woeful state of public legal education at present, those not yet embroiled in court proceedings were the least affected; they generally had no idea how the old act operated and therefore had nothing to relearn upon encountering the new act.

However, although the *Family Law Act* significantly improves the British Columbia law on domestic relations by promoting a child-centred perspective and dispute resolution options other than court, it does not yet appear to be significantly more accessible than its predecessor. The new act is significantly longer than the *Family Relations Act*;³⁷ it introduces new remedies, new subject matter and new legal standards while retaining a number of the old; and some aspects of the new legislation have apparently proven utterly unsusceptible to simplification.³⁸ The accessibility and consequences of the act will be judged by the future.

The new act is nonetheless an enormous improvement over the old and establishes a legislative regime much better suited to the needs of contemporary British Columbia families. It recognizes and accommodates the diversity of family arrangements that have evolved since the *Family Relations Act* was introduced in 1972, the increasing use of assisted reproductive technologies and the continuing involvement of some donors and surrogates in their children's lives. It recognizes the complex repercussions of family violence on the wellbeing of children and on the dispute resolution mechanisms used by their parents. It acknowledges the utility of collaborative settlement processes and parenting coordination, promotes the resolution of disputes out of court and better supports the agreements that are generated. *A New Justice System* called for sweeping reforms to the family justice system; the *Family Law Act* does exactly that.

³⁷ The *Family Relations Act* clocked in at 129 operative sections; the *Family Law Act* contains 256.

³⁸ Division 6 of Part 5, concerning the court's jurisdiction over property *ex juris* and the law to be used in dividing said property, runs to a modest five sections but requires a savant to be comprehended in less than an hour.



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Family Law Act Case Update

Provincial Training Conference for Legal Advocates
29 October 2014 • Richmond, British Columbia

John-Paul Boyd
Canadian Research Institute for Law and the Family

Twenty months of the *Family Law Act* in British Columbia

The state of the (family) law



Developments in the case law

- Transitional provisions and intersection of DA and FLA
- Appointing and removing guardians
- Parental responsibilities and parenting time
- Relocation
- Family property and excluded property
- Protection orders and family violence

3



Underdevelopments in the case law

- Parentage and parentage when assisted reproduction is involved
- Children's property
- Child support, spousal support
- Extraprovincial family property
- Family debt
- Impact of WESA on division of property

4



Continuing change within the bar

- Rush to get new training required to act as mediator, arbitrator and parenting coordinator
- Rush to get training in screening for domestic violence, though not clear if screening is actually required
- New interest in arbitration practice
- Some lawyers adding assisted reproduction agreements to their practices
- Much confusion remains

5



Continuing discovery of easter eggs

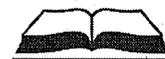
- Who is a guardian when the child's parents never lived together
- Whether guardianship status survives when a pre-FLA order or agreement gives a parent sole custody but is silent on guardianship
- Whether the effect of the one remaining triggering event gives a property interest that survives the two-year limit

6



Changes to the *Family Law Act* and the rules of court

Amendments



Family Law Act

- **Part 4, Division 3:** guardianship
- **Part 4, Division 5:** enforcing parenting time and contact
- **Part 5, Division 2:** identifying family property and family debt
- **Part 5, Division 6:** foreign property
- **Part 9:** family violence and protection orders



Family Law Act

- **Part 10, Division 1:** court proceedings
- **Part 11:** support search officers

9



Part 4, Division 5

- 62** (1) For the purposes of section 61, a denial of parenting time or contact with a child is not wrongful in any of the following circumstances:
- (c) the child was suffering from an illness when the parenting time or contact with the child was to be exercised and the guardian has a written statement, by a medical practitioner or nurse practitioner, indicating that it was not appropriate that the parenting time or contact with the child be exercised;

10



Part 5, Division 2

- 83 (3) For the purposes of this Part, property received by a spouse from a trust in respect of the spouse's beneficial interest in property held in the trust must be considered to be property derived from that beneficial interest**
- (4) In this Part, "property" includes a beneficial interest in property unless a contrary intention appears**

11



Part 5, Division 2

- 84 (1) Subject to section 85, family property is all real property and personal property as follows:**
- (b) after separation,**
- (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a)(i) or from a beneficial interest referred to in paragraph (a)(ii), or from the disposition of either, or**
- (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a)(i) or from a beneficial interest referred to in paragraph (a)(ii), or from the disposition of either.**

12



Part 5, Division 2

- 84 (2.1) For the purposes of subsection (2)(g) [on the increase in value of excluded property], any increase in the value of a beneficial interest in property held in a discretionary trust does not include the value of any property received from the trust.**

13



Part 5, Division 2

- 85 (1) The following is excluded from family property:**
- (b) inheritances to a spouse;**
 - (b.1) gifts to a spouse from a third party;**
 - (f) a spouse's beneficial interest in property held in a discretionary trust**
 - (i) to which the spouse did not contribute, and**
 - (ii) that is settled by a person other than the spouse;**

14



Part 9

- 182** In this Part and the regulations made under section 248(1)(d):
 “firearm” has the same meaning as in the *Criminal Code*
 “weapon” has the same meaning as in the *Criminal Code*

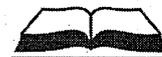
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Part 9

- 183** (3) [a protection order] may include one or more of the following:
- (a) a provision restraining the family member from
 - (iv) possessing a weapon, firearm or a **specified object**, or
 - (v) **possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;**
 - (c) directions to a police officer to
 - (iii) **seize from the family member anything referred to in paragraph (a) (iv) or (v);**

16



Part 10, Division 1

194.1 If a proceeding under this Act and a proceeding under this Act or another Act are started in the same court, the court, on application or on the court's own initiative, may consolidate the proceedings.

17



Supreme Court Family Rules

- Filing of and applications to vary or terminate parenting coordinator's determinations and arbitrator's awards
- Mandatory content of application records expanded
- New provisions for litigation representative

18



Arbitration and parenting coordination

- **Rule 2-1.1:** determinations of parenting coordinators may be filed in court
- **Rule 2-1.2:** arbitration awards may be filed in court
- **Rule 3-1:** if there is no existing family law cases, determinations and awards are filed by requisition, and the requisition starts a family law case

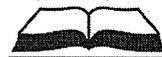
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Arbitration and parenting coordination

- **Rule 6-3:** applications to vary or terminate determination of parenting coordinator or arbitration award must be personally served
- **Rule 10-5:** how to apply to enforce compliance with determination of parenting coordinator or to enforce arbitration award

20



Arbitration and parenting coordination

- **Rule 10-6:** applicant must serve copies of filed determination of parenting coordinator and filed arbitration award with application materials
- **Rule 10-6:** application materials in applications to vary or terminate determinations of a parenting coordinator and arbitration award must be personally served

21



Arbitration and parenting coordination

- **Rule 10-7:** how to apply for consent orders to enforce a determination of a parenting coordinator or arbitration award

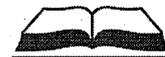
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Application records

- **Rule 10-6:** application record must contain copies of all filed orders that an application seeks to vary or terminate or that are relevant to the application

23



Electronic filing

- **Rule 22-4:** application record, petition record and hearing record may be filed electronically

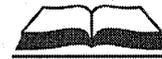
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Litigation representatives

- **Rule 20-6:** if a family law action has or may be started and the person with the claim dies, and there is no personal representative for the deceased's estate, the court may appoint a person as a "litigation representative" to start or defend the family law case on behalf of the estate

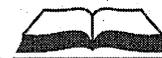
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Provincial Court Family Rules

- Lawyers' approval of form of protection orders
- Affidavits required in applications for guardianship
- Family Justice Counsellors' reports as to result of court-ordered mediation

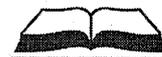
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Protection orders

- **Rule 18:** protection orders prepared by lawyers needn't be signed as approved by the drafting lawyer or other party's lawyer

27



Applications for guardianship

- **Rule 18.1:** rules about required attachments (criminal records check, child protection check and protection order records check) somewhat tightened

28



Court-ordered mediation

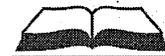
- **Rule 20:** if a judge has ordered the parties to attend mediation with a family justice counsellor, the judge may require the parties to get a letter from the counsellor stating whether mediation was appropriate or whether the parties were able to resolve some or all of the issues

29



Part 1

Interpretation



“Family violence”, s. 1

- Demeaning remarks, blaming parent to a child qualify *D.N.L. v C.N.S.*, 2014 BCSC 1417
- Derogatory outbursts, demeaning comments qualify *D.N.L. v C.N.S.*, 2013 BCSC 809
- Threats, de minimus physical contact qualify *K.L.L. v D.J.*, 2014 BCPC 85
- Court should take a broad view of what is and is not family violence *M.W.B. v A.R.B.*, 2013 BCSC 885

31



“Family violence”, s. 1

- Litigation abuse, failure to cooperate qualify *M.W.B. v A.R.B.*, 2013 BCSC 885
- Behaviour causing financial hardship and stress, threats to cause financial hardship qualify *Hokhold v Gerbrandt*, 2014 BCSC 1875
- Deliberate failure to pay child support intended to inflict emotional harm or control behaviour qualifies *J.C.P. v J.B.*, 2013 BCPC 297; *S.N. v E.C.*, 2014 BCPC 82

32



“Spouse”, s. 3

- Someone separating within two years of FLA is a spouse *Meservy v Field*, 2013 BCSC 2378
- Parties living together for less than two years but have a child are spouses, even if separated before FLA *C.A.M. v M.D.Q.*, 2014 BCPC 110
- Merely living together doesn't mean a relationship is marriage-like *Matteucci v Greenberg*, 2014 BCSC 1434; *Trudeau v Panter*, 2013 BCSC 706

33



Part 2

Resolving family law disputes



Duty to disclose, s. 5

- Intended to encourage earlier disclosure, imposes a duty to disclose at the outset *J.D.G. v J.J.V.*, 2013 BCSC 1274
- Imposes mandatory obligation to provide full and true information *J.C.P. v J.B.*, 2013 BCPC 297
- Don't forget about s. 213!

35



Parenting coordination, ss. 14 - 19

- Legislation intended to give PCs adjudicative powers require to role; PC intended to be cost-effective, should be cheaper than litigation; legislation intended to create alternative process to litigation; court should be reluctant to terminate PC agreement for minor or technical problem *M.J.H. v C.D.S.*, 2013 BCSC 2232

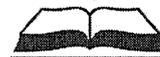
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Parenting coordination, ss. 14 - 19

- May be appointed when future disagreements are foreseeable *Rashtian v Barghoush*, 2013 BCSC 994
- “Considerable conflict” suggests appointment *J.C.P. v J.B.*, 2013 BCPC 297
- “Inability to achieve rational compromise” suggests appointment *R.M. v N.M.*, 2014 BCSC 1755

37



Parenting coordination, ss. 14 - 19

- If no ambiguity in parenting order, shouldn't be appointed *McBeth v Lakey*, 2014 BCSC 735

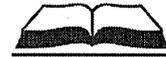
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No case law

- Duties of family dispute resolution professionals, s. 8
- Duties of parties, s. 9
- Confidentiality of information, s. 11

39



Part 3

Determining parentage



No case law

- Void and voidable marriages, s. 21
- Donor not automatically parent, s. 24
- Parentage without assisted reproduction, s. 26
- Parentage with assisted reproduction, s. 27
- Parentage with surrogacy, s. 29
- Declarations of parentage, s. 31

41



Part 4

Parenting



Best interests, s. 37

- Best interests are only consideration
Hadjioannou v Hadjioannou, 2013 BCSC 1682;
S.J.F. v R.M.N., 2013 BCSC 1812
- Each of the s-s. (2) factors must be separately considered but “in the end the evidence has to be considered as a whole” *M.W.B. v A.R.B.*, 2013 BCSC 885
- Assessment of impact of family violence is mandatory *J.C.P. v J.B.*, 2013 BCPC 297

43



Impact of family violence, s. 38

- Analysis requires consideration of each factor
N.C.R. v K.D.C., 2014 BCPC 9
- Expert evidence may assist court’s analysis
Keith v MacMillan, 2014 BCSC 1352

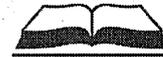
44



Guardianship, s. 39

- Cannot apply for an order of “sole guardianship,” must apply for removal *S.T.H. v R.M.G.*, 2013 BCPC 114
- Court needn’t make an order declaring someone who is a guardian by definition to be a guardian, court simply acknowledges the fact *K.L.L. v D.J.*, 2015 BCPC 85
- However some judges “appoint” *M.J.A. v R.D.A.*, 2014 BCSC 1222

45



Guardianship, s. 39

- Others make declarations confirming status as guardians *T.T. v J.M.H.*, 2014 BCSC 451
- Others just simply say that parents “are” guardians *K.B. v A.S.R.*, 2014 BCSC 1642

46



“Applying” for guardianship, s. 39

- PCFR do not distinguish between someone seeking order under ss. 39(3) or 51(1), guardianship application affidavit required in both cases (doubtful) *M.C. v D.C.*, 2013 PCPC 212

47



Parenting arrangements, s. 40

- No presumptions in favour of a parent that predetermine child's best interests *M.W.B. v A.R.B.*, 2013 BCSC 885
- No presumptions of equal time *Henderson v Bal*, 2014 BCSC 1347
- Person who is not guardian cannot have parental responsibilities, only contact *C.L.T. v S.L.R.*, 2014 BCPC 131; *M.A.G. v P.L.M.*, 2014 BCSC 126

48



Parenting arrangements, s. 40

- “Exclusive rights over all of the parenting arrangements,” without necessity of consultation, may be ordered *J.D.S. v D.Y.C.P.*, 2014 BCSC 1577
- Court may also simply order joint exercise per s. 40(2) *Shier v Shier*, 2014 BCSC 998
- Court may conclude necessity of consultation is unreasonable and may assign responsibilities as best suits child’s best interests *S.T.H. v. R.M.G.*, 2013 BCPC 114

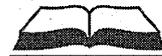
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Parenting arrangements, s. 40

- Court may give views of primary caregiver more weight as they are more familiar with child’s needs, but must not be presumed *K.L.G. v D.J.T.*, 2013 BCSC 1684

50



Parental responsibilities, s. 41

- Court may order that some be shared and some not *C.A.J. v N.J.*, 2014 BCSC 279; *M.S. v G.S.*, 2013 BCSC 1744
- Court may assign primary care to one parent, with sharing of rest *McCaw v Hawkey*, 2014 BCSC 765
- Court may order “equal parental responsibilities” *Wafa v Faizi*, 2014 BCSC 1760

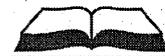
51



Parental responsibilities, s. 41

- Court may impose terms on sharing of parental responsibilities similar to Joyce and Horn models *J.L. v L.D.*, 2013 BCPC 201; *Van Koten v More*, 2013 BCSC 1076
- Court may require sharing but give one parent right to decide in the event of impasse with no other terms *L.A.R. v E.J.R.*, 2014 BCSC 966
- Court may assign all to one guardian *K.M.M. v D.R.M.*, 2014 BCSC 569

52



Parenting time, s. 42

- Guardian has parental responsibility of day-to-day decision making and care and control of child during parenting time *A.B.Z. v A.L.F.A.*, 2014 BCSC 1453
- Court may order that this parental responsibility be vested solely in a guardian during his or her parenting time *K.B. v A.S.R.*, 2014 BCSC 1643

53



Assignment of responsibilities, s. 43

- Court may “authorize” non-guardian to exercise parental responsibilities (doubtful)
J.L. v L.D., 2013 BCPC 201

54



Agreements on parenting, s. 44

- Agreement filed in court can be enforced as court order, and breach of agreement is breach of order and can be punished as contempt (doubtful) *A.T. v J.T.*, 2014 BCSC 1874
- Unclear whether someone who is not guardian can use this section to enforce right of contact *T.C. v S.C.*, 2013 BCPC 217

55



Orders on parenting, s. 45

- Application for parenting time by person applying for guardianship is contingent on outcome of guardianship application *S.J.F. v R.M.N.*, 2014 BCSC 1812
- If application for parenting time is brought in context of plan to change residence, s. 46 applies *S.J.F. v R.M.N.*, 2014 BCSC 1812
- Only consideration is best interests per s. 37 *S.J.F. v R.M.N.*, 2014 BCSC 1812

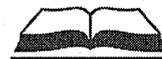
56



Relocation if no order, s. 46

- Section applies to initial application for parenting arrangements when guardian indicates an intention to change child's residence *S.J.F. v R.M.N.*, 2013 BCSC 1812
- If existing order is for contact only, there is no order on "parenting arrangements" and s. 46 applies *S.J.F. v R.M.N.*, 2013 BCSC 1812
- Doesn't apply if guardian has already moved *De Jong v Gardner*, 2013 BCSC 1303

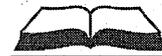
57



Relocation if no order, s. 46

- **Test:** determine the parenting arrangements in the best interest of the children, based on each of s. 37(2) factors, plus the reasons for the change of residence; cannot consider whether guardian would move without child *S.J.F. v R.M.N.*, 2013 BCSC 1812
- Relocation test under s. 69 "involves a more nuanced approach" *A.J.D. v E.A.E.*, 2013 BCSC 2160

58



Changing orders, s. 47

- **Test:** change of circumstance threshold from *Gordon v Goertz* applies, “change alone is not enough; the change must have altered the child’s needs or the ability of the parents to meet those needs in a fundamental way”
Gilmour v Herrick, 2013 BCSC 1591

59



Changing orders, s. 47

- Applicant bears burden of proving change in needs or circumstances of child *M.R. v L.J.*, 2014 BCPC 39
- Intervention of MCFD, child’s election not to see a parent qualify *J.L. v L.D.*, 2013 BCPC 201
- Taking child out of school, mental health issues, family violence qualify *T.D. v E.D.*, 2013 BCPC 135

60



Changing orders, s. 47

- Moves within province where parents already lived far apart don't qualify *McNaught v Friedman*, 2013 BCSC 1836
- Breach of court order, parent's discussion of adult issues with children, parent obtaining live-in caretaker may not qualify *D.J.S. v J.M.D.*, 2013 BCSC 2301
- Change in applicant's financial circumstances doesn't qualify *M.R. v L.J.*, 2014 BCPC 39

61



Informal arrangements, s. 48

- Presumption against unilateral change not against relocation, but against change without consultation *L.J.P. v D.L.B.*, 2014 BCPC 104

62



Appointing guardians, s. 51

- Requirements of s. 51 and rules of court on guardianship applications are mandatory
L.A.M.G. v C.S., 2014 BCPC 172
- Interim order may be made to provide person with standing of guardian for purposes of an application if in the best interests of child and in the interest of the administration of justice
T.C. v S.C., 2013 BCPC 217

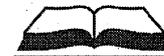
63



Terminating guardianship, s. 51

- Should only occur in “most extreme situations” *D. v D.*, 2013 BCPC 135
- **Test:** first see whether with redistribution of parental responsibilities it remains in child’s interest that person remain a guardian; person ceasing to be guardian loses all parenting responsibilities and rights *D. v D.*, 2013 BCPC 135

64



Terminating guardianship, s. 51

- “By allocating or reallocating parenting responsibilities to a more capable parent as opposed to terminating guardianship, a child may safely retain the benefit of having a parent remain a significant part of his or her life” *M.A.G. v P.L.M.*, 2014 BCSC 126
- Good summary case: *J.W.K. v E.K.*, 2014 BCSC 1635

65



Orders for contact, s. 59

- Person who is not guardian may only have contact *C.L.T. v S.L.R.*, 2014 BCPC 131; *S.J.F. v R.M.N.*, 2013 BCSC 1812
- Supervision should be ordered when necessary for best interests of child and not to serve another purpose; long-term supervision orders are discouraged; test is s. 37(2) factors *L.A.M.G. v C.S.*, 2014 BCPC 172

66



Denial of time or contact, s. 61

- Applicant must prove denial wrongful *Shaw v Shaw*, 2014 BCSC 984
- Court should not consider evidence of incidents beyond 12 month limit *Shaw v Shaw*, 2014 BCSC 984
- Court cannot impose prospective sanctions in anticipation of future breach *S.G. v M.G.*, 2014 BCPC 6; *D.J.S. v J.M.D.*, 2014 BCSC 1143

67



Denial of time or contact, s. 61

- Compensable expenses may include loss of income, increased living costs, travel costs, but applicant must prove expenses claimed to have been incurred *L.S. v G.S.*, 2014 BCSC 187

68



Denial of time or contact, s. 61

- “Missed parenting time should be assessed on a qualitative rather than a quantitative basis. Access days should not be totted up and traded back and forth like poker chips.” *K.L.K. v E.J.G.K.*, 2013 BCSC 2030
- Applicant must prove children missed a special event or activity, should provide plan or schedule for make up time *K.L.K. v E.J.G.K.*, 2013 BCSC 2030

69



Permissible denial, s. 62

- Belief justifying withholding of parenting time or contact must be held at time of withholding, not established after the fact *D.N.L. v C.N.S.*, 2014 BCSC 1417
- Attempted use of force to compel child to go may justify withholding on basis of family violence *D.N.L. v C.N.S.*, 2014 BCSC 1417

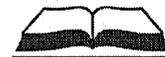
70



Application of Division 6, s. 65

- Not intended to apply to interim applications *S.J.F. v. R.M.N.*, 2013 BCSC 1812; *A.J.D. v E.A.E.*, 2013 BCSC 2160
- Applies to separation agreements *S.B. v N.L.*, 2013 BCPC 233
- Non-guardian parent may have “standing” under s. 65 if has a “significant role” in child’s life (doubtful) *C.V.G. v M.A.L.*, 2014 BCPC 214

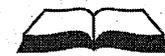
71



Application of Division 6, s. 65

- Focus is on children’s relationships and impact of relocation on those relationships; “to qualify as a relocation, the impact must be significant,” move within a municipality not significant *Berry v Berry*, 2013 BCSC 1095

72



Notice of relocation, s. 66

- Degree of proof of delivery varies depending on severity of repercussions of missing 30 day time limit *S.B. v N.L.*, 2013 BCPC 233

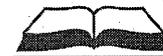
73



Notice of relocation, s. 66

- Notice can be provided by letter from lawyer *S.B. v N.L.*, 2013 BCPC 233; *Klyne v Gardner*, 2014 BCSC 1332
- ... by letter from guardian *S.N. v E.C.*, 2014 BCPC 82
- ... by notice of motion *Hokhold v Gerbrandt*, 2014 BCSC 1875

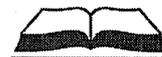
74



Objection to relocation, s. 68

- Only a guardian has standing to object to relocation *S.J.F. v R.M.M.*, 2013 BCSC 1812
- Court may prohibit relocation despite expiry of 30 day period, court should consider length of delay in filing objection, reasonableness of explanation for late filing, prejudice to moving guardian if hearing allowed; prejudice relates to date of move and planning already undertaken *S.B. v N.L.*, 2013 BCPC 233

'75



Relocation, s. 69

- **Test:** reasonableness of arrangements proposed depends on location; good faith factors are subjective, objective or both, and must be considered in light of the facts; best interests require analysis of each s. 37(2) factor *L.J.R. v S.W.R.*, 2013 BCSC 1344

76



1. **Is the party objecting to the move a guardian?** If yes, continue. If no, the party lacks standing unless appointed as a guardian of the child.
2. **Is there a written agreement or a court order respecting parenting arrangements in place?** If yes, proceed under s. 69. If no, proceed under s. 46. Remember that it is immaterial whether the agreement or order is interim or final in nature.
3. Assuming you are proceeding under s. 69, **does the objecting guardian have substantially equal parenting time with the moving guardian?** If yes, apply the test under s. 69(5). If no, apply the test under s. 69(4).
4. **Has the moving guardian proposed reasonable arrangements to continue the child's relationship with other guardians and persons with contact?** If yes, continue to the issue of good faith. If no, the application must be rejected. Remember that the reasonableness of the proposed arrangements depends on the proposed destination.
5. **Does the moving guardian seek to move in good faith?** If yes, continue to the issue of the best interests of the child. If no, the application must be rejected. Remember that the determination of good faith may require an assessment of each of the factors set out in s. 69(6) and that these factors may entail both subjective elements concerning the guardian's intentions and objective elements concerning the facts of the case.
6. **Is the proposed move in the best interests of the child?** If yes, the move should be allowed. If no, the application must be rejected. Remember that the determination of the child's best interests requires an assessment of each of the factors set out in s. 37(2)

77



Relocation, s. 69

- **Test:** good faith requires proof that not moving for improper reasons and that move will enhance child's or guardian's quality of life; reasonable arrangements means preserving child's relationship with guardian, not augmenting or enhancing; best interests require analysis of each s. 37(2) factor *T.C. v S.C.*, 2013 BCPC 217

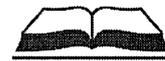
78



If relocation is permitted, s. 70

- Purpose of s. 70 is to preserve existing arrangements “to the extent that is reasonably possible” if relocation permitted, not to “fundamentally change the parenting arrangements” *J.P. v J.B.*, 2013 BCPC 168

79



No case law

- Referral of questions to court, s. 49
- Agreements on guardianship, s. 50
- Appointment of testamentary guardian, s. 53
- Appointment of standby guardian, s. 55
- Agreements for contact, s. 58
- Changing orders for contact, s. 60
- Failure to exercise time or contact, s. 63

80



No case law

- Non-removal orders, s. 64
- Order prohibiting relocation is not a change in circumstances, s. 71

81



Part 5, selected bits

Interim orders about property



Interim distribution, s. 89

- Applicant must detail anticipated expenses and explain why they cannot be met from earnings or funds from other sources *L.L.J. v E.J.*, 2013 BCSC 1233
- Cash advanced to fund litigation where parties have disparity in income and “proceed toward and into trial in very unequal circumstances” *M.A.L. v N.A.L.*, 2014 BCSC 203

83



Exclusive occupancy, s. 90

- Applicant must show that shared use of home is a “practical impossibility” and that he or she should be preferred occupant on balance of convenience, applying FRA case law *Ferguson v Ferguson*, 2014 BCSC 216; *Bateman v Bateman*, 2013 BCSC 2026
- Conclusion that family violence has occurred will influence decision given FLA’s emphasis *J.R.E. v. 07---8 B.C. Ltd*, 2013 BCSC 20138

84



No case law

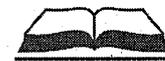
- Protection of property, s. 91

85



Part 8

Child support and spousal support



“Child”, s. 146

- FLA does not change law on whether adult child remains a child for support purposes
D.M.P. v G.E.A., 2013 BCPC 117

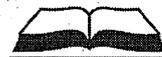
87



Duty to provide child support, s. 147

- All parents and qualifying guardians have a duty to pay support *D.Z.M. v S.M.*, 2014 BCPC 198
- Qualifying stepparents have a duty to pay support *C.L.P. v N.D.*, 2014 BCPC 154
- Old case law from FRA and CSG s. 5 on stepparents applies *Henderson v Bal*, 2014 BCSC 1347

88



Duty to provide child support, s. 147

- Amount of stepparent's obligation is determined under CSG s. 5 along with new FLA factors of length of relationship and standard of living *C.L.P. v N.D.*, 2014 BCPC 154
- May result in stepparent paying no child support *C.L.P. v N.D.*, 2014 BCPC 154
- May result in stepparent paying full amount *S.S. v P.W.*, 2014 BCPC 177

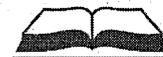
89



Duty to provide child support, s. 147

- May result support obligation terminating before stepchild reaches age of majority *Bouzane v Martin*, 2014 BCCC 1690

90



Duty to provide child support, s. 147

- Purpose is to ensure children have consistent and reasonable standards of living; primary responsibility lies on parents and if parents can adequately provide stepparents are exempt, if parents cannot provide stepparent may be ordered to contribute *C.B. v M.B.*, 2014 BCPC 75
- See also *U.V.H. v M.W.H.*, 2008 BCCA 177

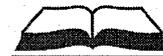
91



Duty to provide child support, s. 147

- Removal of children by state is not voluntary withdrawal intended by FLA *D.Z.M. v S.M.*, 2014 BCPC 198
- Child's refusal to visit does not amount to voluntary withdrawal *Henderson v Bal*, 2014 BCSC 1347
- Child who is incarcerated for more than a year has voluntarily withdrawn *M.A. v F.A.*, 2013 BCSC 1077

92



Agreements on child support, s. 148

- Court may only replace part of agreement on child support prospectively, not retroactively; agreements between parents on support issues should be given “considerable weight” (doubtful) *R.M. v N.M.*, 2014 BCSC 1755
- Whether court would make a different order to be determined by applying the CSG *Young v Yong*, 2013 BCSC 1574

93



Orders on child support, s. 149

- Support from stepparents may only be ordered after stepparent and parent have separated *D.J. & K.J. v C.K. & T.K.*, 2013 BCPC 197; *C.L.L. v D.K.L.*, 2014 BCSC 1020

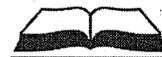
94



Amount of child support, s. 150

- Quantum of child support continues to be determined by CSG *Thibault v White*, 2014 BCSC 497
- CSG are unchanged by the FLA, and old law on child support under FRA continues to apply *S.M.L. v R.X.R.*, 2013 BCPC 123

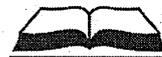
95



Changing support orders, s. 152

- FLA makes it clear that child support orders can be changed retroactively *S.M.L. v R.X.R.*, 2013 BCPC 123
- Applicant must show that significant, long-lasting change occurred, that the change was real and not one of choice, and that every effort was made to earn money *K.B. v J.O.*, 2014 BCPC 212

96



Changing support orders, s. 152

- Test to retroactively reduce child support under s. 152 is different than test to cancel arrears under s. 174 because of “more stringent” gross unfairness *A.B.Z. v. A.L.F.A.*, 2014 BCSC 1453
- However, strong policy reasons to apply same standard to retroactive variation *P.L. v J.D.L.*, 2013 BCSC 1492

97



Spousal support, s. 160

- Court must first consider s. 161 objectives and consider the conditions, means and needs and other circumstances of the spouses under s. 162, analysis is a “balancing act” *Quaife v Quaife*, 2014 BCSC 1418
- A duty to pay support only exists where entitlement exists, taking into account the s. 161 objectives *S.S. v P.W.*, 2014 BCPC 177

98



Objective of support, s. 161

- Language of FLA is “substantially identical” to that employed in DA and “differs significantly” from that of FRA, courts should apply DA case law including *Moge, Bracklow, Chutter* and *Yemchuk Rathlou v Haylock*, 2014 BCPC 59
- Outcome will be the same whether under DA or FLA *Sinclair v Sinclair*, 2013 BCSC 2400

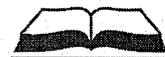
99



Determining support, s. 162

- The provisions of DA and FLA s. 162 “are so close” that “any difference is immaterial” *Hutchen v Hutchen*, 2014 BCSC 729

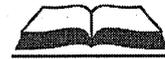
100



Spousal misconduct, s. 166

- Payor's failure to take meaningful steps toward employment and repeated applications to terminate support are arbitrary actions adversely affecting ability to pay support *Peterson v Lebovitz*, 2013 BCSC 651
- Cause of failure of relationship not a factor to be considered *Bateman v Bateman*, 2013 BCSC 2026

101



Changing support orders, s. 167

- Court must be satisfied that there has been a change in circumstances of a spouse, that new evidence has become available or that evidence of a lack of disclosure has been discovered, before changing or cancelling an order and must take that factor into consideration *M.K.M. v P.S.M.*, 2013 BCSC 579

102



Changing support orders, s. 167

- Test under FLA is that under DA, with addition of new FLA factors of new evidence and lack of disclosure *A.B.Z. v A.L.F.A.*, 2014 BCSC 1453

103



Binding estate with support, s. 170

- FLA makes it clear that ongoing support can be made binding on estate, overruling previous cases expressing doubt, however FLA requires court to peer into future and guess whether other obligations of payor's estate allow for ongoing payments; evidence must be provided of children's life expectancies, payor's estate and likely claims against estate *Joffres v Joffres*, 2014 BCSC 1778

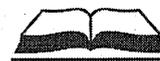
104



Binding estate with support, s. 170

- Orders charging payor's estate are not indefinite or incapable of discharge as payor's personal representative can apply to change or cancel the order *P.K.C. v J.R.R.*, 2014 BCSC 932

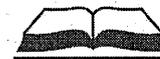
105



Life insurance, s. 170

- Order requiring payor to maintain life insurance and designate spouse or child as beneficiary only available if payor has existing policy, court cannot require payor to obtain new policy *R.M. v N.M.*, 2014 BCSC 1755

106



Priority of child support, s. 173

- Section used to support order for review of spousal support in the event the child support payments require are reduced or terminated
S.S. v P.W., 2014 BCPC 177

107



Arrears of support, s. 174

- Provisions of FLA “virtually the same” as FRA
Jensen v Jensen, 2013 BCSC 1373
- Case law under FRA applies under FLA, including *Earle*, *Van Gool*, *Semancik* and *Luney*
B.F. v J.F., 2014 BCSC 1892; *Beavis v Beavis*, 2014 BCSC 422

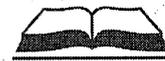
108



No case law

- Child support if parentage at issue, s. 151
- Agreements on spousal support, s. 163
- Setting aside agreements on spousal support, s. 164
- Reviews of spousal support, ss. 168 and 169
- Post mortem support applications, s. 171

109



Part 8

Children's property



No case law

- Guardian not automatically entitled to receive child's property, s. 176
- Delivery of small property to child, s. 178
- Appointment of trustee, s. 179
- Delivery of large property to child, s. 181

111



Part 9

Family violence



“Family member”, s. 182

- Father qualifies as “at-risk family member” to obtain protection order with respect to his adult son *D.J.K. v J.J.K.*, 2013 BCPC 223
- Person is not an “at-risk family member” if not “physically threatened” and family violence not alleged (doubtful) *Whitelock v Whitelock*, 2014 BCSC 1184

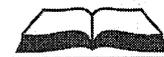
113



Protection orders, s. 183

- Order will not be made in absence of finding that family violence is likely to occur *Hughes v Erickson*, 2014 BCSC 1952; *Cabezas v Maxim*, 2014 BCSC 767
- “Even a single act” of physical violence may suggest that violence is likely to occur in the future, “likely” should be interpreted bearing in mind the potential gravity of the violence *Dawson v Dawson*, 2014 BCSC 44

114



Protection orders, s. 183

- History of psychological and emotional abuse constitutes risk supporting protection order, even when probation order is in place *N.P. v I.V.*, 2014 BCSC 1323
- Evidence of interference with property and trespassing may support protection order, even without evidence as to identity of perpetrator *Pellowski v Wright*, 2014 BCSC 753

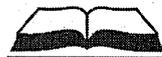
115



Making protection orders, s. 184

- Party's disappointment with result of application may increase the risk of violence, supporting protection order *Chancellor v Chancellor*, 2013 BCSC 1519
- Court must have evidence of one of s. 184 risk factors to determine if family violence likely to occur, applicant's assertion of risk or fear not sufficient *Hughes v Erickson*, 2014 BCSC 1952

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No case law

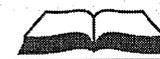
- Additional considerations where child is a family member, s. 185
- Without notice orders, s. 186
- Changing or canceling protection orders, s. 187
- Enforcement of protection orders, s. 188
- Conflict between orders, s. 189
- Extraprovincial orders, s. 191

117



Part 10, selected bits

Court processes



Time limits, s. 198

- Spouses separating within two years of the FLA are “spouses” for the purposes of the FLA *Meservy v Field*, 2013 BCSC 2378
- Cannot amend an existing claim brought within the FRA time limits to claim property under the FLA if separation occurred more than two years of the FLA *P.N.K. v C.L.*, 2013 BCSC 18567

119



Conduct of proceedings, s. 199

- Section used to require party to take counselling and parenting courses (doubtful) *J.C.P. v J.B.*, 2013 BCPC 297
- ... to support making of conduct order *C.P. v B.C.*, 2013 BCPC 112
- ... to support levying of fine for non-disclosure *J.D.G. v J.J.V.*, 2014 BCSC 1274

120



Conduct of proceedings, s. 199

- ... to support relaxing rules of evidence *D.M.P. v G.E.A.* 2013 BCPC 117
- ... to support court's refusal to allow further adjournment of trial *McDermott v McDermott*, 2014 BCSC 1238

121



Children's lawyer, s. 203

- Applicant must establish that the degree of conflict is such that the parties' ability to act in children's best interests; however, inability to act reasonably in connection with another party's time with the children doesn't necessarily amount to significant impairment of ability to act in children's best interests *K.L.K. v E.J.G.K.*, 2013 BCSC 2030

122



Leave to intervene, s. 204

- **Test:** proposed intervenor must have a broad representative base, a direct interest in the proceeding, the issue before the court is suitable for intervention *M.J.S. v A.D.*, 2013 BCPC 230
- See *Frelman v MacGarvie*, 2012 BCCA 109

123



Assessments, s. 211

- FLA focuses on assessment of child's circumstances rather than "family matter", but general principles of ordering assessments under s. 211 unchanged from ordering reports under FRA *T.N. v J.C.N.*, 2013 BCSC 1870
- Threshold justifying order for assessment is "quite low" *Smith v Smith*, 2014 BCSC 61; *Keith v MacMillan*, 2014 BCSC 1352

124



Assessments, s. 211

- Useful where conflicting evidence on parenting qualities, assessment helpful to obtain insight into parenting, child's wellbeing *C.M.L.S. v F.C.M.S.*, 2014 BCSC 1450
- ... where parents' dysfunction leaves them unable to objectively perceive child's best interests *Keith v MacMillan*, 2014 BCSC 1352
- ... where views of child report needed *M.J.A. v R.D.A.*, 2014 BCSC 1222

125



Assessments, s. 211

- ... where objective view of child's best interests is needed *M.M. v C.J.*, 2014 BCSC 6
- ... where necessary to determine child's preference as to residence *Fox v Fox*, 2013 BCSC 691
- ... where necessary to determine child's preference as to parenting schedule *L.I.W. v T.R.W.*, 2014 BCSC 1748

126



Assessments, s. 211

- Court may “place much reliance on the findings and recommendations” *M.M. v C.J.*, 2014 BCSC 6
- Assessor must not decide ultimate question or recommend orders for parenting time *T.C. v S.C.*, 2013 BCPC 217
- Court may draw its own conclusions from information collected by assessor *T.C. v S.C.*, 2013 BCPC 217

127



Enforcing disclosure, s. 213

- Provision intended to equip court with more tools to address willful non- and late disclosure *J.D.G. v J.J.V.*, 2013 BCSC 1274
- Severity of order depends on degree of non-disclosure, reasons for non-disclosure and date when disclosure finally made *J.D.G. v J.J.V.*, 2013 BCSC 1274
- Court should not make anticipatory orders *Crerar v Crerar*, 2013 BCSC 2244

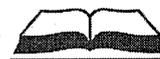
128



Enforcing disclosure, s. 213

- Fine of \$500, disclosure of complex information made before hearing *J.D.G. v J.J.V.*, 2013 BCSC 1274
- Fine of \$2,880 for failing to disclose basic income information, aggravated by wish to avoid child support; reduced from \$4,000 because of limited financial resources *J.C.P. v J.B.*, 2014 BCPC 297

129



Enforcing disclosure, s. 213

- Fine of \$2,500 because of delay of 11 months and failure to take even preliminary steps toward producing financial statement *Cully v Cully*, 2013 BCSC 2457
- Fine of \$500, as disclosure made prior to hearing and respondent's lawyer's cause of some of delay *Doman v Ciccozzi*, 2014 BCSC 866

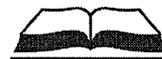
130



Enforcing disclosure, s. 213

- Fine of \$2,000 ordered where information provided was “incomplete, false and misleading” *MacGrotty v MacGrotty*, 2014 BCSC 317
- Fine of \$500 ordered where respondent breached order with deadline *M.L.D. v K.J.E.*, 2014 BCPC 221

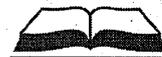
131



Enforcing disclosure, s. 213

- Respondent must be given notice of intention to seek fine before a fine will be ordered *T.M.T. v J.P.T.*, 2013 BCPC 352

132



Misuse of court process, s. 221

- Order amounts to finding that respondent is vexatious litigant *K.L.J. v E.J.G.K.*, 2103 BCSC 2030
- Relief more limited than under SCA s. 18 as cannot generally bar legal proceedings, just within an existing proceeding, but test is less stringent because doesn't require proof that respondent has habitually and persistently instituted vexatious proceedings *Dawson v Dawson*, 2014 BCSC 44

133



Misuse of court process, s. 221

- Order made against grandparents interfering the litigation, "resulting in extended litigation and numerous frivolous applications to the court," plus \$2,000 fine *M.J.S. v A.D.*, 2013 BCPC 230
- ... against party repeatedly attempting to revisit an issue, amounting to a misuse of process *Dawson v Dawson*, 2014 BCSC 44

134



Misuse of court process, s. 221

- ... against both parties where litigation had lasted for four years and trial could have been completed in less than 20 days *J.C.P. v J.B.*, 2013 BCPC 297

135



Restricting communications, s. 225

- Order on court's motion requiring parties not to speak derogatorily about each other in front of the child, not to speak about proceeding with child, to communicate about the child by text or email *Ferguson v Ferguson*, 2014 BCSC 216
- Consent order restricting communication to text or email *Hughes v Erickson*, 2014 BCSC 1952

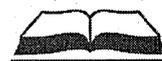
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Restricting communications, s. 225

- Order on court's motion prohibiting direct communication and restricting to email on child-related subjects *L.D.M. v R.H.M.*, 2014 BCPC 98

137



Respecting residence, s. 226

- Although s. 226 not linked to family violence, finding of violence would be factor in application for exclusive occupancy *J.R.E. v 07---8 B.C. Ltd.*, 2013 BCSC 2038

138



Enforcing conduct orders, s. 228

- Section only applies to previously made conduct orders, order shouldn't be anticipatory *K.L.K. v E.J.G.K.*, 2013 BCSC 2030; *Crerar v Crerar*, 2013 BCSC 2244
- Fine of \$5,000 ordered for breach of court order (doubtful) *Radford v Radford*, 2014 BCSC 791

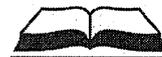
139



Extraordinary enforcement, s. 231

- Following conclusion parenting time wrongfully withheld, order made for police apprehension in event of further withholding *Singh v Singh*, 2014 BCSC 651
- After parent removing child from daycare to accommodate work schedule without consent of other parent, parent ordered not to further remove child and arrest order made in event of breach *A.L. v K.H.*, 2013 BCSC 1943

140



Extraordinary enforcement, s. 231

- Applicant given liberty to apply under s. 231 in event of future breach of orders restricting respondent's communication with applicant's counsel *Dawson v Dawson*, 2014 BCSC 44

141



No case law

- Provincial court enforcement of supreme court orders, s. 195
- Lawyers' compliance with duties regarding family dispute resolution, s. 197
- Legal capacity of children, s. 201
- Receipt of children's evidence, s. 202
- Guardianship of treaty first nations children, ss. 208, 209

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No case law

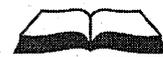
- Property disputes involving treaty first nations land, s. 210
- Orders respecting agreements, s. 214
- Orders on behalf of child, s. 220
- General enforcement provisions, s. 230

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Part 13

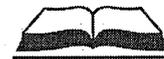
Transitional provisions



Parenting transition rules, s. 251

- Interim FRA order addressing only access must not be read as order denying custody or guardianship where those issues had not been ruled on *J.C.P. v J.B.*, 2013 BCPC 94
- Order on primary residence not addressing custody or guardianship does not disturb s. 39 presumption of guardianship *S.T.H. v R.M.G.*, 2013 BCPC 114

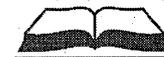
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Parenting transition rules, s. 251

- Ex parte interim order for sole custody and sole guardianship under FRA makes party child's only guardian under FLA until varied *L.A.M.G. v C.S.*, 2014 BCPC 172
- Order for sole custody with no reference to guardianship deprives parent without custody of status as guardian under FLA *P.A.G. v M.S.*, 2014 BCPC 158

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Parenting transition rules, s. 251

- Coming into force of FLA not a change in circumstances justifying setting aside of agreement for sole custody *A.J.H. v L.C.H.*, 2014 BCSC 900

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Effect of transition, s. 245

- IA s. 36 on repeal and replacement of legislation inapplicable to coming into force of FLA, not justifying application to vary FRA order to compliance with new terms on child support obligations of stepparents *K.H.M. v J.M.F.*, 2013 BCPC 56

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Surprise!

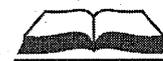
Easter eggs



Who is a guardian?

- Presumption of parental guardianship based on parents' cohabiting relationship with each other after child's birth, not on parents' relationships with child
- Parent never living with other parent and child not a guardian
- Parenting living with child and never living with other parent also not a guardian!

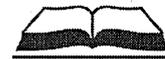
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Who is a guardian?

- 39** (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.
- (3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:
- (a) section 30 [*parentage if other arrangement*] applies and the person is a parent under that section;
 - (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
 - (c) the parent regularly cares for the child.

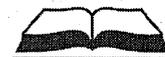
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When can you sue for property?

- On separation, undivided one-half interest in all family property vests as tenant in common, s. 81(a)
- Spouse has two years from date of separation (unmarried) or divorce (married) to start a proceeding for an order under Part 5 to divide family property, s. 198(2)

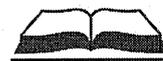
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When can you sue for property?

- Passing of two year limit doesn't remove tenant in common interest in family property
- Can't apply under FLA, but can apply under LTA, PPA, etc!
- Family property owned by one spouse impressed with trust in favour of non-owning spouse on separation, likely under fiduciary obligation to safeguard as trustee!

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Sole custody but still a guardian

- FRA agreement providing parent with access but not custody or guardianship means access parent not guardian, s. 251
- Under FRA s. 27, when married parents are separated, parent normally caring for child has default sole guardianship of person of child, both parents have guardianship of estate of child

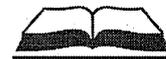
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Sole custody but still a guardian

- FRA orders and agreements silent on guardianship don't strip married parents of standing as joint guardian of estate of child
- Access parent therefore guardian, with parental responsibilities limited to child's property under s. 41(k), with necessary responsibilities under s-s. (h), (i) and (j) (doubtful) *Re Birth Registration No. 2004-59-020158*, 2014 BCCA 137

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Sole custody but still a guardian

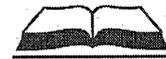
- Rights only available to guardians:
 - Parental responsibilities, s. 40
 - Parenting time with day-to-day care and control, s. 42
 - Apply to court for directions on matter concerning child, s. 49
 - Object to relocation, ss. 68 and 69

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Got questions? Ask them!

Questions



CANADIAN
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FOR LAW AND THE FAMILY

Family Law Act Case Update

Provincial Training Conference for Legal Advocates
29 October 2014 • Richmond, British Columbia

John-Paul Boyd
Canadian Research Institute for Law and the Family

**A Regime of Peaceful Co-Existence:
Disentangling Custody and Guardianship under
the *Divorce Act* and the *Family Law Act***

British Columbia Courts Education Seminar: Trial Courts and the Rule of Law
National Judicial Institute
Vancouver, 16 November 2012

John-Paul Boyd
Aaron Gordon Daykin Nordlinger

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A Regime of Peaceful Co-Existence: Disentangling Custody and Guardianship under the *Divorce Act* and the *Family Law Act*

John-Paul Boyd
November 2012

I. Introduction

It is by now common knowledge that the *Family Law Act*¹ will describe the rights involved in managing and raising a child using a rehabilitated concept of guardianship in a conceptual framework markedly different than that provided by the *Family Relations Act*.² The *Divorce Act*,³ unmoved by the views of the provincial legislature, will continue to describe certain aspects of these rights as “custody.”

In a recent paper written for the Trial Lawyers Association of British Columbia, “Guardianship, Parenting Arrangements and Contact under the *Family Law Act*,”⁴ I expressed some concerns about how married spouses might navigate the different regimes available to them under the federal and provincial legislation, and among other things wrote that:

“Making matters worse, the *Divorce Act* of course remains paramount legislation. A married litigant before the Supreme Court need only apply for custody under the *Divorce Act* to oust the application of the *Family Law Act* on that issue.”

My reasoning for this proposition was roughly as follows:

1. The federal government has the sole authority to make legislation on divorce as a result of the powers assigned to it under s. 91(26) of the *Constitution Act, 1867*.⁵
2. It is settled law that the federal government may legislate on matters corollary to its authority over divorce without trenching on the provincial powers under s. 92 or ousting the authority of the provincial legislatures to validly legislate in respect of domestic relations.⁶

¹ *Family Law Act*, SBC 2011, c. 25.

² *Family Relations Act*, RSBC 1996, c. 128.

³ *Divorce Act*, RSC 1985, c. 3 (2nd Supp.).

⁴ “Get Your Act Together,” TLABC, Vancouver, 12 October 2012.

⁵ *Constitution Act, 1867* (UK), (1867) 30 & 31 Vict., c. 3.

⁶ See for example *Jackson v. Jackson*, [1973] S.C.R. 205 and *Zacks v. Zacks*, [1973] S.C.R. 891.

3. As a result of the operation of the doctrine of paramountcy, however, federal legislation on corollary matters is superior to and therefore trumps provincial legislation on the same subject matter.
4. Given that the *Divorce Act* is paramount legislation, its provisions on the management and care of the children of divorcing parents must occupy the field and be exhaustive of the subject. In other words, it should not be possible for provincial legislatures to say more about the issue, whether by giving it a different name (“guardianship” under the *Family Law Act*) or by dividing it into subsidiary components (“guardianship” and “custody” under the *Family Relations Act*), than is already contained within the meaning of “custody.”
5. Since “guardianship” under the *Family Law Act* cannot invoke any rights or duties that are not fully encompassed by “custody” under the *Divorce Act*, a married litigant would therefore be able to escape the *Family Law Act* merely by making a claim under the *Divorce Act*.⁷

I was troubled by this conclusion, as, in my view at least, the regime advanced by the *Family Law Act* is progressive and child-centred, and has otherwise much to recommend itself over the antique and conflict-laden approach enshrined in the *Divorce Act*.

Thankfully, Mary Mouat QC, my co-panelist at the TLABC seminar and an esteemed member of the family law bar, disagreed with me, citing guardianship’s origins in the common law and the example of Alberta, where provincial law has dealt with the care of children solely in terms of guardianship for almost a decade without secession or conflict akin to that occasioned by the National Energy Program.⁸ My optimism renewed, I looked into the matter further and was very pleased to find that Mary is right and I was wrong; I write this paper to summarize my conclusions.

II. The Historic Law on Guardianship

A. Roman Law

Under the law of the early Roman Empire, the male head of household, the *paterfamilias*, held near omnipotent power, *patria potestas*,⁹ over his wife and his children, including the powers of life, death and sale into slavery. Children under the age of puberty, 12 for girls and 14 for boys, could be placed under the guardianship of a tutor, responsible for their care and nurture, by the wish of their father, by

⁷ See for example *Yu v. Jordan*, 2012 BCCA 367.

⁸ *Family Law Act*, SA 2003, c. F-4.5.

⁹ “*Puissance paternelle*” in the Napoleonic Code of 1804 and the *Civil Code of Lower Canada* of 1866, now the gender-neutral “*autorité parentale*” in the *Civil Code of Québec*, SQ 1991, c. 64.

operation of the law of the later empire, or by the direction of the court.¹⁰ Although girls remained legally incapable and subject to the tutelage of their father or guardian until marriage – at which point they passed into the charge of their husbands – a curator could be appointed to manage the financial affairs of boys between the age of puberty and the date of their emancipation, as determined by either the wish of their father or his death.¹¹

B. English Law

The Roman concept of *patria potestas* was inherited by the English common law, under which the father was the guardian of his legitimate children and was entitled to their property and the fruit of their labour.¹² The *Tenures Abolition Act*¹³ of 1660 confirmed and restated the authority of fathers to dispose of the tuition of their children by will or deed:¹⁴

8. ... where any person hath or shall have any Childe or Children under the age of twenty-one years and not married at the time of his death that it shall and may be lawfull to and for the Father of such childe or children, whether borne at the time of the decease of the Father or at that time in ventre sa mere, or whether such Father be within the age of twenty-one years or of full age by his deed executed in his life time, or by his last Will and Testament in writeing in the presence of two or more credible witnesses in such manner and from time to time as he shall respectively thinke fitt to dispose of the custodie and tuition of such childe or children for and dureing such time as he or they shall respectively remaine under the age of twenty one years or any lesser time to any person or persons in possession or remainder other than Popish Recusants, And that such disposition of the custodie of such childe or children ... shall be good and effectuall against all and every person or persons claiming the custodie or tuition of such childe or children as Guardian in soccage or otherwise; And that such person or persons to whom the custodie of such childe or children hath beene or shall be soe disposed or devised as aforesaid shall and may maintaine an action of Ravishment of Ward or trespasse against any person or persons which shall wrongfully take away or detainee such childe or children for the Recovery of such childe or children and shall and may recover damages for the same in the said Action for the use and benefit of such childe or children.

¹⁰ Tutors appointed by the court were known as *dativi*; see FN 30 below.

¹¹ For a rousing overview of the evolution of Roman law, see Will Durant, *Caesar and Christ*, vol. 3 of *The Story of Civilization* (New York: Simon and Schuster, 1944) throughout, and “Infant” and “Roman Law,” *The Encyclopaedia Britannica*, 13th ed. (London: The Encyclopaedia Britannica Company Ltd., 1926), vol. 14 at p. 514 and vol. 23 at p. 526.

¹² A brief but interesting survey of the feudal law on custody can be found in Joel Brandes, “Child Custody: History, Definitions, New York Law” (28 November 2000) *New York Law Journal* 3.

¹³ *An Act for taking away the Court of Wards and Liveries, and Tenures in Capete, and by Knights-Service, and Purveyance, and for settling a Revenue on His Majesty in Lieu thereof*, (1660) 12 Chas. 2, c. 24.

¹⁴ For a discussion of the effect of the *Tenures Abolition Act*, see Antonio Buti, “The Early History of the Law of Guardianship: From Rome to the Tenures Abolition Act 1660” (2003) 7 *University of Western Sydney Law Review* 91.

9. ... that such person or persons, to whom the custodie of such Childe or Children hath been or shall be so disposed or devised, shall and may take into his or their custodie, to the use of such childe or children, the profits of all land, tenements and hereditaments of such childe or children, And also the custodie, tuition and management of the goods, chattels and personal estate of such childe or children till their respective age of twenty-one years, or any lesser time, according to such disposition aforesaid, and may bring such action or actions in relation thereunto as by law a Guardian in common soccage might do.

To summarize, a father could dispose of the custody or the tuition of children under the age of twenty-one, and dispositions made by will were effective against all other persons with a claim to the custody or tuition of the children, including their mother. In somewhat of an advance beyond the Roman law, the person taking custody or tutelage was put in the position of trustee and was required to act for the benefit of the children rather than the profit from their property or labour; he could sue to recover children wrongfully removed from his care, with any damages to be applied for the benefit of the children, and was required to manage the children's real and personal property toward the same end.

Blackstone summarized the state of English law in the late 1760s on the matters of *patria potestas* and the authority of guardians thusly:¹⁵

"... He may lawfully correct his child, being under age, in a reasonable manner; for this is for the benefit of his education. The consent or concurrence of the parent to the marriage of his child under age, was also *directed* by our ancient law to be obtained: but now it is absolutely *necessary*, for without it the contract is void. ... A father has no other power over his son's *estate* than as his trustee or guardian; for though he may receive the profits during the child's minority, yet he must account for them when he comes of age. He may indeed have the benefit of his children's labor while they live with him, and are maintained by him; but this is no more than he is entitled to from his apprentices or servants. The legal power of a father, – for a mother, as such, is entitled to no power, but only to reverence and respect; the power of a father, I say, over the person of his children ceases at the age of twenty-one: for they are then enfranchised by arriving at years of discretion, or that point which the law has established, as some must necessarily be established, when the empire of the father, or other guardian, gives place to the empire of reason. Yet, till that age arrives, this empire of the father continues even after his death; for he may by his will appoint a guardian to his children. He may also delegate of a part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed."

From the point of view of matrimonial law, the contest between canon law and Roman law was won rather handily by the church. Adhering, despite the

¹⁵ Sir William Blackstone and George Chase, *Commentaries on the Laws of England in Four Books*, (New York: Cockcroft & Company, 1876), vol. 1, §452 (italics in original).

Reformation, to the Catholic doctrine of the indissolubility of marriage, the ecclesiastical courts could grant only divorces *à mensâ et thoro*,¹⁶ a position upheld by the Court of Star Chamber in 1602,¹⁷ and did not address themselves to matters concerning the care of the children of the marriage, leaving such questions to the Court of Chancery.¹⁸

The conclusion of the two thousand year reign of *patria potestas* began in 1839, with the passage of Lord Talfourd's act.¹⁹ The *Custody of Infants Act* allowed the Court of Chancery, in proceedings consequent upon a divorce *à mensâ et thoro*, to award custody of children younger than seven years of age, and access to older children, on the application of wives not guilty of adultery.²⁰ The act did not, however, disturb the father's standing as the sole guardian of their children nor his right to appoint another as guardian.

The first legislation on divorce, the *Divorce and Matrimonial Causes Act*,²¹ introduced in 1857 to allow for divorces *à vinculo matrimonii*,²² gave the newly created Court for Divorce and Matrimonial Causes jurisdiction over all divorce claims and the authority to make orders for custody and child support as between the spouses:

XXXV. In any Suit or other Proceeding for obtaining a Judicial Separation or a Decree of Nullity of Marriage, and on any Petition for dissolving a Marriage, the Court may ... make such Provision ... as it may deem just and proper with respect to the Custody, Maintenance, and Education of the Children of the Marriage ... and may, if it shall think

¹⁶ A divorce "from bed and board" which terminated the parties' obligation to cohabit and the husband's rights of consortium. See John-Paul Boyd, "Half-Baked Torts, Part I: Uncommon Causes of Action in Family Law Proceedings" (2007) 65:1 *The Advocate* 21.

¹⁷ *Rye v. Foljambe* (1602), Moor 683, 3 Salk. 138, 2 Burn. Ecc. Law. 503 (Court of Star Chamber).

¹⁸ Hence, the provisions of the *Law and Equity Act*, RSBC 1996, c. 253, s. 33: "In questions relating to the custody and education of infants, the rules of equity prevail." See also "Divorce," *The Encyclopaedia Britannica*, supra, vol. 8 at p. 334.

¹⁹ *An Act to amend the Law relating to the Custody of Infants*, (1839) 2 & 3 Vict., c. 54. The comments of Lord Lyndhurst to the House of Lords in support of the bill are illustrative:

"By the law of England, as it now stood, the father had an absolute right to the custody of his children, and to take them from the mother. However pure might be the conduct of the mother – however amiable, however correct in all the relations of life, the father might, if he thought proper, exclude her from all access to the children, and might do this from the most corrupt motives. He might be a man of the most profligate habits; for the purpose of extorting money, or in order to induce her to concede to his profligate conduct, he might exclude her from all access to their common children, and the course of law would afford her no redress: That was the state of the law as it at present existed."

(United Kingdom, *Parliamentary Debates*, House of Lords, 18 July 1839, vol. 49, col. 486).

²⁰ *An Act to amend the Law as to the Custody of Infants*, (1873) 36 & 37 Vict. c. 12, s. 1 allowed wives to apply for custody of or access to children younger than age sixteen. Under s. 2, separation agreements were no longer invalidated by reason of assigning custody of children to wives. Lord Talfourd's act was repealed by the operation of s. 3.

²¹ *An Act to amend the Law relating to Divorce and Matrimonial Causes in England*, (1857) 20 & 21 Vict., c. 85.

²² A complete severance of the matrimonial bonds enabling remarriage.

fit, direct property Proceedings to be taken for placing such Children under the Protection of the Court of Chancery.

The law on guardianship was significantly amended in 1886 by the *Guardianship of Infants Act*,²³ which improved the legal capacity of mothers yet continued the key provisions of the *Tenures Abolition Act*:

4. Every guardian in England and Ireland under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be), of an infant as any guardian appointed by will or otherwise now has in England under the Act twelve Charles the Second, chapter twenty-four, or in Ireland under the Act of the Irish Parliament fourteen and fifteen Charles the Second, chapter nineteen,²⁴ or otherwise.

The act provided that upon the death of the father, the mother became the children's sole guardian or their joint guardian with a testamentary guardian appointed by their father.

Perhaps more importantly, the *Guardianship of Infants Act* could be invoked in the course of proceedings for judicial separation or divorce. The court was empowered to make orders for custody and access upon the mother's application, and was required to consider the welfare of the children and the wishes of their parents, rather than the rights of their parents:

5. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think fit regarding the custody of such an infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act ...

It is noteworthy, in my view, that the *Divorce and Matrimonial Causes Act* spoke of the care and control of children in terms of custody alone, without reference to guardianship or the *Tenures Abolition Act*. At this point in the development of English law, custody and guardianship implied two distinct spheres of authority; the Parliaments that considered Lord Talfourd's act and the *Divorce and Matrimonial Causes Act* could hardly have been ignorant of the *Tenures Abolition Act* and must have intended that the legislated sequelae of divorce not impinge upon the rights involved in guardianship.

C. The Law in British Columbia

One might think that for the residents of British Columbia the *Guardianship of Infants Act* came too late, since only the English legislation in force on 19 November

²³ *An Act to amend the Law relating to the Guardianship and Custody of Infants*, (1886) 49 & 50 Vict., c. 27.

²⁴ Both references are to the *Tenures Abolition Act* of 1660.

1858, including the *Tenures Abolition Act*, Lord Talfourd's act and the *Divorce and Matrimonial Causes Act*, became law in the colonies of British Columbia and Vancouver Island by the proclamation of Governor Sir James Douglas.²⁵ However, at least for a while, the law of the colonies evolved apace with its English counterpart. The 1897 *Guardian's Appointment Act*,²⁶ incorporated the key provisions of the 1886 English *Guardianship of Infants Act* almost unchanged:

- a) s. 2 restated s. 8 of the *Tenures Abolition Act*, reproduced above, concerning the father's capacity to "dispose of the custody and tuition" of his children under the age of twenty-one;
- b) ss. 3 and 4 restated s. 9 of the *Tenures Abolitions Act*, reproduced above, and the first paragraph of the *Guardians in Socage Act*²⁷ concerning a guardian's authority and responsibility to manage the real and personal property of the children in his care; and,
- c) ss. 5 and 6 restated ss. 1 and 4 of Lord Talfourd's act allowing mothers not guilty of adultery to apply for custody of children under the age of seven.

Curiously, s. 8 of the *Tenures Abolition Act* did double duty as the foundation for the provisions of the *Apprentices and Minors Act*²⁸ respecting the rights of parents – not just fathers – and guardians to indenture the children in their care and the obligations of those to whom the children were indentured:

3. Any parent, guardian, or any other person having the care or charge of a minor, may, with the minor's consent if the minor is a male not under the age of fourteen years, or is a female not under the age of twelve years, and without such consent if he or she is under such age, constitute, by indenture, to be the guardian of the child any respectable trustworthy person who is willing to assume, and by indenture or other instrument in writing does assume, the duty of a parent towards the child; but the parent shall remain liable for the performance of any duty imposed by law in case the guardian fails in the performance thereof.

4. The guardian shall thereupon possess the same authority over the child as he or she would have were the ward his or her own child, and shall be bound to perform the duties of a parent toward such ward.

²⁵ Proclamation of Governor Sir James Douglas, Fort Langley, 19 November 1858; see also *Law and Equity Act*, s. 2.

²⁶ *An Act to consolidate and amend the Law relating to the Custody and Care of Infants*, RSBC 1897, c. 96.

²⁷ *Guardians in Socage Act*, (1267) 52 Hen. 3, c. 17.

²⁸ *An Act respecting Apprentices and Minors*, RSBC 1897, c. 8. The *Apprentices and Minors Act* and the *Guardian's Appointment Act* were among the legislation consolidated in the first of the *Infants Acts*, *An Act to consolidate and amend the Law Relating to Infants*, RSBC 1911, c. 107.

7. Any parent, guardian, or any other person having the care or charge of a minor ... the minor being a male and not under the age of fourteen years, may, with the consent of the minor, put him and bind him as an apprentice by indenture to any respectable trustworthy master-mechanic, farmer, or other person carrying on a trade or calling, for a term not to extend beyond the minority of the apprentice; or in case of a female not under the age of twelve years, may, with her consent, bind the minor to any respectable and trustworthy person carrying on any trade or calling, or to do domestic service with any respectable and trustworthy person, for any term not to extend beyond the age of eighteen years.

These provisions, considering s. 2 of the contemporaneous *Guardian's Appointment Act*, seem to equate the role and function of guardians with whatever intrinsic rights remained from the Roman law, save that guardians were under a fiduciary duty persisting from the *Tenures Abolition Act* to manage children's property for the ultimate benefit of the children rather than themselves. Both parents and guardians had the authority to indenture or apprentice the children in their care; guardians had the authority of a parent over the children in their care; and, guardians had the responsibilities of a parent toward the children in their care.

The 1917 *Equal Guardianship of Infants Act*²⁹ clarified the law and made substantial reforms, most notably by eliminating the disabilities of mothers in respect of their children, yet distinguished the authority of a guardian between the person and the estate of the child in a manner harking back to the Roman concepts of tutor and curator:³⁰

3. Every guardian under this Act shall have all such powers over the estate and the person or over the estate (as they case may be) of the infant as any guardian appointed by will or otherwise now has in England under the Act 12, Charles the Second, chapter 24,³¹ and 49 and 50 Victoria, chapter 27, section 4.³²

4. All disabilities of married women with respect to the guardianship of their minor children are hereby removed.

²⁹ *An Act to amend the Law relating to the Guardianship and Custody of Infants*, SBC 1917, c. 27.

³⁰ The contemporary *Civil Code of Québec* continues to address the care of persons under a legal disability in terms of parental authority and the rights and duties of tutors and curators. Parents have parental authority and, in addition, are presumed to be the tutors of a child (s. 192), unless the court orders otherwise (s. 195); tutors appointed by the court or the child's parents court are known as "dative tutors" (s. 178). Tutors act with parental authority (s. 186) and may make health care decisions for a child (s. 14); a tutor administers a child's estate (s. 208); a minor's legal domicile is with his or her tutor (s. 80); tutors may act as guardians *ad litem* (s. 159); and, a tutor may emancipate a minor who is at least sixteen years old (s. 167). Curators are appointed by the court where an adult is unable to care for him- or herself (s. 281). Curators may make health care decisions (s. 81); a curator administers the estate of an incapable adult (s. 258); and, the legal domicile of an incapable adult is with his curator (s. 81). The Québec equivalent of the Public Guardian and Trustee for British Columbia is the *Curateur public du Québec*.

³¹ The *Tenures Abolition Act* of 1660.

³² The English *Guardianship of Infants Act* of 1886.

5. The husband and wife living together shall be joint guardians of their minor children with equal powers, rights, and duties in respect thereto, and there shall be no paramount right to either in connection therewith.

6. It shall be lawful for either the father or the mother ... to appoint any person to act in his or her place as guardian of an infant child after his or her death respectively, if the child is then an infant.

7. In the case of the death of either of the parents, the surviving parents shall become sole guardian of their minor children ...

The act also addressed the authority of the court in proceedings for judicial separation or divorce, following the lead of the English *Guardianship of Infants Act*:

12. In any case where a decree for judicial separation or ... divorce shall be pronounced, the Court pronouncing such a decree may thereby declare the parent by reason of whose misconduct such a decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and, in such case, the parent so declared to be unfit shall not be entitled as of right to the custody or guardianship of such children.

13. The Court may, upon the application of either parent of an infant, make such an order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian.

It seems clear that by 1917, the function of the guardian was synonymous with the function of a parent, with no priority being given to the father and the notion of *patria potestas* being entirely replaced by shared parental authority. Between spouses, custody was a possessory interest awarded following marriage breakdown that was subordinate to the larger, more comprehensive rights and responsibilities involved in guardianship.³³

³³ The *Divorce and Matrimonial Causes Act*, RSBC 1960, c. 118, the version in force immediately prior to the first *Family Relations Act*, continued to limit the authority of the court in divorce proceedings to custody, using, at s. 20, the same language as the original English act of 1857:

In any suit or other proceeding for obtaining judicial separation or a decree of nullity of marriage, and on any petition for dissolving a marriage, the Court may ... make such provision ... as it may deem just and proper with respect to the custody, maintenance, and education of the children of the marriage ...

III. The Modern Law on Guardianship in British Columbia

A. Legislation

The first *Family Relations Act*³⁴ was enacted in 1972 and consolidated the various provincial laws on judicial separation and the matrimonial torts, custody of children, and the support of children, spouses and the parents of adult children. The act repealed the *Divorce and Matrimonial Causes Act*,³⁵ various statutes relating to support, and s. 12 of the *Equal Guardianship of Infants Act*.³⁶

In place of the repealed portion of the *Equal Guardianship of Infants Act*, the new legislation provided:

12. Where the court makes or refuses to make an order for the dissolution of marriage or judicial separation, or a declaration that a marriage is null and void, it may, having regard to the condition, means, and circumstances of the spouses, make an order containing one or more of the following provisions: ...

(b) That the custody of any child of a spouse or of the marriage be committed to one spouse,³⁷ and

(c) That a spouse have reasonable access to a child, or access at such times and subject to such conditions as the court considers just and reasonable.

The *Family Relations Act* was reintroduced in 1978,³⁸ in almost its present familiar form with provisions for the division of matrimonial property, and repealed the remainder of the *Equal Guardianship of Infants Act*. The revised act addressed guardianship, and custody and access in two discrete divisions.

Section 25 of the new act described the authority of guardians in rather elliptical terms, few guardians having "a copy of the *Tenures Abolition Act, 1660* readily to hand," as the BC Law Reform Commission³⁹ put it:

25. (1) A guardian is both guardian of the person of the child and guardian of the estate of the child.

(2) Subject to this Act, a guardian of the estate of a child has all powers over the estate of a child as a guardian appointed by will or otherwise had on May 19, 1917⁴⁰ in England

³⁴ *Family Relations Act*, SBC 1972, c. 20.

³⁵ The survival of this oddity on the statute books of British Columbia until 1972 was the result of British Columbia's admission to the Confederation in 1871, thirteen years after the laws of England were adopted by the colonies of British Columbia and Vancouver Island but four years after the passage of the *Constitution Act, 1867* and its division of powers at ss. 91 and 92.

³⁶ Then, the *Equal Guardianship of Infants Act*, RSBC 1960, c. 130.

³⁷ My earlier characterization of custody as a possessory interest is supported, I think, by the requirement of this subsection for the "committal" of the custody of a child to "one spouse."

³⁸ *Family Relations Act*, SBC 1978, c. 20.

³⁹ "Report on the Authority of a Guardian" LRC 78, Law Reform Commission of British Columbia, Vancouver, January 1985, at p. 2.

⁴⁰ The date the *Equal Guardianship of Infants Act* received Royal Assent.

under Acts 12, Charles the Second, chapter 24,⁴¹ and 49 and 50 Victoria, chapter 12, section 4.⁴²

(3) Subject to this Act, a guardian of the person of a child has all powers over the person of a child as a guardian appointed by will or otherwise had on May 19, 1917 in England under Acts 12, Charles the Second, chapter 24, and 49 and 50 Victoria, chapter 12, section 4.

Section 27 set out the presumptive distribution of guardianship rights between married and unmarried parents:

27. (1) ... whether or not married to each other and for so long as they live together, the mother and father of a child are joint guardians unless a tribunal of competent jurisdiction otherwise orders.

(2) ... where the father and mother of a child are married to each other and are living separate and apart,

(a) they are the joint guardians of the estate of the child, and

(b) the one of them who usually has care and control of the child is the sole guardian of the person of the child unless a tribunal of competent jurisdiction otherwise orders.

In a similar manner, s. 34 set out the presumptive distribution of the right to custody of children between parents but specified a mechanism for determining which of the parents would have sole custody following separation:

34. (1) Subject to subsection (2), the persons who may exercise custody over a child are,

(a) where the father and mother live together, the father and mother jointly,

(b) where the father and mother live separate and apart, the parent with whom the child usually resides,

(c) where custody rights exist under a court order, the person who has those rights, and

(d) where custody rights exist under a written agreement, the person to whom those rights are given.

(2) Where persons have conflicting claims to custody under subsection (1)

(a) the person having custody rights under a court order, or

(b) where paragraph (a) does not apply, the person granted custody by an agreement, or

(c) where paragraphs (a) and (b) do not apply, the person claiming custody with whom the child usually resides, or

(d) where paragraph (c) applies and 2 persons are equally entitled under it, the person who usually has day to day personal care of the child

may exercise custody to the exclusion of the other persons unless a court otherwise orders.

The present confusion surrounding the meaning of custody and guardianship under the *Family Relations Act* and of custody under the *Divorce Act* owes much to the

⁴¹ The *Tenures Abolition Act* of 1660.

⁴² The *English Guardianship of Infants Act* of 1886.

three sections just mentioned. Section 25 described the import of guardianship in ambiguous language that would be meaningless to anyone without a background in family law;⁴³ and, s. 27 diminished the apparent effect of separation on a parent's entitlement to guardianship at the same time as s. 34 gave a sharpened sense of gravity to the consequence of separation on custody by continuing the presumption that only one parent should have custody of a child. This last concern was unfortunately reinforced by the fact that the federal *Divorce Act* continued to address the care and control of children in terms of custody and access alone. Making matters still worse, nothing in the *Family Relations Act* suggested a hierarchy to guardianship and custody save that guardianship was dealt with first. It would be reasonable, I suggest, from a layperson's point of view, to assume that custody was the ultimate object to be pursued.

B. *Anson v. Anson*

The substantive distinction between custody and guardianship was before Madam Justice Huddart, then a judge of the county court, in *Anson v. Anson*.⁴⁴ At trial before the provincial court, the father had agreed that the child should remain in the primary care of the mother but nevertheless sought joint custody. The trial judge gave sole custody to the mother but made them both joint guardians in order to address the father's concerns about decisions involving the child's health and education.

The father appealed on the issue of custody, arguing that the trial judge and the person preparing the custody and access report had misconstrued joint custody as requiring regular changes in the child's residence, and, I infer, a more equitable sharing of the child's time. Huddart J.A. recognized the emotional weight attached to the terms custody and guardianship and took the opportunity occasioned by the appeal to "clarify the words and make them less subjectively symbolic to the parents of control or the lack of it."⁴⁵

Huddart J.A. reviewed the development of guardianship from the ancient law and concluded that in its contemporary meaning guardianship refers to "the full bundle

⁴³ The BC Law Reform Commission observed that "In British Columbia, apart from the provisions of the *Tenures Abolition Act, 1660*, particular rights and duties of guardians have been left mainly to the common law for definition; no provincial statute has codified them" (LRC 78, *supra*, p. 3). The commission concluded that:

"The single most potent criticism that can be leveled at section 25 is that it is unhelpful. It does not reveal anything about the incidents of guardianship. Instead, it provides only a clue for the commencement of research. Moreover, it presents problems of interpretation. To what extent has the law respecting guardianship been modified by subsequent legislation? ... How appropriate is the law as it stood on May 19, 1917, based as it is on 17th century legislation? While problems concerning the law of guardianship do not often arise, there is good reason for replacing section 25 with a more modern statement."

(LRC 78, p. 6).

⁴⁴ *Anson v. Anson* (1987), 10 B.C.L.R. (2d) 357 (B.C. Co.Ct.).

⁴⁵ *Ibid.*, para. 8.

of rights and duties voluntarily assumed by an adult regarding an infant akin to those naturally arising from parenthood," save where a guardian is appointed for a limited purpose, as in the case of a property trustee or guardian *ad litem*. Although guardians can be given specific duties by statute, such as ensuring the child's attendance at school under the *School Act* or determining the child's health care under the *Infants Act*, none of these detracted from the general principle that the guardian of a child has "the full bundle of rights and responsibilities relating to a child."⁴⁶

"Thus, subject only to specific statutory restrictions or to limits imposed by a court, the guardian of the estate of a child has the full bundle of parental rights and duties regarding the child's property and the guardians of the person has the full bundle of parental personal rights, including necessarily the entitlement to physical possession of the child."

Turning to the matter of custody, Huddart J.A. observed that fathers' presumptive entitlement to custody of their children originally stemmed from their obligation to provide the the necessities of life; without possession of the child, the father could not fulfil his legal obligation.⁴⁷ However, beyond the implications of this outdated common law concept, the meaning of custody is defined in neither the *Divorce Act* nor the *Family Relations Act* and has become muddled by the case authorities:

"The case law indicates two different meanings. In its wide meaning it is akin to guardianship of the person, That is, it includes the bundle of rights and responsibilities of a parent. In its narrow meaning it is regarded as mere physical custody or day-to-day control of the child.

"In both England and Canada in recent times the wide meaning has taken hold."

This conflict between the narrow meaning of custody, arguably that intended by s. 12 of the 1972 *Family Relations Act*, and the broader meaning is another key contributor to the present confusion. Huddart J.A. cites a 1970 decision of the English court of appeal for the following proposition:⁴⁸

"The trouble is that while the legislature has distinguished between guardianship and custody, the courts have tended to use the latter word as if it were substantially the equivalent of the former, thus leading to some confusion of thought. This confusion is abetted by the language of the Matrimonial Causes Acts and the orders made under them. Whatever may have been the intention of the legislature when first using that word in section 35 of the Matrimonial Causes Act, 1857 ... the courts have come to give more than one meaning to [custody] in orders."

⁴⁶ *Ibid.*, para. 13.

⁴⁷ *Ibid.*, para. 14.

⁴⁸ *Ibid.*, para. 17, quoting *Hewer v. Bryant*, [1970] 3 All E.R. 578 (C.A.).

In light of the abundance of authorities supporting the wider meaning of custody, Huddart J.A. held that:⁴⁹

“... custody under the *Family Relations Act* must be considered as being almost the equivalent of guardianship of the person. It includes the right to determine the child’s education, health care and religion, as well as physical control over the child ... Essentially, the custodian has the full bundle of rights over the person of the child that are not reserved to the guardian of the person or some other person or institution by statute or by court order. ...

“There seems to be no limit other than that of the imagination of the bar and bench to the variety of orders that can be devised to ensure the best interests of children are served by the distribution of custodial rights and duties between interested adults. ... Key, however, is where the residual authority lies. ... The wide meaning is entrenched in federal legislation⁵⁰ and in the case law here and elsewhere. That wide meaning of custody detracts from the significance one can attach to an order for guardianship of the person, for it leaves few sticks in the bundle.”

The point, however, for the purposes of understanding the *Family Law Act*, is that at least a few sticks are left in the bundle. Under even the wider meaning, custody is not guardianship of the person, it is *almost* the equivalent of guardianship of the person; a custodian has the rights that are not reserved to the guardian of the person.

Returning to the Ansons, Huddart J.A. applied her reasoning to the trial result of joint guardianship with sole custody to Mrs. Anson. What distribution of rights did this entail?

- a) Mrs. Anson had the sole responsibility of determining the child’s care and upbringing, education, religion, recreational activities and day-to-day care;
- b) Mr. Anson remained a joint guardian of the estate of the child as “custody has nothing to do with a child’s property;” and,
- c) Mr. Anson retained “the rights that come from his status as a parent and guardian,” including his statutory rights as a parent, including the right to be sole guardian upon the death of Mrs. Anson and his right to appoint a testamentary guardian under the *Tenures Abolition Act*.

Under this analysis, Mrs. Anson took “more ultimate responsibility for parenting” than the trial judge had intended, and, to address the father’s concerns about decisions involving the child’s health and education and better reflect the trial

⁴⁹ *Ibid.*, paras. 24 and 26, emphasis added.

⁵⁰ *Divorce Act*, s. 2(1): “custody’ includes care, upbringing and any other incident of custody.”

judge's intention, Huddart J.A. ordered that the parties have "joint guardianship and joint custody to Mr. and Mrs. Anson with physical care and control to Mrs. Anson."⁵¹

C. *Young v. Young*

The relationship between an order for sole custody and the residual parental authority not exhausted by custody was before the Supreme Court of Canada in *Young v. Young*,⁵² a case brought under the *Divorce Act* involving the rights of a father with access but not custody to educate the children in his religion. At trial, the mother was awarded sole custody and sole guardianship of the children; the father was given access to the children on conditions, including that he not discuss his religion with the children. The father was partially successful on appeal inasmuch as the restrictions on his time with the children were removed. The mother appealed in turn to have the restrictions restored.

Madam Justice L'Heureux-Dubé, writing in dissent, framed the question in terms of parental authority and the deference to be given to the decisions of a parent with sole custody. After covering much of the historical territory addressed by Huddart J.A. in *Anson v. Anson*, L'Heureux-Dubé J. observed that despite the record of legislative and judicial change, "the nature and scope of custody itself have remained relatively constant:"⁵³

"The long-standing rule at common law is that an order of custody entails the right to exercise full parental authority. In the case of a sole custody order, that authority is vested in one parent to the exclusion of the other."

Citing, with approval, the comments of Huddart J.A. regarding the entrenchment of the wide meaning of custody in the legislation and case law and the locus of residual parental authority, L'Heureux-Dubé J. held that the effect of an order for sole custody is to deprive the non-custodial parent of "the rights and responsibilities that previously vested in that parent as a joint custodian of the child," and described the parental authority remaining to that parent as follows:⁵⁴

"The non-custodial parent retains certain residual rights over the child as one of its two natural guardians, among which is the right to apply to the court for the variation of custody and access terms. Various other entitlements have been recognized at common law, including ... the right to access, the right to contest the child's adoption, the right to claim guardianship of the person of the child upon the death of the custodial parent and the right to succeed to the child's property among others."

⁵¹ *Anson v. Anson*, *supra*, at para. 40.

⁵² *Young v. Young*, [1993] 4 S.C.R. 3.

⁵³ *Ibid.*, p. 38.

⁵⁴ *Ibid.*, pp. 40-41.

To these other entitlements must be added, including the rights and duties given to parents by operation of statutes such as the *School Act*, as noted by Huddart J.A.,⁵⁵ the right to apply for the exercise of the court's *parens patriae* jurisdiction⁵⁶ and, to parents with access, the rights given by s. 16(5) of the *Divorce Act*:

Unless the court otherwise orders, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

Nevertheless, such rights may not rise significantly beyond the level of mere residue. L'Heureux-Dubé J. quotes Julian Payne, from his aptly named work *Payne on Divorce*, with approval bordering upon enthusiasm:⁵⁷

"... in the absence of a successful application to vary an unqualified sole custody disposition with respect to all or any of the incidents of custody, the non-custodial spouse with access privileges is a passive bystander who is excluded from the decision-making process in matters relating to the child's welfare, growth and development."

To summarize somewhat, in those circumstances where a parent has a bare order for sole custody, that parent assumes all parental authority to the exclusion of the other parent; the non-custodial parent becomes a "passive bystander" with no ability to participate in the exercise of parental authority and only those limited rights provided by statute and his or her status as a natural, but not legal, guardian. However, this rather grim analysis of the import of orders for sole custody must be taken in context; *Young* involved only a consideration of the rights entailed in proceedings under the *Divorce Act* without the mediating influence of a provincial statute providing independently for guardianship. This was addressed by Madam Justice Russell of the Alberta Court of Appeal in *V.L. v. D.L.*⁵⁸

D. V.L. v. D.L.

Pursuant to a divorce order incorporating the terms of minutes of settlement, the mother in *V.L. v. D.L.* had sole custody of the children and the father had rights of access. Following allegations of certain improprieties, the father voluntarily ceased exercising his right of access, but successfully applied to vary the divorce order and obtained joint custody so as to "secure an ongoing role in the lives of his children which would include the right to be kept informed of and consulted about the major decisions affecting them."⁵⁹ The mother appealed the order for joint custody.

⁵⁵ *Anson v. Anson, supra*, at para. 12.

⁵⁶ *Hewer v. Bryant, supra*, at p. 585.

⁵⁷ *Young v. Young, supra*, at p. 47.

⁵⁸ *V.L. v. D.L.*, 2001 ABCA 241.

⁵⁹ *Ibid.*, para. 65.

Given that the order in question was an order made pursuant to the *Divorce Act*, one might expect the analysis in *Young v. Young* to apply. However, this would overlook certain provisions of the provincial law then in force – provisions redolent of the 1886 English *Guardianship of Infants Act* and soon of the new British Columbia *Family Law Act* – that gave parents certain presumptive rights of guardianship:⁶⁰

46. Except where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, each guardian during the continuance of his guardianship

- (a) may act for and on behalf of the minor, ...
- (d) has custody of the person of the minor and the care of his education.

47. (1) Unless a court of competent jurisdiction otherwise orders, the joint guardians of a minor child are

- (a) the mother, and
- (b) the father, if
 - (i) he was married to the mother of the child at the time of the birth of the child, ...

54. (1) The Court pronouncing

- (a) a judgment for judicial separation, or
- (b) a decree of divorce, either nisi or absolute,

may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the minor children, if any, of the marriage.

(2) The parent declared to be unfit ... is not entitled as of right to the custody or guardianship of those children on the death of the other parent.

After reviewing the authorities defining custody, in its narrow and wide meanings, and the decisions in *Anson v. Anson* and *Young v. Young*, Russell J.A. observed that statements to the effect that custody is “almost the equivalent of guardianship” or “virtually synonymous with guardianship” also suggest that guardianship “may be more comprehensive” in meaning than custody.⁶¹ Further, the oft-quoted remark of Huddart J.A. that “the wider meaning [of custody] is entrenched in federal legislation and in the case law” may not apply in Alberta, where “guardianship is the foundation of ... legislation governing parent child relationships.”⁶²

Russell J.A. described the provincial legislation as establishing a “rebuttable presumption of continuing joint guardianship” following separation:⁶³

“This implies that guardianship is not dependent upon custody; absent a finding of unfitness or court declaration to the contrary, a non-custodial parent with or without access, retains certain rights and responsibilities.”

⁶⁰ *Domestic Relations Act*, RSA 1980, c. D-37.

⁶¹ *V.L. v. D.L.*, *supra*, at para. 29.

⁶² *Ibid.*, paras. 30 and 57.

⁶³ *Ibid.*, para. 48.

Although this premise is “inconsistent” with the reasoning of L’Heureux-Dubé J. in *Young v. Young*, Russell J.A. held that:⁶⁴

“... that presumption is consistent with s. 16(10) of the *Divorce Act* which provides that the court shall promote maximum contact between the child and the non-custodial parent. It also conforms with the U.N. *Convention on the Rights of the Child (1989)* which ... provides that both parents have common responsibilities for the upbringing and development of their children ...”

and, moreover:⁶⁵

“In *Young v. Young*, L’Heureux-Dubé considered the term ‘custody’ to be akin to the concept of guardianship, encompassing the full bundle of parental powers. But ... she acknowledged that a non-custodial parent retains certain residual rights over the child ...

“The residual rights referred to in *Young v. Young*, and prescribed under provincial law, evince an ongoing legal relationship between the child and a non-custodial parent with or without access. Moreover, the exercise of most of those rights necessarily implies the right to be informed of or consulted about, and to participate in significant decisions pertaining to the child’s education, health and welfare. It is reasonable to assume that ‘significant’ decisions would not include day to day decisions while the child is in the care of the other parent, but would include those decisions likely to have long term consequences for the child.”

Needless to say, in the view of Russell J.A., the concept of guardianship set out in her provincial legislation is the legal vehicle through which residual rights concerning children and the ongoing legal relationship between a child and the non-custodial parent are expressed and reified. Extending this reasoning to its logical culmination, Russell J.A. concluded that:⁶⁶

“The concept of joint guardianship is akin to an order of joint custody. Both include parental authority to be informed about and participate in major decisions affecting the child, exclusive of the custody or access rights of either parent. Although the custodial parent’s position will ordinarily necessarily prevail, the non-custodial parent has the right to seek judicial review of any disputed decision. In *Gordon v. Goertz*,⁶⁷ the majority made it clear that while the views of the custodial parent are entitled to great respect, they are nonetheless subject to challenge and scrutiny and may be overridden by the courts, if that is in the best interest of the child.”

⁶⁴ *Ibid.*, para. 49.

⁶⁵ *Ibid.*, paras. 53-54, emphasis added.

⁶⁶ *Ibid.*, para. 64.

⁶⁷ *Gordon v. Goertz*, [1996] 2 S.C.R. 27.

IV. Conclusion

The overwhelming weight of the authorities cited by Huddart J.A. and L'Heureux-Dubé J. make it clear that the wider meaning of custody has taken deep and likely permanent root in our analysis of the rights and duties involved in custody and access under the *Divorce Act*. For cases determined entirely by reference to the federal legislation, non-custodial spouses will continue to labour under the trivialized and confined role described by Professor Payne. However, as Huddart J.A. observed, in jurisdictions with statutory provisions for guardianship there yet remain a few sticks not wrapped up in the bundle of rights entailed by custody.

These residual rights are poised to assume a new significance in British Columbia. At the time *Anson v. Anson* was decided, cohabiting parents were assumed to be joint guardians of their children under s. 27(1) of the *Family Relations Act*. On separation, under s. 27(2), the parents continued to be joint guardians of the estates of their children but

the one of them who usually has care and control of the child is sole guardian of the person of the child unless a tribunal of competent jurisdiction otherwise orders.

Change, however, is coming. The *Family Law Act* will impose presumptions of parental guardianship more akin to the regime prevailing in Alberta, both at present and at the time when *V.L. v. D.L.* was determined,⁶⁸ than to the regime provided by the *Family Relations Act*. Very shortly guardianship will become, as Russell J.A. put it, the foundation of the legislation governing parent child relationships.

The *Family Law Act* rejects the concept of custody in favour of a return to the broad and comprehensive common law sense guardianship held before the 1917 *Equal Guardianship of Infants Act*. Under the new legislation, only guardians have the right to exercise parental responsibilities in respect of the child's day-to-day care and the giving or withholding consent for the child's activities; only guardians may make decisions about the child's schooling, extracurricular activities, health care and cultural, linguistic and spiritual upbringing.⁶⁹ Furthermore, under the new legislation, each of a child's parents is presumed to be a guardian during the parents' cohabiting relationship and after their separation:

39. (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

The conclusions of Russell J.A. in a respect of a regime so similar to that which is about to be come into force are worth repeating:

⁶⁸ See ss. 46 and 47 of the 1980 *Domestic Relations Act* and ss. 20 and 21 of the 2003 *Family Law Act*.

⁶⁹ *Family Law Act*, ss. 40 and 41.

“The concept of joint guardianship is akin to an order of joint custody. Both include parental authority to be informed about and participate in major decisions affecting the child, exclusive of the custody or access rights of either parent.”

This is the pathway, in my view, that will let us carve a space from the wider meaning of custody in which a rehabilitated concept of guardianship may flourish. The conflict between the provisions of the *Divorce Act* and the *Family Law Act* are not insurmountable, nor does the paramountcy of the federal legislation preclude the *Family Law Act* from exploiting the residual parental authority to create a new, progressive and child-centred approach to the care of children after separation. As Walmsley A.C.J. observed in another case of purported conflict between federal and provincial legislation, “both are capable of existing together in a regime of peaceful co-existence.”⁷⁰

⁷⁰ *Lefebvre v. Lefebvre* (8 March 1982), Cornwall Registry No. 00556/8 (Ont. P.C.) at para. 16.



CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Custody and Guardianship

Provincial Training Conference for Legal Advocates
29 October 2014 • Richmond, British Columbia

John-Paul Boyd
Canadian Research Institute for Law and the Family

Agendum for this session.

Overview



Agendum

- How the DA concept of custody and the FLA concept of guardianship fit together... or don't
- Recent case law on the presumptions of guardianship
- Recent case law on applications for appointment or removal of guardians

3



How the federal and provincial laws fit together.

Custody and guardianship



Guardianship and the patriarchy

- Roman law gave male head of household, the *paterfamilias*, sweeping powers over the women and children in his care
- *Paterfamilias* treated as guardian, with power of control but also obligation to support
- Boys were eventually emancipated, but girls passed from the guardianship of their fathers to the guardianship of their husbands

5



Guardianship and the patriarchy

- Rights of *paterfamilias* – *patria potestas* – gave him absolute control of family members, including of their lives and liberty, and of all of their rights in private law
- *Paterfamilias* under obligation to properly raise children as good citizens, maintain moral fitness and wellbeing of household
- Could delegate his authority to a third party as guardian at his pleasure

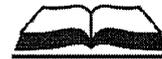
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Law after the collapse of Rome

- Roman law devolved to the local (tribal) government after collapse of Roman Empire
- Influenced heavily by local (village) custom and tradition, and by evolving canon law of the Christian church
- Stabilized in England following Norman Conquest and unification under common monarchy

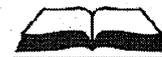
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English law

- Inherited legal concept of power of *pater-familias* and legal disability of those in his care
- Important legislation passed 1267 and 1660 restated core principles of Roman law
 - confirmed fathers' authority to give children into the care of a guardian
 - put guardian under same duty of parental care as father
 - gave guardian same control of children's rights in private law

8



English law

- First legislation about care of children following separation of married parents passed in 1839 and 1857, allowed court to make orders about *custody*
- Further legislation on guardianship in 1886 confirmed rights and duties established in 1660 law, powers of guardian over *estate* and *person* of child

9



British Columbia law

- 1858 declaration of Governor Sir James Douglas adopted the laws of England as those of the colonies, including the 1857 *Divorce and Matrimonial Causes Act* and older laws on guardianship
- 1886 *Guardianship of Infants Act* adopted in BC as 1897 *Guardian's Appointment Act*

10

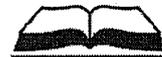


Family law in British Columbia

Up to and including 17 March 2013:

- *Family Relations Act*: custody, guardianship, access
 - *Divorce and Matrimonial Causes Act*
 - *Equal Guardianship of Children Act*
 - *Wives' and Children's Maintenance Act*
- *Divorce Act*: custody, access
 - *Divorce and Matrimonial Causes Act*

11



Family law in British Columbia

On and after 18 March 2013:

- *Family Law Act*: guardianship, parental responsibilities, parenting time, contact
 - *Family Relations Act*
- *Divorce Act*: custody, access
 - *Divorce Act*

12



Custody and guardianship

- **Custody:** rights and duties created by statute, assigned by order or agreement following separation
- **Guardianship:** full bundle of rights and duties belonging to the parent of a child under the old common law, held by parents during and after their relationship; both parents able to appoint testamentary guardians by will; residual authority left over from custody

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Anson v Anson, 1987 BC Co. Ct.

“... subject only to specific statutory restrictions or to limits imposed by a court, **the guardian of the estate of a child has the full bundle of parental rights and duties regarding the child’s property and the guardians of the person has the full bundle of parental personal rights, including necessarily the entitlement to physical possession of the child.**”

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Anson v Anson, 1987 BC Co. Ct.

“... custody under the *Family Relations Act* must be considered as being almost the equivalent of guardianship of the person. It includes the right to determine the child’s education, health care and religion, as well as physical control over the child ... Essentially, **the custodian has the full bundle of rights over the person of the child that are not reserved to the guardian of the person or some other person or institution by statute or by court order.** ... Key, however, is where the residual authority lies.”

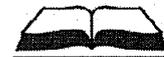
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Doctrine of paramountcy

- Where federal and provincial legislation talk about the same subject, the federal legislation wins
- Why would you have to worry about this?
 - orders and agreements that don’t say what law the court or the parties had in mind
 - transitional provisions of the *Family Law Act* apply
 - client needs the benefits of being under the *Family Law Act* rather than the *Divorce Act*

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Transitional provisions

- 251** (1) If an agreement or order, made before the coming into force of this section, provides a party with
- (a) **custody or guardianship of a child, the party is a guardian** of the child under this Act and has parental responsibilities and parenting time with respect to the child under this Act, or
 - (b) **access to, but not custody or guardianship of, a child, the party has contact** with the child under this Act.
- (2) For the purposes of subsection (1), a party's parental responsibilities, parenting time or contact with a child under this Act are as described in the agreement or order respecting custody, guardianship and access.

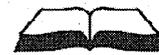
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Why pick the Family Law Act

- Best interests factors include family violence and consideration of child's views
- Difficult to appoint a new guardian
- Parenting time includes more rights than access
- Relocation provisions
- Enforcement of parenting time or contact, both if withheld and if not exercised
- Can apply to enforce in provincial court

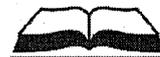
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B.D.M. v A.E.M., 2014 BC Sup. Ct.

“The practical issue that arises from the different provisions of the *Divorce Act* and the *FLA* is that while parenting responsibilities can clearly be allocated among guardians under the *FLA* so that the powers exercised by a guardian may be limited, the authorities suggest that **a parent to whom custody is granted cannot have his or her powers similarly limited.**”

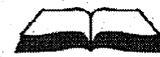
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Consideration by the courts

- Early cases defaulted to DA applying doctrine of paramountcy without much critical analysis
- Other cases found a way to duck the issue

20



A.K. v M.K., 2013 BC Sup Ct.

“To the extent that there is inconsistency between the *Divorce Act* and the *FLA*, the principle of paramountcy might suggest that the *Divorce Act* should govern. However, in my assessment, **it would respond more closely to the evidence and submissions the parties presented in the trial to apply the *FLA*, in this particular case.”**

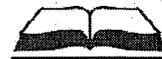
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D.Q.L. v W.D.H., 2013 BC Sup Ct.

“In view of the fact that custody under the *Divorce Act* is to be given a broad meaning akin to the concept of guardianship, the concept of guardianship is now set out in the *FLA*, only interim orders are sought, and these are applications on competing affidavits, **I decline to make any order for custody at this time as I consider that all the necessary requirements for the children on an interim basis can be covered within the principles of guardianship set out in the *FLA*.”**

22



S.F.S. v S.A.S., 2013 BC Sup. Ct.

“I have already granted a divorce, and by consent, an order for joint custody under s. 16 of the *Divorce Act*. The factors I must take into account are those set out in s. 16(8) of the *Divorce Act*. However, I **do not take these factors to be in any meaningful way inconsistent with the factors I would apply under the FLA.**”

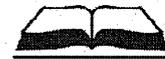
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Consideration by the courts

- Early cases defaulted to DA applying doctrine of paramountcy without much critical analysis
- Other cases found a way to duck the issue
- Later cases took a more careful look at the doctrine of paramountcy and required proof that application of provincial FLA would frustrate federal intentions of DA

24



***B.D.M. v A.E.M.*, 2014 BC Sup. Ct.**

“I am of the view that the doctrine of paramountcy does not preclude consideration and application of the *FLA* in family law proceedings in which a divorce is granted. ...

“I can see nothing in the *FLA* that would frustrate the purpose of s. 16 of the *Divorce Act*. The underlying purpose of the relevant provisions of the *Divorce Act* and *FLA* are identical. Both statutes require the Court to consider the best interests of the child in determining parenting responsibility.”

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Summary

- Guardianship is the full bundle of rights over and responsibilities for a child that a parent has, with roots in the old common law
- Custody is a newer concept created by statute, slightly narrower in meaning
- Federal government chose “custody” when drafting DA, and must be presumed to have made the specific choice of the narrower concept

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Summary

- Doctrine of paramountcy shouldn't be applied by courts without considering whether application of FLA would frustrate purpose of DA... and *B.D.M.* says it doesn't
- To oust the FLA, party must establish that it is impossible to comply with the provisions of both the DA and the FLA
- Read the transitional provisions of FLA s. 251 carefully!

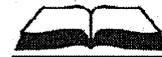
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The Court of Appeal on the issue

- Separation agreement gives mum sole custody, dad very limited rights of access
- Agreement provided that terms "as to custody, access and guardianship" could be varied by parties or court
- Mum enters significant new relationship, applies for adoption of child by new spouse, waiving necessity of dad's consent
- Is dad a guardian?

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Agreements silent on guardianship

- Under FRA, separated married parents are joint guardians of the *estate* the child, but the parent with whom the child usually resides is the sole guardian of the *person* of the child
- Under transition provisions, if agreement or order does not give person custody or guardianship, he or she is not a guardian under the FLA

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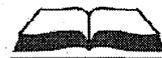


Re Birth Reg'n no. 2004-59-020158

"Section 251 is a transitional provision. It should not be lightly interpreted as taking away substantive vested rights. ...

"... did the separation agreement, properly construed, take away [the father's] then vested (under s. 27 of the *FLA*) right to guardianship of the estate of the child? I think not. In my view, one should interpret the separation agreement, by referring to guardianship without more, as **implicitly continuing the guardianship regime then in place** which afforded joint guardianship to [the parents] of the estate of the child. Section 251 does not affect this status."

30



Agreements silent on guardianship

- Dad is a guardian
- Dad given parental responsibilities in relation to estate of child under s. 41(k), plus under (h), (i) and (j) as necessary for purpose of (k)
- However, note Part 8 on children's property, "a child's guardian is not, by reason only of being a guardian, a trustee of the child's property"

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The presumptions of guardians, applications to appoint or remove

Guardianship



Who is a guardian

- 39** (1) **While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.**
- (2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.
- (3) **A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:**
- (a) section 30 [*parentage if other arrangement*] applies and the person is a parent under that section;
 - (b) the parent and all of the child's **guardians make an agreement** providing that the parent is also a guardian;
 - (c) **the parent regularly cares for the child.**

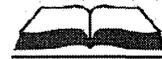
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Presumptions of guardianship

- Parents who lived together after the birth of their child is a guardian
- Person who is a parent as a result of an assisted reproduction agreement is a guardian
- Parent who “regularly cares” for the child is a guardian
- Parent who all guardians agree should be a guardian is a guardian

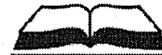
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Applying for guardianship

- 51 (1) On application, a court may
- (a) **appoint a person as a child's guardian, or**
 - (b) **except in the case of a director who is a child's guardian under the *Adoption Act* or the *Child, Family and Community Service Act*, terminate a person's guardianship of a child.**
- (2) An applicant under subsection (1) (a) of this **section must provide evidence** to the court, in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules, **respecting the best interests of the child** as described in section 37 [*best interests of child*] of this Act.
- (3) Subsection (2) of this section applies regardless of whether there is consent to the application under section 219 [*persons may consent to order being made*].

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Applications for guardianship

- Parents who are not guardians because of the s. 39 presumptions or the s. 251 transitional provisions may apply
- Anyone who has an interest in a child may apply
- Applications have special mandatory evidentiary and notice requirements, also pertains to consent applications

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Evidence of child's best interests

- PCFR r. 18.1, SCFR r. 15-2.1
- Special FITB form must be completed, requires:
 - MCFD records check, dated within 60 days
 - criminal records check, dated within 60 days
 - disclosure of current criminal charges
 - disclosure of DA, FLA, FRA, CFCSA proceedings concerning children in applicant's care
 - disclosure of family violence

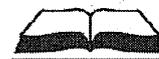
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Why apply for guardianship

- Guardians have "parenting time" and "parental responsibilities," others have contact
- Guardians have day-to-day care of the child during parenting time
- Guardians can object to the relocation of a child or guardian
- Guardians can apply to court for directions

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Case law to date: s. 39(1)

- Lots of cases quite reasonably observing that criteria are met and declaring parties to be guardians
- Important case from provincial court confirms court's power to make declarations
- Another case observed that declarations are unnecessary, because the parties are guardians by virtue of the act

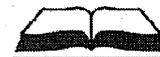
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Case law to date: s. 39(2)

- Presumption of parental guardianship is subject to court's ability to order that a person is not a guardian
- One case confirms that parties can make agreement that parent is not a guardian

40



Case law to date: s. 39(3)(c)

- Nothing yet definitively interpreting “regularly cares for the child”
 - one case in which the parties *agreed* that a parent provided regular care
 - another in which parent saw child once a week for three months, not qualifying as “regular care”
 - provision doesn’t apply to parents who once lived with the child
 - one case holding that guardianship affidavit is required

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Case law to date: s. 51(1)(a)

- A few cases granting guardianship on an interim basis to give an applicant the standing of a guardian, however subject to preparing guardianship affidavit
- Criminal record check required is vulnerable sector search, but next best is fingerprint search
- For parents, means of appointment when s. 39 presumptions not met

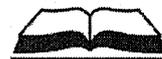
42



Case law to date: s. 51(1)(a)

- Principles to apply are best interests, s. 37(2) and burden lies on applicant
 - significant history of care
 - bond with children
 - able to perform parental responsibilities
 - will cooperate with other guardians
- More than one non-parent can be appointed

43



Case law to date: s. 51(1)(b)

- Person seeking “sole guardianship” should apply for termination of other party’s standing as a guardianship
- Process must consider s. 37(2) factors
- Removal should “occur only in very rare and the clearest of cases where cancelling guardianship was clearly in the child’s interests”

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Case law to date: s. 51(1)(b)

- Because removal is and “extraordinary remedy”, many cases have distributed parental responsibilities to address issues
- “The approach to be taken is, first, to ask whether, through an allocation of parenting responsibilities, in continues to be in the best interest of the children that the parent remain a guardian”

45



Case law to date: Part 8

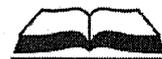
- None

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Let's talk

Questions and comments



CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Custody and Guardianship

Provincial Training Conference for Legal Advocates
29 October 2014 • Richmond, British Columbia

John-Paul Boyd
Canadian Research Institute for Law and the Family

Risk Assessment Across Communities
How to work effectively with clients who are
dealing with violence



Presenters

Debby Hamilton
Regional Coordinator
Harjit Kaur
Program Manager

EVA/CCWS



Purpose of the Presentation

- How to identify signs of highest risk domestic violence
- How to keep women safer by creating collaborative safety plans and proactive interventions

3

Spotting the signs – before somebody dies

The red flags are there, but the problem is in the co-ordination,' says the Crown prosecutor behind a new pilot project



JUSTINE HUNTER
 jhunter@vicbeatnews.com

VICTORIA

In the early hours of Sept. 4, 2007, a frantic 911 call was placed from inside a million-dollar Oak Bay home. By the time a police officer responded nine minutes later, the house was silent. All five members of the family, including a six-year-old boy, were dead of multiple stab wounds inflicted by the boy's father.

Two weeks ago, Merritt RCMP responded to a call from a mother who had just returned to a grisly scene. Inside her trailer home, police found the bodies of her three children, aged six, 8 and 9. Their father is the prime suspect.

In hindsight, Peter Lynn Jason Lee, the Oak Bay man who slaughtered his family with a knife but had a powder keg who shouldn't have been trusted to respect the restraining order that was supposed to protect his family.

In hindsight, Alan Oswald Schoenborn, who had already issued a protection order in place for the children's mother, was also a high risk for domestic homicide. He is now in custody on suspicion of murdering his three young children in Merritt.

Remembering the judges, law-

SCENES OF TRAGEDY IN OAK BAY & MERRITT



One of five bodies is removed from a house in Oak Bay last September. Peter Lee killed four family members and himself. (COURTESY: SHERIFF FOR THE COAST AND MOUNTAINS)

AGENDA

- Definition of Domestic Violence
- Why Focus on Women
- How Common
- Domestic Violence and Homicide
- Why Women Don't Report
- When Do Women Seek Help

5

AGENDA

- Definition of Risk
- Importance of Coordination
- Interagency Case Assessment Teams
- Safety Planning
- Safety for Immigrant & Refugee Women
- References and Resources

6

Definition of Domestic Violence

1. The Violent Action

- Physical or sexual assault or threat;
- Criminal Harassment, threatening, mischief where there is a basis to conclude the act was done or where the act did in fact cause fear, trauma, suffering or loss to the intimate partner

7

Definition of Domestic Violence

2. Who It's Directed Toward

- A current or former intimate partner whether they are married or living together at the time
- Includes vulnerable men in both heterosexual and same-sex relationships
- Includes heterosexual and same-sex relationships
- Includes cases where the intimate partner is the target though not the direct victim

VAWIR Policy 2010

Why Focus on Women?

- Half of all women in Canada have experienced at least one incident of physical or sexual violence since the age of 16
- In British Columbia, 10% of women reported assault by a partner during a 5-year period.

Violence Against Women Survey, Statistics Canada

9

Why Focus on Women?

- In BC, women are eight times more likely than men to be killed by their spouse or romantic partner
- Between 2003-2011 in BC, 80% of domestic violence homicides were committed by males, including 100% of peripheral victims

BC Coroner's Service 2012

10

How Common?

As of 2014, there were over 800 known cases of missing or murdered Aboriginal women in Canada.

*An Awkward Silence:
Missing and Murdered Vulnerable Women and the Canadian Justice System
Pierce, Maryanne. 2014*

11

How Common?

- Domestic violence is equally present in all socio economic groups.

*Statistics Canada 2009
General Social Services Survey on Victimization*

- Women of higher social and economic class may have resources to leave, but risk shame, loss of status and identity.

12

How Common?

Aboriginal women aged 25-44 are five times more likely than non-Aboriginal women of the same age to die of violence.

Status of Women Canada, 2005

13

How Common?

- Immigrant and Refugee Women face additional barriers to reporting and accessing support.
- Social isolation, language issues, immigration/sponsorship issues, economic vulnerability.

Status of Women Canada, 2001; Light, 2007; Shirwadkar, 2004; Russell 2002

How Common?

- In Canada, an estimated half a million children witness violence in relationships
- It is estimated that 30–60% are also maltreated themselves
- The more severe the family violence, the more serious the child abuse and the more serious the children's problems may be

*Children Witnessing Family Violence Mia Dauvergne and Holly Johnson
Juristat, Canadian Centre for Justice Statistics - Statistics Canada. 21.6 (2001)*

15

How Common?

In half of all cases of killings of female ex-partners in Canada, the woman was killed within two months of leaving the relationship.

*Department of Justice Fact Sheet
retrieved June 2006*

16

Domestic Violence and Homicide

- On average, one woman is murdered by her partner in Canada every six days

Homicide Canada 2009, Sara Beatty, Juristat

- 67% of Canadians report knowing a woman who was a victim of domestic or sexual violence

*Family Violence in Canada: A Statistical Profile 2005
Canadian Centre for Justice Statistics, Statistics Canada, page 34*

17

Why Don't Women Leave?

- Fear - The most dangerous time for an abused woman is when she attempts to leave the abuser
- Poverty – Women who leave an abusive relationship to live on their own with their children are 5 times more likely to be poor than if they stayed

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Why Don't Women Leave?

- Harm to pets – 60% of women who stayed in shelters said the abuser harmed or killed pets
- Religious or personal beliefs - women may have beliefs about keeping families together, regardless of abuse

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Why Don't Women Leave?

Control and Coercion:

The abuser will control his spouse by:

- Emotional or verbal abuse
- Isolating her to the house, not allowing her to talk to family or friends
- Threats to harm her, her children, pets or kill himself
- Financial abuse

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When Do Women Seek Help?

- When their children are at risk
- When they feel safe and supported

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**Identifying Risk
Planning for Safety**

Definition of Risk

Any factor that makes the victim more vulnerable, such as poverty, geographic isolation, disability, culture, immigration status, addiction, physical or mental illness

23

Definition of Risk

The purpose of identifying risk is to:

- Form an opinion, together with the woman, about the risk that the abuser will cause serious harm or death to her or her children
- Fill in knowledge gaps about the risk she is facing, knowing that an opinion about the abuser's predicted behaviour is limited by any lack of or unclear information

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Definition of Risk

The purpose of identifying risk is to:

- Form the basis for safety planning
- Determine what strategies or steps should be taken immediately to enhance the woman's and her children's safety

25

Definition of Risk

"While all domestic violence incidents are a concern, certain cases pose a greater risk of violence for serious bodily harm or death."

*BC Violence Against Women in Relationships Policy:
Highest Risk Protocol December 2010*

26

The Importance of Coordination

Research shows that coordinating the work of the various response systems is crucial to keeping women and children safe.

Gamache, D., J. Edleson and M. Schock

27

The Importance of Coordination

Since the Early 1990s

The central importance of coordination in domestic violence cases has been emphasized in research and coroner's reports on deaths resulting from or linked to domestic violence in BC and elsewhere.

28

The Importance of Coordination

Children's watchdog says murders of three children could have been prevented

Dirk Meissner, THE CANADIAN PRESS Thursday, March 01, 2012 7:41 PM

Recommend Be the first of your friends to recommend this.



Mary Ellen Turpel-Lafond releases an investigative report into the deaths of three children killed by their father, Allan Schoenborn in April 2008, during a press conference in Victoria, Thursday, March 1, 2012. THE CANADIAN PRESS/Chris Hillier

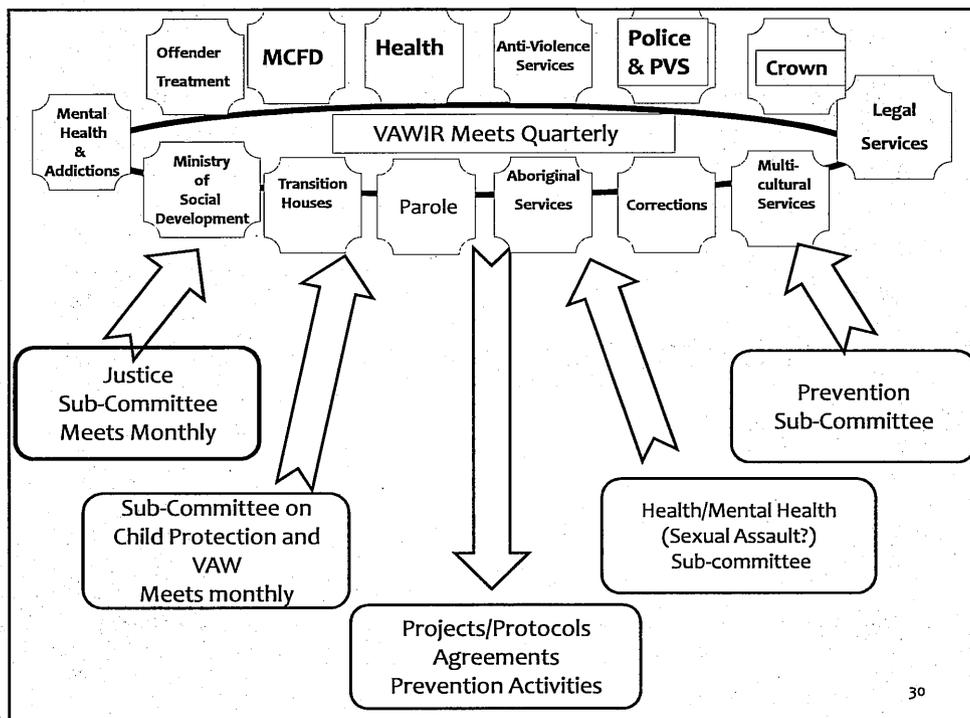
VICTORIA Three vulnerable children murdered by their mentally ill father could have been saved if British Columbia's social safety net was working properly, says a scathing report by the children's commissioner that immediately prompted government to apologize to the bereaved mother.

Kaitlynn, 10; Max, 8; and Cordon, 5; died horribly in April 2008 in Merritt, B.C. after enduring lives of upheaval and anxiety caused by domestic violence and their father's untreated serious mental illness and addictions, said the

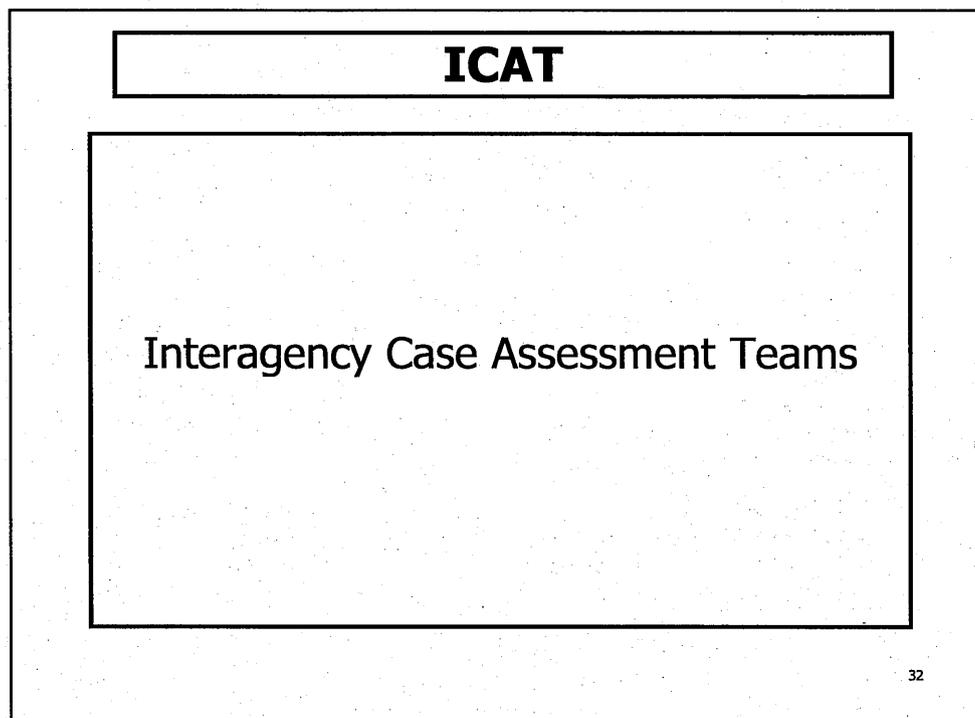
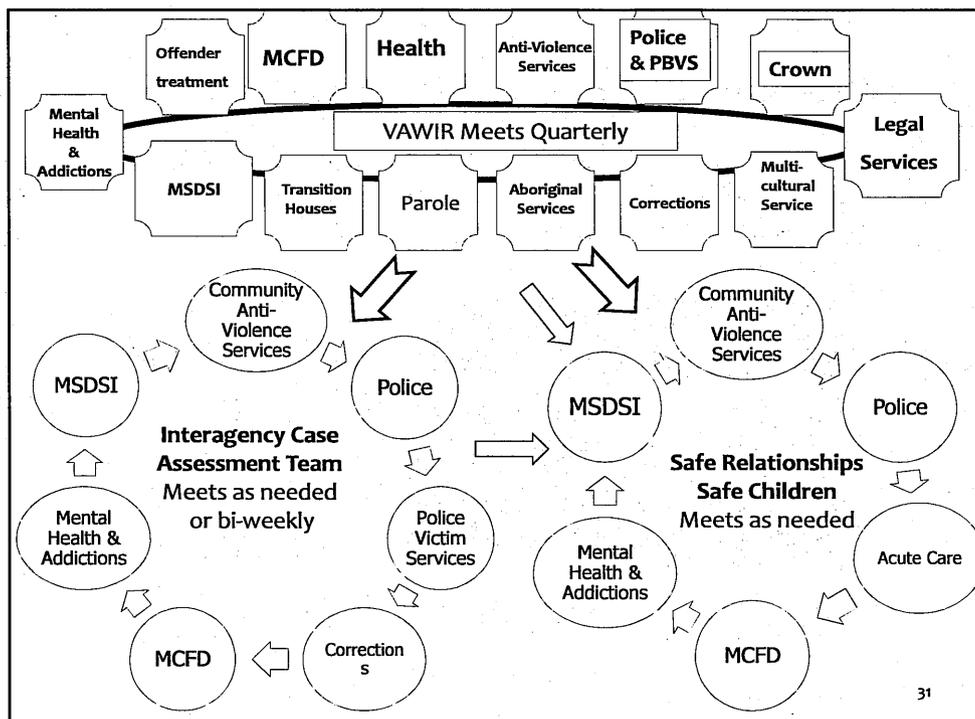
report by B.C.'s Independent Children's Representative

Mary Ellen Turpel-Lafond.

29



30



Purpose of ICAT

- To identify highest risk cases of intimate partner violence domestic violence
- To talk freely with other agencies about case files
- To collaboratively create a safety plan

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Information Sharing

- Generally, consent is required before personal information regarding a victim, perpetrator or involved family members can be shared with other agencies.
- However, clauses in provincial and federal legislation allow for information sharing in certain circumstances

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Information Sharing

“...life trumps privacy, and our laws reflect that reality. Tragedies should not occur as a result of a misunderstanding of privacy legislation.”

*Practice Tool for Exercising Discretion
Cavoukian and Loukidelis, 2008*

35

Informed Consent

As Best Practice:

- seek written permission before sharing information
- Victims should be aware of exposure of their information during case review, for example:
 - MCFD (or delegated child welfare agency)
 - SDSI (Income Assistance)
 - RCMP (or other police force)

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Informed Consent

The paramount principle is life trumps privacy

- Where possible, keep victim central to information sharing process and involved in decision making
- Consider risks and benefits of sharing information without consent

37

Referring to ICAT

- Explain ICAT process to victim, including consent and how information will be used
- Have client sign consent form
- Complete referral forms
- Forward completed forms to police
- Follow-up with a phone call to police

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Case Review Process

1. Agency or individual suspects high risk case
2. Client consent is obtained
3. Referral is made to designated RCMP member
4. RCMP provides initial safety interventions
5. DVU Member calls ICAT Meeting
6. ICAT assesses risk and commits to safety plan
7. Case Summary is sent to RCMP, who forwards summary to Crown Counsel
8. ICAT reconvenes to review critical updates in cases biweekly or sooner if necessary

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Case Review Process

During an ICAT meeting:

- Person/Agency who referred the case presents the situation
- Anyone else with additional relevant information shares it with the team
- Each of the risk factors are explored
- Consensus is reached on whether a case is high risk or not
- Safety plan is coordinated; next review date is set

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Risk Factors

Risk Factors used by ICAT are identical to those used by police in British Columbia

BC Summary of Domestic Violence Risk Factors BC Ministry of Justice

This multi-disciplinary tool is used by police, child protection and social services in BC

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Risk Factor Categories

There are 19 Risk Factors in Four Categories:

1. Relationship History
2. Complainant's Perception of Risk
3. Suspect History
4. Access to Weapons/Firearms

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Relationship History

Relationship History:

- 1.1 Current Status of Relationship
- 1.2 Escalation in Abuse
- 1.3 Children Exposed
- 1.4 Threats
- 1.5 Forced Sex
- 1.6 Strangling, Choking, Biting
- 1.7 Stalking
- 1.8 Information On Relative Social Powerlessness

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Complainant's Perception of Risk

2. Complainant's Perception of Risk

- 2.1 Complainant's Perception of Personal Safety
- 2.2 Complainant's Perception of Future Violence

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Suspect History

Suspect History:

- 3.1 Criminal Violence History
- 3.2 Previous Domestic Violence History
- 3.3 Court Orders
- 3.4 Alcohol/Drugs
- 3.5 Employment Instability
- 3.6 Mental Illness
- 3.7 Suicidal Ideation

45

Access to Weapons

4. Access to Weapons/Firearms

- 4.1 Weapons/Firearms (Used or Threatened)
- 4.2 Access To Weapons/Firearms

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Victim Vulnerability

Other Information

Any barriers to safety that exist in the woman's life, such as culture, ethnicity, poverty, isolation, language, mental ill health, addictions, age, disability, geography, social class, discrimination, lack of transportation, pregnancy, illness, responsibility for pets, farm animals or a business, lack of childcare, immigration status (refugee, sponsorship), living on reserve, extreme dependence on offender

47

Women Who are Marginalized

- More work to be done for marginalized women in particular
- Numerous deaths in BC of immigrant women suggest more training, standards, access to interpreters needed



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Safety for Immigrant and Refugee Women Project

- In response to the DV deaths of numerous Immigrant women in the Lower Mainland of BC, the BC Law Foundation funded a number of focused projects

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Safety for Immigrant and Refugee Women Project

Building a partnership



50

Safety for Immigrant and Refugee Women Project

- Identified gaps in policy and legislation
- Developed Comprehensive Strategic Plan
- Standing in Lee Inquest
- Conducted Focus Groups across BC

Safety for Immigrant and Refugee Women Project

Developed a number of resource documents:

- 8 Provincial Briefing Notes,
- 6 Federal Briefing Notes,
- a Literature Review,
- Annotated Bibliography and
- Focus Groups Summary.

Available on our website
www.endingviolence.org

Safety for Immigrant and Refugee Women Project

Initiating
Dialogue



Safety for Immigrant and Refugee Women Project

- Applied for Intervener status in *Mavi* case at Supreme Court of Canada
- Submission to the Inland Refugee Board
- CIC policy staff and provided briefing related to how and what policies could be altered to increase safety

Safety for Immigrant and Refugee Women Project

- Recent Roundtable with Province on Sponsorship debt
- Ongoing work with MOSAIC re Forced Marriage

CHALLENGES FACING IMMIGRANT WOMEN

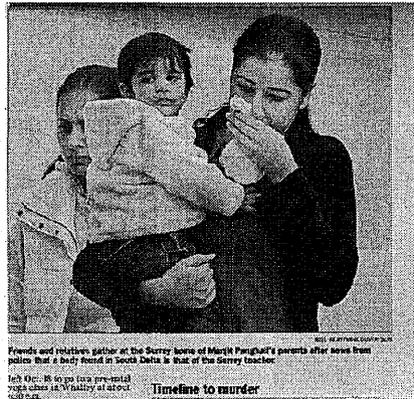
Challenges

- Isolation
- Language barriers
- Myths
- Re-victimization

Challenges

Regional
isolation

Family
dynamics



Challenges/Language Barriers

- Lack of accessible materials and resources in victim's language

- Lack of qualified interpreters
 - Family members being used as interpreters
 - Lack of training in cultural sensitivity

Challenges/Myths

- Victims with permanent resident status being told they can be deported.

- This results in some women remaining in their abusive relationship

Challenges/Revictimization

- Of non-status women
- Of women sponsors
- Of women who are sponsored
- By systems that operate in vacuums

Revictimization of Non-status Women

- Real risk of deportation
- Shelters are not immune to CBSA enforcement
- H & C process is time consuming and access to benefits is very limited to non-existent
- There are some options for those who are victims of human trafficking

Revictimization of Women Sponsors

- Sponsorship Undertaking for spouses is 3 years
 - The undertakings are a contractual obligation on the sponsor to repay any monies paid to their sponsored relative in the form of social assistance.
 - The collection may be held off if “the default is the result of abuse” but resumed once “circumstances have changed”

The net effect is that some women choose to remain in the abusive relationship

Revictimization of Sponsored Women

- Sponsored women who leave abusive relationships often live in marginalized circumstances
- If they have children and want to sponsor family to assist them, they will be ineligible if they are on welfare
- They could apply to sponsor, be refused, and then be embroiled in a lengthy appeal on H & C grounds

Systemic Revictimization

- Immigrant women without status are facing many systems simultaneously:
 - Immigration
 - Family Law
 - Criminal Justice System

Systemic Revictimization

- The systems tend to work in isolation of one another
- For example: In the case of non-status women the removals process is not concerned with outstanding family custodial matters
- The best interest of the child is ignored

Systemic Revictimization

- Even within systems there are sub-systems that work in isolation of one another
- For example:
 - The removals branch of immigration has a mandate to remove
 - Removal can occur even while an H & C application is underway

Strategies for Action

- The need to view the issue of domestic violence involving immigrant/refugee women through a multi sector safety lens
- Ensure that safety of women is the paramount concern

Strategies for Action

- The need to ensure a coordinated response to women's safety, police, Crown, Child protection, Immigration, Settlement & English language
- The need to review policy to ensure no inadvertent re- victimization

Determining Risk

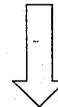
Based on risk factors is this case High Risk?

If Yes:



- Safety Plan is created
- ICAT follows case until risk is reduced

If No:



- Safety Plan is created
- ICAT does not follow case

Safety Planning

Strategies are tailored to each case:

- Monitoring - contact with victim & offender
- Supervision – court orders
- Treatment
- Victim Safety Planning

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Safety Planning

- Victim Services Programs (Victimlink)
1-800-563-0808
- Transition Houses
- Second Stage Housing
- Safe Homes
- Children Who Witness Abuse Programs
- Helpline for Children (310-1234)

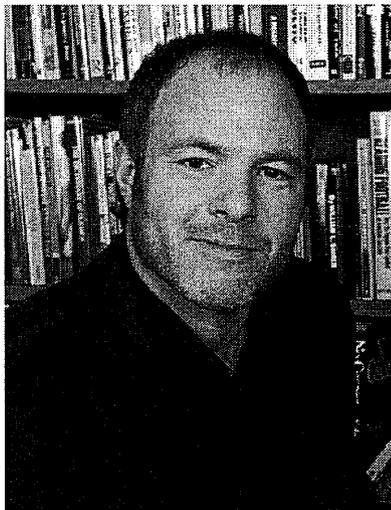
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Case Studies

- Pearla
- Martina



Principles of Safety Planning



The Macho Paradox

Jackson Katz, Ed.M, ex-pro football player

I believe we, men, need to acknowledge that the reason for men's violence is not anything that women and girls are doing or not doing, but more, that it lies in boys' and men's attitudes and behaviours, and the functioning of institutional structures that are largely controlled by men.

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Links to Important BC Government Ministry of Justice Documents and Tools regarding Domestic Violence

Public documents: www.pssg.gov.bc.ca/victimservices/publications

Documents for service providers: www.pssg.gov.bc.ca/victimservices/service-provider

More technical documents for service providers related to safety planning, etc.:
www.pssg.gov.bc.ca/victimservices/training

VAWIR policy including Protocol for Highest Risk Cases:
www.pssg.gov.bc.ca/victimservices/publications/docs/vawir.pdf

Factors to Consider When Domestic Violence Safety Planning:
www.pssg.gov.bc.ca/victimservices/training/docs/factors-to-consider.pdf

Creating a Safety Plan Booklet:
www.pssg.gov.bc.ca/victimservices/training/docs/creating-safety-plan.pdf

Personalized Safety Planning Template:
www.pssg.gov.bc.ca/victimservices/training/docs/personalized-safety-planning.doc

EVA BC/CCWS Documents Regarding Interagency Case Assessment Teams, Information Sharing and Safety Planning

- Critical Privacy Provisions Which Impact Information Sharing in Woman Abuse Cases
www.endingviolence.org/node/1239
- *Backgrounder:* Interagency Case Assessment Teams; Collaborating to Identify Risks and Increase Safety
www.endingviolence.org/node/1606
- Safety Planning Across Culture & Community: A Guide for Front Line Violence Against Women Responders:
www.endingviolence.org/node/1594

Comparison of Commonly Used Risk Assessment/Indicator Tools

Tools reviewed:

- 1) SARA: Spousal Assault Risk Assessment Guide, Kropp et al 2nd Edition 2008
- 2) Family Violence Investigation Report, Alberta Solicitor General and Public Security, (Part of ARTAMI Initiative) 2008
- 3) Danger Assessment, J.C. Campbell, 2003
- 4) Ontario Domestic Violence Death Review Committee Risk Factor Coding Form, 2005
- 5) Vancouver Police Department, patrol dv guide (no date, in use in 2009)
- 6) B-Safer: Brief Spousal Assault Form for the Evaluation of Risk, Kropp et al 2nd Edition 2010

SARA	FVIR	Danger Assessment	Ontario DV Death Review Committee	Vancouver DVACH Patrol Guide	B-Safer
Past Assault of family members	Suspect used or threatened to use a weapon against complainant, family mbr, pet or another person?		14. Prior violence against family pets	3. Has ACC* ever hurt, injured, threatened to hurt VIC**, a family member, another person, animal?	1. Violent acts
Past Assault of strangers or acquaintances	Does suspect have a history of violence or sex assaults?		1. History of violence outside family by perpetrator		1. Violent acts 6. General criminality
Past violation of condition release Past violation of conditional release or supervision					4. Violation of court orders
Recent relationship problems	Is there past, recent or pending separation in the relationship?	3. Have you left him after living together during past year?	24. Actual or pending separation	1. Are there past, recent/pending separations	7. Intimate relationship problems
Victim/witness re family violence as child or teen			17. Perp*** was abused and/or witnessed dv as child		
Recent substance abuse/dependence	Suspect history of drug or alcohol abuse?	11. Does he use illegal drugs? 12. Is he an alcoholic or a problem drinker?	25. Excessive alcohol/drug use by perp 26. Severe and excessive alcohol/drug use by perp	10. Is ACC currently using alcohol/drugs? Is substance abuse escalating? Does violence increase when ACC has been consuming?	9. Substance use problems

Recent suicidal/homicidal ideation/intent	Has suspect threatened or attempted suicide?	16. Has he ever threatened or attempted suicide?	6. Prior threats to commit suicide by perpetrator 7. Prior suicide attempts by perpetrator	11. ACC ever expressed homicidal/ suicidal ideas? Has ACC ever attempted suicide?	2. Violent threats or ideations
			27. Perp depression; fam/friend opinion 28. Perp depression; diagnosed		
Recent psychotic-manic symptoms	Suspect history of mental illness?		29. Other mental health or psychiatric problems (perp)	11. Does ACC have a mental illness?	10. Mental health problems
Personality disorder...					
			8. Prior attempts to isolate the victim		
Spousal Assault History					
Past spousal assault	Is there a history of violence/abuse in previous relationship?		2. History of domestic violence	2. Has there been physical, sexual, verbal/emotional, financial abuse	1. Violent acts
Past sexual assault/jealousy	Has suspect ever forced sex on the complainant?	9. Has he ever forced you to have sex?	11. Prior forced sex acts and/or assaults during sex		1. Violent acts 5. Violent attitudes
Past use of weapons/credible threats of death?	Suspect ever threatened to kill or harm complainant, family mbr, pet or another person?	5. Has he ever used a weapon against you or threatened you with a weapon? 6. Has he threatened to kill you?	3. Prior threats to kill victim 4. Prior threats with a weapon 5. Prior assault with a weapon	4. ACC ever used weapons against VIC threatened to use weapons? 12. Has ACC ever made serious threats?	1. Violent acts 2. Violent threats or thoughts

Recent escalation?	Is there escalation in frequency/intensity of violence towards complainant, family mbr, pet or another person?	1. Has the physical violence increased over past year?	18. Escalation of violence	2. Has abuse escalated in the last 12 months?	3. Escalation
Past violation of no contact orders	Suspect ever violated a court order?		32. Perp failure to comply with authority	9. Has ACC ever violated a court order including a Peace Bond or no contact?	4. Violation of court orders
Extreme minimization or denial of spousal assault history			23. Extreme minimization or denial of spousal assault history	3. Does ACC use extreme minimization or denial of assaultive behaviour?	5. Violent attitudes
Attitudes that support or condone spousal assault					5. Violent attitudes
	Suspect have access to weapons?	2. Does he own a gun?	30. Access to or possession of firearms	4. Own a Firearm or have plans to acquire a firearm?	
	Suspect unemployed or in financial difficulty?	3. Is he unemployed?	20. Perpetrator unemployed	8. Has ACC employment history changed during the last 12 months?	8. Employment problems
	Suspect ever strangled, choked or bit the complainant?	10. Does he ever try to choke you?	16. Choked victim in past	7. Has ACC ever strangled or bitten VIC?	1. Violent acts
	Suspect displayed jealousy, stalked or	14. Is he violently and constantly	19. Obsessive behaviour by	1. During separations has	2. Violent threats or thoughts

	harassed complainant or a previous partner?	jealous of you? 19. Does he follow or spy on you...	perpetrator	ACC stalked /harassed VIC? Displayed jealous behaviours? 12.Has ACC committed acts of stalking, made PLANS to harm others?	
		7. Has he avoided being arrested for DV?			
				5. Have children witnessed the abuse by offender? Have children been abused? Has MCFD been involved with the family?	
				6. Has ACC ever abducted / threatened to abduct children?	
		13. Does he control most of your daily activities?	9. Controlled most or all of victim's daily activities		
		15. Have you ever been beaten by him while you were pregnant?	15. Prior assault on victim while pregnant		
		17. Does he threaten to harm			2. Violent threats or thoughts

		your children? 18. Do you believe he is capable of killing you?		13. VIC perception of personal safety?	12. Extreme fear of perpetrator
		20. Have you (victim) ever threatened or attempted suicide?			
			10. Prior hostage-taking and/or forcible confinement		
			12. Child custody or access disputes		
			13. Prior destruction or deprivation of victim's property		
			21. Victim and perp living common-law		
			31. New partner in victim's life		
			33. Perp exposed to/witness of suicidal behaviour in family		
			34. After risk assess. Perp had access to victim		
			35. Youth of couple		
Current Offence					
Severe and/or sexual assault					1. Violent acts
Use of weapons / credible threats of death					1. Violent acts 2. Violent threats or thoughts

Violation of no contact order					3. Violation of court orders
				9. Is ACC currently before the courts?	
Victim Factors					Victim Vulnerability Factors
	Does the complainant believe the suspect will disobey the terms of release?				
	Does the complainant fear further violence if the suspect is released?				12. Extreme fear of perpetrator
	Are there children under 18 in the home?				
		8. Do you have a child that's not his in the home?	22. Presence of stepchildren in home		
				13. VIC socially /physically isolated?	13. Inadequate support or resources 14. Unsafe living situation 15. Health problems
				13. VIC cultural barriers to getting help?	13. Inadequate support or resources

					11. (Victim) Inconsistent attitudes or behaviours
					Other considerations

Abbreviations used in specific risk models

- *ACC = accused
- **perp=perpetrator
- ***VIC=victim

Combined list of risk indicators:

History:

1. History of violence in relationship by perpetrator
2. Prior violence against family or pets
3. Past assault of strangers or acquaintances
4. Past violation of conditions
5. Prior threats or attempts to commit suicide by perpetrator
6. Perpetrator history of mental illness
7. History of sexual assault by perpetrator
8. Has the perpetrator ever strangled, choked, or bitten the complainant?
9. History of assault on victim while she was pregnant

Perpetrator:

1. Was abused or witnessed abuse as child
2. Recent substance abuse/dependence
3. Suicidal and or homicidal ideation
4. Recent psychotic or manic symptoms
5. Sexual jealousy
6. Extreme minimization or denial of spousal assault history

7. Attitudes that support or condone spousal assault

Current Situation:

1. Recent separation
2. Recent escalation of violence
3. Are there children under 18 in the home?
4. Are there children that are not the perpetrator's in the home?
5. Does the suspect have access to weapons?
6. Is the suspect unemployed or in financial difficulty?
7. Does the suspect control most of the complainant's activities?
8. Threats to kill complainant
9. Threats to kill complainants children/family
10. Does complainant feel the perpetrator is capable of killing her?
11. Child custody dispute
12. New partner in victim's life

Victim:

1. Does the complainant believe the suspect will violate the terms of release?
2. Does the complainant fear further violence if the perpetrator is released?
3. Is the complainant socially isolated?
4. Does the complainant experience social barriers to getting help?

Risk factors from RCMP Violence in Relationship Policy; "not limited to:"

1. Past actual or attempted assault of family members
2. Past actual or attempted assault of strangers or acquaintances
3. Past arrest for violating the terms of a conditional release or community supervision;
4. Separation from partner or extreme conflict regarding relationship status within the past year;
5. Serious substance abuse or dependency
6. Serious homicidal or suicidal ideation/intent, psychotic or manic symptoms
7. Past physical assault of current intimate partner;
8. Past use of weapons/credible threats of harm; and
9. Recent escalation of frequency or severity of assault.

BC SUMMARY OF DOMESTIC VIOLENCE RISK FACTORS
Based on 19 Risk Factors

Date of ICAT Meeting: _____

Police File Number: _____

 Indicates a risk factor associated with an increased likelihood of future violence and also an increased severity (escalation) of future violence.

(text in boxes below are to describe risk and important notes)

1.	RELATIONSHIP HISTORY		YES	NO
1.1	Current Status of the Relationship 	<ul style="list-style-type: none"> Is there past, recent or pending separation in the relationship? <p>Note: <i>Social science experts say that where there are controlling coercive behaviours, the intensity and lethality of violence often escalates after the victim leaves the relationship.</i></p>		
1.2	Escalation in Abuse 	<ul style="list-style-type: none"> Is there escalation in the frequency/intensity of violence or abuse towards the complainant, family members, a pet or another person? 		
1.3	Children Exposed	<ul style="list-style-type: none"> Are there children, under 19 years of age, in the family who are living in the home? Who are the parents and is there a custody dispute? (Note: <i>Contact the MCFD</i>) 		
1.4	Threats	<ul style="list-style-type: none"> Has the Suspect ever threatened to kill or harm the complainant, a family member, another person, children or a pet? 		
1.5	Forced Sex	<ul style="list-style-type: none"> Has the Suspect ever forced sex on the complainant? 		
1.6	Strangling, Choking or Biting 	<ul style="list-style-type: none"> Has the Suspect ever strangled, choked or bit the complainant? 		
1.7	Stalking 	<ul style="list-style-type: none"> Has the Suspect displayed jealous behaviours, stalked or harassed the complainant or a previous intimate partner? 		
1.8	Information on Relative Social Powerlessness	<ul style="list-style-type: none"> Are marginalization factors present (i.e. drugs, alcohol, pregnancy, etc.)? Geographical isolation, disability, poverty? Are cultural factors present (i.e. family pressures, religious beliefs, gender inequality, etc.)? 		
2.	COMPLAINANTS PERCEPTIONS OF RISK		YES	NO
2.1	Complainant's Perception of Personal Safety	<ul style="list-style-type: none"> Does the complainant believe the Suspect will disobey terms of release particularly a No Contact Order? 		
2.2	Complainant's Perception of Future Violence 	<ul style="list-style-type: none"> Does the complainant fear further violence if Suspect should be released from custody? What access is there to the Victim and what is the basis of the Victim's fear? 		

BC SUMMARY OF DOMESTIC VIOLENCE RISK FACTORS
Based on 19 Risk Factors

3. SUSPECT HISTORY			YES	NO
3.1	Suspect's Criminal Violence History	<ul style="list-style-type: none"> Does the Suspect have a history of threats, violence, sex assaults, and criminal harassment? <p>Note: <i>One of the most common research findings is that Suspects with a history of violence are much more likely to engage in future violence than those with no such history.</i></p>		
3.2	Suspect's Previous Domestic Violence History	<ul style="list-style-type: none"> Is there a history of violence or abusive behaviour in a previous Intimate Partner Relationship? Is there any history of threats or actual violence or abusive behaviour against other members of the household including children, other family members or family pets? 		
3.3	Court Orders	<ul style="list-style-type: none"> Has the Suspect ever violated a Court Order? Is the Suspect presently bound by any Court Orders? (FLA, CFCSA, or protection orders?) Is the Suspect in a reverse onus situation for bail? 		
3.4	Alcohol/Drugs	<ul style="list-style-type: none"> Does the Suspect have a history of drug or alcohol abuse? 		
3.5	Employment Instability	<ul style="list-style-type: none"> Is the Suspect unemployed or experiencing financial problems? 		
3.5	Mental Illness 	<ul style="list-style-type: none"> Does the Suspect have a history of mental illness (e.g. Depression or paranoia)? 		
3.7	Suicidal Ideation 	<ul style="list-style-type: none"> Has the Suspect threatened or attempted suicide? <p>If YES, when and how?</p> <hr/> <hr/> <hr/> <hr/> <hr/>		
4. ACCESS TO WEAPONS/FIREARMS			YES	NO
4.1	Weapons/Firearms (Used or Threatened?)	<ul style="list-style-type: none"> Has the Suspect used or threatened to use a firearm or weapon against the complainant, family member, children or an animal? 		
4.2	Access to Weapons/Firearms	<ul style="list-style-type: none"> Does the Suspect have access to weapons/firearms? 		

Review Meeting Date: _____



INFORMATION BULLETIN MAY 2014

WHAT ARE DOMESTIC VIOLENCE INTERAGENCY CASE ASSESSMENT TEAMS AND WHAT DO THEY DO?

Recent Tragedies

There have been a series of recent incidents in BC involving the death or serious injury of women at the hands of their abusive spouses. In the aftermath, CCWS is getting questions from communities regarding mechanisms to respond to high risk domestic violence. Across BC we have about 22 high risk domestic violence teams, generally referred to as Interagency Case Assessment Teams, or ICATs. A number of inquests and inquiries, including the Domestic Violence Death Review Panel Report to the Chief Coroner of BC in 2010, have stressed the fact that safety for women and children can be improved by such collaborative interagency responses.

What is an ICAT?

ICATs are partnership groups which include criminal justice, child welfare, health and antiviolence workers with a goal of keeping domestic violence victims and their children safer. This goal is achieved by legally and ethically sharing risk related information and building a safety net for victims, their children and the community and initiating interventions and monitoring of suspects. Agencies in the community who are not ICAT members can still refer cases into the ICAT.

How do ICATs work?

Domestic violence cases that are suspected as being high risk are referred to the police ICAT contact. The police ICAT contact then circulates the victim and suspect names and birthdates for the next ICAT meeting. If the situation is urgent an emergency meeting may be arranged as soon as practicable. ICAT individual members then research their agency for relevant risk related information about the victim and suspect. This information is brought to the ICAT meeting where data is reviewed for presence of BCDVS 19 Risk Factors.

When the risk level is determined, information sharing proceeds and a report is created. An enhanced safety plan for the victim and a monitoring and support plan for the suspect is developed.

How is an ICAT different from Domestic Violence Units (DVUs) and police-based highest risk domestic violence teams?

Unlike a DVU, an ICAT is not an investigative body. The ICAT makes critical interventions when a case is deemed high risk.

ICATs are a partnership between a number of community services including police, child welfare, antiviolence agencies, health and income assistance. ICATs look for consensus in determining risk level. ICATs allow for more informed decision making about risk since information can be shared by a broader range of agency partners at the table. ICATs can also offer more resources to build seamless safety plans and initiate suspect intervention and monitoring.

DVUs and Police-Based Highest Risk Domestic Violence Teams are usually stewarded by the police detachment and have a focus on child welfare, police, corrections and community based victim assistance.

How is an ICAT different from Violence Against Women in Relationships Committees (VAWIR Committees) or other local coordination committees dealing with domestic violence?

VAWIR Committees are open membership groups that include service providers who work with women and children victims of domestic violence and also those that work with dv offenders. VAWIRs identify and address service gaps and safety needs, using a

strategic planning model. Networking, training and agency/service information sharing is part of a typical agenda, but information about specific cases is not shared. There are often subcommittees, one of which may be an ICAT.

An ICAT meets for the sole purpose of reviewing specific, referred high risk cases. If any systemic issues are identified through the ICAT, they are passed on to the VAWIR Committee to be included in the strategic plan. ICATs meet regularly and frequently, do not have open membership and are typically short in duration.

What if the case does not receive a high risk assessment?

Information sharing stops, but the usual police, child welfare and anti violence agency safety and support plans are enacted. The referring person monitors the case for changes in risk factors that may result in ICAT reviewing the case again.

Which agencies are members of ICAT?

It is essential to have Police, Child Welfare, Antiviolence Agency (Community Based Victim Assistance, Transition House, Police-Based Victim Assistance) and Community Corrections at the ICAT. Other necessary participants are Health (Mental Health and Substance Misuse); Income Assistance; Aboriginal representatives and immigrant servicing agencies. In rural and isolated areas, participants can call in by conference call and speakerphone.

Each agency representative should have a fully trained back up to fill in for them. Substituting non trained ICAT agency staff is not advised.

Does Crown counsel sit on ICATs?

No - Crown counsel are advisors to the process, but do not participate in ICAT case reviews or decisions.

Why are we allowed to share information at the ICAT table?

Life trumps privacy. Privacy laws limit situations in which someone's personal information can be shared but they allow personal information to be disclosed in the public interest or where compelling circumstances exist that affect anyone's health or safety. Personal information can also be disclosed to assist in a police investigation or in making a decision to start an investigation.

The provincial *Freedom of Information and Protection of Privacy Act* specifically permits release of personal information if disclosure is for the purpose of reducing the risk of domestic violence if domestic violence is reasonably likely to occur. This amendment was enacted in the aftermath of the Peter Lee domestic violence murders and suicide where a perceived inability to share risk related information between sectors was identified as a systemic problem needing to be addressed to prevent more domestic violence homicides.

Do the parties have to give consent?

If your agency collects personal information for one purpose and you want to use or disclose that information for another purpose, consent is generally required. If possible and if it is safe to do so, every effort should be made to get consent from the domestic violence victim before disclosing her personal information. However, provincial and federal privacy laws recognize that in high risk situations, it may be necessary to share either victim or suspect/offender information without consent in order to prevent more violence or save a life.

What kind of information gets shared?

Information relevant to the health or safety concern in question. There are specific risk indicators for domestic violence and information related to these indicators should be shared at the ICAT table.

Is sharing information breaching privacy or unethical?

Provincial and federal privacy laws allow personal information to be shared where there are health or safety concerns or to reduce the risk of domestic violence. Most professional ethics codes provide that privilege or confidentiality does not extend to

This document is for general information only. It is not intended to be and cannot be relied upon as legal advice. (May 2014; revised September 2014)

situations involving imminent danger. BC's Violence Against Women in Relationships Policy states that "...The authority to share information among justice and child welfare partners is found in provincial and federal legislation." (at p. 60)

How do ICATs identify risk?

ICATs use the BCDVR 19 Risk Factors, which is consistently used among police, child welfare, corrections and criminal justice partners across BC. This group of factors are evidence based, but these factors do not operate as a checklist. Professional judgment, and consideration and knowledge of domestic violence are required of the ICAT members to carefully consider the risk factors in the context of victim and suspect vulnerabilities.

Can anyone sit on an ICAT?

ICATs are not open committees. Trained representatives from agencies that work with domestic violence and a backup member are standing representatives and are not replaced in an absence. An ICAT cannot be held without the presence of a police officer.

If the referring agency is not a standing ICAT member, they are invited to attend the case presentation of their referral only. They are not included in the risk level decision, but may be asked to provide parts of safety plans.

How does ICAT keep domestic violence victims safer?

Victims of domestic violence, their children, extended family, workplaces, the community and suspects are kept safer by providing comprehensive safety plans that include mental health and practical support and monitoring to the suspect.

What is an enhanced safety plan for the victim?

Special arrangements are made, and services agree to be flexible with their mandates to ensure the highest risk victims, their families and people and pets close to them get the best safety measures possible. This may mean being prioritized for services,

consideration in bail conditions and protection orders and assistance with household and workplace security.

What about the suspect?

The suspect may be provided expedited mental health and counselling appointments, employment and housing assistance and general support by an appropriate agency.

Can ICAT help keep others safer?

Children, new partners, extended family, workplace colleagues and pets are vulnerable to harm when there is a high risk of domestic violence. Their safety is taken into consideration during the review and monitoring.

How can I find an ICAT in my community?

You can contact the Community Coordination for Women's Safety Program for more information on ICATs in your community or region.

Where can I get more information about high risk case assessment teams?

1. More resources on information sharing and the establishment of high risk teams including a webinar and ICAT and Information Sharing Backgrounders and information pamphlets can be accessed on the Ending Violence Association (EVA) website at:

www.endingviolence.org.

You can also contact the Community Coordination for Women's Safety Program directly by phone or email. Contact information is provided on the EVA website.

2. Further information on privacy laws can be found at:

www.oipc.bc.ca

www.priv.gc.ca/index_e.asp

3. Information on applicable **provincial policies** dealing with domestic violence can be found at:

www.pssg.gov.bc.ca/victimservices/publications/docs/vawir.pdf

www.ag.gov.bc.ca/prosecution-service/policy-man/index.htm

www.mcf.gov.bc.ca/podv

For information on RCMP Operational Policies contact Sgt. Loretta SMITH, "E" Division Domestic Violence Coordinator at loretta.smith@rcmp-grc.gc.ca

4. Information on **risk factors** associated with an increased likelihood of future violence in woman abuse cases can be found at:

- www.jocelyncoupal.com

AFFIDAVITS

CHEAT SHEET

Uphar Dhaliwal
Dhanu Dhaliwal Law Corporation
2450 Pauline Street,
Abbotsford B.C. V2S 3S1
604 746 3330
uphar@ddlaws.ca

TO PRESENT AFFIDAVIT EVIDENCE

Rule 13(1)

Step 1

COMPLETE the AFFIDAVIT. You may use a type-writer or print clearly and firmly. If you accessed this form from the Ministry of Justice website, you may also complete it at the computer, and then print it. An affidavit may be the evidence of a party in support of his or her own case, or it may be the evidence of another person. Either one may complete the affidavit. The person whose evidence it is must make sure the contents are true.



Step 2

TAKE the affidavit to a commissioner for taking affidavits. All lawyers, notaries public and also certain staff at the registry are commissioners. No fee is charged at the registry for this service. The person whose evidence is in the affidavit will be asked to swear or affirm that the contents are true. Bring identification with you, as you may be asked to produce it.

Please note that neither the commissioner nor any other registry staff member will assist with completing the content of the affidavit.



Step 3

FILE the affidavit by taking or mailing it to the registry where the file is. Filing and serving the affidavit is the responsibility of the party presenting the affidavit as evidence.



Step 4

SERVE the other party(s) and anyone else who must be notified. They must be served at least 7 days before the date of the court hearing. If this is not possible, you may ask the judge to allow you to use an affidavit without the 7 days' notice, or to adjourn the hearing.

The purpose of service is to be sure the person affected knows in advance the evidence that will be given by affidavit. (Normally the only one who must be served is the other party, but if a person who is not a party is being asked to produce information or documentation, that person must be served as well.)

TO SERVE A PARTY with the affidavit, you may deliver it:

- by mail to the party's most recent address for service as shown on the last document that they filed and served on you;
- by fax, if the fax number is included in the address for service provided by that party. You must use the special fax cover page, which the registry can give you;
- by e-mail, if the e-mail address is included in the address for service provided by that party;
- by leaving the affidavit with the other party's lawyer; or
- by having another person, at least 19 years of age, leave the affidavit with the party.

These last 2 methods are called 'personal service'.

TO SERVE A PERSON OTHER THAN A PARTY, you may either:

- leave the affidavit directly with the person; or
- deliver it by registered mail to that person's postal address.



Step 5

At the hearing you may be asked to prove that the affidavit was served. To **PROVE SERVICE**, use one of the forms printed on the back of the 'proof of service' copy of the affidavit.

If you served the affidavit by mail, e-mail or by fax, complete an **AFFIDAVIT OF SERVICE**. If you mailed the affidavit by registered mail, bring to the hearing the original copy of the signature obtained at the time the affidavit was delivered, unless you have already filed an affidavit of service.

If you or someone else personally served the affidavit, an **AFFIDAVIT OF PERSONAL SERVICE** must be completed.

Either file the proof of service ahead of time or bring it with you to the hearing. It is necessary to swear or affirm an affidavit of service or affidavit of personal service before a commissioner for taking affidavits.

Court File Number:

Copy the court file number, FMEP number (if any) and the court location from the original application.

Case Name:

Copy the parties' names from the application.

Name and Current Address for Service:

This is to be filled out by the party presenting the affidavit. Be sure that the address you give is correct because this is where the registry will send any further notices or information to you. If your address changes at any time, you must file a NOTICE OF CHANGE OF ADDRESS form with the registry and serve a copy of it on the other party.

What is the Affidavit for?

You are asked to briefly describe the order applied for (eg. guardianship, support, production of documents).

What are the Facts?

You then list the facts that you wish to present to the court in written, rather than spoken, form.

If you refer to documents, attach them to the affidavit and have them marked as exhibits.

Sworn or Affirmed:

Leave this section blank until you attend a commissioner for taking of affidavits, as your signature must be witnessed by the commissioner when you swear or affirm that the facts in the affidavit are true.

If you use an extra sheet, be sure the oath appears after the last paragraph on the extra sheet.

How to Complete this Form



Form 17 (Rule 13(1))

AFFIDAVIT

Court File No. 00001
 Court Location: Way Out There
 F.M.E.P. No.

In the Provincial Court of British Columbia

In the case between:

Wilma Flintstone

and

Fred Flintstone

I, Fred Flintstone, labourer, of c/o 2459 Pauline Street, Abbotsford, BC V2S 3S1, swear or affirm that:

I know or believe the following facts to be true. If these facts are based on information from others, I believe that information to be true.

I am making the application*, OR I am responding to the application

Family Background

1. I am the father of Pebbles Flintstone hereinafter "Pebbles" born June 1, 2008.
2. I married Wilma Flintstone, hereinafter "Wilma" on September 9, 2010 in Bedrock, B.C. and we separated in May of 2014. I learned she was having an affair with my best friend, Barnie Rubble and ultimately this led to our separation.
3. Our dating relationship started approximately 8 years ago and we began living together in approximately September 2006. We lived together in Bridal Falls, B.C. in 2006 and in October 2007 we moved to Bedrock, B.C.
4. Wilma has two children with George Jetson hereinafter "George" and their names are Kate Jetson hereinafter "Kate" born January 14, 2005 and Sally Jetson, hereinafter "Sally" born February 4, 2002.
5. Wilma's children were on a 50/50 split schedule with their father George during our relationship. George pays child support, which I believe is \$500 per month.
6. In approximately April of 2014 Kate and Sally started living full time with Wilma.

Employment & Education

7. I am employed by Jurassic Park Ltd. I am a labourer and I have been employed in this position for approximately ten years.
8. Currently I am stationed in Jurassic Park, B.C. and it takes me approximately 13 hours to get to Bedrock.
9. I have a grade ten education. I did not finish school as I went to work as soon as I turned 16.

My other children

10. I have two other children with Betty Crocker, my former common law spouse. The children are Dino Flintstone, hereinafter "Dino," born January 3, 2000 and Bino Flintstone Hirschman, hereinafter "Bino," born May 20, 2003.
11. For Dino and Bino, I pay \$922 per month which is paid as \$461 on the first and fifteenth of each month.

Relationship with Wilma's Children: Kate and Sally

12. I did not have a very good relationship with Sally during my relationship with Wilma however my relationship with Kate was better.
13. Since the separation, Sally and Kate have not seen me. I do not think they want to see me as they have not called and Wilma has not said anything to me about them coming to me for a visit.

Parenting Time

14. I work on a rotation where I am at work for two weeks straight and then have one week off, referred to as 2 on and 1 off.
15. During my off week, I need two days to travel in and out of camp. I typically see Pebbles on the five days that I have off. I also have Dino and Bino at the same time, in this way all the siblings get to spend time with each other and have a good bond.
16. Since separation I typically have Pebbles on my off time, I simply call Wilma and make the arrangement. This has been working for us, except until the last few days where she telling me that Pebbles doesn't want to come with me.

Ex-Parte Order on July 2, 2014

17. I picked up Pebbles on approximately June 18, 2014 and returned her on approximately July 4, 2014 (Friday). At that time, Wilma told me about the order of July 2, 2014.

- However my parents were served via substitutional service sometime later that month.
18. Wilma knew I had taken Pebbles camping. I was in Cavetown where I did not have cell phone reception.
 19. During my parenting time there were times where I did have cell phone reception and I was in contact with Wilma, however, she did not disclose any of our text message exchanges at the hearing on July 2, 2014 and did not mention them in her affidavit.
 20. I had a long visit with Pebbles as I had extra time off and he was not in school. I communicated to Wilma during the time Pebbles was with me and she knew that I would be he would be with me for longer a longer time period. This was the first quality time I had with my daughter since the break up and I believe she needed to be with her father. Pebbles needed to know how much I love her and that I am there to support her.
 21. Wilma called and spoke with Pebbles during my parenting time and worked her up and then she became really sad and wanted to go home. I brought her back home. Wilma purposely ruined our father-daughter camping trip.
 22. Wilma is using our break-up to alienate Pebbles. Pebbles needs both parents and I have always been active in her life and Wilma is aware of that. Wilma did not disclose this to the court.
 23. I have never hit Wilma or been violent or aggressive with her. Her accusations are false. Her affidavit of July 2, 2014 is full of untruths, which are hurtful and show her malicious behaviour. I am shocked that she would say such horrible things.
 24. Since the exparte order, Pebbles came to me for one week until August 13, 2014. Wilma failed to inform the court at the next court date which was August 13, that after the ex-parte order she allowed Pebbles to come with me.

Wilma's Behaviour

25. I believe the only reason Wilma states that we separated in February is to try to get more money out of me and to collect child tax benefits.
26. In May of 2014 I bought Wilma a big bone bracelet; in April of 2014 we bought a dinosaur together and on Mother's day I bought flowers for Wilma, her mother and her sister. I also took her out for lunch. We were still in a relationship at that time and I was living in the home in Bedrock.
27. We broke up and separated near the mid to end of May. We broke up over text when she told me not to come back home. Since I had nowhere to go, I stayed at work. Since then I stay in hotels with my children and at my parents' home. I am now renting a travel

- trailer so that I don't have to stay at my parents when I am home.
28. On approximately June 12, 2014 Wilma forged my signature to transfer my vehicle into her name, which I now believe her new boyfriend Barney is driving.
 29. My ATC trike is gone; Wilma told me she gave that to some guy named Bobo. My father gave this to me, it had sentimental value.
 30. Wilma has disposed of my trailer, dino-cart, bowling balls, and I believe other belongings
 31. I have not had any access to any of my belongings that are at our home.
 32. I have asked Wilma for my belongings, she has told me to stay off the property and refuses to give me my belongings.
 33. I need my winter clothes and my winter jacket; Wilma is not cooperating with returning the items, Wilma knows these are my basic needs to do my work. The temperature is normally minus 30 degrees from October to March.
 34. Wilma is disposing of my personal property and family property unilaterally. I am asking for an order for her to stop doing that.
 35. I do not know how much money she has made off selling my property; Wilma has not informed me.
 36. In May 2014, Wilma changed my email passwords. I cannot access my accounts.
 37. I cannot even get into my employment portal, as Wilma has changed that email password.
 38. Wilma has taken over my Facebook account as well.

Child support

39. I have been paying Wilma \$1150 per month and some months I paid more.
40. In May 2014 I paid \$1750.16
41. In June, 2014 my employer did not pay me for two weeks as there was an error and the money did not come to my account. On June 17, 2014 I only had \$29.94 to my name and I transferred it to Wilma. The total amount of money I paid to Wilma in June was \$1269.84.
42. In July 2014 I paid Wilma \$1560.00 and \$1150.00 in August, 2014. I paid Wilma \$1250 for September.
43. I am agreeable to paying what I owe for child support for Pebbles as she is my daughter, but I believe the court must take into consideration that I am also paying child support for my other children, Bino and Dino.
44. Attached and marked as Exhibit A is a copy of Wilma and my joint Dinotown bank

account #600000 which shows money transferred into the account from May 14, 2014 onwards from my personal account at Dinotown #600001. Since separation I have only deposited money into the account via account transfers and I have not withdrawn any money from that account since June, 2014.

45. My employer was depositing my cheques into the joint account and I had that changed to my personal account as of June 2014.

SWORN OR AFFIRMED BEFORE ME

at Abbotsford, British Columbia

on September 19, 2014

A commissioner for taking affidavits for British Columbia

*Uphar K. Dhaliwal
Barrister and Solicitor
Dhanu Dhaliwal Law Corporation
2459 Pauline Street
Abbotsford, BC V2S 3S1*

Tel: 604-746-3330

Fax: 604-746-3331

Signature

Fred Flintstone

This is the 1st affidavit
of _____ in this case
and was made on _____

Court File No.: E _____
Court Registry: New Westminster

In the Supreme Court of British Columbia

Claimant: Raj Singh

Respondent: Rani Kaur

AFFIDAVIT

[Rule 21-1 of the Supreme Court Family Rules applies to all forms.]

I, Rani Kaur, c/o 2459 Pauline Street, Abbotsford, BC V2S 3S1, former house-wife, SWEAR
(OR AFFIRM) THAT:

I know or believe the following facts to be true. If these facts are based on information from
others, I believe that information to be true.

Family Background

1

2

3

Personal History

4

5

6

Family Money

7

8

Sale of Family Home

9

10

11

Legal Proceedings in India

12

13

14

Hardship

15

16

17

SWORN (OR AFFIRMED) BEFORE ME at

Abbotsford, British Columbia,
on October 31, 2014

A commissioner for taking
affidavits for British Columbia

Uphar Dhaliwal
Barrister & Solicitor
Dhanu Dhaliwal Law Corporation
2459 Pauline Street
Abbotsford BC V2S 3S1
(604) 746-3330

[The following endorsement must be completed if required under Rule 10-4 (7) of the Supreme Court Family Rules.]

ENDORSEMENT OF INTERPRETER

[if applicable]

I, Uphar K. Dhaliwal, of 2459 Pauline Street Abbotsford B.C. V2S 3S1, lawyer, certify that:

1. I have a knowledge of the English and Punjabi languages and I am competent to interpret from one to the other.
2. I am advised by the person swearing or affirming the affidavit and believe that the person swearing or affirming the affidavit understands the Punjabi language.
3. Before the affidavit on which this endorsement appears was made by the person swearing or affirming the affidavit I correctly interpreted it for the person swearing or affirming the affidavit from the English language into the Punjabi language and the person swearing or affirming the affidavit appeared to fully understand the contents.

Date: 31 October 2014.

Signature of interpreter

TAB 5: Housing

- **Update on Legal Issues at the Residential Tenancy Branch (Day 1)**
 - RTB Powerpoint
 - Residential Policy Guideline : 24 Review consideration of a decision or order

Orange sheet

- **Residential Tenancy Systemic Advocacy Panel (Day 1)**
 - CLAS materials

Orange sheet

- **Manufactured Home Parks (Day 3)**
 - CLAS presentation

Residential Tenancy Branch

2014 Update



Cheryl May
Executive Director
Residential Tenancy Branch

1



BRITISH
COLUMBIA

Agenda



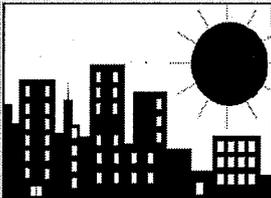
- Overview of the RTB
- Public Education
- Policy
- Service Delivery
- On the Horizon

2

 **BRITISH COLUMBIA**

RTB's Reach

- 600,000 estimated tenancies in BC
- Close to a million website visits each year
- More than 20,000 applications for dispute resolution



(2013-2014)

3

 **BRITISH COLUMBIA**

Service Personnel

47 Information Officers



- ✓ More than 160,000 phone calls
- ✓ Close to 12,000 emails
- ✓ Over 35,000 in-person contacts

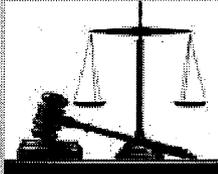
4



BRITISH
COLUMBIA



Dispute Resolution Personnel



- ✓ 27 Arbitrators
- ✓ 7 Contract Arbitrators
- ✓ 17,000 dispute resolution hearings
- ✓ Average hearing 40 minutes

5



Dispute Applications

- 20,000 per year
- 18% filed online
- 82% filed in-person
- 60% landlords and 40% tenants



6



Most Common Reasons Citizens Apply

Top reasons for tenants

- Monetary Order for return of security or pet damage deposit
- Cancel a Notice to End Tenancy

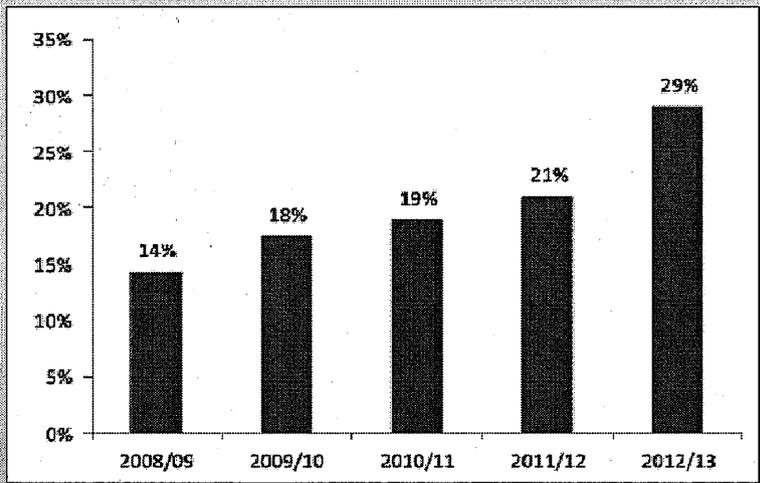
Top reasons for landlords

- Monetary Order for unpaid rent or utilities
- Order of Possession to End Tenancy

7



Cross Applications

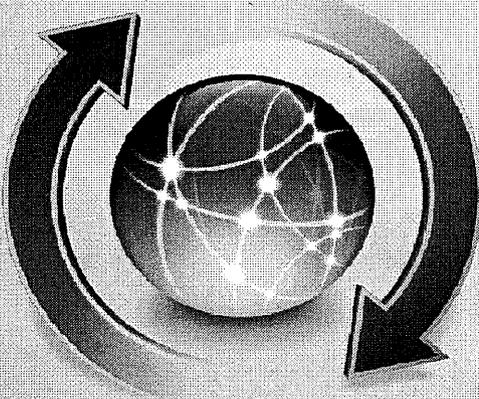


Year	Percentage
2008/09	14%
2009/10	18%
2010/11	19%
2011/12	21%
2012/13	29%

8



BRITISH COLUMBIA



Public Education

9

New Website



BRITISH COLUMBIA Residents

Search Gov. BC.ca

Home | Taxes & Revenue | Investment in B.C. | Service | Housing | Daily Life | Sports & Recreation | Driving & Transport in BC

Residential Tenancies

B.C. Home > Residents > Housing

- Starting a Tenancy
- During a Tenancy
- Ending a Tenancy
- Solving Problems
- Firms
- Tools and Resources
- Contact us

Residential Tenancies

A tenancy begins when someone agrees to pay rent to occupy a property or unit owned by a landlord. Under the law, both tenants and landlords have specific rights and responsibilities in a tenancy. Make sure you're renting the right way - access information and resources that will help you have a successful tenancy.



- Starting a tenancy
- During a tenancy
- Ending a tenancy
- Solving problems

The Residential Tenancy Branch

Landlords and tenants are encouraged to use the law to understand their rights and responsibilities.

The Residential Tenancy Branch can also help answer questions or provide dispute resolution services for problems that landlords and tenants can't solve on their own.

Contact the Residential Tenancy Branch.

Upcoming Workshops

"So, You Want to be a Landlord!"
Workshop for landlords presented by the Residential Tenancy Branch and LandlordEC.

Tuesday, October 21st, 6:00 - 8:00 p.m.
RFB Burnaby office
408 - 5021 Kingsway, Burnaby, BC

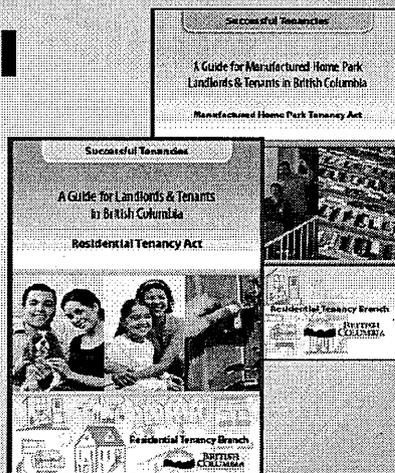
For more information email: RSSTO@gov.bc.ca (Type: "FREE WORKSHOP" in the subject line)

www.gov.bc.ca/LandlordTenant 10

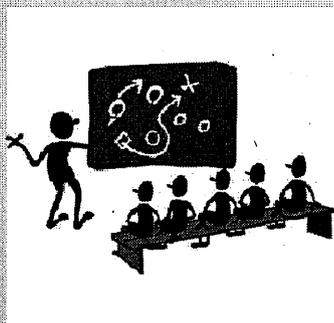


Print Material

- A Guide for Landlords and Tenants
- A Guide for Manufactured Home Park Landlords and Tenants



Public Education Team

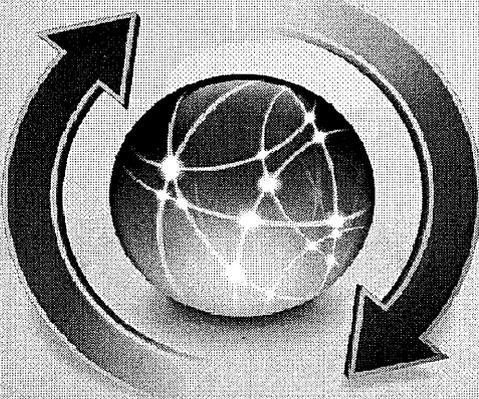


Focused Presentations

- Landlords
- New Residents of BC
- Young Renters
- International Students



BRITISH
COLUMBIA



Policy

13



BRITISH
COLUMBIA

Rules of Procedure *New*

- **Evidence due with application**
 - Applicant's evidence no later than 14 days before the hearing
 - Respondent's evidence no later than 7 days before the hearing
- **Definition of days is no longer "business days"**

14



BRITISH
COLUMBIA

Update to Policy Guideline 16: Claims in Damages

New

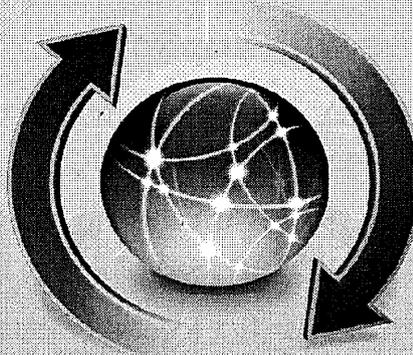
- *Limitation Act* does not apply to claims made under the *RTA / MHPTA*
- Limitation periods in our Acts apply
- Additional revisions underway regarding awarding damages

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BRITISH
COLUMBIA

Service Delivery



16



BRITISH
COLUMBIA



Advocates Phone Line New

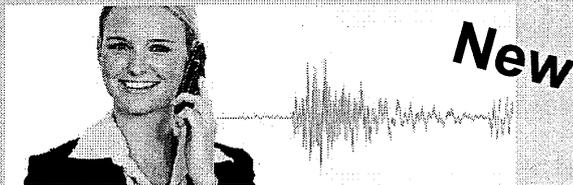


- Quick resolution of issues for advocates
- Increased levels of service to those who need it most
- No long distance charge

17



Contact Centre



- 500 calls per day (up by approximately 40 calls)
- Average wait times down to 30 minutes (from 48 minutes last year)

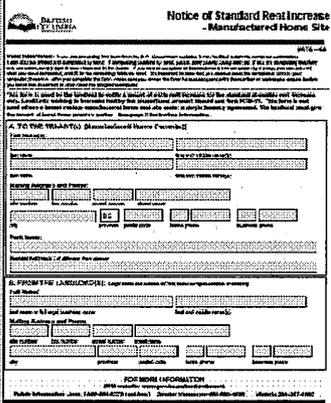
18



MHPTA Notice of Standard Rent Increase

New

- Simplified form
- Plain language
- Fewer attachments



19



Coming Soon

Improving the Online Application

- Citizens who qualify for a fee waiver will be able to apply online
- Advocates will be able to assist their clients with an online application in their offices rather than attending an RTB or Service BC office.
- Online applications can be made any time, payment is not required in advance

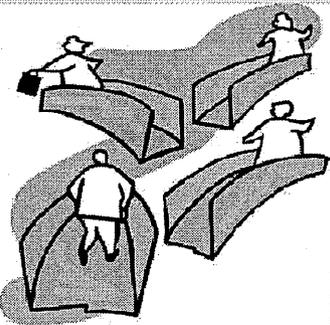


20



BRITISH COLUMBIA

On The Horizon



21



BRITISH COLUMBIA

Government Initiatives

Ministry of Justice Tribunal Transformation

- Increase the prevention and early, speedy resolution of disputes
- Increase user satisfaction with service experience
- Maximize value for money for taxpayers and users
- Increase the capacity of the justice sector to support public safety, justice and environment protection objectives

22



BRITISH
COLUMBIA

Provincial Housing Strategy

Goal:

Streamlined and modernized systems which address landlord and tenant expectations for timely and efficient access to services and support consumer confidence

23



BRITISH
COLUMBIA

Future of RTB Services

- Enable a more informative and user-friendly service experience – e.g. implement an Expert System
- Provide service options that empower citizens – e.g. Facilitated Dispute Resolution
- Leverage technology to facilitate new modes of online interaction and mobile communications
- Continue to support in-person and phone services

24



24. Review consideration of a decision or order

July 2011

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This policy guideline addresses:

- grounds on which a review may be considered
- when the Residential Tenancy Branch (RTB) may accept, refuse or dismiss an application for review of a decision or order
- the format of the hearing, if a review is granted.

GROUNDINGS FOR A REVIEW

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*¹ (the Legislation) provide for a review of a decision or order if:

- a party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control;
- a party has new and relevant evidence that was not available at the time of the original hearing; or
- a party has evidence that the decision or order was obtained by fraud.

Unable to attend

In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

For example, a review may not be granted if a participant's phone batteries were drained. One may be granted if there was a system-wide failure.

¹ *Residential Tenancy Act*, s. 79; *Manufactured Home Park Tenancy Act*, s. 72

24. Review consideration of a decision or order

July 2011

New and relevant evidence

A review may be granted on this basis if the applicant can prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision.

Prior to a hearing, parties must collect and supply all relevant evidence to the hearing. Evidence refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution hearing. Letters, affidavits, receipts, records, audio, video, and photographs are examples of documents or things that can be evidence.

New evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained, such as photographs that could have been taken or affidavits that could have been sworn, before the hearing took place.

Evidence in existence at the time of the original hearing which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

Evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Evidence that would have had a material effect upon the decision is such that if believed and when taken with the other evidence introduced at the hearing, it could reasonably be expected to have affected the result.

A mere suspicion of new evidence is not sufficient to support this ground for review consideration.

Decision obtained by fraud

Fraud is the intentional use of false information to obtain a desired outcome.

Fraud must be intended. An unintended negligent act or omission is not fraudulent.

Intentionally providing false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information rendering the document false. Fraud may arise where a witness has deliberately misled the proceeding by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

24. Review consideration of a decision or order

July 2011

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

1. information presented at the original hearing was false;
2. the person submitting the information knew that it was false; and,
3. the false information was used to get the outcome desired by the person who submitted it.

ACCEPTING, REFUSING OR DISMISSING AN APPLICATION

Accepting an application

The Legislation² allows the Director to delegate authority to accept, reject or dismiss an application for review consideration of a decision or order.

In accordance with the above noted delegation, the RTB will accept an application for review consideration that is:

- completed in the approved form;
- accompanied by the \$25 filing fee or completed Application to Waive Filing Fee;
- made within the required time limit; and,
- made under a recognized ground for review and is accompanied by evidence and information that supports the ground and discloses a basis for a decision that is different from the original decision.

Refusing an application

The RTB may refuse³ an application for review consideration for the following reasons:

- the application was not made in the approved form;

² *Residential Tenancy Act*, s. 9, s. 79, *Manufactured Home Park Tenancy Act*, s. 9, s. 72

³ *Residential Tenancy Act*, s.79, s. 80, s. 81, *Manufactured Home Park Tenancy Act*, s. 72, s. 73, s. 74

24. Review consideration of a decision or order

July 2011

- the application was not accompanied by the required fee or completed Application to Waive Filing Fee;
- the application does not contain complete information or the evidence on which the applicant intends to rely is not attached;
- the application was made outside of the time limit, and the application did not contain sufficient information on the exceptional circumstances that prevented timely application;
- the matter can be dealt with by a clarification or correction (see Policy Guideline 25: Clarifications and Corrections);
- the application does not disclose sufficient evidence of a ground for the review;
- the application discloses no basis for a decision that is different from the original decision; or
- the application is frivolous or an abuse of process.

Approved form: An application for review consideration should be provided on form RTB-2. If it is not provided on this form, it may be accepted if it contains all the information required by form RTB-2.

Time limit: Under exceptional circumstances, the Legislation⁴ allows the RTB to accept an application for review consideration after the time limit. For an application to be accepted after the time limit, the applicant must show they:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

Policy Guideline 36 (Extending a Time Period) provides more information on exceptional circumstances.

Sufficient information: An application for review consideration should contain specific points, details or circumstances that warrant a review of the original decision. The ground(s) for review should be stated and supported by evidence that could lead to a different decision.

Frivolous or abuse of process: An application is frivolous when it lacks any arguable basis or merit in either law or fact. It is an abuse of process when the applicant wishes to reargue the case or submits an application for review in order to postpone the decision or order issued after the original hearing.

⁴ Residential Tenancy Act, s. 66; Manufactured Home Park Tenancy Act, s. 59

24. Review consideration of a decision or order

July 2011

Dismissing an application

The RTB may dismiss⁵ an application for review consideration for all the reasons that it could be refused, with the following differences:

- an application may be dismissed because the applicant failed to pursue their application diligently or because the applicant did not follow an order made in the course of the review
- an application may not be dismissed because it was not made in the proper form. (See discussion above in the *Refusing an application* section.)

FORMAT OF A HEARING, IF A REVIEW IS GRANTED

When a review has been granted, the Legislation⁶ allows the RTB to conduct a review in one of the three following ways:

- by holding a new participatory hearing;
- by holding a written hearing, based solely on the record of the original dispute resolution proceeding and written submissions of the parties, if any; or,
- by reconvening the original hearing.

New participatory hearing: The Director, in most cases, will order a new participatory hearing when the criteria for review are met.

Written hearing: The Director may order a written hearing when:

- the parties displayed excessive animosity; or,
- the parties are geographically far apart (e.g., when one party is in a different time zone).

Reconvened hearing: The Director may order the original hearing be reconvened when:

- neither the landlord nor the tenant could have a perception of bias if the matter were returned to the original decision-maker; and
- the issue is narrow in scope and it is the only issue to be decided. Generally, the application will illustrate whether the issue is narrow in scope.

The Director may reconvene a hearing when the original hearing was adjourned and a party did not receive notification of the reconvened hearing.

When a hearing is reconvened because of single, narrow issue, the parties should be informed that the reconvened hearing will focus on the issues raised through the review application.

⁵ *Residential Tenancy Act*, s. 81; *Manufactured Home Park Tenancy Act*, s. 74

⁶ *Residential Tenancy Act*, s. 82, *Manufactured Home Park Tenancy Act*, s. 75

Residential Tenancy Systemic Advocacy

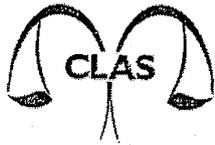
Provincial Training Conference

October 28, 2014

Kaity Cooper and Kendra Milne

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Community Legal Assistance Society

providing specialized legal assistance to promote social justice since 1971

Community Law Program

Please direct your reply to:
Kendra Milne
kmilne@clasbc.net

May 27, 2013

*** URGENT ***

Via fax

Residential Tenancy Branch
400 - 5021 Kingsway
Burnaby, BC V5H 4A5

David Mossop, Q.C.
James Sayre
Diane Nielsen
Frances Kelly
Alison Ward
Aleem Bharmal
Dan Solseth
Rose Chin
Lindsay Waddell
Kevin Love
Scott Hicks
Kendra Milne
Kaity Cooper
Dante Abbey

RE: File Number: [REDACTED]
Direct Request re: [REDACTED] Surrey, BC [REDACTED]

The [REDACTED] Housing Society has applied via direct request for an Order of Possession and Monetary Order against its tenant, [REDACTED]. I am assisting [REDACTED]

This dispute is inappropriate for the direct request process because:

- (1) The amount of rent owing in the Notices to End Tenancy is incorrect. Please see the attached letter from the landlord noting the rent was assessed at \$474.00 per month and not \$709.00 per month as the Landlord's rental ledger sets out. (See the December 5, 2012 letter from the landlord, Enclosure #1.)
- (2) The Landlord assured the tenant that she did not need to act on the Notices to End Tenancy. Instead, the Society staff assured the tenant that the Notices to End Tenancy were issued only to speed up the income assistance application process. (See the May 24, 2013 letter from the Resident Building Manager, [REDACTED] Enclosure #2; and May 23, 2013 letter from [REDACTED] to "the Board", Enclosure #3.)

As a result, this dispute should not be decided via direct request, and should instead be set for a Dispute Resolution hearing so that these issues can be properly determined.

Yours truly,
COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:
Kendra Milne, Barrister and Solicitor

Enclosures: #1: December 5, 2012 letter from [REDACTED] Housing Society to [REDACTED]
#2: May 24, 2013 letter from [REDACTED], Resident Building Manager
#3: May 23, 2013 letter from [REDACTED] to "the Board"

cc: [REDACTED] Housing Society (via fax)

In the Alternative
Template submissions to request for appropriate time to move

If the Dispute Resolution Officer upholds my eviction, I respectfully request that I not have to vacate the rental unit until _____. The authority to grant this request is set out below.

I make this request because:

[List any compelling reasons why your client can't move out on short notice. Provide details that clearly explain why your client's circumstances make it hard for him/her to move quickly. Submit evidence of the circumstances whenever possible. Some examples are set out below. These are only examples.]

- *I have ___ children. I need time to pack my things and my children's things and move them safely. I also need to try to find new housing in their school's catchment area.*
- *I have disabilities: _____. Because of my disabilities, I need specialized housing with no stairs. I need enough time to find appropriate new housing. I also have difficulty physically packing and moving, so I need time to complete that.*
- *I live on a fixed income of _____. Because there low-cost housing is so limited, I need adequate time to find new housing I can afford.*
- *I need time to request money to cover the cost of moving from the Ministry of Social Development, which takes time because I have to submit moving quotes.*
- *I have a pet, which limits my rental options. I need time to find housing that will accept my pet.*
- *I have no family or friends in town that I can temporarily stay with if I am evicted on very short notice.*
- *My manufactured home is my only asset and I cannot move it on short notice. The manufactured home is 25 years old and is very difficult to move on a trailer. I will have to have some structural work done on the manufactured home before it can be transported. I have talked to one mechanic who said he could do the work but he could not get it done until four weeks from now. I require time to get this done so that I can move my home.*

All of these factors mean that I need adequate time to find appropriate new housing. If I have to leave the rental unit on very short notice, such as 48 hours, I will not be able to find adequate new housing and I will risk becoming homeless.

In addition, it would cause minimal hardship and it would not be unfair to my landlord if I am allowed to continue living in the rental unit until the date stated above because:

[List any compelling reasons that minimize the hardship to the landlord if your client gets more time to move. Submit any evidence available to support each reason. Some examples are set out below. These are only examples.]

- *My rent is up-to-date. (This may be the RTB's primary consideration.)*
- *I am willing and able to pay rent for the time period in question (submit proof if there is any reason for the DRO or landlord to doubt this, such as a history of non-payment).*
- *It is halfway through the month, and the landlord would likely not re-rent the unit until the end of the month anyway.*
- *I have taken good care of the property and gotten along with neighbours, and I will continue to do so until I move.*
- *I am being evicted for having a cat. I will arrange for my cat to live with a friend of mine until the date stated above. Attached is a letter from my friend (name) confirming the arrangement.*

The following sections of the *Residential Tenancy Act / Manufactured Home Park Tenancy Act* provide the authority to grant me adequate time to move:

- Section 68(2)(a) of the *Residential Tenancy Act*, which gives Dispute Resolution Officers the power to order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy.
- Section 55(3) of the *Residential Tenancy Act*, which gives Dispute Resolution Officers the power to issue an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- Section 61(2)(a) of the *Manufactured Home Park Tenancy Act*, which gives Dispute Resolution Officers the power to order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy.
- Section 48(3) of the *Manufactured Home Park Tenancy Act*, which gives Dispute Resolution Officers the power to issue an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

BC Residential Tenancy Branch Ombudsperson Complaints

The Ombudsperson is an independent officer of the BC legislature, and she is responsible for making sure that government bodies treat people fairly. The Ombudsperson can conduct an independent investigation and, in some cases, can recommend that the government body fix a problem or improve its practices and procedures so that future clients do not experience the same unfair treatment.

British Columbia's Residential Tenancy Branch is a government body that the Ombudsperson can investigate. Every year, the Branch makes thousands of decisions that affect the safety and security of landlords and tenants. In making these decisions, the Branch has a duty to treat its participants **fairly**. It must not act arbitrarily or oppressively; it cannot issue decisions based on mistakes of fact or law; and it must provide adequate and appropriate reasons for its decisions.

However, the Ombudsperson **cannot** investigate your case if you simply disagree with the outcome. If the Branch uses a fair process to reach a reasoned decision that was not in your favour, the Ombudsperson cannot recommend that the Branch change its decision. To illustrate, the following are examples of situations where a complaint will not be successful:

- Both you and the other party had a chance to provide evidence, but the arbitrator believed the other side's version of events.
- A Branch staff member gave you information that is not what you want to hear.
- Your arbitrator did not consider some of your evidence, but you failed to submit it.
- During the hearing, the arbitrator asked you to wait your turn to speak.
- The arbitrator gave reasons explaining her decision, but you disagree with them.

Because the Ombudsperson is restricted to investigating *public bodies*, you cannot file a complaint alleging unfairness on the part of your private landlord.

How do I know if I was not treated fairly?

Problems with fairness can arise before, during, and after your hearing before the Branch. At a basic level, fairness requires that all parties are given an opportunity to hear the case against them and to respond to that case. In practice, this means that parties are treated fairly when:

- Information given to parties about the process is clear, accurate and accessible;
- Parties to a dispute have a chance to give information and evidence to support their position and to know and respond to the information given by the other side;
- Decisions are made by unbiased and impartial decision-makers;
- The parties' reasonable expectations regarding the procedure that will be followed in making decisions are met;
- Decisions are made within a reasonable time;
- Clear and adequate reasons for the decisions are given; and
- The unsuccessful party is informed of any appeal or review procedures available.

The attached suggested complaint form gives more specific examples of unfairness that can arise.

In order to make a complaint to the Ombudsperson, you must:

(1) Try to resolve the complaint yourself before complaining to the Ombudsperson. Depending on your situation, you might:

- Complain directly to the Branch to try to resolve the matter. Complaints to the Branch may help identify areas where it needs to improve its services and procedures. For example, complaints about the clarity and accuracy of the factsheets published by the Branch have led to corrections or clarifications to information in those documents. In your complaint, *clearly* and *concisely* set out what you found to be unfair. You can complain to the Branch in writing either via email or mail:

Branch email: HSRTO@gov.bc.ca
Branch mail: PO Box 9844 Stn Prov Govt
Victoria BC V8W 9T2

- Apply to the Branch for "Review Consideration". See the Branch's factsheet on Review Considerations (RTB-100). Please note that there are limited grounds for review and very short timelines to apply – for some issues as little as two days.
- Seek legal advice about a possible judicial review. Judicial review is a complicated legal remedy that is beyond the scope of this document, and we suggest that you talk to a lawyer before pursuing one. For more information about judicial review, you can refer to CLAS's guide entitled "Representing Yourself on Judicial Review", which can be found at <http://www.clasbc.net/publications/details.php?ID=83>. You must apply for judicial review within 60 days of the decision being made.

(2) **File a written complaint within one year of the unfair treatment that you are complaining about.** The Ombudsperson may refuse to investigate if more than a year has passed. It is also important to note that the Ombudsperson cannot investigate until after the time limits for judicial review and, if applicable, review consideration, have expired. Generally, this will be at least 60 days after the unfair treatment occurred.

Written complaints can be sent to the Ombudsperson via fax or mail:

By fax: (250) 387-0198 (Victoria)
By mail: PO Box 9039 Stn Prov Govt
Victoria, BC V8W 9A5

Please copy CLAS on your complaint so we can keep a record of problems:

By fax: (604) 685-7611 (Attention: Tenancy Issues)
By mail: Attention: Tenancy Issues
300-1140 West Pender Street
Vancouver, BC V6E 4G1
By email: tenancy@clasbc.net

(3) **The written complaint must provide the relevant information and a phone number or address to contact you.** Please remember that your complaint will be more effective and it will assist the Ombudsperson if you think carefully about how to present your situation in a logical, clear and legible format. Keep it short and to the point, and include dates when possible. See the attached complaint form for more information.

DETACH THE FIRST TWO PAGES

Complaint to the BC Ombudsperson Regarding the Residential Tenancy Branch

Name: _____

Address: _____

City: _____ Province: _____ Postal Code: _____

Phone: _____ Best contact time: _____

This complaint is regarding Residential Tenancy Branch File No.: _____

Names and positions of any Branch staff members involved:

My complaint relates to:

Information services and before my hearing

- Branch staff gave me incorrect or misleading information.
- The Branch lost or mishandled evidence relating to my case.
- There were significant delays in getting a hearing before the Branch.
- I didn't get proper notice of my Branch hearing.
- I didn't get to see all the evidence the Branch used to make its decision.
- Other (*specify on next page*)

During the hearing itself

- The arbitrator was rude, tried to pressure me, or appeared to have already made up his or her mind.
- I didn't get a chance to explain my case or my side of things.
- I didn't get the chance to challenge the other side's case (e.g. through questions or submissions).
- I was not allowed to have someone represent me or assist me at the hearing.
- The arbitrator did not follow the Branch Policies or Rules of Procedure.
- I wasn't able to attend the hearing for reasons beyond my control and my review was dismissed.
- Other (*specify on next page*)

After the hearing

- The decision is discriminatory, or is based on irrelevant grounds or a mistake of fact or law.
- The decision does not explain what findings were made or how the arbitrator reached them.
- I was not told of my right to seek review consideration (if applicable) or judicial review of the Branch's decision when I received it.
- Other (*specify on next page*)

Submit complaint to Ombudsperson's Office by fax to: (250) 387-0198
Submit complaint to Ombudsperson's Office by mail to: PO Box 9039 Stn Prov Govt, Victoria, B.C V8W 9A5
Please copy CLAS on your complaint "Attention: Tenancy Issues"

Explain what happened: *(be clear and concise; include dates when possible)*

Explain why this was unfair:

What have you done to try to resolve the problem? *(check more than one if necessary)*

- I filed for a Branch Review Consideration.
- I complained directly to the Branch.
- I filed a judicial review in BC Supreme Court.

Outcome of the attempt(s):

What outcome do you want, or what do you want the Ombudsperson to do?

Attach copies of all relevant documents: *(make sure your documents are organized and clearly labelled)*

- Branch decision(s)
- My correspondence to the Branch
- Correspondence I received from the Branch
- Other _____

BC Residential Tenancy Branch Administrative Penalties

The *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* contain enforcement provisions that empower the Residential Tenancy Branch (RTB) to meaningfully monitor and enforce the legislation. One such enforcement mechanism is the authority to issue administrative penalties. The RTB may issue an administrative penalty when a landlord or tenant has contravened a provision of the *Residential Tenancy Act* or *Regulation* or the *Manufactured Home Park Tenancy Act* or *Regulation* or when a landlord or tenant has failed to comply with a decision or order of the RTB.

The purpose of the administrative penalty authority is to enable the government to levy fines for bad behaviour rather than requiring parties to go through the court system. Administrative penalties can be up to \$5000 per day of the violation. The amount of an administrative penalty may be determined pursuant to Policy Guideline 41: Administrative Penalties.

The legislation requires the RTB to hear from any party they propose to penalize, and to consider the following factors before issuing an administrative penalty:

1. Previous enforcement actions for contraventions of a similar nature by the person;
2. The gravity and magnitude of the contravention;
3. The extent of the harm to others resulting from the contravention;
4. Whether the contravention was repeated or continuous;
5. Whether the contravention was deliberate;
6. Any economic benefit derived by the person from the contravention; and
7. The person's efforts to correct the contravention.

In order to make an application for an administrative penalty you must submit a written application to the Director, Residential Tenancy Branch by mail to:

101-3350 Douglas Street
Victoria, BC V8Z 3L1

Please copy CLAS on your application:

By fax: (604) 685-7611 (Attention: Tenancy Issues)
By mail: Attention: Tenancy Issues
300-1140 West Pender Street
Vancouver, BC V6E 4G1
By email: tenancy@clasbc.net

The written complaint must provide the relevant information and a phone number or address to contact you. Please remember that your application will be more effective if you think carefully about how to present your situation in a logical, clear and legible format. Keep it short and to the point, and include dates when possible. See the attached application form for more information.

DETACH THE FIRST PAGE

Submit application to Director, Residential Tenancy Branch by mail: 101-3350 Douglas Street, Victoria, BC V8Z 3L1
Please copy CLAS on your application by fax, mail or email, "Attention: Tenancy Issues"

Application to the Residential Tenancy Branch for an Administrative Penalty

Applicant Information

Name: _____ Phone: _____

Address: _____

City: _____ Province: _____ Postal Code: _____

Landlord Information

Name: _____ Phone: _____

Address: _____

City: _____ Province: _____ Postal Code: _____

I am seeking an administrative penalty pursuant to s. 94(1) of the *Residential Tenancy Act* because:

My landlord contravened the following provisions of the *Residential Tenancy Act* or the *Regulation*:

My Landlord failed to comply with the following decision(s) or order(s) of the Residential Tenancy Branch.
Residential Tenancy Branch File No(s): _____

Explain what happened: *(Be clear and concise; include dates when possible)*

Explain how your landlord's contravention/failure to comply has impacted you and others: *(E.g. health or safety, physical harm, economic harm, loss of quiet enjoyment)*

Has your landlord's contravention been repeated or continuous?

Yes. (Describe the number of previous contraventions and the number of tenants affected) _____

No.

Have there been previous enforcement actions against your landlord for similar contraventions in the past 2 years:

Yes. Residential Tenancy Branch File No(s): _____

No.

Was your landlord's contravention deliberate?

Yes. (Describe how your landlord was notified of the contravention, including if there were any orders from a governmental body) _____

No.

Did your landlord derive any economic benefit from the contravention?

Yes. (Quantify the economic benefit) _____

No.

What has your landlord done to try to resolve the contravention?

Outcome of the attempt(s):

Attach copies of all relevant documents: (Make sure your documents are organized and clearly labelled)

Branch decision(s)

Evidence of the landlord's contravention of the Act or Regulation

Evidence of the landlord's failure to comply with a decision or order of the Branch

Other _____

INTRODUCTION TO MANUFACTURED HOME PARK TENANCY LAW IN B.C.

October 2014

Presented by Joshua Prowse and Amita Vulimiri
Community Legal Assistance Society

Materials Developed by Jess Hadley and Kendra Milne

jprowse@clasbc.net or avulimiri@clasbc.net

604-685-3425 / 1-888-685-7611

INTRODUCTION TO MANUFACTURED HOME PARKS: SOME POLICY CONTEXT

In a manufactured home park, the tenants own their manufactured homes, but rent the land on which the home is sited (sometimes also called the manufactured home “pads”). The landlord is responsible for maintaining the sites and providing the basic services necessary for tenants to live in their manufactured homes (e.g. water and electricity hook-ups). Meanwhile, the tenants own the manufactured homes, and remain responsible for maintaining the homes.

When a manufactured home is sold it often does not get moved; rather, it stays put on the same manufactured home site. The person purchasing the home must either take over the previous tenancy agreement, or else start a totally new tenancy agreement with the landlord.

Benefits from a tenant perspective: manufactured home parks are a major source of low-cost housing for those living in rural or semi-urban areas of BC that do not have large rental developments. The month-to-month cost of living in a manufactured home on a rented site is usually quite low when compared to the cost of buying a similar home along with the land it sits on, or renting a full house, which may not be available

Benefits from a landlord perspective: for a landlord, manufactured home parks are typically viewed as investment properties. Landlords buy the undeveloped land and, while waiting for the land to increase in value, they use pad rent as a source of income. Although it may take many years for the land to increase in value, at that point the land owner usually has plans to sell or develop the land, converting it to another use. To a manufactured home park landlord, it is often important to be able to easily change the use of land from a manufactured home park to something more profitable whenever the landlord chooses to do that.

The difference between these two perspectives creates a built-in tension between the interests of landlords and tenants in manufactured home parks.

Manufactured home park legislation in BC *attempts* to strike a balance between:

- (1) The desire for relatively stable, low cost housing in more rural areas that do not have much rental housing; and
- (2) the acknowledgement that landlords often create manufactured home parks with the primary intent to eventually develop or sell the land for a profit, and as a result, want to be able to change the use of the land.

Unfortunately, the *Manufactured Home Park Tenancy Act* (“MHPTA”) and associated regulation do a fairly poor job of balancing these conflicting interests of landlords and tenants. Tenants often only have one asset – their manufactured home – and the legislation’s focus on allowing landlords to remove a manufactured home park relatively easily leaves park tenants disproportionately vulnerable.

This is because **the whole structure of the MHPTA is premised on the notion that manufactured homes can be moved with relative ease and minimal cost.**¹ The legislation does not provide much more security of tenure to manufactured park tenants renting a site than it does for tenants renting a house or apartment despite the increased risk the tenants take: their primary asset may be at stake. The reality is that once a manufactured home is placed in a manufactured home park, it is often impracticable, extremely expensive, or even impossible to move. In addition, it is often difficult to find a place to move the home to. This creates a lot of risk for tenants: they’ve put a primary asset on a piece of land, their rights to keep it there are tenuous, and the legislation does not provide adequate compensation for having to move it.

¹ Section 1 of the *MHPTA* defines a “manufactured home” as a structure that is designed, constructed or manufactured to be moved from place to place, and is used or intended to be used as living accommodation.

FOCUS OF THIS PRESENTATION:

WORKING WITHIN THE LEGISLATION, NOT CHANGING THE LEGISLATION

While it is important to be aware of the problems with the manufactured home park legislation as described above, and tenants may often approach you with legitimate complaints about these problems, *this presentation will not focus on those problems.*

This is because when a client approaches you with a problem with their manufactured home tenancy, **you will need to help your client in the context of the current legislation.** Actually fixing the problems with the legislation is not within a legal advocate's mandate. If a client wishes to seek legislative change, we recommend referring them to their MLA or to the provincial minister responsible for housing.

In this presentation we will cover:

1. The scope of the *Manufactured Home Park Tenancy Act* (the "MHPTA");
2. Key similarities and differences between the *MHPTA* and the *Residential Tenancy Act*;
3. Practical factors at play in manufactured home park tenancies, which will help you to respond to clients in an informed way;
4. Key steps that you can take to help manufactured home park tenants;
5. Seizure of personal property by court bailiffs and sales of the manufactured home; and
6. Resources.

1. SCOPE OF THE MANUFACTURED HOME PARK TENANCY ACT (THE “MHPTA”)

The *MHPTA* applies to “tenancy agreements, manufactured home sites and manufactured home parks” (s. 2 of *MHPTA*). Carefully review the following definitions in s. 1:

- Manufactured home
- Manufactured home park
- Manufactured home site

In some situations it may seem unclear whether the *MHPTA* applies. Two common examples are campgrounds, and situations where a single manufactured home sits on a residential property.

Campgrounds

In many areas of BC that have limited rental housing available, campgrounds become a permanent residence for tenants. They may have a recreational vehicle like a truck and camper, or a more permanent manufactured home on the site.

Park owners often try to argue that these types of tenancies are not covered by the *MHPTA* and, as a result, tenants have no protection from evictions without cause or proper notice and significant rent increases during the summer camping season.

Although the Residential Tenancy Branch Policy Guideline #9 sets out factors that weigh for and against the application of the *MHPTA*, new cases have come out since it was published that indicate a much broader application of the *MHPTA*.

When trying to determine if a client’s tenancy falls under the *MHPTA*, the key is to look not at the type of home, trailer or vehicle the tenant has on the site, but instead at whether the home, trailer or vehicle is used as a primary, permanent residence.² If this is the tenant’s only place to reside and the parties intended some permanence, then it is very likely a tenancy that is covered by the *MHPTA*.

² To see the recent court cases that support this broad application of the *MHPTA*, see:

- *D. & A. Investments Inc. (c.o.b. Garnet Rock Trailer and RV Park) v. Hawley*, 2008 BCSC 937 at paragraphs 11 and 29 (the judge upholds a DRO’s decision that focuses on the actual use of the vehicle in issue)
- *Steeves v. Oak Bay*, 2007 BCSC 1409 at paragraphs 107, 109 and 111 where the judge says, in part:

... it is my view that the MHPTA is intended to provide regulation to tenants who occupy the park with the intention of using the site as a place for a primary residence and not for short-term vacation or recreational use where the nature of the stay is transitory and has no feature of permanence. (¶111)

A single manufactured home on a residential property

It is also quite common for a land owner to allow one trailer on a property for rent or other payment. As long as the tenant owns the trailer and pays rent or some other consideration for the use of the land the trailer is on, this situation probably falls under the MHPTA.

See the definition of “manufactured home park” in s. 1, which includes “one or more manufactured home sites”. See also Residential Tenancy Policy Guideline #9 (Tenancy Agreements and Licenses to Occupy) which describe factors to consider in this situation, such as whether the landlord and tenant have a family or personal relationship and occupancy is given for personal and not businesses reasons, whether the occupier pays a fixed amount for rent, and whether the landlord and tenant have agreed that the tenant can vacate without notice.

Some notes on the scope of the *MHPTA*:

- *MHPTA* does not apply where the manufactured home site AND manufactured home are both rented to the same tenant (s. 3 of *MHPTA*). Instead, the RTA probably applies in such a situation.
- Where the *MHPTA* applies, the Residential Tenancy Act doesn't apply (s. 4(j) of *RTA*).

2. KEY SIMILARITIES AND DIFFERENCES BETWEEN THE *MHPTA* AND THE *RTA*

ISSUE	SIMILARITIES TO <i>RTA</i>	DIFFERENCES FROM <i>RTA</i>
Tenancy agreements	<ul style="list-style-type: none"> Parties cannot contract out of the <i>MHPTA</i> (s. 5 of <i>MHPTA</i>). There are standard terms that apply to every tenancy whether written or oral (s. 12 of <i>MHPTA</i>). The landlord is required to prepare a written agreement that includes key information (s. 13 of <i>MHPTA</i>). 	<ul style="list-style-type: none"> <u>Rules are a factor!</u> Tenancy agreements must include any Rules of the MHP (s. 13(2)(g) of <i>MHPTA</i>). But note - landlord can unilaterally change the rules without tenant's agreement (s. 14(3)(c) of <i>MHPTA</i>). Landlord may not include a term in the tenancy agreement that the tenant must use the landlord as the tenant's agent when selling the manufactured home (s. 19(2) of <i>MHPTA</i>).
Before a tenancy	<ul style="list-style-type: none"> Rights and obligations start as soon as tenancy agreement takes effect, even if the tenant has not yet occupied the manufactured home site (s. 16 of <i>MHPTA</i>). 	<ul style="list-style-type: none"> No security deposit (s. 17 of <i>MHPTA</i>) - although landlord can charge a key deposit (s. 4 of Regulation). No conditional inspection at the start of tenancy.
Termination of services or facilities	<ul style="list-style-type: none"> Landlord can only terminate with 30 days' notice and only if rent is reduced accordingly; landlord cannot terminate a service/facility that is "essential for the tenant's use of the manufactured home site as a site for a manufactured home" (s. 21 of <i>MHPTA</i>). 	<ul style="list-style-type: none"> The definition of "service or facility" includes water, sewer, electricity, lighting, roadway and other facilities It does not include many of the services listed in the definition in the <i>RTA</i> (see s. 1 of <i>MHPTA</i>).
Tenant's property	<ul style="list-style-type: none"> Landlord cannot interfere with a tenant's access to the tenant's property, and cannot seize the tenant's property (including the manufactured home) unless the LL has a court order or the tenant has abandoned it (s. 20 of <i>MHPTA</i>). 	<ul style="list-style-type: none"> Although not set out in the <i>MHPTA</i>, a Writ of Possession issued by the BCSC can give a bailiff power to seize the manufactured home itself.
Landlord's access	<ul style="list-style-type: none"> As under the <i>RTA</i>, there are specific purposes for which a landlord can access the manufactured home site, and rules on advance notice that must be given to the tenant. 	<ul style="list-style-type: none"> Under the <i>MHPTA</i>, the landlord only has a right to access the manufactured home park <u>site</u>, not the <u>home</u>.

ISSUE	SIMILARITIES TO RTA	DIFFERENCES FROM RTA
<p>Duty to maintain/ repair</p>	<ul style="list-style-type: none"> • A landlord must provide and maintain the park in a reasonable state of repair and comply with housing, health and safety standards. • The tenant must maintain reasonable standards of health, cleanliness and sanitation throughout the site (ss. 26 and 30 of <i>MHPTA</i>). 	<ul style="list-style-type: none"> • Landlord is not responsible for maintenance of the home itself – just the site & park. • Landlord is not responsible for maintaining any improvements the tenant has put onto the site (s. 26 of <i>MHPTA</i>). • “Emergency repairs” has a different definition than in the <i>RTA</i> because the landlord only controls the <i>site</i>, and not the manufactured home.
<p>Ending a tenancy</p>	<ul style="list-style-type: none"> • Same justifications as under the <i>RTA</i> for landlord ending tenancy (s. 39-42). • <u>Note – the timelines are the same too, for NTEs for cause and non-payment!</u> • NTE for cause: tenancy end date = end of next tenancy month! • NTE for non-payment: tenancy end date = 10 days after notice! 	<ul style="list-style-type: none"> • Landlord can end tenancy if it “has all the necessary permits and approvals required by law, and intends in good faith to convert all or a significant part of the manufactured home park to a non-residential use or to a residential use other than a manufactured home park”. • Landlord must give 12 months notice in the proper NTE form (<i>MHPTA</i> s. 42). • Tenants must dispute the NTE within 15 days (<i>MHPTA</i> s. 42(4)). • If NTE stands, tenants can leave early if they wish (<i>MHPTA</i> s. 43). • Landlord must pay tenants 12 months rent as compensation (<i>MHPTA</i> s. 44).
<p>Assignment/ sublet</p>	<ul style="list-style-type: none"> • Like the <i>RTA</i>, there is a general policy that a landlord cannot unreasonably refuse a request to assign or sublet. <u>HOWEVER</u>, the requirements for a tenant’s request and the reasons a landlord can refuse are different. See the differences column. 	<ul style="list-style-type: none"> • A tenancy agreement can prohibit subletting (s. 48(c) of <i>MHPT</i> Regulation). • There are <u>very</u> specific requirements for a tenant’s request to assign or sublet (ss. 43-44 of the <i>MHPT</i> Regulation) • A landlord can only refuse a request for the reasons set out in the legislation. NOTE: these can be interpreted quite broadly (s. 48 of <i>MHPT</i> Regulation).

ISSUE	SIMILARITIES TO RTA	DIFFERENCES FROM RTA
<p>Rent increases</p>	<ul style="list-style-type: none"> Increases are allowed once every 12 months. As under the RTA, the landlord has to give tenants 3 months notice, in the proper form, of any rent increase. As under the RTA, the landlord is entitled to an annual rent increase provision tied to inflation, plus an additional amount. <u>However, see differences column for how this is calculated.</u> The landlord can also get a bigger increase by getting tenants to agree to the additional increase. Or, the landlord can apply to the RTB for a bigger increase in certain circumstances (s. 34-36 of MHPTA and s. 33 of the MHPT Regulation). 	<ul style="list-style-type: none"> The annual allowable increase formula is different than under the RTA (s. 32(2) of the MHPT Regulation): ANNUAL INCREASE = INFLATION + 2% + A "PROPORTIONAL AMOUNT" THAT REFLECTS THE CHANGE IN LOCAL GOVERNMENT LEVIES AND UTILITY FEES Note the special definition section in s. 32 of the Regulation, which defines "proportional amount". There are differences in when a landlord can get an additional rent increase because of repairs or renovations (s. 33(1)(b) of MHPT Regulation). There is particular evidence that a landlord is expected to provide if they want an exceptional rent increase for manufactured home units, as described in <i>Crest Group Holdings Ltd. v. British Columbia (Attorney General)</i>, 2014 BCSC 1651 (CanLII)
<p>Park Committee</p>	<p>N/A</p>	<ul style="list-style-type: none"> S. 31 of MHPTA provides for creation of a park committee (see also Part 3 of MHPT Regulation). Tenants can call a meeting to vote on whether to create a park committee composed of the landlord, plus a group of elected representative tenants. S. 32 of MHPTA provides that the park committee may create and modify the park rules (see also part 3 of MHPT Regulation) by majority vote; the landlord has one vote and one tenant from each site has one vote.
<p>Dispute resolution</p>	<ul style="list-style-type: none"> Dispute resolution process applies the same way as under RTA – Part 6. Direct request process applies the same way. 	<p>None.</p>

3. PRACTICAL FACTORS TO BE AWARE OF

a. Manufactured homes are hard to move or sell!

- It can be hard to find a place to move a home, especially an older home. Many manufactured home parks will not take older homes.
- The cost of physically moving the home to a new location is usually several thousand dollars.
- Fixtures, gardens, building additions, etc. that homeowners often establish make it even more physically difficult to move the home, and can even make it impossible to move the home without damaging it or reducing its value.
- If a manufactured home is going to be sold, it is always a condition of sale that the purchasers can arrange a tenancy agreement with the landlord. Landlords can therefore thwart sales by refusing to enter into a new agreement with the purchaser and refusing to assign the tenancy. A landlord can refuse to assign a tenancy for any of the reasons in s. 48 of the *MHPT* Regulation. For example, a landlord may claim the home does not comply with housing, health and safety standards required by law (s. 48(a)(i) of *MHPT* Regulation).
- The *Manufactured Home Act* provides rules for selling and moving a manufactured home. One must have a permit to move a manufactured home. They need to complete the Application to Transport a Manufactured Home and provide a Tax Certificate, from their local taxing authority to a Service BC Centre or through a qualified supplier. A Transport Permit will then be issued. Transport Permits expire 30 days after the date they are issued.
- BC Registry Services maintains a Manufactured Home Registry. Since April 1, 1978, under the *Manufactured Home Act*, no sale, transfer or purchase of a manufactured home in British Columbia is effective to transfer property in the manufactured home unless the transaction is registered in the Manufactured Home Registry.

b. Tenants' expectations of permanency are not a guarantee of permanency

As discussed above, manufactured homeowners typically have an illusion of permanency about their manufactured home park tenancy. With this in mind:

- They often place their primary assets, their home, on a site where it typically remains in one place for many years, making it difficult and costly (if not impossible) to move.
- They often invest a great deal of time, effort and money to create gardens and additional fixtures around their home, which can make it even more difficult to move.

- Many older adults on fixed incomes live in manufactured homes, and count on them as places to retire and grow old.

Despite all of this, they are relatively unprotected from having to move.

In the *Steeves v. Oak Bay* case (2007 BCSC 1409) a group of manufactured home park tenants were facing eviction with 12 months' notice under the *MHPTA* because the landlord wanted to change the park from a permanent manufactured home park to a temporary camp site. The tenants asked the BC Supreme Court to recognize a longer-term right of tenure in their manufactured home park on the basis that the park manager had allowed and encouraged them to make improvements to the sites, and had told them over time that the nature of the park would not change. The tenants said that, based on the park manager's actions, they reasonably believed they had a permanent right of occupancy in the park and had made improvements to their homes in reliance on that belief. (Legally, the tenants relied on the concept of "proprietary estoppel.")

The court in *Steeves* refused to recognize a longer-term right of tenure for the tenants. This was because the tenants failed to prove 2 things:

- They failed to prove that the landlord knew they believed they had a right of permanent occupancy.
- They failed to show that the landlord encouraged them in their belief that they had a right of permanent occupancy. Even though the park manager made casual comments that the park would remain as-is for many years, the court placed much greater weight on the written tenancy agreements, which clearly stated that the tenancies were month-to-month. The court found that the belief of a permanent right to occupy was largely perpetuated by the park residents, not by the landlord.

c. Municipal laws may play a role

Municipal bylaws and policies may affect manufactured home parks in various ways:

- There may be municipal bylaws or policies affecting re-zoning and development of a manufactured home park. These are relevant to NTEs for landlord use. It's important to look and see if there are any rules requiring MHP landlords to consult, warn, compensate, or to put timelines on the LL's redevelopment.
- There may be standards of maintenance bylaws that landlords must comply with (e.g. snow removal).

4. KEY STEPS FOR ADVOCATES TO TAKE

For manufactured home park tenants who approach you as clients:

- Get a copy of the specific tenant's tenancy agreement, and rules if they exist.
- If the landlord has issued a notice of any kind, get a copy of it as well as any documents the parties have exchanged.

- If there are multiple tenants wanting help with a common issue, get documents for each client, since their situations may vary widely.
- Review the detailed provisions of the *MHPTA* and do not assume they match the RTA.
- For systemic problems within a park, suggest that tenants take advantage of the park committee process.
- Speak to a lawyer (e.g. your supervising lawyer, or a lawyer at CLAS).

For people who approach you with questions about entering a MHP tenancy:

- Warn them about the risks: lack of security of tenure, lack of control over rental/ assignment, rent increases.

5. RESOURCES

Residential Tenancy Branch – <http://www.housing.gov.bc.ca/rtb/>

- Link to the *Manufactured Home Park Tenancy Act* and Regulations
- Forms
- Guidelines, Factsheets
- Dispute resolution Rules of Practice and Procedure
- Contact information for RTB offices

Active Manufactured Home Owners Association (AMHOA) - www.amhoa.ca/

- Grass-roots website with a variety of excellent reports and resources
- Advocates can call AMHOA with questions of a practical or logistical nature (no legal advice given).
- AMHOA asks that before calling, advocates check to make sure the situation really falls under the *MHPTA*.

CASL line - 1 888 781 CASL (2275)

- If you are helping your clients with manufactured home park issues at the RTB level, CASL lawyer Alison Ward can supervise you.

Community Legal Assistance Society - www.clasbc.net / 1 888 685-6222

- If your client already has a RTB decision, CLAS lawyers can give an opinion on a possible judicial review.

TAB 6: Resources and Services

- **Family Law Resources (Day 1)**

- Access Pro Bono powerpoint
- Courthouse Libraries BC (see Resources for Poverty law clients)
- Legal Services Society resources

Orange sheet

- **Resources for Poverty Law Advocates (Day 1)**

- BCCEAS information sheet
- Clicklaw and clicklaw wikibooks

Separating sheet

- TRAC powerpoint

- **Advocacy Resources and Services for Seniors (see Other)**

- **LSS Update on New Projects to Improve Access to Justice (Day 2)**

- Materials at conference and posted online after the conference

- **Legal Services Society Update (Day 3)**

- Materials at conference and posted online after the conference

Access Pro Bono
Society of British Columbia



ACCESS PRO BONO

- We are a non-profit society incorporated in February 2010 to carry on the work of Access Justice and Pro Bono Law BC.
- 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.

OUR SERVICES

- Summary Advice Clinics
- Roster Programs
- Civil Chambers Duty Counsel Program
- Paralegal Clinic
- Wills & Estate Planning Clinic
- Mental Health Program

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

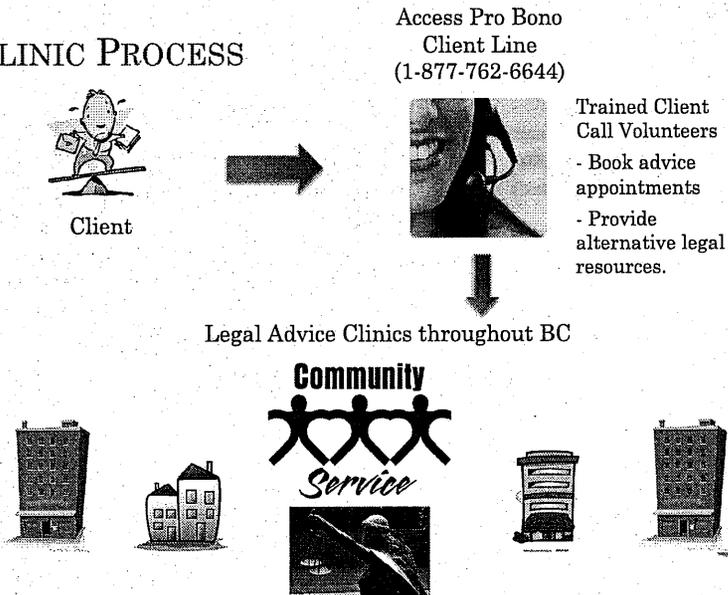
MEANS TEST

- 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

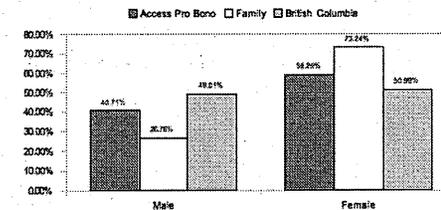


CLINIC PROCESS



ACCESS PRO BONO FAMILY CLIENTS

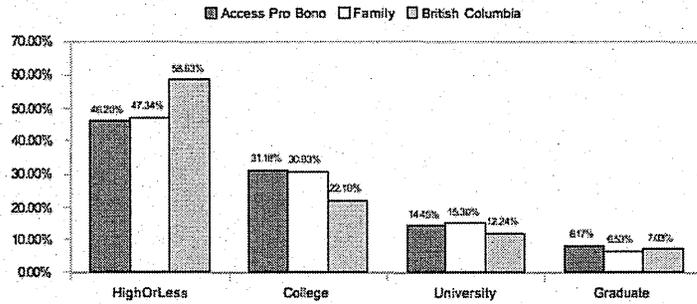
- 2013 Data
- Gender
 - 1,448 (F)
 - 529 (M)



N = 1,977 family clients

FAMILY CLIENTS

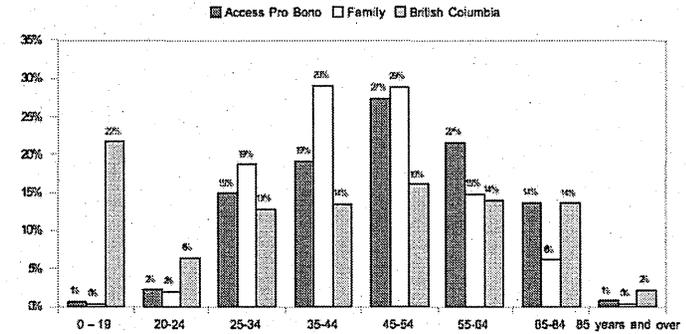
Education



N = 1,333 (67.4%)

FAMILY CLIENTS

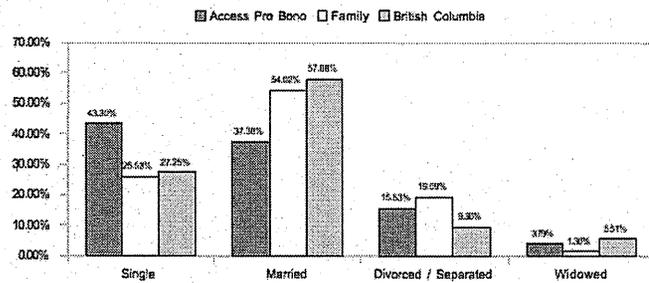
Marital Status



N = 1,757 (88.9%)

FAMILY CLIENTS

Marital Status



N = 1,692 (85.6%)

MAIN CONTACT

Client Line

- 604.878.7400
- 1-877-762-6664

Email

- help@accessprobono.ca





BC CENTRE FOR ELDER
ADVOCACY
AND SUPPORT

Seniors Abuse & Information Line (SAIL)
604-437-1940/1-866-437-1940

www.bcceas.ca

BC Centre for Elder Advocacy and Support (BCCEAS) provides the following services and resources:

Elder Law Clinic assists older adults who cannot otherwise afford legal representation with issues of financial exploitation, abuse/neglect, guardianship/capacity and discrimination.

Legal Advocacy Program provides assistance for older adults with issues of government benefits, housing and debt.

Victim Services Program provides information and support for adults aged 50+ who are victims of abuse, including family and sexual violence.

Seniors Abuse and Information Line (SAIL) is a safe place for older adults and those who care about them to talk to someone about situations of abuse and mistreatment, and to receive information about elder abuse prevention. SAIL is also provides intake for BCCEAS's legal and victim services programs. The line is open seven days a week from 8 am to 8 pm. Calls are anonymous.

Workshops and Train the Trainer provides workshops for professionals and the general public Elder Abuse: What is it? How do we deal with it?; Frauds and Scams; Powers of Attorney/Joint Bank Accounts/ Representation Agreements; Residential Tenancy for Older Adults; and Bullying Between Older Adults in Residential Settings. We have trained people across BC to deliver these workshops, and have materials in English, Chinese and Punjabi. BCCEAS lawyers also give presentations to legal and business professionals about Mental Capacity and working with aging clients.

Publications BCCEAS has three recent publications, all available as E-books: Legal Issues in Residential Care: An Advocate's Manual; Recognizing and Responding to Elder Abuse (written for BC Victim Services); and the three When I'm 64 booklets: Benefits; Seniors; and Controlling Your Affairs (written for the People's Law School). All of these can be accessed from the BCCEAS website.

BCCEAS Website provides extensive information about elder law and legal issues related to older adults, factsheets, template letters, and links to resources within BC and nationally. See over the page for more about what can be found on Information section of the BCCEAS Website.



BCCEAS Website – www.bcceas.ca

The website has seven **Information** sections, providing information about elder abuse, template letters, and links to resources. Sections 1, 5 and 6 focus on legal issues and legal resources but all sections contain information that is useful to legal advocates.

1 Older Adults and Elder Law Ethics: introduction to the older adult population in BC, and some issues that arise in our work: *BCCEAS's approach to advocating for older adults; autonomy vs independence; barriers to access to justice for older adults; legal capacity and dementia; third parties; vulnerabilities*

2 Complaints: seniors are vulnerable to inadequate treatment or services, including from or by: *medical and other professionals; care homes and care home staff; other forms of seniors living; police and RCMP; consumer issues; government agencies; employment matters; transportation*

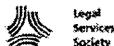
3 Elder Abuse and Neglect: *how to identify and respond to elder abuse and neglect; what elder abuse is; types of abuse & indicators; prevalence; profiles; possible reasons; responses*

4 Information on Programs and Benefits: income security and other programs for Seniors in BC: *federal income security – CPP/OAS/GIS; provincial programs – housing programs, SAFER, Social Assistance, home adaptations; municipal and agency programs – tax clinics, forms filling, seniors centres; dentist and dental hygienist programs; transportation programs*

5 Legal Information: information on legal programs and legal matters of concern to seniors: *advance planning (power of attorney, representation agreement, advance directive); consumer protection; debt and bankruptcy; family law; housing; human rights; immigration and refugee; mental health; wills & estates*

6 Getting Legal Help: where to go for help with a legal problem: *BCCEAS Elder Law Clinic; Law Student Legal Clinics; Lawyers; Legal Advocates for Seniors; Notaries*

7 Glossary: there are a large number of terms and acronyms used in this area – we provide a glossary to help



2014 Provincial Training Conference



Clicklaw & Clicklaw Wikibooks

Family Law Resources & Services

October 28, 2014

Nate Russell

<http://clicklaw.bc.ca>

<http://wiki.clicklaw.bc.ca>

Clicklaw 

Clicklaw  Wikibooks

1. Recap & quick update on Clicklaw

- The Clicklaw HelpMap—a reminder
- Stay current—sign up for **Clicklaw Blog** alerts
- Multi-lingual resource update
- New video tutorials on using Clicklaw

2. Introduction to Clicklaw Wikibooks

- What? Where? How? Why? Wiki?
- *JP Boyd on Family Law*—the Wikibook
- Choose your format (PDF, EPUB, print it)

Clicklaw 

Clicklaw  Wikibooks

Clicklaw Recap & Update

- Over 25 contributor organizations
- First-stop website with authoritative BC information
- Search or browse topics or subtopics
(e.g. "Immigrants & refugees" includes "domestic workers", "sponsorship, "temporary visas" etc.)
- 144 common questions, e.g.:
 - Our marriage is over; do we have to go to court?
 - Where can I find the rules, forms and guides for court?
 - I've missed a few mortgage payments and am facing foreclosure
- PLUS HelpMap
Find help by *community* or by *keyword*



Subscribe to the Clicklaw Blog

- A great way to learn about current and upcoming resources
- <http://blog.clicklaw.bc.ca/>

Stay Updated

Subscribe to blog via RSS

Or, subscribe to blog via email:



Recent Posts

Public Libraries and Hides

Personal Planning Events

BCCFD is now Disability Alliance BC

Conflict Resolution Week
October 11-16, 2014

Do It Yourself Separation Guide
Now Available

Supreme Court Family Law
Forms: New Ffillable Forms from
the Legal Services Society



Improved Multi-Lingual Support

- More prominent links to other languages
- Refine your search results... select the language you need

The screenshot shows a search interface with two filter panels on the left and search results on the right. The top filter panel, titled 'Disabilities (107)', includes categories like 'abuse & neglect (15)', 'benefits for people with disabilities (51)', 'deaf community (3)', and 'rights & protection from discrimination (34)'. The bottom filter panel, titled 'Language (107 selected)', includes 'Chinese (Simplified) (2)', 'Chinese (Traditional) (10)', 'Punjabi (7)', 'Spanish (2)', and 'Vietnamese (2)'. The search results panel, titled 'Your search results', shows 'Online resources' sorted by 'most viewed'. Two results are visible: 'Persons with Disabilities (PWD) Benefit Application' and 'Canada Pension Plan Disability Benefits Application Guide'. Both results have a link to 'View PDF in Chinese (Traditional)'.



Using Clicklaw — New Videos

<http://www.clicklaw.bc.ca/content/usingclicklaw>

- Tips on Using Clicklaw's HelpMap (1:41)
- Tips on Using Clicklaw to Find Legal Information in Other Languages (1:54)
- Tips on Using Clicklaw to Search for Legal Information (3:09)



Introducing Clicklaw Wikibooks

<http://wiki.clicklaw.bc.ca>

1. What are Wikibooks and what are their strengths?
2. *JP Boyd on Family Law*
3. Format Strengths (EPUB, PDF, print-on-demand)

Clicklaw Wikibooks

What are Clicklaw Wikibooks?

- Kind of looks and acts like *Wikipedia*

The image displays two side-by-side screenshots of web interfaces. On the left is the Wikipedia homepage, showing the 'Welcome to Wikipedia' message and a featured article. On the right is the Clicklaw Wikibooks homepage, which features a search bar, a 'Featured and Clicklaw Wikibooks' section with book covers, and a 'Clicklaw Wikibooks Distribution' section. Both interfaces are presented within a browser window frame.

Clicklaw Wikibooks

What are Clicklaw Wikibooks?

- Kind of looks and acts like *Wikipedia*

The screenshot displays two side-by-side web pages. On the left is a Wikipedia page for 'Nobel Memorial Prize in Economic Sciences', showing its standard layout with a sidebar and main text. On the right is a Clicklaw Wikibooks page for 'Resolving Family Law Problems out of Court', which has a more structured, legal-oriented layout with a table of contents and a list of authors/reviewers. The Clicklaw Wikibooks page includes a 'Contents' table with links to various sections like 'Introduction', 'The Family Law Court Alternative Process', 'Legal Costs', 'Child Support', 'Parenting Time', 'Child Protection', 'Family Violence', 'Family Dispute Resolution', 'Family Mediation', and 'Family Arbitration'. Below the screenshot, the Clicklaw Wikibooks logo is repeated.

Clicklaw Wikibooks strengths

- Built with PLEI and lawyer authors & reviewers in mind.
- Invite-only means a close, well-supported community of authors & reviewers.
- Multiple format support (PDF, EPUB, "print-on-demand").
- Easy keyword-searching.
- Google indexes the content (i.e. more visible on the web).
- Creative commons to encourage public use and re-use.
- Good for public libraries who collect PLEI materials.

Clicklaw Wikibooks

Clicklaw Wikibooks strengths

- Easy to keep up-to-date
- Accessibility for site impaired or low literacy—text-to-speech works well with EPUBs.
- Clicklaw Wikibooks bridges:
 - lawyers (legal expertise),
 - PLEI organizations (content experts with plain language and domain expertise), and
 - audiences (self-represented litigants, community advocates, social workers, family members, librarians, etc.)

Clicklaw  Wikibooks

What's on Clicklaw Wikibooks?

- Dozens titles from numerous BC PLEI organizations in BC (Peoples Law School, TRAC, BC CEAS and Courthouse Libraries BC).
- 17 titles and counting.
- Over 22,500 sessions monthly.
- Support from BC lawyers and judges.

What's on Clicklaw Wikibooks?

Try out our Clicklaw Wikibooks



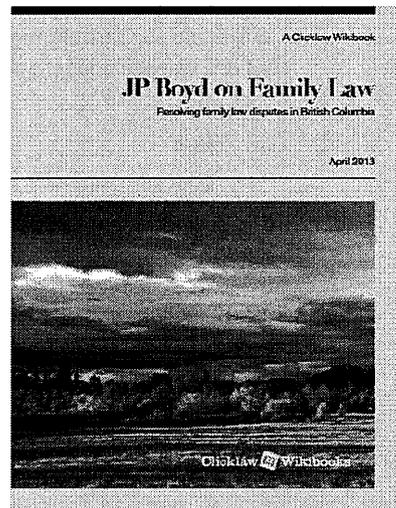
Learn & Teach Series

The Learn & Teach Series on Clicklaw Wikibooks features resources:



JP Boyd on Family Law

- Successor to www.bcfamilylawresource.com
- 30+ lawyer and judge editors.
- 1000+ pages of family law help materials.
- Published conventionally in small run and available print-on-demand.
- Over 15,500 unique views monthly.



JP Boyd on Family Law

- Dozens of How-Tos
- 1000+ pages of family law help materials.
- Published conventionally in small run and available print-on-demand.
- Over 14,000 unique views monthly.

Clicklaw  Wikibooks

Format flexibility and Clicklaw Wikibooks

- Wikibooks support offline printing and reading options—get that content off of a website and into the hands of the clients or their helpers!
 - PDF
 - EPUB
 - “print-on-demand”
- Visitors can mix & match Wikibook chapters and titles—extract what’s useful to them and leave the rest.

Clicklaw  Wikibooks

Clicklaw Wikibook Formats (PDF)

The screenshot shows a web browser displaying a Clicklaw Wikibook page. The page title is "Basic Principles of Property & Debt in Family Law". The main content area contains an introduction to the Family Law Act, explaining that spouses who are married or live together in a common-law relationship for at least two years are considered to share property and debt. A sidebar on the left contains navigation links such as "Home", "About", "Contact", and "Help". A circular callout with an arrow points to a button that says "Download as PDF", with the text "Printable version" below it.

Clicklaw Wikibook Formats (other)

- Full book in PDF, EPUB or print-on-demand

The screenshot shows a Clicklaw Wikibook page for "JP Boyd on Family Law". The page features a detailed table of contents and a sidebar with navigation options. A circular callout highlights three download options: "Download the full Wikibook in PDF", "Download the full Wikibook in EPUB (learn more)", and "Buy this Wikibook from our print-on-demand partner". Below these options, there is a link to "Customize, take what you need, leave the rest (learn more)".

LSS and Hiil announce MyLawBC partnership

The Legal Services Society of British Columbia and Hiil Innovating Justice are pleased to announce a partnership for MyLawBC, an interactive new online legal resource for British Columbia. This innovation will enhance access to justice in BC and give ordinary British Columbians access to a range of new tools to help them resolve their legal problems. It will feature public legal information, interactive guided pathways to diagnose legal problems and direct users to self-help resources, both online and in person. People experiencing relationship breakdowns can access action plans and online negotiation tools to help each party make a separation agreement that works for the family.

MyLawBC will be based on the interactive Rechtwijzer platform, a public legal resource developed by Hiil in partnership with the Dutch Legal Aid Board. It will include legal information on everyday legal problems and links to key public legal information and education resources. The platform builds on Hiil's experience with interactive information, best practices for online dispute resolution, and research conducted with users and professionals. The scope of the interactive platform will include family law, family violence, wills/estates and life planning and foreclosure.

MyLawBC will help many people who cannot afford to hire a lawyer. It will improve the average British Columbian's access to justice for everyday legal problems. As a platform it will support other organizations in pursuit of the same goal. LSS will establish an advisory committee with key BC stakeholders. We will also work with an international committee to develop these new online resources.

MyLawBC represents an exciting new chapter in the history of public legal information services, not just for British Columbia but with its international partnership model, around the world.

Funding for MyLawBC is provided by The Law Foundation of BC.

We plan to launch MyLawBC by the end of June, 2015.

Provincial Training Conference
October 28, 2014

PLEI Resources for Advocates

TRAC Tenant Resource & Advisory Centre

Andrew Sakamoto
andrew@tenants.bc.ca



Tenant Survival Guide

- **Hardcopy**
 - Law Foundation Project Funding – reprinting approximately 10,000 copies
 - Distributed through Crown Publications

- **Electronic**
 - Wikibook produced in collaboration with Clicklaw



Tenant Info Pamphlets

- Challenge: demand for multilingual resources vs. reality of reduced funding
- With funding from the Ministry of Justice, TRAC developed a new *Tenant Info Pamphlet*, which has been translated into 18 languages
- Augmented Reality technology



Template Letters

- Importance of written evidence at dispute resolution
→ creation of template letters
- With the launch of our new website, we will have 26 template letters for tenants / advocates to use when communicating with landlords.
- Option of electronic or hardcopy



Template Letters

- | | |
|---|---|
| 1. Bedbugs, Rodents or Pests | 15. Terminating or Restricting Essential Services or Facilities |
| 2. Change to Tenancy Agreement | 16. Written Notice for Failure to Comply with a Material Term |
| 3. Landlord's Right to Enter a Rental Unit Restricted | 17. 10 Day Notice to Move Out Early |
| 4. Loss of Quiet Enjoyment | 18. Notice to Deduct Overpayment from Rent |
| 5. Notice to End Month to Month Tenancy Agreement | 19. Request for Landlord's Legal Name and Address |
| 6. Rental Property Being Sold | 20. Request for permission to assign or sublet |
| 7. Request for a Copy of a Tenancy Agreement | 21. request for reduced rent for restricted service or facility |
| 8. Request for a Rent Receipt | 22. Request for Reimbursement for Emergency Repairs |
| 9. Request for Copy of Condition Inspection Report | 23. Request for Return of Post Dated Cheques |
| 10. Request for Locks to be Re-Keyed at Start of Tenancy | 24. Request to Cooperate in Finding a Replacement Tenant |
| 11. Request for Repairs | 25. Response to Illegal Term in Tenancy Agreement |
| 12. Request for the Return of a Security and or Pet Deposit | 26. Tenant's Right to Have Guests |
| 13. Response to Illegal Eviction Notice | |
| 14. Response to Illegal Rent Increase | |



Redeveloped Website

- Hope to achieve:
 - more attractive and modern interface
 - better organization of web pages to allow visitors to more efficiently find answers to their legal problems
 - improved functionality (e.g. fillable membership form available directly on the site)
 - improved Content Management System for easier editing of content by TRAC staff
 - mobile and tablet optimization to adapt to the growing trend of people accessing online information on their phones and tablets
 - Search Engine Optimization for increasing traffic
 - Google Analytics for gathering detailed statistics
 - increased security

- <http://staging.tenants.bc.ca/>



Online Course for Tenants

- Partnership with Justice Education Society
- Do-It-Yourself Online Course for Tenants
 - Accessible at any time, to anyone with an Internet connection
 - Online modules, videos, exercises, final exam.
 - Certificate of completion
- Useful for all tenants, but particularly those who are renting for the first time and do not have references or previous experience



Online Course for Tenants

- Currently working on first half of course, which will cover everything tenants need to know before renting:
 - References
 - Credit checks
 - Cover letters
 - Pets
 - Smoking
 - Roommates
 - Viewing a rental unit
 - Digital Footprint
 - Accommodation covered / not covered by RTA
 - Disclosure of personal information
 - Discrimination
 - Deposits
 - The real cost of moving out
 - How to find rental housing
 - Tenant Insurance
 - Condition Inspection Reports
 - Locks and Keys
 - Illegal Fees



TAB 7: Skills

- **Laying the Groundwork: effectively prepare your client's case (Day 1)**
 - Materials

Orange sheet

- **Technology and Advocacy (Day 2)**
 - Powerpoint

Orange sheet

- **Effective Advocacy for Mental Health Consumers/Survivors (Day 2)**
 - Powerpoint

Orange sheet

- **Developing Persuasive written arguments (Day 2)**
 - Materials

Orange sheet

- **Professional Responsibility and File Management (Day 3)**
 - Best Practices for Advocates Materials
Separating sheet
 - Sample forms
Separating sheet
 - File Management Tips

Orange sheet

- **Legal Research (Day 3)**
 - Materials

Orange sheet

- **Working Effectively with Clients Dealing with Violence – for NON Family law advocates (Day 3)**
 - Background materials
Separating sheet
 - Powerpoint and fact sheets '
Separating sheet
 - Relevant papers and research
Separating sheet
 - FLA Plain Language Guide for women who have experienced abuse.

PREPARING YOUR CASE

ESSENTIAL CHECKLIST FOR ADVOCATES

PTC 2014

Presented by Kendra Milne and Kaity Cooper
Community Legal Assistance Society

This checklist will take you through some key steps in handling a client file that is headed to a hearing. We hope it will give you some helpful ideas to handle these files with skill and confidence!

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Initial assessment of your case

Always do this assessment before committing to represent a client

At some point after you have spoken with the client and developed an understanding of what she would like you to help with, it's very important to consider these points before you commit to take on her case.

Go over these questions with the client:

- What, exactly, does the client want to achieve? Why has she come to see you?
- Is the client's goal realistic? What specific results can realistically be expected?
- If your client has a specific plan in mind (e.g. take her landlord to the RTB, challenge a reconsideration decision at EAAT), is that specific plan likely to be helpful to the client? Is it possible that plan will put the client in a worse position?
- Are there other options that you and the client should explore as well or instead? (e.g. negotiation, doing nothing, a different legal option, re-applying, etc.)

And go over these questions in your own mind:

- Do you have the skills and experience necessary to do a proper job of this case? Should you get some support and mentorship from a supervising lawyer or senior advocate, and if so is that person available?
- How much time will it take to assist this client? Given your overall workload, do you have enough time to do the work necessary?
- If there is a hearing or a deadline coming up, can you get ready in time?
- If the client is set to go to hearing, does she have at least some chance of succeeding in the hearing?
- Have you gone over all the options with your client and has she given you clear instructions to proceed?

Only commit to doing a hearing when you're satisfied there is a good reason to do so.

File management

Steps to take as soon as you're ready to commit to the hearing

After you have gone over all the above steps and you're ready to commit to assisting the client, always make sure to ask yourself these file management questions.

- Does your office have a system for checking for conflicts of interest? If so, have you checked for conflicts?
- Have you clearly communicated to the client exactly what you can and cannot do for her? (e.g. Who will file the notice of appeal? When? Who will gather the evidence for the case?)
- Have you completed an opening letter for the client?
 - Does it confirm exactly what assistance you can provide, and what assistance you cannot provide?
 - Does it set out any ground rules for your or your program's continued assistance?
 - Does it explain confidentiality, including any applicable exceptions?
- Do you need any consent forms signed by the client? (e.g. to act for the client at a tribunal, or to gather any evidence you might need for the case)
- Do you have reliable contact information for the client? If not, have you thought about how you will communicate?
- Do you need the client to provide any additional documents? When?
- Have you opened a file or do you have another means to organize the correspondence and documents for the file?
- Are there any deadlines you are aware of at this stage? Have you put them in a reliable calendar system?

The rest of this handout is geared toward cases that are going to hearing. But keep in mind, not all clients will benefit from going to hearing! It's your job as an advocate to help the client to make a good decision about what approach to take.

Getting started

*Do this soon after you have taken on the case,
but before you do any other work on the file*

Identify your objective and write it down.

What, specifically, are you hoping to achieve for your client in this hearing?

Make sure you have all the relevant documents.

Get your client to give you *all* the relevant documents. (Re-assess whether you need the client to sign any additional releases.)

If it's an appeal hearing of any kind, it's essential that you get a copy of the decision being appealed, as well as all the documents that were submitted to or relied on by the lower level decision-maker.

Think about the nature of the tribunal.

How are hearings done at this tribunal? Formal or informal? In person, by phone, or in writing? What are the rules governing procedure at this tribunal? If the rules are published, review them. Pay particular attention to timelines.

You can usually get this information from the tribunal's website.

Take the time to identify any deadlines you will need to meet. Carefully note these deadlines, as well as the time and date of the hearing, in a reliable calendar system.

Locate the law that applies.

What statutes and regulations will you rely on? Is there any policy or case law relevant to your case? Read these materials carefully and find the specific parts you will rely on.

Think about the interpretation of the statutes and regulations. Are there any statutory interpretation issues you need to sort out?

If in doubt, ask your supervising lawyer or a senior advocate, to make sure you are finding everything and focusing on the right stuff.

Develop a case plan

We strongly suggest you put in the time at the outset to come up with a good case plan that identifies the following elements.

1: Key legal principles or legal arguments.

- Think carefully about the legislation, policy and any case law that might apply.
- Take your time to figure out what the legal issues are and to break them down into their elements. It can take some effort.
- If in doubt, talk it over with a more senior advocate or supervising lawyer. It's very helpful to get this stuff straight as early as possible.

2: Key factual points that need to be proven.

- Looking at each element of the legal test that applies in your case, what factual points need to be proven in order for your client to have a shot at winning?

3: What evidence you will rely on to prove each of these points.

- Evidence can be contained in all kinds of documents (such as pictures, letters, emails, contracts, receipts, etc.)
- Evidence can be in the form of a witness' testimony. If a witness cannot attend the hearing, he/she can write a signed and dated statement, or swear an affidavit if it's a really key point.
- Consider: what would be the simplest and most convincing way to prove each point? It is usually best to keep it as simple as possible.

NOTE: It's very helpful if you can create a table lining up the factual points that need to be proven in one column, and the evidence to prove those points in the other column. (see next page)

4: Theory of the case

- Come up with a brief (1-3 bullet point) statement summarizing how you will argue the case. Every case can be boiled down into a simple "This case is about..." statement.

Note: the number of facts that you need to prove will vary with each legal issue

Legal Requirement #1	
Fact to Prove	How you will prove it

Legal Requirement #2	
Fact to Prove	How you will prove it

Legal Requirement #3	
Fact to Prove	How you will prove it

Evidence-gathering

- Decide what documents you need for evidence by looking at your "How will you prove it" column in your case plan. If you have them already, great. If not, get them!

You might be able to get some documents yourself. Others you may have to get from the client or a third party.

Keep these documents organized in a sensible way. We recommend an evidence folder *separate from the rest of the file*.

- Decide what witnesses you might need by looking at your "How will you prove it" column in your case plan. Talk to them right away.

Make sure each prospective witness' evidence is actually going to be helpful to your client. If so, make sure they can attend the hearing.

Keep a list of witness names and phone numbers in your evidence folder.

- Think about both sides of the case – what witnesses and documents do you think the other side will use? Does that change what evidence you might want to rely on?

Once you have gathered your evidence, it needs to be organized and sent in to the decision-maker (and to the other side if required at this specific tribunal) in advance of the hearing and within the tribunal's timelines.

It is okay to send in additional evidence later if you need to, but keep in mind if it's sent in after the deadline it might not be accepted.

Before sending the evidence, think about the following tips for submitting documentary evidence

Some tips about documentary evidence

Remember that everything you put before a decision-maker is an opportunity to advocate for your client and get the decision-maker on your side. Think about how to submit your documentary evidence in the most persuasive and helpful way possible.

- This might be obvious, but when you send in your documentary evidence, it makes a huge difference if you can **organize the documents in a helpful way** (chronologically, conceptually, or some combination of the two).
- It's also very helpful if you can **number the pages** so that everyone can refer to it easily.
- Ideally, try to create **a list of your documents**, like a table of contents, and include the list when you send your documents in to the tribunal. This is especially helpful if the case is complex. There is an example list of documents at the back of this checklist.
- If the evidence deadlines allow, you can send your **written submissions** to the decision-maker along with your documentary evidence, in a neat package. This makes life much easier for the decision-maker. (More on written submissions later.)
- Remember that your job is to **make it easy for the decision-maker to find in your client's favour**, so think about how you can accomplish that.
 - Do you have time to put all the documentary evidence, the list of documents, and your submissions into a neat binder?
 - If you are faxing in your evidence, can you make the cover page as clear, professional and helpful as possible?
 - Is there anything else you can do to make the evidence easy to navigate?

Preparing to present your case

- Prepare a list of direct examination questions for each of your witnesses.** If you don't have time to do a full list of questions, at least write out the key points you want to get across, in chronological order.

Some people prefer to write just a list of points to cover; others like to write out the whole question. Either way the questions you ask should be short and simple.

Start with 2 or 3 questions that guide the witness to introduce herself and explain her relationship to the case. *These can be leading questions as long as the subject-matter is not contentious in the case. (Leading questions suggest an answer, e.g. "Your tenancy started on September 1, 2010, right?")*

Then, move on to questions that lead the witness through her testimony in an orderly way. *These cannot be leading questions. The goal is to stay out of the witness' way as much as possible so that your witness is telling her story. Some tribunals won't even want you to ask questions and will just want to hear from the witness.*

In direct examination it can help to start with descriptive questions that "set the scene", and then move on to questions about sequences of events.

- Make a plan for how you will draw the tribunal's attention to all the important documentary evidence.** Will the documents be discussed during the witnesses' testimony? If possible, it is a good idea to bring them in that way, rather than just referring to them in your argument. Have a plan for bringing each important document to the tribunal's attention.

- Prepare each of your witnesses for direct examination.**

- Go over the time and place of the hearing, and how the witness will attend.
- Describe the tribunal and how it operates.
- Explain what exclusion of a witness is (some witnesses may have to stay out of the hearing until they have given their evidence so they don't hear other witnesses).
- Explain the duty to tell the truth, and how you will guide the witness to get her evidence out, but you will not be telling her what to say.
- Tell the witness how to address the decision-maker. It's usually appropriate to address him/her by surname (e.g. Mr. Wong or Ms. Smith).

- Go over the "4 S's" – 4 basic principles for direct examination:
 - 1) Simple questions; simple answers.
 - 2) Slow answers: allow time for the decision maker to absorb information.
 - 3) Specific answers: do not generalize.
 - 4) Systematic testimony: let the advocate guide the way.
- Go over the 3 or 4 key points you need the witness to get across.

If possible, practice the direct examination with your witness (especially if it's an important witness).

Prepare your witnesses for cross-examination by the other side.

Explain that the other side might ask questions to try and (A) get evidence that hurts your client's case; and/or (B) attack your witness' credibility.

Go over any topics you think might be brought up in cross-examination, and practice asking the questions you think the other side might ask.

Tell the witness to keep the following points in mind:

- 1) Tell the truth and don't exaggerate.
- 2) Listen carefully to the questions, and take your time before answering.
- 3) If you don't know, say so.
- 4) If you don't remember, say so.
- 5) If you don't understand the question, say so.
- 6) Answer the questions directly, then give an explanation if you need to.

Get ready in advance if you are hoping to get helpful admissions from the other side's witnesses.

Sometimes you can anticipate that the other side's witnesses will be able to admit a point that will help your case.

If that seems likely, come up with a plan to get the helpful evidence. It's usually only a good idea to try and get helpful evidence from the other side's witness if you are very confident you can get it.

Brainstorm leading (narrow!) questions, such as:

- "You didn't ever respond to the tenant's request, did you?"
- "In a 3 year tenancy, this tenant has always paid his rent on time, right?"
- "There have been problems with bedbugs in several units in this building, haven't there?"

Preparing yourself for hearing

- Remind yourself of the rules and tone of this tribunal and make sure you have everything you might need during the hearing.
- Ask yourself whether there are any procedural requests you need to make prior to the hearing or at the hearing itself.
- We suggest you prepare a **hearing binder** containing your notes for the hearing. You can re-use the same binder for different hearings. Helpful things for the binder to contain:
 - (A) Your written argument if you have one;
 - (B) Your list of documents;
 - (C) Your plan for leading your witnesses through their evidence (direct examination);
 - (D) Your plan for cross-examining witnesses on the other side, if any; and
 - (E) Any other materials you may want to refer to.
- If you do not have a written argument, we suggest you prepare the following items to put in the hearing binder. This will really help with getting ready for the hearing.
 - (A) Your opening statement including your statement of what, exactly, you are asking the tribunal to do. (Remember your theory of the case and your "This case is about..." statement.)
 - (B) A summary of the key facts, organized chronologically. *Stick to the relevant facts and don't get bogged down in excessive detail.* Have a plan for referring to the documents as you go through the facts. Sometimes a table is helpful with the fact on one side and the relevant document on the other.
 - (C) A statement of the applicable law. Again, stick to the key points and don't get bogged down.
 - (D) A statement of your legal arguments about the case.

It is essential to spend some time, in each individual case, thinking about exactly how you will present your client's case. There is no "one size fits all" formula. The best way to get ready is to become completely familiar with the evidence, the law, your client's theory of the case, and exactly what you are asking for.

Statutory Interpretation

Provincial Training Conference, 2014

Presented by Kendra Milne and Kaitly Cooper
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Learning goals:

In this session, we hope to teach you how to interpret a specific statutory provision. This method should work regardless of the statute you are working with.

Specifically, we hope to give you a set of reasonably concrete steps you can go through to (1) determine the potential meanings of statutory provisions, and (2) find materials to base your interpretation on and persuasively argue that the interpretation most favourable to your client should be the one the decision maker should adopt.

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The basics of legislation

Statutes are passed by Parliament or the Legislature and set out the general skeleton of a statutory scheme, as well as what can be expanded on in regulations. Regulations are generally passed by the executive branch and don't have to be debated in the Legislature or Parliament. Regulations are subordinate to statutes and can only regulate within the bounds of the statute. Policies are not legislation and are generally not binding on decision-makers.

STEPS FOR FINDING RELEVANT LEGISLATION

(1) Start with a secondary source, if available

In some legal areas, you may already know what legislation to look at. If you don't know, a good place to start is a secondary source (a text book, policy guide or other resource that compiles and summarizes information about the area of law you're dealing with). These resources often have a subject index that might bring you to a section that can tell you which legislation to look at. Some examples of secondary sources include the annotated *Residential Tenancy Act*, the Ministry of Social Development Online Resource or the annotated *Canada Pension Plan*.

NOTE: this is not the end of the research road. You still always need to go through the following steps and look at the actual wording of the legislation.

(2) Go to the text of the statute

Once you know which statutory sections might be relevant to your client's legal issue, find them. You can usually use one of the consolidated statute sites (CanLII, BC Laws, etc.) or the website of the body that administers the legislation (so the Residential Tenancy Branch site for tenancy legislation, or the Ministry of Social Development site for income assistance legislation, etc.). Once you find the text of the statute or regulation, make sure to check the following:

a. Is the provision the most up-to-date version?

Legislation changes on a regular basis. In particular, regulations can change very quickly and with no notice. Make sure to check that you are looking at an up-to-date version of the statute or regulation. If you are looking at an online version, there will generally be a note at the top of the document setting out "regulation is current to..." or "includes amendments up to...". Check that date, and if it's not current, you may need to make sure there is not a more recent version of the legislation.

b. Is the provision in force?

Once you find the legislation, check to make sure it is in force. Sometimes statutes can be passed in the legislature, but not actually be in force, for years.

c. Is there any companion legislation?

If you're looking at a statute, are there any regulations? If you're looking at regulations, do you also have the statute it was enacted under? You need the whole picture to start interpreting. Don't forget key pieces of the puzzle.

d. Do you have a version that is formatted correctly?

Finally, while it may seem obvious, make sure you have a version of the legislation that is properly formatted (don't just copy it into a word document). Indenting and punctuation are very important when interpreting legislation and you can make serious errors because of silly formatting issues.

(3) Apply the interpretation methods set out in the rest of this article.

Introduction to statutory interpretation

When you are faced with a section of a statute and you are trying to determine what that section means, it is important to remember that there is usually no right or wrong answer. There is also no silver bullet or sure fire way to determine the answer. Unless a superior court has expressly determined that the provision cannot be interpreted in a given way, your job will generally be to look at what the plain meaning of the language could mean, and what meaning the "context" of the legislation supports. Generally, each statutory provision can be interpreted in more than one way, and you can often argue that an interpretation that helps your client is the one that a decision maker should adopt.

Think about a statutory provision like a painting:



How do you determine the meaning of the painting?

- 1) Plain meaning: What can you see from the physical face of the painting?
 - Are some interpretations ruled out? What aspects are unclear?
- 2) Context
 - Do you look at what others have said the painting means?
 - What have others said this painting means? How valuable are their opinions (what weight can you give them)?
 - Do you use information you can find about the content of the painting?
 - Who is depicted in the painting? Where was it painted? How was it painted? Are there any other specific elements of the painting that might provide information?
 - Do you use what the artist intended the painting to mean?

- Is there any evidence of what the artists meant the painting to mean?
- Do you use the wider context of the painting, and how it fits into broader developments?
 - Who painted the painting? What was going on with the artist when it was painted? Where does the painting fit in art history? What was happening in the broader social history when it was painted?

3) How persuasive (or binding) is the context you found?

This process is similar to trying to determine what a statutory provision means. You need to think of a statutory provision as something that can be capable of different interpretations. Your job is to find an interpretation that supports your client's case and that you can realistically persuade a decision maker to adopt.

To determine whether there is an interpretation that supports your client's case, and whether or not that interpretation will be persuasive to a decision maker, you need to ask the same questions we asked with the painting:

- 1) Does the **ordinary meaning** of the text support this interpretation?
- 2) What **context** supports this interpretation?
- 3) How persuasive are the sources you found to support your interpretation?

General rule for interpreting legislation¹

There are many different theories, approaches and latin rules that you can use to interpret legislation, but there is one general rule that will probably be the most effective in your practice. That general rule is called "Driedger's Modern Principle". The rule essentially boils down to this:

When determining the meaning of a provision, you need to look at the ordinary meaning of the actual text, together with the context of the provision.

If you follow this general rule when interpreting a statute, it will allow you to determine what interpretations the language of the statute can support and to find the supporting context you need to persuade a decision maker to adopt the interpretation you are putting forward.

The general idea is to look at:

- (1) What interpretations are supported by the actual text of the statutory section (in our painting example, this was question #1); and
- (2) What interpretations are supported by the context – everything other than the text of the specific provision.

¹ These materials refer to statutes and regulations somewhat interchangeably, or refer simply to "legislation". There are some basic differences to remember: statutes are enacted by the legislature or parliament, and are generally the main framework for a statutory regime. Regulations are often enacted outside of the legislature (by the cabinet) and are sub-ordinate to a specific statute. They must comply with their governing statute and generally contain most of the details of the regime.

The ordinary meaning(s) of the text

Going back to our painting example, at this stage you are looking at the face of the painting (with no additional research or knowledge) to see what the painting means. This was question #1. Can the face of the painting, for example, support an interpretation about a historic war? Probably not.

Obviously, language is more definite than art so a statute's ordinary meaning will probably support fewer interpretations than a painting, but the process is similar: which interpretation(s) can the face of the statutory provision support?

With a statute, you are determining what interpretations can be supported by the ordinary meaning(s) of the text. There is a general presumption that the legislature intended to use language in the ordinary grammatical sense when it drafted the statute. Unless there is a reason to reject it, the ordinary meaning(s) of the text will prevail (in other words, if the wording and punctuation of the text cannot support an interpretation, it's generally not going to fly with a decision maker).

You do not look at dictionary definitions or external sources at this point. Instead, you are looking for the meaning(s) that a regular person with basic language comprehension would find when reading the provisions.

READ THE WORDS AND PUNCTUATION – WHAT MEANING(S) CAN THEY SUPPORT?

Because some language can be ambiguous, there may be several reasonable interpretations of the face of the text. This is where the context comes in. You will need to look for external information that will help you understand what the text means and where the provision fits into the larger picture.

The context of the provision

Once you've determined what interpretation(s) the face of the provision can support, you need to think about the context of the statutory provision. The context is everything outside the ordinary language of the provision – what external information can you find to help you determine what the section means? Just like in the painting example, we think of different kinds of context that might help to understand the language of the provision, or to argue for a specific interpretation.

Context specific to the provision you're interpreting

You can use external aides to interpret the specific language of your provision. You're still focused on the text of the provision, but you are now looking outside the section of the statute to determine what it means. You have the text and now you are researching for external aids to help you understand what that specific text means.

- 1) Definitions in legislation: the first place to look is the definition section of the statute. Many statutes have defined terms, either at the beginning of the statute or at the beginning of the section you are dealing with.

Look at the statute you are dealing with to see if there is a defined terms section and, if so, if any of the terms in your provision are there. If you find them, those definitions will generally be binding and you will not be able to suggest that different meanings should be adopted.

- 2) Interpretation Act: the next place you can look for an explanation of the specific terms of your provision is the *Interpretation Act*. There are provincial and federal interpretation acts that set out some definitions for common terms and also some general rules about some statutory interpretation issues. Specifically, it may be helpful with the calculation of time, defining some generic terms, and determining which version of a statute applies to your client's case.

For example, see s. 8 of the BC *Interpretation Act*, which reads "[e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

Also see s. 29, which provides definitions for a variety of terms used in provincial legislation.

These sections are binding in the sense that they are valid law enacted by the legislature, although the provisions about how to interpret statutes will rarely be the

one source of context that will win a case because they apply to every statute and every decision applying a statute.

- 3) Other sources specific to the statute: are there any rules of practice and procedure for the decision maker that offer insight into what the provision means? Some decision makers, like the Residential Tenancy Branch, offer definitions of a handful of procedural terms in its rules of practice and procedure. In most situations, the rules of procedure for a tribunal may not be binding, but they may be very, very persuasive.
- 4) Policy guides: many government branches provide policy guides designed to assist in understanding the statutes and regulations that the branch administers. These are generally non-binding (which means that the decision maker is not bound to follow them), but often give an idea of what the legislature was aiming for. Be careful when using the guides – don't necessarily restrict yourself to what they say the provision means, and make sure they reflect the current version of the statute and case law.

Some relevant examples:

Residential Tenancy Branch Guides and Policy Guides, which can be found here:
<http://www2.gov.bc.ca/gov/topic.page?id=C442920EB73C4ADCB15258AE446F10A5>

Ministry of Social Development Online Resource, which can be found here:
http://www.gov.bc.ca/meia/online_resource/

Employment Insurance Digests of Benefit Entitlement Principles:
http://www.servicecanada.gc.ca/eng/ei/digest/table_of_contents.shtml

Worksafe BC's policies can be found here:
<http://www.worksafebc.com/publications/default.asp>
(NOTE: many of the Worksafe BC policies, like the Claims Manuals, are binding on WCB and WCAT decision makers)

- 5) Dictionary: if you cannot find a term in the definitions in the statute or in the *Interpretation Act*, you can try looking in a regular English dictionary or a legal dictionary. The definitions you find will not be binding but they may be helpful in establishing what the ordinary meaning of a provision is, or what other reasonable interpretations might exist.

Interpretations by others

It is important to know how others have interpreted the provision – this is also context. Even more importantly, you want to know how important that other interpretation is – in other words, what weight can you give it, or how much authority will it carry with the decision maker.

- 1) Previous decisions: if a superior court or a binding decision maker has previously considered the provision you are dealing with, obviously that is going to be very important to your case because the decision maker in your case will be obligated to follow that interpretation.

A previous interpretation will be binding if it is made by a superior court (BCSC for provincial decision makers) or an administrative decision maker that binds the decision maker you are dealing with. That being said, most tribunals' decisions are not binding on each other – each tribunal panel or decision maker gets to make its own decision in each specific case. To determine whether a former decision is binding, look at the statute governing the decision maker you are dealing with.

Even if a former tribunal decision is not binding on your current decision maker, if the decision supports your client's interpretation of the provision, it may help you to persuade your decision maker to adopt it as well.

Previous court decisions can be found on CanLII: <http://www.canlii.org/>. If you access the legislation through CanLII, you can often click on the blue section number and any court cases referencing that section will come up.

Previous tribunal decisions, if publicly available, can usually be found on the webpage of the tribunal you are dealing with.

- 2) Secondary sources: your statutory provision may also be addressed in a secondary source, like a textbook or annotated statute. Again, it is helpful to look through these to see if the materials support your interpretation because, if so, you can use them to persuade your decision maker to adopt your interpretation. Secondary sources are not binding, but if they are authored by a recognized expert in the area, they may be very persuasive.

If you don't have secondary sources at your office, try looking at the BC Courthouse library website to see if the local branch has relevant textbooks or annotated statutes: <http://www.courthouselibrary.ca/>

The key to using others' interpretations is to decide how much weight, or importance, you can give the interpretation. Remember that, if a binding decision has been made interpreting the provision a certain way, it may carry the day.

The intention or the purpose of the provision

When trying to determine what a statutory provision means, an obvious solution is to ask the person who wrote it what she actually meant. Although we cannot speak to the individual drafters of our legislation, we do have tools to look at what the legislature, or the body that enacted the provision, intended it to mean.²

² These materials generally refer to the provincial legislature as the body that enacted a provision. Be aware that the same suggestions apply to federal parliament. For regulations, cabinet may have passed the provision.

There are generally three places to look for evidence about what the legislature/parliament intended the provision to mean:

- 1) Legislative debates: when enacting a statute, the legislature often debates the content of the statute, and sometimes sends the act to committee so that each provision can be separately debated and examined. All of these materials can give you an idea of what the legislature intended the statute to mean – why was the section enacted? Was there an existing problem it was meant to address? Did the Minister specifically say that it was not intended to mean one interpretation?

BC legislative debates can be found at: <http://www.leg.bc.ca/hansard/>

Canada parliamentary debates can be found at: <http://www.parl.gc.ca/>

- 2) Other public statements about the meaning or intent of the provision: there may be other evidence out there about the enactor's intent in enacting the provision you are interpreting. This might include press releases or consultation materials.

While not binding, these sources can provide evidence about what the body that enacted the provision intended for it to mean. Remember, though, that this evidence must be read with the ordinary meaning of the provision as well as the rest of the context.

The wider context: how does your section fit in?

Finally, you can look at the wider context of the provision, or where and how it fits into the larger picture. Like in our painting example, we are now looking beyond the text of the provision or the face of the painting; we are looking for external context that might inform what the provision means.

- 1) The rest of the statute: make sure that you understand where your provision fits in the rest of the statutory regime. Look carefully at the index and headings of the legislation to see if any of the other sections might be helpful. Or, look to see if other sections can provide you with more information about what the provision was designed to do.
- 2) Related legislation: if your provision is part of a larger legislative regime that involves more than one statute or regulation, make sure you look at related legislation (this is especially true if you are dealing with a regulation – make sure you look at the enabling statute!). Again, use the index. It is an invaluable tool that can give you a quick overview of the content of the entire piece of legislation. If similar terms or phrases are used in related legislation, those uses can inform how your provision should be interpreted.

All BC legislation can be found here: <http://www.bclaws.ca/>

All federal legislation can be found here: <http://laws.justice.gc.ca/eng/>

- 3) Purpose of the entire statutory regime: the first external aid that you might be able to use is the purpose of the entire statutory regime. If you know that the entire regime is designed, for example, to confer last resort benefits, then you can use that information to decide what your provision might mean. Generally, you can interpret your provision in line with the broader purpose the regime is trying to achieve.

To find the broader purpose of the regime, you can look at past decisions, the preamble of the statute (if there is one) or legislative debates on the regime more generally. (You may have come across more general information in your hunt for evidence of the intention or purpose of the specific provision you are interpreting.)

- 4) Specialized method of interpretation: some specific types of statutes have specialized methods of interpretation that you can use. They are usually not going to carry the day – you still have to make sure the text of the provision supports the interpretation you are putting forward – but they may assist the decision maker in deciding which interpretation they want to adopt.

For example, benefit conferring social welfare legislation is generally interpreted in a liberal manner and any doubt about its interpretation should be resolved in favour of the claimant. (See for example para. 35 of *Hudson v. British Columbia*, 2009 BCSC 1461 for a list of cases confirming this principle.)

Penal legislation, on the other hand, is generally interpreted in a strict manner and any doubts about its meaning are resolved in favour of the accused.

Again, these tools are not about the specific language of your provision, but instead provide you with information about how and where your provision fits into a wider picture. This wider picture may give you insight into how the provision should be interpreted.

How to put it all together

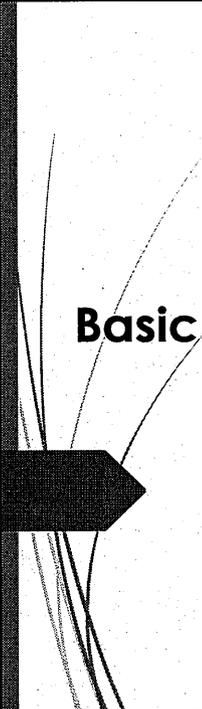
In summary, your goals when interpreting a legislative provision are to first determine what interpretations the ordinary language can support, and second find external evidence of the context of the provision that supports the interpretation you want to put forward.

When applying this method to a case, you can:

- (1) Decide the plain language meaning of the provision, and identify any aspects that are unclear or ambiguous.
- (2) What other tools or context can you find to help resolve the ambiguity?
- (3) How much can you rely on the contextual interpretation tools? (Are they binding? Are they only persuasive?)
- (4) Do any of the tools support an interpretation that will help your client's case?

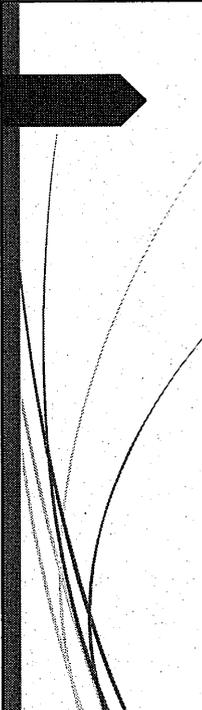
Provincial Training Conference October 29, 2014

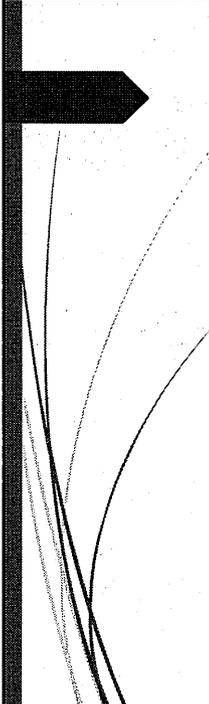
Basic Tech Literacy for Advocates



Andrew Sakamoto
TRAC Tenant Resource & Advisory Centre
andrew@tenants.bc.ca

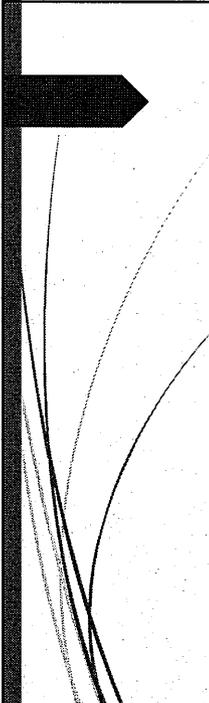
Technology: Friend or Foe?

- 
- Technology is already unavoidable in the workplace, and its influence will continue to grow.
 - How does technology impact your work as an advocate?
 - Barrier?
 - Enabler?



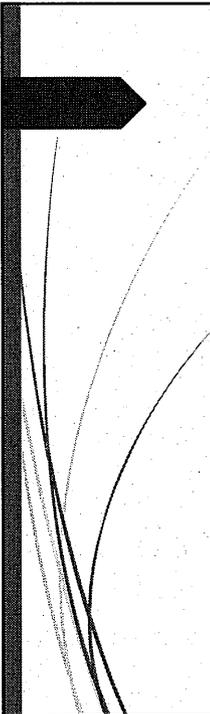
Goals for this Session

- Provide basic computer skills and tools that will improve your efficiency, quality, security and enjoyment at work
- Change your mindset going forward:
 - convince you that using these skills/tools is realistic
 - commit to trying some of these skills/tools going forward
- Accept today's session as the start of an ongoing learning process
 - Please feel free to use me as a resource in the future



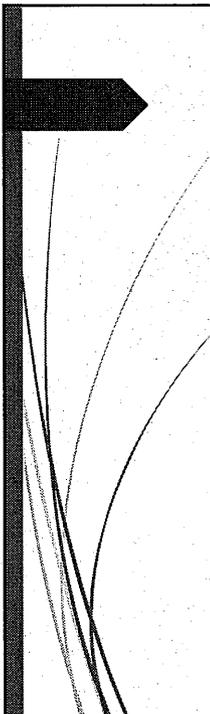
A Bit About Me

- I am NOT an expert on technology and computers
- I was the guy who said, "someone should do a session on basic tech literacy at the Provincial Training Conference..."
- Please don't be embarrassed to ask questions!



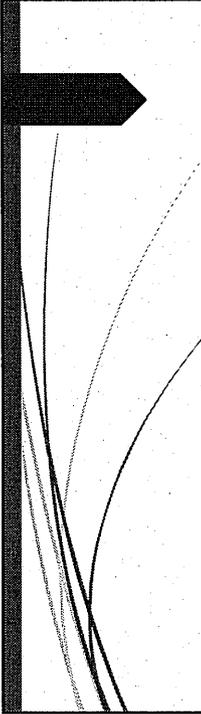
Outline

- Keyboard Shortcuts
- Online Calendars and To-Do-Lists
- Online Storage (the "cloud")
- Basic Excel
- Google as a Resource / Research Tool
- Online Security
- Screen Sharing
- Bookmarks and Toolbars
- Technology on a Budget



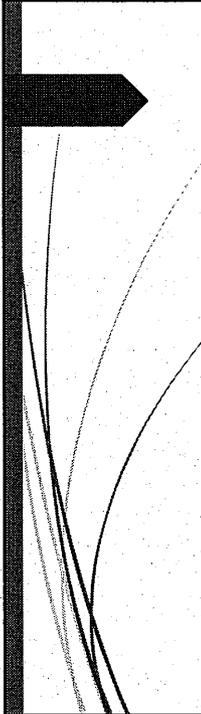
To Complicate Matters...

- There are different:
 - Desktop Operating Systems (Vista, Windows 7, Windows 8, MAC)
 - Mobile Operating Systems (Android, iOS, Windows)
 - Versions of Microsoft Office Programs (Word, Excel, PowerPoint, Outlook)
 - Internet Browsers (Chrome, Internet Explorer, Firefox, Safari)



Keyboard Shortcuts - FIND

- ▶ [Ctrl] + [F] = FIND
- ▶ Useful when searching legislation, policy documents, websites, funding guidelines, user manuals, etc.
- ▶ Works in Word, Excel, PowerPoint, (most) PDFs, all web browsers
- ▶ Note: MAC users can use the [Command] key ⌘ instead of [Ctrl]



Keyboard Shortcuts - FIND

- ▶ Example: You want to write a letter to a landlord about how their right to claim your client's security deposit for damage is "extinguished", and you want to quote the relevant section from the *Residential Tenancy Act*.
- ▶ Options:
 1. Search your hardcopy binder
 2. Search the RTA's Table of Contents
 3. [Ctrl] + [F] "security deposit"
 4. [Ctrl] + [F] "extinguish"

Keyboard Shortcuts - FIND

Keyboard Shortcuts - FIND

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the unit or legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy:
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(3) Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirements for agreement under subsection (2) does not apply to any of the following:

- (a) a rent increase in accordance with Part 3 of the Act;
- (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 (terminating or restricting services or facilities);
- (c) a term in respect of which a withdrawal or restriction has obtained an order of the court, so that the agreement of the other is not required.

Application and processing fees prohibited

15 A landlord must not charge a person anything for:

- (a) accepting an application for a tenancy;
- (b) processing the application;
- (c) investigating the applicant's suitability as a tenant; or
- (d) accepting the person as a tenant.

Keyboard Shortcuts - FIND

Keyboard Shortcuts - FIND

Condition inspection start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit, on or before the day the tenant starts keeping a pet or on another mutually agreed day, if:

- (a) the landlord permits the tenant to keep a pet on the residential property at the start of a tenancy; and
- (b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report, and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if:

- (a) the tenant has complied with subsection (3); and
- (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if:

- (a) the landlord has complied with section 23 (3) (2) opportunities for inspection; and
- (b) the tenant has not participated on either occasion.

(4) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord:

- (a) does not comply with section 23 (3) (2) opportunities for inspection;
- (b) having complied with section 23 (3), does not participate on either occasion; or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must:

- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit; and
- (b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsections (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Division 4 — During a Tenancy

Notes about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid to cash.

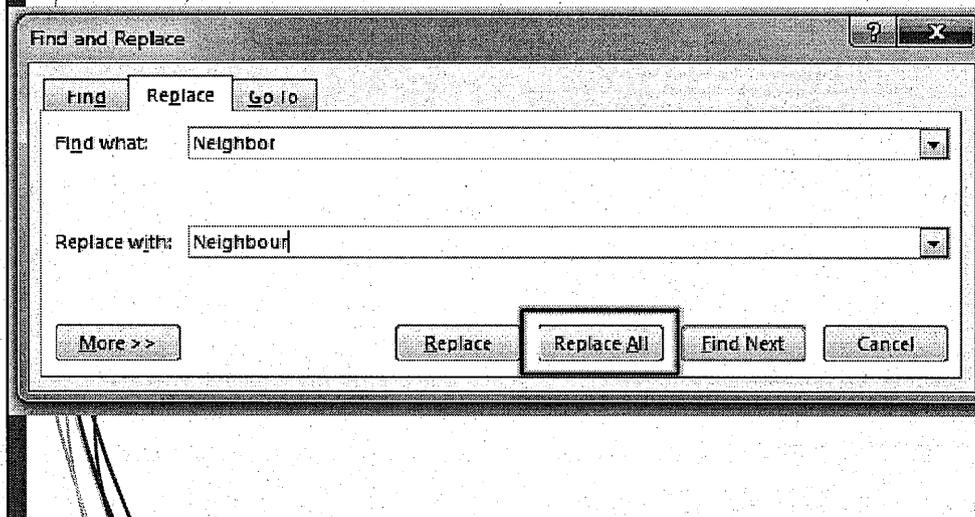
(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not:

- (a) seize any personal property of the tenant; or

Keyboard Shortcuts – FIND AND REPLACE

- ▶ [Ctrl] + [H] = FIND AND REPLACE
- ▶ Useful when wanting to replace all instances of one word, with another word.
- ▶ Example: A co-worker from the US spelled "neighbour" as "neighbor" in a document, and now you need to fix the entire document.

Keyboard Shortcuts – FIND AND REPLACE



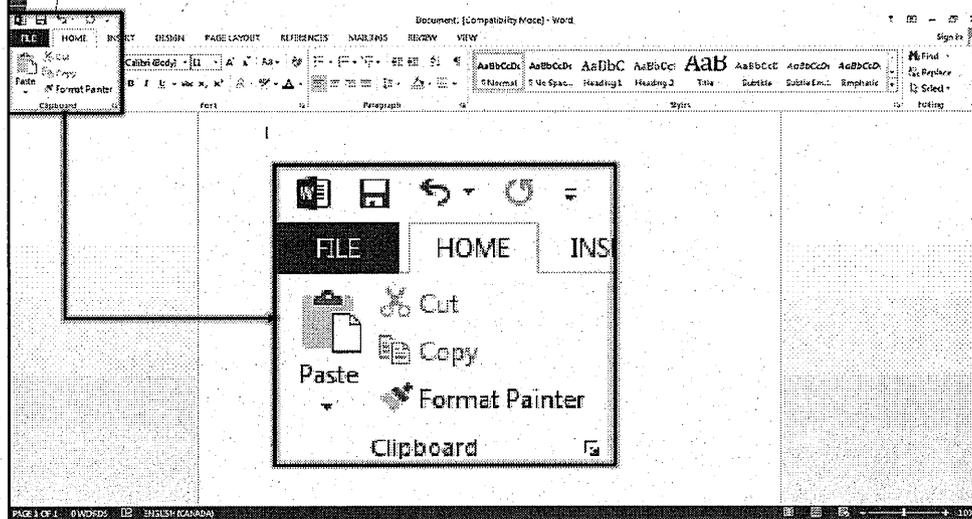
Keyboard Shortcuts – COPY AND PASTE

- ▶ [Ctrl] + [C] = COPY
- ▶ [Ctrl] + [V] = PASTE

- ▶ Note: you can also right-click on highlighted text and select "Copy", and then right-click where you want to paste that text and select "Paste"

- ▶ Sometimes when you paste text, it doesn't appear the way you want it to appear
 - ▶ Home Tab / Paste ▾ / Paste Special / Unformatted Text
 - ▶ Format Painter

Keyboard Shortcuts – COPY AND PASTE

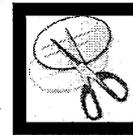


Keyboard Shortcuts – COPY AND PASTE

- ▶ Print Screen button [Prt Scr]
 - ▶ Located above the backspace button
 - ▶ Copies what's on your screen

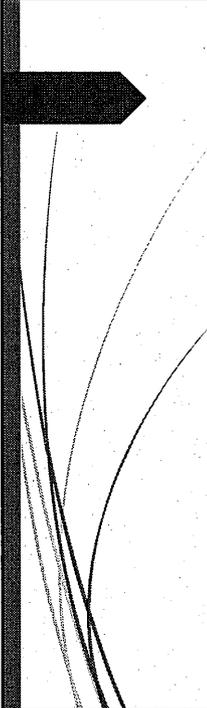


- ▶ Snipping Tool (Windows 7 and 8)
 - ▶ Copies what you draw a box around



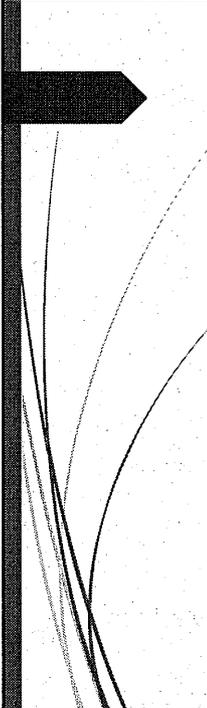
Keyboard Shortcuts – UNDO / REPEAT TYPING

- ▶ [Ctrl] + [Z] = UNDO 
- ▶ [Ctrl] + [Y] = REPEAT TYPING 
- ▶ In Microsoft Office programs, you can simply click the symbols in the top left corner. However, in other instances, those symbols may not be visible
 - ▶ Filling out a form online (e.g. grant application)
 - ▶ Social media (e.g. Facebook)
 - ▶ Online Calendars / To-Do-Lists (e.g. Google Calendar)
 - ▶ Some email clients (e.g. Mozilla Thunderbird)
 - ▶ Delete/move a file accidentally



Keyboard Shortcuts – REOPEN CLOSED TAB

- Have you ever accidentally closed a tab?
- [Ctrl] + [Shift] + [T] = REOPEN CLOSED TAB
 - Works with all Internet browsers
- TIP: Set your browser to continue where you left off upon start up.
 - Let me know if you would like help setting this up!



Keyboard Shortcuts – CAPITALIZATION

- [Shift] + [F3] = CAPITALIZATION OPTIONS
- capitalization
- Capitalization
- CAPITALIZATION

Mouse Shortcuts – MOUSE WHEEL

- [Ctrl] + [roll mouse wheel up/down] = Zoom In / Out
 - Alternatively, [Ctrl] + [+] / [-] = Zoom In / Out
 - [Ctrl] + [0] (Zero) = Resets to Default Zoom
- Clicking the mouse wheel on a link will open that link in a new tab
- Clicking the mouse wheel on a tab will close that tab

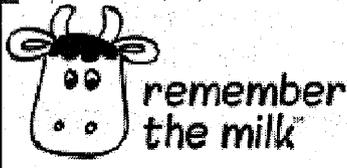
Keyboard Shortcuts – CHEATSHEET

- [Ctrl] + [F] = FIND
- [Ctrl] + [H] = FIND AND REPLACE
- [Ctrl] + [C] = COPY
- [Ctrl] + [V] = PASTE
- [Ctrl] + [Z] = UNDO
- [Ctrl] + [Y] = REPEAT TYPING
- [Ctrl] + [Shift] + [T] = REOPEN CLOSED TAB
- [Shift] + [F3] = CAPITALIZATION OPTIONS
- [Ctrl] + [+] / [-] = Zoom In/Out; [Ctrl] + [0] (Zero) = Resets to default Zoom
- [Ctrl] + [P] = PRINT
- [Ctrl] + [T] = NEW TAB
- [Ctrl] + [N] = NEW
- [F5] = REFRESH WEB PAGE
- [Windows Key - ] + [P] = Display computer screen through projector

Online To-Do-Lists

- ▶ Our memories are limited – we need reminders!
- ▶ Many free or cheap To-Do-List Apps
- ▶ Google Keep
 - ▶ Wunderlist
 - ▶ Any.do
 - ▶ Todoist
 - ▶ Remember the Milk
- ▶ Available for mobile and desktop platforms
- ▶ Devices can be synced online (e.g. smartphones, tablets, personal computers).
 - ▶ Let me know if you would like help setting this up!

Online To-Do-Lists



Complete | Fastlane | More Actions... | Sort by...

Select: All, Due Today, Due Tomorrow, Overdue, None

Add a new task

<input type="checkbox"/> Finish PowerPoint Presentation	Tuesday
<input checked="" type="checkbox"/> Arrive on time	Wednesday
<input type="checkbox"/> Ensure at least one person learns one thing	Wednesday
<input type="checkbox"/> Remember to mention that you are happy to provide support in the future	Wednesday
<input type="checkbox"/> Save time for a Q&A period	Tuesday
<input type="checkbox"/> Rest!	Nov 03

Notes

Arrive on time (3 notes) Print

[Add Note](#)

Take your car instead of walking to save time. [Edit](#)

It's counting on you. Don't sleep in! [Edit](#)

1 task repeated.

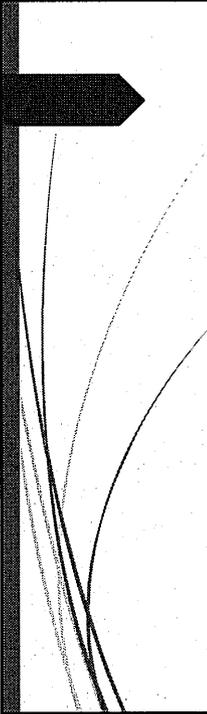
Key

Priorities: **B** **E** **R** **C**

Due today: **bold**

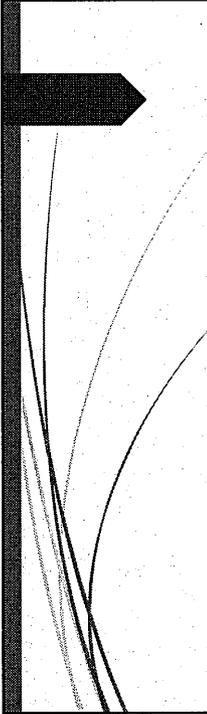
Overdue: underline

[Learn keyboard shortcuts](#)



Online Storage

- Dropbox, iCloud, Box, Google Drive, SkyDrive, OneDrive, Pocket
- Pros
 - Back up work and know it's safe regardless what happens to your physical hardware
 - Sync work across multiple devices / users
- Cons
 - Privacy concerns
 - Depending how much space you need, you may have to pay



Online Storage – SHARED DROPBOX FOLDERS

- Alternative to emailing documents and images. Instead, you and others can simply save them in your shared folder.
 - Works well for projects with multiple people
 - Works well for when you have to work at home
- Administrator can control who is invited to have access to the shared folder, and can revoke access of any user at any time.
- Simply double-click an icon on home desktop to gain access!
 - Let me know if you would like help setting this up!

Excel

- You may need to know some basic Excel skills for:
 - Grant budgets
 - Grant statistics reports
 - Timesheets
 - Expense reimbursement forms

Excel Basics – BOOKS vs. SHEETS

The screenshot shows an Excel spreadsheet with the following data:

	Funder A	Funder B	Funder A	Funder B	TOTAL
EXPENSES					
Building	8000	17000	6000	4000	
Staff Services	8000	17000	6000	4000	
EXPENSES					TOTAL
Salaries & Benefits - 2 FTE	6000	11000	5000	1000	
Workshop Expenses	0	1000	1000	0	
Advertising	2000	0	0	2000	

Excel Basics – INSERTING ROWS AND COLUMNS

The screenshot shows the Microsoft Excel interface with the 'Insert' menu open. The 'Insert' menu is highlighted, and its options are listed below:

- Insert Cells...
- Insert Sheet Rows
- Insert Sheet Columns
- Insert Sheet

The background spreadsheet displays financial data for the 'Law Foundation of British Columbia' for the years 2014-2015 and 2015-2016. The data is organized into columns for 'Law Foundation of BC', 'History Foundation of BC', 'Law Foundation of BC', and 'History Foundation of BC', with a 'TOTAL' column. The rows include 'REVENUE' (Funding, Total Revenue) and 'EXPENSES' (Salaries & Benefits - RPTs, Workshop Expenses, Total Expenses, Surplus/Deficit).

Excel Basics – DELETING ROWS AND COLUMNS

The screenshot shows the Microsoft Excel interface with the 'Delete' menu open. The 'Delete' menu is highlighted, and its options are listed below:

- Delete Cells...
- Delete Sheet Rows
- Delete Sheet Columns
- Delete Sheet

The background spreadsheet displays financial data for the 'Law Foundation of British Columbia' for the years 2014-2015 and 2015-2016. The data is organized into columns for 'Law Foundation of BC', 'History Foundation of BC', 'Law Foundation of BC', and 'History Foundation of BC', with a 'TOTAL' column. The rows include 'REVENUE' (Funding, Total Revenue) and 'EXPENSES' (Salaries & Benefits - RPTs, Workshop Expenses, Publication Printing, Total Expenses, Surplus/Deficit).

Excel Basics – WRAP TEXT

Excel Budget (Compatibility Mode) - Excel

	2014-2015	2015-2016																
	Law Foundation of BC	Notary Foundation of BC	Law Foundation of BC	Notary Foundation of BC	TOTAL													
REVENUE																		
Funding	8000	17000	6000	17000														
Total Revenue	8000	17000	6000	17000														
EXPENSES																		
Salaries & Benefits - O & PTE	5000	15000	5000	15000														
Workshop Expenses	0	2000	1000	0														
Advertising	3000	0	0	3000														
Total Expenses	8000	17000	6000	17000														
Surplus/Deficit																		

Excel Basics – MERGE & CENTER

Excel Budget (Compatibility Mode) - Excel

	2014-2015		2015-2016															
	Law Foundation of BC	Notary Foundation of BC	Law Foundation of BC	Notary Foundation of BC	TOTAL													
REVENUE																		
Funding	8000	17000	6000	17000														
Total Revenue	8000	17000	6000	17000														
EXPENSES																		
Salaries & Benefits - O & PTE	5000	15000	5000	15000														
Workshop Expenses	0	2000	1000	0														
Advertising	3000	0	0	3000														
Total Expenses	8000	17000	6000	17000														
Surplus/Deficit																		

Excel Basics – SORTING

The screenshot shows the Microsoft Excel interface with the 'Sort' dialog box open. The dialog box has the following settings:

- Sort On: Values
- Sort Order: Ascending
- My data has headers: (unchecked)
- Sort by: Column E

The background spreadsheet shows a list of numbers in column E, ranging from 10 to 48. The 'DATA' tab is selected in the ribbon.

Excel Basics – SORTING

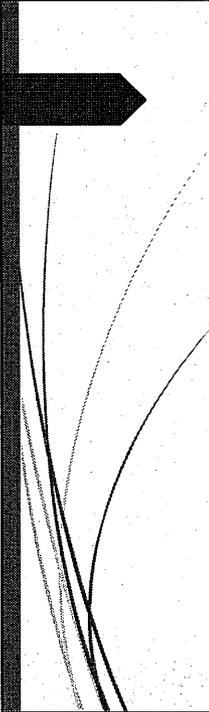
The screenshot shows the Microsoft Excel interface with the 'Sort' dialog box open. The dialog box has the following settings:

- Sort On: Values
- Sort Order: Ascending
- My data has headers: (unchecked)
- Sort by: Column C

The background spreadsheet shows a list of cities and their counts in column C:

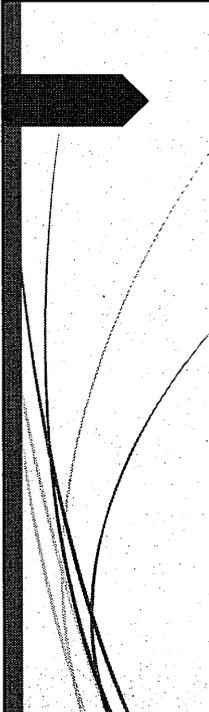
City	Count
Vancouver	333
Burnaby	42
Victoria	51
Richmond	12
Delta	19
New Westminster	20
Surrey	54
Port Moody	1
Codolpham	39
Langley	11
Hope	48
TOTAL	512

The 'DATA' tab is selected in the ribbon.



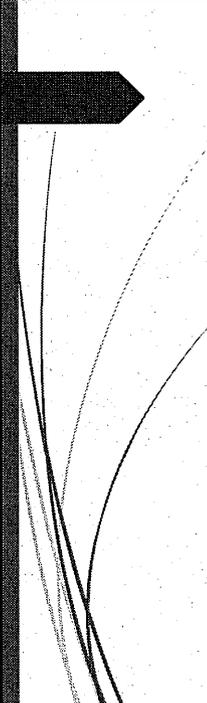
Google – IT PROBLEMS

- ▶ "Google" named word of the decade for a reason
- ▶ The answer to most simple computer-related questions can be "googled"
 - ▶ There are thousands of message boards online. Chances are someone else has asked and received an answer to your question
 - ▶ Key considerations:
 - ▶ Browser (Chrome, Internet Explorer, Firefox, Safari)
 - ▶ Operating System (Vista, Windows 7, Windows 8, MAC, Android, iOS)
 - ▶ Program (Word, Excel, PowerPoint, Outlook)
- ▶ TIP: Even before googling a problem, consider restarting your computer. Many problems can be solved using this simple step.



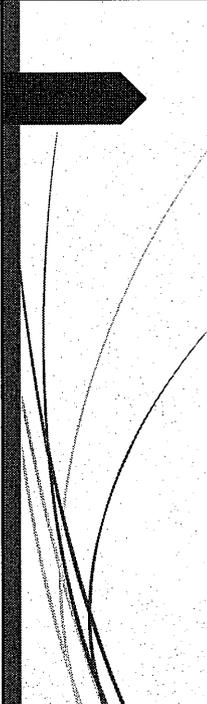
Google – RESOURCE / RESEARCH TOOL

- ▶ Measurement conversions
 - ▶ miles → km
- ▶ Currency conversions
 - ▶ cad → pesos
- ▶ Calculator
- ▶ Read free public domain books
- ▶ Track packages
- ▶ Definitions



Google – RESOURCE / RESEARCH TOOL

- Use [""] to find exact phrases
 - "security deposit" vs. security deposit
 - Try other boolean search techniques
 - combine keywords with operators such as AND, NOT and OR to further produce more relevant results
- Use [related:] to search relevant websites
 - related:nhl.com
- Use [site:] to search specific sites straight from google
 - "mental health" site:theyee.ca
- Use the "AROUND" function to search two words/phrases that are "x" number of words away from one another.
 - youth AROUND(5) homeless



Google – RESOURCE / RESEARCH TOOL

- If you want to search for NYTimes articles about college or university test scores, but not the SATs, from 2008 to 2010:
 - site:nytimes.com ~college "test scores" -SATs 2008..2010
- If you want to search for articles from the past couple of years on theyee.ca where "Rich Coleman" and "housing" have appeared within 10 words of each other:
 - site:theyee.ca "rich coleman" AROUND(10) housing 2013..2014

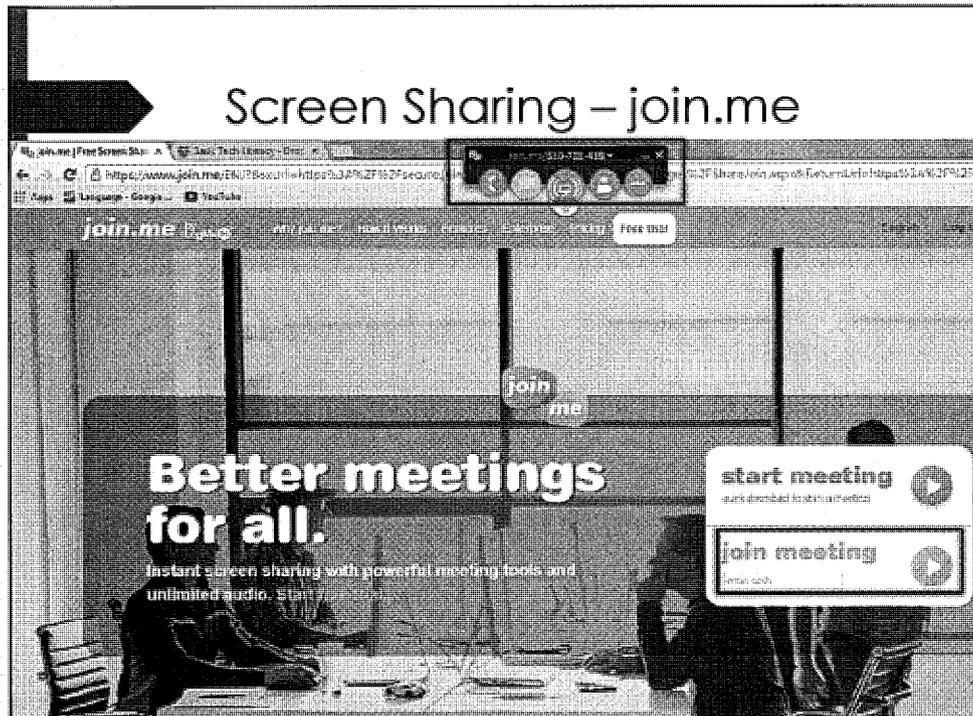
Online Security

- Anti-virus software
 - AVG (Free)
 - Avast (Free)
 - Kasperksy (Paid)
- Download and install all Microsoft Windows updates to prevent / fix security issues with your operating system
- Passwords
 - Do you ever forget your passwords?
 - LastPass: www.lastpass.com
- Lock your computer using [Windows Key – ] + [L]

Screen Sharing – join.me

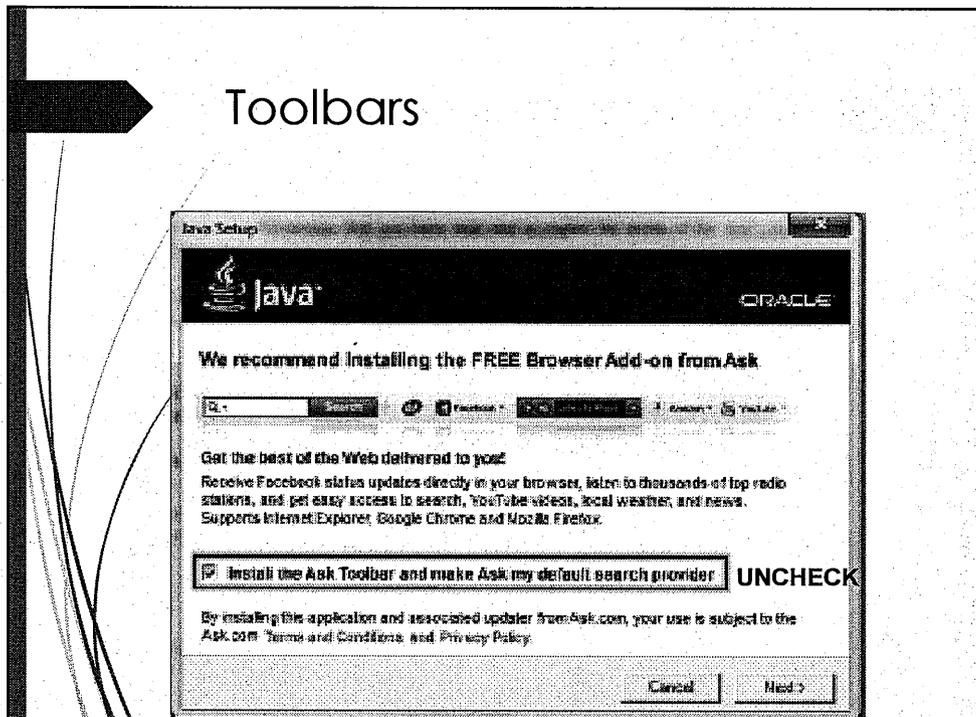
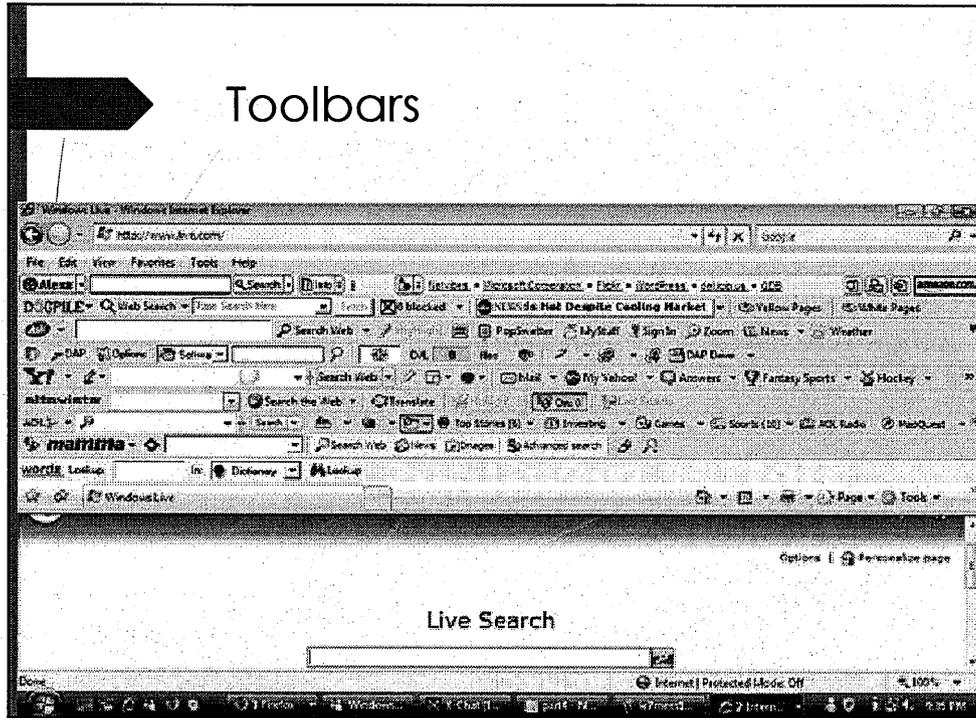


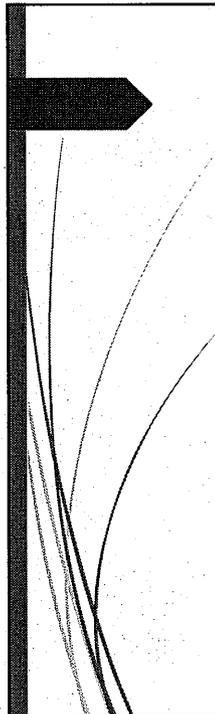
The screenshot shows the join.me website interface. At the top, there is a navigation bar with the join.me logo and links for "why join.me?", "How it Works", "Features", "Enterprise", "Pricing", and "Free trial". Below the navigation bar, there is a large banner with the text "Better for all" and "Instant screen sharing unlimited audio. Start". In the center, there is a "start meeting" button with a play icon and a "join meeting" button with a play icon. A security warning dialog box is overlaid on the page, asking "Do you want to run this file?" with details about the file name, publisher, and type. The dialog box has "Run" and "Cancel" buttons. The background of the website shows a person sitting at a desk with a computer monitor.



Bookmarks and Toolbars

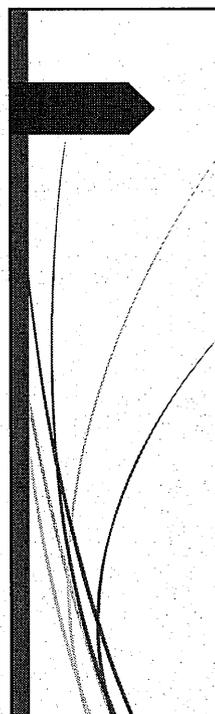
- Bookmark frequently used websites for easy access
 - Let me know if you would like help setting this up!
- Don't download toolbars in your browser.
- You will often be asked if you want to install certain toolbars when downloading legitimate software.
 - For example, Java  will ask you if you want to install an Ask.com toolbar.
- At their best, toolbars are unnecessary and slow down your computer
- At their worst, toolbars can contain viruses





Technology on a Budget

- Open Office
 - Alternative to Microsoft Office (Word, Excel, etc.)
- Mozilla Thunderbird
 - Alternative to Microsoft Outlook Email
- Gimp
 - Alternative to Adobe Photoshop



Technology on a Budget

- TechSoup Canada
 - Provides donated software and technology resources for Canadian charities, non-profits and libraries.
 - Since 2004, over 14,000 non-profits, charities and libraries in Canada have received over \$185 million worth of software and hardware donations.
 - www.techsoupcanada.ca



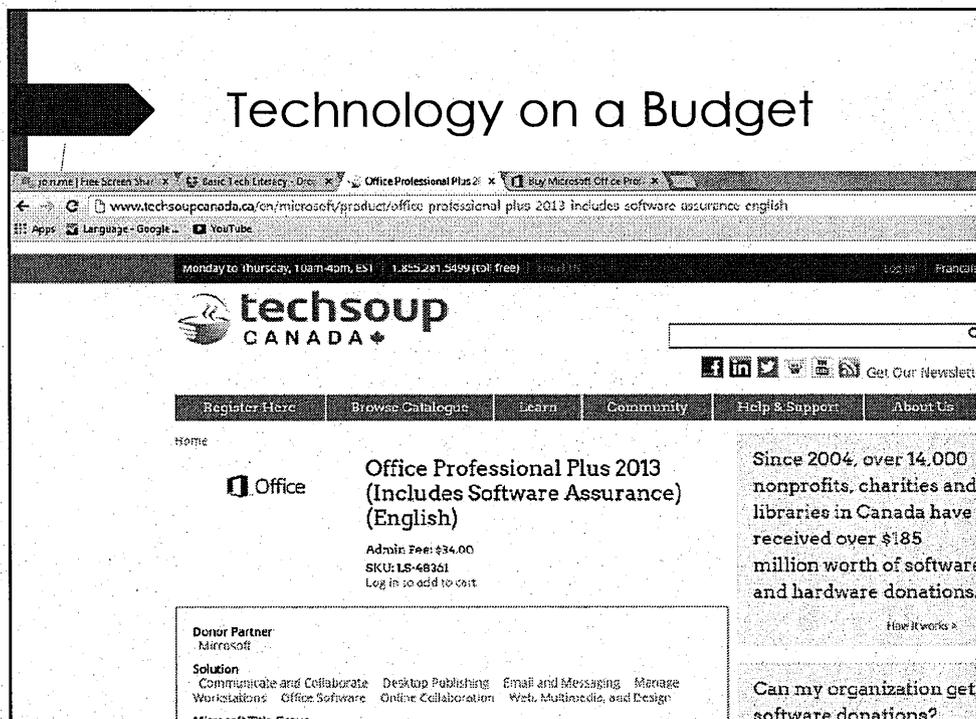
Technology on a Budget

Office Professional 2013
Work smarter with Office
Best for those who want Office with Outlook, Publisher and Access on one PC

\$519.00 Buy now

See features | FAQ

Compatible only with Windows 7 or later



Technology on a Budget

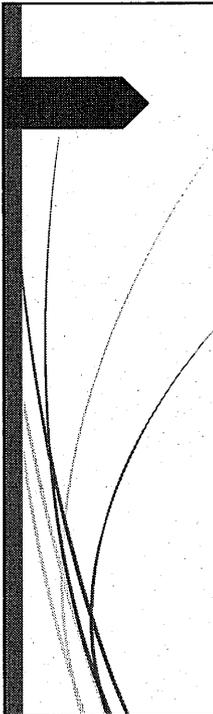
techsoup CANADA

Office Professional Plus 2013 (Includes Software Assurance) (English)

Admin Fee: \$34.00
SKU: 15-48361
Log in to add to cart

Since 2004, over 14,000 nonprofits, charities and libraries in Canada have received over \$185 million worth of software and hardware donations.

Can my organization get software donations?



Questions?

- ▀ Again, please feel free to contact me with questions in the future. I will be more than happy to help!
 - ▀ andrew@tenants.bc.ca

Thank you for your time!

Working Effectively with Clients Who Have Mental Health Issues

Provincial Advocates Conference
November 23, 2011

Working Effectively with Clients Who Have Mental Health Issues

Workshop Overview:

- ◆ *A brief overview of mental health conditions and related symptoms*
- ◆ *Self-reflection exercise*
- ◆ *Identifying & Addressing Barriers to Service in Agency Practice*
- ◆ *Working with Challenging Behaviours-Improving Responses and Outcomes*
- ◆ *Case Scenarios*

Working Effectively with Clients Who Have Mental Health Issues

Workshop Objectives:

- ◆ *To address gaps in knowledge and applied skills regarding mental health by addressing the behavioural, cognitive and other challenges that come with working with persons with mental health issues.*
- ◆ *Provide information on mental health generally as well as addressing relevant issues such as reducing barriers to service, effective case management and improving responses to challenging behaviours.*

Working Effectively with Clients Who Have Mental Health Issues

A brief overview of common mental health conditions and symptoms

Depression:

Is a mood disorder characterized by impaired behaviour and cognition and changes in mood.

Symptoms:

- ◆ *Feelings of worthlessness and hopelessness*
- ◆ *Sleep Problems: Falling or staying asleep/Oversleeping*
- ◆ *Trouble concentrating or making decisions*
- ◆ *Loss of interest in activities*
- ◆ *Overwhelming feelings of sadness*
- ◆ *Changes in weight or appetite*
- ◆ *Social avoidance/isolation*
- ◆ *Irritability*
- ◆ *Loss of energy/fatigue*
- ◆ *Hallucinations/Delusions: in extreme cases*
- ◆ *Thoughts of death or suicide*

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Bipolar Disorder:

Is a diagnostic category describing a class of mood disorders characterized by episodes of mania (elevated mood) and depression or mixed states (depression/mania simultaneously) with periods free of symptoms.

Bipolar I (at least 1 manic episode & one or more depressive episodes)

Bipolar II: (Predominantly depressive episodes with milder hypomanic episodes)

Cyclothymic Disorder: Chronic fluctuating moods-byomania & depression

Symptoms:

- ◆ Excessively high or elevated mood
- ◆ Extreme irritability or anger
- ◆ Impulsive decision making
- ◆ Racing thoughts
- ◆ Rapid speech
- ◆ Restlessness/High levels of energy
- ◆ Feeling little need for sleep
- ◆ Extremely short attention span
- ◆ Seeing or hearing things that other people aren't experiencing

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Anxiety Disorders:

an excessive, irrational dread of everyday situations. Categorized as the following:

- ◆ **Generalized Anxiety Disorder (GAD) :**
exaggerated worry and tension, even when there is no apparent reason for concern
- ◆ **Obsessive-Compulsive Disorder (OCD)**
unwanted and intrusive thoughts (obsessions) that compel repeated performance of ritualistic behaviors and routines (compulsions) to try and ease anxiety
- ◆ **Panic Disorder/Agrophobia**
the abrupt onset of intense fear that reaches a peak within a few minutes and includes some of the following symptoms: feeling of imminent danger & doom, need to escape, heart palpitations, shortness of breath, nausea, fear of dying or going crazy

Working Effectively with Clients Who Have Mental Health Issues

- ◆ **Post Traumatic Stress Disorder:**
Occurs in people who have experienced a traumatic event
Symptoms include:
Re-experiencing the traumatic event through flashbacks, nightmares and distressing recollections of the event
Emotional numbness
Avoidance of places, activities and people associated with the event
Difficulty sleeping, concentrating
Feeling jumpy, easily irritated or angered
- ◆ **Social Anxiety Disorder**
Extreme fear of being scrutinized and judged by others in social or performance situations leading to extreme distress and isolation

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Schizophrenia & psychotic disorders:

- ◆ **Schizophrenia:**
Positive symptoms:
Hallucinations: seeing, hearing, feeling things others do not see, hear or feel
Delusions: false beliefs that are not part of the person's culture and do not change regardless of truth or logic
Thought disorders: unusual or dysfunctional ways of thinking. Disorganized thinking. Neologisms.
Negative symptoms:
Flat affect: where a person's face does not move or he or she talks in a dull or monotonous voice
Lack of pleasure in everyday life
Lack of ability to begin and sustain planned activities
Cognitive symptoms:
Poor "executive functioning" (the ability to understand information and use it to make decisions)
Trouble focusing or paying attention
Problems with "working memory" (the ability to use information immediately after learning it)

Working Effectively with Clients Who Have Mental Health Issues

◆ Schizoaffective Disorder:

Psychotic symptoms-hallucinations, paranoid thoughts along with a mood disturbance, such as depressed or manic mood

Depressive type vs. Bipolar type

◆ Delusional Disorder:

Circumscribed symptoms of non-bizarre delusions, but with the absence of prominent hallucinations and no thought disorder, mood disorder, or significant flattening of affect found in schizophrenia

6 subtypes: erotomanic, grandiose, persecutory, jealous, somatic & mixed

Working Effectively with Clients Who Have Mental Health Issues

Personality Disorders:

a group of psychiatric conditions in which a person's chronic behaviors, emotions, and thoughts are very different from their culture's expectations and cause serious problems with social and occupational functioning

- ◆ *Anti-social personality disorder*: persistent social rule-breaking, deceitfulness, offending behaviour, irresponsibility, lack of remorse and failure to plan ahead
- ◆ *Avoidant personality disorder*: lifelong pattern of feeling very shy, inadequate, and sensitive to rejection
- ◆ *Dependant personality disorder*: a chronic condition in which people depend too much on others to meet their emotional and physical needs
- ◆ *Histrionic personality disorder*: act in a very emotional and dramatic way that draws attention to themselves

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- ◆ *Narcissistic personality disorder*: an inflated sense of self-importance and an extreme preoccupation with self
- ◆ *Obsessive-compulsive personality disorder*: preoccupation with rules, orderliness, and control
- ◆ *Paranoid personality disorder*: long-term distrust and suspicion of others, but does not have a full-blown psychotic disorder such as schizophrenia
- ◆ *Schizoid personality disorder*: person has a lifelong pattern of indifference to others and social isolation. It does not cause hallucinations, delusions, or complete disconnection from reality.
- ◆ *Schizotypal personality disorder*: trouble with relationships and disturbances in thought patterns, appearance, and behavior. Odd beliefs and behaviours but no positive symptoms found in schizophrenia.

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- ◆ *Borderline Personality Disorder*: characterized by unstable relationships, unstable emotions, unstable behaviour, unstable sense of identity and awareness problems.
- ◆ *Unstable behaviours*: acting on impulses and urges even where harmful-self-harm, suicide attempts, risky behaviours
- ◆ *Unstable emotions*: extreme anxiety, depression, irritability, anger and boredom
- ◆ *Unstable relationships*: seeing others as all good or all bad, intense avoidance of abandonment
- ◆ *Unstable sense of identity*: not knowing self, feeling empty
- ◆ *Awareness*: sensations or feelings not founded in reality

Working Effectively with Clients Who Have Mental Health Issues

Identifying & Addressing Barriers to Service in Agency Practice

Common Barriers to Service:

STIGMA

- ◆ *People experience prejudice and discrimination (in medical care, housing etc.) and thus avoid asking for services*
- ◆ *They have negative feelings about themselves, have low self-esteem and can be prey to believing negative stereotypes generated by society and media*
- ◆ *They tend to avoid seeking help and to keep symptoms and substance use secret*
- ◆ *They tend to minimize the impact of their illness on their functioning*
- ◆ *They experience social isolation or limited support networks*
- ◆ *Depression and loss of hope for recovery or that taking action will result in positive, efficacious outcomes*

Working Effectively with Clients Who Have Mental Health Issues

REDUCING STIGMA IN SERVICE PROVISION:

- ◆ *Understand why stigma exists and make efforts to challenge & counteract it in your own lives and working practice.*
- ◆ *Sometimes stigma is based on fear. Stigma can also be passed upon the fact that mental illness may affect the social skills or appearance of the person, making others feel the person is difficult to relate to. Or one might have a perception of poor prognosis and/or attribute responsibility for lack of wellness, assuming that discipline, will power and desire to get better are sufficient to address the presenting mental health problems.*
- ◆ *Practice accessible and inclusive service provision. Services provided must be non-judgmental and empathic and client centered. An advocate must always see the service user as a person first. Be able to put yourself in the shoes of your client and appreciate their experience from their perspective.*
- ◆ *Adequate time must be devoted to working individually with your client to build trust and to facilitate honesty about stigma and how it may be affecting disclosure.*
- ◆ *Self-empowering clients to act on their own behalf and to take steps to assist in the resolution of their case/issue is also important in addressing stigma. Empowerment can improve a person's self-image and concept of identity and can contradict stereotypes they themselves or others may have about capacity to act.*

Working Effectively with Clients Who Have Mental Health Issues

Fragmented Services:

- ◆ *By the time someone reaches your door, they may have attempted to access a number of other services and been turned away. This can lead to high levels of frustration and hopelessness. It is important therefore, that the services you provide be as low barrier as possible.*

Increasing Access:

- ◆ *Services should be immediate, accessible and client centered*
- ◆ *Drop-In services mean that help is more readily available*
- ◆ *People are informed as soon as possible if there are not eligible for services and provided accurate information about other relevant services.*
- ◆ *People should be treated as individuals first*
- ◆ *Non-judgemental and unconditional services-an individual may be experiencing extreme distress and the advocate may be the only person the individual sees who is independent from the mental health system/who is not providing treatment and monitoring of mental health symptoms.*
- ◆ *The intake and informed consent forms are brief*
- ◆ *Additional time is allowed for face to face service delivery*
- ◆ *Advocates should be familiar with other agencies that provide expertise in the provision of services to persons with mental illness so that appropriate referrals can be made when needed.*

Working Effectively with Clients Who Have Mental Health Issues

Barriers to Communication:

- ◆ *Some the barriers people with mental illness face to obtaining advocacy services may be imposed by the illness itself and its specific symptoms. When people are struggling with symptoms, they may be unable to identify or articulate what services they need, may speak tangentially/incoherently, may shift from one topic to another at will, talk about several issues as once or be unable to focus.*
- ◆ *Most mental illnesses will cause impairments in attention and concentration, memory and ability to recall information, motivation, executive and planning skills and will also significantly impair social/communication skills. All of the above will also impair the client's ability to follow up.*

Working Effectively with Clients Who Have Mental Health Issues

- ◆ *Reducing barriers to communication and follow up.*
- ◆ *Take time to learn about various mental illnesses so that you know what to expect and can put communication barriers in context.*
- ◆ *Most importantly!! you will need additional time to work effectively with the client. This will include at the initial assessment/intake phase and through to any case advocacy you take on.*
- ◆ *You must be willing to take the time to build trust with the client whenever possible. The relationship must be characterized by consistency and trust.*
- ◆ *Allow time for the person to tell their story/vent/express for 10-15 minutes before asking structured questions*
- ◆ *You may need to repeat questions/instructions several times before they are truly understood. Use active listening skills to ensure understanding. Open-ended questions, paraphrasing, parroting.*
- ◆ *Use short, clear direct sentences and questions. Long, involved questions may be difficult to follow as some mental illnesses make concentrating difficult.*
- ◆ *Cover one topic or give only one direction at a time.*

Working Effectively with Clients Who Have Mental Health Issues

- ◆ *Be compassionate and empathetic in your approach. Be willing to experience the person's situation from their frame of reference. You don't have to agree with the person but simply communicate that you appreciate how they feel.*
- ◆ *You may need to document and write down everything in simple steps.*
- ◆ *Do want you can to keep the stimulation level as low as possible. This is especially important where symptoms of anxiety or psychosis are present.*
- ◆ *Ensure follow up. Calling, writing letters. Sending documentation directly to third party.*
- ◆ *Maintain a positive attitude.*

Working Effectively with Clients Who Have Mental Health Issues

- ◆ *Other Helpful Practices:*
- ◆ *Being client centered in your approach. Meeting people where they are at, moving at their pace, with PATIENCE.*
- ◆ *Validating a person's feelings and choices.*
- ◆ *Setting clear boundaries and managing expectations at the outset.*
- ◆ *Consistent practices among volunteers, staff and management*
- ◆ *Maintaining equanimity-staff practice self-control, calm and good communication*
- ◆ *Practice non-attachment to outcomes.*
- ◆ *Emphasizing strengths. Lots of reinforcement for simple steps*
- ◆ *Practicing self care: breathe, take a break, practice work-life balance, set realistic goals, take care of mind and body*

Working Effectively with Clients Who Have Mental Health Issues

- ◆ *Working with Challenging Behaviours:*
- ◆ *Do not make unrealistic promises about what services you can provide or outcomes you can achieve. Be honest and realistic about limitations of service/time delay*
- ◆ *Deal with emotional response by modelling calm. When person loses focus, reframe the issue to get behind why person is asking for help- "Let's look at your goals. What will achieving this outcome get for you?"*
- ◆ *Demonstrate empathy when cannot assist. "I can see you are upset, stressed by your experience"*
- ◆ *Echo/paraphrase person's concerns. Express empathy appropriately and acknowledge emotions. Acknowledge point of view without agreeing with it. Use the language of cooperation- "we could look at it this way". "How can we resolve this".*

Working Effectively with Clients Who Have Mental Health Issues

- ◆ *Define key issues at the outset and stay focused on them.*
- ◆ *Treat any complaints seriously. Try and focus on the issue being presented rather than just the behaviour or emotions.*
- ◆ *Communicate clearly. Ask the person if they understand what you are saying.*
- ◆ *Use direct language. Tell them clearly what you can or cannot do.*
- ◆ *Be consistent in your approach to the person.*
- ◆ *Use a neutral tone and pitch. Be non reactive. Try to remain calm.*
- ◆ *Always be conscious of your own emotional and physical safety.*

Working Effectively with Clients Who Have Mental Health Issues

Hostile/aggressive behaviours:

- ◆ *Follow any existing protocols regarding safety and potential threats in the workplace-two staff, meeting place, duress alarms etc.*
- ◆ *Determine if the anger is constructive/reasonable and appropriately directed. If so, allow venting for a specific period of time. Provide clarity about the time you have available for venting and stick to it. Allow the client to express feelings and then provide information/strategies for follow up if appropriate.*
- ◆ *If anger is abusive, advise of need for respect and consequences if continues. For example, will hang up, be asked to leave and come back when calm. Be clear about boundaries and enforce consequences.*
- ◆ *Do not try and reason with a person who is extremely angry. Do not react or verbally defend yourself. Adopt a non-threatening, but firm physical stance. Hold arms at the side of your body, with palms open. Stand at a distance. Breathe deeply and speak slowly in a moderate voice.*
- ◆ *Use name frequently. Focus on them with empathy, acknowledging feelings and needs. Ask open ended questions. Agree where you can. Reassure concerns are important.*

Working Effectively with Clients Who Have Mental Health Issues

Clients who may be excessively dependent:

- ◆ *Be clear at the outset about what services you do and do not offer. People need structure and fair setting of limits. Be consistent and maintain clear expectations.*
- ◆ *Set out each persons' tasks clearly. Provide person with specific tasks to complete to self-empower. Provide honest and genuine appreciation when completed.*
- ◆ *Articulate and keep to time limitations. For example...*
- ◆ *Use your team for continuity of care & to avoid burnout.*
- ◆ *Learn how to tolerate hostility without retaliating or withdrawing. Start with & maintain positive tone. Say nothing. Model expected behaviour.*

Working Effectively with Clients Who Have Mental Health Issues

Clients with depression:

- ◆ *Maintain a positive attitude. Maintain morale and sense of hope.*
- ◆ *Break information and next steps down into basic, simple instructions.*
- ◆ *Use genuine, heartfelt admiring statements to empower.*
- ◆ *Follow a self-empowerment model. Give clients tasks to take on that are achievable. Good for self-esteem.*

Working Effectively with Clients Who Have Mental Health Issues

Clients Who Regularly Miss Appointments:

- ◆ *Identify barriers to meeting schedule-poor sleeping-perhaps afternoon appointments preferable? Child care or transportation issues?*
- ◆ *If client cannot make appointments, identify file will be closed and that it can be re-opened when client is ready*
- ◆ *Set a specific time (once a week/once every two weeks) and advise client you will be available for a specific amount of time. You will be there regardless and if they show up, great. If not, you will attend to other work. No judgment.*

Working Effectively with Clients Who Have Mental Health Issues

Clients with psychosis/paranoia:

- ◆ *Important to understand and acknowledge distress and likely feelings of terror.*
- ◆ *Reduce stimuli in the environment.*
- ◆ *Identify with, rather than argue with the person. It is unhelpful to challenge delusions directly. Delusions are usually extremely fixed and difficult to change.*
- ◆ *However, try not to agree with/collude with beliefs expressed. Provide alternative explanations based on your own experience. Reassure them clearly and calmly by letting them know you understand they may see things in a particular way but you believe there is no problem or threat.*
- ◆ *"I know you think security guards are following you, but I don't think this is true." "You have no need to worry, you have done nothing wrong, so your landlord has no reason to go into your apartment."*
- ◆ *Ask for documentary or other evidence to support allegations. Indicate advice/follow up limited if no back up to support claims.*
- ◆ *Encourage person to seek help, not because of paranoia but because of specific circumstances they are experiencing and their named distress.*

Working Effectively with Clients Who Have Mental Health Issues

Case Scenario #1:

You are working with a client who has a history of anger management problems, anxiety, depression and substance abuse. He has been banned from his local grocery store for alleged threatening behaviour. He has requested your help in pursuing a human rights complaint. In the course of your work together, he has become increasingly frustrated in his interactions with you. He frequently swears and interrupts you and at your last appointment, he threw his paperwork across your desk and told you to shut up when you tried to explain the reasoning behind your questions and decisions. You and the client have not been successful in resolving his concerns and no other agency/individual will take on his human rights complaint. He is now demanding you represent him.

Working Effectively with Clients Who Have Mental Health Issues

Case Scenario #2

You are helping a person with a PWD application. He have been diagnosed with schizophrenia but does not agree with the diagnosis. He is not sure he wants any mental health information added to the application. He also believes that he has a serious medical condition the physician is ignoring and has stated that the physician refuses to provide a proper referral for treatment because he is closely related to a former service provider who "has it out for him and has been trying to get him for years". He says he won't complete the PWD form until his medical condition is acknowledged. He wants to make a complaint about the physician.

Writing Persuasive Submissions

Provincial Advocacy Training Conference 2014
Presented by Kendra Milne and Devyn Cousineau,
Community Legal Assistance Society

The goal of written submissions

What is the goal of written submissions? To persuade!

Written submissions provide an important opportunity (and sometimes the only opportunity) to put forward your client's argument. Through effective written submissions, you will build sympathy for your client, become a trusted helper for the decision-maker, and help your client appear reasonable. Everything about the submission is an opportunity to assist your client's case, from how the argument appears, to its content, organization and tone. Your submission should help, and ideally compel, the decision maker to decide the case in your client's favour.

Below are some general tips for how to use written arguments to assist your client's case.

Be helpful

Your job is to make life easy for the decision-maker. You may dislike an institutional decision-maker or think they do a lousy job, but it is your role as an advocate to make it as easy as possible to decide in your client's favour.

When you are writing your submission, always be thinking about what would be helpful for the decision maker. Do not become sidetracked by ideas, facts or arguments that your client wants you to include, or that you want to include, for reasons other than helping the decision maker.

So what will help the decision maker?

To answer this question, you need to first think about who the decision maker is. Many of the administrative tribunals that you practice in front of are informal, underfunded, and over worked. Decision makers may be notoriously frustrated, curt and ill-informed with the context in which you work and your client lives. Regardless of what you think about the decision maker, this is important to acknowledge when you plan your advocacy. If they are over-worked, you know they are less likely to spend a lot of time wading through evidence, facts and legal submissions to get to your point. You know they are even less likely to do research themselves to find the right answers. If they are ill-informed with your client's world, you know you need to briefly orient them. If they are easily frustrated, make sure to appease them by making your arguments attractive and accessible. You will not help anyone, least of all your client, if you do not cater to the reality of the decision maker you are appearing before.

With that in mind, the following points are ways you can help your decision maker.

Do the work to analyse your case. As an advocate, this is your main job. Do not assume that the decision maker will do your work for you; in fact, assume she will not. You can irritate a decision maker by leaving all the work of finding the law, summarizing the facts, and drawing conclusions up to her. And, even worse, you take a giant gamble that their work will not lead them to the conclusion that you want. Do the work.

Make your argument organized. Take time before you start writing to structure your argument. It does not help a decision maker to find in your client's favour when she has to wade through a stack of material with no roadmap for how it fits together. How to organize an argument will be discussed in greater detail below.

Make your argument interesting. Be thoughtful about how to present your client's case in a compelling way. This does not mean you should include inflammatory statements (eg. "the landlord is a cruel slumlord and my client has never done anything to deserve the torture that has been inflicted on her"). Nor should you use a lot of exclamation points and bolding to scream your point across (eg. "My client **NEVER** had that loud party!!!!"). It means you should present facts and argument in a way that you would enjoy reading and feel moved by.

Make your argument readable and accessible. Font size, white space, page numbering and binding can help conserve the decision maker's energy so that she can focus on the substance of your argument, rather than straining to access your submissions. Some practical tips include:

- Use a decent sized font (no smaller than 11pt).
- Leave some white space to make it easy to read. Use double spacing, and leave space between paragraphs.
- Use lists for important points.
- If there is a form, don't squeeze the submission onto the form. Use additional pages as required.
- Number the pages and paragraphs whenever possible.
- Put the case name and file number at the top of the cover page and, if you're submitting the argument by fax, at the top of every page.
- If you refer to evidence, direct the decision maker to exactly where she can find the evidence.
- Use headings and subheadings to guide the reader through your argument.
- Explain clearly who everyone is. For example, the first time you mention "Dr. Don Daisy", explain that he is your client's family physician.
- Take the time to proofread! If you can, put the arguments away overnight and proof read them the next day. Spelling and grammar mistakes, typos, and nonsensical sentences can cost you credibility.

Be clear and concise

Distill your case. Before you start writing, sit down with a pen and paper. Write one or two sentences that capture what the case is about. *You can, and should, do this with every case.* No case is too complicated for this method. For example, in a human rights case that took 43 days of hearing, 20 witnesses and over 10,000 pages of documents, the appellants distilled the case to this sentence:

This case is about how British Columbia's education system failed in its obligation to be inclusive of all children.

Once you have this clear sense of the case, you use this to structure your arguments around supporting your theory of the case.

Clarity requires preparation and organization. Use a case plan to identify:

1. What is the legal test that applies?
2. What facts are relevant to this test?
3. What evidence will support the facts I need to prove?

Again, this takes some work at the outset but will ensure that your arguments are focused on exactly what the decision maker needs to find in order for you to win the case.

Keep the decision maker focused. Your argument can easily lose focus and distract the decision maker if you include facts, arguments, authorities and evidence that are peripheral to the main point of the case. Be confident:

- Do not include facts or evidence that is irrelevant to the issue. It is confusing.
- If you have a choice between one strong argument and four weak arguments, make the strong argument.
- Do not include authorities that are not directly on point and necessary.

Identify your point. The best practice in legal writing is to use "point first" writing. This means that the first sentence of every paragraph will tell your reader what the point of that paragraph is. Then every other sentence goes to that single point. For example, compare this paragraph:

Rayna James was served with a Notice to End Tenancy on September 30. Then, on October 2, she tried to pay her landlord the rent she owed. He refused it. Ms. James says that the Notice to End Tenancy should be set aside because she tried to pay her rent.

With this one:

The Notice to End Tenancy in this case should be set aside. Ms. James attempted to pay her rent two days after being served with the Notice, but the landlord refused to accept it.

In the second paragraph, the reader knows immediately what point you are trying to make; they don't have to wait for the punchline.

Be credible

You can really help your client by appearing credible to the decision maker. If you are viewed as a credible advocate, the decision maker will be more likely to find facts in your favour, and adopt your view of the law. So what makes a person credible?

Don't overstate. Do not overstate your client's case or the evidence. Even one instance of appearing to mislead the decision maker can cost you your credibility. Stick to what is supported by the evidence and its reasonable interpretation. For example, if your client admitted that the police were called to her apartment after a loud argument with her boyfriend at 11pm, do not try to say that she has been a perfect tenant who never caused a commotion. Instead, focus on evidence that none of the neighbours complained, and that she was quick to apologise to the landlord for the inconvenience.

Be thorough. Show the decision maker that you have done the work. This doesn't mean being long-winded, or including all of your research and analysis, no matter how peripheral to the case. It means presenting everything that the decision maker needs to find in your favour.

Address the other side. If there is a legitimate argument against your client, address it head on. Do not try to "get away" with hiding the law or evidence to promote your case. If there is a section in the legislation that does not support you, you need to include it and explain why it doesn't apply. If there is evidence against your client, you need to address why it should not undermine her case.

Know the role of the decision maker. Can she even do what you're asking for? If not, then you can quickly lose credibility by even asking for it.

Don't escalate the conflict. There is an old saying: "the lawyer who represents herself has a fool for a client". Your client is lucky to have you as an advocate because you are not personally involved in the case and so can objectively pursue it. You need to remain above the fray in a dispute. Your tone should be almost clinical in its neutrality. It may seem cold, but it is really the best way to help your client and earn the trust of the decision maker.

Structure your argument

There is a basic structure that you can use in all of your written arguments. Again, make sure to use headings and subheadings throughout the argument to let the decision maker easily follow

along.

Start with a concise and engaging opening statement. This will include your distilled explanation of what the case is about and what you want the decision maker to do for you. For example:

This case is about whether the landlord has established grounds for evicting Jeffrey Leboswki for cause. The evidence will show that the landlord has not met this threshold. Mr. Leboswki asks that you grant his application to set aside the landlord's Notice to End Tenancy.

Next, give a brief statement of facts. Stick to only the facts that are relevant to the case. Do not include every single fact you have discovered in the course of your work with the client. The decision maker does not need to know as much as you do. But they do need to know the facts that support what you are asking them to do.

For every fact that you are asserting, show the decision maker where the evidence supporting that fact comes from. A fact does not become a fact just because you said so. It has to be proven in the evidence.

Explain the law. This might mean setting out statutory provisions, or referring to specific legal authorities. Again, this should be thorough while remaining clear and concise. In other words, you should refer to everything that directly relates to the issue, including authorities or statutory provisions that go against you.

Analyse the law with your facts. This means setting out what law should apply (addressing the other side's arguments), and applying your facts to that law. This will probably be the biggest, and most important, part of your argument.

End with a conclusion and a statement of remedy. Here, provide a brief and compelling summary of why you think your client should win, and set out clearly what you are asking the Tribunal to do.

Finally, sign and date the submissions.

Written submissions can win your case

A thoughtful, organized and well-written submission can win the case for your client. Attention to even small details, like font and spacing, can make the decision-maker's job easier and impress her with your advocacy. A disciplined approach to distilling the nature of the case and focusing your submissions on only the relevant facts, law and evidence will go along way toward achieving the ultimate goal of any advocacy: persuasion.

**APPENDIX A: SAMPLE SUBMISSION TO
THE EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL**

Employment and Assistance Appeal Tribunal

Appeal No.: 2012-00XXX

Written submissions of Jane Doe

1. This is an appeal of a Ministry decision that found that Ms. Doe was not eligible for the income assistance she received from April 2009 until September 2010 because she owned non-exempt assets over the allowable legislative limit.
2. Ms. Doe received the income assistance as a result of an acknowledged Ministry error (see EAAT Appeal Record, page 43). The Ministry has now found her liable to repay the assistance she received.
3. Ms. Doe originally requested a reconsideration in October, 2010 (see EAAT Appeal Record, page 25). Although the Ministry initially issued a reconsideration decision in November 2010 (see EAAT Appeal Record, page 19), a new "revised decision" was issued on February 23, 2012 (see EAAT Appeal Record, page 9). It is this most recent "revised" reconsideration decision that is under appeal.

Background

The properties in question

4. At the time she received income assistance, Ms. Doe owned four lots located together (collectively the "Lots"). The Lots are very rural, approximately one hour north of Fort St. Smith, BC.
5. All four are named as Fort St. Smith District Lot 1234. The Lots breakdown as follows:
 - "Lot A": PID 003-4456-911, 10 acres;
 - "Lot B": PID 003-4455-084, 10 acres;
 - "Lot 2": PID 004-4456-239, 20 acres; and
 - "Lot 3": PID 004-4787-786, 20 acres.

(see Appellant's Book of Submissions, Tab 2)

6. Ms. Doe originally lived on Lot A until her home burned down in 2007. The only water hook-up on the Lots is at the site of the burned house on Lot A. There is no hydro access for any of the Lots.
7. After Ms. Doe's home burned down, Ms. Doe lived in a small, dilapidated cabin on Lot 2 with no running water. In 2008, her family assisted Ms. Doe to buy a garage package to build her current home on Lot B. Her home has no running water, phone or hydro.
8. Because she resides on Lot B, the Ministry exempt that property. It is the remaining three Lots (A, 2 and 3) that the Ministry alleges to be non-exempt assets.

Issues in the case

9. There is no dispute that Ms. Doe owned the Lots while she received income assistance. There is also no dispute that Lots A, 2 and 3 were assessed at a total value that exceeded the legislative asset limits.
10. The issues to be decided in this appeal are:
 - I. Whether it was a reasonable application of the applicable legislation for the Ministry to conclude that Ms. Doe's equity in Lots A, 2 and 3 was convertible into cash and thus falls under the definition of "asset" in the *Employment and Assistance Regulation*; and
 - II. If Lots A, 2 and 3 were saleable, whether it was a reasonable interpretation of the applicable legislation for the Ministry to consider them non-exempt assets in light of s. 11(3) of the *Employment and Assistance Regulation*.

New Evidence

11. Tabs 2-6 in the Appellant's Books of submissions are new evidence:
 - Tab 2: a rough map of the properties relevant to the appeal
 - Tab 3: 2007 MLS listings with Jeff Katz
 - Tab 4: 2008 MLS listing with Moira Reed
 - Tab 5: Email from David Klein regarding saleability of the Lots
 - Tab 6: file history excerpt from Ministry records
12. All of the evidence is submitted in support of the information that was before the Ministry at the time of the reconsideration decision.

Issue I: Any equity in Lots A, 2 and 3 was not convertible into cash

The definition of "asset"

13. The purpose of the asset limits with respect to income assistance eligibility is clear: if applicants/recipients have equity in assets and they can turn that equity into cash, they should generally do so and live on those funds before relying on income assistance. This purpose corresponds with the principle that the Ministry is the payer of last resort and that applicants/recipients are required to exhaust all sources of income.
14. The Ministry itself acknowledges this purpose of asset eligibility restrictions (see Appellant's Book of Submissions, Tab 10).
15. With all of this in mind, it becomes clear why the legislature chose to define "asset" in s. 1 of the *Employment and Assistance Regulation* as follows:

"asset" means

- (a) *equity in any real or personal property that can be converted to cash,*
- (b) *a beneficial interest in real or personal property held in trust, or*
- (c) *cash assets;*

(emphasis added; see Appellant's Book of Submission, Tab 7)

16. For property to be considered an asset, and thus a source of equity for the applicant/recipient to live off of before relying on income assistance, the equity in that property **must be convertible into cash**. Regardless of the amount of equity, if it cannot be converted into cash then applicants/recipients cannot use the proceeds to support themselves.
17. The Ministry's own policy contemplates this very issue:

Assets are only assets if they can be converted into cash. All assets have an intrinsic monetary value; therefore, the term convert refers to the "ability" to sell the asset. The decision as to whether the asset is convertible is the responsibility of the case manager to make based on information provided by the applicant or recipient.

In all circumstances, the onus rests with the applicant or recipient to provide reasonable documented evidence that the asset could not be sold.

(emphasis added; see Appellant's Book of Submissions, Tab 11).

18. The “convertibility” or “saleability” of any property must be assessed in combination with the legislative sanctions the Ministry can impose if an applicant/recipient disposes of an asset for what the Ministry considers to be inadequate consideration or value. Section 14 of the *Employment and Assistance Act* sets out:

14 (1) *The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:*

[...]

(b) disposed of real or personal property for consideration that, in the minister’s opinion, is inadequate.

(2) *A family unit is **not eligible** for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:*

(a) disposed of real or personal property to reduce assets;

(b) [Not in force.]

(3) *In the circumstances described in subsection (1), the minister may*

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person **ineligible for income assistance or hardship assistance for the prescribed period.**

(emphasis added; see Appellant’s Book of Submissions, Tab 8)

19. So, presumably the applicant/recipient can prove that the property cannot be converted to cash by proving that she could not sell the property **for a reasonably assessed value.**

20. Otherwise, applicants/recipients are between a rock and a hard place: they must try to sell their property to live off the equity, but if they reduce the price too much, they risk sanctions for disposing of the property for too little.

Ms. Doe’s attempts to sell

21. After her home burned down, Ms. Doe received income assistance for May and June 2007. At that time, the Ministry exempted Lots A, 2 and 3 so she could try to sell them (see Appellant’s Book of Submissions, Tab 6). It was in May 2007 that Ms. Doe first attempted to sell the Lots.

22. In **May 2007**, Ms. Doe listed all four Lots with Jeff Katz:

- Lot A: listed for \$33,000 (2008 BC Assessment value of \$ 44,400¹)
- Lot B: listed for \$48,000 (2008 BC Assessment value of \$ 44,400)
- Lot 2: listed for \$43,000 (2008 BC Assessment value of \$62,700)
- Lot 3: listed for \$43,000 (2008 BC Assessment value of \$62,700)

(For listing prices, see Appellant's Book of Submissions, Tab 3; for 2008 BC Assessment values see EAAT Appeal Record, pages 30-37)

23. In response to the May 2007 listing, there was little sales activity. Mr. Katz noted:

The location and the layout of the properties make it very hard for any interested buyer. A big portion of the properties is not accessible because the creek is dividing the land and there is no access to the other portion.

Two properties are usually flooded due [to] a culvert onto the corner property and need a big job to make the property usable and ready for sale.

[These] properties will hardly find any buyer and at the actual market condition there may be no buyer at all, where ever [sic] the sale price will be.

There are many properties for sale on the market and there are only a few sales.

(see EAAT Appeal Record, page 24)

24. In **April 2008**, Ms. Doe listed Lot 3 with Moira Reed with the hopes of enticing buyers to look at the other properties. Ms. Reed noted:

This letter is to confirm that your property was listed with me for sale for a period of 203 days and nobody has put an offer forward.

The main reason for that is, [sic] that for most of the year a huge portion of the land is flooded due to a "Highways" channelling water through as culvert onto your property.

(see EAAT Appeal Record, page 29; Appellant's Book of Submissions, Tab 4)

¹ Note: the 2008 BC Assessment values are used because the documents provided by the Ministry and included in the EAAT Appeal Record only go back as far as 2008.

25. Despite Ms. Doe's repeated attempts, she has not been able to sell Lots A, 2 and 3. The Lots are very remote, have no hydro access, and have major drainage problems. The only water access is on Lot A and Ms. Doe uses a hose to get water for her current home. Staff from the Ministry of Forests, Lands and Natural Resource Operations have confirmed that water tends to collect on the Lots and the northern parcels of land are "extremely wet and appear to be of limited value for development."

(See Appellant's Book of Submissions, Tab 5)

26. The Lots cannot be converted into cash because Ms. Doe cannot sell them for a reasonably assessed value. It was impossible for her to sell the Lots and live off the proceeds instead of assistance. As a result, Lots A, 2 and 3 do not fit within the definition of "asset" and should not have impacted Ms. Doe's income assistance eligibility.

(Although not binding, see Appellant's Book of Submissions at TAB 12 for a previous EAAT decision on this topic)

Revised Reconsideration Decision

27. The Ministry's revised reconsideration decision is simply not a reasonable application of the legislated definition "asset". The decision seems to find that, as long as there are no "functional impediments" (presumably this means legal barriers, although it is unclear), the property can be converted into cash, even if the property cannot be converted "immediately."

28. Not only does this interpretation not accord with the plain language interpretation of the definition of "asset", which does require a "legal", "functional" or any other specific type of barrier to converting the property to cash, but it also seems to run afoul of the Ministry's own policy.

29. The Ministry's policy expressly contemplates situations where an applicant/recipient is unable to sell property, including who bears the onus of proving that the property cannot be sold and who makes the final determination.

(see Appellant's Book of Submissions, Tab 11)

30. In addition, Ministry's decision also seems at odds with the clear policy intent of asset and income eligibility thresholds – whenever possible, applicants/recipients should sell assets to support themselves. If they cannot sell the property, it is impossible to use the proceeds to support themselves.

31. Eligibility for income assistance is assessed on a month-by-month basis. The determination of whether property is an asset may change from month-to-month. Income assistance is

about immediate financial need. It stands to reason that the Ministry's statement that "[t]he fact of whether or not sale can be accomplished immediately or will be delayed is not part of the definition of 'asset'" is simply incorrect and is clearly an unreasonable application of the legislation in this case.

32. Such an interpretation would leave applicants/recipients ineligible for assistance because they have assets that they cannot possibly use to support themselves.

Issue II: Even if Lots A, 2 and 3 were saleable, the Ministry could have exempted them

33. Even if the Tribunal finds that Lots A, 2 and 3 were assets as defined under the legislation, the Ministry still had the power to exempt them. Section 11(3)(b) of the *Employment and Assistance Regulation* reads:

(3) *The minister may authorize one or more of the following:*

[...]

(b) *that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.*

(See Appellant's Book of Submissions, Tab 9)

34. It is very clear that, even if the Ministry felt that Lots A, 2 and 3 were saleable and should fall under the definition of "asset", the Ministry still has express power to exempt them. This is evidenced by the fact that the Ministry *did* exempt the properties for the two months Ms. Doe received income assistance in 2007 and she listed them for sale that same month. (She was pursuing other means of support, as the legislation requires.)

(See Appellant's Book of Submission, Tab 6)

35. Although not binding, it is informative that the Tribunal has previously dealt with similar cases where the Ministry failed to consider exempting buildings and acreages from asset calculation. Lots A, 2 and 3 fall under s. 11(3)(b) of the Regulation and could have been exempt from Ms. Doe's asset calculation leaving her eligible for income assistance.

(See Appellant's Book of Submission, Tab 12, 13 and 14)

36. It is particularly concerning that the Ministry failed to consider exempting the Lots in this case. Even if the properties are assets, Ms. Doe did not mislead the Ministry. The Ministry erred by finding her eligible in the first place and is now refusing to consider whether they were exempt and pursuing Ms. Doe for an overpayment.

(See EAAT Appeal Record, page 43)

37. Ms. Doe received assistance for which she understood she was eligible and used it to live in very frugal manner. Then, after a year and a half, she was told that the Ministry made a mistake, she was no longer eligible, and she must repay the income assistance she received despite her very low income. Ms. Doe has been clear that, had she ever known that she would have to repay the assistance she received, she would not have accepted the income assistance in the first place.

(See EAAT Appeal Record, page 26)

38. Given the circumstances, the Ministry's decision to find Ms. Doe ineligible for income assistance from April 2009 to September 2010 was an unreasonable interpretation of the legislation in her circumstances.

Conclusion

39. In summary, it is Ms. Doe's position that the Ministry's reconsideration decision was an unreasonable interpretation of the applicable legislation in her circumstances. Specifically:

- Lots A, 2 and 3 should not fall under the definition of "asset" because they cannot be converted into cash despite Ms. Doe's attempts; and
- Even if Lots A, 2 and 3 qualify as assets because they are saleable, they should have been exempt under s. 11(3)(b) of the *Employment and Assistance Regulation*.

40. As a result, Ms. Doe requests that the Ministry's revised reconsideration decision be rescinded by this Tribunal.

All of which is respectfully submitted.

September 30, 2013.

Perry Mason, representative
for Ms. Doe

THE LAW FOUNDATION OF BRITISH COLUMBIA

BEST PRACTICES FOR ADVOCATES November 2012

This document is intended to serve as a guide to advocates funded by the Law Foundation as to what practices and level of conduct are expected of them. The document does not deal with why these are the best practices to be followed, nor does it explain how to implement these practices. Rather it is meant to provide a touchstone regarding the professional fulfillment of the duties of an advocate. If an advocate does not understand why a particular best practice exists or how to meet the standard expected, they should follow up with their supervisor at work, their supervising lawyer or their program director at the Law Foundation for clarification.

Client Relationships and Professional Responsibility

1. Maintain strict confidentiality regarding all information with respect to a client's file
2. Avoid any conflict of interest regarding a client's file. If there are any questions about a possible conflict of interest, your supervising lawyer should be contacted.
3. Treat all clients with respect and courtesy
4. Clients are entitled to have their files handled in a competent, thorough and timely manner
5. Communicate clearly with clients regarding what you can do for them, and what you cannot do for them, in order to manage client expectations and establish boundaries for your professional well being
6. For every full representation file provide the client with a retainer letter setting out what you will be doing, and what you will not be doing, for that client
7. Respond promptly to any communication from clients
8. Keep clients regularly updated on the status of their file
9. Make use of the Community Advocate Support Line lawyer
10. Know what other resources there are, both within your community and elsewhere, to refer clients to
11. Maintain a collection of current Public Legal Education and Information materials to provide to clients

Opposing Parties

1. Treat all opposing parties with respect and courtesy
2. Respond promptly to any communication from opposing parties

Tribunals and Courts

1. Treat all administrative tribunal members and judges with respect and courtesy
2. Ensure that all procedural requirements of any tribunal or court are met
3. Respond promptly to any communication from tribunals, courts or other government agencies

File Management

1. Utilize the Foundation's key precedent documents, or equivalent documents, for full representation files (intake form, file opening checklist, retainer letters, authorizations to release information, consent for disclosure of information and waiver of confidentiality, file closing form)
2. Any consent for disclosure of information form used must include permission for Law Foundation staff or their agents to review the file
3. Maintain a formalized intake process (what is the process once people contact the office, what happens when they arrive, what are the income criteria, what paperwork is to be completed, what happens at the end of the initial interview)
4. Maintain a bring forward system for all open client files
5. Maintain a conflicts check system for all new clients
6. Maintain a system for identifying and monitoring any limitation periods
7. Have file contents organized chronologically (and in accordance with organization's protocol)
8. Keep and date notes of all substantive conversations and meetings with respect to client files, in particular information received from and advice given to clients
9. Maintain a system for work load management (what types of cases are taken, merit assessment, time allocation parameters)

10. Maintain a system for storing open and closed client files securely and separately
11. Maintain a central file index with a list of all open files and all closed files (containing information such as client name, address, legal matter, file number, date file opened, date file closed)
12. Maintain a list of all open files
13. Ensure the safekeeping of all original documents
14. Maintain a formalized file closing process (criteria for when to close a file, completion of a file closing form, review file with supervising lawyer, file closing letter to client, return of any original documents to client, physical storage of closed files)

Legal Supervision

1. Be familiar with the Foundation's Legal Supervision Requirements, which set out a supervising lawyer's responsibilities in supervising advocates. Bear in mind that the Foundation expects that each advocate should be supervised according to his or her level of competence and experience in each area of law. It is for the supervising lawyer to assess an advocate's competence and experience in each area of law, and to then determine the level of supervision required. A supervising lawyer is responsible for the supervision of an advocate's work in regards to substantive and procedural legal matters
2. Respond promptly to any communication from your supervising lawyer
3. Hold regularly scheduled meetings with your supervising lawyer, and at other times as needed
4. If you think you should ask your supervising lawyer about something, no matter how small – ask

Professional Education

1. Participate in ongoing professional education (Provincial Training Conference, the Foundation's Education and Training Fund)
2. Participate in PovNet
3. Participate in regional calls with the Ministry of Social Development or meetings of groups such as the Front Line Advocacy Workers, as appropriate
4. Keep current on relevant legislation

Law Foundation

1. Respond promptly to any communication from the Foundation
2. Assist with the provision of activity reports to the Foundation, as required by the Foundation's grant
3. Assist with the provision of monthly statistics to the Foundation, as required by the Foundation's grant
4. Be familiar with the Foundation's Advocacy Program Guidelines
5. Comply with any conditions attached to the Foundation's grant

Date: _____

NAME OF ORGANIZATION
ADDRESS

INTAKE FORM

Last Name: _____

Middle Name: _____

First Name: _____

Phone-Home: _____

Phone-Work: _____

Phone-Cell: _____

E-mail Address: _____

Birth date: _____

Birthplace: _____

Marital Status: _____

Other names you are known by: _____

BC Medical Card #: _____

Driver's License #: _____

S.I.N.: _____

Status Card #: _____

If you are of Native Ancestry, please indicate the following:

- Status
- Non-Status
- Métis/Inuit
- Off Reserve
- On Reserve

Band Name: _____

Nation/Ancestry: _____

If applicable, name the opposing parties in this matter and their relationship to you:

If applicable, name the opposing lawyer or advocate: _____

File Opening Checklist

- Intake Form Completed
- Conflict Check Completed
- Limitation Dates Checked
- Retainer Letter Sent
- Authorizations to Release Information to an Advocate Obtained
- Consent for Disclosure of Information and Waiver of Confidentiality

NAME OF ORGANIZATION
ADDRESS

Date:

CLIENT'S NAME
ADDRESS

PERSONAL AND CONFIDENTIAL

Dear **CLIENT**:

Re: **DESCRIPTION OF LEGAL MATTER**

You have asked the **NAME OF ORGANIZATION** to assist you with the above matter. This letter sets out the terms and conditions for our assistance to you.

YOUR LEGAL PROBLEM

Describe why the client has come to you for legal assistance

WHAT WE HAVE AGREED TO DO

1.

WHAT YOU HAVE AGREED TO DO

You have agreed to do as much as possible to assist us with your own case. This will include:

1. informing us promptly of any change of address or other contact information;
2. informing us promptly of any new facts or changes in circumstances that may affect your case; and
3. giving us copies of all documents in your possession, or that you may be able to obtain, that may be necessary or helpful for your case.

CONFIDENTIALITY

NAME OF ORGANIZATION will keep your case confidential unless you authorize us to release information. However, you specifically authorize us to do the following:

1. To disclose to your co-petitioners, if any, all aspects of the case as are necessary in order properly pursue the case.

2. To discuss within our office, or with other appropriate advocacy services, details of all aspects of your case as may be necessary for the proper conduct of your case.
3. If this is a case which raises an issue of concern to low income people throughout the province, to discuss the case with other lawyers, advocates and community groups.

FILE

Your file and all its contents belong to **NAME OF ORGANIZATION**. Any papers or documents that you give us will be returned to you at the conclusion of the case, if requested. However, the rest of your file belongs to **NAME OF ORGANIZATION** and will remain with us.

WITHDRAWAL BY YOU

You are free to end our services for any reason and at any time by writing us a letter to that effect.

NAME OF ORGANIZATION WITHDRAWAL

We also have the right to terminate our services at any time if we have good reason which includes, but is not limited to, the following:

1. You fail to make full disclosure of all facts and all documents (both for and against you) relating to your problem;
2. You fail to keep us informed of your current contact information;
3. We are of the opinion that your case no longer has a reasonable likelihood of success;
4. You fail to co-operate with us regarding any reasonable request or to accept our advise;
5. You have misrepresented facts or failed to disclose important facts;
6. You ask us to do something unethical or illegal;
7. If there are threats, inappropriate language or behavior directed at advocates, staff, or other agencies including government staff or agencies.

If there is anything in this letter that you do not understand or if you have any questions about the services we will be providing you, please contact us.

Yours truly,

ADVOCATE'S NAME
NAME OF ORGANIZATION

NAME OF ORGANIZATION
ADDRESS

PERSONAL AND CONFIDENTIAL

Date:

CLIENT ADDRESS:

Dear CLIENT:

Re: DESCRIPTION OF LEGAL MATTER

As we discussed during our meeting, before we could agree to assist you in this matter, we had to investigate whether this assistance could adversely affect existing or former clients' interests or if there might be some other reason that we would be unable to adequately represent your interests.

We have performed a conflict of interest check and found that we do indeed have a conflict of interest in this case. Unfortunately, we can therefore not assist you.

Please be aware that whatever claim you have may be barred by the passage of time. Since time limitations may be critical in your case, we recommend that you immediately contact a lawyer or another agency for assistance regarding this matter.

Yours truly,

NAME OF ORGANIZATION
ADDRESS

PERSONAL AND CONFIDENTIAL

Date:

CLIENT ADDRESS:

Dear CLIENT:

Re: DESCRIPTION OF LEGAL MATTER

After considering the facts and legal issues involved in your case, we regret that we cannot provide further assistance. As we discussed in our meeting of

_____:

SET OUT REASONS YOU CANNOT ASSIST THIS PERSON WITH THEIR PROBLEM

- 1.
- 2.
- 3.

This letter is not intended to be an opinion about the merits of your case. In declining to assist you, we are not expressing an opinion as to whether you should take further action in this matter.

You should be aware that there may be strict time limitations within which you must act in order to protect your rights. Failure to advance your case within the required time may mean that you could be barred forever from pursuing your case. Therefore, you should immediately contact a lawyer or another agency to obtain advice about any deadlines and to obtain representation. We cannot be responsible for your meeting any outstanding deadlines or limitation dates.

Yours truly,

**NAME OF ORGANIZATION
ADDRESS**

AUTHORIZATION AND WAIVER OF CONFIDENTIALITY

To: **NAME AND ADDRESS OF ORGANIZATION OR INDIVIDUAL YOU WANT
TO OBTAIN INFORMATION FROM**

This is to notify you that I, _____
do hereby authorize the person(s)/organization listed below to act as my
representative.

You are hereby authorized to release any and all information regarding my case,
including that deemed confidential, as may be requested.

My authorized representative is: **NAME OF ADVOCATE** _____

Signature: _____

Date: _____

S.I.N.: _____

Birthdate: _____

NAME OF ORGANIZATION
ADDRESS

To Dr. NAME
ADDRESS

MEDICAL AUTHORIZATION

You are hereby authorized to provide NAME OF ADVOCATE with any and all information and opinions that they may require regarding my present or past physical condition and treatment, together with your prognosis, and to allow them to see or copy any x-rays, records, or other documents or instruments that you may have regarding my past or present condition or treatment.

You are not to disclose any information concerning myself to any persons other than NAME OF ADVOCATE, without written authority from me to do so.

All prior authorizations of disclosure are hereby cancelled. I hereby waive any privilege I have to the said information.

Name: _____

Signature: _____

Date: _____

S.I.N.: _____

Birthdate: _____

NAME OF ORGANIZATION
ADDRESS

CONSENT FOR DISCLOSURE OF INFORMATION AND WAIVER OF
CONFIDENTIALITY

I give my permission to **NAME OF ORGANIZATION** for my file to be reviewed by designated employees of **NAME OF ORGANIZATION** on a need to know basis.

I give my permission to **NAME OF ORGANIZATION** to discuss and disclose all relevant information regarding my file with any organization or individual deemed necessary by **NAME OF ORGANIZATION** for the proper conduct of my file.

I understand that **NAME OF ORGANIZATION** receives funding from the Law Foundation of British Columbia. In order for the Law Foundation to evaluate the effectiveness of the advocacy programs it funds, Law Foundation staff or their agents may request to review your file. This review would be solely to evaluate the services **NAME OF ORGANIZATION** provides and information would be kept in the strictest confidence. I give my permission to **NAME OF ORGANIZATION** to allow Law Foundation staff or their agents to review my file.

Name: _____

Signature: _____

Date: _____

Date: _____

NAME OF ORGANIZATION

Primary legal issue:

- | | |
|--|---|
| <input type="checkbox"/> Criminal | <input type="checkbox"/> Immigration / Refugee |
| <input type="checkbox"/> Debt / Consumer | <input type="checkbox"/> Income security (e.g. Employment assistance, EI, CPP, OAP, or WCB) |
| <input type="checkbox"/> Employment (Employment Standards) | <input type="checkbox"/> Tax |
| <input type="checkbox"/> Family | <input type="checkbox"/> Other (Specify): _____ |
| <input type="checkbox"/> Wills / Estates | |
| <input type="checkbox"/> Housing / Landlord / Tenant | |

1. Briefly describe the client's problem: _____

2. What did the client want to have happen? _____

3. What did the client actually get? _____

4. For better or for worse, has the client's problem finished or reached a conclusion? Please explain. _____



nelson
CARES
society



The Advocacy Centre

250.352.5777
fax: 250.352.5723

521 vernon st
nelson BC V1L 4E9

www.advocacycentre.org
advocacycentre@nelsoncares.ca

INFORMATION FORM

Date _____

Client information:

Name _____

Mailing Address _____

Phone _____ Message OK? Yes No

Email _____

Case type:

Income assistance Disability Family court Child protection

Assault victim Housing Human rights

Other _____

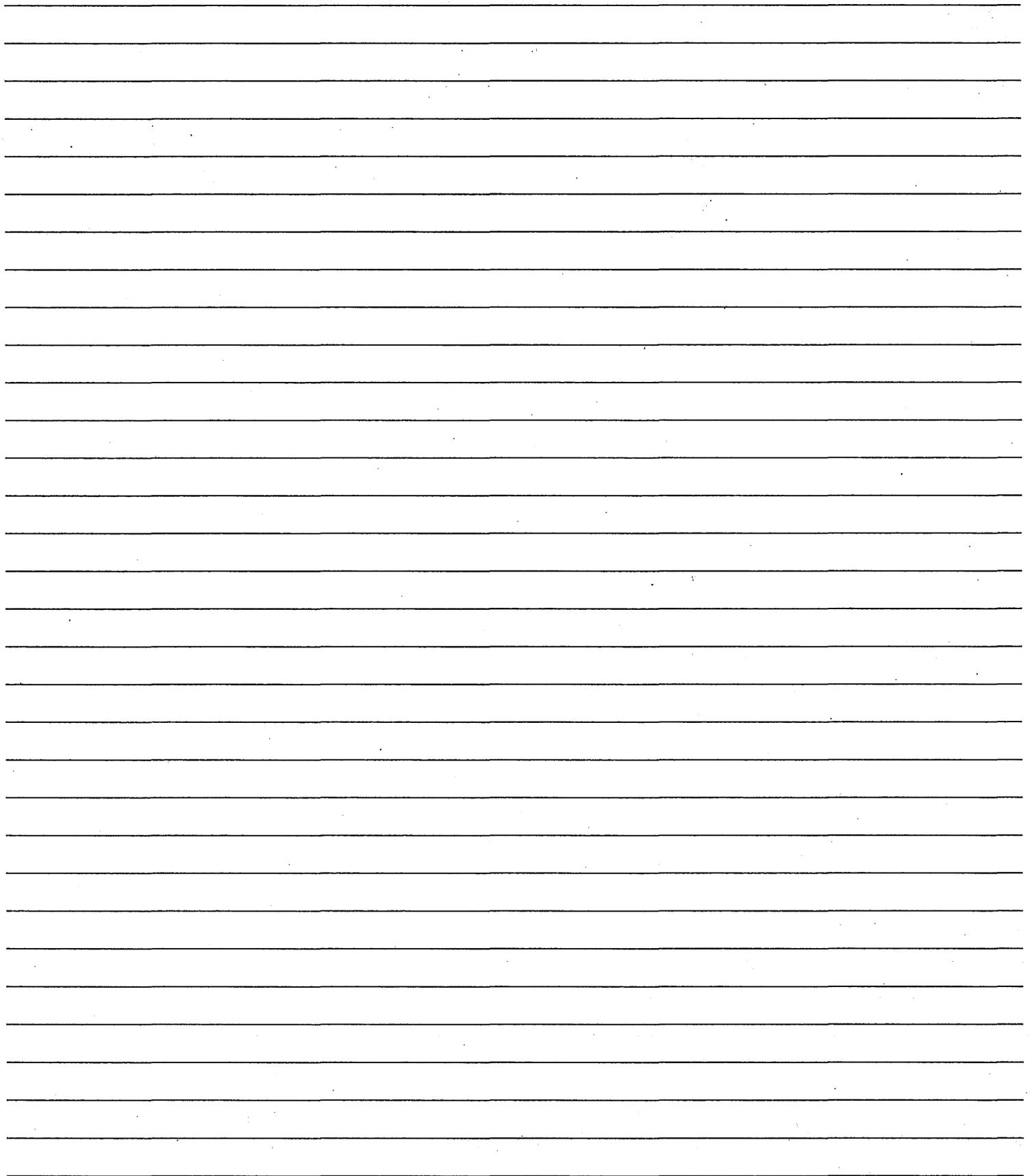
Other parties:

Advocate has agreed to:

Discussed confidentiality? Yes No

Conflict check? Yes No

Entered in database? Yes No





The Kettle Friendship Society

1725 Venables Street
Vancouver, BC V5L 2H3
T: 604.251.2801
F: 604.251.6354
E: admin@thekettle.ca
W: thekettle.ca

*Supporting people
living with mental illness
to lead healthier lives.*

Client Name: _____

Address: _____

Phone

Number: _____

Email: _____

Thank you for coming to see us! Before we begin working with you, there are some important points you need to know:

- 1) What you tell your advocate is private. Your advocate will not discuss your case with anyone outside of the Kettle (except their supervising lawyer) unless you give permission or the advocate is legally required to do so.
- 2) If the Kettle discovers that for ethical reasons, such as a conflict of interest with one of our other clients, we cannot help you, we will let you know as soon as possible.

These are some important things you must do as a part of working with the Kettle Advocacy Service. If you do not do these things, we may not be able to help you:

- 1) You must tell your advocate the truth and give the advocate all the information they need. You must also give them any papers or decisions about your case right away.
- 2) You must treat everyone at the Kettle with respect.
- 3) You must keep your contact information up to date, or give the advocate some other way to contact you quickly.
- 4) If your advocate asks you to do something to help with your file (for example getting information or filling out a form), you must do it in a timely manner. This includes returning our phone calls promptly.
- 5) If there are any expenses that must be paid (for example, filing fees), you must pay them or get the fees waived. The Kettle cannot pay any expenses for you.

If you have any questions or concerns, please let your advocate know.



THIS PAGE TO BE FILED OUT WITH YOUR ADVOCATE

Brief description of the problem:

This is what the Kettle can do for you. Unless we agree otherwise, the Kettle **cannot** help you with anything except what is listed here:

The Kettle
Friendship Society

1725 Venables Street
Vancouver, BC V5L 2H3
T: 604.251.2801
F: 604.251.6354
E: admin@thekettle.ca
W: thekettle.ca

*Supporting people
living with mental illness
to lead healthier lives.*

These are some things you need to remember to do:

Sincerely,

Advocate's Name: _____

Phone Number: _____

PERSONAL & CONFIDENTIAL



Reply to: Amber Prince, Legal Advocate
Direct: 604 331 1407 ext 105
E: legaladvocate@atira.bc.ca

T 604 331 1407
F 604 688 1799
E office@atira.bc.ca

October 24, 2012

101 East Cordova St.
Vancouver, BC V6A 1K7

Attention:

Vancouver, BC.

Delivered in hand & via email

Dear,

**Re: Your Application for Dispute Resolution with the Residential
Tenancy Branch (File #:)**

You have asked me, in my capacity as Legal Advocate with Atira Women's Resource Society (Atira), to assist you with the above matter. This letter confirms the level of assistance I can provide in this matter, and outlines your rights and responsibilities as well as other important information as we work on your case together.

YOUR LEGAL PROBLEM

You have asked for my assistance with preparing for and attending your upcoming Residential Tenancy Branch hearing set for:

IMPORTANT TIME LIMITS

You should be aware that your evidence in this case must be submitted by:

Should you disagree with the decision of the Residential Tenancy Branch, you have a right to appeal that decision to the BC Supreme Court within 60 days of the date of the Residential Tenancy Branch decision. In the event you are unsuccessful in your Residential Tenancy Branch hearing, I recommend you seek the assistance of a lawyer as soon as possible to determine whether you can appeal the decision.

WHAT I HAVE AGREED TO DO

I have agreed to assist you with the following:

1. To assist you with preparing a submission to the Residential Tenancy Branch including applicable law and evidence per the rules and requirements set out by the Residential Tenancy Branch;
2. to provide legal information, general guidance and advice on this matter, in my capacity as a Legal Advocate;
3. to attend, as your legal advocate, at the Residential Tenancy Branch hearing set for November 1, 2012, and make submissions at the hearing on your behalf as permitted by the Dispute Resolution Officer at the hearing; and
4. to debrief the hearing with you and inform you of any applicable next steps.
5. My legal advocacy services are funded by the Law Foundation of British Columbia for the purpose of providing advocacy for low-income / marginalized women. Therefore, Atira's legal advocacy services are provided at no charge.
6. I will assist with your case in my capacity as a legal advocate and to the best of my ability. However, it is impossible to predict or guarantee any particular outcome in your case.

YOUR ROLE & NEXT STEPS

It is important that you also provide me with any necessary / relevant information about your case. Here is what I will need from you to continue to assist you to the best of my abilities:

1. That you inform Atira as soon as possible of any change of address or other contact information;
2. that you inform me promptly of any new facts or changes in circumstances that may affect your case; and
3. that you provide me with copies of all documents in your possession, or that you may be able to obtain, that may be necessary or helpful for your case.
4. That you provide me with specific information, including:
 - (a) Your tenancy agreement with the landlord;
 - (b) The amount of the security deposit you paid and any proof of payment

- (c) Details and any proof that you served the landlord with your Application for Dispute Resolution.
- (d) All photographic evidence to support your Residential Tenancy Branch claim;
- (e) Names and contact information of all potential witnesses.
- (f) Any other information you believe is relevant to your Residential Tenancy Branch matter.

CONFIDENTIALITY

Atira will keep your case confidential unless you authorize us to release information. However, please be aware that:

1. Your case may be discussed within Atira, only to the extent necessary, for the proper conduct of your case.
2. Your case may be discussed with a lawyer, only to the extent necessary, for the purpose of obtaining legal advice on your case.
3. Aspects of your case may be discussed in a non-identifying manner with other lawyers, advocates and community groups, if your case raises important legal principles or issues.
4. Non-identifying information about your case may be recorded, as required, for statistical purposes.
5. There is a small possibility that information in your file could be subpoenaed to court. In this unlikely circumstance Atira would oppose the release of your file to court. There is law to support Atira's position but we cannot guarantee any particular outcome should your file information be subpoenaed to court.
6. In the event you disclose information that a child is in danger or that you are considering harming yourself or another person, Atira could be required by law to release that information without your consent.

FILE

Your file and all its contents in Atira's possession will be housed securely by Atira. Copies of any papers or documents that belong to you and are in your file will be provided to you within a reasonable time period upon your request.

Please note that we may be required by law to retain a copy of some of your file contents for a certain time period. Certain documents such as a legal advocate's own notes belong to Atira.

WITHDRAWAL BY YOU

You are free to end my legal advocacy services, or Atira's services generally, for any reason and at any time by writing us a letter to that effect.

ATIRA WOMEN'S RESOURCE SOCIETY WITHDRAWAL

We also have the right to withdraw from your case for good reason. Those reasons include:

1. We determine that our continued involvement in your case will place us in a conflict of interest.
2. It is determined that we are not competent to handle your case or it is no longer within our jurisdiction.
3. You take a position which is solely to harass or maliciously injure another
4. You do not keep us informed of your current contact information;
5. You do not provide adequate instructions in order to proceed with your matter.
6. You do not accept and act on our advice on a significant issue;
7. You have misrepresented facts or failed to disclose important facts;
8. You ask us to do something unethical or illegal;
9. There is a serious loss of confidence between you and myself and/or Atira.

If there is anything in this letter that you do not understand or if you have any questions about the legal advocacy services I can provide please contact me.

Sincerely,

Amber Prince
Legal Advocate



The Advocacy Centre

521 Vernon St.
Nelson, B.C.
V1L 4E9

ph: (250) 352-5777

fax: (250) 352-5723

Authorization and Waiver of Confidentiality

TO: _____

DATE: _____

RE. FILE #: _____
(if applicable)

This is to notify you that I, _____
(print name)
authorize the person listed below to act as my representative.

I authorize you to release any and all information regarding my case that my representative or another staff member of the Advocacy Centre requests. This includes any information that might be considered confidential.

My authorized representative is: _____

Signed: _____

Expiry date: _____



Advocate: _____

Client: _____

Client gender: Female Male Other

Community: _____

Primary issue: Income Security (includes CPP, WCB, Welfare, Disability, EI)
 Housing (includes Residential Tenancy)
 Child protection
 Other _____

Debt
 Family
 Victim assistance

Outcomes

1. Briefly describe the client's problem _____

2. What did the client want to have happen? _____

3. What did the advocate agree to assist the client with? _____

4. What did the client actually get? _____

5. For better or for worse, has the client's problem finished or reached a conclusion?
a) Yes, completely
b) Only partly, and no further resolution likely
c) No, not at all, and no resolution likely
d) Original problem no longer needs resolution because situation has changed, client dropped matter or changed mind (without coercion)
e) Don't know

6. If answered a or b to question #4, did client get what they wanted or hoped to achieve?
a) Yes, completely
b) Only partially
c) No, not at all

Ownership of File Contents

The Client is entitled to:

1. originals of all documents existing before they retained the advocate (unless belonging to a third party)
2. originals of letters by the advocate to the client
3. originals of letters sent by third parties to the advocate
4. any expert opinions and medical reports
5. copies of letters sent by the client to the advocate
6. copies of letters sent by the advocate to third parties
7. notes of conversations with witnesses (if the hearing has not been held)
8. memorandum of law
9. transcripts of any proceedings held
10. all legal documents prepared in relation to the file

The Advocate is entitled to:

1. notes of conversations (other than with witnesses, if the hearing has not been held)
2. notes on evidence and notes of submissions to courts and tribunals
3. inter-office memos
4. routine forms such as diary, time or BF forms
5. originals of letters sent by the client to the advocate
6. authorizations and instructions given to the advocate by the client

The documents the client is entitled to must be provided to the client upon demand. The advocate is still entitled to keep copies for their file. The documents the advocate is entitled to do not have to be provided to the client.

What to do with Closed Files

GENERAL CONSIDERATIONS

Advocates are responsible for maintaining the safety and confidentiality of their client's files and should take all reasonable steps to ensure the privacy and safekeeping of client's information. The duty of confidentiality survives the professional relationship and continues indefinitely after the advocate has ceased to act for the client.

Many of the documents in a file belong to the client and it is the advocate's responsibility to ensure these are returned to the client when the file is closed.

When a file is closed determine a destruction date. While some documents in the file will have been disposed of upon closing the file, the destruction date is the ultimate date upon which the balance of the file will be destroyed.

STORAGE OF CLOSED FILES

Closed files should be stored securely, separately from open files. Unused office space is an option for the storage of closed files. Since client confidentiality is a concern, closed files should be stored in areas where only staff have access.

It is advisable to store files at the office for at least two years after closing, because this is the most likely time when access may be needed.

If, after storing closed files on site for two years, space becomes an issue, then renting secure off-site storage space may be necessary.

HOW LONG TO RETAIN CLOSED FILES

There is no universal agreement on how long to retain files. Each organization should develop their own policy on the retention and destruction of files, in consultation with the supervising lawyer for the advocacy program.

As a general guideline, files should be retained for a period of six years after they are closed. This general guideline is taken from the Law Society of BC document *Closed Files – Retention and Disposition*, which is available on their website. That document provides more specifics on retention of closed files, based on area of law, beginning at page 28.

DESTRUCTION OF CLOSED FILES

When it is time to destroy closed files, confidentiality remains a concern. It is not acceptable to throw files in the trash or into a dumpster.

Burning files may be an option, if there is access to a facility that can ensure the complete destruction of all the file contents.

The main destruction method is paper shredding. An organization may choose to purchase or lease its own paper shredder.

Alternatively, organizations may hire a paper shredding company. Many such companies will travel anywhere in British Columbia to shred and then recycle the material. Companies charge by the weight or the volume of the material to be shredded, with some variation depending on location in the province.

Document shredding is also available from some of the off-site file storage businesses.

A more comprehensive examination of the retention and disposition of closed files can be found in the Law Society of BC document *Closed Files – Retention and Disposition*, June 2013

Available: <http://www.lawsociety.bc.ca/docs/practice/resources/ClosedFiles.pdf>

5 File Management Tips

1. Colour code files: use different coloured file folders for each of the areas of law you work in. For example, all family files would be pink, all criminal files green, all PWD files red, etc.

2. Create a numbering system: you need to keep track of all the files you have open, and all the files you have ever had open, but which are now closed. You can simply start with "001", for your first file, and then each subsequently opened file would take the next number. Another method is to have a numbering system within each area of law you work in. For example, all family files (which all have the same colour file folder) would begin with "10". The first family file would be "10-001" and so on.

3. Separate open files from closed files: You need a central file cabinet in which you keep all the files that are currently open and which you are working on. You also need to have a separate file cabinet in which you store all your closed files.

4. Create a central file index: This can be on paper or computer or both. It will have two parts: a list of all your open files, and a list of all your closed files. The list should contain basic information such as client name, address, legal matter, file number, date file opened and date file closed.

5. Same client, new matter, new file: if a client you have an open file for comes to you with another problem – open a new file for the new matter. Even if the two problems are connected, as they often will be, you should have a separate file for each matter you are assisting a client with.

ORGANIZE:

Using RSS Feeds

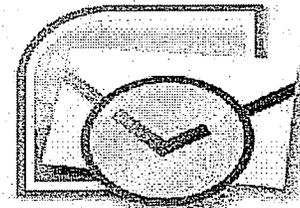


COURTHOUSE
LIBRARIES | BC

www.courthouselibrary.ca

Using RSS Feeds

Adding RSS Feeds to Microsoft Office Outlook

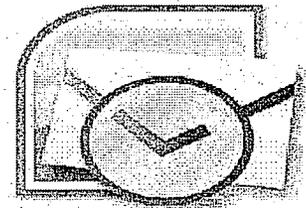


RSS Feeds: MS Office

Adding RSS Feeds to Microsoft Office Outlook

Overview

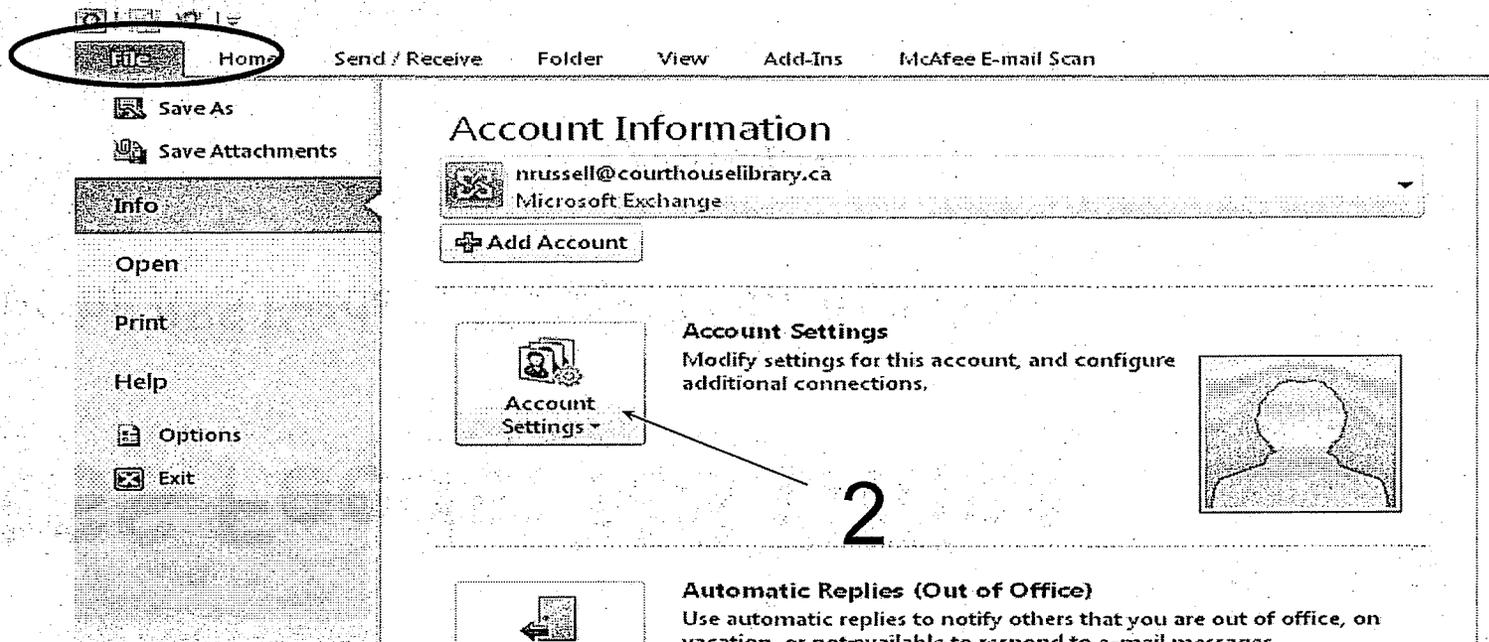
1. File Tab
2. Account Settings
3. click "Account Settings"
4. On RSS Feeds tab,
5. click "New"
6. In box, paste URL of RSS Feed



Adding RSS Feeds: MS Office

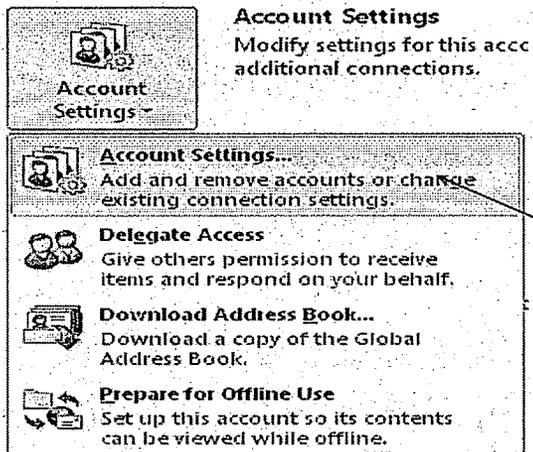
Click "File" tab and select "Account Settings"

1



Adding RSS Feeds: MS Office

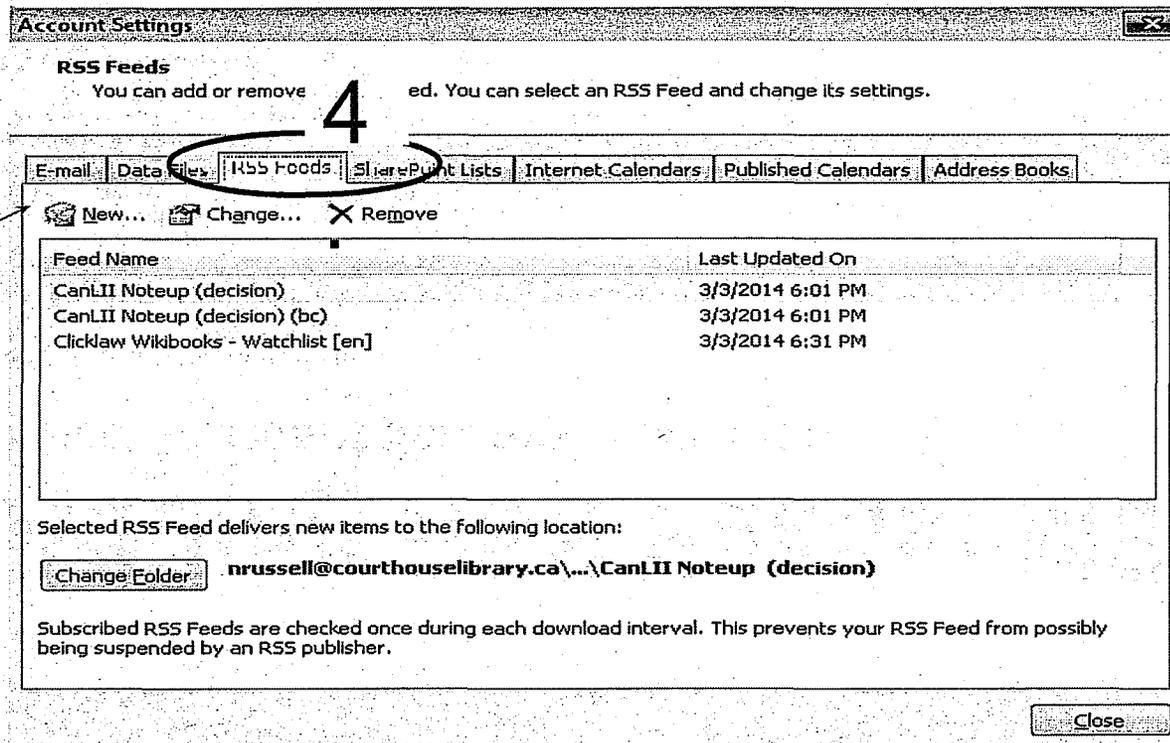
Select "Account Settings" once more



3

Adding RSS Feeds: MS Office

Click "RSS Feeds" tab, then click "New"



Adding RSS Feeds: MS Office

Paste the RSS Feed into the field...

6



New RSS Feed

Enter the location of the RSS Feed you want to add to Outlook:

Example: <http://www.example.com/feed/main.xml>

Add Cancel

<http://news.gc.ca/web/fd-en.do?mthd=dpt&ft=atom&ctr.dpt1D=6681>

Organizing Feeds: MS Office

Organizing RSS Feeds for case files

Overview

1. Change feed name
2. Click “Change Folder”
3. Select destination
4. Click “New Folder”
5. Name new folder
6. New RSS posts appear as unread messages

Organizing Feeds: MS Office

Change name and destination folder

1

RSS Feed Options

Use the choices below to configure options for this RSS Feed.

General

Feed Name: DOJ NEWS

Channel Name: Canada News Centre - Justice Canada

Location: <http://news.gc.ca/web/fd-en.do?mthd=dpt&ft=atom&crtr.dpt1D=6681>

Description: Canada News Centre

Delivery Location

Items from this RSS Feed will be delivered to the following location:

`nrussell@courthouselibrary.ca\...\Canada News Centre - Just`

Downloads

Automatically download enclosures for this RSS Feed

Download the full article as an .html attachment

Update Limit

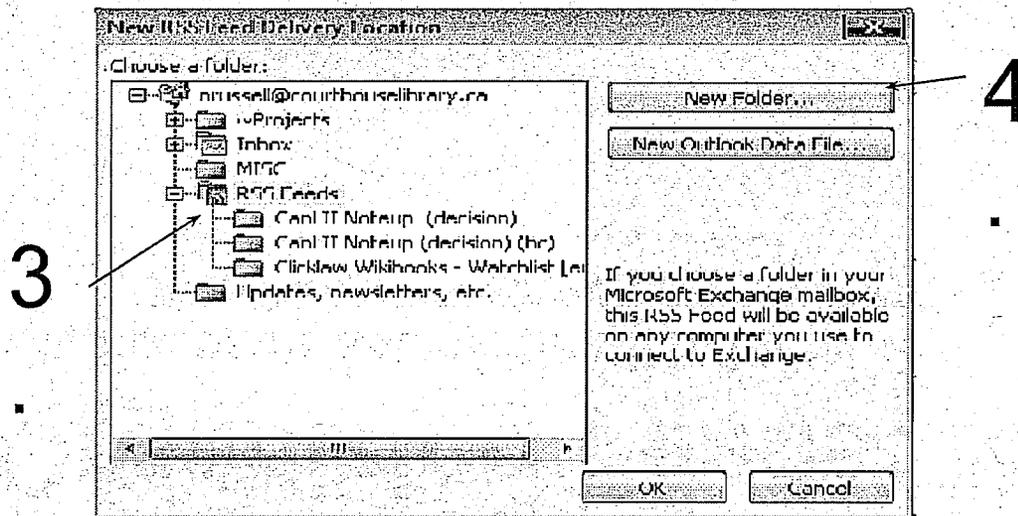
Use the publisher update recommendation. Send/Receive groups do not update more frequently than the recommended limit to prevent your RSS Feed from being suspended by the content provider.

Current provider limit: Not published.

2

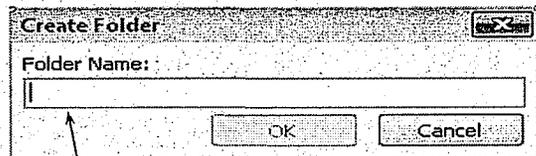
Organizing Feeds: MS Office

Indicate location and click “New Folder”

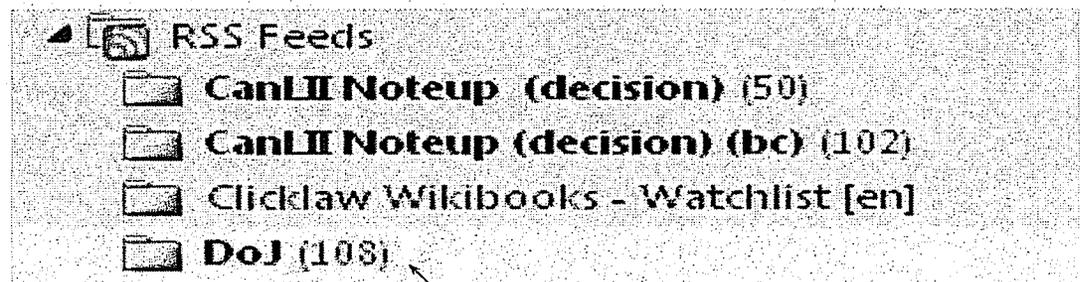


Organizing Feeds: MS Office

Name folder — view it populate with new posts from the RSS feed as though it were an inbox



DoJ
5



6

Legal Research Tips: the Fast and the Free

Your Cheatsheet

1	CanLII, how I love you....	<p>AND, OR, NOT /s: same sentence /p: same paragraph /5: within 5 words (substitute any number) *: wild card (eg: employ* = employment, employer, employed, etc) Don't forget about:</p> <ul style="list-style-type: none"> - statute features like note ups, associated regs and compare - secondary sources - great filters
2	Clicklaw the Site	<p>Great organizations, great materials Use it for:</p> <ul style="list-style-type: none"> - efficient guides - forms - multilingual features - HelpMap
3	Clicklaw the Wikis	<p>Incredible books, incredibly free</p> <ul style="list-style-type: none"> - scan, keyword search, check back often
4	Google Professionally	<p>Use your filters site:courthouselibrary.ca = Site/domain search filetype:pdf = Filetype search intitle:poverty law = search specific to titles Define, calculate, convert canlii + name of act=super shortcut</p>
5	Find those law blogs	<p>http://blog.clicklaw.bc.ca/ http://www.povnet.org/blogs www.lawblogs.ca www.mondaq.com</p>
6	RSS doing your work	<p>Get a reader then subscribe, read, repeat</p>

Practice Questions for CanLII

Scenario 1

You are helping a client who couldn't access services at a local business because it was not wheelchair friendly. You have been told that there was a major case coming out of Saskatchewan where an employee of a movie theatre told a man that he could only sit at the very front of the theatre because of his wheelchair.

You would like to find this case. You then want to see if any judges in BC have ever talked about this case.

Scenario 2

A woman comes in and wants to read about family custody cases. She says that she specifically wants to know about cases that have talked about "parental alienation" from the last two years in British Columbia.

Scenario 3

A man comes in and explains that he wants to research interest rates charged by pay day loan places. In particular, he has heard that section 347 of the Criminal Code says that some interest rates are criminal. He would like to read that section and then read cases from BC that have dealt with that section, particularly as they relate to pay day loan businesses.



52% of all sexual assaults occur where victims live

LINK BETWEEN HOUSING & SEXUAL VIOLENCE

Sexual violence can jeopardize a person's housing. Lack of housing or inadequate shelter can increase the risk for sexual violence. Nearly 10% of women and 8% men who experienced housing insecurity in the past year had a higher prevalence of intimate partner violence.

RELOCATION



71%

of victims wanted to move after being sexually assaulted by their landlords, but could not afford to break a lease.

Nearly 80%

of victims living in public housing wanted to relocate because the perpetrator was nearby, but couldn't because of a lack of funds and housing options.

VICTIMIZATION OF INDIVIDUALS WHO ARE HOMELESS OR MARGINALLY HOUSED

VICTIMS OF PHYSICAL OR SEXUAL VIOLENCE

58% Of homeless LGBT youth

32% Of homeless women

27% Of homeless men

24% Of homeless youth witness sexual assaults

REASONS WHY YOUTH LEAVE THEIR HOMES

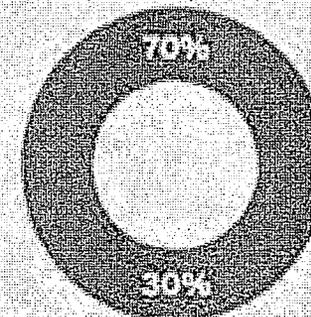
Being sexually abused at home:

61% Girls
16% Boys

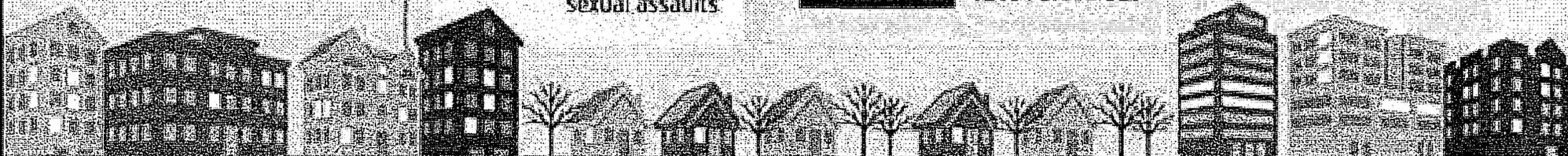
Many homeless/run away LGBT youth leave after being rejected because of their gender identity and/or sexual orientation:

46% Run away
43% Forced out

COMMERCIAL SEXUAL EXPLOITATION VICTIMS



70% Youth-aged victims living on the streets
30% Youth-aged victims living in shelters



SEXUAL VIOLENCE

in

intimate partner relationships

Did you know that...

Sexual assault can happen between spouses and partners. Just because you are married, in a relationship with someone, or have had sex with someone previously, does not entitle them to sexual activity that you do not consent to.

In fact...

- One third to one half of battered women are sexually assaulted at least once by their partners.
- Intimate partner violence accounts for nearly 25% of all sexual assaults.
- 10-14% of married women experience sexual violence within their relationships.
- Two-thirds of partners in intimate relationships were sexually assaulted by the time they were 25.

No one has the right to force or coerce us to do anything with our bodies that we are unwilling or do not desire to engage in. Being in an intimate relationship does not give our partners the right to expect or demand sex or sexual acts from us. None of us deserve to be abused and/or degraded in this manner and we are not alone.

Did you know that...

there is help available if you have experienced violence in an intimate relationship.

Did you know that...

it is your right to be given accurate, timely, and thorough information regarding your options.

There is help!

WAVAW can support you. Our free services include: community referrals, transportation to and from Vancouver General Hospital for the Sexual Assault Support services, 24 hour Crisis Line, One to one counselling, support groups, aboriginal outreach and counselling, and a victim service team to help with legal forms, police reporting, and court support. For more information, contact our office: 604-255-6228 or visit our website at www.wavaw.ca



women against violence against women

Rape Crisis Centre
2405 Pine St.
PO Box 46851 Station D
Vancouver, BC V6J 5M4

24hr CRISIS LINE:
604 255 6344
1 877 392 7583

What is sexual violence?

Sexual violence can include:

- Not giving consent to sex or sexual acts, including touching, kissing, or intercourse
- Unwanted sex or sexual touching while sleeping
- Use of coercion
- Verbal threats to engage in intercourse or perform specific sexual acts
- Physical violence during sex or sexual acts
- Use of a weapon to force sex or sexual acts

Sexual violence happens in all kinds of intimate relationships.

Sexual violence can occur regardless of age, social class, race, ethnicity, and sexual orientation. Women who live with a partner who is physically violent may be at a greater risk for sexual violence.

A history of sexual violence in intimate relationships and the law...

Historically, in many societies around the world, it has been acceptable for men to force their wives to have sex against their will. Over time, this has been perpetuated by laws stating that, once married, a woman does not have the right to refuse sex with her husband. In 1983, Canada repealed these laws and removed spousal immunity from legislation relating to rape. It is now possible in Canada for partners/spouses to be charged with sexual assault. Sexual assault is always a crime.

Know your rights...

The importance of having accurate, timely, and thorough information regarding your options is necessary due to the risk that you may encounter in an abusive relationship. You have the right to medical attention. You have the right to a safe place to live. You have the right to report to the police. You have the right to a support person.

If you are in a violent relationship, phone WAVAW's Crisis Line for more information about the support that is available to you.



women against violence against women

Rape Crisis Centre
2405 Pine St.
PO Box 46851 Station D
Vancouver, BC V6J 5M4

24hr CRISIS LINE:

604 255 6344
1 877 392 7583

DO YOU KNOW SOMEONE WHO IS BEING ABUSED?

- Let her know she is not alone
- Tell her the abuse is not her fault
- Read and collect information to pass on to her
- Talk with her about her choices and help her develop a safety plan
- Provide a place for your friend and her children to stay in bad times
- Help her find housing
- Show that you believe in her and her ability to deal with change
- Offer to babysit while she looks for housing, seeks support, or goes to work
- Call 911 if you see her being hurt

IT IS IMPORTANT TO REMEMBER

- Don't tell her what to do, when to leave or when not to leave
- Don't push her before she is ready
- Don't make her feel bad for staying
- Don't tell her to go back to the situation
- Don't tell her to stay for the sake of the children
- Don't be angry with her if she does decide to go back. Many women go back to abusive situations before they finally leave.
- Don't talk to her partner about it. This could put your friend in danger.

Support her choices, whatever they are. She needs a friend. These are not easy decisions. Listen, refer and support.

Are you someone who cares?
ACT NOW. See available Metro Vancouver resources on the inside of this brochure.



YWCA VANCOUVER

Stopping the Violence

A guide for women facing domestic violence

Ending violence against women is core to YWCA Vancouver's mission. A spectrum of YWCA programs and services support women who have experienced abuse; Munroe House (a second stage transition house), violence prevention programs, legal support, resources and more.

Munroe House
tel 604 734 5722



YWCA Vancouver
535 Hornby Street,
Vancouver, BC V6C 2E8
tel 604 895 5800

YWCA Vancouver is a registered charity, providing a range of integrated services for women and their families, and those seeking to improve the quality of their lives. From early learning and care to housing, health and fitness, employment services and leadership, YWCA Vancouver touches lives in communities throughout Metro Vancouver.



Violence is a harmful act that violates human rights and denies the dignity and equality that we all deserve.



RESOURCE LISTINGS

CRISIS LINES/EMERGENCY NUMBERS

Police/RCMP Emergency	911
VictimLINK (24hrs)	1 800 563 0808
Chimo Crisis Line (Richmond, 9:00am-12:00am)	604 279 7070
Crisis Centre (Greater Vancouver, 24 hrs)	604 872 3311
Greater Coquitlam Crisis and Information Line	604 540 2221
Ministry of Housing and Social Assistance (after-hours and emergency line)	604 660 3194
Prideline (Gay and Lesbian Helpline)	1 800 566 1170
South Fraser Region Crisis Line (24 hrs)	604 951 8855
Surrey Women's Centre Crisis Line	604 583 1295
Upper Fraser Valley Crisis Line	1 877 820 7444
Vancouver Rape Relief and Women's Shelter	604 872 8212
Women Against Violence Against Women (24 hrs)	1 877 392 7583

TRANSITION HOUSES

Ama House (women over 55)	604 542 5992
BC/Yukon Society of Transition Houses (referrals)	604 669 6943
Coquitlam Women's Transition House	604 464 2020
Cythera Transition House (Maple Ridge)	604 467 9966
Durrant Transition House (White Rock)	604 531 4430
Evergreen Transition House (Surrey)	604 584 3301
Ishtar Transition House (Langley)	604 530 9442
Jean Scott Transition House (Hope)	1 877 869 5191
Kate Booth House (Vancouver)	604 872 7774
Libra Transition House (Aldergrove)	604 857 5797
Marguerite Dixon Transition House (Burnaby)	604 298 3454
Monarch Place Transition House (New Westminster)	604 521 1888
Nova Transition House (Richmond)	604 270 4911
Peggy's Place (mental health, Vancouver)	604 430 5202
SAGE Transition House (North Shore)	604 987 3374
Shimal Transition House (drug and alcohol issues, Surrey)	604 581 9100
Vancouver Rape Relief and Women's Shelter	604 872 8212
Virginia Sam Transition House (Surrey)	604 572 5116
Xolhemet Transition House (Chilliwack)	1 888 558 0468

COUNSELLING

Abbotsford Women's Support Services	604 855 3363
Ann Davis Services (Agassiz, Chilliwack, Hope)	604 792 2760
Atra Women's Resource Society	604 331 1407
Battered Women's Support Services	604 687 1867
Burnaby Family Life Institute	604 659 2200
Catholic Family Services	604 443 3220
Chimo Crisis Services (Richmond)	604 279 7077
Cythera Counselling (Maple Ridge)	604 467 9939
Deltassist	604 594 3455
Downtown Eastside Women's Centre	604 681 8480
Family Services of the North Shore	604 988 5281
Ishtar Counselling Services (Langley)	604 534 1011
PACE Society (Prostitution Alternatives Counselling and Education)	604 872 7651

COUNSELLING, CONT'D

Tri-City Women's Resource Society	604 941 7111
Family Services of Greater Vancouver	604 731 4951
Surrey Women's Centre Society	604 583 1295
Women Against Violence Against Women	1 877 392 7583
VGH Domestic Violence Program	604 875 4924

SERVICES FOR CHILDREN WHO HAVE WITNESSED ABUSE (most will require that the children are no longer living with the abuser)

BC/Yukon Society of Transition Houses (can give information about local CWWA programs)	604 669 6943
YWCA CWWA Program (Vancouver)	604 734 5517 ext 2227
Fraser'side CWWA Program (New Westminster)	604 522 3722 ext 118
Cythera CWWA Program (Langley)	604 467 9939 ext 230
Atra's 'The Family Project' (South Surrey/White Rock)	604 531 9143
Options CWWA Program (Surrey)	604 572 7411 or 604 584 5811
Family Services of Greater Vancouver's Children Affected by Family Violence Program (Vancouver)	604 874 2938
Vancouver and Lower Mainland Multicultural Family Support Services Society CWWA Program (Burnaby)	604 436 1025

SERVICES PROVIDING SUPERVISED ACCESS OF CHILDREN'S VISITS WITH NON-CUSTODIAL PARENT

Tin Harbour (Surrey)	604 590 8234
Network of Inner City Community Services Society (Vancouver)	604 687 2717

MULTICULTURAL

Chimo Multicultural Outreach Program	604 279 7077
Chinese Community Policing Centre	604 688 5030
India Mahila Association	604 321 7225
Inform'Elles (francophone information, referrals and support)	604 736 6974
MOSAIC Stopping the Violence Counselling	604 254 9626
OPTIONS Multilingual Help Line	604 596 4357
SUCCESS	604 408 7266
Vancouver and Lower Mainland Multicultural Family Support Services	604 436 1025

FIRST NATIONS

Aboriginal Women's Outreach Program (Atra)	604 594 7547
Helping Spirit Lodge Society (Transition House)	604 872 6649
Native Courtworker and Counselling Association of BC	604 687 0281
Residential School Survivors Society	604 925 4464
Warriors Against Violence Society	604 255 3240

GAY, LESBIAN & BISEXUAL

Battered Women's Support Services	604 687 1867
The Centre	604 684 5307
Family Services of Greater Vancouver	604 731 4951

SENIORS

411 Seniors Centre (referrals)	604 684 8171
BC Centre for Elderly Advocacy and Support	1 866 437 1940
React	604 984 5958
Vancouver Coastal Health Authority (referrals to local health centres)	604 736 2033

LEGAL ASSISTANCE AND ADVOCACY

Access Justice	604 878 7400
Atra Legal Advocacy Program	604 331 1407 ext 105
Battered Women's Support Services	604 687 1867
Canadian Bar Association	1 888 687 3404
Legal Services Society (Legal Aid, Duty Counsel, Law Line)	1 866 577 2525
Lawyer Referral Service	1 800 663 1919
Surrey Women's Centre Society (pro-bono clinic)	604 583 1295
Vancouver Status of Women (lawyer referrals)	604 255 6554
YWCA Vancouver Legal Educator	604 734 5517 ext 2235

VICTIM ASSISTANCE

Battered Women's Support Services	604 687 1867
Crime Victim Assistance Program	604 660 3888
Specialized Victim Assistance (Maple Ridge/Pitt Meadows)	604 467 6911 ext 227
Surrey Women's Centre Society	604 583 1295
Tri-City Women's Resource Society	604 941 7111
VictimLINK	1 800 563 0808
Victim Services (Burnaby/ New Westminster)	604 525 9144
Women Against Violence Against Women (24 hrs)	1 877 392 7583

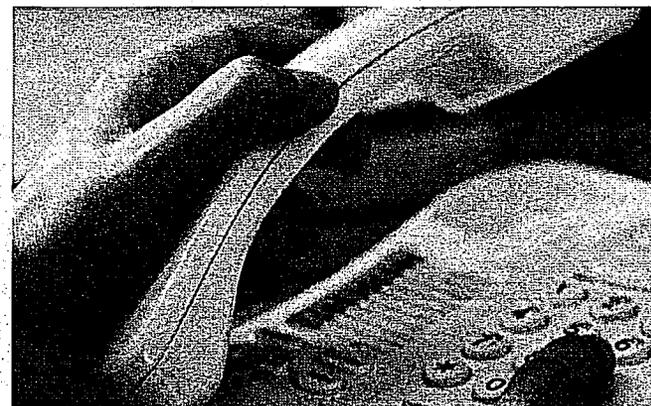
WOMEN'S CENTRES

Downtown Eastside Women's Centre	604 681 8480
North Shore Women's Centre	604 984 6009
Philippine Women Centre of BC	604 215 1103
Port Coquitlam Area Women's Centre	604 941 6311
Richmond Women's Resource Centre	604 279 7060
South Fraser Women's Services Society	604 536 9611
Surrey Women's Centre	604 589 1868
Tri-City Women's Resource Society	604 941 7111

Many colleges and universities also have women's centres.

OTHER RESOURCES

Family Violence Resource Centre	604 873 3772 ext 312
UBC Life and Career Centre	604 822 8585
BC Women's Hospital Sexual Assault Service	604 875 2881
Vancouver Status of Women	604 255 6554
Vancouver Women's Health Collective	604 736 5262
Wenlido, Women Educating in Self-Defense Training (WEST)	604 876 6390
YWCA Crabtree Corner	604 216 1650



Violence Against Women: The Facts

Every year thousands of women in Canada are seriously injured or killed by their partners — many die.

All kinds of women are abused — young old women with disabilities, immigrant women, and women of all races, religions and social classes. Violence happens in small towns and big cities. It affects us all.



In every 2 women is the victim of at least one act of physical or sexual violence in her lifetime.¹

3 out of 4 women who experience violence are assaulted by someone they know.²

653,000 women reported that they experienced spousal violence by a current or previous partner between 1999 and 2004.³

Only 36% of women who experience spousal violence report the incident to police.⁴

On average in Canada, 78 women are killed every year by their husbands.⁵

47% of men who kill their wives have a history of domestic violence known to the police.⁶

105,711 women and children sought safety in Canadian shelters between April 2005 and March 2006.⁷

In 2004, 47% of women who experienced violence turned to a national help agency.⁸

Remember, no one deserves to experience violence or abuse.

Violence seriously affects children and youth

Violence creates a climate of fear and uncertainty, which undermines the well-being of children and youth. It affects children's emotional development, social behaviour, and their ability to learn at school. Children who witness violence at home are at risk of becoming victims of violence themselves, and are also more likely to become involved in abusive relationships as adults. Parents are responsible for teaching their children the values of equality and respect. The cycle of violence must stop in the home.

- Over one million children in Canada have witnessed domestic violence⁶
- 61% of children who witnessed violence saw their mother seriously injured⁶
- Children who witness violence are more likely to be overtly aggressive by bullying, threatening, or physically attacking people⁷
- Children who witness violence often display increased levels of depression, delinquency and emotional anxiety⁸

Is your relationship healthy?

Respect, honesty and trust are essential parts of a healthy relationship. Feeling hurt or upset at times is normal, but relationships should never make you feel scared, humiliated or controlled.

HEALTHY SIGNS

- Do you and your partner respect each other's feelings, make decisions together and support one another?
- Do you and your partner communicate openly and honestly, accept responsibility for your actions and admit when you are wrong?
- Do you and your partner share financial decisions and responsibilities?
- Do you and your partner talk through disagreements, make compromises and resolve conflicts in ways that make you both feel comfortable, safe and satisfied with the outcome?

WARNING SIGNS

- Does your partner check up on you or act possessively?
- Does your partner yell, put you down, call you names or make you feel bad about yourself?
- Does your partner boss you around, give orders and make all the decisions?
- Does your partner blame you for his own harmful behaviour or avoid taking responsibility for his actions?

DANGER SIGNS

- Does your partner claim to be the head of the household and control all money in the home and bank account?
- Does your partner keep you from getting a job or an education?
- Does your partner have a temper or make you afraid?
- Do you try to please your partner instead of yourself to keep from being hurt?
- Does your partner inflict unwanted touching, kissing, tickling, or make sexual threats? Does your partner push, hit, slap, kick or use weapons to harm you?

Women who experience violence do not need to feel ashamed or helpless. Violence and abuse is never the victim's fault. There are people and services to help you. Talk to a trusted friend about the abuse or contact a community organization for more information. Services in Metro Vancouver are listed on the back of this poster.

PLANNING FOR SAFETY

Leaving an abusive relationship takes a great deal of courage and strength. All women must plan for their well-being and their children's safety. Planning for safety means knowing how to access the people, places and resources that can help if you are the victim of violence.

IDEAS FOR YOUR SAFETY PLAN

- Call or visit a women's centre to learn about resources available for victims of violence
- Tell your friends and neighbours to call the police if they hear yelling, banging or frightening noises coming from your house
- Think about where you can go if you decide to leave your partner, such as a safe house for women
- Memorize emergency service phone numbers
- Keep some extra money and a set of keys in a safe place
- Leave an extra set of clothes and photocopies of your personal ID with a friend or family member
- Teach your children to use the telephone to call the police and fire department
- Create a code word with family and friends to signal that you need help

1 Status of Women Canada (2002), *Assessing Violence Against Women: A Statistical Profile*, Ottawa: Federal-Provincial-Territorial Ministers responsible for the Status of Women Canada.
2 Statistics Canada (2001), *Canadian Crime Statistics 2000*, Catalogue 85-203, Ottawa: Canadian Centre for Justice Statistics.
3 Statistics Canada (2003), *Family Violence: A Statistical Profile*, Catalogue 85-224, Ottawa: Canadian Centre for Justice Statistics.
4 Statistics Canada (2006), *Measuring Violence Against Women: Statistical Trends*, Ottawa: Federal-Provincial-Territorial Ministers responsible for the Status of Women Canada.
5 Statistics Canada (2003), *Transition Homes in Canada: National, Provincial and Territorial Fact Sheets 2003/2004*, Ottawa: Canadian Centre for Justice Statistics.
6 Statistics Canada (1999), *Family Violence in Canada: A Statistical Profile 1999*, Ottawa: Canadian Centre for Justice Statistics.
7 Statistics Canada (2002), *Witnessing Violence: Aggression and Anxiety in Young Children*, The Daily, December 1, Ottawa.
8 Statistics Canada (2004), *Family Violence: A Statistical Profile*, Catalogue 85-224, Ottawa: Canadian Centre for Justice Statistics.

SUPPORTING SURVIVORS

of

sexual assault

What is Sexual Assault?

The law defines sexual assault as any form of unwanted sexual contact. It can include unwanted kissing, rubbing, grabbing, intercourse, etc. Sexual assault is a violent crime where one person asserts power and control over another person.

How is a person affected by Sexual Assault?

Sexual assault often leaves survivors feeling powerless. It can affect many aspects of a survivor's life including their physical, emotional, mental, and spiritual health. Some common feelings survivors have include guilt, shame, fear, depression, anger, loss of trust, etc. A survivor may also be worried about their physical health (STIs, pregnancy, HIV). While some effects of sexual assault are due to the physical assault itself, survivors are also greatly affected by sexual assault myths which often blame survivors for the violence they have experienced. Due to this, many survivors choose not to tell anyone about their assault.

Many survivors also develop coping mechanisms. Coping mechanisms are survival strategies that people use to deal with overwhelming or unbearable emotions. Coping mechanisms may include minimizing their experience, dissociation, increased use of drugs or alcohol, disordered eating, self-harming behaviours, self-isolation, an increase/decrease in sexual activity, etc. It is important that survivors are not judged for the way they cope. Validate it as a natural reaction to a very difficult, painful experience. If the survivor is concerned that the way they are coping is not healthy or helpful, assist them in finding resources or different coping mechanisms that they are more comfortable with.

Immediate Support

Survivors of sexual assault often express their emotions in two different ways. There is an expressed style, where survivor actively express emotions such as fear, anxiety, and anger. They may also express themselves in ways that seem 'inappropriate' such as laughter. There is also the controlled style, where survivors seem very calm and composed, although it may not seem like a survivor is in crisis, they are. No matter how a survivor appears, it is important to be sensitive, caring, and respectful, and to listen to their needs.

There is help!

WAVAW can support you. Our free services include: community referrals, transportation to and from Vancouver General Hospital for the Sexual Assault Support services, 24-hour Crisis Line, One to one counselling, support groups, aboriginal outreach and counselling, and a victim service team to help with legal forms, police reporting, and court support. For more information, contact our office: 604-255-6228 or visit our website at www.wavaw.ca.



women against violence against women

Rape Crisis Centre
2405 Pine St.
PO Box 46851 Station D
Vancouver, BC V6J 5M4

24hr CRISIS LINE:
604 255 6344
1 877 392 7583

Support Tips:

LISTEN to what the survivor says. Acknowledge the strength and courage it takes to talk about their experience. Thank them for trusting you with their personal information. Help them find the resources they need. Support the decisions they make, even if you believe they should do something different. This is an important part of a survivor's healing process. Do not interrupt or ask a lot of questions. Being asked a lot of questions can feel like being interrogated and can leave a survivor feeling more vulnerable. It is important to respect a survivor's need for privacy. Let the survivor disclose what they are comfortable with. Don't worry if they stop talking for a while, silences are okay.

BELIEVE the survivor. Tell them you believe them. It's also important to think about what you say. You will have been influenced, as we all have, by the many myths in our society about sexual assault. Make sure your responses do not reinforce any of these myths.

CONTAIN your own feelings. It's important not to show shock or horror. This may reinforce a person's sense of shame and this may deter them from seeking more support. Avoid talking about getting revenge. Talk of revenge can create anxiety for a survivor and can put your own safety at risk. It is normal to be angry and to fantasize about revenge. Please talk about these feelings instead of acting on them. Supporting the survivor will require you to remain calm and in control of your feelings.

REASSURE them by saying, "it's not your fault." No one ever asks or deserves to be sexually assaulted. The only person to blame for a sexual assault is the perpetrator.

AVOID BLAMING by not asking questions like, "what were you doing there anyways?" As well, try to avoid asking questions using the word "why." Even with the best intentions the question may sound accusatory to the survivor.

BE CAREFUL about touching (e.g. hugging) the person if they have not initiated the contact. Some people may be upset by physical contact. If in doubt, ask the survivor if touching is okay and always ask permission before making physical contact.

GET INFORMATION and help the survivor find existing resources including legal, medical, and/or emotional support.

BE AWARE that the person may not hate the offender, they may have very conflicting feelings especially if the offender is a partner, acquaintance, or relative.

TAKE CARE OF YOURSELF. Sexual violence is difficult for everyone, especially for those close to the survivor. You may experience many emotions, such as disbelief, anger, or guilt. It is important that you get the support you need from someone other than the survivor, **while maintaining the survivor's confidentiality.**

If an assault has just occurred...

It is important to consider your health. The Sexual Assault Service at Vancouver General Hospital can provide specialized medical care and support to anyone 13 years and older who has been sexually assaulted in the past 7 days. This includes answering questions, offering STI and/or pregnancy prevention medications, doing a medical exam, and collecting forensic samples. A WAVAW staff woman can come to support you at the hospital. WAVAW staff are also able to support a woman through the criminal justice system, if she decides to report to police. If a woman is unsure about reporting, it is important to know that forensic samples can be kept at the hospital for up to one year. If collecting forensic samples is of interest, a survivor should consider not showering, eating, or changing clothes after the assault.

WAVAW supports all self-identified women who are 13 years or older.



women against violence against women

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1 877 392 7583

COMMON MYTHS

about

sexual assault

Rape myths give people a false sense of security by minimizing, legitimizing, and/or denying the occurrence of sexual assault. They accomplish this by blaming the victim and making excuses for the perpetrator. In effect, these myths perpetuate sexualized violence because they fail to address the realities of sexual assault.

MYTH 1: The best way for a woman to protect herself from sexual assault is to avoid being alone at night in dark, deserted places such as alleys or parking lots.

REALITY 1: Most assaults occur in a private home (60%) and the largest percentage of these occur in the victim's home (38%). In fact, over 80% of sexual assaults are committed by someone known to the victim.

MYTH 2: If a person consents to have sex at the start of making out with their partner, then changes their mind but their partner keeps going, it is not an assault.

REALITY 2: Legally, a person has the right to change their mind about having sex at any point of sexual contact. If a sexual partner does not stop at the time a person says "no," this is a sexual assault. If a person is in a relationship with someone or has had sex with a person before, this does not mean that they cannot be assaulted by that person. Consent must be given every time two people engage in sexual contact.

MYTH 3: Women secretly want to be raped.

REALITY 3: There is a big difference between fantasizing about aggressive sex and wanting to be raped. A woman is in control of her fantasies; however, women are not in control when they are being sexually assaulted. Rape is a violent, terrorizing, and often humiliating experience that no person wants or asks for.

There is help!

WAVAW can support you. Our free services include: community referrals, transportation to and from Vancouver General Hospital for the Sexual Assault Support services, 24 hour Crisis Line, One to one counselling, support groups, aboriginal outreach and counselling, and a victim service team to help with legal forms, police reporting, and court support. For more information, contact our office: 604-255-6228 or visit our website at www.wavaw.ca.



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IT IS NEVER a survivor's fault.

These are only a few of the many myths about sexual assault. If you, a partner, a friend, or a family member have been sexually assaulted it is important to know that it is never a survivor's fault.

Rape myths are often internalized, which can intensify a survivor's feelings of shame, self-blame and not being believed.

We all need to challenge these myths which help to perpetuate and normalize sexual violence.

MYTH 4: Rape is a sexual act that is "taken too far."

REALITY 4: Rape is an act of violence; it involves asserting control over another person and taking their power away from them.

MYTH 5: Women who are sexually assaulted "ask for it" by the way they dress or act; rape only happens to young, "sexy" women.

REALITY 5: Women are assaulted because we live in a culture that views women as less valuable than men. In addition to sexism, factors like racism, colonization, homophobia, transphobia, classism, fatphobia, and ableism all contribute to violence against women. It is these factors, not the way a woman looks or acts, that puts women at risk of violence.

MYTH 6: If a person is drunk or passed out from drinking too much, it is okay to have sex with them.

REALITY 6: If a person is unconscious or their judgement is impaired by alcohol or drugs, they are unable to give consent. Legally, consent has to be a freely and clearly given "yes," not just the absence of a "no." Having sex with a person when they are intoxicated is a sexual assault.

MYTH 7: Women cannot rape other women.

REALITY 7: The majority of sexual assaults are committed by men against women or girls and many are committed by men against men or boys. However, sexual assault and abuse can happen in all relationships, whether the members are of the same or different genders. Often, when women are assaulted by other women, or men are assaulted by other men, they fear they will not be believed. It is important to realize that ALL survivors of sexual violence experience trauma.

MYTH 8: Men of certain races and backgrounds are more likely to sexually assault women.

REALITY 8: Men who commit sexual assault come from every economic, ethnic, racial, age, and social group. As well, women who are sexually assault are from every economic, ethnic, racial, age, and social group.



women against violence against women

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1 877 392 7583

Working effectively with clients dealing with violence: Skills and information for non- family law advocates

A panel of anti-violence workers
teaching introductory information
about working with victims of intimate
partner violence

Agenda

- **Dalya Israel – WAVAW**
 - Supporting survivors of sexual assault
- **Lisa Rupert – YWCA Metro Vancouver**
 - Understanding intimate partner violence
- **WAVAW Video on decolonizing practice**
- **Grace Tait – Musqueam Safe House**
 - Supporting Aboriginal women who've experience violence
- **Sital Kaur – South Vancouver Neighbourhood House**
 - Supporting immigrant women who've experience violence
- **Vicky Law – BWSS**
 - Contextualizing intersections of law for women who've experience violence

*** Holding Women at the
Center: Supporting Survivors
of Sexual Assault**

Presented by WAVAW Rape Crisis Centre

*** Social Service, or Social
Change?**

*

“I am convinced that if we are just trying to get ahead ourselves, or are altruistically trying to help others get ahead, we will remain part of the problem, part of the economic, political, and social structure that maintains the ruling class in power. It is only when we get together with others, and see our work as that of helping people come together for power that our social service work will lead to social change.”

Paul Kivel

The poster is divided into two main sections. The left section, titled "BLAMING RAPE SURVIVORS", features an image of three severed legs hanging from a gallows. Below the image, the text reads: "FEEL ISOLATED", "FEEL SHAMED", "I WAS BLAMED", and "I GUILTED MYSELF". The right section, titled "SUPPORTING RAPE SURVIVORS", features an image of three hands raised in a gesture of support. Above the hands, the text reads: "YOU ARE NOT ALONE", "WE ARE LISTENING", "IT'S NOT YOUR FAULT", and "WE BELIEVE YOU". Below these two sections, the text asks: "WHICH CULTURE DO YOU WANT TO LIVE IN?".

***Placing Sexual Assault in the Social Context**

This collage contains several definitions and descriptions of rape culture. The central text reads: "A rape culture is a complex set of beliefs that encourages male sexual aggression and supports violence against women. Rape culture allows men to be seen as less morally culpable for these types of transgressions against women. It is a society where violence is seen as sexy and women's sexuality as violent. In a rape culture, women perceive a continual threat of violence that ranges from sexual remarks to sexual touching to rape itself. As a culture we become desensitized to the horrors of rape and sexual violence. A rape culture condones physical and emotional harassment against women as the norm. In a rape culture both men and women assume that sexual violence is a fact of life. However, what we accept as inevitable in our culture, the expression of values and attitudes that can change. When a society normalizes sexualized violence, it accepts the creation of a rape culture." To the left, text reads: "WHAT IS RAPE CULTURE? VIOLENCE IS AN IT SUPPORTS VIOLENCE OKAY IT TELLS THE PERPETRATOR HOW WE DON'T MEAN YES". To the right, text reads: "RE? SEXUAL NORM. RAPE SEEM TELLS Complicit in Sexual Violence".



women against violence
against women

rape crisis centre
24 Hour Crisis-Line 604-255-6344

www.wavaw.ca *Thanks!



Women Who Have
Experienced Abuse From
Their Intimate Partner



The United Nations defines violence against women as:
"Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."



This can include:

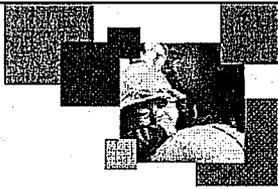
- Physical abuse
- Sexual abuse
- Emotional or verbal abuse
- Financial abuse
- Spiritual abuse
- Harassment/Stalking



- 
- Any woman who accesses your program could be experiencing, or have experienced abuse from an intimate partner:
 - 1 in 5 Canadian women experience some form of emotional or economic abuse in their intimate relationship
 - Across Canada, on any given day, over 3,000 women and 2,900 of their children are living in an emergency shelter to get away from an abusive intimate partner
 - The B.C. Coroner's Service reported that between 2003 and 2011, 87 women were killed by a current or former partner in this province.



Working With Women Who Have Experienced Abuse:

- 
- Listen without judgement
 - Recognize that women are the experts on their own situation
 - Respect women's right to self-determination
 - Offer choice-based supports and referrals, based on what she is identifying as her needs
 - Be aware of the ways that the legal issues she is seeking support for might intersect with the abuse she experienced
 - Her safety (for example, will seeking child support or spousal support put her in danger?)
 - How the power imbalance between her and her ex-partner might impact the situation (for example mediation around parenting issues might be inappropriate.)



Changing lives
since 1897.

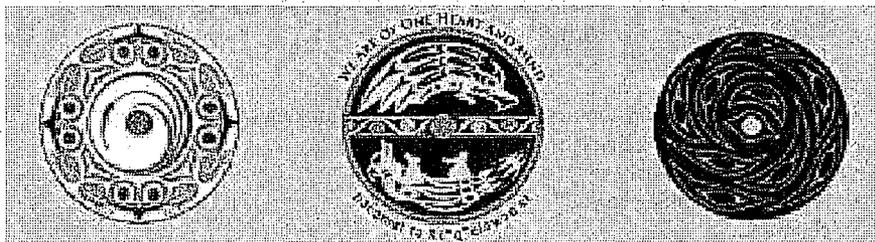


**WAWAW:
Decolonizing Practice**

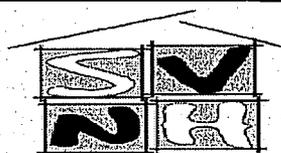
<http://vimeo.com/102073522>

Through film, WAWAW explores how anti-violence organizations supporting survivors of sexual violence can integrate a decolonizing approach to service delivery in all programming; including but not limited to STV, Victim Services and Outreach.

We explore how Aboriginal victims might gain access to our programs and navigate systems in an effective, meaningful and dignified way and how we can make meaningful connections with community when we commit to a decolonizing framework.



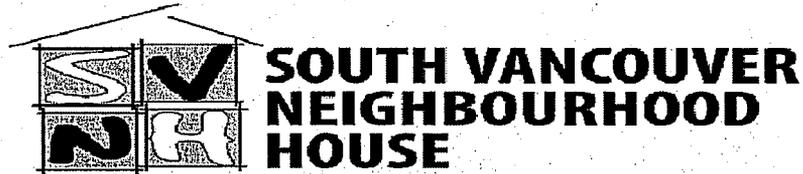
Grace Tait



SOUTH VANCOUVER NEIGHBOURHOOD HOUSE

DV Worker Role at South Vancouver Neighbourhood House:

- work with women who have or are experiencing violence
- work in the south van area
- attend homes, work places, schools, MCFD office, court, etc; where women feel safe
- safety plan
- work with MCFD, Community, Schools, Health Unit, Probation, Police, past women
- no cut off time
- may still be with the abuser or make plans to get back together
- her status in Canada, her children
- take women to Transition house when required
- go to hospitals, meetings, lawyers, schools, income assist., what she needs to do
- provide her with options
- work with other service providers, or connect her to other services
- provide her with info
- support her with decisions about her life



Things to think about.....

- how are you making contact w/her or how is she making contact w/you?
- is she able to speak English
- what are her needs?
- is she safe speaking to you?
- children...

Violence has numerous ways to isolate and silence women:

- The abusers control and power whether it be physical violence, threatens/cohesion, emotional/psychological etc are very real for the woman experiencing it.
- Her power and status in the relationship may be minimal or non-existent.
- She might not have papers or be able to read or write English or her own mother tongue. `fear`

Important to be realistic about what you can do in the role you are in;
Who can you call from the city you are working in?

She is about to **Trust** a stranger and may not realize what might happen

Recognize the manner barriers she might be facing:

- the role of women as those who keep a family together
- impact on her family (here or at home)
- her status in the community
- what happens to women when they speak outsiders
- her children's future, her future, her families future
- what will happen to him? Help him change?
- first incident vs an established history
- her being blamed for all the issues and problems
- private matter
- laws in Canada



Important to be curious about different cultures but don't assume certain people are this way or that way . (ex.)

Culture is not static.

Most races practice and function under various traditional followings and practices in which women and children experience violence. So the practice of violence against women is not most prominent in one community versus the other.

There will be belief and notion about violence in the home being a private and family matter.....its a social issue, problem, and safety factor.



“The justice system is not just”

How the legal system impacts women who have experienced violence



Warning Signs of Abuse

You may suspect abuse is happening to a neighbour, friend or family member, but do not know what to do or how to talk about it. You may worry about making the situation worse. By understanding the warning signs and risk factors of woman abuse, you can help. If you recognize some of these warning signs, it may be time to take action.

Signs of Abuse

He puts her down

He does all the talking and dominates the conversation

He checks up on her all the time, even at work

He tries to suggest he is the victim and acts depressed

He tries to keep her away from you

He acts as if he owns her

He lies to make himself look good or exaggerates his good qualities

She may be apologetic and makes excuses for his behaviour or becomes aggressive and angry

She is nervous talking when he's there

She seems to be sick more often and misses work

She tries to cover her bruises

She makes excuses at the last minute about why she can't meet you or she tries to avoid you on the street

He acts like he is superior and of more value than others in his home

Signs of High Risk

He has access to her and her children.

He has access to weapons

He has a history of abuse with her or others.

He has threatened to harm or kill her if she leaves him. He says "If I can't have you, no one will."

He threatens to harm her children, her pets or her property

He has threatened to kill himself

He has hit her, choked her

He is going through major life changes (e.g. job, separation, depression)

She seems sad, lonely, withdrawn and is afraid.

She uses drugs or alcohol to cope.

She has just separated or is planning to leave

She fears for her life and for her children's safety or she cannot see her risk

She is in a custody battle, or has children from a previous relationship

She is involved in another relationship

She has unexplained injuries

She has no access to a phone

He is convinced she is seeing someone else

He blames her for ruining his life

He doesn't seek support

He watches her actions, listens to her telephone conversations, reads her emails and follows her

He has trouble keeping a job

He takes drugs or drinks every day

He has no respect for the law

She faces other obstacles (e.g. she does not speak English, is not yet a legal resident of Canada, lives in a remote area)

She has no friends or family

Ways To Talk To Men Who Are Abusive

Sometimes people around an abusive man overlook his behaviour and only focus on supporting the abused woman. At other times, people may sympathize with the abusive man, which may inadvertently escalate his abuse. Talking to an abusive man is an important part of preventing woman abuse, but it needs to be done carefully. Abusive behaviour won't go away on its own. There are services to help him in his community.

For a global list of abuse hotlines, shelters, and women's organizations in over 80 languages, go to:
www.hotpeachpages.net

Jocelyn Coupal
www.jocelyncoupal.com
Brochure design © NIC Smallwood

What You Can Do When Recognizing the Warning Signs

Choose the right time and place to have a full discussion.

Approach him when he is calm.

Be direct and clear about what you have seen.

Tell him that his behaviour is his responsibility.

Avoid making judgmental comments about him as a person. Don't validate his attempt to blame others for his behaviour.

Inform him that his behaviour needs to stop.

Don't try to force him to change or to seek help.

Tell him that you are concerned for the safety of his partner and children.

Never argue with him about his abusive actions.

Recognize that confrontational, argumentative approaches may make the situation worse and put her at higher risk.

If He Denies The Abuse...

Men who are abusive will often minimize the impact and deny that they have done anything wrong. They may state that it isn't that bad or blame the victim for their actions. This type of behaviour deflects his own responsibility for his actions.

Keep your conversation focused on your concerns for his family's safety and well-being and reiterate that abuse is never an answer.

Keep the lines of communication open and look for opportunities to help him find support.

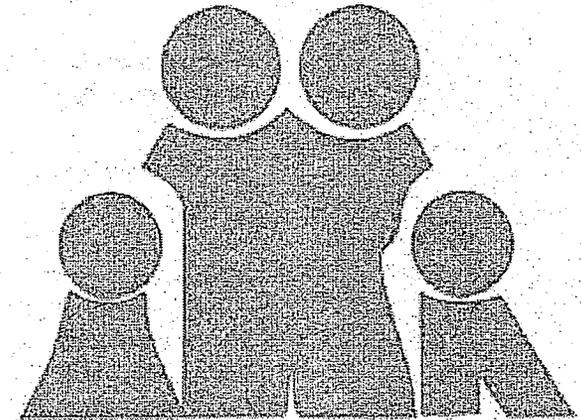
Some Concerns You May Have About Whether You Should Help

Points of Concern	Points to Consider	Points of Concern	Points to Consider
You feel it's none of your business	It could be a matter of life or death. Violence is everyone's business	You think she doesn't really want to leave because she keeps going back to him	She may not have had the support she needed
You don't know what to say	Saying you care and are concerned is a good start	You are afraid he will become angry with you	Maybe, but it gives you the chance to offer your help
You might make things worse	Doing nothing could make things worse	You feel that both partners are your friends	One friend is being abusive and the other lives in fear
It's not serious enough to involve the police	Police are trained to respond and utilize other resources	You believe that if he wanted help or wanted to change his behaviour, he would ask for help	He may be too ashamed to ask for help
You are afraid his violence will turn to you or your family	Speak to him alone. Let the police know if you receive threats	You think it is a private matter	It isn't when someone is being hurt

Everyone in the community has a role to play in helping to end domestic violence. You can reach out to organizations in your community that support abused women and those that can help abusers.



How to talk to Men who are Abusive



We are all touched by the impact of domestic violence and have a personal responsibility to help end it. Recognizing it is the first step. Take the warning signs seriously. For further information, visit: www.jocelynCoupal.com

Don't let domestic violence walk away.

FAMILY VIOLENCE + ANIMAL ABUSE

FAMILY VIOLENCE: A DEEPER UNDERSTANDING

Family violence is abuse that takes place in the family, in an intimate relationship, or in a situation of dependency or trust. Abusers use violence to establish power and control over those who are vulnerable because of their gender, age, ability, or other factors.

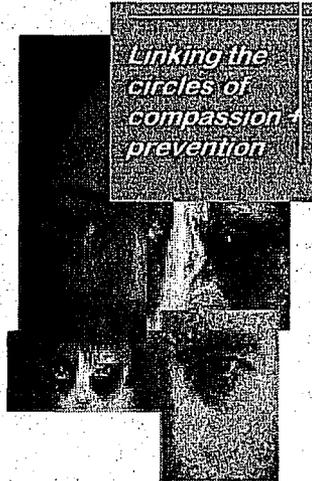
The abuse can include: psychological abuse, neglect, financial exploitation, destruction of property, injury to pets, physical assault, sexual assault, and homicide.

Family violence reaches across generations and across victims. In violent families, different forms of violence are likely to co-occur and the dynamics behind the violence can be similar.

HOW FAMILY VIOLENCE LINKS WITH ANIMAL ABUSE

WHAT THE RESEARCH SHOWS

- A study by the Ontario SPCA (1998) surveyed women leaving abusive relationships:
 - 61% had had pets abused or killed by their partners
 - 48% said concern over the safety of their pets prevented them from leaving sooner
- A study (Ascione and Weber, 1997), interviewed women in a transition house. 52% reported that their children had witnessed pet abuse in their homes. Only 3% of a matched group not in a transition house reported exposure of their children to pet abuse.
- A study (Deviney, Dickert & Lockwood, 1983) looked at 53 families where child abuse had occurred and pets were present:



- 60% reported abuse of the family pets

Where the child abuse had been physical

- 88 % reported companion animals had been either abused or killed
- A study (Ascione & Weber, 1997) found that children who witness their fathers abusing their mothers are three times more likely to become batterers themselves. Children from violent homes are more likely to have witnessed animal abuse and to commit animal abuse.

- A study (Luke, Arluke & Levin, 1997) found that over a 20-year period, a group of 153 animal abusers were more likely to commit violent crimes than a matched group of non-abusers.
- A study (Ascione, 1993) found that those who commit serial or mass criminal violence often use animals as "rehearsal" in their adolescence to work themselves up to the eventual abuse or killing of people.

WHY ANIMAL ABUSE MATTERS

- Animal abuse is a crime in itself. It can be part of the dynamics of family violence.

- Research indicates that animal abuse is highly predictive in identifying children at risk for committing future acts of violence, and also in identifying children being abused, and cases of wife assault.
- Animal abuse is often one of the earliest signs of an individual or a family in trouble.
- The abuser may use acts or threats of abuse against companion animals to intimidate, control, punish, or silence family members.
- Fear for what will happen to her pets may make it difficult for a woman to leave an abusive relationship. It is important to include family pets in the safety plan for women and children who need to escape family violence.
- For many battered women, companion animals are of profound emotional importance. Animals are a source of solace for abused children and children who witness abuse.
- Caring for animals can also foster empathy and compassion in children, adolescents, and adult offenders.

In violent homes, when animals are abused, people are at risk.

In violent homes, when people are abused, animals are at risk.

The greatness of a nation and its moral progress can be judged by the way its animals are treated.

- Mahatma Gandhi

OPPORTUNITIES FOR COLLABORATION

Collaboration between family violence prevention workers and animal protection workers is bringing us one step closer towards eliminating all forms of violence within families. The work is new and much needs to be done.

Examples of current collaborative work:

- including plans for pets in safety plans for abused women
- developing emergency shelter programs for the pets of women leaving abusive relationships
- including animal care workers on local coordinating committees for violence against women in relationships
- building partnerships between veterinarians and family violence prevention workers
- developing training modules on violence in relationships, animal abuse, and child abuse for animal protection workers and family violence prevention workers
- having family violence courses in colleges and universities that include pets in the definition of family
- holding joint educational workshops for the family violence prevention and animal welfare communities



INCORPORATING THE LINK: WHAT YOU CAN DO

1. Be informed about the links between family violence and animal abuse, the resources you can use, and the collaborative efforts underway in your community. See contact numbers on the back page.

2. The welfare of companion animals may be vitally important to the safety of abused women or children. You may be able to assist them by providing safety planning for both humans and pets. Include questions about companion animals when you conduct assessments with women and children.

Questions could include:

- do you have pets or other animals at home?
- are you concerned about their health or welfare?
- can we help you contact someone to care for them?
- are you aware that (explain what provisions can be made for temporary care of the animal)?
- would you like us to work with you to find housing that allows pets when you leave the shelter?

Follow up on the responses to these questions, and report animal abuse. See phone numbers on the back page.

3. In support groups, include a discussion about pets and their role in the family. For example, a women's support group can be a safe place for women to disclose witnessing cruelty towards their pets. Guiding questions could include:

- have there been threats or violence towards your pets or other animals?
- have you ever had to take measures to protect your pet from violence at home?
- have you ever been told that if you tried to leave your animal would be harmed?
- were your children present

at the time of the threat or violence?

- how did your children react?

4. Animal assisted therapy may help adults and children rebuild self-esteem and trust. The unconditional love of a companion animal can greatly assist battered women and their children in the healing process. The presence of pets at women's groups can facilitate a discussion of women's and children's experiences of witnessing or experiencing abuse. See the contacts on the back page to find out more about animals and healing.

5. Be proactive in your community about the link. Your role provides an opportunity for you to educate others about the links between family violence and animal abuse. You can advocate for or support:

- programs for young people that teach alternate behaviours to bullying, violence in dating relationships, and abuse of animals
- violence prevention policies and practices in schools, families, and communities.
- visible and consistent law enforcement to deal with violent behaviour against victims of all types
- improved animal welfare legislation
- programs that demonstrate how we can learn caring and show compassion for all living things

RESOURCES

REPORT ABUSE

- Report suspected child abuse. Call the Helpline for Children **310-1234** (toll-free, BC-wide, no area code needed).
- Report suspected animal abuse to the SPCA or the police. Phone BC SPCA: **1-800-665-1868**

BECOME INVOLVED

Contact **Victim Services Division** to find out about resources, cross-training, the development of protocols, and community coalitions. Phone: **604-660-5199**

- The BC/Yukon Society of Transition Houses is working with the BC SPCA and with veterinarians in local communities to provide support for battered women and their pets. BC SPCA toll-free **1-800-665-1868**
- The British Columbia Veterinary Medical Association has made animal welfare, including animal abuse, one of its priorities. Contact the British Columbia Veterinary Medical Association at **1-604-929-7090**.
- BC/Yukon Society of Transition Houses: **604-669-6943**; Fax: **604-682-6962**

This pamphlet is one in a series of three. The other two are for the animal care professionals and for victim service workers and justice system personnel. For copies of any of these materials, or to link with them online, go to:

BC Society for the Prevention of Cruelty to Animals (BC SPCA)

Phone: 604-682-7271
Toll free in BC: 1-800-665-1868
Fax: 604-681-7022
Web: www.sPCA.bc.ca
Email: info@sPCA.bc.ca

BC Veterinary Medical Association

Tel: 604-929-7090
Toll free in BC: 1-800-463-5399
Fax: 604-929-7095
Web: www.bcvma.org
Email: info@bcvma.org

The BC Institute Against Family Violence

Phone: 604-669-7055
Toll free in Canada: 1-877-755-7055
Fax: 604-669-7054
Web: www.bcifv.org
Email: bcifv@bcifv.org

BC/Yukon Society of Transition Houses

Phone: 604-669-6943
Fax: 604-682-6962
Web: www.bcysth.ca



This project is funded in part through the Government of Canada's National Crime Prevention Strategy



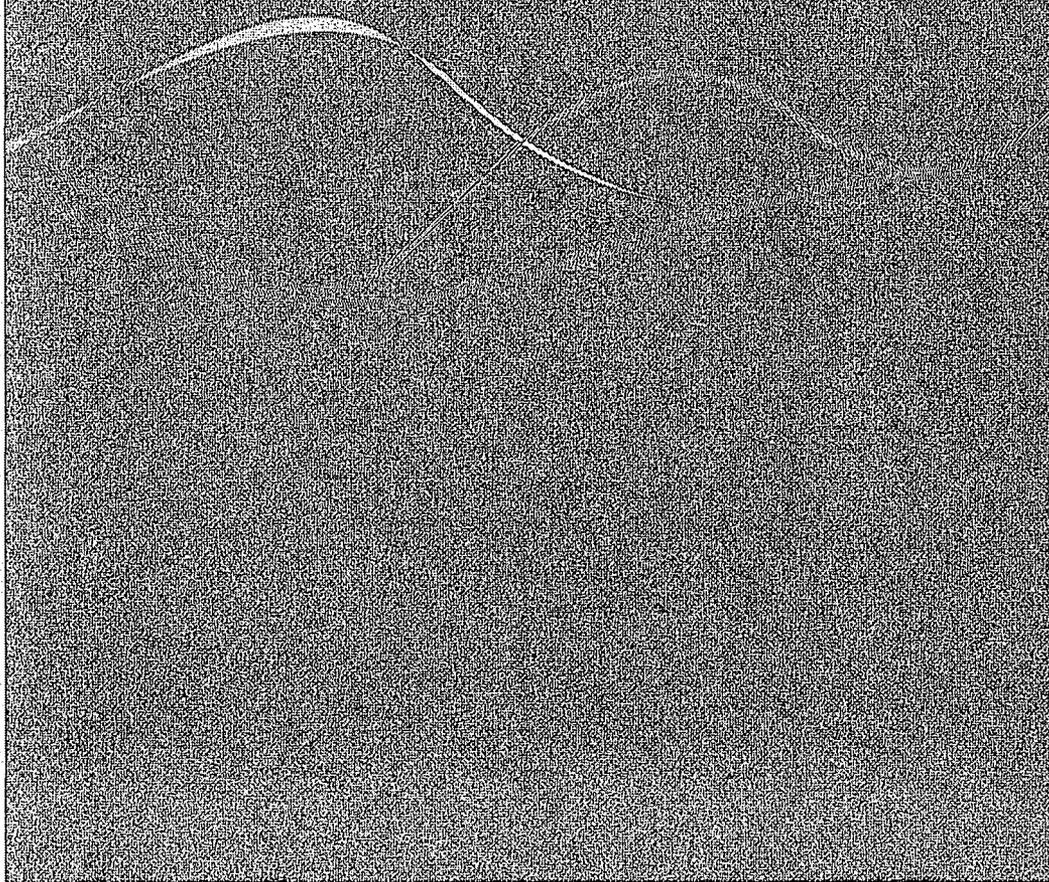


NATIVE WOMEN'S
ASSOCIATION OF CANADA

L'ASSOCIATION DES FEMMES
AUTOCHTONES DU CANADA

Fact Sheet

Fact Sheet: Violence Against Aboriginal Women



For further information about
Evidence to Action, please contact
the NWAC satellite office:

1 Nicholas Street, 9th floor
Ottawa ON K1N 7B7

Phone: 613-722-3033
Toll Free: 1-800-461-4043
Fax: 613-722-7687

www.nwac.ca

Head office:

155 International Road, Unit 4,
Akwesasne, Ontario K6H 5R7

Phone: 519-445-0990
Fax: 519-445-0924

Fact Sheet: Violence Against Aboriginal Women

Aboriginal women and girls are strong and beautiful. They are our mothers, our daughters, our sisters, our aunts and our grandmothers.

For years, communities have pointed to the high number of missing and murdered Aboriginal women and girls in Canada. As of March 31, 2010, Native Women's Association of Canada (NWAC) has gathered information about 582 cases from across the country.

Aboriginal women face life-threatening, gender-based violence, and disproportionately experience violent crimes because of hatred and racism. This fact sheet places the issue of missing and murdered Aboriginal women and girls in the broader context of violence against Aboriginal women. By understanding the severity of the issues, we can better work toward breaking the cycle of violence.

According to Statistics Canada's 2004 General Social Survey (GSS), Aboriginal women experience much higher rates of violence than non-Aboriginal women.

Statistics Canada also reported the following findings:

- + Aboriginal women 15 years and older are 3.5 times more likely to experience violence than non-Aboriginal women.
- + Rates of spousal assault against Aboriginal women are more than three times higher than those against non-Aboriginal women.
- + Nearly one-quarter of Aboriginal women experienced some form of spousal violence in the five years preceding the 2004 GSS.

Statistics Canada reported that Aboriginal women are more likely to experience more severe and potentially life-threatening forms of family violence than non-Aboriginal women.

- + 54% of Aboriginal women reported severe forms of family violence, such as being beaten, being choked, having had a gun or knife used against them, or being sexually assaulted, versus 37% of non-Aboriginal women
- + 44% of Aboriginal women reported "fearing for their lives" when faced with severe forms of family violence, compared with 33% of non-Aboriginal women.
- + 27% of Aboriginal women reported experiencing 10 or more assaults by the same offender, as opposed to 18% of non-Aboriginal women.
- + While the number of non-Aboriginal women reporting the most severe forms of violence declined from 43% in 1999 to 37% in 2004, the number of similar attacks against Aboriginal women remained unchanged at 54% during the same time period.

Certainly, family violence represents one of the most urgent issues impacting Aboriginal women. However, **there is also a need for more research and awareness about other forms of violence—particularly violence perpetrated by strangers or acquaintances.**

- + Most of the existing research focuses on family violence or abuse between parents and children. Apart from studies dealing with women involved in prostitution, little attention is paid to other forms of violence.
- + Statistics Canada does not have enough data to produce reliable estimates of sexual assault against Aboriginal women.
- + There are no national data sources regarding the number of missing persons reports filed each year, the number of cases resolved or the percentage that remain outstanding. This makes it virtually impossible to compare figures for Aboriginal and non-Aboriginal women.

Statistics Canada reports that Aboriginal women are significantly overrepresented as victims of homicide.

- + Between 1997 and 2000, homicide rates of Aboriginal females were almost seven times higher than those of non-Aboriginal females.
- + Often overlooked or ignored is the extreme vulnerability of women in the sex trade. Between 1991 and 2004, 171 women involved in prostitution were killed in Canada; 45% of these homicides remain unsolved (Statistics Canada 2006a, p. 37).
- + Indian and Northern Affairs Canada (INAC) data published in Amnesty International Canada's report *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* indicate that Aboriginal women between the ages of 25 and 44 with Indian status are five times more likely than other women of the same age to die as the result of violence.
- + NWAC's research indicates that homicides involving Aboriginal women are more likely to go unsolved. Only 53% of murder cases in NWAC's Sisters In Spirit database have been solved, compared to 84% of all murder cases across the country.



2008 SIS vigil.

Community-based research has found levels of violence against Aboriginal women to be even higher than those reported by government surveys. There are many limitations to government-collected statistics.

- + Government statistics are based on police-collected data, but police numbers reflect only those incidents that are reported to police. Six out of 10 incidents of violent crime against Aboriginal people are thought to go unreported.
- + There are no standard policies covering whether and/or how police track violence experienced by Aboriginal peoples. Some police agencies, including the RCMP, do not collect this information at all. This is significant, as the RCMP covers 75% of Canada's geography and serves more than 630 Aboriginal communities.

NWAC holds the only national database on the number and circumstances of missing and murdered Aboriginal women and girls in Canada. For more information, please see Fact Sheet 3D, "Missing and Murdered Aboriginal Women and Girls."

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The BC *Family Law Act*

A Plain Language Guide for Women who have experienced abuse



CENTRE FOR
FEMINIST
LEGAL STUDIES

A Project of the Centre for Feminist Legal Studies

2013

This guide was completed as a project of the Centre for Feminist Legal Studies at the Faculty of Law, University of British Columbia by Laura Johnston.

Nothing in this guide constitutes legal advice, and it should not be relied on as such.

To contact someone about this guide, email cfls.familylawguide@gmail.com.

March 18, 2013

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1. Introduction

This guide has basic information on the *Family Law Act* in British Columbia (BC).

Family law is the law that governs legal parenthood, separation, divorce, caring for children after separation, dividing family property, spousal support, and child support. This guide focuses on problems related to separation.

The *Family Law Act* is a new law that came into effect March 18, 2013. The new law changed many things about family law, so terms or information you have heard about may be different now.

The *Family Law Act* is a BC provincial law, which means it applies to people who live in BC. Each province has its own law that addresses family law problems. If you have a family law problem that involves people or property in different provinces, this guide may not answer your questions.

This guide provides information and explains options, but does not give legal advice on which option is right for you. For legal advice, you must consult a lawyer.

*Although this guide discusses issues related to violence, this guide is about family law, not criminal law. For example, if a judge finds that your spouse has been violent to you in a family law proceeding, this does **not** mean that he has been charged with or convicted of a crime.*

A legal matter is criminal when the government criminally charges and prosecutes a person. If your spouse has been criminally charged, the criminal proceedings will be separate from your family law matters.

Criminal proceedings may be considered in a family law proceeding if they are relevant to a child's safety, security or well-being (s. 37). See more information on this on page 13.

1.1. Who is this Guide for?

This guide was written for women who are leaving or thinking about leaving a relationship with an abusive man and need information on family law problems. However, the information in this guide applies to a marriage-like relationship between any two people, for example, two people in a same sex relationship.

Under the *Family Law Act*, the word “spouse” includes (s. 3):



- a man you are married to,
- OR**
- a man you have been living with in a marriage-like relationship for at least 2 years (sometimes people call this common-law),
- OR**
- a man you have children with.

Throughout the guide, you will see numbers in brackets at the end of a sentence or paragraph. These are references to the section of the Family Law Act that the information came from. For example, here (s. 3) means that you can find this information in section 3 of the Family Law Act.

A “spouse” includes a man you have separated from or are about to separate from.

Although you may call your partner something else (for example, your boyfriend, your husband, or your ex) this guide will use the word “spouse” because that is the word the *Family Law Act* uses.

The *Family Law Act* **does not apply** when you are in a romantic or dating relationship with someone who you are not married to, not living with, or do not have children with. However, if a man you’re romantically involved with or dating threatens you or is violent, it is still a criminal matter, and you can contact the police to make a report.

If you are **not married** to your spouse, only the BC *Family Law Act* will apply to your family law matters.

If you are **married** to your spouse, both the BC *Family Law Act* and the federal *Divorce Act* may apply to your family law matters. This guide does not have information on the *Divorce Act*.

1.2. What will this Guide Cover?

- What is considered “family violence” under the *Family Law Act*.
- Court orders to help protect you and your children from violence.
- What will happen with your children after separation:
 - What guardianship means and who will get guardianship of children.
 - What parenting responsibilities and parenting time are and how they will be divided between parents. This used to be called “custody and access”.
 - What can happen if one parent denies another parent parenting time or contact with a child.
 - When you may move with your child and what to do if you want to move with your child.
- What dispute resolution is and what different types of dispute resolution professionals do.
- Where you can get more help, information, and legal advice.

1.3. What will this Guide NOT Cover?

- Information about the federal *Divorce Act*, which may govern part of your family law problem if you and your spouse are married and you are trying to get a divorce.
- The division of family property, such as pensions or houses that you own.
- Spousal support payments and child support payments.
- Legal issues that can arise if your child was conceived using assisted reproduction, such as sperm donation or surrogacy.
- Issues relating to property on Indian reserves.
- Issues relating to immigration, such as spousal sponsorship.

If you have questions on these topics, you should look for other information or contact a lawyer for legal advice. There is a list of resources at the end of this guide, on pages 24 – 25.

2. Family Violence

This section explains how **family violence** is defined in the *Family Law Act* and gives some examples. Family violence includes physical abuse, sexual abuse, psychological or emotional abuse and exposing a child to violence (s. 1).

Physical abuse:

- Pushing, hitting, punching, choking, kicking, biting, forced confinement, or depriving someone of the necessities of life, like food.
- Attempts to physically abuse.

Note: If you use reasonable force to protect yourself or someone else from violence, this will **not** be considered family violence.

Sexual abuse:

- Unwanted sexual touching, forcing someone to have sex and any sexual touching of a child.
- Attempts to sexually abuse.
 - For example, your spouse tried to force you to have sex, but then stopped.

Psychological or emotional abuse:

- Intimidation, harassment, coercion, or threats to you, another person, a pet or property.
 - For example, your immigration status is sponsored by your spouse, and he threatens to have you deported or to withdraw his sponsorship.
- Restricting you from controlling your finances or from making your own decisions.
 - For example, your spouse will not let you go out with friends or tells you what time you have to be home by.
- Following or stalking you.
- Intentionally damaging property.

Exposing a child to violence directly or indirectly:

- For example, if your spouse is violent to you and your children see it, hear it, or see your injuries, both he and you may be seen as exposing your children to family violence. If you are being accused of exposing your children to violence because your spouse was violent to you, it may help to explain what you did to try to protect your children from being exposed.

3. Court Orders for Protection

This section discusses court orders you can apply for if you have separated from your spouse, or you are about to, and you are worried he will hurt you or your children.

3.1. Protection Orders

The *Family Law Act* has introduced a new court order called a **Protection Order**. You can apply to the BC Provincial Court or BC Supreme Court for a Protection Order even if you are not ready to make an application for other matters, like a parenting arrangement. A court can also make a Protection Order without being asked – that is, even if you haven't applied for one (s. 183(1)(a)).

A court may make a Protection Order if the court finds that (s. 183(2)):

- you, your children, or any of your family members are **at risk for family violence**,
- and
- **family violence is likely to happen**. Family violence includes anything in the definition of family violence, discussed in section 2 on page 4 of this guide.

If your spouse breaks or violates a term of the Protection Order, you can call the police to enforce the order. A police officer may take action to enforce the order if she or he has reasonable grounds to believe the order has been violated. For example, if a Protection Order says that your spouse is not allowed to come to your home and he does, a police officer can take him off the property (s. 188).

A Protection Order expires one year after it is made, unless the court orders that it should last for a different length of time (s. 183(4)).

If you have a Protection Order, you can apply to court to change the order before it expires. For example, if your Protection Order will expire soon, but you are still concerned for your safety, you can apply to court to extend the order (s. 187).

Under the old BC family law, a court could make a similar order, called a restraining order. These orders won't be made under the new law.

If you have a restraining order that was made under the old law, it will still be in effect. The new law has not changed it.

A court can make the following orders in a Protection Order (s. 183(3)):

- An order that your spouse cannot:
 - communicate directly or indirectly with you or your children,
 - come to your or your children's residence, property, business, school, or workplace, even if your spouse owns the place or has a right to possess it,
 - follow you or your children,
 - own or carry a weapon.
- An order that places limits on how your spouse may communicate with you or your children.
- A direction to a police officer to:
 - remove your spouse from the residence,
 - accompany your spouse or you to the residence to supervise the removal of personal belongings,
 - take weapons from your spouse.
- An order that your spouse must report to court or someone named by the court.
- Any other terms or conditions that the court considers necessary to protect the safety and security of you or your children or to implement the order.

If you have a Protection Order as well as another order under the Family Law Act, and the two orders say different things, the Protection Order "trumps" and the other order is suspended (s. 189).

For example, if there is an order that your spouse can have parenting time with the children, and a Protection Order states that your spouse is not allowed to communicate with you and your children, the order for parenting time is suspended, and your spouse must obey the Protection Order by not communicating with you and your children.

In deciding whether to make a Protection Order, the *Family Law Act* tells the court to consider the following things. It will help if you give your lawyer or the court evidence on these things (ss. 184(1), 185):

- any history of family violence by your spouse,
- whether his violence is repetitive or getting worse,
- whether psychological or emotional abuse shows your spouse is trying to control you, for example, he tries to control who you see or where you go,
- whether you intend to separate from your spouse or have recently separated,
- any of your spouse's circumstances that increase the chances he will be violent, for example, he abuses drugs or alcohol, he has lost his job, he has financial problems, he has mental health problems associated with an increased risk of violence, he has access to weapons, or he has a history of violence,
- your perception of your and your children's safety and security, for example, whether you are afraid he will hurt you or your family,
- any of your circumstances that increase your vulnerability, including whether you're pregnant, your family circumstances, your immigration status, your health, and whether you are financially dependent on him,
- if your child is at risk from your spouse, whether your child may be exposed to family violence unless a Protection Order is made.

The court may make a Protection Order, even if (s. 184(4)):

- a previous Protection Order has been made,
- your spouse doesn't live with you at the time,
- you and your children are at a shelter, transition house, or other safe place,
- criminal charges may be or have been laid against your spouse,
- you and your spouse have a history of separating and getting back together,
- other orders have been made under the *Family Law Act*.

3.2. Temporary Exclusive Occupation of Family Residence

You can apply to the BC Supreme Court for an order giving you **temporary exclusive occupation of a family residence**. If the court makes this order, it means that you have the right to live in the residence for a certain period of time and your spouse is not allowed to live there. This order can apply to the place you normally live or a place that is owned, leased or rented by either you or your spouse or both of you. This order does **not** mean that the residence or property belongs to you, and you will not be allowed to sell it or give it away – the property division will still have to be decided later (s. 90).

3.3. Conduct Orders

The BC Provincial Court or the BC Supreme Court can make a **Conduct Order** – an order that you, your spouse, or your children must do or must not do certain things. The purpose of the Conduct Order is to help settle a family law dispute, to manage behaviours that are making settlement difficult, or to prevent misuse of the court (s. 222). For example, if your spouse is making many applications to court as a way to harass you, the court may consider this misuse of the court. A Conduct Order can be made even if other orders have been made under the *Family Law Act*, like a temporary exclusive occupation order.

Conduct Orders may be useful if the court has denied you a Protection Order. As the next best alternative, you could ask the court to make a Conduct Order about how your spouse behaves. However, remember that the court can give a Conduct Order to anyone in a family law dispute, including you.

Unlike a Protection Order, if your spouse breaks a term of the Conduct Order, you cannot call the police to enforce it. Instead, you would need to go back to court. If the court finds that your spouse didn't follow the order, the court can respond by making another order or fining your spouse (s. 228).

Some examples of Conduct Orders are (ss. 224, 225, 226):

- Requiring that you or your spouse participate in family dispute resolution.
- Requiring that you, your spouse, or your children participate in counselling or programs.
- Setting limitations or conditions on communication between you and your spouse.
- Requiring you or your spouse to pay rent, mortgage or bills for the family residence.
- Prohibiting your spouse from cancelling utilities at the family residence.
- Requiring that someone supervise the removal of belongings from the family residence.

4. Children

This section discusses issues related to children after separation. While you may simply think of yourself as your child's parent, the terms **parent**, **guardian**, **parenting responsibilities**, **parenting time**, and **contact** with a child all mean different things under the *Family Law Act*.

4.1. Parents and Guardians

If you and your spouse are the child's biological parents, then when you separate, both parents are considered the child's **guardians** (s. 39(1)). You and the child's other parent can make an agreement or a court can order that a biological parent is not a guardian on separation (s. 39(2)).

A child's biological parent who has never lived with the child and has not regularly cared for the child will **not** be considered a child's guardian (s. 39(3)). If you marry or live with a man who is not the child's biological parent, that does **not** automatically make that man the child's guardian (s. 39(4)). A person who is not a biological parent can apply to a court to be appointed as a guardian, for example, a child's grandparent (s. 51).

4.2. Parenting Responsibilities and Parenting Time

The new *Family Law Act* introduces new terms for how parenting is split up after you and your spouse separate: **parenting responsibilities**, **parenting time**, and **contact**. These terms replace the old BC family law terms "custody" and "access".

Only a child's guardians can be given parenting responsibilities and parenting time (s. 40(1)). People other than a guardian who want to spend time with a child can be given contact with a child. Contact is discussed in section 4.3, on page 14.

The federal Divorce Act still uses the terms "custody" and "access", not "parenting responsibilities", "parenting time", and "contact". If you are married to your spouse and you are getting a divorce, the parenting agreements and orders may be made under the Divorce Act, not under the BC Family Law Act.

If there is no agreement or order in place, the *Family Law Act* states that each child's guardian may exercise all parental responsibilities in consultation with the child's other guardian. This means that if you share guardianship of your child with another parent, you usually have to consult with the other guardian when making major decisions about the child. The *Family Law Act* says that guardians must exercise their parenting responsibilities in the best interests of the child (s. 43(1)).

You do **not** have to consult with the child's other guardian if it would be unreasonable or inappropriate in the circumstances (s. 40(2)). For example, if you have to make a medical decision quickly, or if you are hiding from your spouse at a transition house for your safety, it would likely be considered reasonable for you to make decisions on your own.

Some examples of **parenting responsibilities** are (s. 41):

- making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child,
- making decisions about where the child will live,
- making decisions about with whom the child will live and associate,
- making decisions about the child's education and participation in extracurricular activities, including the nature, extent and location,
- making decisions about the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity,
- applying for a passport, licence, permit, benefit, privilege or other thing for the child,
- giving, refusing or withdrawing consent for the child, for example, giving consent for health care treatment,
- requesting and receiving information about the child from third parties, for example, from teachers or doctors.

Parenting time is time that a guardian spends with a child. Unlike parenting responsibilities, which a child's guardian has automatically, parenting time must be arranged under an agreement or an order from a court or a dispute resolution professional. During a guardian's parenting time, she or he may make day-to-day decisions affecting the child, and control and supervise the child unless an agreement or order states she or he may not do these things (s. 42).

How are Parenting Responsibilities and Parenting Time split up?

A **parenting arrangement** refers to how parenting responsibilities, parenting time, and decisions about children are split up between guardians. Sections 4.1 and 4.2 explained that on separation, it is presumed that both parents are guardians and that both guardians share parenting responsibilities. However, you and your spouse can make a different agreement, or a court or a dispute resolution professional can order a different parenting arrangement.

There are different ways a parenting arrangement can be made:

- You and your spouse can make an agreement about how to share parenting responsibilities and parenting time. You can do this on your own, or you may use a service provider like a lawyer or a mediator. Once you sign an agreement, you are bound by it. It can be difficult and expensive to change terms in an agreement. Before you sign anything, consider the arrangement carefully. It is a good idea to speak to a lawyer to get legal advice first. If you cannot afford a lawyer, there are some suggestions for low-cost and free legal advice and information in sections 6.2 and 6.3 on pages 24 – 25. If you want information on changing an agreement, see section 4.4, Changing Parenting Arrangements, on page 14.
- A court can order that you and your spouse participate in a dispute resolution process. For example, a court can order that you must go to a dispute resolution professional, who will help you and your spouse reach an agreement about parenting arrangements. For information on dispute resolution, see section 5 on pages 20 – 23.
- A court can make an order about a parenting arrangement.

The *Family Law Act* states that the only consideration for making a decision about parenting arrangements is what is in the best interests of the child. This is true whether parents make an agreement, a dispute resolution professional makes a decision about parenting arrangements, or the court orders a parenting arrangement. This means decisions will be made based on what the decision maker thinks is best for the child, not based on what would be best for the parents or what the parents want.

No particular type of parenting arrangement is presumed to be in the best interests of the child. That means there is **no** presumption that (s. 40(4)):

- parenting responsibilities should be shared equally between guardians,
- parenting time should be shared equally between guardians, or
- guardians must make decisions together.

The law allows for one guardian to be given all the parenting time, parenting responsibilities and decision making. However, courts and professionals are very reluctant to deny a guardian any time with his or her children, no matter what the circumstances are. Sometimes courts view a guardian who appears resistant to the other guardian spending time with the child as uncooperative or unreasonable.

If you do not want your spouse to have parenting time or responsibilities with your child, you should make it clear that you think it is not in the best interests of the child because of his history of violence. If you claim that your spouse has been abusive, it will be up to you to convince the court or professional. Courts and professionals do not always believe women when they say their spouse was violent to them or their children. The more information and evidence you provide, the more likely it is that you will be believed. The *Family Law Act* states that an agreement, decision or order is **not** in the best interests of a child unless it protects a child's physical, psychological and emotional safety, security and well-being as much as possible (s. 37(3)).

*If you have a previous custody and access arrangement under the old BC family law (the Family Relations Act), that agreement or order is still in effect even though a new law has been passed. A person who had custody or guardianship of a child under the old law will be considered a guardian who has **parenting responsibilities and parenting time** under the new Family Law Act. A person who had only access, but not custody or guardianship of a child, under the old law only has **contact** with a child under the new Family Law Act (s. 251).*

To decide what is in the best interest of a child in making a parenting arrangement, all of the child's needs and circumstances must be considered, including (s. 37):

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

If your spouse has been violent to you or your child, a court must consider (s. 38):

- the nature and seriousness of the violence,
- how recently the violence occurred,
- how often the violence occurred,
- whether any psychological or emotional abuse shows a pattern of coercive and controlling behaviour directed at you,
- whether the violence was directed toward the child,
- whether your child was exposed to violence that was not directed at her/him,
- the harm to your child's physical, psychological and emotional safety, security and well-being as a result of the violence,
- any steps your spouse has taken to prevent himself from being violent again,
- anything else that is relevant.

4.3. Contact with a Child

The *Family Law Act* uses the word **contact** to refer to time that an adult who is **not** a child's guardian spends with a child. For example, if your child's father is not the child's guardian, but wants to spend time with the child, he is asking for contact. Or, if a man you were in a relationship with, who is not the child's parent or guardian, wants to spend time with the child, he is asking for contact. Other relatives, like the child's grandparents, may also ask for contact.

There are two ways someone can get contact with a child:

- 1) If all the child's guardians agree, you can make an agreement that someone can have contact with the child.
- 2) The person who wants contact with the child can apply to the BC Provincial Court or the BC Supreme Court (s. 59). The court will decide whether to order that the person may have contact with the child based on whether it is in the child's best interest (discussed on page 13). If the court makes a contact order, the court can also order how the contact will take place.

4.4. Changing Parenting Arrangements

If there is no agreement or order in place about parenting arrangements, but you and the child's other guardian(s) have had an **informal parenting arrangement** in place long enough to become part of the child's routine, you must not change the informal arrangement without consulting the other guardian(s) in that arrangement. However, you do not have to consult if it would be unreasonable or inappropriate in the circumstances. For example, if you and your ex-spouse had an arrangement that he spends time with your children on weekends, but he threatens your safety and you leave with the children to stay in a transition house, it would likely be considered unreasonable or inappropriate for you to consult with him (s. 48(1)).

If you have an informal parenting arrangement in place, you can change the arrangement by making an agreement with the other guardian(s), or, if you cannot reach an agreement, by applying for an order from the court (s. 48(2)).

If you want to change an **agreement** you and your spouse made about parenting arrangements, and your spouse will not agree to the change, you can apply to court to set aside an agreement. If the court is satisfied that the agreement is not in the best interests of the child, then the court will set aside the agreement (s. 44). The best interests of the child include all of the factors discussed on page 13. However, it can be very difficult to convince a court to change an agreement that you made.

If you want to change an **order** that was made about parenting arrangements, you can apply to court to change or set aside the order. If the court is satisfied that there has been a change in the needs or circumstances of your child, then the court will make a new order that is in the best interests of the child (s. 47). A court will only be willing to make a new order if there has been a fairly significant change.

4.5. Moving with a Child

This section discusses what you can do if you want to move to another place with your child after you and your spouse have separated. Sometimes this is called “relocation” or “mobility”.

If NO Agreement or Order is in Place

If you want to move, and there is **NO agreement or order in place** about a parenting arrangement, you can try to reach an agreement with your child’s other guardian(s) about moving. If you reach an agreement with the other guardian(s), you can move.

If there is **NO agreement or order in place**, you cannot reach an agreement with your child’s other guardian(s), and the move will have a significant impact on your child’s relationship with her or his other guardian(s), you can apply to court for a parenting arrangement order. The court must consider what parenting arrangement would be in the best interests of the child (discussed on page 13), and the reasons why you want to move (s. 46). For example, if you want to move because you think you will have a better chance of finding work or to be closer to other supportive family members, the court may consider the move in the child’s best interests.

If a Written Agreement or Order is in Place

If there is a **written agreement or order in place** and you want to move with your child, and the move will have a significant impact on that child's relationship with her or his other guardian(s) or another significant person in her or his life, then you must give notice to the other guardian and anyone else who has contact with the child. The notice must be given in writing, at least 60 days before you move, and must state the date and location of the proposed move (ss. 65, 66).

The BC Provincial Court or the BC Supreme Court can grant you an exemption from all or part of the requirement to give notice if you satisfy the court that you cannot give notice without a risk of family violence OR if there is no ongoing relationship between your child and the other guardian or person having contact with the child. For example, if you want to move and you do not want to tell your spouse where you are going because you think he will hurt you or your children if he knows where to find you, the court can give you permission to move without giving him notice (s. 66(2)).

If you give notice that you would like to move and you reach an agreement with the child's other guardian or person who has contact with the child, then you may move with your child on the proposed date or after it.

If you give notice that you are moving and the child's other guardian(s) or person who has contact with the child does not file an application in court within 30 days for an order prohibiting (not allowing) relocation, then you may move with your child on the proposed date or after it. This means, for example, that if you give your ex-spouse written notice that you are going to move, it is not enough for him to simply tell you that he objects to the move. He must file an application in court for an order prohibiting the move (s. 68).

This also means that if your spouse gives you notice that he is leaving with your child, and you do not want him to leave the area with your child, you must file an application in court to prohibit the move within 30 days.

If you are worried that your spouse will try to leave the area with your child, you can apply to BC Provincial Court or BC Supreme Court for an order that he cannot leave a specific area with the child (s. 64).

If you and the child's other guardian(s) cannot reach an agreement about the move, then you can apply to court. The court can order that you may move with the child, or that you are not allowed to move with the child. This court's decision will partly depend on whether you have more parenting time, or substantially equal parenting time with the child's other guardian.

If you have more parenting time with your child than the other guardian, the move will be considered in the best interests of the child, as long as you satisfy the court (s. 69(4)):

- that the proposed move is made in good faith – that is, you have a sincere reason to move and you are not lying or doing it for a malicious reason. The court will consider the reasons for the move, whether the move is likely to increase your or your child's quality of life, whether you gave notice, and whether there are any restrictions on moving in a written agreement or order (s. 69(6)). For example, if you have a better chance of finding work or you have supportive family members in the place you propose to move to, the court may see the move as likely to increase your and your child's quality of life.

and

- that you have proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardian, people who have contact with the child, and other people who have a significant role in the child's life.

If you and the child's other guardian have substantially equal parenting time, in order to move, you will need to satisfy the court (s. 69(5)):

- that the proposed move is in the best interests of the child (discussed on page 13);

and

- that the proposed move is made in good faith – that is, you have a sincere reason to move and you are not lying or doing it for a malicious reason. The court will consider the reasons for the move, whether the move is likely to increase your or your child's quality of life, whether you gave notice, and whether there are any restrictions on moving in a written agreement or order (s. 69(6)). For example, if you have a better chance of finding work or you have supportive family members in the place you propose to move to, the court may see the move as likely to increase your and your child's quality of life.

and

- that you have proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardian, people who have contact with the child, and other people who have a significant role in the child's life.

4.6. Denying Parenting Time or Contact

This section discusses what will happen if someone is denied parenting time or contact that they are entitled to under an agreement or an order. This could happen if you deny someone parenting time or contact they are entitled to, or if someone denies you parenting time or contact you are entitled to. The *Family Law Act* treats situations when the denial is “wrongful” differently than when the denial is “not wrongful”.

When denial is wrongful

If someone is denied parenting time or contact, that person can apply to BC Provincial Court or BC Supreme Court to have the agreement or order enforced. If the court decides that the denial was wrongful, the court can order (s. 61(2)):

- That your family participates in dispute resolution (see section 5 on pages 20 – 23 for information on dispute resolution).
- That you, your spouse, or your child must attend counselling or another program.
- That the person who was denied gets a specific time to make up for lost parenting time or contact with the child.
- That the transfer of the child be supervised by someone.
- That the guardian who denied the parenting time or contact has to pay the denied person for their travel expenses, lost wages, or child care expenses.
- That the guardian who denied the parenting time or contact has to pay a fine up to \$5000.

If the court is concerned that the guardian who denied the parenting time or contact will not obey the court order, the court can order that guardian to give money to the court as security, or report to someone.

You cannot deny a guardian parenting time that he is entitled to on the grounds that he has failed to pay child support that he owes for that child. If you deny someone parenting time because of a failure to pay child support, that may be considered “wrongful”.

If your spouse repeatedly fails to exercise his parenting time or contact, a court can order him to reimburse you for lost wages, child care expenses, or travel expenses that you lost because he failed to exercise his parenting time or contact. The court can also make orders to try to ensure he exercises his parenting time or contact in the future (s. 63).

When denial is NOT wrongful

The *Family Law Act* states it is **not** wrong to deny someone parenting time or contact in these situations (s. 62(1)):

- The guardian reasonably believes the person will be violent to the child.
- The guardian reasonably believes that the person was drunk or high on drugs.
- The child was sick, and a doctor writes a note that says the parenting time or contact is not appropriate.
- In the 12 months before the denial, the person failed repeatedly and without reasonable notice or excuse to use their parenting time or contact.
- The person told the guardian that they were not going to use their parenting time or contact and then changed his or her mind without giving the guardian reasonable notice.
- Other situations that the court thinks are enough to justify denial.

Tips

When a court considers whether your belief was “reasonable” they will not just consider whether you believed it at the time. The court will also consider whether someone else in your shoes at the same time would have believed the same thing. For example, if you thought your spouse was drunk when he was picking up the children and you denied him parenting time, the court will ask whether another person in your shoes would also have thought your spouse was drunk.

If you are having problems with your spouse exercising his parenting time or contact, it might help to keep a journal or notebook where you write down notes of dates and what happened. For example, if your spouse often does not come to exercise parenting time or contact or often comes late, you can write down when this happens. It may help you to have these details written down if there is a dispute in the future.

5. Out of Court Dispute Resolution

This section explains what dispute resolution is and introduces some types of dispute resolution processes. **Dispute resolution** is an out of court process where you and your spouse negotiate with each other to reach an agreement. There is a strong emphasis in the new *Family Law Act* on using a dispute resolution process instead of, or at least before going to court (s. 4). The *Family Law Act* requires lawyers to tell you about options for dispute resolution (ss. 8, 197).

You do not have to participate in a dispute resolution process **unless** a court orders that you must. A court can make an order that you and your spouse must participate in an out of court dispute resolution process (s. 224).

Some examples of dispute resolution processes are:

- **Mediation** – a process where you and your spouse negotiate while a neutral third party tries to help you reach an agreement together. Mediators do not make decisions for people.
- **Collaborative Law** – a process where you and your spouse agree that you will not go to court, and instead you and your lawyer negotiate together with your spouse and his lawyer to reach an agreement.
- **Arbitration** – a process where you and your spouse agree that an arbitrator will make binding decisions for you in your family law dispute.
- Using the services of a **family justice counsellor** or a **parenting coordinator**.

The *Family Law Act* states that family law professionals like family justice counsellors, parenting coordinators, and lawyers have a duty to ask questions to find out if there has been violence in your family before beginning a dispute resolution process (s. 8).

It may be difficult for you to go through a dispute resolution process or to get a fair result if your spouse has been controlling or abusive. Dispute resolution is based on the idea that two people come to the process with the same amount of power and resources to bargain with. The assumption is that both of you are willing to make compromises to reach a fair agreement.

If your spouse usually made decisions for both of you, if he controlled the finances, or if he is used to getting his way, it may be very difficult for you to assert what you want and difficult for him to see your perspective and make compromises.

This is especially true if your spouse has an advantage going into the process. For example, if he has more money than you, if he has a better paying job or higher education level than you, or if he has permanent resident or citizenship status in Canada and you do not. If making sure your children stay with you is the most important thing to you, and your spouse knows that, he may try to use that as a bargaining tool to make you agree to an unfair property division or spousal support arrangement.

This does not mean that you should never take part in dispute resolution. If it is safe and workable for you, it can be cheaper and faster than going through a court process. But it is worth thinking carefully about whether you believe you and your spouse will be able to reach a fair agreement before you agree to participate.

Tips

If you decide to participate in a dispute resolution process, or a court orders that you must, there are some things you can do to try to make the process more fair.

For example, you can ask to meet with the professional who will facilitate the process alone and tell them what your concerns are before having a group meeting with your spouse.

Some dispute resolution processes can take place without you and your spouse sitting down in the same room together. The professional who will facilitate the process can meet with you, then meet separately with your spouse, and go back and forth between you to try to reach an agreement. This is sometimes called "shuttle mediation".

You can also ask whether you can have an advocate, transition house worker, rape crisis worker or lawyer with you during the process. The law does **not** say that a dispute resolution professional must let you have a support person with you during dispute resolution. But if a dispute resolution professional won't agree to you having a support person with you, you can try to find another professional who will.

5.1. Family Justice Counsellors

A **family justice counsellor** is a government employee. They may provide you with information or give you a referral to another service or agency (s. 10). At the time this guide was written, the wait times to meet with a family justice counsellor were very long.

A family justice counsellor may also be appointed by a court to assess the needs of your child, the views of your child, or the willingness and ability of you or your spouse to satisfy your child's needs (s. 10). This means that the family justice counsellor may interview you, your child, or your spouse and prepare a report for the court. Under the old family law, these reports were sometimes called a "custody and access report" or a "section 15 report". You should receive a copy of this report. The court can order that you and/or your spouse pay a fee for this (s. 211).

5.2. Parenting Coordinators

A **parenting coordinator** is a professional who helps you and your spouse with implementing a parenting arrangement. People use a parenting coordinator when they already have an agreement or order in place for parenting arrangements, but they cannot agree on how the arrangement is put into place or carried out.

You will only use a parenting coordinator if you and your spouse agree to use one or the court orders that you must use one (s. 15). The court can order that you and your spouse go to a parenting coordinator even if you do not want to. At the time this guide was written, there was no government funding for parenting coordinators and the fees they charge are usually very expensive. If you do not have enough money to pay for a parenting coordinator, you should make this clear to the court.

A parenting coordinator may assist you and your spouse to make an agreement by creating guidelines and strategies about how to communicate and solve conflicts about parenting arrangements (s. 17). If you and your spouse cannot reach an agreement, a parenting coordinator may also make a binding decision about parenting arrangements or contact with a child that you and your spouse **must** follow (s. 18). When making this decision, the parenting coordinator must consider only the best interests of the child, not the interests of the parents (s. 18(2)). The best interests of the child include all of the factors discussed on page 13.

The *Family Law Act* states that you **must** give a parenting coordinator any information the parenting coordinator asks for. If the parenting coordinator asks for your permission to request or receive information about you, your spouse, or a child from other people who are not in your family (s. 16) you **must** give them this permission. For example, the parenting coordinator can ask you to give her permission to get information from your child's teacher about your child.

5.3. Mediators

A **mediator** is a professional who helps you and your spouse come to an agreement on family law problems after separation. Mediators do not make decisions for you. Any professional with at least 2 years of experience in a family related profession who takes mediator training can be a mediator. Lawyers, social workers, nurses, or teachers can be a mediator.

5.4. Arbitrators

An **arbitrator** is a professional who makes binding decisions for you and your spouse on family law problems after separation. Not all arbitrators can make decisions on all family law problems. An arbitrator who is a psychologist or counsellor can only make decisions about child-related issues and straightforward child support. Arbitrators who are lawyers can make decisions about any family law problem, including spousal support and property division.

If you tell any professional, like a lawyer, family justice counsellor, parenting coordinator, mediator, or arbitrator, anything about a child being abused or neglected, they may be obligated to report this to a child welfare worker with the Ministry of Children and Family Development, who may begin an investigation. They may make this report even if you tell them that your spouse abused the child in the past, and he no longer has access to the child. They may make this report even if your spouse never abused your child, but he abused you and they think that the child was exposed to this abuse.

Under some circumstances, information you tell a lawyer will be kept confidential and not reported to the Ministry. It is important that before you tell a professional anything, you ask them what they will keep confidential and what they may have to report.

6. More Information, Help, and Legal Advice

6.1. Finding a Lawyer

If you can afford a lawyer, many transition houses, rape crisis centres, women's centres, and women's support services keep lists of family law lawyers who are experienced in situations where there has been violence in the family. You can contact your local women's organization and ask if they keep a list of family law lawyers (see page 25 for a list of organizations).

You can also call the Lawyer Referral Service of BC, who will provide you with the names of a few lawyers in your area. Using this service, the lawyer will charge you \$25 for the first 30 minutes of consultation. Any further work the lawyer does will cost additional money. You can find more information on the Lawyer Referral Service by calling 604-687-3221 or at http://www.cba.org/bc/initiatives/main/lawyer_referral.aspx.

6.2. If you Cannot Afford a Lawyer

This section explains what you can do to get legal advice if you cannot afford to hire a lawyer to represent you.

Legal Aid for a Lawyer

Legal aid services are free legal services provided by the government. Legal aid will pay for a lawyer to take your case and represent you if your income is below a certain level and you have a certain type of legal problem. At the time this guide was written, legal aid would only pay for a lawyer to represent you if you had one of the following problems:

- You need an immediate court order to ensure you or your children's safety or security, for example, a Protection Order (discussed on page 5).
- There has been a serious denial of parenting time or contact.
- A parent or guardian threatens to remove children permanently from the province.

If you do not qualify for a legal aid lawyer to represent you, you may qualify for legal aid to pay for a few hours of **advice** with a family law lawyer. Speaking with a lawyer for a little while may be helpful if you are representing yourself in court and want a lawyer to check your documents or answer a particular question.

There are also **duty counsel** at the BC Provincial Court and the BC Supreme Court. Duty counsel are lawyers paid by legal aid to help low income people with their family law problems. Even if you do not qualify for a legal aid lawyer, you may still qualify for legal aid to pay for you to speak with duty counsel. To find more information on legal aid, and to see if you qualify for legal aid, you can look on the Legal Services Society of BC website at <http://legalaid.bc.ca/>.

6.3. More Information

The following is a list of resources with more information on family law, court forms, court rules and fees, and how to prepare yourself for court:

- *BC Family Law Act* – <http://www.bclaws.ca>
 - On the BC Laws website, click on the “Laws” tab, then on the letter “F” tab, then on “Family Law Act”
- BC Ministry of Justice: Family Justice – <http://www.ag.gov.bc.ca/family-justice/index.htm>
 - Provides a website with information and runs Justice Access Centres in Vancouver, Victoria, and Nanaimo that offer information and help with family law matters in-person and over the phone
- Legal Services Society Family Law in BC – <http://www.familylaw.lss.bc.ca/>
 - Provides a website with information and runs a Family LawLINE with lawyers who give free legal advice over the phone for people with low income
- Supreme Court BC: Online Help Guide – <http://www.supremecourtbc.ca/family-law>
- Clicklaw – <http://www.clicklaw.bc.ca/>
- Access Probono – <http://www.accessprobono.ca/>
- JP Boyd’s BC Family Law Resource – <http://www.bcfamilylawresource.com/>

Women’s centres, women’s support services, rape crisis centres and transition houses provide free and confidential support, counselling, information, and advocacy to women who have experienced violence. The following is a list of some women’s organizations:

- Atira Women’s Resource Society – 604-331-1407 – <http://www.atira.bc.ca/legal-advocate>
- Battered Women’s Support Services – 604-687-1867 – <http://www.bwss.org/>
- Downtown Eastside Women’s Centre – 604-681-8480 – <http://www.dewc.ca/>
- Sources Women’s Place – 778-565-3638 – <http://www.sourcesbc.ca/>
- Women Against Violence Against Women – 604-255-6344 – <http://www.wavaw.ca/>
- Vancouver Rape Relief & Women’s Shelter – 604-872-8212 – <http://www.rapereliefshelter.bc.ca/>
- YWCA – 604-895-5800 – <http://www.ywcavan.org/>

**A resource for
front-line workers**

**WHEN
BATTERED
WOMEN ARE
ARRESTED**

**A GROWING
PROBLEM**



**BATTERED WOMEN'S
SUPPORT SERVICES**



The Violence Stops Here

www.bwss.org • www.theviolencestopshere.ca

In recent years, Battered Women's Support Services (BWSS) has become increasingly alarmed by the growing number of women accessing its services who have been arrested for allegedly perpetrating domestic violence against their partners.

In BWSS' experience, these arrests are occurring despite the fact that in all cases the women were in relationships where they were being abused by their partners, and it is clear that some very worrying patterns are emerging. For example, women accessing BWSS' services nearly always claim to be acting to protect themselves when they were arrested, and often the police have been involved in relation to the partner's abuse on previous occasions. It is also concerning that many women who are being arrested are from immigrant backgrounds.

There are huge legal, social, economic and emotional consequences for women who are arrested, which may include the involvement of MCFD, loss of child custody to a violent partner, the inability to find employment with a criminal conviction, incarceration and even deportation. These consequences add significantly to the burden already being shouldered by women who are victims of relationship violence, and women's negative experience of the criminal justice system may in many cases make them more vulnerable to further abuse.

Given the increasing prevalence of woman arrest and the dire consequences of being arrested, it is critical that advocates are proactive in assisting women who have been arrested, and that these women are provided with appropriate information, support and advocacy. This tool is designed to assist advocates to provide these services.

WHY ARE WOMEN BEING ARRESTED?

Most of the literature attributes the increase in women being arrested to the application of pro arrest, pro charge, no drop and mandatory arrest policies (often collectively referred to as 'mandatory charge' policies). Police may feel compelled by these policies to arrest any party who has perpetrated violence, regardless of the context. Ironically and unfortunately, these arrest policies are sometimes being used against the very people whom they were designed to protect.

In addition, when police attend scenes of domestic violence, the situation can often be difficult to interpret, making the decision to arrest a complex one. Police officers also often view the credibility of each of the parties at a domestic violence incident according to their own prejudices, assumptions and biases. Police officers may tend to arrest the more distressed and emotional party (often the woman), and accept the calm, rational account given by the perpetrator. Police officers may also view Aboriginal women, immigrant women and/or women of colour as being more susceptible to perpetrating violence, and accordingly arrest them.

WHAT ARE THE RELEVANT POLICE AND CROWN COUNSEL POLICIES AROUND WOMAN ARREST?

There are three principal policies which apply to woman arrest for domestic violence in British Columbia: the RCMP "E" Division Operational Manual Part 2: Criminal Code Offences, persons, violence in relationships: Section 4, primary aggressor; the BC Violence Against Women in Relationships Policy (VAWIR Policy) and the BC Crown Counsel policy. These policies are largely inconsistent and lack any real coordination and integration. For example, while the RCMP policy requires a primary aggressor assessment, the VAWIR Policy contains no such requirement, and nor are Crown Counsel required by their policy to consider contextual factors in the decision to prosecute. Advocates should keep copies of these policies to assess whether they have been followed in specific cases.

BWSS believes that police in all cases should thoroughly investigate the context, history and dynamics of relationship violence before they make the decision to arrest a woman for perpetrating domestic violence. They should:

- upon arrival at the scene, interview both parties separately for their account of what happened, and if possible interview any neighbours or family friends who may have information regarding the abuse;
- if the woman is an immigrant woman who does not speak good English, provide a qualified interpreter to translate;
- question the woman about the history of abuse and violence in the relationship;
- investigate any claims of self-defense made by the woman, and whether her use of violence was legitimate;
- assess which party is more dangerous, physically imposing, and in control of the situation;
- carefully assess any injuries sustained by both parties (including whether they are likely to have been sustained in self-defense);
- conduct a comprehensive risk assessment of the situation and help the woman prepare a safety plan;
- conduct detailed background-checks to assess whether the police have been called previously in relation to violence in the relationship, and whether the man has a criminal history in relation to domestic violence generally.

If it is not clear immediately who the dominant aggressor is, then police should not rush to arrest, but make further investigation using record searches, witness interviews, and follow up inquiries.

HOW CAN YOU SUPPORT WOMEN WHO HAVE BEEN ARRESTED?

There are a number of steps advocates can take to support women who have been arrested:

1. INFORM Inform and educate the woman about the dynamics and prevalence of woman arrest, and the relevant police and Crown Counsel policies applying to her situation. Let her know she is not alone in her arrest experience.

2. ASSESS Make a detailed assessment of the woman's arrest experience, which should include asking the following questions at the minimum:¹

Background

- Is English the woman's primary language? If not, is she fluent in English?

- What is the woman's immigration status?

- What is the gender of the other party?

- Has there been prior abuse in the relationship? Please provide details.

- Have the police been called in relation to the partner's abuse in the past? Please provide details.

- Does the woman or the other party have a prior criminal record?

- Is there anything else important about the background of relationship violence that the woman wants to raise?

Circumstances of the arrest

- Which police force arrested the woman? What is the police file number for the incident?

- What were the circumstances leading to the arrest itself?

- Did the woman use violence against the other party? Why?

- Was there any evidence of physical injury to either party? If so, what?

- What evidence was available at the scene? What evidence led to the police officer's decision to arrest?

- Who called the police?

- What did the police do? (*interview both parties, length of time to assess the situation, provide an interpreter if necessary*)

- Was the other party arrested?

- Did the police follow the relevant policies relating to arrests for domestic violence?

- Is there anything else about the arrest that the woman would like to raise?

Impact of the arrest

- Was the woman detained in custody and for how long?

- Was the woman charged? With what offence(s)?

- Was the woman able to get legal representation? Please provide details of any problems with this process.

- Was the woman convicted? Please provide details of the sentence received.

- What was the woman's experience of the legal system?

- Did the arrest impact on a family law case and how?

- Did the arrest lead to the involvement of MCFD and how?

- Did the arrest impact on the woman's employment or financial circumstances?

- Did the incident affect the woman's immigration status?

- How was the woman affected emotionally or psychologically by the arrest?

- Are there any other relevant impacts that the woman would like to talk about?

¹These questions have been adapted from the document 'Anatomy of a Woman Arrested' prepared by Darcie Bennett of Pivot Legal Society

4. ADVOCATE There are a variety of ways to advocate on behalf of individual women who have been arrested, and for law reform in this area generally. Using a detailed assessment of a woman's particular arrest situation, advocates can:

- assist the woman to obtain adequate legal representation;
- write to police and/or crown counsel requesting that the charges be dropped (and alleging the failure to follow policy, if relevant);
- assist the woman to file a formal written complaint about the police's conduct in arresting the woman to either the Commission for Public Complaints Against the RCMP (if RCMP officers arrested her) or the Office of the Police Complaint Commissioner (if municipal police officers arrested her);
- assess whether other legal avenues are open to the woman, including lodging a discrimination complaint with the BC Human Rights Tribunal or filing a small claim;
- use the particulars of the woman's case to advocate to law enforcement agencies and Government for reform of both policy and practice in this area.

The specific, informed and written consent of the woman to use the particulars of her case must be obtained prior to taking any of the steps outlined above. Informed consent involves discussing with the woman all of the consequences of any of the above actions and how those consequences might affect her and her children, as well as investigating options for support with those options. For example, women should be advised about the problems with the police complaint system in Canada, not least of which is that the police investigate the police and that women accordingly often report feeling pressured and intimidated by the complaint investigation process. These and other problems should be discussed with women before they decide which course of action to pursue.

Advocates should also compile a list of all cases where women have been arrested for use in advocacy for changes in this area.

5. SUPPORT Given the enormous ramifications of being arrested, it is important that advocates help women obtain the legal advice, representation and support they require to navigate the criminal justice system. Advocates should also assist the woman to obtain appropriate emotional support, which may include counseling, providing court accompaniment, or accompanying the woman to interviews in relation to any complaints about the conduct of police in arresting her.

Battered Women's Support Services is currently undertaking a law reform project on the issue of woman arrest, and is keen to collaborate with other front-line women's organizations to advocate for reform in this area. Please contact BWSS between 10am and 5pm on weekdays (and until 8pm on Wednesdays) on 604-687-1867 for further information in relation to this project.



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BRITISH
COLUMBIA

Help Starts Here.

Information on Stalking (Criminal Harassment)

What is stalking?

Stalking (also called criminal harassment) occurs when one person is followed, watched, communicated with, or subjected to any form of behaviour from another person such that they begin to fear for their safety or for the safety of those known to them. Stalking/criminal harassment often involves repeated conduct over a period of time between the perpetrator and the victim. Although stalking/criminal harassment may not result in injury, it can be a precursor to violent acts.

Stalking/criminal harassment is not a sign of love. It is a form of abuse that is based on power and control. It is also a crime under the Criminal Code of Canada. It can frighten you and take away your sense of security and personal safety. It can even lead to physical harm.

If you are a victim of criminal harassment, help is available.

Signs of Stalking/Criminal Harassment

If someone is:

- threatening you or your children, Grandchildren, family or friends
- following you or your children, grandchildren, family or friends
- threatening or damaging your property or hurting your pets
- calling you over and over, hanging up or not speaking when you answer
- sending you unwanted repeated text messages
- contacting you by email or through social networking websites over and over
- calling your children, grandchildren, family, friends or co-workers and asking about you
- sending you things you don't want

Or if you feel that:

- your emotional or physical safety is being threatened
- you are afraid to say something about the person's conduct
- you can't do what you want or go where you want due to fear
- you need to change your lifestyle to avoid this person

You may be the subject of stalking/criminal harassment. Stalking/criminal harassment can be perpetrated by anyone. Examples include a spouse or partner, a person you lived with, someone you dated, a client, a former employee, a co-worker, a fellow student, a peer, or a total stranger. Although almost three out of four victims of criminal harassment in Canada are women, children, adolescents, and men can also be victims.

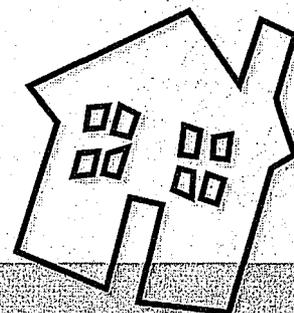
If you are concerned that you are being harassed, don't hesitate to call the police or contact VictimLink BC at 1-800-563-0808. Your safety and peace of mind are important.

If You Believe You're Being Stalked Contact the Police

If you are in a dangerous situation, call 911 or the emergency police number for your community. If you are not in immediate danger, call the non-emergency number for the police in your area. You may find it helpful to bring a friend with you to the police station. Bring a written statement with you and include a detailed description or a photograph of the stalker. Tell the officer if you have kept any notes about past incidents, if you have received any threatening letters, emails, or voicemails, or if there is anyone who saw the perpetrator being violent or threatening you. It is important to maintain detailed



Ministry of
Justice





notes about the stalking and to keep any recorded telephone messages, emails, text messages, gifts, letters or notes that have been sent by the perpetrator.

Make sure you write down the police case or file number and the officer's name. Use the file number every time you call the police to report anything that could be part of the harassment. If you have any questions or concerns, it is easiest if you talk to the same officer who will be familiar with you and the case.

Keep emergency numbers and your police file number with you at all times.

You may find it helpful to speak to a Victim Service Worker about your situation. You can ask to be referred to a Victim Service Worker through the police or by contacting VictimLink BC at 1-800-563-0808.

In some communities personal safety alarms may be available. Ask police, a Victim Service Worker or a transition house worker if this type of alarm is available for you. You can also contact the Victim Safety Unit for more information at (604) 660-0316 (lower mainland) or 1-877-315-8822 (toll-free in BC).

If you move to another area and you have an active police file, inform the police in your new community about the harassment. Tell them from where you moved, your file number, and the name of the officer who was helping you.

If the stalker has been charged and convicted on this or any other crime, you can get information about the stalker's whereabouts, any upcoming day passes, or the release date. Contact the Victim Safety Unit for more information by calling (604) 660-0316 (lower mainland) or 1-877-315-8822 (toll-free in BC). If you know that the stalker has violated a court order, tell the authorities.

Keep Written Records

If you haven't kept notes, start now. Write down what you remember and ask others you trust to do the same.

Write down the time, date and place of every contact or event with the stalker. Note what happened and how it made you feel, beginning with the first incident. Even if an event seems trivial, or unrelated, write it down as it may help to show a pattern of criminal harassment.

Copy and save any messages left on your answering machine or voicemail and make notes of times when you answered the phone and the other person either hung up or didn't speak.

Keep your record book handy, make a copy of it, and keep the copy in a safe place outside of your home. Keep any notes, letters or parcels sent by the stalker. Good records are very important for investigation.

Tell Others

If you are being stalked, tell friends, family, trusted co-workers, employers and neighbours about what is happening to you. Ask them to write down any contact they may have with the stalker and to note the time, date, place and what happened. It may help to direct them to read this publication.

If you're getting child support through the Family Maintenance Enforcement Program, tell your worker about your situation.

Tell your children's caregivers, school principal and teachers about your situation. If you have a photograph of the stalker, show it to them. Be clear and direct and ask them to help you stay safe. Ask them to keep all information about you private and to let you know if the stalker contacts them. Add their reports to your record book.





Help Starts Here.

Information on Stalking (Criminal Harassment)

Take Care of Yourself

Your emotional health and sense of self-worth are important. Talk to your friends and get support from someone you trust such as a doctor, religious leader, a Victim Service Worker, or a counsellor.

It is important that you get help for yourself and for others close to you when you're dealing with the trauma caused by criminal harassment. If you have children or grandchildren they may need help too.

You can talk to a Victim Service Worker for assistance in formulating a safety plan for you and your family. Call VictimLink BC at 1-800-563-0808 to locate a victim service program in your area.

Ways to Increase Your Personal Safety

A stalker may try to track you down at home, work, or other places. Here are some steps you can take to enhance your personal safety. Please keep in mind that these steps are not intended to replace you contacting the police.

Protect Your Personal Information

Be aware of where you are and who is close by when talking about family, social and travel plans. Someone could be listening.

Avoid giving out your social insurance number in most circumstances. It is legally required only by banks and on employer tax forms.

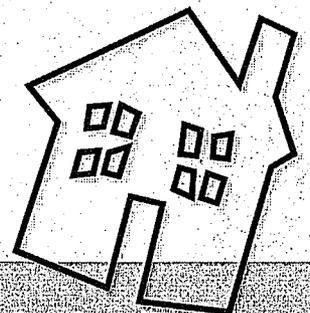
If you live in an apartment building, remove your name from the door-buzzer, or use an alias if a name other than 'occupant' is required.

Get a post office box. Put in a change of address card at the post-office and notify all personal and professional contacts of your new postal box address. If you have a mail-slot in your door, seal it closed. Make sure your

name is not on anything that is delivered to your home.

Remove your home address and telephone number from anywhere there's a record, including:

- auto mechanic records
- business cards
- car registration
- cheques
- children's sports
- church/club records
- couriers
- credit bureau
- credit card records
- dentist's office
- doctor's office
- driver's licence
- dry cleaners
- florists
- Internet and social networking (e.g., Facebook, MySpace)
- land registry files
- libraries
- luggage
- medical records
- medical services plan
- personnel file at work
- pharmacies
- photo-developers
- recreation centre files





- schools
- subscriptions
- universities
- utility bills
- veterinarians
- voter records

You may be able to get your address removed from public records. Contact your local police or VictimLink BC at 1-800-563-0808 for more information.

Safety at Home

When approaching your home have your key in your hand before you reach the door.

Keep all doors and windows locked, even when you are in the house, and check to see that they remain locked.

Keep emergency numbers and your police file number near your telephones.

Install extra outside lights at a height where they cannot be easily removed. Keep lights on inside your garage. Keep shrubs around your home trimmed. If possible, install motion detector lights and security alarms. If you have an outside fuse box, keep it locked. If you rent, consider asking your landlord to provide some of these items.

Place lamps near windows to reduce shadows on the curtains or blinds.

Consider changing the locks. Use deadbolt locks and keep track of all keys. If you lose a key, replace the locks and have new keys made. Keep your garage locked at all times.

Drill a hole for a metal stopper in the frame of sliding windows and doors so they can't be pushed open.

Put a wide-angled peep-hole in the door and always

check to see who is at the door before you open it.

Ask any repair persons for identification if they come to your home. Refuse to accept packages or deliveries that you did not order.

Make sure your name and address and any personal details are removed before you recycle or throw out mail.

Tell trusted neighbours, landlords or building managers about your situation and ask them for help in watching your home. If you have a photograph of the stalker, show it and ask neighbours to tell you or the police if the person is seen in the area. If you can, describe the stalker's car and give them the licence plate number.

Have an emergency plan. Make sure your children and grandchildren know about the emergency plan and where to go for help.

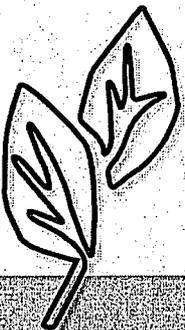
Keep an emergency bag packed with extra clothes, medications, identification and cash or credit/debit cards. Include toys, books and any special items your children might want or need. You may want to keep this bag in your car or at your workplace, or at a neighbour's or friend's home.

Safety on the Phone

You can use *67 before dialling a phone number to block your name and number from appearing on a call display. You may want to check with the phone company to see if this and other privacy protection services are available in your area.

If you are getting harassing calls, talk to the phone company, ask about *57 call trace service. Get a new phone line with an unlisted phone number. Keep your old phone number on a second line and connect it to an answering machine. Keep all messages that may be related to the criminal harassment.

Consider getting a cellular phone for emergencies.





Help Starts Here.

Information on Stalking (Criminal Harassment)

Be aware that conversations on cellular and mobile phones can be traced by a scanner.

Protect your privacy by not making 1-900 calls on your phone. Only use 1-800 and 1-888 numbers for police and justice system information.

Safety on the Internet

Take care when posting personal or private information on the Internet. This information may be available to anyone.

Review your Internet Service Provider's harassment policies. Your Internet Service Provider may be able to help protect you from harassment online.

Learn about online tools to block unwanted communication.

Never use your full name as a user ID.

Change your passwords often.

If you receive harassing emails or experience chat room abuse, contact your Internet Service Provider. They may be able to control the abuser's account.

Safety at Work

You may need to make special arrangements at your workplace in order to keep yourself and your family safe. Be clear and direct with your coworkers about the help you need.

Tell trusted co-workers and your employer about what is happening to you. It may help to show them a copy of this publication.

Ask others to screen your calls. Ask them to take names and messages.

Remove your name from the in/out board and tell people not to say where you are or when you are expected.

Remove any personal information from your files, time sheet, locker, desk or computer.

Remove your name plate from your desk or office door.

Do not accept any packages you are not expecting.

If you have a photograph of the person who is harassing you, show it to other staff and on-site security. Make them aware of your safety needs.

Safety When Walking

Look around and be aware of what is going on around you.

Avoid distractions such as wearing headphones or digging in your purse or backpack.

Wear your purse strap on your shoulder, not looped around your neck and shoulder.

Wear comfortable shoes such as runners.

Walk with others whenever possible.

Stay on well-lit streets, in the centre of the sidewalk, away from doorways, bushes, and parked cars. Cross the road if necessary.

If you think you are being followed, go to a safe place such as a store or cafe, or get on a bus or in a taxi. Tell someone you are being followed.

Safety on Transit

Carry a transit schedule. After dark, arrive just before the transit vehicle is due.

Wait in well-lit areas.

On the bus, sit near others. If you feel unsafe, ask the driver to call for help.

Request a Special Stop to let you off the bus closer to your street or door if available on your bus route.

Call TransLink (Metro Vancouver) or BC Transit (outside Metro Vancouver) for more information about routes that provide Special Stop Service.





Safety in Your Car

Lock your car doors and windows at all times, even when you are in your car. Use a locking gas cap. Try to use a car with a front hood that can only be opened from the inside.

When you approach your car, have your key ready. Check your car before opening the door. Look inside and under your car, do a quick check of tires and wipers, and make sure the front hood and trunk/hatchback are closed.

Do not identify your car keys with a name, car model or licence plate tag. Keep your car registration hidden in the trunk/hatchback of your car.

Park in well-lit places or near attendants in parking lots. Use extra caution in parkades. Never give your car keys to a parking valet.

If someone is waiting near your car, leave the area.

If a suspicious looking van is parked on the driver's side of your car, enter from the other side, or leave if you feel unsafe.

Tell the people who service your car to keep all information private and to keep your keys safe.

If you are being followed in your car, drive directly to a police, fire or gas station. Stay in your car and honk your horn until someone comes out.

Try to write down the licence plate number of any car following you. Keep a pen, paper and flashlight in your car.

Change your routine; drive on different roads.

Know where to find police, gas and fire stations.

Plan your trips ahead of time. Know your routes and exits.

Legal Options to Help Increase Your Safety Peace Bonds

A Peace Bond is an order made by a judge in court to help protect one person from another. If you are the subject of stalking/criminal harassment, you can get a Peace Bond if you fear for your own safety or for the safety of your family or property. A Peace Bond lists certain conditions that the perpetrator must follow. It can direct the person to have no contact with you or your family and to keep a certain distance from you, your workplace, or your home. It gives the police the right to arrest the stalker if the Order is broken. A Peace Bond is enforceable anywhere in Canada and lasts for up to one year, but can be renewed under certain circumstances.

To get a Peace Bond . . .

Ask the police officer who is working on your file to start the process for a Peace Bond. If you have children, ask if they should be mentioned, and tell the officer what you want included in the order.

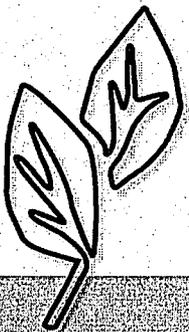
When you get your Order, ask the police if it has been registered with the Protection Order Registry. The Protection Order Registry is a computer database of protection orders issued by BC courts.

Make copies of the Order and keep one with you at all times. If the stalker breaks the conditions of the Order, call the police immediately.

If the Order includes your children, give a copy of the order to the principal at your child's school or daycare, sports coaches, recreation instructors, and so on as appropriate.

Family Law Protection Order

A family law protection order is a protection order made under the BC Family Law Act. The order can protect you from a "family member," which includes your partner, your child's parent or guardian, a relative of theirs who





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Help Starts Here.

Information on Stalking (Criminal Harassment)

lives with them, or a relative of yours who lives with you. The order can protect you, your children, and other family members who live with you, and any other children living in your home, the home of your partner, or the home of your child's parent or guardian. The order is meant to protect you from what the law calls "family violence" by a family member, which includes physical abuse (or attempts), including being locked up or restricted, or denied food or other basic needs, emotional or mental abuse, such as being intimidated, harassed, stalked, threatened, or having your property damaged, sexual abuse (or attempts), and children being exposed to family violence.

If you are afraid for your safety or if you are concerned about other matters (such as to get your partner or ex-partner to stop calling you every day, or to stop him from showing up uninvited at your home or your child's school), you can apply for a family law protection order.

To get a Family Law Protection Order . . .

You can apply for a family law protection order in Provincial Court or Supreme Court. You can apply for one on its own, or when you apply for other family court orders. (Only orders about safety can go in the family law protection order.) You choose the court, and then fill out the necessary court forms.

You may apply for a family law protection order with or without a lawyer, but a lawyer is recommended. The hearing will be in civil (family) court.

A family law protection order lasts for as long as the judge sets it for. If the judge doesn't set an end date, it lasts for one year. The police or RCMP in your new province may be able to enforce your family law protection order. Check with the nearest court registry in your new province.

For more information about Peace Bonds and Family Law Protection Orders, see the publication, *For Your Protection: Peace Bonds and Family Law Protection Orders* available at: www.pssg.gov.bc.ca/victimservices/publications

VictimLink BC 1-800-563-0808

VictimLink BC is a toll-free, confidential telephone service available across BC and Yukon 24 hours a day, 7 days a week. It provides information and referral services to all victims of crime and immediate crisis support to victims of family and sexual violence.

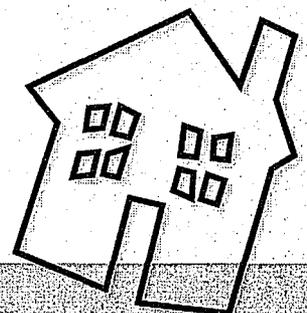
VictimLink BC is TTY accessible. Call TTY at (604) 875-0885; to call collect, please call the TELUS Relay Service at 711. Text (604) 836-6381. Email VictimLinkBC@bc211.ca. Website: www.victimlinkbc.ca

Please note: This pamphlet provides general information only. It is not a legal document.



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November 2012





women against violence
against women

After A Sexual Assault Check List

- ♀ Sexual Assault is NEVER a survivor's fault
- ♀ You have the right to specialized medical care. Try not to shower, go to the washroom eat/drink or change your clothes. This is to ensure forensic evidence is not washed away. (see reverse for details)
- ♀ Sexual Assault is a crime.
You can call 911 to make a report to police or RCMP in the area in which the assault took place.
- ♀ After a sexual assault it is important to seek supportive non-judgemental support from friends and family
- ♀ Ensure that you are in a safe environment
- ♀ Call WAVAW's Crisis Line at 604-255-6344 or 1-877-392-7583
For information regarding counselling, community resources, legal, financial and housing options. All of WAVAW's services are free and confidential.



women against violence against women

women against violence against women.

- 24 Hour Crisis Line
- One to One Counselling
- Support Groups
- Hospital, Police and Court Accompaniments
- Aboriginal Outreach and Counselling
- Advocacy, Referrals and 3rd Party Reporting

604-255-6344

The Sexual Assault Service (SAS) at Vancouver General Hospital offers sensitive and comprehensive health care to anyone 13 years or older who has been sexually assaulted within the past 7 days.

The SAS can offer:

- Specially trained female doctors and nurses
- Free services 24 hours a day 7 days a week
- Medical assessment and treatment
- Free emergency contraception and medication to prevent STI's
- Collection of Forensic evidence (if desired)
- Information about community support services

If you want to report your assault to police...

- You may report to police at anytime, there is no time limit on reporting a sexual assault.
- You must report to the police or RCMP detachment in which the assault took place
- WAVAW's Victim Services are available to support you through the criminal justice system process
- If you decide reporting directly to police at this time will not work for you, you still have options. WAVAW's Victim Service program can support you fill out a third party report. Third Party Reports are a confidential way of documenting the assault, and sharing information with police.

Appendix 4: Safety Planning

Safety Planning: Approaches and Implementation

It is critical that safety planning be done in a way that acknowledges and builds on a mother's strengths and her own knowledge of her unique situation.

It is important that child welfare workers and anti-violence service providers involved in developing safety plans consider how issues such as language skills, level of income, availability of transportation, childcare etc. will affect the mother's ability to be safe.

Well-developed and effective safety plans ideally require collaboration among a wide range of other trained personnel, including anti-violence services, police, crown, mental health, and child welfare workers, etc.

It can't be emphasized enough that no mother experiencing abuse has control over her partner's behavior, and it is dangerous to expect victims to "stop the violence." The problem is the abusive man's conduct; his sense of entitlement to coercive, controlling and violent behaviors.

Principles of Safety Assessment and Planning

- The use of violence is the abuser's choice
- Abusers must be held accountable for their violence
- The goal is to reduce the risks, not predict the violence
- Mothers who live with violence evaluate their risk on a continual basis
- The mother is the expert on her life, she owns her safety plan
- No one agency will have all the relevant information
- Sharing of information increases the effectiveness of safety planning, with mothers consent wherever possible.

While gender neutrality and treating both parents as equals are well-intentioned approaches, gendered realities are ignored by:

- Minimizing men's social, economic and legal advantages
- Assuming equal caretaking roles
- Minimizing women's greater contribution to parenting
- Minimizing the mother's beliefs about her or her children's safety.

Principles of Safety Assessment and Planning When Children are Involved

- A child's safety and well-being is integrally linked with the safety of the mother
- Interventions require an understanding of the complex dynamics of power and control
- Gender inequality operates against mothers in custody and access in ways which include:
 - o Mothers usually have less financial stability than their male partners
 - o Society continues to undervalue women's role as caretakers.

SAFETY PLANNING FOR THE CHILD OR YOUTH AND THEIR MOTHER

Well-developed and effective safety plans require collaboration among a wide range of other trained personnel, including child welfare workers, mental health care providers, transition house staff, victim service workers and police.

Safety planning for the child or youth and their mother should focus on:

- What the mother thinks will be safe strategies.
- Securing safe housing in the mother's and child or youth's own residence whenever possible or with her family or friends, in subsidized housing, in transitional or permanent housing. If she is really in danger and her partner is not in custody, she might need to go to a transition house.
- Offering support to abused mothers in a respectful way that does not label them unnecessarily as neglectful.
- Referring mothers to interpreters if required.
- Referring mothers to services that will aid in securing financial and income assistance, and employment services.
- Referring mothers to voluntary supportive services such as: stopping the violence counselling, groups or community-based victim services, job training, or substance use treatment programs.
- Sometimes mothers are referred to parenting groups, when in fact, what they really need are support services and safety, not parenting skills. If mothers are expected to attend parenting classes, it is important to provide childcare and transportation support so they do not face additional hardships to attend these sessions.
- Referring mothers to legal advocacy and family law services for assistance in obtaining protection orders, custody and safe visitation arrangements, child support, and/or divorce.
- Providing transportation to safety resources, including transition houses, stopping the violence counselling programs, support groups, community based victim assistance programs, stopping the violence outreach, childcare, court, educational institutions, counselling, and health care services.

Before you start

- Discuss the purpose of safety assessment with the mother and see if she wishes to take part
- Provide emotional support during and after the safety assessment and planning process.

Critical Situations for Intervention and Planning

The following points should alert child welfare workers to circumstances that could increase the risks to mothers and should lead safety planning or discussion about safety:

- When she attempts to leave the relationship
- If the abuser becomes aware that she is accessing support/help
- When she initiates legal actions such as:
 - o Divorce
 - o Custody or access
 - o Child welfare investigation and child removal
 - o Property settlement
- If a stay of proceedings is entered
- Upon Application for Peace Bond or other protection order
- Upon Application to vary protection order conditions
- When accused is released on interim conditions
- When any papers are served such as
 - o Restraining Orders
 - o Notification of Divorce or Separation Proceedings
- When she enters another relationship.

Immediate Safety Planning

An immediate safety plan should be developed in consultation with at least the mother and should begin by asking if she has a safety plan and the details of it. Most mothers have developed ways to keep themselves and their children safe, but may not have formalized this plan. Ask the mother what she has done in the past to keep herself and her children safe.

Safety Plan

The following steps represent my plan for increasing my safety and preparing in advance for the possibility for further violence. Although I do not have control over my partner's violence, I do have some choices about how best to get myself and my children to safety.

Step 1: Safety during a violent incident: Mothers cannot always avoid violent incidents. In order to increase safety, battered mothers may use a variety of strategies.

I can use some or all of the following strategies:

- If I decide to leave, I will. (Practice how to get out safely. What doors, windows, elevators, stairwells or fire escapes would you use?)
- I can keep my purse and car keys ready and place them in order to leave quickly.
- I can tell _____ and _____ about the violence and request they call the police if they hear suspicious noises coming from my house.
- I can teach my children how to use the telephone to contact the police and the fire department.
- I will use _____ as my code word with my children or my friends so they can call for help.
- If I have to leave my home, I will go. (Decide this even if you don't think there will be a next time.) If I cannot go to the location above, then I can go to _____ or _____.
- I can also teach some of these strategies to some/all of my children.
- When I expect we are going to have an argument, I will try to move to a space that is lowest risk, such as _____. (Try to avoid arguments in the bathroom, garage, kitchens, near weapons or in rooms without access to an outside door).
- I will use my judgement and intuition. If the situation is very serious, I can give my partner what he/she wants to calm him/her down. I have to protect myself until I/we are out of danger.

Step 2: Safety when preparing to leave. Mothers who are assaulted frequently leave the residence they share with the violent partner. Leaving must be done with a careful plan in order to increase safety. Violent men often strike back when they believe that a woman is leaving a relationship.

(This safety plan was adapted with permission from Barbara Hart and Jane Stuehling's Safety Plan that was based upon "Personalized Safety Plan", Office of the City Attorney, City of San Diego, California).

I can use some or all of the following safety strategies:

- I will leave money, bus tickets, and an extra set of keys with _____ so I can leave quickly.
- I will keep copies of important documents or keys at _____.
- I will open a savings account by (date) _____ to increase my independence.
- Other things I can do to increase my independence include:
- The VAWIR program's hotline number is _____. I can seek shelter by calling this hotline.

- I can keep change for phone calls on me at all times. I understand that if I use my telephone credit card, the following month the telephone bill will tell my abusive partner those numbers that I called after I left. To keep my telephone communications confidential, I must either use coins or I might get a friend to permit me to use their telephone credit card for a limited time when I first leave.
- I will check with ____ and ____ to see who would be able to let me stay with them or lend me some money.
- I can leave extra clothes with _____.
- I will sit down and review my safety plan every _____ in order to plan the safest way to leave the residence. (VAWIR advocate or friend) has agreed to help me review this plan.
- I will rehearse my escape plan and, as appropriate, practice it with my children.

Step 3: Safety in my own residence. There are many things that a mother can do to increase her safety in her own residence. It may be impossible to do everything at once, but safety measures can be added step by step.

Safety measures I can use include:

- I can change the locks on my doors and windows as soon as possible.
- I can replace wooden doors with steel/metal doors.
- I can install security systems including additional locks, window bars, poles to wedge against doors, and electronic system, etc.
- I can purchase rope ladders to be used for escape from second floor windows.
- I can install smoke detectors and purchase fire extinguishers for each floor in my house/apartment.
- I can install an outside lighting system that lights up when a person is coming close to my house.
- I will teach my children how to use the telephone to make a collect call to me and to _____ in the event that my partner takes the children.
- I will tell people who take care of my children which people have permission to pick up my children and that my partner is not permitted to do so. The people I will inform about pick-up permission include: (school), (daycare), (babysitter), (Sunday school teacher), (teacher), (coach) and (others)
- I can inform _____ that my partner no longer resides with me and they should call the police if he is observed near my residence.

Step 4: Safety with a protection order: Many violent men obey protection orders, but one can never be sure which man will obey and which will violate protection orders. I recognize that I may need to ask the police and the courts to enforce my protection order.

The following are some steps that I can take to help the enforcement of my protection order:

- I will keep my protection order ____ (location) _____. (Always keep it on or near your person. If you change purses, that's the first thing that should go in.)
- I will give my protection order to police departments in the community where I work, in those communities where I usually visit family or friends, and in the community where I live.
- There should be a registry of protection orders that all police departments can call to confirm a protection order. I can check to make sure that my order is in the Protection Order Registry. The telephone number for the Protection Order Registry is _____.
- I can call the local police if I am unsure about the previous points or if I have some problem with my protection order.
- I will inform my employer, my minister, my children's school, my closest friend and _____ and _____ that I have a protection order in effect.
- If my partner destroys or breaches my protection order, I can call the police and report a violation, contact my attorney, call my advocate, and/or advise the court of the violation.

- If the police do not help, I can contact my advocate or lawyer and will file a complaint with the chief of the police department.
- I can also call the VAWIR advocate to help me file a private criminal complaint with the justice of the peace in the jurisdiction where the violation occurred or with crown counsel. I can charge my violent partner with a violation of the protection order and all the crimes that he commits in violating the order.

Step 5: Safety on the job and public. Each woman must decide if and when she will tell others that her partner has assaulted her and that she may be at continued risk. Friends, family and co-workers can help to protect mothers. Each woman should consider carefully which people to invite to help secure her safety.

I might do any or all of the following:

- I can inform my boss, the security supervisor and _____ at work of my situation.
- I can ask _____ to help screen my telephone calls at work.
- When leaving work, I can _____.
- When driving home if problems occur, I can _____.
- If I use public transit, I can _____.
- I can use different grocery stores and shopping malls to conduct my business and shop at hours that are different than those when residing with my violent partner.
- I can also _____.

Step 6: Safety and drug or alcohol use. Most people in this culture use alcohol. Many use mood-altering drugs. Much of this use is legal and some is not. The legal outcomes of using illegal drugs can be very hard on a mother who has been assaulted. They may hurt her relationship with her children and put her at a disadvantage in other legal actions with her violent partner. Therefore, woman should carefully consider the potential cost of the use of illegal drugs. But beyond this, the use of any alcohol or other drugs can reduce a woman's awareness and ability to act quickly to protect herself from her violent partner. Furthermore, the use of alcohol or other drugs by the violent partner may give him/her an excuse to use violence. Therefore, in the context of drug or alcohol use, a woman needs to make specific safety plans.

If drug or alcohol use has occurred in my relationship with the violent partner, I can enhance my safety by some or all of the following:

- If I am going to use, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
- I can also _____.
- If my partner is using, I can _____.
- I might also _____.
- To safeguard my children, I might _____ and _____.

Step 7: Safety and my emotional health. The experience of being assaulted and verbally degraded by partners is exhausting and emotionally draining. The process of building a new life for myself takes much courage and incredible energy.



To conserve my emotional energy and resources and to avoid hard emotional times, I can do some of the following:

- If I feel down and ready to return to a potentially abusive situation, I can _____.
- When I have to communicate with my partner in person or by telephone, I can _____.
- I can try to use "I can ..." statements with myself and to be assertive with others.
- I can tell myself "..." Whenever I feel others are trying to control or abuse me.
- I can read to help me feel stronger.
- I can call _____ and _____ as other resources to be of support to me.
- Other things I can do to help me feel stronger are _____, and _____.
- I can attend workshops and support groups at the VAWIR program or _____, or to gain support and strengthen my relationships with other people.

Step 8: Items to take when leaving. When mothers leave partners, it is important to take certain items with them. Beyond this, mothers sometimes give an extra copy of papers and an extra set of clothing to a friend just in case they have to leave quickly.

Items with an asterisks on the following list are the most important to take. If there is time, the other items might be taken, or stored outside the home.

These items might best be placed in one location so that if a mother has to leave in a hurry, she can grab them quickly.

When I leave, I should take:

*Identification for myself		*Medications		Work permits	
*Birth certificates for me and my children		Income assistance information		Bank statements and books	
*Social insurance cards		*Keys – house/car/office		Insurance papers	
*Healthcare cards for self and children		*Driver's license and registration		Small saleable objects	
*School and vaccination records		Passport(s)		Pictures	
*Money/ Credit cards		Medical records – for all family members		Address book	
*Chequebook, ATM card		*Immigration/divorce/separation/custody papers		Jewellery	
Items of special sentimental value		Lease/rental agreement, house deed, mortgage payment book		Children's favorite toys and/or blanket	

Telephone numbers I need to know:

Police department – at home, school and office	9-1-1 or
Transition House	

VAWIR program or counselor	
Protection Order Registry (Victim LINK)	1-800-563-0808 Victim LINK
Work number	
Supervisor's home number	
Minister	
Helpline for Children	310-1234
Other (e.g. interpreter, lawyer)	

Safety Planning for Children's Unsupervised Visitation Arrangements

Barbara Hart recommends that in cases where there has been spousal or child abuse, there should be safety planning for unsupervised visits to help children manage their fear and anxiety, and to minimize the risk of violence during visitation. Professionals should help children identify safety issues and build problem-solving skills. Safety plans for children should be realistic, simple, and age-appropriate. Possible safety strategies to empower children include:

- (1) To provide information beforehand on how to handle queries about their mother's activities
- (2) How to avoid situations (place, time, circumstance) of prior violence
- (3) How to phone home, including making long distance calls or using operator assistance
- (4) How to obtain emergency assistance, e.g., 911
- (5) Escape logistics
- (6) How to manage an intoxicated parent
- (7) What to do if they are kidnapped.

Safety plans for children should be developed with the non-abusing parent and the child, and should be rehearsed. ("Spousal Violence In Custody And Access Disputes: Recommendation for Reform"; p. 60; Nicholas Bala et al; March 1998)

Appendix 5: Assessing for Violence Against Mothers in Relationships before Conducting Family Group Conferences or Mediation

Determining if violence is present in the lives of mothers before deciding to use a family group conference or mediation or other form of family meeting is important for mother's safety and for the success of the conference or mediation. Failure to address violence against mothers in child welfare cases can compromise the safety of victims and children. Some questions that might help mothers identify whether they are in an abusive relationship include:

1. Controlling, coercive, and threatening tactics

- Does your partner prevent you from visiting friends and family?
- Does your partner prevent you from going to school or work?
- Does your partner tell you what to wear, what to do, where you can go, or whom you can talk to?
- Does your partner control the household income?
- Does your partner follow you to "check up" on you or check the mileage on your car?
- Does your partner telephone you constantly while you are at work or home?
- Does your partner give you threatening looks or stares when he does not agree with something you said or did?

2. Verbal, emotional, sexual, or physical abuse

- Does your partner call you degrading names, put you down, or humiliate you in public or in front of friends or family?
- Does your partner blame you or tell you that you are at "fault" for the abuse or any problems you are having?
- Does your partner deny or minimize his abusive behaviors towards you?
- Has your partner ever destroyed your personal possessions? Broken or destroyed household items?
- Has your partner ever pushed, kicked, slapped, punched, or choked you?
- Has your partner ever threatened to kill or harm himself, you, the children, or a pet?
- Has your partner ever threatened you with a weapon or gun? Does your partner have access to a dangerous weapon or gun?
- Has your partner ever been arrested for a violent crime or behaved violently in public?
- Has your partner ever forced you to commit illegal activities, use illegal drugs, or abuse alcohol?
- Has your partner ever forced you to engage in unwanted sexual activity or practices (e.g., pornography, multiple sexual partners, prostitution)?

3. Risks and impact on the adult victim

- How has your partner's abusive behavior affected you?
- Do you suffer from anxiety or depression (resulting from your partner's behavior towards you or your children)?
- Do you have difficulty sleeping, eating, concentrating, etc. (resulting from your partner's behavior towards you or your children)?
- Do you suffer from headaches, stomachaches, breathing difficulties, or other health problems?
- Have you had to seek medical assistance for injuries or health problems resulting from your partner's violence?
- Have you been physically assaulted during pregnancy? Have you suffered prenatal problems or a miscarriage as a result of the abuse?
- Do you abuse alcohol or other substances?

- Have you ever been hospitalized for a mental illness? Do you have a mental health diagnosis? Are you taking psychotropic medication?
- Have you ever thought about or tried to hurt yourself or someone else?

4. Risks and impact on the children

- Has your partner called your children degrading names or verbally threatened them?
- Has your partner ever threatened to make a report to child welfare, take custody of the children, or kidnap the children?
- Does your partner physically discipline or touch the children in a manner that you don't agree with or that makes you uncomfortable?
- Has your partner ever asked the children to report your daily activities or to "spy" on you?
- Has your partner ever forced your children to watch or participate in his abuse of you?
- Has your partner physically hurt you in front of the children?
- How do you think the violence at home affects your children?
- Do your children exhibit problems at school or at home (e.g., sleeping and eating difficulties, difficulty concentrating in school, aggressive behaviors)?
- Have your children ever intervened in a physical or verbal assault to protect you or to stop the violence?
- Do your children behave in ways that remind you of your partner?
- Has a school or daycare center ever contacted you regarding behavioral problems of your children?

5. Help seeking and protective strategies

- Have you told anyone about the abuse? What happened?
- Have you ever left home because of the abuse? Where did you go and what happened?
- Have you ever called the police or 911? What was their response?
- Have you ever filed a restraining order or criminal charges? What was your partner's response?
- Have you ever used a violence against women shelter or services?
- Have you fought back? What happened?
- How do you survive the abuse?
- What have you tried to keep you and your children safe from your partner?
- What has made it difficult for you to keep you and your children safe?
- How will your partner react if he finds out you talked with me? ⁴¹

Note that the responses to some of the above questions for example: "Does your partner blame you for any problems you are having?" may not, in isolation, provide sufficient information to indicate that violence is occurring in the home. These need to be considered with other responses in order to assist with an accurate assessment.

⁴¹Ganley, A. L., & Schechter, S. (1996). Domestic violence: A national curriculum for child protective services. San Francisco, CA: Family Violence Prevention Fund; Massachusetts Department of Social Services' Domestic Violence Protocol. (1995). Unpublished practice protocol, Massachusetts Department of Social Services, Boston, MA; Bragg, L. (1998). Domestic violence protocol for child protective services intervention. Charlotte, NC: Mecklenburg County Department of Social Services.

Appendix 6: Risk Factors

These Risk Factors are associated with decreased safety for mothers and their children. These factors are consistent with the risk factors included in B-SAFER assessment that police in British Columbia will be considering when carrying out violence against women investigations and assessing victims' safety. This information will be forwarded to Crown Counsel and used when making decisions regarding the criminal justice response to the abusive man. Child welfare workers need to be aware of these Risk Factors and provide any information they receive in relation to them to police and Crown to ensure that their interventions are appropriate. (B-SAFER = Brief Spousal Assault Form for the Evaluation of Risk.)

The child welfare assessment and service planning should include an analysis of any risk factors presented by the abusive man, the child's degree of exposure and resilience, protective factors, and supports available in the community.

Summary of Offender Threat Factors (associated with decreased safety)

The following risk factors are adapted, with permission, from *Evidenced – based, Risk- focused Domestic Violence Investigations Training for BC Police*, Public Safety and Solicitor General (2009).

Child welfare workers need to be aware of these risk factors and consider them when assessing the mother and child's safety.



This icon indicates a risk factor associated with the greatest potential for LETHAL violence.



This icon indicates a risk factor that if present must be included (at a minimum) in the documentation for Protective Intervention Order pursuant to the CFCS Act, section 28.



Suspect's Criminal Violence History

- Does the abusive man have a history of threats, violence, sex assaults, and criminal harassment towards anyone? *Note: One of the most common research findings is that abusive men with a history of violence are much more likely to engage in future violence.



Violence against women History

- Is there a history of stalking violence or abusive behaviour in an Intimate Partner Relationship?
- Is there any history of threats or actual violence or abusive behaviour against children, other family members, friends, co-workers or family pets?
- Is there any history of stalking, threats or violence against intimate partners of the victim?



Attitudes that Support or Condone Violence

- Does the abusive man engage in extreme minimization or denial of the abuse?
- Does the abusive man blame the victim for the abuse or believe in the right to control his partner through violence and coercion?
- Does the abusive man demonstrate an attitude of entitlement and privilege?

Court Orders

- Has the abusive man ever violated a Court Order including Protective Intervention Orders pursuant to section 28, *CFCS Act* or any no-contact conditions under the *Family Relations Act*?
- Is the abusive man presently bound by any Court Orders?

Alcohol/Drugs

- Does the abusive man have a history of drug or alcohol abuse?

Employment Instability

- Is the abusive man unemployed or experiencing financial problems?



Mental Illness

- Does the abusive man have a history of mental illness (e.g. depression or paranoia)?



Suicidal Ideation

- Has the abusive man threatened or attempted suicide? (If YES, when and how?)

Weapons/Firearms (Used or Threatened?)

- Has the abusive man used or threatened to use a firearm or weapon (knives, household objects, golf clubs etc.) against the complainant, family member, children or an animal?

Access to Weapons/Firearms

- Does the abusive man have access to weapons/firearms?



Victim's Perception of Personal Safety

- Does the victim believe the abusive man will disobey terms of release particularly a no contact order?



Victim's Perception of Future Violence

- Does the victim fear further violence?
- What access is there to the victim and what is the basis of the victim's fear?



Current Status of the Relationship

- Is there past, recent or pending separation in the relationship or custody dispute? *Note: Social science experts say that where there are controlling coercive behaviours, the intensity and lethality of violence often escalates after the victim leaves the relationship, seeks outside support including child welfare interventions or seeks to minimize the children's exposure by applying for custody under the *Family Relations Act*.

Escalation in Abuse

- Is there escalation in the frequency/intensity of violence or abuse towards the victim, children, family members, a pet or another person?



Children Exposed

- Has the abusive man exposed the children to abuse of the victim?
- Have the children been exposed to the aftermath of violence? (E.g. Arrest of the abusive man or injuries of the victim).
- Has the abusive man engaged the children in abuse of the victim or incited the children to use violence toward the victim?
- Has the abusive man ever mistreated the children or deliberately endangered them to intimidate or retaliate against the victim?

Threats

- Has the abusive man ever threatened to kill or harm the victim, a family member, another person, children or a pet?

Forced Sex

- Has the abusive man ever forced sex on the victim?



Strangling, Choking or Biting

- Has the abusive man ever strangled, choked or bitten the complainant?

Stalking

- Has the abusive man displayed jealous behaviours, stalked or harassed the victim or a previous intimate partner?

Information on Relative Social Powerlessness

- Are marginalization factors present (i.e. drugs, alcohol, pregnancy, disabilities etc)?
- Are cultural factors present (i.e. family pressures, religious beliefs, gender inequality, etc.)?⁴²

⁴² Adapted by MacPherson, Colleen (2009) *Domestic Violence Assessment and Case Planning Resource*



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British Columbia

Transition Houses in British Columbia

Location	Contractor	Agency Phone Number	Crisis Line
Grand Forks	Boundary Women's Coalition	250-442-3131	
Hope	Hope & Area Transition Society	604-869-5191	1-877-869-5191
Kamloops	Kamloops Community YMCA-YWCA	250-374-6162	
Kelowna	Central Okanagan Emergency Shelter Society	250-763-1040	
Kitimat	Tamitik Status of Women Association	250-632-6070	250-632-6070
Langley	Ishtar Transition Housing Society	604-530-9442	604-530-9442
Maple Ridge	Cythera Transition House Society	604-467-9966	604-467-9966
Massett	Haida Gwaii Society for Community Peace	250-626-4666	250-626-4666
Mission	Women's Resource Society of the Fraser	604-826-7800	

Valley

Nanaimo	Haven: A Society for Women and Children	250-756-2452	250-756-0616
Nelson	Nelson Community Services Centre Society	250-354-4357	
New Westminster	W.I.N.G.S. Fellowship Ministries	604-521-1888	
North Vancouver	North Shore Crisis Services Society	604-987-8325	604-987-3374
Okanagan Indian Reserve #1	Okanagan Nation Family Intervention and Service Society	250-493-4902	1-877-493-4909
Penticton	South Okanagan Women in Need Society	250-493-7233	1-800-814-2033
Port Alberni	Alberni Community and Women's Services Society	250-724-2223	
Powell River	Powell River & Region Transition House Society	604-485-4554	604-485-9773
Prince George	Phoenix Transition House Society	250-563-7305	
Prince George	Prince George & District Elizabeth Fry Society	250-562-5868	1-866-563-1113
Prince Rupert	North Coast Transition Society	250-627-4793	
Quesnel	Amata Transition House Society	250-992-7321	250-992-3385
Revelstoke	Revelstoke Womens Shelter Society	250-837-4382	250-837-1111
Richmond	Chimo Crisis Services	604-270-4900	604-270-4911
Salmon Arm	Shuswap Area Family Emergency Society	250-832-9616	
Salt Spring Island	Island Women Against Violence	250-537-0735	1-877-435-7544
Sardis	Xolhemet Society	604-858-0468	604-858-0468
Sechelt	Sunshine Coast Community Services Society	604-885-5128	604-885-2944
Smithers	Northern Society for Domestic Peace	250-847-2595	
Sooke	Sooke Transition House Society	250-642-2591	250-480-5461
Squamish	Howe Sound Women's Centre Society	604-892-5711	1-877-892-

Surrey/Newton	Options:Services to Communities Society	604-572-5116	
Surrey/South Surrey	Atira Women's Resource Society	604-542-5992	
Surrey/Whalley	Atira Women's Resource Society	604-581-9100	1-877-581-9100
Surrey/Whalley	Options:Services to Communities Society	604-584-3301	
Surrey/White Rock	Atira Women's Resource Society	604-531-9151	604-531-4430
Telegraph Creek	Tahltan Health & Social Services Authority	250-235-3805	
Terrace	Ksan House Society	250-635-6447	1-888-337-5726
Trail	Trail Family & Individual Resource Centre Society	250-364-1543	
Ucluelet	Westcoast Community Resources Society	250-726-2020	1-877-726-2080
Vancouver	Governing Council of the Salvation Army in Canada	604-872-0772	604-872-0774
Vancouver	Helping Spirit Lodge Society	604-872-6649	604-872-6649
Vancouver	Vancouver Coastal Health Authority	604-430-5202	
Vancouver	Vancouver Rape Relief Society	604-872-8212	604- 872-8212
Vanderhoof	Omineca Safe Home Society	250-567-9512	
Vernon	Vernon Women's Transition House Society	250-542-1122	
Victoria	Cridge Centre for the Family – Hill House	250-479-3963	250-479-3963
Victoria	Victoria Women's Transition House Society	250-380-7527	250-385-6611
Watson Lake, Yukon	Help & Hope for Families Society	867-536-2711	867-536-7233
Williams Lake	Cariboo Friendship Society	250-398-5658	

TAB 8: Welfare and Disability Benefits

- **Welfare Updates and practical strategies : General**

- Overpayments – case on discretion whether to recover overpayments (materials available at conference)

Separating sheet

- TFSA materials (TAPS)

Separating sheet

- Ombudsperson complaint
- Ombudsperson check list
- Consent to Authorize a Representative in a Complaint to the BC Ombudsperson
- Complaint Form

Orange sheet

- **Welfare Updates and practical strategies : Service Quality Issues**

Orange sheet

- **Social Security Tribunal (Day 3)**

- Powerpoint

Overpayments and Collections: Ontario Court of Appeal decision in *Surdivall v. Ontario (Disability Support Program)*¹

**Prepared October 24, 2014 by Alison Ward, lawyer, Community Legal Assistance Society.*

If someone owes an overpayment to MSDSI, does the Ministry have the discretion *not* to recover all of it? Similarly, does the Employment and Assistance Appeal Tribunal have the power to order that the Ministry can only collect part of an overpayment?

We don't yet know the final answer to these questions in BC, but they became a lot more interesting this year. In 2013, the Ontario Court of Appeal released a decision called *Surdivall v. Ontario (Disability Support Program)*,² dealing with these same questions under the Ontario welfare legislation: **The Court found that, in Ontario, both the welfare ministry and the appeal tribunal have the discretion to order that some or all of an overpayment can NOT be recovered.** The government appealed to the Supreme Court of Canada. In September 2014, the Supreme Court of Canada denied the government's application for leave to appeal.

Facts in the Ontario Case

Mr. Surdivall was 64 and received disability welfare in Ontario. He made an "innocent reporting error" (in the court's words), and received \$3 050.00 more in disability benefits than he was entitled to. The welfare ministry ordered him to repay it; he appealed that decision to Ontario's welfare tribunal. By the time of his appeal hearing, he was 65 and receiving CPP, OAS and GIS. The Tribunal found that the Ministry was correct that he owed an overpayment, but ordered the Ministry to collect only half of it.

The Tribunal found that the Ministry's discretion to recover an overpayment should be "flexible", taking into account the circumstances of each case and the purposes of the Act. Further, that Mr. Surdivall would "experience financial hardship" if he had to repay the full amount of the overpayment. However the Tribunal also found he had some responsibility to the taxpayers of Ontario to repay a portion of it, so the Tribunal ordered that he repay half, \$1525.00 at the rate of \$10.00 per month

Factors the Ontario Court of Appeal considered

The Ontario Court of Appeal considered four main factors in reaching its decision:

1. Relevant sections of the Ontario disability welfare legislation (the Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Sched B ("ODSPA"));
2. The wording of the ODSPA and what statutory discretion it gives the Ministry, in light of:
 - a. the scheme and objects of the ODSPA; and
 - b. the overall context of the legislation.

How can this be applied in BC?

It is possible to develop a legal argument that both MSDSI and the EAAT have the jurisdiction to decide how much of an overpayment should be collected. However, it is more problematic in BC than in

¹ *Surdivall v. Ontario (Disability Support Program)*, 2014 ONCA 240 at <http://www.canlii.org/en/on/onca/doc/2014/2014onca240/2014onca240.html>

Ontario, because of some important differences between the Employment and Assistance legislation and the ODSPA.

The argument in BC would centre on section 28 of the *Employment and Assistance Act* (or section 19 of the *Employment and Assistance for Persons with Disabilities Act*, which reads the same):

- 28. (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be**
- (a) recovered in a court that has jurisdiction, or*
 - (b) deducted in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.*

The Ontario Court of Appeal found the use of the word “*may*” in a similar section in the ODSPA gave the Director discretion not only about how to recover an overpayment but also *whether* to recover all or part of an overpayment. However, in reaching this conclusion, the Ontario Court of Appeal gave a lot of weight to the legislative object of the ODSPA, which are set out in section 1 of the ODSPA as follows:

1. *The purpose of this Act is to establish a program that:*
 - a) provides income and employment supports to eligible people with disabilities;*
 - b) recognizes that government, communities, families and individuals share responsibility for providing such supports;***
 - c) effectively serves persons with disabilities who need assistance; and*
 - d) is accountable to the taxpayers of Ontario.*

The Ontario Court of Appeal found that b) above indicates that government shares with individuals, families and communities, the responsibility of providing support and that, to meet this objective, flexibility in collection of overpayments is needed. In the words of the Court:

*“Especially when overpayments result from innocent mistakes, demanding recovery may impose an enormous hardship on persons already living well below the poverty line. In such cases, it is entirely appropriate, as the Tribunal recognized in *Surdivall’s* appeal, that government share the responsibility for the overpayment.”*

Unlike the ODSPA, the Employment and Assistance legislation does not have explicit statutory purposes. Courts in BC have characterized the welfare legislation as having a dual purpose:

- a) the provision of income and disability assistance and other benefits persons in need; and*
- b) good stewardship of public funds¹*

While the lack of legislative purpose in BC, and limited case law on its purpose, make developing an argument based on *Surdivall* quite challenging, CLAS would be interested in helping advocates develop arguments based on it, in compelling cases where collection of an overpayment created by innocent error, would create undue financial hardship for a client.

¹ See *Watts v B.C. (Social Development and Social Innovation)* 2014 BCSC 1085 at page 14.

Advocacy Step-by-Step Instruction: Establishing a Non-Discretionary Trust through a Tax-Free Savings Account

October 2013

Prepared by Stephen Portman,
TAPS Advocate

Introduction:

Assisting a client to establish a TFSA Trust is one way that advocates can help clients to improve their social and financial security. Clients designated as a person with disability (PWD) or clients intending to apply for designation, face strict cash asset levels to maintain eligibility for disability support payments. Without the benefit of a financial vehicle to exempt cash assets many in need are required to deplete their financial resources to a significant degree resulting in hardship to the individual and their families. The following step-by-step instruction guide seeks to provide advocates with the tools that they need to help clients to establish non-discretionary trusts through mainstream financial institutions that offer TFSA accounts that meet the legal definition of a trust for the purposes of exempting cash assets.

Before advocates assist a client to establish a TFSA Trust it is important to understand what exactly a TFSA Trust is from the perspective of the Ministry of Social Development and Social Innovation (MSDSI). In order to effectively assist clients advocates should familiarize themselves with the applicable legislation and ministry policy that relates to disability trusts (See Appendix 1 and 2). MSDSI recognizes a TFSA Trust as a non-discretionary trust for the purposes of Section 12 of the *Employment and Assistance for Persons with Disabilities Regulation*. Assets held in a non-discretionary trust are exempt from determining ongoing eligibility for support payments. Disbursements or expenditures from the TFSA trust are also exempt as long as the funds are used for disability related costs.

In assisting clients through the process of establishing a TFSA Trust there are many hurdles that the client and advocate may face. This includes financial institution staff being concerned that their actions will result in loss of disability benefits to the client and/or ministry staff misinforming clients on the legal standing of a TFSA Account as a trust. In developing the following step-by-step instruction guide I have attempted to mitigate many of the challenges that may arise. It is important for advocates to apply sound judgement in assisting clients to establish TFSA trusts. Every client and circumstance is different and may require different strategies and solutions. Advocates should consult legal supervision whenever they are unsure in their course of action on behalf of a client.

Do not rush into helping a client to determine what the best method is for exempting a lump sum. Advocates and clients alike will often need time to reflect on the circumstances surrounding the receipt of a lump sum in order to make an informed decision.

Summary of the 4 steps

1. **The interview** – Establish whether or not a TFSA Trust is the right option for the client and provide client with information regarding responsibilities
2. **At the Bank** - Instruction on how the client and advocate should approach the financial institution of choice
3. **Follow Up Appointment(s)** – Review of the TFSA Trust documentation to ensure the correct account and information is being used
4. **Disclosure to MSDSI** – Instruction on submission of the TFSA Trust to the ministry

Part 1 - Case Study: Sigurd Larson gets an Inheritance

Sigurd Larsen is designated as a person with disabilities (PWD). As a single PWD he is only allowed to have a maximum of \$5000.00 in cash assets and continue to receive monthly disability support. On September 10, 2013, he received a check for \$20, 000 as an inheritance that was willed to him by his dearly departed Aunt Gertrude. Sigurd may lose his monthly disability support payments unless he can find a way to exempt a portion of this inheritance. He has decided to seek help from an advocate to deal with his problem. He called Super Awesome Advocacy Society (SAAS) and spoke to an advocate named Sally Turnip. Sally set up an appointment for an interview with Sigurd.

Step 1 - The Interview:

This step is the most involved and time consuming. Advocates who take the time to complete a thorough initial interview will be sure to save time and effort in the long run. In the initial interview with a client, for the purposes of establishing a TFSA trust, there are two objectives that will need to be accomplished: 1) Determine if a TFSA trust is the right decision for the client to exempt their asset, 2) Advise the client of the process for establishing the TFSA trust and the ministry policy that will impact them.

Objective 1: Determining if a TFSA Trust is right for the client

When contacted by a client who either has or will be receiving a lump sum that places them outside of the asset exemption level for PWD support, advocates will need to set up an appointment. At this appointment the advocate will need to get the following information from the client to determine if a TFSA Trust is the right vehicle for exempting a lump sum. The following are key questions that will help the advocate to get this information and make a determination along with the client on what to do.

1. Is the client designated PWD or intending to apply?

In order to exempt assets through a TFSA Trust and maintain disability support payments the client must be designated as PWD.

Exception: If a client is intending to apply for PWD the ministry will exempt assets above the PWD asset exemption limit while the client is in the process of applying for designation if the client demonstrates that they are intending to complete the PWD

application and establish either a trust or an RDSP as an exemption vehicle, (See ministry policy on asset limits for persons applying for PWD designation, Appendix 2).

2. How much money will the client be receiving?

The maximum contribution limit for a TFSA Trust account in 2013 is \$25, 500. If the client has not made prior contributions to a TFSA and the amount that they will be receiving is less than \$25, 500 then a TFSA Trust account may be a good option. If they will be receiving funds in excess of the maximum TFSA contribution limit then they should consider speaking to a lawyer to establish a trust or consider an RDSP as an alternative.

3. What does the client intend to use the money for?

The client's intent for the money that they have or will receive is an important component of determining whether or not a TFSA Trust is the right option for asset exemption. Funds from a TFSA Trust account must be used for disability related costs or items that go toward promoting the clients independence. If the client does not intend to use the money for these purposes then a trust may not be a good option. Advocates should take this opportunity to make a rough list of the client's expenses, eg. shelter costs, utilities, phone, car costs. The client needs to be advised that disbursements from a disability trust are not intended for smaller day-to-day purchases but are instead intended for larger expenses that are easily tracked, eg. shelter costs above the shelter allowance, Internet expenses.

4. Is the client capable of sufficiently managing their own financial affairs?

If the client is unable to independently manage and maintain their own bank account, keep up to date records of expenditures, and/or manage a basic budget, then a TFSA Trust may not be the right choice for them. MSDSI conducts regular annual reviews of client trust accounts to ensure that expenditures are made for the purposes of disability related costs. The client will need to demonstrate a concise record of all expenditures while under review. If the client is reasonably able to independently manage their own financial affairs or has access to some support from friends and family to help manage their finances, then a TFSA Trust account may be a good option.

5. Does the client have access to establishing an account at either a *Vancity* or a *Royal Bank of Canada (RBC) Branch*?

At the present time, Vancity and RBC are the only financial institutions that carry a declaration of trust (See Appendix 6 and 7) that establishes a TFSA Trust account that has been approved as a non-discretionary trust by MSDSI. If your client does not have access to either institution due to geographical location or other reasons, i.e. insufficient ID, then a TFSA account may not be a good option. It is possible that other financial institutions, not listed in this presentation, offer a TFSA governed by a declaration of

trust that could be approved as a non-discretionary trust by MSDSI. Advocates should seek a legal opinion if choosing to use a financial institution other than Vancity or RBC.

Note: It is fundamentally important to ensure that the client makes the decision to use a TFSA Trust account on their own. Advocates should present the various options that are available to clients for asset exemption and assist the client in pursuing the course of action that the client chooses.

Part 2 - Case Study: Sigurd decides to use a TFSA Trust Account

Sigurd is a 54 year old male who has chronic back pain caused by scoliosis. In addition, he suffers from severe dysthymia. He has always independently managed his own bank account and is proud of the fact that he is able to manage his finances and survive on his budget of \$906.42 per month. He currently has a bank account in good standing at Scotia Bank Sigurd's monthly rent is \$750.00 per month and he would like to use some of this inheritance so he can offset his shelter costs. There is a Vancity down the block from where he lives and he is very confident that he would be able to independently open and manage an account there. Sigurd would like to use the money to help him pay his shelter costs above the \$375.00 that he receives and one day he would like to purchase a car for basic transportation.

Objective 2: Know and advise the client of the process for establishing the TFSA trust and the ministry policy around asset exemption

All clients who decide to establish a TFSA Trust account should be advised of the following information to assist the client in avoiding entanglements with MSDSI and to allow them to benefit from the use of their assets.

The process:

1. Disclosing receipt of income to MSDSI

Ministry clients are required to disclose receipt of all income to MSDSI for the month within which it is received. For clients intending to establish a TFSA Trust account this will typically result in a one month period of ineligibility for PWD support. During this period the client must ensure that they budget accordingly and take all necessary steps required to manage their financial responsibilities independent of MSDSI. Clients should be able to pay for all personal expenses from funds received in the lump sum.

Advocates should advise clients to disclose their income to MSDSI by the 5th day of the month following receipt of income. If the client is capable, they need to inform the ministry as soon as possible that they are intending to establish a trust to exempt the funds. Advocates may choose to forward a letter to the ministry advising MSDSI Staff of the client's intent to establish a non-discretionary trust for the purposes of asset exemption (see Appendix 3).

If an asset passes directly into a trust or RDSP and the client never receives the asset, then the asset is not considered income in the month received. In order to avoid MSDSI

treating the asset as income the client must demonstrate that they did not have direct control over the funds at any point in the transfer. Where a client is establishing a TFSA Trust there is rarely an occasion where they do not have direct control over the funds. This typically results in a one month period of ineligibility for the month within which funds are received.

2. 3 Month Asset Exemption Period and Extensions

The ministry will exempt funds received in a lump sum for a period of 3 months to allow the client time to establish a trust for the purpose of asset exemption. In order to receive this exemption the client must disclose their income to MSDSI and advise the ministry of their intent to establish a trust (see above). The exemption period begins in the month that the funds are received. Advocates should record the date that the 3 month period begins and take steps to ensure that all funds are transferred into the TFSA Trust account and that the account is disclosed to MSDSI before the 3 months are up. MSDSI will extend the 3 months period on a month-by-month basis in cases where the client can provide documentation proving that they are making reasonable efforts to establish a trust and that the delay is beyond their control. A letter from the clients advocate will usually suffice. The client must provide documentation each month for which an extension is requested (See ministry policy on Transferring assets or income into a trust, Appendix 2).

Note: In most cases a TFSA Trust can be established within a relatively short period and extensions are rarely required.

3. Using the TFSA Trust account

Advocates must advise the client of their responsibilities in using the TFSA Trust once it is established. Clients are responsible for making sure that all of the disbursements from the TFSA trust account are used for disability related costs (See glossary for definition of disability related costs). Clients are also responsible for maintaining a record of all disbursements from the account. This can be easily managed by the client opening a second checking account at the financial institution where they establish the TFSA. The client can then transfer all funds from the TFSA Account to the checking account and make all purchases with a debit card to produce a bank record of all transactions (See step 2, "At the Bank"). Clients must ensure that they do not carry a cash balance in their other account(s) that exceeds their allowable asset level.

The best way to ensure that the client understands their trust and how they are allowed to spend funds from the trust is to provide them with a copy of, *Trusts for People Receiving the Persons with Disabilities (PWD) Benefit*, produced by the BC Coalition of Persons with Disabilities (See Appendix 2). In most cases it is advisable to read this document over with the client to ensure that they understand.

Note: Clients are allowed to spend up to \$8000.00 per calendar year on items that go toward promoting the persons independence. Independence expenses are not defined

and are therefore at the discretion of the beneficiary and not ministry staff. This can often be a challenging area for clients who are establishing a trust.

End of the Interview

Once it has been determined by both the client and the advocate that a TFSA Trust is the appropriate vehicle for asset exemption and the client understands their responsibilities and how to use the trust it is time to go about establishing it. In order to do this there are some basic preliminary steps to go through before the client leaves the initial interview to set up the Account. The client must be prepared to attend the financial institution and have a clear picture of how to disclose their income to MSDSI.

1. Preparing to go to the Bank

Once the client determines that they are going to establish a TFSA Trust Account they will then need to determine which financial institution they wish to deal with. If the client cannot or chooses not to use either Vancity or RBC as the financial institution to establish the trust, then the client will need to seek a legal opinion as to whether or not the TFSA account offered by their financial institution of choice will be accepted as a legal trust by MSDSI. Provided the client wishes to use either Vancity or RBC, the advocate should provide the following:

- Advocate Letter addressed to the financial institution which outlines the clients intent and identifies the specific TFSA account to be established (Appendix 4)
- A copy of the appropriate Declaration of Trust (Appendix 6 or 7)
- **Optional** – A signed Release of Information if the client wishes to have the advocate communicate with the institution on their behalf

It is also a good idea to offer clients access to online resources that provide information on disability trusts and the RDSP:

- *How to Create a Trust -*
http://www.vcpvgv.org/uploads/bu/ad/buadXsi4vgyNbPpJTe_X-g/trust.pdf
- *Trusts for People Receiving the Persons with Disabilities (PWD) Benefit -*
<http://www.bccpd.bc.ca/docs/hs8.pdf>
- *The RDSP and People Receiving Social Assistance -*
<http://www.bccpd.bc.ca/docs/rdspguide2012.pdf>
- *Disability Assistance and Trusts -*
<http://www.eia.gov.bc.ca/publicat/pdf/DisabilitiesTrusts.pdf>

2. Disclosing Income and Intent to MSDSI

Depending on the client's level of familiarity and comfort with MSDSI Advocates may determine different approaches to assisting the client with disclosure of income. If the client is capable, advise them to disclose the income on their monthly stub and to

contact MSDSI staff to advise of the intent to establish a non-discretionary trust. If the client is not as capable the advocate should gain consent from the client and forward a letter of intent to the MSDSI on the clients behalf.

Remember: Keep record the date the client disclosed of income and informed MSDSI of intent to establish non-discretionary trust.

Last Thing:

Before completion of the initial interview the advocate should book a follow up appointment with the client (See Step 3 - Follow up appointment).

Part 3 - Case Study: Sigurd plans to establish a TFSA and inform the ministry

Sigurd received \$20,000 as an inheritance from the estate of his deceased Aunt Gertrude on September 10, 2013. Sally has advised him to indicate this income on his income assistance stub and deliver it to MSDSI by October 5, 2013. Sally is going to fax a letter to MSDSI to advise the office that Sigurd intends to place the money into a non-discretionary trust (see Appendix 3). Sally further advised him that he will not receive disability support payments for the month of November, paid out on October 23, 2013. This means that Sigurd will need to ensure that he takes the necessary steps to personally pay his rent, bills, and other expenses as he will not receive his full disability support again until, November 20, 2013. Sigurd has to write a check to his landlord, BC Hydro and purchase all of his groceries with the money he received from Aunt Gertrude until November when he will once again be in receipt of disability support.

Sally advised Sigurd on the process for establishing the TFSA Trust account and gave him a helpful fact sheet to review so that he will understand how to manage disbursements from his account (see Appendix 8). He also has been given a letter to bring with him to Vancity to help in setting up the account (see Appendix 4). Sigurd is ready to go to the bank.

STEP 2 – At the Bank

This step is a quick and generally easy process. The client attends the financial institution of their choice and meets with an account manager. At this point the client will provide the account manager with the advocate letter (Appendix 3) which explains the client's purpose for being there. In most cases the account manager will provide the client with the TFSA account application form and corresponding declaration of trust and advise the client to contact the branch to establish the account after they have met with their advocate to review the forms.

If the account manager does not provide the application and declaration to the client the Advocate may need to provide some assistance. In some cases, financial professionals do not understand provincial disability assistance programs and may feel insecure in assisting the client. If this occurs advocates need merely contact the branch and discuss the client's intention and needs. After the financial institution staff are informed that the client is merely going to establish a TFSA they are generally all too happy to assist.

Once the client has the TFSA Trust Application and corresponding Declaration of Trust then they will then be ready for the next step.

Establishing two Separate Accounts:

It is advisable that clients establish two separate accounts with their financial institution of choice: 1. TFSA trust account, 2. Checking Account. The client can then make all disbursements from the TFSA trust account directly to the checking account. The client will then use a debit card for all purchases resulting in an automatic bank record of all expenditures. When clients have their trust accounts reviewed by MSDSI they can simply request a bank record and provide this to the ministry. This strategy removes much of the stress and uncertainty that clients may experience throughout the MSDSI review. MSDSI Staff typically review all trusts on an annual basis.

Part 4 - Case Study: Sigurd goes to the Bank

Sigurd called Vancity and made an appointment to meet with an account manager named Jeff Suit. When Sigurd arrived at Vancity, Jeff told him that he was concerned that a TFSA Account may not qualify as a trust and that Sigurd might be cut off of benefits from the ministry as his financial assets are too high to continue to receive this support. Sigurd gave Jeff the letter from Sally. Jeff read the letter but had some more questions and so decided to call Sigurd's advocate. After a quick conversation with Sally, Jeff was reassured that Sigurd could open the TFSA Account and still continue to receive benefits. Jeff gave Sigurd a copy of the TFSA Account application and Declaration of Trust (see Appendix 6) that Sally had indicated would be necessary. Sigurd left Vancity and went straight to SAAS to review the documents with Sally.

During the Phone call between Sally and Jeff, Sally mentioned that she serves many clients like Sigurd and that she would like to have someone in the local Vancity branch that she could communicate with in future when clients were in need of establishing similar accounts. Jeff gave Sally his email address and told her that she could contact him any time.

STEP 3 – The Follow-Up Appointment(s)

The purpose of the follow-up appointment(s) is to ensure that the client is opening or has opened the correct account governed by the correct Declaration of Trust. Depending on the advocates familiarity with the local financial institution and with setting up trusts in general there may only be need for one follow up appointment.

At the follow-up appointment(s) the advocate will review the TFSA Account application form and Declaration of Trust that the financial institution provided to the client. If these documents are consistent with the declaration of trust found in Appendix 6 or 7 then the client is ready to establish the account. Advise the client to return to the financial institution to establish the account and deposit their funds. Once the account is established the client must request and be provided with copies of a *statement of account*, the complete *TFSA Account application*, and the *Declaration of trust*. These are the documents that must be submitted to MSDSI. The client then returns for a second follow up appointment to provide the forms to the advocate.

The follow up appointment is the ideal time to answer any additional questions that the client may have. This is a good time for advocates to review with clients how trust disbursements work and what the client will need to do in the case that their trust is reviewed by MSDSI.

Part 5 – Case Study: The First Follow up at SAAS

At the follow up appointment Sally asked Sigurd if he had submitted his income assistance stub to the ministry. Sigurd had done this and told Sally that he was making plans to pay for his rent and bills over the next month. Sally then reviewed the documents and noted that they were the correct document to establish the account. Sally then advised Sigurd to return to Vancity to meet with Jeff to establish the account.

Sally reminded Sigurd that he would need to open two accounts; 1. A TFSA Account with the documents that they had reviewed and 2) a Checking account so that Sigurd could manage the disbursements from his TFSA. Sally reminded Sigurd that he would need to bring her a copy of the signed TFSA Application, the Declaration of Trust and a Statement of Accounts so that she could forward these documents to the ministry. Sigurd thanked Sally and returned to Vancity the next day.

At Vancity Jeff established both accounts for Sigurd and gave him copies of the completed documents. Jeff thanked Sigurd for banking with Vancity and told him to give him a call if he needed anything in the future.

Part 6 – Case Study: The Second Follow Up at SAAS

This appointment was quick. Sally reviewed all of the documents with Sigurd. Sally noted that the Statement of Accounts showed that Sigurd had deposited \$20, 000 into the TFSA account governed by the correct Declaration of Trust. Sally further noted that Sigurd had taken 1, 000 out of the TFSA Account and placed it in his new checking account. Sigurd told Sally that he was going to use this money to pay for his day-to-day expenses over the next month. Sally advised Sigurd again that the funds from the trust are to be spent on disability related costs and that Sigurd should make all of his purchases from the checking account with a debit card to make sure that he has a clear and concise record of all expenditures.

Sally told Sigurd that she would fax the completed Trust documents to the ministry and that Sigurd should contact her when he receives a letter from the ministry with respect to his trust. Sigurd thanked Sally, breathed a sigh of relief, and left the SAAS office.

Sally thought to herself that she might not need this second appointment for future clients. Now that she knows Jeff and can communicate directly with him, she can be reasonably assured that her clients will receive the right documentation when they are setting up their TFSA accounts at the local Vancity branch.

STEP 4 – Disclosing the TFSA Trust to the Ministry

When the client has established the TFSA account and deposited the money into the account the accompanying documentation must be disclosed to MSDSI to be reviewed by the Legislation, Litigation and Appeals Branch (LLAB) prior to receiving final approval as a non-discretionary trust.

Once ministry staff are provided with the TFSA trust disclosure (see Appendix 5) by the advocate on behalf of the client, they then complete a Trust Query Form, attach it to the trust documents and forward the package along to LLAB for final approval. This process can take many months for MSDSI to complete.

It is necessary to send the completed documents directly to the client's local MSDSI office and not to LLAB. If the local office is not informed of the pending trust approval and LLAB takes longer than the three month exemption period to approve the trust then the client may be found ineligible for disability support payments. This error can be corrected but will cause unnecessary hardship on the client.

The disclosure can be delivered to the local MSDSI office by in person delivery, post, or fax.

Documents that must be disclosed:

1. Advocate disclosure letter
2. Trust Account Application
3. Statement of Accounts - indicating balances for both the TFSA Trust Account and the checking account if applicable
4. Declaration of Trust
5. Release of Information (Optional)

Once LLAB has approved the TFSA trust they will mail a letter to the client that explains that the TFSA Trust account is considered to be a non-discretionary trust (see Appendix 9). Advocates should advise clients to contact them when this letter is received to close the file and to tie up an loose ends.

Part 7 – Case Study: Sally sends the documents to the ministry

After Sigurd left the office Sally prepared a letter of disclosure to the ministry explaining that the TFSA Account meets the ministry definition of a non-discretionary trust (see Appendix 5). Sally then took copies of all the documentation and prepared a fax cover letter that outlined all of the attachments; 1) Advocate Letter, 2) TFSA Account Application, 3) Declaration of Trust, 4) Statement of Accounts, 5) Release of information. Sally faxed the documents to the local ministry office and kept a copy of the fax confirmation letter along with all of the other documents in Sigurd's file.

Part 8 – Case Study: A job well done

Two months after Sally last saw Sigurd she received a small box of chocolates and an envelope in her mail box at SAAS. When she opened the envelope she saw two things, a card from

Sigurd thanking her for all of her efforts and a letter from the ministry that approved Sigurd's TFSA Account as a non-discretionary trust (see Appendix 9). This truly was a job well done.

Advocate Questions:

1. **What would happen if Sigurd did not report his income to the ministry?**
2. **What happens if the ministry does not approve the trust?**
3. **What happens if frontline ministry staff, tell Sigurd that a TFSA is not a Trust?**
4. **What if there is no local Vancity or RBC Branch?**
5. **Do advocates need to forward a Statement of Accounts to the ministry?**
6. **What happens if the client who wishes to establish a trust receives \$35, 000 instead of \$20, 000?**

Trust Glossary:

Assets: the financial resources a person or trust has, including cash, bonds, securities, property and/or items of value (i.e. a car)

Asset Limit: the maximum amount of assets a person receiving PWD benefits can have (Cash assets of \$5000.00 for a single recipient or \$10, 000 for a family unit of 2).

Beneficiary: The person who benefits from the assets in the trust. Can be the client or holder of an approved TFSA Trust Account. The beneficiary is responsible for keeping a record of all disbursements from a non-discretionary trust.

Declaration of Trust: Document that sets out the legal structure of the trust (also referred to as a trust agreement).

Disbursements: payments from a trust.

Discretionary Trust: a trust where the beneficiary does not have control over the money in the trust. The trustees make all of the spending decisions. No limit to the amount of money that can be held in a discretionary trust provided the beneficiary has no legal right to end the trust and gain control of the assets.

Disability Related Costs: disability related costs are considered as exempt for the purposes of calculating disability support amounts. All disbursements from a trust must be used for a disability related cost as defined under s. 12 of the EAPWD Reg or used to promote the persons independence.*

In the definition of "disability-related costs there is no limit to the amount that can be spend each year on following categories:

- devices or medical aids related to improving the person's health or well-being;
- caregiver services or other services related to the person's disability (The online policy says this term is interpreted broadly and includes many services including home-maker service, social network facilitators, employment services or supports, speech therapy, physiotherapy, occupational therapy, behavioural or communication therapy, applied behaviour analysis counselling) ;
- education or training;
- renovations to the person's residence to accommodate the person's disability, and
- necessary maintenance for that residence.

*There is a calendar year limit of \$8,000/ year for any other item or service that promotes the person's independence (Regulation Sch B s. 7(2.1)) Independence expenses are not defined under the program. The policy manual say this term is interpreted broadly and is determined by the beneficiary or trustee, not ministry staff.

Inter vivos Trust: a trust fund that comes into effect during the lifetime of the person who established the trust. It is also known as a living trust.

Non-discretionary trust: a trust in which the beneficiary of the trust has some control over income or capital or can regain control of the assets. MSDSI will exempt assets held in a non-discretionary trust so long as the total assets in the trust are less than \$200, 000. MSDSI may approve assets above this level if the beneficiary demonstrates that they have life time disability related costs above \$200, 000.

Settlor: The persons who establishes a trust. The settlor can be the beneficiary.

Tax Free Savings Account (TFSA): A Tax-Free Savings Account (TFSA) is a flexible, registered, general-purpose savings vehicle that allows Canadians to earn tax-free investment income to more easily meet lifetime savings needs.

Testamentary Trust: a trust that is set up, often within a will, which takes effect upon the death of the settlor

TFSA Trust : technically the same as a TFSA. A form of non-discretionary trust where the financial institution acts as the trustee and the account holder acts as the beneficiary and settlor. Must carry a declaration of trust or trust agreement that establishes the account to meets the legal definition of a trust. As of 2013, carries a maximum cumulative contribution limit of \$25, 500 for a person eligible for a TFSA as of 2009. This limit will likely increase by \$5, 500 to \$31, 000 in 2014.

Trust: a legally binding agreement in which a settlor transfers legal ownership of assets to a trustee to manage and administer for the benefit of the beneficiary.

Trustee: The person or company that manages the trust according to written instruction contained in the trust agreement.

APPENDIX:

- ❖ APPENDIX 1 – EAPWD Regulations pertaining to disability trusts
- ❖ APPENDIX 2 - MSDSI Policy Guide: Trusts
- ❖ APPENDIX 3 – Intent to Establish a Trust (Template Letter)
- ❖ APPENDIX 4 – Introduction Letter to Financial Institution (Template Letter)
- ❖ APPENDIX 5 – MSDSI Trust Disclosure Letter (Template Letter)
- ❖ APPENDIX 6 – Vancity TFSA Application and Trust Agreement
- ❖ APPENDIX 7 – RBC TFSA Application and Trust Agreement
- ❖ APPENDIX 8 – BCCPD Trust Fact Sheet
- ❖ APPENDIX 9 – LLAB Trust Approval Letter

Trust Related Legislation: October 2013

BC Employment and Assistance for Persons with Disabilities Regulation

Limits on income

9 (1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Asset limits

10 (1) The following assets are exempt for the purposes of subsection (2):

(2) A family unit is not eligible for disability assistance if any of the following apply:

a) a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5 000;

(B.C. Reg. 197/2012)

(b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000.

(B.C. Reg. 197/2012)

Assets held in trust for person with disabilities

12 (1) In this section, "**disability-related cost**" means the cost of providing to a person with disabilities or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre,

(a) devices, or medical aids, related to improving the person's health or well-being,

(b) caregiver services or other services related to the person's disability,

(c) education or training,

APPENDIX 1 – Trust Legislation

(d) any other item or service that promotes the person's independence, and (B.C. Reg. 197/2012)

(e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital,

(i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and

(ii) necessary maintenance for that place of residence.

(2) If a person referred to in subsection (1) complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows: (B.C. Reg. 197/2012)

(a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus

(b) any capital subsequently contributed to a trust referred to in paragraph (a),

is exempt for the purposes of section 10 (2) [*asset limits*].

(3) If the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$200 000, the minister may authorize a higher limit for the person for the purposes of subsection (2). (B.C. Reg. 197/2012)

(4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make the records available for inspection at the request of the minister:

(a) for a trust created before April 26, 1996, the capital of the trust on that date;

(b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was created;

(c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b);

(d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest.

(5) For the purposes of this section, the real or personal property of a "patient", as defined in the *Patients Property Act*, who is a person with disabilities is to be treated as if the real or personal property were held in trust for the patient by the patient's committee.

Schedule B

Exemptions - unearned income

7 (0.1) In this section:

“disability-related cost” means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation; (B.C. Reg. 197/2012)

“disability-related cost to promote independence” means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation; (B.C. Reg. 197/2012)

“intended registered disability savings plan or trust”, in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies; (B.C. Reg. 197/2012)

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence. (B.C. Reg. 197/2012)

(3) Repealed (B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

Ministry Policy Related to Trusts: October 2013

Available online at:

http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/trusts/policy.html#2

Trusts

Policy

Eligibility and Trusts

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Client as Trustee

Eligibility and Trusts

July 20, 2011

Among other things, trusts provide a way for some clients and their families to safeguard *assets* for meeting disability-related costs now and in the future while remaining eligible for assistance.

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The following client types may transfer certain kinds of *assets (real property or personal property)* into a *discretionary trust* or a *non-discretionary trust*, under certain conditions, without affecting eligibility for assistance:

- Clients who have the *persons with disabilities (PWD) designation*;
- A client who resides in a private hospital or a *special care facility* (other than a drug or alcohol treatment centre);
- Clients or applicants awaiting a PWD adjudication decision or completing a PWD Application form [for more information, see Persons with Disabilities Designation – Designation Application].

Note: Throughout this topic, “client” will refer to both clients and applicants if “client/applicant” is used in the paragraph in which it appears.

Income assistance clients, other than those who reside in a private hospital or a special care facility, could have a discretionary trust that would not be considered an asset in certain narrow circumstances. [For more information, see Policy – Income Assistance Clients and Trusts.]

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Types of Trusts: October 1, 2012

October 1, 2012

A trust is a legal relationship where someone (the trustee) holds the legal interest in (legally owns) money or other *assets* for someone else’s benefit (that person is called the “beneficiary”). The legal relationship is often, but not always, described in a written agreement, or in a will. There can be more than one trustee, and multiple beneficiaries, or there may be only one of each.

There are two basic types of trusts: “discretionary” and “non-discretionary.” The distinction is important, because they are treated differently under BC Employment and Assistance legislation.

Discretionary trust: a trust in which the trustee has absolute authority over payment of capital and income from the trust. In other words, the trustee has complete authority to decide whether to provide trust funds to the beneficiary, or to spend trust funds on their behalf.

- The ministry generally does not consider a discretionary trust to be an asset, provided the beneficiary has no legal right to end the trust and take the capital. Because such a trust is not considered an asset, there is no limit to the value of assets that can be held in a discretionary trust.
- If the beneficiary has a legal right to collapse the trust and gain control of the assets, the ministry considers the trust to be an asset. Such a trust is considered to be a *collapsible discretionary trust*.

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Non-discretionary trust: A trust in which the trustee does not have absolute authority over payments of capital and income from the trust. The beneficiary may have some control, or the trustee may be required to make certain payments.

1. A non-discretionary trust is considered an exempt asset for eligible clients so long as the value of all capital contributions over time does not exceed **\$200,000**.
2. Any return on investment generated by the trust can grow the value of the trust beyond \$200,000 [see Policy – Return on Investment in a Trust for more information].
3. Capital contributions in excess of \$200,000 are not exempt as an asset unless special approval is given by the minister.
4. The minister can approve capital contributions in excess of \$200,000 if the minister is satisfied that the lifetime disability-related costs of the beneficiary will exceed \$200,000 [see Procedures – Lifetime Maximum].

Note: Trust capital is the total of all contributions made to a trust. Trust income is any return on investment generated from capital contributions within a trust.

An *RDSP* is a registered matched savings plan specific for people with disabilities. An *RDSP* is not a trust but is an alternative tool for safeguarding and growing assets now and for the future. [see Related Links – Assets and Exemptions]

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Income Assistance Clients and Trusts

July 20, 2011

Income assistance clients, other than those who reside in a private hospital or a *special care facility* (other than a drug or alcohol treatment centre), could have a *discretionary trust* provided they have no way of collapsing the trust and gaining control of the *assets*. This is because a discretionary trust is not considered an asset. However, whether they can have such a trust also depends on how, when, and by whom the trust was set up. For example, these clients may not be eligible for assistance if the trust was set up with capital that was within that client's control, within two years before their date of application for assistance or while in receipt of assistance. Further considerations include the underlying purpose of the contribution to the trust, and the purpose of the trust itself. **A legal opinion must be sought by the ministry through LLAB regarding such a contribution to a trust before making an eligibility decision.** [See Procedures]

Examples:

- A third party sets up a discretionary trust using their own resources, naming the client as beneficiary. The client cannot collapse the trust and gain control of the assets. In this case, the existence of the trust alone does not impact the client's eligibility for assistance.

APPENDIX 2

- During the two years prior to applying for *income assistance*, a client receives some property as an inheritance and transfers it to a discretionary trust. The client cannot end this trust and take the capital. Depending on all the circumstances in this case, the client may not be eligible for assistance because of s. 13 of the *EAPWD Act* or s. 14 of the *EA Act*. In some cases it may be determined that the client disposed of *real property* or *personal property* in order to reduce assets by transferring them into a trust.

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How a Trust is Set Up

July 20, 2011

A trust is generally set up by transferring *assets* to someone to hold for the benefit of another person. Similarly, a trust can also be set up by a person declaring assets they own are owned for the benefit of another person. The fundamental concept of a trust is that the legal ownership of the asset (essentially, the authority to manage or dispose of the asset) is separated from the beneficial ownership (the right to benefit from the asset).

There are many ways to set up a trust. Two common trust arrangements are:

- The client/applicant or another party chooses someone to be a trustee, or to be a co-trustee with the client, to manage the trust. The client and the trustee sign a trust document showing all the terms under which the assets have been transferred to the trustee, to be held in trust. This type of trust is an *inter vivos* trust because the creator of the trust is still alive.
- A person creates a trust in their will. The trust becomes effective when that person dies, because the deceased person's assets are automatically transferred to their executor and trustee, so they can carry out the instructions in the will. Thus, a separate trust agreement is not needed to put this trust into effect. This type of trust is a *testamentary* trust, because it is created through a person's last will and testament.

A trust document itself is not enough to create a trust. The legal title to the asset in trust must be transferred to the trustee to make the trust effective.

Ministry staff must not provide recommendations or advice regarding whether a trust or other personal arrangement is right for a client/applicant. The ministry cannot give legal or investment advice to clients, and can only provide information regarding how an arrangement a client has already made affects their eligibility. If a trust is claimed by a client, a legal opinion must be sought by the ministry through *LLAB* before making an eligibility decision.

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Ministry staff use a Trust Query Cover Form (HR2999) and send any other relevant documents to LLAB to determine whether the trust is valid, whether the trust is to be considered an asset, and if it is exempt.

[For more information, see Resources for Clients – Trust Query Submission Guidelines for Clients and Resources for Staff – Trust Query Submission Guidelines for Staff.]

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Transferring Income or Assets into a Trust: October 1, 2012

October 1, 2012

If an eligible client receives *earned income* or *unearned income* (such as CPP disability payments, money from a trust or inheritance, or investment income from *assets* held outside a trust), it is considered income in the month received even if the income is redirected, or received and transferred, into a trust. Certain income exemptions apply [see Related Links – Income and Exemptions]. Unless deemed by the legislation to be unearned income by definition, transfers of capital (including most gifts) are not treated as income [see Related Links – Assets and Exemptions].

Eligible clients may choose to transfer newly received income or assets to a trust or RDSP to avoid being over the asset limit in subsequent months [see Related Links – Assets and Exemptions]. If under \$200,000, the asset(s) can be transferred into a trust. If the value of the asset(s) exceeds \$200,000, the client should get legal advice, and they MAY be able to use a trust. For example, a possible concern is disposal of *real property* or *personal property* to reduce assets (section 13 of the *EAPWD Act* and section 12 of the *EA Act*). Whether or not this provision applies will depend on the circumstances of each case.

Ministry staff must not provide recommendations or advice regarding whether a trust or other personal arrangement is right for a client/applicant. The ministry cannot give legal or investment advice to clients, and can only provide information regarding how an arrangement a client has already made affects their eligibility. If a trust is claimed by a client, a legal opinion must be sought by the ministry through *LLAB* before making an eligibility decision.

If an asset passes directly into a trust or RDSP and the client/applicant never receives the asset, then the asset is not considered income in the month received. For example, if a relative chooses in their will to disburse assets directly into a trust for the client, those assets will not be considered income in the month received. Note that this is different than when a client has an entitlement to the asset, but directs the person who has to transfer the asset to the client to instead transfer the asset into trust. An example is where a client is named as a beneficiary in a will, but there is no testamentary trust – the client is simply entitled to receive the inheritance; the client then requests the executor to transfer it into a trust. In such a case, it is the client and not the

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transferor who has chosen to transfer the asset in the trust. Accordingly, the ministry treats this situation the same as if the client actually received the asset before it was transferred to the trust.

A legal opinion must be sought by the ministry through LLAB when ministry staff require advice regarding how to categorize a transfer of income or assets and, generally, whenever there may be a trust involved, before making an eligibility decision.

If an eligible client transfers an exempt asset into an exempt trust, for example, a residential property that serves as the client's primary residence, or a transfer from a personal RDSP, the asset remains exempt and does not impact eligibility for assistance. Likewise, funds rolled into an exempt trust from a deceased parent's RRSP or Registered Retirement Income Fund are not considered income in the month received.

If an eligible client does not have an exempt trust or RDSP and the client wishes to transfer an asset to a trust or RDSP, the ministry allows the client up to three months to do so (the first month being the month in which the asset is received). During this time, the ministry will exempt assets intended for the trust or RDSP. If, after three months, the client has not set up a trust or RDSP, the client's circumstances will be reassessed. If the client provides documentation (from a financial institution or lawyer) proving they are making reasonable efforts to establish an RDSP or trust, and the delay is beyond their control, the exemption for the asset may be extended on a month-by-month basis. The client must provide documentation each month for which an extension is requested. The exemption ceases to apply if the ministry becomes aware of information that indicates that a client does not intend to contribute the asset or a portion of the asset to a trust or RDSP.

Expenditures from an asset intended for a trust or RDSP will be exempt only so long as they are spent on "disability-related costs" [see Policy – Trust Payments]. However, if the client does not receive assistance for a month because of excess income in the month received, expenditures from the asset intended for a trust or RDSP are not restricted during this month (short of transactions making s. 13 of the *EAPWD Act* or s. 14 of the *EA Act* applicable).

Assets Reported Late or Discovered by Review or Investigation: Clients found to be ineligible for assistance as a result of reporting assets at a later date, or for failing to report assets (either before or after the client began receiving assistance) which were subsequently discovered as a result of a review or investigation, may reapply for assistance when they no longer have the assets, or when they transfer the assets into a trust [see Policy – Eligibility and Trusts]. If they choose to set up a trust, this must be done **before** they will be eligible for assistance (i.e., unlike clients who report assets, non-reporters are not eligible while they are setting up the trust). In such cases, ministry staff will expedite the review of the trust and the client will remain ineligible for assistance until the trust has been reviewed and determined to be valid and an exempt asset.

Exception:

If an asset described above (over the asset limit that is reported at a later date or following a review or investigation that has uncovered the asset which was not reported) is being held within

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an existing trust, the client remains eligible for assistance and the trust should be immediately reviewed.

Amended Trusts: Clients found to be ineligible following a review of a trust may in some cases amend the terms of the trust. Ministry staff cannot advise whether a client can or should amend a trust. If the client chooses to amend a trust, ministry staff will expedite the review of the amended trust, and the client remains ineligible for assistance unless and until the trust has been reviewed and determined to be valid and an exempt asset.

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Trust Payments: October 1, 2012

October 1, 2012

Payments from both *discretionary* and *non-discretionary* trusts are considered *unearned income* subject to exemptions for certain trust payments. Exemptions apply only to *persons with disabilities* (PWD) clients, PWD applicants and clients who reside in a private hospital or a *special care facility* (other than a drug or alcohol treatment centre); there are no trust payment exemptions for other clients or non-PWD members of a family unit. Trust payments are fully exempt for eligible clients when used for:

- Buying a place of residence for the client,
- A contribution to a Registered Education Savings Plan,
- A contribution to an *RDSP*, or

Disability-related costs:

Disability-Related Cost	Annual Calendar Year Limit
Devices, or medical aids, related to improving the person's health or well-being [see notes below]	None
Caregiver services or other services related to the person's disability [see notes below]	None
Any other item or service that promotes the person's independence [see notes below]	\$8,000
Education or training	None
Renovations or changes to the person's place of residence necessary to accommodate the needs resulting from the person's	None

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disability (clients with PWD designation only)	
Necessary maintenance on the person's place of residence (clients with PWD designation only)	None

Notes:

Examples of devices, or medical aids, related to improving the person's health or well-being include but are not limited to:

- High performance wheelchairs for recreational/leisure or sports use
- Vehicle modifications (hand controls, van lifts)
- Lift chairs

"Other services related to the person's disability" is interpreted broadly and includes many services. Examples include but are not limited to:

- Home-maker services
- Community Connectors (social network facilitators)
- Employment services or supports
- Speech therapy
- Physiotherapy
- Occupational therapy
- Behavioural or communication therapy
- Applied behavioural analysis
- Counselling

"Any other item or service that promotes the person's independence" is interpreted broadly and is determined by the beneficiary or trustees, not ministry staff.

If part of the cost of an item or service that promotes a person's independence falls under a different disability-related cost (or exempt trust payment), that portion of the expense should not be included within the \$8,000 limit. For example, if a client takes an annual trip that requires a caregiver to accompany them, the client's expenses could be paid for out of the \$8,000 limit, but the expenses the client pays for the caregiver, (including the caregiver's travel costs if applicable), are not included within the \$8,000 limit.

Generally, *disability assistance* clients are not required to use *assets* from a trust to pay for items that may be provided by the ministry. For example, if a PWD client meets all eligibility criteria to be provided a wheelchair, their trust would not be considered an available resource and they would be eligible to receive the wheelchair. Assets from a trust can be used to pay for upgrades to items beyond what may be provided by the ministry.

If an individual who is not a ministry client with a non-discretionary trust applies for a health supplement under life-threatening health need, they are required to use assets from their trust before being considered for a supplement under life-threatening health need.

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Trust payments are separate from *RDSP* payments. *RDSPs* are not subject to trust payments guidelines.

Note on fees: Trust payments for investment commissions, or administration and legal fees required to operate a trust (for example, tax payments or payments to trustees) are not payments to the beneficiary and do not count towards the \$8,000 limit.

Ministry staff have no authority to direct a client or a trustee regarding how they must use a trust, nor may they provide suggestions or advice as to how to use a trust; staff apply the Act, regulations and ministry policy to determine how the client and trustee have used their trust as it relates to determining eligibility for assistance.

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Structured Settlements: October 1, 2012

October 1, 2012

A structured settlement is an agreement to pay damages to a plaintiff in a lawsuit, but by periodic payments rather than as a lump sum. To be considered a structured settlement under this policy, the settlement agreement:

- must have been in relation to a claim for damages in respect of personal injury or death, and
- must require the defendant to make periodic payments directly to the person for a fixed term or the life of the person through the purchase of a single premium annuity contract that is not assignable, commutable or transferable.

If a settlement does not meet all of these criteria, it is not a structured settlement. These annuities are not assets. Some structured settlements require payments to be made into an actual trust, in which case the trust will determine how the arrangement is treated.

Payments received under structured settlements are treated the same as payments from trusts. The same trust payment income exemptions apply, regardless of whether the payment originated in a trust, or came from a structured settlement annuity.

If a client receives a structured settlement and does not have the *persons with disabilities (PWD) designation* or is not a person receiving accommodation or care in a private hospital or a *special care facility*, the underlying annuity will not be considered their asset. However, there are no exemptions for payments under a structured settlement for these clients, so any payments under a structured settlement to a client who is neither a PWD nor a resident in a special care facility will be treated as unearned income.

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If the structured settlement is set up to make payments into a trust, the payments may or may not be considered income; a legal opinion is required.

A legal opinion must be sought by the ministry through LLAB when structured settlements are reported, before making an eligibility decision.

Structured Settlement Reporting: Clients who are the beneficiary of structured settlement annuity payments are required to keep records of the following and make the records available for inspection at the request of the minister:

- the settlement agreement, including the table of payments to be made to the person
- documentation showing the ownership of the underlying annuity

Each year the ministry needs the following information:

- all payments made to or on behalf of the person under the structured settlement and what the money was used for

In addition, clients are required to report structured settlement annuity payments on their monthly report, as the payments may affect their eligibility.

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Committees: October 1, 2012

October 1, 2012

A committee is an arrangement where the *Public Guardian and Trustee* (PGT), a private individual, or a trust company is granted the authority to manage the affairs of an adult who is incapable of managing his or her own affairs. Under BC Employment and Assistance legislation, a *patient's* own *real property* and *personal property*, which is controlled by a *committee*, is treated by the ministry as if held in trust for the adult; accordingly, it is not required to be held in an actual trust to qualify for an exemption equivalent to a *non-discretionary trust* (generally \$200,000). A third party can still set up a trust for a patient. A patient would also generally continue to be the beneficiary of a trust that existed prior to their incapacity. Such actual trusts are considered on their terms, and in light of the patient's inability to manage their affairs.

A legal opinion must be sought by the ministry through LLAB in the case of a committee, to confirm the status of the committee as well as to determine how to apply the trust asset exemptions before making an eligibility decision. In seeking a legal opinion, it is important to include documentation showing who holds title to the assets in question and, if there is an actual trust, documentation showing that the property is held in trust

APPENDIX 2

and confirming the terms of any trust arrangement. Documentation should also include a copy of the court order or certificate of incapacity creating the committee.

The PGT provides assistance to adults who need support for financial and personal decision making. In that role, the PGT acts as the client's representative, no different from any other client advocate, committee or trustee. **As such, a legal opinion must be sought by the ministry through LLAB for all arrangements involving the PGT before making an eligibility decision.**

For more information on documentation required, including for committees involving the PGT, see Resources for Clients – Trust Query Submission Guidelines for Clients, and see Resources for Staff – Trust Query Submission Guidelines for Staff.

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Trust Reporting Requirements

July 20, 2011

Clients are required to report all trust changes and activity that may affect their eligibility on their monthly report (for example, new contributions, income, payments). Clients are not required to regularly report trust balances.

The ministry has the authority to ask for information regarding a trust at any time, and trustees must keep accounts and be prepared to produce documentation on request regarding activity in the trust. Each year the ministry needs all of the following information about a trust:

- how much money was disbursed from the trust to or on behalf of the client
- what this money was used for
- whether any new money was deposited to the trust

[see Resources for Clients – Disability Assistance and Trusts Booklet for tips on how to report this information]

An updated legal opinion must be sought by the ministry through LLAB when a change in trustee or amendment to the terms of the trust is reported, before making an eligibility decision.

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Random Annual Audits

July 20, 2011

APPENDIX 2

Exempt trusts held for clients with the *persons with disabilities designation* or persons in a private hospital or a *special care facility* (other than a drug or alcohol treatment centre) are subject to random annual audits. Audits will match reported trust activities with actual trust documentation to ensure accurate accounting of the trust.

Trustees holding exempt trusts for clients need to keep a record of all activity relating to the trust.

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Return on Investment in a Trust: October 1, 2012

October 1, 2012

Income generated from return on investment within a trust can either be kept in the trust or paid out to the client, depending on how the trust is set up.

If the income is held in the trust, it is **not** considered income to the client but rather remains part of the trust. This is true for both *discretionary trusts* and *non-discretionary trusts*. Only distributions from the trust are attributable to the client as income, and exemptions may apply.

While non-discretionary trusts have a maximum contribution limit, the value of the trust can exceed the contribution limit through return on investment. This means that the trust remains exempt regardless of whether the income generated in it brings the value of the trust over \$200,000. Income accrued in a trust is **not** considered to be a capital contribution.

For example, if a client sets up a non-discretionary trust with a \$199,000 contribution and income generated on that amount brings the value of the trust to \$210,000, the entire value of this trust would still be considered an exempt asset.

If the income is paid out to the client through a trust payment, it does not matter whether the payments are made from capital, income or mixed capital and income. The entire payment is from a trust, and therefore income attributable to the client [see Policy – Trust Payments].

Note on topping a trust back up: If a client contributes \$200,000 (or their approved lifetime maximum) to a non-discretionary trust, draws down the value of the trust, and subsequently makes further contributions to it, the additional contribution is not exempt. For example, a client withdraws \$10,000 from their trust that they set up with \$200,000. After the \$10,000 withdrawal, the client contributes \$5,000 of fresh capital. In this example, the \$5,000 contribution is considered a non-exempt asset since the client has now contributed a total \$205,000 to their trust – more than their lifetime maximum.

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Note that it is only “new” contributions to the trust that count toward the exemption limit in the calculation; if the trust earns income that is simply kept by the trust and accumulated as trust capital, such capital has not been “contributed” to the trust for the purpose of this calculation.

Note on investment properties: *Real property* may be held within a trust. If the trust owns the property, rental income the property generates is income to the trust, like any other investment income. It is not a capital contribution nor is it the client’s income. Assuming the trust is exempt, this income is exempt because it is income earned by the trust, not the client. If the income accumulates, it does not count as a capital contribution by the client.

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Client as Trustee

July 20, 2011

While not a common situation, a client/applicant can be a trustee of a trust where another person is the beneficiary. (A client can also be a co-trustee of a trust where the client is the beneficiary.)

If a client is a trustee of a trust where another person is the beneficiary, the assets in the trust and income generated in the trust are not considered to be the client’s asset; however, a number of issues can still arise in this situation. **A legal opinion must be sought by the ministry through LLAB in every case where the client claims they are a trustee, or otherwise claims to be holding property for the benefit of another person, before making an eligibility decision.**

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APPENDIX 3 – Intent to Establish a Trust (Template Letter)

Date:

RE: Mr. John Doe, SIN

Intent to Establish a Trust

ATTN: Ministry of Social Development and Social Innovation

To Whom it May Concern,

Mr. John Doe has requested that I provide the ministry with a brief outline establishing his intentions for the use of his recent income. Mr. Does has recently received \$20, 000 in a recent inheritance. It is Mr. Doe's intent to establish a non-discretionary trust with this income and to use the benefits of this trust for disability related costs.

I have advised Mr. Doe that it is ministry policy to exempt assets intended for the establishment of a non-discretionary trust for a period of three calendar months from the date that he receives his inheritance. Please notify me directly if any other course of action is taken so that I may be of assistance to both the ministry and Mr. Doe in correcting any error in understanding.

Yours sincerely,

Stephen Portman
Legal Advocate, TAPS

APPENDIX 4 – Introduction to Financial Institution (Template Letter)

Date:

RE: Client Name - SIN

Dear RBC/Vancity Representative,

Mr. John Doe is currently in receipt/applying for persons with disability (PWD) benefits from the Ministry of Social Development and Social Innovation. Mr. Doe is in need of placing some inheritance monies into a Royal Bank/Vancity Tax Free Savings Account that meets the terms as set out in the attached Declaration of Trust. It is essential that the TFSA that Mr. Doe establishes to deposit this money into is governed by the attached agreement in order to ensure the continuance of his PWD benefits. Please provide Mr. Doe with the necessary application and trust agreement/declaration of trust so that I may review the forms with him prior to establishing the account.

If you have any questions concerning this request please feel free to contact me at (250) 361-3521. Mr. Doe has granted me a release of information to discuss this information with you.

Sincerely,

Stephen Portman
Legal advocate, Together Against Poverty Society

APPENDIX 5 – MSDSI Trust Disclosure (Template Letter)

Date:

RE: John Doe, SIN

Trust Agreement

ATTN: Ministry of Social Development and Social Innovation

To Whom it May Concern,

The following attached documents are in reference to a Tax Free Savings Account (acct # -123456789) established for the account holder, Mr. John Doe, who agrees to be bound by the terms and conditions of this account as set out in the application and the accompanying Trust Agreement. The Trustee, namely the Royal Bank of Canada/Vancity Credit Union, agrees to act as Trustee of the Account in accordance with the terms of the Trust Agreement. This trust relationship is clearly established in the documents that I have attached.

This trust qualifies as a Trust under Section 12 of the *Employment and Assistance for Persons with Disabilities Regulation*. I understand that the Ministry procedure at this point is to refer the Trust to the Legislation, Litigation and Appeals Branch for review and in the meantime to continue to pay Mr. Doe's disability benefits. Please advise me if any other course of action is taken so that we can apply for Reconsideration in the appropriate time period.

Yours sincerely,

Stephen Portman
Legal Advocate, TAPS

Holder Information

Office Use

Vancity Account Number

Branch Number

Date

UR Number

TFSA Contract Number

First Name

Last Name

Social Insurance Number

Birth Date
(MM/DD/YYYY)

Investment Instructions

\$

Deposit Amount

Variable Rate Investment Savings

or

Term Deposit

Effective Date

Product Type

Term Length

Successor Holder and Designated Beneficiaries

Please note that the election of a successor Holder and designation of a beneficiary in respect of the Account is subject to the laws of the applicable jurisdiction (province or territory). If the laws of the applicable jurisdiction do not permit such an election or designation, it may be made only in your will. If the laws of the applicable jurisdiction permit such an election or designation in the Account, the following applies:

Successor Holder Election

I elect that my surviving spouse or common-law partner below become the successor Holder in the event of my death before termination of the Account, and confirm that my spouse or common law partner has the unconditional right to revoke any beneficiary designation made by me.

First Name

Initial

Last Name

Relationship to Holder

Designation of Beneficiary(ies)

I designate the person(s) below as beneficiary(ies) to receive, in the event of my death and in the absence of a successor Holder, any property under the Account.

First Name

Initial

Last Name

Relationship to Holder

Proportion of Account

First Name

Initial

Last Name

Relationship to Holder

Proportion of Account

Please note that:

- unless the proportion of the Account property to which each beneficiary is entitled is clearly indicated above, such property will be divided equally among them.
- in the event of the death of a beneficiary, the surviving beneficiary will receive the deceased beneficiary's share.

Undertakings, Acknowledgements, Agreements

- I acknowledge receipt of a copy of the Declaration of Trust governing the said Account, which is printed on the reverse hereof, and agree to be bound by it and the provisions of the *Income Tax Act* (Canada).
- I acknowledge that I must notify the Vancouver City Savings Credit Union should I wish to use my interest or right in the Account as security for a loan or other indebtedness.
- I acknowledge that I may be liable for certain tax consequences should the Account not comply with the requirements of the *Income Tax Act* (Canada).
- I undertake to notify Vancouver City Savings Credit Union should I cease to be a resident of Canada.

Election

I request that Vancouver City Savings Credit Union elect to register this arrangement as a tax free savings account (the "Account") under Section 146 of the *Income Tax Act* (Canada). If the date hereof is prior to 2009, I understand that the TFSA will not be issued, and that I may not make any contributions, until 2009.

X

X

Holder Signature

Date

Witness/Vancity Staff Signature

Vancity Staff Operator Number

Vancouver City Savings Credit Union, located at 183 Terminal Avenue Vancouver, British Columbia, acknowledges receipt of the contribution(s) noted above and accepts the within application.

Richard Seres

Vancity Signature

The information in this document, including the S. I. N., will be used for record keeping, financial reporting and tax reporting purposes.

Vancouver City Savings Credit Union (the "Trustee") by this Declaration of Trust hereby agrees to act as the trustee of the Vancouver City Savings Credit Union Tax Free Savings Account (the "Account") established by the individual named on the application (the "Application") hereof (the "Holder") on the following terms and conditions:

1. **Registration:** Subject to the Holder having attained at least 18 years of age, the Trustee will elect, in the form and manner prescribed by the Income Tax Act (Canada) (the "Act"), as amended from time to time, and any applicable provincial income tax legislation (the "Applicable Tax Legislation") relating to tax free savings accounts, to register the arrangement as a tax free savings account under the Social Insurance Number of the Holder. The Holder shall be solely responsible for the acceptability for registration thereof, and the Trustee assumes no responsibility for any revocation of such registration for any reason including, without limitation, the failure of the Holder to comply with any of the conditions necessary for registration of a tax free savings account under the Applicable Tax Legislation. The ultimate responsibility for the administration of the Account however, remains with the Trustee. For greater certainty, unless the Holder has attained at least 18 years of age at the time that this arrangement is entered into, it shall not constitute a qualifying arrangement, as that term is defined in subsection 146.2(1) of the Act, susceptible of being registered as a tax free savings account.
2. **Definition of Spouse:** Notwithstanding anything to the contrary contained herein or any endorsements forming a part thereof, the term "Spouse", as it is used in this Declaration of Trust or in the Application, means the individual who is considered the Holder's spouse or common law partner but does not include any person who is not recognized as a spouse or common-law partner for the purposes of any provision of the Act respecting a tax free savings account.
3. **Definition of Holder:** Any reference to "Holder" in this Declaration of Trust or in the Application means the Holder or the Successor Holder.
4. **Definition of Successor Holder:** Any reference to "Successor Holder" in this Declaration of Trust or in the Application means a survivor, as that term is defined in subsection 146.2(1) of the Act, and who is the Spouse of the Holder immediately before the Holder's death.
5. **Purpose of the Account:** Contributions to the Account and the income therefrom will be held by the Trustee, subject to the terms hereof, until the arrangement is no longer considered a tax free savings account.
6. **Account:** The Trustee will establish and maintain the Account for the exclusive benefit of the Holder showing all contributions and transfers to and distributions and transfers from, the Account, the Holder's investments and the income earned from such investments. The Trustee shall provide the Holder with a statement of the Account at least annually as of December 31 each year.
7. **Contributions:** Only the Holder may make contributions to the Account. Contributions may be made in cash, and in such minimum amounts as may be acceptable to the Trustee as may be directed by the Holder as permitted by the Applicable Tax Legislation. It is the sole responsibility of the Holder to ensure that the contributions do not exceed the amounts permitted under the Applicable Tax Legislation in effect at that time.
8. **Investments:** Subject to such limitations as the Trustee may impose from time to time, contributions to the Account shall be invested and reinvested as directed by the Holder such investments as the Trustee shall make available from time to time; provided that such investments are qualified investments for trusts governed by tax free savings accounts and not prohibited investments. It is the sole responsibility of the Holder to ensure that such investments are and remain qualified investments and are not and do not become prohibited investments, as those terms are defined in subsection 207.01(1) of the Act. No one other than the Holder and the Trustee shall have rights under the Account relating to the investment and reinvestment of the Account.
9. **Tax Receipts:** The Trustee will provide the Holder each year with appropriate information slips for income tax purposes and such other information as may be required by Applicable Tax Legislation.
10. **Distributions:** Subject to such reasonable requirements as the Trustee may impose and to the terms of any investment, the Holder may request in writing that the Trustee pay to the Holder all or a portion of the property of the Account in satisfaction of all or part of the Holder's interest (a "Distribution"), subject to the deduction of all proper charges, fees and expenses, together with such income or other taxes as may be required by applicable laws. Notwithstanding the terms of any investment, or any reasonable limits the Trustee may impose on the frequency of Distributions or any minimum Distribution requirement identified either in the Application or other notice given under the terms of this Declaration of Trust, the Trustee may make Distributions at any time in order to reduce the amount of tax otherwise payable by the Holder as a result of excess contributions made contrary to the Applicable Tax Legislation. No one other than the Holder and the Trustee shall have rights under the Account relating to the amount and timing of Distributions.
11. **Transfers Out:** The Holder may, upon 90 days written notice to the Trustee, or such shorter period as the Trustee may permit, request that the Trustee transfer all or a portion of the property in the Account to another tax free savings account of the Holder subject to the terms of the any investment. The Holder may, upon 90 days written notice to the Trustee, or such shorter period as the Trustee may permit, request that the Trustee transfer all or a portion of the property in the Account to a tax free savings account of his or her Spouse or former Spouse where the Holder and the Spouse or former Spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individuals in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

The Trustee shall promptly take all steps necessary to effect such transfer (subject to the deduction of all proper charges, fees and expenses, together with such income and other taxes as may be required by applicable laws) and upon such transfer the Trustee shall have no further liability to the Holder with respect to the property of the Account.
12. **Transfers In:** The Holder may transfer assets to the Account from another tax free savings account of the Holder or of the Spouse or former Spouse where:
 - (a) the Holder and the Spouse or former Spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal, or under a written separation agreement, relating to a division of property between the individuals in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership; or
 - (b) the Holder is the Spouse's survivor and the transfer occurs as a result of an exempt contribution as that term is defined in subsection 207.01(1) of the Act.
13. **Death of Holder:** In the event of the death of the Holder where the Holder has validly designated the Successor Holder (and the Holder is domiciled in a jurisdiction designated by the Trustee as one in which a holder of a tax free savings account may validly designate a survivor), the Successor Holder shall become the Holder. In the event of the death of the Holder where the Holder has not designated the Successor Holder or where there is no Successor Holder, the Trustee shall, upon receipt of satisfactory proof of the death of the Holder and other such documentation as the Trustee may require and to the deduction of all proper charges, fees and expenses together with such income or other taxes as may be required by applicable laws, pay the proceeds of the Account in a lump sum to the designated beneficiary or the estate of the Holder, as the case may be (where the Holder is domiciled in a jurisdiction designated by the Trustee as one in which a holder of a tax free savings account may validly designate a survivor.)

14. Designation of Beneficiary: If the Holder is domiciled in a jurisdiction designated by the Trustee as one in which a holder of a tax free savings account may validly designate a beneficiary, the Holder may designate one or more beneficiaries to receive the proceeds of the Account in the event of the Holder's death. If any such designated beneficiary is a minor at the time of the death of the Holder then the Trustee is expressly authorized to pay any infant beneficiaries' interest in the Account to his or her legally appointed representative or to the Office of the Public Trustee for the Province of British Columbia (or parallel legislation in any other relevant jurisdiction), at the Trustee's option, on behalf of the infant beneficiary.

The initial beneficiary will be the Holder's estate or such person or persons named by the Holder as beneficiary or beneficiaries under the Designation of Beneficiary section of the Application. A revocation or alteration of a designation of beneficiary will be effective if it is made by an instrument in writing in a form acceptable to the Trustee and is signed by the Holder or it is contained in a will or other testamentary document. The Holder agrees to deliver to the Trustee all instruments, wills and other testamentary documents which contain any revocation or alteration of a designation of beneficiary, provided however, that:

(i) the Trustee shall be entitled to make payment at any time after the date of death of the Holder to the beneficiary, having regard only to such instruments that are delivered to the Trustee prior to the Holder's death and wills and other testamentary documents that are delivered to the Trustee prior to the date of such payment, notwithstanding that the Holder fails to deliver such wills and other testamentary documents prior to the Holder's death; and

(ii) if more than one such instrument, will or other testamentary document has been made and so delivered, the Trustee shall make payment only in accordance with the instrument, will or other testamentary instrument bearing the latest execution.

15. Loans: The Trustee is prohibited from borrowing money or other property for the purposes of the Account.

16. Security: Where the Holder wishes to use his or her interest or right in the Account as security for a loan or other indebtedness, he must first advise the Trustee. Where the Holder uses his or her interest in the Account for such purposes, it is the Holder's responsibility to ensure that the terms and conditions of the indebtedness are terms and conditions that persons dealing at arm's length with each other would have entered into, and it can be reasonably concluded that none of the main purposes for that use is to enable a person, other

than the Holder, or a partnership to benefit from the exemption from tax of any amount in respect of this Account.

17. No Advantage to Holder: The Holder or a person with whom the Holder does not deal at arm's length may not receive an advantage, as that term is defined in subsection 207.01 (1) of the Act.

18. Amendments: The Trustee reserves the right to amend this Declaration of Trust at any time, provided that no such amendment shall have the effect of disqualifying the Account as a tax free savings account within the meaning of Applicable Tax Legislation. The Trustee shall give the Holder written notice of any amendment by postage prepaid ordinary mail addressed to the Holder at the address set out in the Trustee's records for the Account and shall be deemed to have been given on the day following the mailing. In the event of changes to Applicable Tax Legislation, the Account will be deemed to have been amended to conform to such changes effective the date such changes come into force.

19. Date of Birth: The Holder's statement of his or her date of birth on the Application shall be deemed to be a certificate by the Holder of that information and an undertaking to provide the Trustee with any further evidence of proof of age that the Trustee may require.

20. Fees: The Trustee shall be entitled to payment out of the property of the Account for its services as a trustee, in accordance with its fee schedule. The Trustee may change its fee schedule from time to time upon giving the Holder notice as stipulated under Section 18.

21. Replacement of Trustee: The Trustee may resign as trustee of the Account on 90 days written notice to the Holder. Upon resignation, the Trustee shall appoint a successor trustee and such appointment shall be in writing and signed by both the resigning Trustee and successor trustee. Subject to the approval of Canada Revenue Agency and any other applicable tax authorities, the successor trustee so appointed shall be vested with the property of the Account and the same powers, rights duties and responsibilities as the resigning Trustee and the resigning Trustee shall execute and deliver to the successor trustee all such conveyances, transfers and assurances as may be necessary for the purposes of assuring the same to the successor trustee.

Any successor trustee appointed hereunder shall be a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province therein to carry on in Canada the business of acting as trustee.

22. Governing Law: This Declaration of Trust and the Account shall be governed by the laws of British Columbia and the laws of Canada applicable therein.



TAX-FREE SAVINGS ACCOUNT APPLICATION

SUBMITTING BRANCH DOMICILE [REDACTED]		ACCOUNT TRANSIT [REDACTED]	APPLICATION DATE [REDACTED]	ACCOUNT NUMBER [REDACTED]
		SRF CLIENT NUMBER [REDACTED]		
ACCOUNT HOLDER				
ACCOUNT HOLDER'S FIRST NAME [REDACTED]		LAST NAME [REDACTED]	LANGUAGE PREFERENCE [REDACTED]	SOCIAL INSURANCE NUMBER [REDACTED]
STREET NUMBER & NAME (APT. NO.) [REDACTED]		CITY / TOWN [REDACTED]	BIRTH DATE [REDACTED]	
PROVINCE [REDACTED]	POSTAL CODE [REDACTED]	HOME TELEPHONE NUMBER [REDACTED]		

To: Royal Bank of Canada (as agent)
Head Office (Toronto, Canada)

I am applying to open a Royal Bank of Canada Tax-Free Savings Account ("the Account"), and request The Royal Trust Company ("Royal Trust") to file an election with the Minister of National Revenue to register this qualifying arrangement as a Tax-Free Savings Account under section 146.2 of the *Income Tax Act* (Canada).

I will notify the Agent, in a form acceptable to the Agent and Royal Trust, should I no longer be resident in Canada. I understand that I may be liable for certain tax consequences arising in connection with a non-compliant qualifying arrangement.

I acknowledge that I must and will notify the Agent should I wish to use my interest or right in the Account as security for a loan or other indebtedness.

I acknowledge and agree to be bound by the terms and conditions of this Account as set out in the application and the Trust Agreement.

Quebec residents only

I have expressly requested that all documents relating to this Account be drawn up in the English language only. J'ai expressément requis que tous les documents relatifs à ce compte soient rédigés en anglais seulement.

DATE [REDACTED] Account Holder Signature X [REDACTED]





TAX-FREE SAVINGS ACCOUNT APPLICATION

IDENTIFICATION: ON FILE

OCCUPATION: ON FILE

I confirm that this account will not be used by or on behalf of a third party.

APPENDIX TO THE TAX-FREE SAVINGS ACCOUNT APPLICATION

Changes to your Account: We may make changes to the terms of the Trust Agreement and the Schedule of Fees charged at any time in accordance with the terms of the Trust Agreement. If we do, we will let you know before the changes take effect. We will notify you of any increase in Fees or the introduction of new Fees by written notice mailed to you or sent electronically, if you have agreed to this form of delivery, at least 30 days before the effective date of the change.

Complaint or Compliment: If you have a problem or concern, please contact your branch. If it is not resolved, please contact the Client Care Centre by telephone at 1 (800) 769-2540, by email at clientcarecentre@rbc.com or by mail to P.O. Box 1, Royal Bank Plaza, Toronto, Ontario M5J 2J5. For more information, please consult our brochure "How to Make a Complaint", available at any branch or at www.rbc.com/customercare.

Schedule of Fees (TFSA)

1. There is a \$50.00 service fee for each transfer of Account Proceeds or Property from the Account to an Institution that is not a RBC member at the time of such transfer.
2. There is a \$5.00 service fee for each duplicate account statement request.

This Schedule of Fees is subject to change.

® Registered trademark of Royal Bank of Canada.

Accepted by Royal Bank of Canada as Agent for The Royal Trust Company by:

DATE

X _____
AUTHORIZED SIGNATURE
SARAH YUEN, (250) 356-4630



RBC Dominion Securities Tax- Free Savings Account

Trust Agreement

1. **Definitions.** Whenever used in this Trust Agreement or the Application, any capitalized terms shall have the meanings given to them below:

“Account” means the tax free savings account established for the Original Holder;

“Agent” means RBC Dominion Securities Inc. and its successors and assigns;

“Applicable Laws” means the Tax Act and such other laws of Canada and of the provinces and territories applicable hereto;

“Application” means the Original Holder’s application to the Agent to establish the Account;

“Contribution” means a contribution of cash, in whatever currency held within the Account or any Qualified Investment,

“Distribution” means a payment out of or under the Account in satisfaction of all or part of the Holder’s interest therein in a currency agreed upon between the Trustee and the Holder; failing which agreement, the currency of which shall be Canadian dollars;

“Estate Documents” means proof of the Holder’s death and such other documents including Letters Probate of the Holder’s will as may be required by the Trustee in its sole discretion in connection with the transmission of the Property on the Holder’s death;

“Estate Representative” means an executor, an administrator, an administrator with the will annexed, a liquidator, or an estate trustee with a will or without a will, whether one or more than one is so appointed;

“Expenses” means all costs, charges, fees, commissions, investment management fees, brokerage fees, legal expenses and out-of-pocket expenses (together with any goods and services tax or other Taxes applicable to such expenses) incurred from time to time in relation to the Account;

“Former Spouse” means the individual who is considered by the Applicable Laws to be the Holder’s former Spouse;

“Holder” means the Original Holder or the Survivor;

“Non-Qualified Investment” means an investment which is not a Qualified Investment;

“Original Holder” means the individual who enters into the arrangement with the Trustee which arrangement is to be registered as a TFSA;

“Proceeds” means the Property, less any applicable Expenses and Taxes;

"Prohibited Investment" means Property (other than prescribed excluded Property as that term is defined in the Tax Act) that is:

- (a) a debt of the Holder;
- (b) a share of the capital stock of, an interest in or a debt of:
 - (i) a corporation, partnership or trust in which the Holder has a significant interest;
 - (ii) a person or partnership that does not deal at arm's length with the Holder or with a person or partnership described in subparagraph (i);
- (c) an interest in, or right to acquire, a share, interest or debt described in paragraph (a) or (b); or
- (d) prescribed property (as that term is defined in the Tax Act);

"Property" means any property, including the income on it, the proceeds from it and any cash, in whatever currency held within the Account, held in the Account from time to time;

"Qualified Investment" means any investment which is a qualified investment for a TFSA according to the Tax Act;

"Spouse" means the individual who is considered by the Tax Act to be the Holder's spouse or common-law partner;

"Survivor" means the individual who, immediately before the death of the Original Holder, was the Spouse of the Original Holder;

"Tax Act" means *Income Tax Act* (Canada);

"Taxes" means any and all taxes, assessments, interest and penalties which may be required under the Applicable Laws;

"TFSA" means a tax free savings account, which is a "qualifying arrangement" (as that term is defined in the Tax Act) the issuer of which has elected, in the form and manner prescribed by the Tax Act, to register as a TFSA; and

"Trustee" means The Royal Trust Company in its capacity as trustee and issuer of the arrangement governed by this Trust Agreement, and its successors and assigns.

2. **Acceptance of Trust.** The Trustee agrees to act as trustee of the Account, which is to be maintained for the exclusive benefit of the Holder, and to administer the Property in accordance with the terms of this Trust Agreement.
3. **Appointment of Agent.** The Trustee has appointed RBC Dominion Securities Inc. (the "Agent") as its agent to perform certain duties relating to the operation of the Account.

The Trustee acknowledges and confirms that ultimate responsibility for the administration of the Account remains with the Trustee.

4. **Registration.** Subject to the Original Holder having attained at least 18 years of age, the Trustee agrees to elect, in the manner and form prescribed by the Tax Act, to register the arrangement governed by this Trust Agreement as a TFSA under the social insurance number of the Original Holder. For greater certainty, unless the original Holder has attained at least 18 years of age at the time that this arrangement is entered into, it shall not constitute a qualifying arrangement, as that term is defined in subsection 146.2(1) of the Tax Act, susceptible of being registered as a tax free savings account.
5. **Account.** The Agent shall maintain an account for the Holder which will record particulars of all Contributions, investments, Distributions and transactions under the Account in the currency in which such Contributions, investments, Distributions and transactions occurred, and shall mail to the Holder, at least annually, a statement of account.
6. **Contributions.** Only the Holder may make Contributions to the Account, in such amounts as are permitted under the Tax Act in such property as may be permitted in the sole discretion of the Trustee. It shall be the sole responsibility of the Holder to ensure that the amounts of Contributions are within the limits permitted under Tax Act.
7. **Distributions to Reduce Tax.** Notwithstanding any limit on the frequency of Distributions or any minimum Distribution requirement identified in the Application or other notice given under the terms of this Trust Agreement, any Distributions may be made at any time to reduce the amount of Taxes otherwise payable by the Holder as a result of excess Contributions made contrary to the Tax Act.
8. **Tax Information.** The Trustee shall provide the Holder with appropriate information slips for income tax purposes and such other information as may be required under the Applicable Laws.
9. **Delegation by Trustee.** The Holder expressly authorizes the Trustee to delegate to the Agent the performance of the following duties of the Trustee:
 - (a) receiving Contributions;
 - (b) receiving transfers of Property;
 - (c) investing and reinvesting the Property as directed by the Holder;
 - (d) registering and holding the Property in the Trustee's name, the Agent's name, in the name of their respective nominees or in bearer form as determined by the Agent from time to time;
 - (e) maintaining records, including information concerning the Survivor and the designation of beneficiaries, where applicable;

- (f) providing to the Holder statements of account at least annually;
- (g) preparing all government filings and forms;
- (h) making Distributions pursuant to the provisions hereof; and
- (i) such other duties and obligations of the Trustee as the Trustee in its sole discretion may from time to time determine.

The Holder acknowledges that, to the extent the Trustee delegates any such duties, the Trustee shall thereby be discharged from performing such duties, subject to paragraph 3.

10. **Investment of the Property.** The Property shall be invested and reinvested on the directions of the Holder (or the Holder's agent) without being limited to investments authorized by law for trustees. The Trustee, in its sole discretion, may require the Holder to provide such documentation in respect of any investment or proposed investment as the Trustee deems necessary in the circumstances. The Trustee reserves the right to decline to make any particular investment if the proposed investment and related documentation do not comply with the Trustee's requirements at that time. Subject to the appointment of an agent as contemplated in paragraph 12, no one other than the Holder and the Trustee shall have rights under the Account relating to the investment and reinvestment of the Property.
11. **Segregated Funds.** Segregated funds forming part of the Property will be held in nominee name. The Holder agrees to designate the Trustee as the beneficiary under any segregated fund held in the Account. Upon the death of the Original Holder, the proceeds of the segregated funds paid shall form part of the Property to be dealt with according to the terms of this Trust Agreement.
12. **Choice of Investments.** Without restricting the generality of the foregoing, it shall be the sole responsibility of the Holder to:
 - (a) select the investments with respect to the Property and to determine whether any such investment is or remains a Qualified Investment and is not and continues not to be a Prohibited Investment, and
 - (b) determine whether any such investment would result in the imposition of any penalty under the Tax Act and whether any investments should be purchased, sold or retained by the Trustee, and give such instructions as are needed.

The Holder shall have the right to appoint an agent, including the Agent as his or her agent, for the purpose of giving investment directions as provided in this paragraph and paragraph 10.

13. **No Advantage.** No advantage may be extended to the Holder or to a person with whom the Holder does not deal at arm's length. Advantage means:

- (a) any benefit, loan or indebtedness that is conditional on the existence of the Account other than:
 - (i) a benefit derived from the provision of administrative or investment services in respect of the Account,
 - (ii) a loan or indebtedness (including the use of the Account as security for a loan or an indebtedness) the terms and conditions of which are terms and conditions that persons dealing at arm's length with each other would have entered into, and
 - (iii) a Distribution; and
 - (b) an increase in the total fair market value of the Property if it is reasonable to consider, having regard to all circumstances, that the increase is attributable, directly or indirectly, to a transaction or series thereof as is described in the definition of "advantage" in the Tax Act; and
 - (c) a prescribed benefit (as that term is defined in the Tax Act).
14. **Uninvested Cash.** Uninvested cash, in whatever currency held within the Account, will be placed on deposit with the Trustee or an affiliate of the Trustee and held in the same currency as received from the Agent, provided that such currency is a currency that has been agreed from time to time by the Trustee and Agent, and repaid in the same currency. The interest on such cash balances payable to the Account will be determined by the Agent from time to time in its sole discretion with no obligation to pay a minimum amount or rate. The Trustee will pay interest to the Agent, in the same currency as the uninvested cash was received, as referred to above, for distribution to the Account and the Agent shall credit the Account with appropriate interest. The Trustee shall have no liability for such payment of interest once it is paid to the Agent for distribution.
15. **Right of Offset.** The Trustee and the Agent shall have no right of offset with respect to the Property in connection with any obligation or debt owed by the Holder to the Trustee or the Agent, other than the Expenses payable by the terms of this Trust Agreement.
16. **Pledging.** Where the Holder wishes to use his or her interest or right in the Account as security for a loan or other indebtedness, he or she must first advise the Trustee. Where the Holder uses his or her interest or right in the Account as security for a loan or indebtedness, it shall be the sole responsibility of the Holder to ensure:
- (a) that the terms and conditions of the loan or other indebtedness are terms and conditions that persons dealing at arm's length with each other would have entered into; and
 - (b) that it can be reasonably be concluded that none of the main purposes for that use is to enable a person (other than the Holder) or a partnership to benefit from the exemption from Taxes of any amount of the Account.

The Trustee shall be entitled to rely on the information provided by the Holder, liquidate Property as it deems appropriate with respect to the pledge, and fully recover any legal costs it incurs in this regard as Expenses, and shall be fully discharged with respect to any such liquidation and payment to the creditor of the loan or other indebtedness.

17. **Cash Deficits.** If the Account has a cash deficit in one or more currencies held within the Account, the Holder authorizes the Trustee or the Agent to determine which Property to select and to sell such Property to cover such cash deficit. The Trustee is prohibited from borrowing money or other property for the purposes of the Account.
18. **Interest Charged.** Interest charges, owing on any cash deficit in one or more currencies held within the Account, are calculated and payable monthly, in the same currency or currencies that is or are in deficit, based on an annual interest rate (divided by 365, or 366 in a leap year) and the average daily cash deficit or deficits during the calculation period. Any unpaid interest will be included in the calculation of the daily average cash deficit for the applicable currency. The rate of interest payable on a cash deficit will be determined by the Agent from time to time in its sole discretion. The rate of interest and method of calculation is available upon request to the Agent and will be the rate shown on the Annuitant's statement in respect of the Account.
19. **Distributions.** Subject to any limit on the frequency of Distributions or to any minimum Distribution requirement identified in the Application or other notice given under the terms of this Trust Agreement, and to the deduction of all Expenses and Taxes, the Holder may, at any time and upon 60 days' written notice or such shorter period as the Agent in its sole discretion permits, request that the Agent liquidate part or all of the Property and pay to the Holder an amount, in a currency agreed upon between the Trustee and the Holder, failing which agreement, the currency of which shall be Canadian dollars, from the Property not exceeding the value held under the Account immediately before the time of payment. No one other than the Holder and the Trustee shall have rights under the Account relating to the amount and timing of Distributions.
20. **Designation of Beneficiary.** Where the Holder is domiciled in a jurisdiction where the Applicable Laws permit the valid designation of a beneficiary and where the Holder has not designated the Survivor or there is no Survivor, the Original Holder may designate a beneficiary to receive the Proceeds on the Original Holder's death. A beneficiary designation may only be made, changed or revoked for the purposes of the Account by the Original Holder in a format required by the Agent for this purpose. Such designation must adequately identify the Account and be delivered to the Agent prior to any payment by the Agent. The Original Holder acknowledges that it is his or her sole responsibility to ensure the designation is valid under the Applicable Laws.
21. **Death of Original Holder (Where There Is a Survivor).** Upon the death of the Original Holder where there is a Survivor, the Holder is domiciled in a jurisdiction where the Applicable Laws permit the valid designation of a survivor, and the Survivor has been designated for purposes of the Account, and upon the receipt of Estate Documents by the

Agent which are satisfactory to the Trustee, the Survivor shall become the Holder, subject to any pledging under paragraph 16.

22. **Death of Original Holder (All Other Cases).** Upon the death of the Original Holder, where there is no Survivor or the Survivor has not been designated for purposes of the Account, and upon the receipt of Estate Documents by the Agent which are satisfactory to the Trustee, and subject to paragraph 16:
- (a) if the Original Holder has designated a beneficiary in accordance with paragraph 19, the Proceeds will be paid to the designated beneficiary, subject to the Applicable Laws. The Trustee and the Agent will be fully discharged by such payment, even though any beneficiary designation made by the Original Holder may be invalid as a testamentary instrument; and
 - (b) if the Original Holder's designated beneficiary had died before the Original Holder or if the Original Holder has not designated a beneficiary, the Trustee will pay the Proceeds to the Original Holder's estate.

Where multiple beneficiaries have been designated and the Holder has not indicated how the Proceeds are to be shared among them, or if there is such an indication but the shares do not add up to 100%, then the Proceeds shall be divided equally among the beneficiaries designated. If any designated beneficiary predeceases the Holder or dies at the same time as the Holder or in circumstances rendering it impossible to determine which of the Holder or beneficiary died first, then the remaining beneficiary(ies) is(are) entitled to receive the Proceeds in accordance with the Holder's wishes. If the Holder has not indicated how the Proceeds are to be shared among the designated beneficiaries, or if there is such an indication but the shares do not add up to 100% of the Proceeds, then the Proceeds allocated to the deceased person(s) will be divided equally among the surviving designated beneficiary(ies). For greater certainty, the share of a deceased person will go in equal portions to the surviving designated beneficiary(ies).

23. **Release of Information.** The Trustee and the Agent each are authorized to release any information about the Account and the Proceeds, after the Holder's death, if the Holder has pledged his or her interest or right in the Account as security for a loan or other indebtedness or where there is to be a transfer to the Spouse's TFSA pursuant to paragraph 30, to either the Holder's Estate Representative, the creditor or the Spouse, as the Trustee deems advisable.
24. **Payment into Court.** If there is a dispute about who is legally authorized to apply for and accept receipt of the Proceeds on death of the Holder, the Trustee and the Agent are entitled to either apply to the court for directions or pay the Proceeds into court, which payment shall be in Canadian dollars, and, in either case, fully recover any legal costs it incurs in this regard as Expenses from the Account.
25. **Limitation of Liability.** The Trustee shall not be liable for any loss suffered by the Account, by the Holder or by any Survivor or beneficiary designated for purposes of the Account as a result of the purchase, sale or retention of any investment including any loss

resulting from the Trustee acting on the direction of the agent appointed by the Holder to provide investment direction.

26. **Indemnity.** The Holder agrees to indemnify the Trustee for all Expenses, Taxes and compensation incurred or owing in connection with the Account to the extent that such Expenses, Taxes or compensation cannot be paid out of the Property.
27. **Self-Dealing.** The Trustee's services are not exclusive and, subject to the limitations otherwise provided in this Trust Agreement on the powers of the Trustee, the Trustee may, for any purpose, and is hereby expressly authorized from time to time in its sole discretion to, appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate, with which it may be directly or indirectly interested or affiliated with, whether on its own account or on the account of another (in a fiduciary capacity or otherwise), and to profit therefrom, without being liable to account therefore and without being in breach of this Trust Agreement.
28. **Compensation, Taxes and Expenses.** The Trustee and Agent will be entitled to such reasonable fees and other charges as each may establish from time to time for services rendered in connection with the Account. All such fees and other charges (together with any goods and services tax or other Taxes applicable thereto) will, unless first paid directly to the Agent, be charged against and deducted from the Property in such manner as the Agent or Trustee determines. All Expenses incurred and Taxes payable shall be paid from the Account.

For greater certainty, in the event of any executions of third party demands or claims against the Account, both the Trustee and the Agent are entitled to fully recover any Expenses incurred by them in this regard as Expenses and all such payments made under this Paragraph shall be in Canadian dollars, with the conversion to occur on the date of payment.

29. **Sale of Property.** The Trustee and Agent may sell Property in their respective sole discretion for the purposes of paying Expenses, Taxes, compensation and loans or other indebtedness under paragraph 16 including, for greater certainty, their own compensation.
30. **Transfers to the Account.** Any property may be transferred to the Account from another TFSA of the Holder, or of the Spouse or Former Spouse where:
 - (a) the Holder and the Spouse or Former Spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal or under a written separation agreement, relating to the division of property between the Holder and the Spouse or Former Spouse in settlement of rights, arising out of, or on the breakdown of, their marriage or common-law partnership; or
 - (a) the Holder is the Spouse's survivor and the transfer occurs as a result of an exempt contribution (as that term is defined in the Tax Act).

31. **Transfers out of the Account.** Upon delivery to the Agent of a written direction from the Holder in a form satisfactory to the Trustee, the Trustee shall transfer all or a portion of the Property as is specified in the written direction:
- (a) to another TFSA of the Holder; or
 - (b) to a TFSA of the Spouse or Former Spouse where the Holder and the Spouse or Former Spouse are living separate and apart and the transfer is made under a decree, order or judgment of a competent tribunal or under a written separation agreement, relating to the division of property between the Holder and the Spouse or Former Spouse in settlement of rights, arising out of, or on the breakdown of, their marriage or common-law partnership.
32. **Changes to Trust Agreement.** The Trustee may change this Trust Agreement periodically. The Holder will be notified on how to obtain an amended copy of the Trust Agreement reflecting any such change and will be deemed to have accepted such changes. No change to this Trust Agreement (including a change calling for the Trustee's resignation as trustee or the termination of the trust created by this Trust Agreement) will be retroactive or result in the Account not being acceptable as a TFSA under the Applicable Laws.
33. **Replacement of Trustee.**
- (a) The Trustee may resign by giving such written notice to the Agent as may be required from time to time under the terms of an agreement entered into between the Agent and the Trustee. The Holder will be given at least 30 days prior notice of such resignation. On the effective date of such resignation, the Trustee will be discharged from all further duties, responsibilities, and liabilities under this Trust Agreement, except those incurred before the effective date. The Trustee will transfer all Property, together with all information required to continue the administration of the Property as a tax free savings account under the Applicable Laws, to a successor trustee.
 - (b) The Trustee has agreed to resign upon it being provided with notice in writing by the Agent if the Trustee is satisfied that the successor trustee nominated by the Agent will properly assume and fulfill the Trustee's duties and liabilities hereunder in respect of the administration of the Account.
 - (c) In either event, the Agent shall forthwith nominate a person to replace the Trustee and the resignation of the Trustee shall not take effect until its replacement has been so nominated by the Agent and appointed as successor by the Trustee and approved by Canada Revenue Agency or its successor. Failing the nomination of a replacement by the Agent within 30 days after receipt by it of a notice of resignation, the Trustee shall be entitled to appoint a person as its own replacement.
 - (d) Upon any such appointment and resignation of the Trustee, the person so appointed as replacement trustee shall, without further act or formality, be and

become the Trustee hereunder. Such replacement trustee shall, without any conveyance or transfer, be vested with the same power, rights, duties and responsibilities as the Trustee and with the assets of the Account as if the replacement trustee had been the original Trustee. The Trustee shall execute and deliver to the replacement trustee all such conveyances, transfers and further assurances as may be necessary or advisable to give effect to the appointment of the replacement trustee.

- (e) Any person appointed as a replacement trustee shall be a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee.

Any trust company resulting from the merger or amalgamation of the Trustee with one or more trust companies and any trust company that succeeds to substantially all of the trust business of the Trustee shall thereupon become the successor to the Trustee without further act or formality. In all such cases, Canada Revenue Agency or its successor shall be notified.

34. **Assignment by Agent.** The Agent may assign its rights and obligations hereunder to any other corporation resident in Canada authorized to assume and discharge the obligations of the Agent hereunder and under the Applicable Laws.
35. **Notice.** Any notice given by the Holder to the Agent shall be sufficiently given if delivered electronically to the Agent upon the Holder's receipt of an acknowledgement and response to same or personally to the office of the Agent where the Account is administered, or if mailed, postage prepaid and addressed to the Agent at such office, and shall be considered to have been given on the day that the notice is actually delivered or received by the Agent.

Any notice, statement, receipt or other communication given by the Trustee or the Agent to the Holder shall be sufficiently given if delivered electronically or personally to the Holder, or if mailed, postage prepaid and addressed to the Holder at the address shown on the Application or at the Holder's last address given to the Trustee or the Agent, and any such notice, statement, receipt or other communication shall be considered to have been given at the time of delivery to the Holder electronically or personally or, if mailed, on the fifth day after mailing to the Holder.

36. **Date of Birth.** The Holder's statement of his or her date of birth in the Application shall be deemed to be a certification as to the Holder's age, on which the Trustee and the Agent may rely, and an undertaking to provide any further evidence of proof of age as may be required by the Agent.
37. **Contribution While Holder is a Minor.** Where the Holder makes a Contribution to the Account prior to the Holder having attained the age of majority in accordance with the Applicable Laws, the Holder will execute a ratification of the Application and all

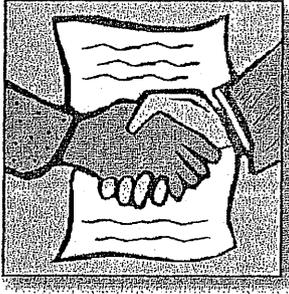
transactions made by the Holder in respect of the Account prior to reaching the age of majority.

38. **SIN and Address of Holder.** The Trustee shall be entitled to rely upon the Agent's records as to the social insurance number, and to the current address of the Holder as establishing his or her residency and domicile for the operation of the Account and its devolution on the death of the Holder subject to any written notice to the contrary respecting the Holder's domicile on death.
39. **Heirs, Representatives and Assigns.** The terms of this Trust Agreement shall be binding upon the heirs, Estate Representatives, attorneys, committees, guardians of property, other legal and personal representatives, and assigns of the Holder and upon the respective successors and assigns of the Trustee and the Agent and their directors, officers, employees, and agents, as well as their respective estates, Estate Representatives, heirs, attorneys, committees, guardians of property, other legal and personal representatives, and assigns.
40. **Language.** The Holder has expressly requested that this Trust Agreement and all related documents, including notices, be in the English language. Le titulaire a expressément demandé que cette Convention de fiducie et tous documents y afférents, y compris tout avis, soient rédigés en langue anglaise. (Quebec only/Québec seulement)
41. **Interpretation.** Unless the context requires otherwise, any terms or provisions importing the plural shall include the singular and vice versa.
42. **Governing Law.** This Trust Agreement and the Account shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

The Holder expressly agrees that any action arising out of or relating to this Trust Agreement or the Account shall be filed only in a court located in Canada and the Holder irrevocably consents and submits to the personal jurisdiction of such court for the purposes of litigating of any such action.

29 April 2010

TFSA Trust Agreement ()



ADVOCACY ACCESS
HELPSHEET
 BC DISABILITY BENEFITS

8

DECEMBER 2012

Trusts for People Receiving the Persons with Disabilities (PWD) Benefit

This Help Sheet funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.

The BC Coalition of People with Disabilities has prepared this Help Sheet to help you understand about trusts. If you receive the Persons with Disabilities (PWD) benefit, have disability status, or live in a special care facility, you may be allowed to set money aside in a trust and still receive PWD benefits.

A trust is set up by a legal document that has to follow strict guidelines. You will need to submit the trust document to the Ministry of Social Development (MSD). As soon as it is drawn up, the Ministry's legal advisors will tell you whether the trust fits its guidelines. This process can take a few weeks.

This Help Sheet explains what a trust agreement is and outlines some of the MSD rules on trusts. It does not tell you how to set a trust up—you should have a lawyer do that for you. Some community organizations may also be able to help. Please see below for details.

Definition of a trust

A trust is a way to set money aside through a special legal agreement. It is not the same as a regular savings account or term deposit. This agreement allows a person (the trustee) to hold money or other assets for you (the beneficiary). The trustee must follow certain rules about how the money is spent.



Advocacy Access is a program of BC Coalition of People with Disabilities
 Ask about other Help Sheets in this series. All our publications are available at www.bccpd.bc.ca.
 Information in this Help Sheet is based on the legislation that was current at the time of writing.
 The legislation and policy may be subject to change. Please check the date on this Help Sheet.



Why you may consider setting up a trust

You should consider setting up a trust if you are going to receive a lump sum of money that is over your asset limit. To be eligible for PWD benefits, you may only have a certain amount of assets. For example, if you are a single person with no children, you cannot have more than \$5,000. This is called an asset limit.

PWD recipients who are over their asset limit:

- must go off monthly benefits until they are within their asset limit, or
- may put the money into an exempt asset such as a trust, use it for certain things related to their disability and still receive monthly benefits.

We recommend that you look into setting up a trust before you actually receive the money. The sooner a lump sum is placed in a trust, the less likely it is to affect your monthly benefits. Ministry regulations require you to declare income shortly after you receive it and it may be decided that you are ineligible for a benefit cheque for one month. After the first month, a lump sum may be considered an asset and if the trust is in place by then your monthly entitlement should not be in question. See "Having your trust recognized by MSD."

How trusts work

Trusts have beneficiaries and trustees. You are the beneficiary—the person who receives money from the trust.

The trustee is the person who manages or helps to manage the trust. The trustee arranges for money to go from the trust to you, the beneficiary. There may be more than one trustee.

You can choose your trustee. It should be someone who knows you well and understands your needs. You may also be named as a co-trustee for your trust. This means that you manage your trust with another trustee.

Once the trust is established, money can be added to it. Under MSD regulations, PWD recipients may have one of the following types of trusts:

- **Discretionary trust** - you do not have control over the money in the trust. The trustee makes all spending decisions. There is no limit to the amount of money that can be placed in a discretionary trust.
- **Non-discretionary trust** - you have control over the money in the trust through the trustee. The trustee makes all expenditures based on your requests. You may



also act as a co-trustee. There is a \$200,000 life-time limit to the money you can put in a non-discretionary trust. The MSD may permit you to put in more by special approval only.

Using the trust money

There are restrictions on what you can use your trust money for, without affecting your monthly disability benefits. If there is any doubt about what category a planned expense falls into, you can check with an advocate before you draw money from the trust. To maintain your disability benefits, you may only spend trust money on the following:

- Caregiver services
- Education or training
- Home renovations necessary because of your disability
- Home maintenance repairs
- Medical aids
- Independent living: up to \$8,000.00 per year for any other item or cost that will help you live more independently.

You will be required to provide MSD with information at least once a year on how the trust money has been spent. MSD can ask for verification of any payment or disbursement of funds so it is crucial that you and your trustee keep accurate up-to-date records of all your expenditures.

Setting the trust up: next steps

As we noted above, you should have a lawyer or professional with legal knowledge set up your trust. This person should not only understand trust law, but also be familiar with the Ministry's regulations and policy regarding trusts. This will cost money, but you should be able to arrange for it to come out of your lump sum payment.

Other people can set up a trust for you. A common way is for family members to create a trust provision in their will. This means that a trust will come into effect when the family member dies. If your family or friends are planning to establish a trust for you, make sure they understand that MSD has rules about how it must be set up.

Two community organizations that may provide information about trusts to you or your family are:

Coast Foundation

- assists people who have mental health disabilities to set up trusts.
Ph: Trust Coordinator at 604-872-3502



Plan Lifetime Advocacy Network

- provides information about trusts and a referral service to lawyers who know about setting up a trust for people receiving PWD.
Ph: 604-439-9566

Having your trust recognized by MSD

Once your trust document has been drawn up, MSD has to approve it. Give your local office a copy and MSD will forward it to Victoria for a legal opinion. This process will help MSD decide whether or not your trust has been set up properly. A decision can take several weeks.

If you have not already set up a trust, and you receive a lump-sum payment, we recommend that you tell MSD you plan to set up a trust when you receive the funds. MSD will exempt these assets for 3 months to give you time to set up your trust and get MSD approval. If it takes longer than 3 months, you will need to keep in touch with MSD and they will review the situation on a month-to-month basis.

Appealing

You have the right to appeal if the Ministry reduces or cuts off your benefits because it does not accept the terms of your trust. However, it is probably better to talk to your lawyer about changing your trust so that it meets MSD's rules.

You may also appeal MSD denials related to how you spend your trust money. If you want to appeal, you must notify the Ministry within 20 business days of receiving notification that your expenditures have not been approved. Contact MSD and ask for a Request for Reconsideration form. If possible, contact an advocate for help with your appeal.

Other Resources

For more information on trusts, contact the Voice of the Cerebral Palsied of Greater Vancouver (VCP) for a copy of their booklet, "How to Create a Trust: A Resource Guide for People Receiving 'Persons with Disabilities' Benefits and their Families."

Ph: 604-874-1741, Email: vcpgv@vcn.bc.ca. You can also access the guide by going to: www.vcpgv.org/trust.html.

For the Ministry's brochure on trusts, "Disability Assistance and Trusts," contact your local MSD office or go to: www.eia.gov.bc.ca/publicat/bcea/trusts.htm.



An Alternative to Trusts

Another way to exempt assets is to put money into a Registered Disability Savings Plan (RDSP). However, keep in mind that your age and eligibility requirements, such as the Disability Tax Credit, may determine whether you can open an RDSP. For more information on the RDSP, see Help Sheet 14, Registered Disability Savings Plan and the Disability Tax Credit. BCCPD also has several free RDSP resource online at www.bccpd.bc.ca/rdsp.htm.



Prepared by Advocacy Access
A program of BC Coalition of People with Disabilities

204-456 W. Broadway, Vancouver, BC V5Y 1R3 • tel: 604.872.1278 • fax 604.875.9227
tty 604.875.8835 • toll free 1.800.663.1278 • www.bccpd.bc.ca

This Help Sheet is funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.



Ministry of Social Development

Dear

We are writing to advise you of the ministry's decision following review of your trust arrangement.

The ministry has determined that your Tax Free Savings Account (TFSA) is set up by a Declaration of Trust. Under the terms of the trust, you can compel the plan trustee to withdraw funds for you at any time. As a result, the TFSA is considered to be a non-discretionary trust.

This means that the ministry will treat this trust property as your asset. Nevertheless, the trust property will be an exempt asset as long as the aggregate value of all trust property contributed to the trust is no more than \$200,000 in value.

All payments made from the trust to or on behalf of you will be your unearned income, except for payments that are exempt because they are for "disability-related costs" as defined in the regulation.

Please also note that you must advise the ministry of any additional money or other assets placed in the trust, and of any changes made to the trust or the trustee.

You may find it helpful to review the general information in the booklet "Disability Assistance and Trusts" available at Employment & Assistance Centres or <http://www.mhr.gov.bc.ca/publicat/pdf/DisabilitiesTrusts.pdf>.

The ministry cannot provide specific advice about how best to arrange your affairs. If you have any questions in that regard, or if you have questions about the legal implications of the ministry decision, it is your responsibility to seek independent legal advice.

Sincerely,

for Donna Thompson
Manager, Litigation

The Ombudsperson and Complaints about the Ministry of Social Development and Social Innovation (“MSDSI”)

**Prepared October 24, 2014 by Alison Ward, lawyer, Community Legal Assistance Society.*

The Office of the Ombudsperson is an independent officer of the BC legislature who can investigate unfair administrative decisions or actions of public agencies, including MSDSI.

The Ombudsperson’s jurisdiction to investigate unfair actions and decisions is broad. Section 23 of the *Ombudsperson Act* R.S.B.C. 1996, c. 340 sets out its scope. The Ombudsperson must make recommendations to MSDSI if it finds that an act, decision, omission or recommendation by MSDSI was:

- supported by inadequate reasons;
- subject to unreasonable delay;
- contrary to law;
- based on a mistake of law or fact, or irrelevant considerations;
- related to the application of arbitrary, unfair or unreasonable procedures;
- unjust, oppressive or improperly discriminatory;
- made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
- done for an improper purpose,
- was the result of negligence or improper action; or
- otherwise wrong,

For more detail on the types of unfairness the Ombudsperson can investigate, see:

- the “Fairness Checklist” on the Ombudsperson’s site at <https://www.ombudsman.bc.ca/home/fairness-checklist> (copy attached); and
- Ombudsperson’s Public Report 42 (March 2003) *Code of Administrative Justice* at https://www.ombudsman.bc.ca/images/resources/reports/Public_Reports/Public%20Report%20No%20-%2042.pdf

Section 11 of the *Ombudsperson Act* provides that the Ombudsperson cannot investigate a complaint while a reconsideration or appeal to the EAAT, or application for judicial review, is ongoing. However, the Ombudsperson *can* investigate a complaint against MSDSI if the deadline for reconsideration, appeal or judicial review (as applicable) has passed.

Deadline for complaint:

A complaint to the Ombudsperson must generally be made within one year of the act, omission or decision that being complained about (section 3 of the *Ombudsperson Act*).

How to complain:

Complaints to the Office of the Ombudsperson can be made in writing and mailed in, submitted online, or made by phone. A standard complaint form is on the Ombudsperson's website.

A template complaint form customized for general complaints about MSDSI is also **attached**.

Complaints must be made by the person directly affected by unfairness. However, **the Ombudsperson's office will accept complaints from advocates on behalf of clients** when the advocate is able to send them an **authorization form, signed by the client**, whereby the client confirms they want the advocate to represent them in making a complaint to the Office of the Ombudsperson. A sample authorization form is **attached**.

Numbers:

Reports from the Ombudsman show that it receives more complaint about MSDSI than any other ministry. Complaints about MSDI were

- 21.0% of total Ombudsperson files opened in In 2013/14 (1110 files)
- 19.7% of total Ombudsperson files opened in 2012/13 (983 files).
- 18.1 % of total Ombudsperson files opened in 2011/12 (830 files)
- 20.4% of total Ombudsperson files opened in 2010/2011 (915 files)

Issues in Complaints

While many complaints to the Ombudsperson are made about MSDSI each year, I think that this is an under-utilized remedy for many different substantive problems that clients face with MSDSI. While the Ombudsperson can clearly deal with procedural complaints on issues such as delay in processing applications for immediate needs assessments, and communication problems related to ICM, there are many other *substantive welfare topics* that may also be ripe for a complaint to the Ombudsperson.

Each year the Ombudsperson releases summaries of sample cases they have dealt with, in their annual report and occasional newsletters. You can find summaries of their decisions about MSDSI (and other income and community support issues like FMEP) at <https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports>

Those case summaries often surprise me, and show that the Ombudsperson investigates a wide variety of substantive issues that are difficult to otherwise resolve with MSDSI (e.g. through reconsideration and appeal), and that their office achieves meaningful results for many people.

To encourage advocates to file complaints to the Ombudsperson in a wider variety of issues. I've summarized several sample cases below:

Issue investigated by Ombudsperson	Substantive issue with MSDSI	Outcome	Link to decision
<i>Were MSDSI's actions contrary to law?</i>	MSDSI made numerous deductions from a man's PWD benefits. The Ombudsperson reviewed MSDSI records and determined that some of the repayments were made after the limitation period to collect had expired.	MSDSI's actions contrary to law. Client reimbursed \$255 for deductions made after the limitation period expired, and received written confirmation no further debts were owed to MSDSI.	https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/230-settling-debts
<i>Did MSDSI follow a fair process in reaching its decision?</i>	A woman on PPMB had her PPMB status reviewed; MSDSI gave her only 3 weeks to submit a new application before her PPMB status would be lost, even though MSDSI policy required 3 months' notice.	Fair process not followed. Client's PPMB rate reinstated for three months to allow for time for review to be conducted.	https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/228-time-matters
<i>Did MSDSI follow a fair process in determining what the client had been eligible to receive in the past?</i>	Client on PWD had not been receiving the full amount of the shelter benefits he was entitled to, due to Ministry error. His ongoing benefits were increased, but no reimbursement issued. Ombudsperson reviewed MSDSI records and determined that client had told MSDSI of his actual shelter costs 4 years earlier. While investigating, MSDSI offered to reimburse client for 12 months of underpayment.	Fair process not followed: no policy or legislative directive limiting reimbursement of underpayments to the past 12 months Client reimbursed \$4 620.22 for underpayments over the past 4 years.	https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/13029-persistence-leads-to-reimbursement-for-four-years-of-underpayment-13-14
<i>Did MSDSI issue adequate reasons for its decision?</i>	A truck driver had had his driver's license suspended for 3 months because of points. His employer usually had work other than driving available, but currently had a shortage of other work. His employer laid him off	Inadequate reasons for decision that he was not eligible, given he was only laid off. MSDSI quickly found	https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/369-assistance-

	and he applied for IA until work became available. MSDSI said he was not eligible as he had lost work due to his own actions, so it was like he'd been fired.	client eligible for IA.	provided-for-laid-off-worker-1011
<i>Was there unreasonable delay in processing application for IA?</i>	Client on methadone had just been released from jail in order to attend drug treatment. He had applied for IA one week ago but no decision had yet been made. His methadone coverage was running out; he contacted the Ombudsperson the day before it was scheduled to end.	Unreasonable delay to provide Pharmacare coverage and IA. MSDSI said it had not known client's methadone coverage was running out. Pharmacare instated immediately and IA issued within 2 days.	https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/363-emergency-medical-coverage-1011
<i>Did MSDSI follow a fair process in reaching its decision?</i>	<p>A single parent on PWD and MNS (\$165/month) received a large lump sum of child support. She was off benefits and on MSO for over a year due to excess assets. MSDSI told her once the child support was spent, she would be reinstated to all her benefits.</p> <p>In fact, once she was back on PWD, MSDSI said she had to reapply for MNS. She did not receive MNS for about two years after her PWD restarted. She asked MSDSI to issue MNS retroactively for the 2 year period; MSDSI refused. She applied for reconsideration and appeal of that decision, and lost.</p>	<p>Ombudsperson found fair process not followed.</p> <p>Client received retroactive payment of 21 months of MNS (\$3 456).</p>	https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/361-persistence-results-in-supplement-payments-1011
<i>Did MSDSI follow a fair process in reaching its decision?</i>	<p>Client on IA received her first CPP payment in June. She budgeted for it to be deducted from her IA cheque for August (2 month lag). Datamatch with CPP showed client had received the CPP payment in May, so MSDSI deducted it from her July check instead.</p> <p>Ombudsperson reviewed MSDSI records and confirmed there was</p>	Unfair process: datamatch error confirmed and client issued full IA check for July.	

	a datamatch error; client had not in fact received CPP in May, so entitled to full IA check for July.		
<i>Did MSDSI follow a fair process?</i>	<p>A man on IA had been put on third party administration about 10 years ago. He went off assistance for several years. When he reapplied, third party administration was automatically continued. He complained to the Ombudsperson that this was unfair.</p>	<p>Fair process not followed. MSDSI best practices and policy require review of client contact prohibitions annually, but this was not followed.</p> <p>MSDSI agreed to a major revision of its policy regarding 3rd party administration in December 2013, including written reasons for 3rd party administration, and annual review.</p>	<p>https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/13033-preventative-ombudsmanship-results-in-new-policy-new-procedure-for-income-13-14</p>
<i>Did MSDSI follow a fair process?</i>	<p>A single mother on IA had her cheque withheld as she had not given MSDSI a birth certificate for her newborn child. The mother had registered the child's birth but, for personal reasons, did not want to get a birth certificate for him. She gave MSDSI other evidence of her son's identity, including a statement from the doctor who delivered him.</p> <p>The client applied for reconsideration of the decision that she had to provide a birth certificate for her son to get IA. She lost. She appealed to the EAAT and lost.</p> <p>She re-applied for IA and complained to the Ombudsperson that it was unfair that MSDI would only accept a birth certificate as identification for her son.</p>	<p>Fair process not followed. The EA Regulation required ID be provided, but did not specify what <i>kind</i> of ID was required. MSDSI maintained section 10 of the Act (information and verification) allowed them to direct provision of a birth certificate.</p> <p>MSDSI agreed to revise its policy and procedures on ID requirements and how section 10 is applied.</p> <p>Client's IA restarted, apology issued.</p>	<p>https://www.ombudsman.bc.ca/investigations/case-summaries/income-a-community-supports/13036-unfair-demands-ministry-revises-policy-13-14</p>

Past Systemic Complaints

While systemic complaints are beyond the scope of this handout, it is important to note that the Ombudsperson has released two major reports regarding systemic problems at MSDSI in the past 6 years. They are essential reading for welfare advocates.

They are as follows:

- a) *Time Matters: An Investigation into the BC Employment and Assistance Reconsideration Process*, January 2014, Special Report 35, at [https://www.ombudsman.bc.ca/images/resources/reports/Public Reports/Time Matters Report 35 web.pdf](https://www.ombudsman.bc.ca/images/resources/reports/Public%20Reports/Time%20Matters%20Report%2035%20web.pdf)

This report identified that MSDSI was not meeting the legislated deadlines for issuing reconsideration decisions. As a result of the ministry's delays, over 900 recipients lost benefits they were entitled to receive. As a result of this investigation, the government amended the welfare regulations to require that when reconsideration decisions are not made within specified time limits, approved benefits must be paid retroactively so that MSDSI's delay does not cause a recipient financial loss. The Ministry also agreed to review its application process for PWD, presumably so that more accurate initial decisions are made and fewer reconsiderations needed (*this is in process*).

- b) *Last Resort: Improving Fairness and Accountability in BC's Income Assistance Program*, March 2009, Public Report 45 at [https://www.ombudsman.bc.ca/images/resources/reports/Public Reports/Public Report No 45.pdf](https://www.ombudsman.bc.ca/images/resources/reports/Public%20Reports/Public%20Report%20No%2045.pdf)

This systemic report resulted from complaints filed by a number of advocacy organizations, coordinated by BCPIAC. The investigation focused on:

- issues relating to income assistance applications: these included the application process, 3 week work search, immediate needs assessments, and 2 year financial independence requirement;
- eligibility criteria and assessment process for PPMB, as well as the number of PPMB clients
- requirements to submit and resubmit medical and other documentation
- the implementation of previous commitments which included commitments to implement the decisions of appeal boards, monitor program effectiveness and staff compliance with policy, and provide reasons for ministry decisions

The Ombudsperson issued 25 recommendations to MSDSI, with various timelines for implementation, MSDSI agreed to 24 of the recommendations. The Ombudsperson has been monitoring implementation of those recommendations since 2009.

1. See August 1, 2009 Update on Implementation of Recommendations, at <https://www.ombudsman.bc.ca/images/resources/reports/Report%20Updates/2009.08.01%20Income%20Assistance%20Report%20Update.pdf>
2. See November 1, 2010 Update on Implementation of Recommendations, at

<https://www.ombudsman.bc.ca/resources-and-publications/121-last-resort-update-2010-11-01>

As of 2014, six recommendations from Last Resort have still not been implemented. The Ombudsperson updated this situation in her 2013/14 annual report (at page 67) as follows:

In previous years, I reported that the ministry had not implemented the six recommendations related to the PPMB program that it accepted and committed to implement over five years ago (Recommendations 12, 13, 14, 15, 16(A) and (B)). This situation unfortunately remains the same this year. The ministry accepted and committed to implementing these recommendations but in five years has made no changes – not even as recommended in Recommendation 13 to change a form to improve the clarity of information provided. This situation highlights the importance of continued monitoring of recommendations that have been accepted but not yet implemented. Ministries have the opportunity to accept or reject recommendations at the time a report is made. Once accepted, however, the ministry has made a commitment to carry through on these changes.

The ministry has recently completed a province-wide consultation process on disability that may lead to policy and program changes. The ministry has told us it will endeavour to implement the recommendations related to PPMB in Last Resort as part of the changes from this consultation process.



About Administrative Fairness

Administrative fairness consists of applying well-recognized principles of procedural fairness and effective public administration. These include:

- Appropriate legal authority
 - Useful policies and procedures
 - Clear public information
 - Accessible programs
 - Consistent standards of practice
 - Adequate monitoring and enforcement
 - Timely and responsive complaint resolutions
-

Ombudsperson Fairness Checklist

Communication

- Public information is available and understandable
- Forms are in plain language
- Clients are given all the information they need
- Clients are treated with courtesy

Facilities and Services

- Telephones are answered promptly
- Voicemail, answering machines or toll-free numbers are available
- Premises are easily accessible and suited for wheelchairs
- The environment is safe and healthy for workers
- The public's right to privacy is respected

Decision Procedures

- Those affected by a decision have a chance to give information and evidence to support their position
- Decisions are made within a reasonable time
- Reasons are given for decisions

Appeal, Review, and Complaint Procedures

- At the time of decisions, people are told of any existing appeal or review procedures
- Complaint procedures are clearly defined
- The public is asked for ideas on improvements in service

Organizational Issues

- Staff are given clear titles for the functions they perform
- Agencies consider whether reorganizing would provide better quality service
- Agencies cooperate with one another to provide better service to the public

Agency Review and Planning

- The public is invited to participate in planning programs
- How decisions will be made is clear from the beginning
- Statistical information needed to evaluate and improve performance is recorded and maintained

Consent to Authorize Representative in Complaint to the Office of the B.C. Ombudsperson

I, (*insert full legal name of client*), of (*insert client's address*), hereby authorize (*insert name of your advocacy organization*) to represent me in making and pursuing a complaint to the Office of the B.C. Ombudsperson about the Ministry of Social Development and Social Innovation.

I further authorize the Office of the B.C. Ombudsperson to communicate with and release to (*name of advocacy organization*) all information relating to my complaint regarding the Ministry of Social Development and Social Innovation.

Signed this ___ day of (*insert month*), 2014, in the City/town of _____, B.C.

(insert printed name of client under signature)

Complaint to the BC Ombudsperson Regarding the Ministry of Social Development and Social Innovation

CONTACT INFORMATION

Name: _____

Address: _____

City: _____

Postal Code: _____

Phone: _____

Email: _____

Best contact time: _____

THIS COMPLAINT RELATES TO:

- MSDSI has not followed a fair process in my case;
- MSDSI has not given adequate reasons for a decision in my case;
- MSDSI has unreasonably delayed in processing my application;
- MSDSI has unreasonably delayed in making a decision about my eligibility;
- MSDSI has acted contrary to law in my case;
- MSDSI staff gave me incorrect or misleading information
- other (*specify on next page*)

MSDSI office: (*if there is a specific office involved*):

Names and positions of any MSDSI staff members involved:

Do you have any specific barriers?

DESCRIBE COMPLAINT *(attach additional description if necessary)*

Explain what happened: *(be clear and concise; include dates when possible)*

Explain why this was unfair:

What hardships did the situation cause? *(E.g. late rent, not enough money for food, underpaid benefits, etc.)*

What steps did you take to resolve the problem? *(Did an advocate help? Was a supervisor involved? Did you file for reconsideration? Was there an appeal?)*

Outcome of the attempt(s) to solve the problem:

What outcome do you want, or what do you want the Ombudsperson to do?

ATTACH DOCUMENTS:

Attached are copies of all relevant documents (*make sure documents are organized & clearly labelled*)

- My correspondence to the Ministry
- Correspondence I received from the Ministry
- Other (list below)

Your signature: _____ Today's date: _____

Going to the Social Security Tribunal



we are all
connected

Updated: October 2014

Given the backlog at the Tribunal, this presentation assumes that current hearings by the General Division are for old Review Tribunal appeals.

- All the 7, 000 unheard appeals from the OCRT have been transferred to the Social Security Tribunal on April 1, 2013. Media reports indicate the back log now stands at 10,000 appeals.
- Initially the tribunals were considered as having been received on April 1st 2013 and the SST would give 365 days to submit new information or submissions.
- Due to the significant back log cases the SST has a new process.

Significant changes

- Both parties are allowed to continue to submit new documents and submissions during the delay period. The Tribunal will accept and forward any documents received. It should be noted that it is currently taking the Tribunal up to six months to disclose some of the Minister's submissions.
- The Tribunal will notify both parties a few weeks before the appeal is ready to be assigned to a Member.
- If your client is not ready to proceed with the appeal or is waiting for new information, it is important to contact the Tribunal when the notice of assignment is received. Ask them to delay setting any hearing date until you feel that you are ready to make a final submission. Provide the Tribunal with an estimate as to when you think you might be ready. If you don't the Tribunal will set a hearing date and you may be forced to seek an adjournment.
- Once a hearing is scheduled the parties will be given 30 days to provide new document or submissions. After the 30 day period has expired, the parties are given 15 days to reply to any new information. Nothing further can be added to the hearing file except at the discretion of the Member.
- The Tribunal's new process has made the Notice of Readiness redundant.
- Hearing Information Form?

Appeals to the General Division

- An appeal must be filed within 90 days of having received the denial letter.
- To start an appeal a Notice of Appeal must be completed.
- The Notice of Appeal is available online, over the phone or attached to this package.

The first two pages of the Notice of Appeal to the General Division includes instructions for submitting an appeal.

The Appeal will not be considered until all mandatory information has been submitted.

NOTICE OF APPEAL to the SOCIAL SECURITY TRIBUNAL (SST) - GENERAL DIVISION
 For individuals seeking to appeal the discretionary decision made by Human Resources and Skills Development Canada (HRSDC) regarding their Canada Pension Plan (CPP) Disability Benefit

INSTRUCTIONS FOR SUBMITTING AN APPEAL
 Dernière édition en français

BEFORE YOU SUBMIT AN APPEAL
 Read the instructions carefully. You must provide the information requested. If you do not, your appeal will not be considered.

1. APPELLANT INFORMATION (PERSONS):
 Section 1 asks for information about the appellant's personal and contact information.

2. DECISION UNDER APPEAL (CASE):
 Section 2 asks for general information about the decision under appeal and the reasons for the appeal.

3. REPRESENTATIVE INFORMATION (PERSONS):
 Section 3 asks for information about the representative's personal and contact information.

HRSDC-DC-03-CPP-2010-03-010 E Page 1 of 1 Canada

The second page also gives the contact information for the SST.

Mailing address:
 Social Security Tribunal
 Attention: General Division
 PO Box 9812 STN CSC
 Ottawa, ON
 K1G 6S3

Internet: www.canada.gc.ca/sst-tss
 Phone: 1-877-227-8577
 TTY: 1-800-465-7735
 Fax: 1-855-814-4117
 Email: info.sst-tss@canada.gc.ca

1. APPELLANT INFORMATION (PERSONS):
 Section 1 asks for information about the appellant's personal and contact information.

2. DECISION UNDER APPEAL (CASE):
 Section 2 asks for general information about the decision under appeal and the reasons for the appeal.

3. REPRESENTATIVE INFORMATION (PERSONS):
 Section 3 asks for information about the representative's personal and contact information.

HRSDC-DC-03-CPP-2010-03-010 E Page 1 of 1 Canada

PROTECTED B (when completed)

**NOTICE OF APPEAL - GENERAL DIVISION
INCOME SECURITY SECTION - CANADA PENSION PLAN**

FOR OFFICE USE ONLY
Date Stamp

APPELLANT INFORMATION
CONTACT FOR THE PURPOSES OF THIS APPEAL

Mr. MRS. MRS. M.L. Other
 First Name Last Name

Appellant's Social Insurance Number: _____
 Contributor's Social Insurance Number (if applicable): _____
See Page 1 Instructions

CURRENT HOME ADDRESS
Address (No., Street, Apt., R.R.): _____
City: _____

Provincial / Territory / State: _____ Country: _____ Postal / Zip Code: _____

MAILING ADDRESS (if different from home address)
Address (No., Street, Apt., R.R.): _____
City: _____

Provincial / Territory / State: _____ Country: _____ Postal / Zip Code: _____

ADDITIONAL CONTACT INFORMATION

Telephone Number: _____ Other Telephone Number: _____

Do you (the Appellant) have a fax number? If yes, you must provide it.
 No Yes (specify) Fax Number: _____

Do you (the Appellant) have an email address? If yes, you must provide it.
 No Yes (specify) Email Address: _____

Best Time to Contact: _____ Time Zone: _____
 (NOT Regular Hours of Operation: 07:00 - 19:00 EST)
 Front: _____ Tel: _____

3ST-HQA-GD-SCPP (2013-03-03) E Page 2 of 4 Canada

An appeal to the General Division must be filed within 90 days of having received the Reconsideration's denial letter.

You only need to fill in Section B if you are submitted an appeal after the 90 day deadline.

Any documents that are being submitted with the Notice of Appeal should be listed in Section D. The only document that you must attach is the CPP Reconsideration denial letter.

Social Insurance Number: _____

DECISION UNDER APPEAL

If you need more space, continue on a separate sheet. Clearly indicate the question number on the separate sheet.
 A) REASON(S) FOR APPEAL (REQUIRED)

Did you receive the Reconsideration Decision from MATYC? Yes/No/Not Specified
 Year/Month/Day: _____
 If you are appealing more than 90 days after receiving the Reconsideration Decision, please explain the reason for the delay in 2 (B). If not applicable (B)

B) REASON(S) FOR LATE APPEAL (If not applicable, please explain the reason for the delay in 2 (B). If not applicable (B))

C) REASON(S) FOR APPEAL (I believe the RECONSIDERATION DECISION IS INCORRECT BECAUSE)

D) Attach any documents you may have to support your case and list them below:

Document Description (E.g., Medical Report, Employment Document, etc.)	Page	Day Year/Month/Day	# of Pages

3ST-HQA-GD-SCPP (2013-03-03) E Page 4 of 5

		Social Insurance Number	
REPRESENTATIVE INFORMATION			
<input type="radio"/> I will represent myself		<input type="radio"/> I have a representative	
<small>PLEASE PRINT OR TYPE IN CAPITAL LETTERS. Circle how you wish to disclose your information to the public.</small> Representative's First Name Representative's Last Name Name of Company, Association, or Organization			
Representative's Address (No., Street, Apt., R.R.)			
City		Province / Territory / State	Suite / Unit Number
Postal / Zip Code	Telephone Number	Other Telephone Number	
Does your Representative have a fax number? If yes, you will provide it. <input type="checkbox"/> No <input type="checkbox"/> Yes (provide) Fax Number:			
Does your Representative have an email address? If yes, you must provide it. <input type="checkbox"/> No <input type="checkbox"/> Yes (provide) Email Address:			
TO BE COMPLETED BY APPELLANT			
<small>PART 1 - TO BE COMPLETED IF YOU DO NOT HAVE A REPRESENTATIVE</small> I hereby appeal the award of my Canada Pension Plan payments to which you have made a decision on my behalf, all of the information on this Notice of Appeal is true and complete.			
Signature of the Appellant		Year Month Day	
TO BE COMPLETED BY A WITNESS IF THE APPELLANT CANNOT COMPLETE THE FORM			
<small>PART 2 - TO BE COMPLETED BY A WITNESS IF THE APPELLANT CANNOT COMPLETE THE FORM</small> I have witnessed and verified the contents of the Notice of Appeal to the Appellant. I am a person who is not a relative or partner of the Appellant. I am not a witness to the signature of the Appellant. I am not a witness to the signature of the Appellant. I am not a witness to the signature of the Appellant.			
Name of the Witness (Print)		Signature of the Witness	
Year Month Day		Year Month Day	
Witness' Address (No., Street, Apt., R.R.)			
City		Province / Territory / State	
Country	Postal / Zip Code	Telephone Number	
<small>PART 3 - TO BE COMPLETED BY A REPRESENTATIVE OF THE APPELLANT IF APPLICABLE</small> I hereby appeal the award of my Canada Pension Plan payments to which you have made a decision on my behalf, all of the information on this Notice of Appeal is true and complete.			
<small>Note: If you are representing an Appellant, complete and submit a signed Authorization to Disclose with this notice of appeal form. The Appellant must sign the Authorization to Disclose.</small>			
Signature of the Representative		Year Month Day	
Discorable equipment on back			
SST-1004-00-45-00P (2010-00-1) E			

Late Appeals

- The tribunal does have the power to accept appeals after the 90 day deadline.
- While the SST had the power to accept these appeals they retain the right to refuse a late appeal. It is best to get the appeal in on time or provide a reasonable and compelling explanation for why the appeal was delayed.

The Tribunal Member will consider the following when assessing if they will allow further time to appeal:

- Is there continued intention to pursue the appeal;
- Does the matter disclose an arguable case;
- Is there a reasonable explanation for the delay; and
- Is there prejudice to the other party for allowing the extension.

Appeals to the General Division are de novo appeals

- When appealing to the General Division new material can be submitted. You are not limited to what is already in the file.

Summary Dismissal

- It the Tribunal believes that there will be no chance of success with an appeal or that it has no legal authority to allow an appeal it will be summarily dismissed.
- For example if someone does not have sufficient contributions to CPP.
- The tribunal member will mail a letter with the reasons why it wishes to summarily dismiss the appeal.
- Should you disagree with the tribunals reasoning there is the automatic right to appeal this but remember you cannot appeal based on compassionate or humanitarian grounds

Examples of Appeals that would be heard by the OCRT that will likely be dismissed with out a hearing:

- Appeals where the applicant does not have sufficient contributions to the plan.
- Appeals where the applicant has been in receipt of CPP Early Retirement for more than 15 months.
- Appeals where the applicant is over sixty five when they applied for CPP Disability

Submitting documentation with the notice of appeal

- In most cases wait until you have had a chance to review the file before submitting additional documents. This lets you ensure that there won't be conflicting information in the file and target any letters to the gaps in the file.
- The exception would be if there is some compelling new information that was not available during reconsideration or the merits of the appeal are so weak that the Tribunal might summarily dismiss it.

The hearing file

- Two to three months after the Tribunal acknowledges the appeal you (or your client) should receive the Hearing File.
- This file will contain all of the additional information that Service Canada had gathered during the reconsideration.

Written Submissions

- Provide a written submission in support of the appeal with any new evidence you may have collected.
- In the submission request the hearing style that would best meet your client's needs.
- Let the Tribunal know that you are ready to proceed.

Going to a hearing

- While the OCRT was a three person panel made up of a lawyer, medical person, and community member the SST only has one Tribunal Member. Hearings transferred from the OCRT will all be held with only one Tribunal Member.

- While you can make a case in your submissions for the hearing type that would be most appropriate for your client ultimately it is the Tribunal member who will make the decision on what type of hearing will be held.
- In making the decision the Tribunal member should be guided by Section 2 of the SST Regulations

Section 2 of the SST Regulations

“General principle

2. These Regulations must be interpreted so as to secure the just, most expeditious and least expensive determination of appeals and applications”

Forms of Hearings

Factors considered when the SST Member is deciding what style of hearing:

- Credibility
- Complexity of the Appeal
- Information gaps in the file that requires clarification

Decision on the written record

- The member bases the decision totally on existing information in the file and any submissions or evidence submitted to the Tribunal.
- This may seem similar to a summary dismissal but a decision based on the written record does not come with an automatic right to appeal to the Appeals Division.

Decisions based on the written record are considered appropriate to SST when:

- There is no contradictory evidence.
- Credibility is not an issue.
- There is no other information needed to make a decisions.
- Should you feel credibility is an issue or that oral testimony would be needed for your client's case to be presented fully and fairly ensure that a part of the written record addresses that.

Hearing in writing

- Done through the Tribunal Member obtaining written answers to questions and then makes a determination based on the information in the file, the information that had been submitted and the answers to the questions.
- The Tribunal Member will give deadlines for submitting the answers. The Tribunal Member may follow up with additional questions if necessary.
- Seems similar to a summarily dismissal. There is not an automatic right to appeal with a written hearing.

A hearing based on written questions and answers is considered appropriate to SST when:

- The tribunal member does not anticipate having to assess credibility but information in the file needs to be clarified.
- The issue is simple, clear and plain.

Oral hearing by teleconference

- The hearing will happen over telephone. The parties are responsible for having access to a telephone on the date and time of the hearing.
- If using a cell phone you must ensure that the phone will remain charged and in use for the course of the hearing.
- If the client has no access to a telephone the Tribunal Member should be contacted as soon as possible within the time frame given in the Notice of Hearing letter.
- The hearings will now be recorded.

An oral hearing by teleconference is considered appropriate to the SST when:

- Credibility is not expected to be an issue but there are gaps of information on the file that a Tribunal Member needs to clarify before it can make a decision.

Oral hearing in person or by videoconference

- Both in person and videoconference hearings will be scheduled at a hearing location nearest the appellant's address.
- The hearings are now recorded.
- ID requirements.

An oral hearing by videoconference is considered appropriate to the SST when:

- It is available where the participants live.
- Seeing the parties is important for the appeal.
- Multiple parties will be involved with the hearing.
- Multiple or complex issues.
- The tribunal member feels they must assess credibility.
- There are gaps in the written record that needs clarification.

An in person hearing is considered appropriate to the SST when:

- Seeing the parties is important for the appeal.
- Multiple parties will be involved with the hearing.
- Multiple or complex issues.
- The tribunal member feels they must assess credibility.
- There are gaps in the written record that needs clarification

After the Tribunal Member has made a decision on the form of hearing:

- They will provide a written decision with an explanation of their reasoning for why they considered that form of hearing the most cost effective and appropriate hearing.
- If you do not agree with the tribunal member for example they have selected a teleconference hearing but you believe to fully assess your clients credibility a videoconference or in person hearing would be required ensure that there is a record of your objection.

Preparing your client for the hearing

Based on the written submissions and the information in the file prepare your client for questions that may be asked during their oral hearing.

Expenses

- If there are special reasons that a person must travel to attend their hearing the Chairperson of the SST may reimburse some of the costs.
- In most circumstances the appellant will be responsible for their own expenses related to taking part in the hearing.

Language

- The appellant can decide what official language is used for the hearing. Unless told otherwise the SST will assume the hearing will go forward using the official language used to fill the notice of appeal.
- Inform the Tribunal as soon as possible if the appellant does not speak sufficient English or French. The tribunal will provide an interpreter at no cost.

Witnesses

- While a health professional can be a compelling witness the Tribunal will not pay the costs associated with attending the hearing.
- Job placement and vocation counselor may also make compelling witnesses.
- Friend or family members can give evidence about how life has changed because of the disability.

Case Law

- The Tribunal are bound by decisions of the court. Using case law in your written submissions can be a very powerful too.
- While the Tribunal is not bound by Pension Appeals Board decisions, they can be persuaded by them
- Some Social Security Tribunal decisions are now being published on line. Tribunal Members are not bound by other tribunal decisions but may be persuaded by them.
- Cite any decisions you use for example:

Villani v. Canada (A.G.)[2001] FCA 248

After the Hearing

- The SST have been advising people that they should expect a written decision in four to six weeks following a hearing.

If the appeal is allowed

- Congratulations! But don't relax just yet. HRSDC has 90 days from the date they receive the decision letter to apply to the SST for leave to appeal to the appeals division.

If the appeal was dismissed

- Regardless of the appeal format if the appeal is dismissed there are 90 days to file a Notice of Appeal with the Appeals Division of the Social Security Tribunal.
- Leave to appeal must be granted in most cases (the only exception is if you are appeal the General Division's decision to summarily dismiss an appeal)
- Appeals from the General Division to the Appeals Division are no longer de novo. The Minister is arguing that the Appeals division cannot consider any new information. It relies on past decisions that were made in the EI context. Because CPP disability claims are much different, there is room to argue that a new set of rules should be developed for these appeals.

The only time to Appeals Division will hear new information

- Any appeals that have been transferred to the Social Security Tribunal and the Appeals Division from the Pension Appeals Board can still submit new information. Their appeals were filed with the expectation of a de novo appeal and the SST have stated they will honor that expectation.

Appeals to the Appeals Division MUST be based on the following grounds:

- Failure to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction
- Erred in law
- Based its decision on an erroneous finding of fact that is made in a perverse or capricious manner with out regard to the material before it.

- One of the reasons why we are encouraging people to object on record if they are not provided with an in person hearing (if requested) is to lay the groundwork to make a Appeals case based on what would be considered *Procedural Fairness*.

- As the Tribunal Hearings are now recorded if you are going before the Appeals Division you should obtain a copy of the recorded General Division hearing.

The Appeals Division has the power to:

- Dismiss an appeal
- Allow an appeal
 - Give the decision that should have been given
 - Send the appeal back to the General Division
 - Rescind or vary decisions

When the Appeals division refers the appeal back to the General Division

- There are no regulations compelling the General Division to hear or ignore new information provided on cases referred to them from the Appeals Division. It is up to each individual Tribunal Member to decide on a case by case basis if they will allow the parties to submit any additional documentation and what time frames would be allowed to do so.
- In some cases the Appeals Division may give specific directions for a certain decision to be made in which case additional submissions would not be appropriate or necessary.

Appeals where it may be appropriate to provide an opportunity to provide additional submissions:

- Appeals referred back with instructions to take into account evidence or submission that were not properly considered by the original member;
- Appeals referred back with instructions to make a determination of an issue which was not decided by the original Member and / or on which parties did not make submissions;
- Appeals referred back to a new member who did not hear the matter in the first instance.

Appeals where it may not be necessary to provide an opportunity to submit additional information:

- Appeals referred back because of an error in the application of a legal test, on which both parties have made submissions.
- Appeals referred back because of insufficiency of reasons.

What is the next level of Appeal?

- Once the Appeals Division has given their decision if either party is unhappy the next level of appeal would be Judicial Review before the Federal Court of Appeals.

In 2014 people need to let
service Canada know if:

- Their annual earnings exceed \$5,200 in 2014 (this figure increases slightly each year);
- They are in a paid education or training program;
- Their address, phone number, or direct deposit information changes; or
- A child enters or leaves their custody.
- CPP also asks recipients to report things such as improvements to their medical condition or if they have successfully completed an educational program but these issues are not that significant as long as the person is not capable of gainful employments.

OTHER:

- In most cases you cannot collect CPP Disability benefits if you are still able to work the exceptions are:
- Sheltered Employment
- Work for a “Benevolent Employer
- Work that is not substantially gainful.

What is a benevolent employer?

A benevolent employer is someone who varies the working conditions and modifies the job expectations to accommodate a person with disabilities limitations. For example the performance expected in terms of productivity or output is considerably less than that expected of other employees.

What is substantially gainful?

What CPP considers to be substantially gainful is adjusted in January each year to allow for inflation. It is based on the maximum annual retirement pension (\$12, 456 in January 2014).

Generally speaking, CPP's sticks to the above figure but its adjudicative framework allows adjudicators some flexibility. It contains the following income levels:

1. From no earnings up to substantially gainful
2. Between substantially gainful amount and twice that amount
3. Above twice the substantially gainful amount

Retroactive benefits

The lump sum retroactive amount begins accumulating four months after the HRSDC has determined you were disabled under the CPP rules.

After taking a four month waiting period into account, the maximum amount of retroactive benefits that can be made is for the 11 month period prior to the date the application was received by Service Canada.

There is an exception for those who were so incapacitated that they could not form the intent to apply sooner but this rarely applied.

USING CASE LAW

The previous Review Tribunals paid little attention to past tribunal decisions because they were never published. Selected decisions by the new Social Security Social Security Tribunal are now being published on the Canadian Legal Institute's web site (<http://www.canlii.org/en/ca/sst/>). There are not many decisions published so far and the ones involving the Minister of Human Resources and Skills Development (now Employment and Social Development Canada) should be looked at.

Tribunals are often persuaded by decisions of the Pension Appeals Board which was replaced by Appeals Division of the Social Security Tribunal. There is a link to old PAB decisions on the Social Security Tribunal web site. The problem with using this link is that you need the name of the parties or the appeal number in order to locate a specific decision. You cannot just browse them. If you use the Annotated Canada Pension Plan/Old Age Security Act (Wolters Kluwer) to do a little research, it provides the case numbers for cases that might interest you.

Tribunals are bound by decisions of the Courts.

Using case law in a submission can be a powerful tool. When making oral submissions at a hearing however, a little restraint might be wise. Provided that you have made a written legal argument, don't be overly legalistic in your closing remarks. The SST has provided all Members with legal training. Assume that the Tribunal has read your written submission. Remind the Tribunal of the legal principal you are relying on and refer to the cases you have cited but focus your closing remarks on the facts not the law.

Always provide a citation for decisions that you use [i.e.: *Tasse v. M SD* (PAB CP24087, November 27, 2006)] or for Social Security Tribunal decision *G. D. v. Minister of Human Resources and Skills Development* 2014 SSTGDIS 3]. It is wise to attach a full copy of any decision you cite to your submission unless it is one that can be accessed easily by the Minister or the Social Security Tribunal on line. A full copy is needed so that the other parties can see that quote being used is not being taken out of context.

Decisions of Interest

One of the leading CPP disability decisions is *Villani v. Canada (A.G.)* [2001] FCA 248 This decision is a must read for advocates. Two important passages are as follows:

[29] Accordingly, subparagraph 42(2)(a)(i) of the *Plan* should be given a generous construction. Of course, no interpretive approach can read out express limitations in a statute. The definition of a severe disability in the *Plan* is clearly a qualified one which must be contained by the actual language used in subparagraph 42(2)(a)(i). However, the meaning of the words used in that provision must be interpreted in a large and liberal manner, and any ambiguity flowing from those words should be resolved in favour of a claimant for disability benefits.

(c) The Appropriate Legal Test for Disability under the Plan

[37] Except for one case, none of the recent decisions of the Board has analyzed fully the text of subparagraph 42(2)(a)(i) of the *Plan*. That one occasion was the Board's relatively recent decision in *Patricia Valerie Barlow v. Minister of Human Resources Development*, CP 07017 (November 22, 1999). It is worth repeating the central passage of the Board's decision in that case:

Is her disability sufficiently severe that it prevents her from regularly pursuing any substantially gainful occupation?

To address this question, we deem it appropriate to analyze the above wording to ascertain the intent of the legislation:

Regular is defined in the *Greater Oxford Dictionary* as "usual, standard or customary".

Regularly – "at regular intervals or times."

Substantial – "having substance, actually existing, not illusory, of real importance or value, practical."

Gainful – "lucrative, remunerative paid employment."

Occupation – "temporary or regular employment, security of tenure."

Applying these definitions to Mrs. Barlow's physical condition as of December, 1997, it is difficult, if not impossible, to find that she was at age 57 in a position to qualify for any usual or customary employment, which actually exists, is not illusory, and is of real importance.

[38] This analysis of subparagraph 42(2)(a)(i) strongly suggests a legislative intention to apply the severity requirement in a "real world" context. Requiring that an applicant be incapable *regularly* of pursuing any *substantially gainful* occupation is quite different from requiring that an applicant be incapable *at all times* of pursuing *any conceivable* occupation. Each word in the subparagraph must be given meaning and when read in that way the subparagraph indicates, in my opinion, that Parliament viewed as severe any disability which renders an applicant incapable of pursuing with consistent frequency any truly remunerative occupation. In my view, it follows from this that the hypothetical occupations which a decision-maker must consider cannot be divorced from the particular circumstances of the applicant, such as age, education level, language proficiency and past work and life experience.

[39] I agree with the conclusion in *Barlow, supra* and the reasons therefore. The analysis undertaken by the Board in that case was brief and sound. It demonstrates that, on the plain meaning of the words in subparagraph 42(2)(a)(i), Parliament must have intended that the legal test for severity be applied with some degree of reference to the "real world". It is difficult to understand what purpose the legislation would serve if it provided that disability benefits should be paid only to those applicants who were incapable of pursuing any conceivable form of occupation no matter how irregular, ungainful or insubstantial. Such an approach would defeat the obvious objectives of the *Plan* and result in an analysis that is not supportable on the plain language of the statute.

Another important case is *Inclima v. A.G. Canada* (2003 FCA 117). This case was decided after *Villani*. The Ministry often cites the following passage from this decision to argue that an Appeal should be denied because the Appellant has not made sufficient effort to look for work:

[3}... an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but *where*, as here, *there is evidence of work capacity*, must also show that efforts at obtaining and maintaining employment have been unsuccessful by reason of that health condition. (emphasis added)

Some of the original words have been bolded because they support the proposition that Appellants do not have to look for work if they are not capable of working.

For those who do try to work, the Ministry will often argue that any earnings after a MQP is a sign that the Appellant is capable of gainful employment. In *Tasse v. M SD* (PAB CP24087, November 27, 2006) the Board examined the issue of what constitutes gainful employment and looked at the question of employment and entitlement to CPP disability benefits. The Board wrote at page 3:

[7] To her credit in 2005, she resumed employment as a sales clerk, at Zehrs, a grocery store, which involved working 21.50 hours per week at an hourly rate of \$7.75.

[8] She was forced to return to work because she and her husband were in dire financial straits, as the husband was unemployed for some time. She was unable to continue at the end of the six months and resigned due to her health problems. She later worked for a three month period at a nursing home in 2006. Based on a 32 ½ hour work-week on alternate weeks at the same rate of pay, i.e. \$7.75 per hour.

...

[15] Does the fact that the Appellant returned to work for brief periods in 2005 and 2006 preclude her from obtaining a pension? In my view it does not. The Federal Court of Appeal has held that it is the responsibility of the Appellant to attempt to return to work at a lighter, sedentary type of employment, if they cannot return to their original job. The Appellant is required to show that he or she has made an attempt to do so, and has been refused due to disability, or if successful, are unable to continue

because of their incapability to continue. See *Inclima v. Canada (Attorney General)* 2003 FCA 117.

...

[20] The evidence adduced also raises another issue which needs to be addressed, namely, whether the amount of wages earned by the Appellant during her brief stints of employment following her stoppage of work in 2000, constitutes “a substantially gainful occupation.” Ms. Tasse worked a 32½ hour week on alternate weeks and received \$7.75 per hour or \$501.85 per month, for a period of six months. For the three month period in 2006, while employed at a nursing home her weekly take home pay calculated at 21½ hours per week at \$7.75 amounted to \$166.63 per week or \$675.00 per month.

[21] This meager sum is substantially below the “poverty line” as referred to by Statistics Canada. Had her previous work prior to her disability occurring, been at the same hours and wage, this issue would not arise.

[22] Different considerations however are present in this appeal. Ms. Tasse was previously working a regular 40hour week for a period of approximately ten years. She subsequently was capable of sporadic employment at different jobs, with reduced hours.

[23] Her family physician agrees that she is incapable of working longer hours. A disability is “severe” only if by reason thereof the person is incapable regularly of pursuing any substantially gainful occupation. (Emphasis added in original)

[24] “Regular” has been defined as ‘with consistent frequency.’ The Oxford Dictionary defines “substantially” as “having substance, actually existing, not illusory.” The Webster Dictionary defines “gainful” as “profitable, lucrative.” In my view, the legislature, by prefacing the word “gainful” with substantially, intended that the employment would be in excess of gainful.

[25] The Appellant has established that she has a combination of both physical and mental disabilities i.e. bipolar disorder and chronic fatigue.

[26] In addition I find that on incontrovertible evidence that she lacks the capacity to pursue with consistent frequency any substantially gainful occupation, due to disabilities. The Appellant therefore succeeds in her appeal.

Chronic pain is one of those conditions that often results in a hearing because there are often few objective tests to explain its cause. The issue comes down to one of credibility which can only be tested through oral evidence. The Board in *Mullaney v. MSD* (CP24444 February 2007) wrote:

[25] Before the Supreme Court of Canada in the case *Re: Nova Scotia (Workers' Compensation Board) v. Martin* [2003] SCC 54, the Court was persuaded beyond doubt that chronic pain was a legitimate medical condition and was entitled to constitutional protection as falling within the enunciated ground of "physical disability" within Subsection 15(1) of the Charter. In his judgment at paragraph 1 Gonthier, J. stated:

Chronic pain syndrome and related medical conditions have emerged in recent years as one of the most difficult problems facing workers' compensation schemes in Canada and around the world. There is no authoritative definition of chronic pain. It is, however, generally considered to be pain that persists beyond the normal healing time for the underlying injury or is disproportionate to such injury, and whose existence is not supported by objective findings at the site of the injury under current medical techniques. Despite this lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real. While there is at this time no clear explanation for chronic pain, recent work on the nervous system suggests that it may result from pathological changes in the nervous mechanism that result in pain continuing and non-painful stimuli being perceived as painful. These changes, it is believed, may be precipitated by

peripheral events, such as an accident, but may persist well beyond the normal recovery time for the precipitating event. Despite this reality, since chronic pain sufferers are impaired by a condition that cannot be supported by objective findings, they have been subjected to persistent suspicions of malingering on the part of employers, compensation officials and even physicians ... [Emphasis added in the original.]

At times there may not be a clear diagnosis for a condition. In *B.K. v. MHRSD* (CP25269 PAB January 4, 2008) the Board wrote:

[8] Her concentration and memory are both very poor. This in my view was quite obvious as she gave her evidence. She was unable to continue a thought for more than a few seconds. She was also diagnosed as having a major depressive disorder in 2001 with a GAF score of 55-60 which is not that of a well functioning person...

[10] A great deal of focus has been placed on the fact that there has been no definite diagnosis of MS. Dr. M. Hohol her main neurologist while unable to give a definite diagnosis has not excluded its possibility...

[17] Clearly she is suffering from a multiplicity of problems both now and as of December 2002. Whether she has MS or not is in my view not relevant. A definitive diagnosis is not required. The fact is that these health problems are real and prolonged. Mrs. BK is not employable now nor was she in 2002.

[18] This woman now and in 2002 could not function either physically or mentally. She is now and was then incapable of regularly pursuing any substantially gainful occupation.

[19] The appeal is allowed ..

Also in *P.R. and M.H.R.S.D.* (2014 SSTGDIS 1) the Social Security Tribunal wrote:

[40] Regarding the Respondent's point about a lack of "serious pathology", it is true that the investigations have not uncovered any serious pathology however it is a leap to conclude the Appellant should, therefore, be able to work. The very nature of fibromyalgia is such that it does not appear on diagnostic tests. Still the label of fibromyalgia is not sufficient to satisfy a severe finding; the Tribunal must look at the effect on the individual (*Petrozza v. MSD*, (October 27, 2004) CP 12106 (PAB)). In this case, the Appellant has been largely home-bound since leaving the workforce. He describes pain throughout his body. His family doctor lists numerous functional limitations in the CPP Medical Report, notably that the Appellant is unstable while standing, has pain on rising from the seated position, suffers multiple tender trigger points, has a loss of strength (due to pain) in his knees, hips and elbows. He is only able to walk short distances with aid of cane (often two). At the hearing, the Appellant reported that he spends most of his days lying on a couch. He requires assistance in travelling to medical appointments and doing his groceries. He is even unable to walk across the street to go to the coffee shop. Given his extensive limitations, when considered in a "real world" context (*Villani v. Canada (A.G.)*, 2001 FCA 248 (CanLII), 2001 FCA 248), the Tribunal is satisfied that the Appellant's disability is severe since he left work in February 2007.

"Real world" considerations as out in *Villani* (age, education, English literacy skills, etc.) are often important when determining the appellant's capacity to work or to be retrained.

In *K.A v. MHRSDC* (CP25289 PAB December 2007) the Board decided:

[15] In considering Mrs. KA's condition it must be remembered that she has only attended school to Grade 8 in her native country of Guyana. Her language skills in English are very limited. Her work experience involved a labour intensive job which she can no longer do because of her disabling condition. In 2002 she completed a program which was intended to qualify her for work more suitable to her condition. This was not successful and she did not obtain re-employment.

[16] Taking into account the evidence of the Appellant and that of her daughter who testified as a corroborative witness, it is my opinion that Mrs. KA was in January 2003, incapable regularly of pursuing any substantially gainful occupation and that she has continued to be thus disabled since then. The evidence also supports the conclusion that her disability is prolonged in that it is likely to be long continued and of indefinite duration.

[17] The appeal is therefore allowed with the date of onset of the disability deemed to be 15 months prior to the date of application for benefits being March 2005.

In *P.R. v. MHRSDC* (CP25115 PAB January 2008) the Appellant was 60 years old, had a grade 8 education, and English was not her first language. The Board wrote:

[17] It has been submitted on behalf of the Minister that Mrs. P.R. has not made any effort to retrain or to obtain employment that might accommodate her condition. It has been held in prior decisions that in order to establish a severe disability applicants must not only show a serious health problem, but where there is evidence of work capacity, must show effort at obtaining and maintaining employment has been unsuccessful by reasons of the health condition. (*Inclima v. Canada (Attorney General)* [2003] FCA 117.)

[18] With respect to work capacity, Mrs. P.R. stated that she tried to return to her job as a packager but was not able to continue because of her medical problems. She also stated that when it was known that she was not going to get better that she thought she was too old to learn new skills.

[19] Mrs. P.R. came to Canada with limited education and limited ability to speak or to write in English. Because of work and family responsibilities she has not improved her abilities in these areas.

[20] In my view, given her age, medical condition and limited education and language skills, it would not be realistic to expect her to retrain.

I found her to be an honest witness and that she did not exaggerate or embellish her difficulties.

[21] Taking into account all of the evidence, I find that the Appellant does suffer from a disability that is severe which renders her incapable of regularly pursuing any substantially gainful occupation and that such condition is prolonged and has persisted since her fall at the end of November 2001.

[22] The appeal is allowed and I would determine the date of onset of the disability to be 15 months prior to the date of her application in October 2004.

TAB 9: Other

- **Civil Resolution Tribunal (Day 1)**
 - Powerpoint

Orange sheet

- **Procedural Fairness (Day 1)**
 - Materials

Orange sheet

- **Legal Issues Affecting Seniors (Day 1) (repeated)**
 - Seniors Advocacy: an introduction

Orange sheet

- **Police Accountability (Day 2)**

Orange sheet

- **Resisting Burn Out with Justice Doing (Day 3)**

Orange sheet

- **Wills and Estates (Day 3)**
 - Legislation

Orange Sheet

- **Conditional Permanent Residence for Spouses (Day 3)**
 - Powerpoint



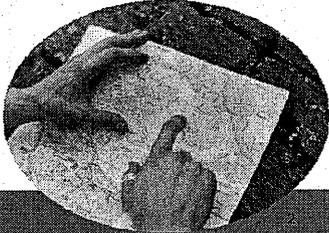
Civil Resolution
Tribunal

Shannon Satter, Chair
Provincial Training Conference, October 28, 2014



Introduction to the CRT

- Where did the CRT come from?
- Where are we now?
- What does the future look like?
- Questions?



Why the CRT?

We have built a legal system that has become increasingly burdened by its own procedures, reaching a point that we have begun to impede the very justice we are striving to protect..."

- George Strathy, Chief Justice of Ontario,
September 2014

Jurisdiction

Small claims disputes up to \$25,000, including:

- debt or damages;
- recovery of personal property;
- specific performance of an agreement relating to personal property or services; or
- relief from opposing claims to personal property.

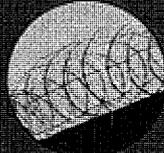
The tribunal will not decide matters that affect land

Jurisdiction

Strata disputes such as:

- non-payment of fees/ fines;
- unfair actions by the strata or majority of owners;
- issues with enforcement of strata bylaws;
- repairs;
- meeting irregularities;
- interpretation of the legislation, regulations or bylaws; and
- issues with common property.

Why the CRT?



Access

- Rural parties
- Complexity
- Limited support
- Few cases go to trial



Time

- 12-18 months (SC)
- Longer for strata
- Delays & backlogs



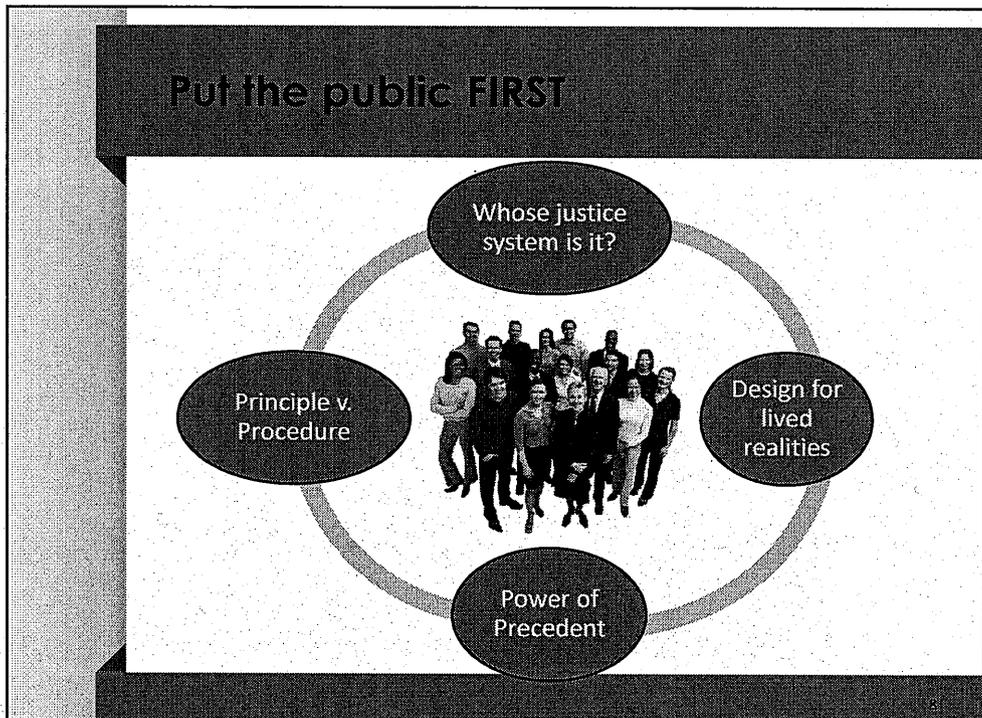
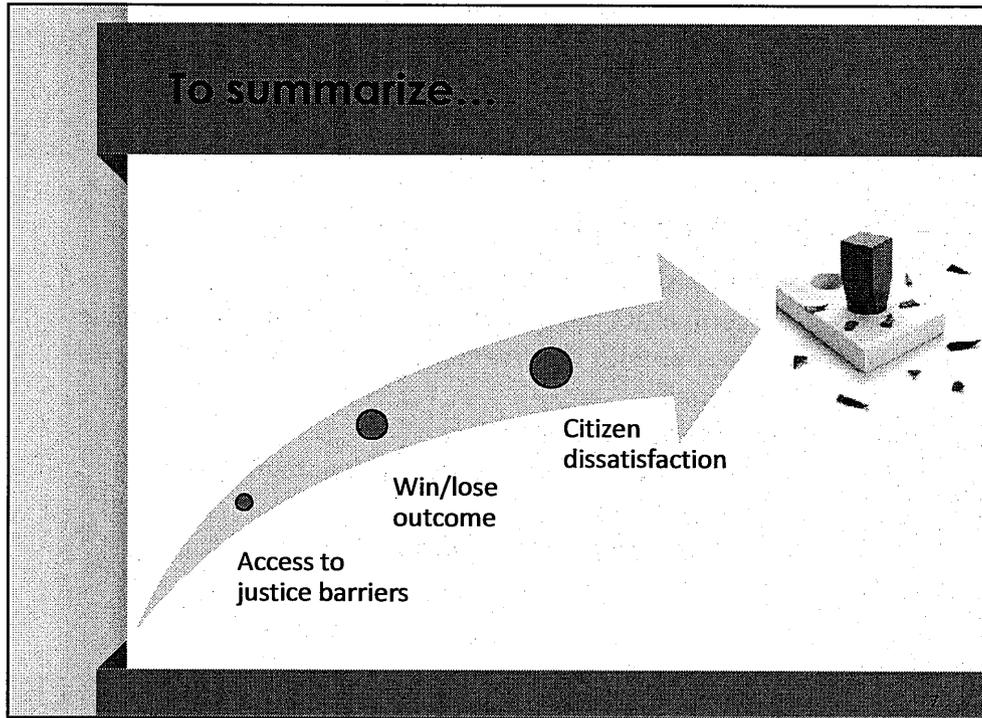
Cost

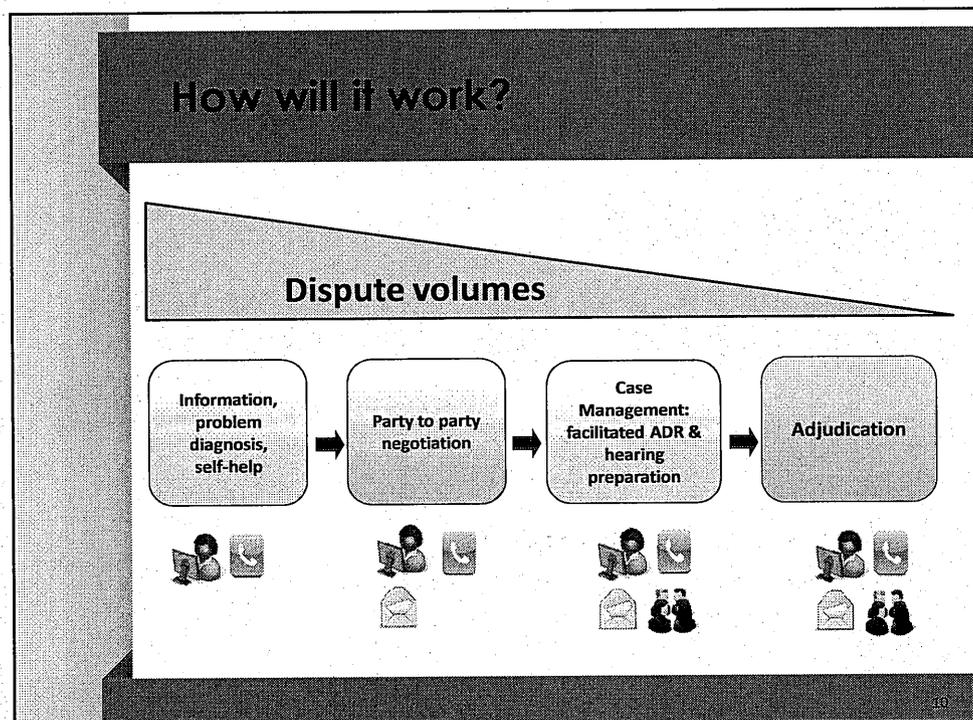
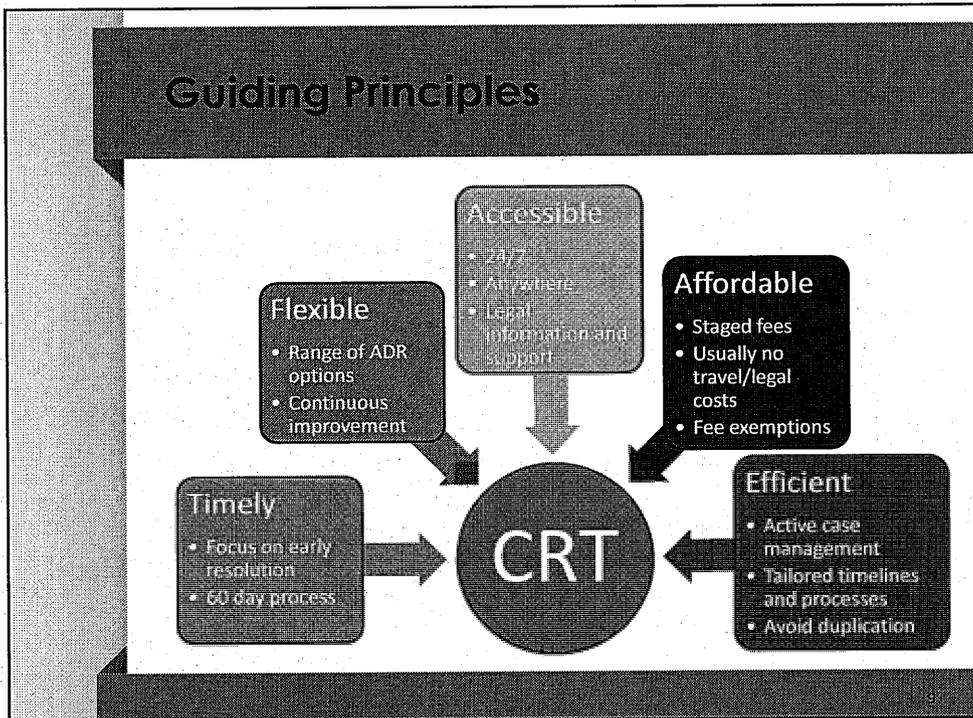
- Travel
- Legal fees
- Court costs (strata)



Proportion

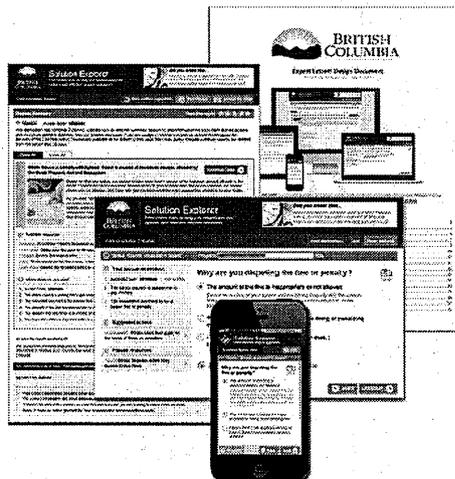
- Generic processes
- Generalist decision-maker
- Little ADR or case management





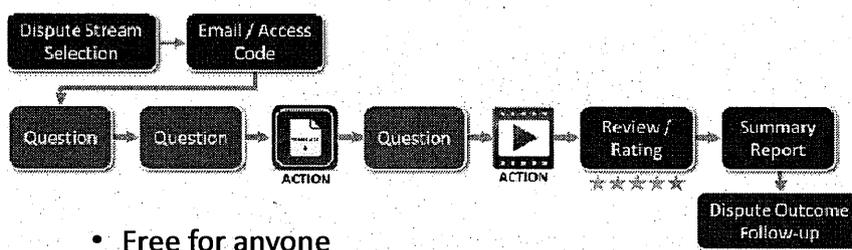
How will it work?

- Initially voluntary (mostly)
- Website available 24/7
- Flexible processes: negotiation, facilitation, adjudication
- Asynchronous interactions
- Mix of service channels, but no one left behind
- Telephone support



11

Solution Explorer



- Free for anyone
- Guided pathways
- Interactive question and answers
- Tools, templates, resources
- Resolution or preparation for CRT process
- Available 24/7

12



Solution Explorer

Free online tools to help you understand your options and effective dispute solutions!

Did you know that...
Working to resolve a dispute quickly is often the best way to minimize your total investment of time and money and getting yourself the best possible result.

Civil Resolution Tribunal
Find alternatives
Quit
Save and exit

Strata - Owner, occupant or tenant
Progress: 60%

Your dispute information

1. Access Code: aZb834n [email this](#)
2. The strata council is asking me to pay money
3. The requested payment is for a bylaw fine or penalty

Suggested actions

I am about: [Strata rules that apply to the issue of fines or penalties](#)

Popular resources

[Video: Strata disputes when they involve bylaw fines](#)

Why are you disputing the fine or penalty?

help

- The amount of the fine is inappropriate or not allowed
Based on reading of your bylaws and the Strata Property Act, the amount does not seem appropriate and fair or the amount exceeds the stated maximum amount for a fine or penalty.
- The strata didn't follow the right process in fining or penalizing me
- I don't think I did anything wrong or I don't think I contravened (broke) a bylaw
- None of these options describe my dispute

Back Continue



Solution Explorer

Free online tools to help you understand your options and effective dispute solutions!

Did you know that...
Working to resolve a dispute quickly is often the best way to minimize your total investment of time and money and getting yourself the best possible result.

Civil Resolution Tribunal
Find alternatives
Quit
Save and exit

Suggested Resource
Rate this ★★★★★

Make sure you are prepared before you continue

Use this checklist to make sure you understand the rules that govern fines in your Strata and that you have all your information ready. If you would like a copy of this checklist you can email it to yourself. As completing these steps can take time, feel free to save and exit this exploration to prepare, and then use your access code to return here when you are ready to continue.

Page: 1 of 1
Full Width



- Read the relevant areas of the BC Strata Property Act.
The specific sections for bylaw fines (under 9 - Part 7 - Bylaws and Rules, Section 230-232). You can view this [online bylaw checklist](#).
- Get a copy of your local Strata Corporation bylaws and read any sections relevant to fine processes and fine amounts.
Your strata may have specific bylaws and rules in regard to fines that are different than the Strata Property Act. Your strata corporation must provide you with a copy of your bylaws, but may charge a fee for a copy.
- Make sure you have copies of any letters of

Print
Download
Skip this
Store this and continue



BRITISH COLUMBIA

Solution Explorer

Free online tools to help you understand your options and effective dispute solutions!

Did you know that...
Working to resolve a dispute quickly is often the best way to minimize your total investment of time and money and getting yourself the best possible result.

Civil Resolution Tribunal
Find alternatives
Quit
Save and exit

Suggested Resource
Rate this ★ ★ ★ ★ ★

Strata Fine Letter Template

You can use this letter template to respond to the bylaw fine that was issued by your Strata Corporation. You can edit this template right here from your computer or device by replacing the [bracket] areas with your information.

If you edit the letter here, make sure you print or email your letter to yourself before you continue as this site does not save any personal information. When you "Save" this item and continue, only the blank template will be stored for future use and all changes will be lost.

Normal B U I [List Icons]

[Name]
[Address]
[Phone]
[Email]
[Date Sent]

Re: Notice [Notice # and Title] received on [Date Received]

It is my understanding that the bylaw fine issued to me in relation to [Name of Infraction] that I received on [Date Received] is in excess of the \$200 limit set by section 7.1.12 of the Strata Property Regulation under the Strata Property Act or the [Local Bylaw Limit Amount] limit set out in the strata bylaws in [Local Bylaw Section].

I am sending this letter to request that this matter be resolved by [Type whether you would like a reply letter or are requesting for this matter to be heard at the next Strata Council meeting here]

[Add anything else you would like to communicate here, or delete this line]

Print Email Skip this Save this and continue



BRITISH COLUMBIA

Solution Explorer

Free online tools to help you understand your options and effective dispute solutions!

Did you know that...
Working to resolve a dispute quickly is often the best way to minimize your total investment of time and money and getting yourself the best possible result.

Civil Resolution Tribunal
Start another exploration
Print Version
Send to my email

Dispute Summary
Rate this report ★ ★ ★ ★ ★

ID: 1234234 Access Code: a2b934n

You exploration has identified 2 claim(s). Use the tabs to view the summary, resources and information for each claim and the actions and resources available that may help you achieve resolution. If you are unable to resolve this dispute, options for engaging the services of the Civil Resolution Tribunal are available at the bottom of this page (fees may apply). Dispute summary reports are deleted from this server after 30 days.

Claim 01 Claim 02

Strata failure to comply with bylaws: Fined in excess of maximum amount allowed by the Strata Property Act and Regulation Review Claim

Based on what you told us, you appear to have been fined in excess of the maximum amount allowed by the Strata Property Act (\$200) or a lower amount as set by your strata bylaws. Before you continue, you should review your local bylaws and make sure that you know what the exact allowed fine amount is for your Strata.

As you have not been heard by us have reported to your Strata Council about this claim, you may want to consider raising this issue directly with the strata corporation by either (respectively) with a letter that outlines the specific sections of the Strata Regulation or Act that set the maximums (a sample template is in the resources). You can also request to be heard at a Strata Council meeting where you can present the excess fine amount claim and have it reduced to an appropriate amount.

Available resources

Resource: 2014 Strata Property Regulation Act - Section 7.1.12(s)

Learn about: Strata rules that apply in the issue of fines or penalties

Template: Excess fine amount letter

Video: Strata disputes when the receive bylaw fines

Learn about: General tips for writing letters to your Strata Council

Information you provided

- Access Code: a2b934n
- The strata council is asking me to pay money
- The requested payment is for a bylaw fine or penalty
- The amount of the fine is inappropriate or not allowed
- The amount that was fined is in excess of the allowable amount according to the Strata Property Act
- You have not written a response letter to your Strata or had a Strata Council meeting about the fine or penalty

Unable to reach resolution?

We always recommend that you try to resolve your claims using the information and resources provided above. If you have already attempted to resolve your claim(s) but were not successful, you can move forward with services provided by the Civil Resolution Tribunal.

Recommended Next Step: Online Negotiation

Service Fee: \$29.99 Start Process

What you will need to request this service:

- Your contact information including email address
- The contact information and email address(es) for the other party or parties you are issuing the claim against
- Evidence for each of the claims you carry forward and what you are seeking for them to be resolved.
- Ability to make an online payment by Visa or Mastercard (some exceptions apply)

Negotiation

- Connects parties to encourage negotiated settlement:
 - Zero to nominal cost
- Low intervention
 - Negotiation resources
 - Opportunity to avoid spending more time/money on dispute
- Occurs during facilitation/case management queue:
 - Efficient/avoids duplication



← Return to Case List May Contain Settlement Discussions Will Not Contain Settlement Discussions Welcome: Mike Harlow [log out]

Case Claims (2) People Documents (2) Tasks/Schedule (2) Communications (2)

Notifications Drafts (1) Communications (2) Public Private Both Internal Staff

Filter Disputations by Status: Facilitation Type: All Search: Subject-Date

Show non-primary Show inactive

All Dispute Contacts

Party A
Contact Group
Jane Miller (Hawaii)
Chris Miller (Support)

Party B
Bob Smith (Support/Staffing)
Bobsmith Contracting (Hawaii)

Party C
Sarah Matthews (Hawaii)

Non Party
Doug Willis (Business)

All Case Staff

Facilitator
Mike Harlow

Member
Frank Holmes

Intake & Support
Karen Williams

Site Administration
Greg Jones

Claim 02 Agreement - Sign Off Public Approval: Open

To: A-J Miller, B-Smith

CRT mharlow, 20Mar-14, 10:00AM

Hi Everyone, here is the final agreement. Please read it carefully and press the 'approve and sign' button to record your approval. I'll send out a final copy once you have signed.

Agreement.pdf

Review Claim 02 Resolution Agreement Public Request: Open

To: A-J Miller, B-Smith, C-Matthews

Disc: Thurs Mar 20, 2014 - 4:30PM

A-J Miller, 21Mar-14, 4:18PM

This reflects what we discussed. I just want to make sure that by agreeing to this that I am not agreeing to the issue with the floors, or setting any expectations there.

Mark Read

B-Smith, 20Mar-14, 5:25PM

I'm fine with the way this is worded. Please send me a copy to sign when it is ready.

CRT mharlow, 20Mar-14, 10:00AM

Hi Everyone, here is the draft resolution agreement I created for the Bob's claim regarding extra work performed. Can you please review this and let me know if you have any issues with the wording here?

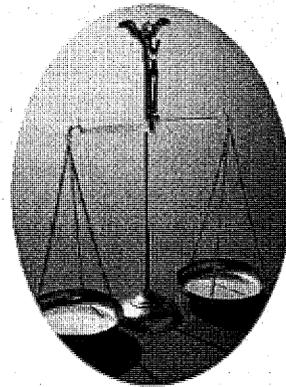
ProposedAgreement.pdf

Next steps with Claim 02 Private Discussion: Closed

New from Selected New Selected Add Comment Add Manual Response Reply All Page 1/6

Adjudication

- Mostly part-time tribunal members
 - Experts
 - Located all over province
- Primarily written hearings
 - Some telephone/video hearings
- Brief written reasons
 - More detailed reasons on request
- Decisions enforceable in court
 - No need to sue on agreement
- Decisions can be:
 - Appealed (small claims)
 - Judicially reviewed (strata claims)



CRT: How we're putting the public first

- Empower people to take charge of dispute resolution
- Accessible anywhere, anytime
- Variety of dispute resolution methods
- Case manager/facilitator to assist participants
- Telephone support to use platform
- 60 days end-to-end, in most cases
- Continuous feedback and improvement

Challenges

- What about people who are unwilling/unable to use the technology?
- What happens if there are problems with the technology?
- What about people who want to use a lawyer/support person?
- When will the CRT open its doors?

21

Where are we now?

Fall/Winter 2014

- Conceptual designs
- Technology partner selected
- Hiring key staff
- CRT implementation website launch

Spring 2015

- Appointment of adjudicators
- Hiring case managers
- Rules & templates
- Technology build continues

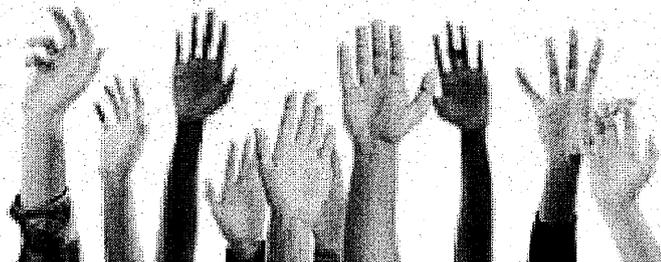
CRT Launch!

22

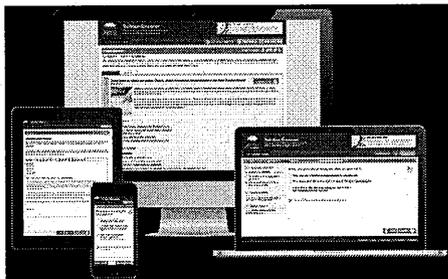
What will the future look like?

- CRT is pioneering a new model for the civil justice system:
 - increased access to justice for public
 - seamless, user-focussed, end-to-end service
 - choice of tools and channels
 - commitment to continuous improvement
- model will be applied across the administrative justice sector in coming years
 - tailored to each tribunal's process/jurisdiction

Questions?



More information



Shannon Salter
Shannon.salter@crtbc.ca

<http://www.ag.gov.bc.ca/legislation/civil-resolution-tribunal-a>
Implementation site coming soon!

PROCEDURAL FAIRNESS
Ensuring fairness and accountability
of government decision-makers

Sarah Khan

Lobat Sadrehashemi

BC Public Interest Advocacy Centre



**All government decision-makers have
the duty to act fairly**

- What do we mean by “government decision-makers”?
- Anyone employed by government with the authority to make a decision about your rights, entitlements or services you will receive
 - Ex: intake worker at MSDSI, tribunal members at the RTB or EAAT, an immigration officer, etc.



The Supreme Court of Canada on procedural fairness

“The values underlying the duty of procedural fairness relate to:
the principle that the individual or individuals affected
should have the **opportunity to present their case fully and
fairly**, and
have **decisions affecting their rights, interests, or privileges**
made using a
fair,
impartial, and
open process,
**appropriate to the statutory, institutional, and social
context of the decision.**”

(Baker v. Canada (Minister of Citizenship and Immigration))

2



All government decision-makers have the duty to act fairly

- What do we mean by the “duty to act fairly”
 - Two basic elements:
 - the right to be heard (right to a fair hearing)
 - the right to an unbiased decision-maker
 - Level of fairness owed to you is not the same in every situation – it depends on the context
 - The seriousness of the consequences of the decision
 - How “judicial” or court-like the proceedings are
 - Whether there are any opportunities to appeal a decision

3



Right to be heard

Varies with the context but at the **very least**:

- **Right to know the case against you**
 - You need to be informed about the case that the government has against you
 - What are the facts they are relying upon? What are the issues they raise? What evidence do they have?
- **Right to respond to that case**
 - You need to be given a chance to respond to the allegations that have been made
 - You may be able to respond in writing, in a hearing, or at an interview
 - You may be able to summon witnesses, or cross-examine government decision-makers

4



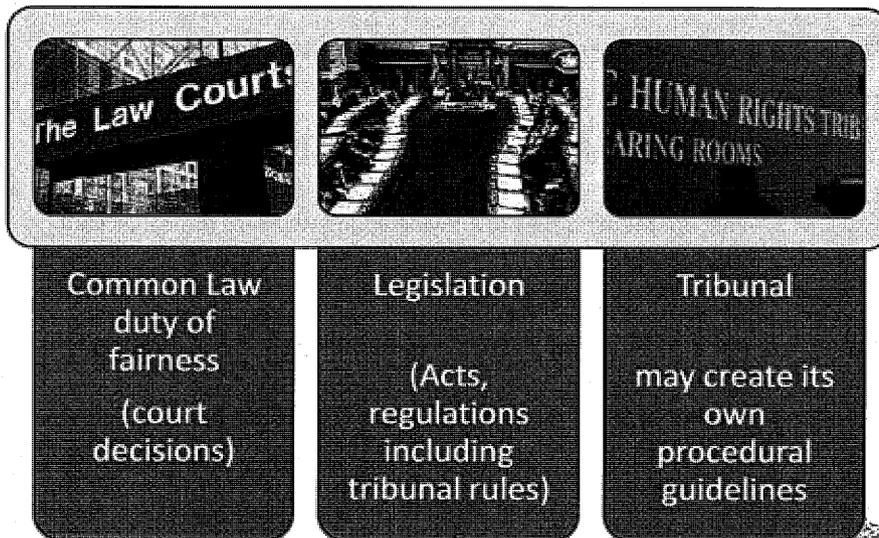
The right to a fair hearing may include:

- | | |
|--|---|
| • Sufficient notice of the time and place of the hearing | • Right to test the evidence that goes against you |
| • Sufficient notice of the subject matter of the hearing | • Right to know all of the evidence that the decision-maker is relying upon |
| • Right to be present during the hearing | • Right to respond to the evidence that is presented |
| • Right to be represented | • Right to make representations or submission |
| • Right to present your case | • Right to reasons of a decision |
| • Right to know case against you | |

5

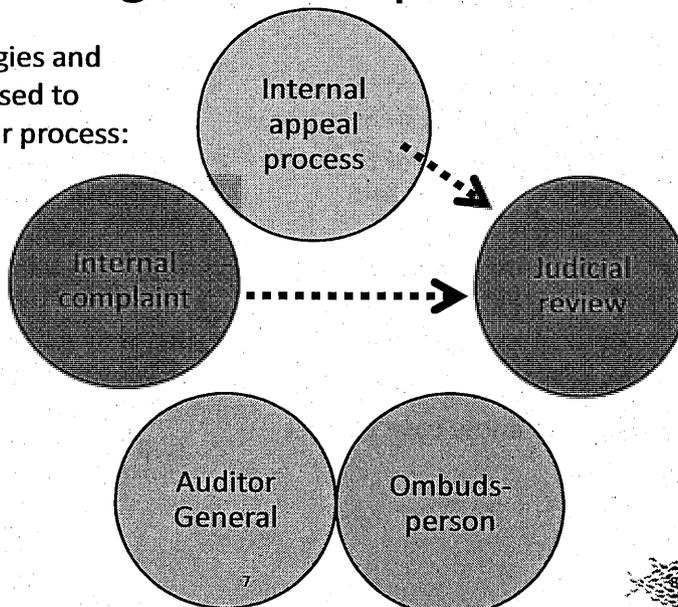
6

Where are the rules of procedural fairness?



Resolving an unfair process

Different strategies and bodies can be used to resolve an unfair process:



Internal complaint

- A complaint could be filed within the government agency against the decision made or the conduct of the decision-maker
 - Example: a service quality complaint filed about BC Employment and Assistance services at the Ministry of Social Development and Social Innovation
- Sometimes the response to such a complaint could be judicially reviewed

8



Internal appeal process

- Some government bodies offer a formal internal process to reconsider or review a decision
 - Example: If income, disability or hardship assistance is denied, discontinued or reduced
 - You can ask for reconsideration by the Ministry
 - If you disagree with the reconsideration decision, you can appeal to the Employment and Assistance Appeal Tribunal
- The appeal decision can generally be judicially reviewed by a court

9



MSDSI Principles of Fairness

- The duty to act fairly is the most basic component of administrative law. For the appeal process to meet the principles of fairness, it is essential that:
 - both parties (the ministry and the *appellant*) have the same information available to them about the case being appealed
 - both parties have the opportunity to present their case and hear the case against them
 - the person deciding the matter is not a *party* to the original decision being appealed
 - the person hearing the case must be impartial and independent of the outcome
 - clients are informed of all reasons a decision was made
 - clients are informed of their right to have their case heard

http://www.gov.bc.ca/meia/online_resource/decisions_reconsideration_and_appeal/appeal/policy.html#4

10



Judicial review application

- If a decision is unreasonable, or lacked procedural fairness, you might be able to file for judicial review of the decision by a court
- There are strict time limits: judicial review of EAAT decision must be filed within 60 days of decision
- You will likely need to use all available internal appeal processes within a ministry or agency first

11



Ombudsperson

- They may be able to investigate unfair treatment by BC ministry or agency
- They can investigate issues of administrative unfairness, attempt to create resolutions, and make recommendations to avoid unfairness in future

12

Auditor General of BC

- Conducts independent audits on how well BC government is managing its responsibilities
 - Financial audits: control on government financial reporting
 - Performance audits (value-for-money audits):
 - Is government achieving something that needs doing at a reasonable cost?
 - Are government managers making the best use of public funds?
 - Are government managers adequately accounting for the prudent and effective management of the resources entrusted to them?
- DOES NOT investigate individual complaints
- Cannot investigate municipal governments & agencies
- Can receive comments from public and NGOs on topics to audit

13

CASE EXAMPLE #1

A client comes to you two days before she has a hearing scheduled at the RTB.

The client's friend had helped her draft her application for a rent reduction based on a disruption in her building's elevator service.

The client had a falling out with her friend who has now refused to continue to help her.

The client is physically disabled, elderly, and extremely anxious about being able present her concerns to the Tribunal.

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CASE EXAMPLE #2

Your client is challenging a decision saying that she doesn't qualify for a moving supplement.

The intake worker rejects the application and tells your client that she has heard from her ex-boyfriend that she was just trying to get some extra money and that the eviction notice was fake.

When your client tries to ask for more information, she is told that the decision is already made. Your client applies to reconsider the decision.

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CASE EXAMPLE #3

You are representing your client at a RTB telephone hearing.

You have advised the RTB that you intend to call two witnesses.

The two witnesses are tenants who live in the same building as your client who had been told by the property manager that the landlord was trying evict your client so that they could raise the rents.

The RTB member interrupts the questioning of your first witness, saying that they do not need to hear anything further and do not need to hear from the second witness.

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Rules of Procedure for the Residential Tenancy Branch

<http://www2.gov.bc.ca/gov/DownloadAsset?assetId=E6D9CB62397F41018FCC988EF511B41B>

Practices and Procedures for the Employment and Assistance Appeal Tribunal:

[http://www.gov.bc.ca/eaat/popt/practice and procedures.htm](http://www.gov.bc.ca/eaat/popt/practice_and_procedures.htm)

17



Provincial Training Conference 2014
Seniors Advocacy – an introduction to ‘elder law’ issues
BC Centre for Elder Advocacy and Support – Kevin Smith – Staff Lawyer

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1. OLDER ADULTS

Older adult(s) (or “senior(s)” – not “old folk(s),” not “the elderly”) are increasing in number as the ‘baby boomers’ age. Over the coming years, the number of seniors in BC will nearly double to become almost 25% of the population. The fastest growing segment of the population is 85+. Immigrants compose a relatively large (28%) proportion of seniors.

According to geriatrician Robert Moulias, in industrialized countries only a small minority (about ten percent) of people in later life are “the rich, young-like” (such as the recently retired). Disabled seniors or dependent frail older persons are also a minority but larger in size. “The large majority of the 60-100 year olds are neither young nor physically nor mentally dependent.” About 93% of seniors will live out their lives at home, likely with some support, rather than in a care facility.

Most of low-income seniors’ money is spent on: housing; food; transportation; and, health related costs. Many older adults are working longer to help pay for these expenses. The elderly poor are generally widowed, and living alone – widowhood is a significant transition point for older women. Meyer-Harrington notes that to be old, female and poor is a “triple jeopardy.” Understanding the role of and the intersection of gender with aging is essential. Seventy per cent of low income women 65+ have two or more chronic conditions – they are more likely to die prematurely.

Vulnerability

There are three main risk factors that contribute to vulnerability in older adults: health status; cognitive ability; and, social network. The oldest adults (85+) have greatest vulnerabilities to exploitation by institutions and individuals due to the worsening of health and cognitive abilities and the reduction in social support over time. Other sub groups have equal or arguably more risk of exploitation because of dual/multiple identifications with other oppressed groups including: low socioeconomic status; ethnic background; and, rural living.

Older adults are often economically vulnerable because their cost of care often exceeds their income. In particular, chronic illness increases an older adult’s dependency and cost of living. The impairments caused by chronic illness and the need for long term care increases directly with age – they say for many the last 10 years of life are spent in illness.

Poverty among seniors is often an accumulation of disadvantages over their lifetime, race and gender differences, and structural issues. The *Special Senate Committee on Aging* noted that many seniors can’t understand the complex programs available for them, and others are penalized due to interactions between federal and provincial programs. Access to services and benefits are a major challenge for low income seniors.

United Way - Seniors Vulnerability Report

The United Way published a report in 2011 on the vulnerability of seniors in the Greater Vancouver area and the Sea-to-Sky corridor. It found that vulnerabilities are most concentrated in certain groups of 65+ seniors. Groups most affected include:

- The “oldest old” women (85+);
- Unattached, single-income seniors;
- Visible minority seniors;
- Aboriginal seniors;
- Recent immigrant seniors;
- Seniors without a certificate, degree, or diploma; and,
- Seniors with mobility limitations and/or chronic illnesses.

It identified nine ‘dimensions of vulnerability’ for these populations:

1. Economic insecurity
2. Social isolation
3. Inadequate and unaffordable housing
4. Poor mental and physical health
5. Inaccessible transportation and ‘built environments’
6. Food insecurity
7. Physical mobility limitations
8. Marginalized identities and cultures
9. Barriers to multi-lingual communication and lack of multi-lingual services

Autonomy vs Dependence

Vulnerable older adults may need protection, but protection is often antithetical to autonomy – the more we help older adults the more we take away their autonomy. There is a need to balance the right to be autonomous while protecting the vulnerable elderly. But older adults should also be free whenever possible to expose themselves to risk, just as younger adults can. The Fraser Health Authority has developed a guideline on “*Supporting Residents to Live at Risk in Residential Care.*”

To reduce elderly people’s dependency we must recognize and expand their rights. Legal advocates, who should by training be sensitive to the balancing of competing values, have a major role to play in the sorting out of the proper mix of protection and autonomy.

Third Parties

One area where the tension between autonomy and dependence comes into play is when dealing with interested third parties who come to an appointment – family members, friends, neighbours. They may be very involved in helping the older adult with important matters. They might even have arranged the appointment for assistance. A useful American Bar Association pamphlet ([Why Am I Left In The Waiting Room - Understanding the 4 C's of Elder Law Ethics](#)) explains to ‘friends’ and relatives why a legal worker needs to meet with the older adult alone if at all possible to properly address what are called “the four C’s of elder law ethics:”

1. **Client ID** (who is the client – what are instructions)
2. **Conflicts of Interest** (only one client if possible)
3. **Confidentiality** (and protection of privilege)
4. **Competency** (assessing capacity)

It can be useful for a legal services organization to develop a ‘third party protocol’ setting out the limited circumstances when a third party is included in interviews, and when the third party might be the ‘client’ rather than the older adult, or a joint client.

Barriers to Accessing Justice

Older adults accessing justice encounter various barriers:

- May be unaware of their rights, especially in area of rights of residents of seniors housing;
- Many areas of law are complex – thick statutes, overlapping jurisdictions
- Physical barriers, lack of accessible transportation or services;
- For those living in care homes – the staff (who may be the problem) may be only link to outside world;
- Fixed income and limited coverage by BC legal aid;
- Court proceedings often lengthy
- Not a strong ‘elder law’ bar
- If a legal process pits an older adult against their care provider or family member, they will be reluctant to file complaints, as they must continue to depend on this care provider into the future, or they may want to keep ‘peace in the family.’

Working with Older Clients

A thorough initial interview is fundamental to the development of a plan for effective advocacy with an older adult. For example, the information gleaned from a thorough interview allows the legal advocate to assess any financial or housing choices in terms of that client’s likely future. Medical information including medical history may be important, especially if legal capacity may be an issue.

Some practical concerns:

- Early morning appointments vs the ‘sundown effect’
- House calls
- Good, indirect lighting
- Some elderly are suspicious of lawyers
- Some elderly may be confused or paranoid which may be the direct result of medication

Legal advocates must be cognizant of the stress of working with elderly clients who, perhaps more than others, may:

- fear their own mortality
- feel anger
- regret their experiences and behavior, or
- regret the behaviour of their own children.

Timeliness

It is important to be timely in working on seniors matters. Timely access is important to older adults with precarious or deteriorating health. Procedural processes that result in delays can work to systemically disadvantage older adults and may effectively negate their rights, including lengthy reviews or appeals. On the other hand, many seniors are systemically disadvantaged by the short time frames in areas such as RTA evictions.

Death can make an elderly person’s problem moot. So it is urgent to get to elderly clients cases – don’t let them be ‘dog files.’ Older adult or their concerned friend/family member who seeks legal assistance usually need help now, not in the distance future or when it is convenient for the legal worker.

2. AGEISM

Ageism is defined as the *process* of systematic stereotyping and discrimination against older people because of age, with a distinct valuing of younger age groups. Ageism allows people to covertly justify certain discriminatory behaviours, and tolerate activities towards older adults that would be considered unacceptable if experienced by other adults. *[First coined by Robert Butler in 1969].*

Age discrimination is the act of treating someone differently and poorly, or harassing or insulting someone, because of their age. Age discrimination may also happen when a rule, condition, policy or practice that is the same for everyone has an unfair effect (“disparate impact”) on a person because of their age. Ageism has been called a ‘pervasive and sinister’ plague in Canada – in a recent poll eight in 10 agree that older seniors are seen as less important - and more likely to be ignored - than younger generations. One-third of Canadians admit they’ve treated someone differently because of their age, and 63 per cent of seniors over 65 say this has happened to them.

Examples

Examples of ‘ageism’ in daily life:

- Telling jokes and giving birthday cards that make fun of old people
- Seniors are treated as invisible, rejected as unattractive
- Only 2% of TV characters are 65 yrs or older (although they make up 12% of population)
- Older adults are ignored or not taken seriously
- Talked down to and patronized
- Treated with less dignity and respect
- Assumptions – can’t hear, can’t understand
- Denied employment, promotion, position of leadership
- Refused loan, rental housing, medical treatment
- Preyed on by vandals, thieves, fraudsters and scam artists

Ageism and Resource Distribution

Ageism and age discrimination are often harder to address than other forms of discrimination as older adults’ needs easily become subsumed to the needs of other age groups or to the administrative needs for efficiency or cost cutting. Given pressure for scarce resources and given similar need, the fact that one is older often becomes the justification for not receiving a benefit or service or not being treated as a sufficiently high priority. In any ‘cost-benefit analysis’ based on remaining years or future productivity, older adults are always at a disadvantage. *[Law Commission of Ontario]*

Ageism and Health Care

Ageism is reflected in the health care system by the lack of, or absence of health services for older adults. Decisions are often made about providing health services based on age (“age rationing”). Health care providers often presume to make decisions about the quality of older people’s lives. Seniors often feel forced to make care decisions. There is gender bias or paternalism in deciding on surgeries – more radical mastectomies, less reconstructive surgery. Seniors are often omitted from the pool of subjects for clinical drug trials – even though these drugs may have a different effect on older adults.

There is less treatment for mental health issues for older adults. They receive 15% of mental health care, compared to 80% for those 20-64. Instead there is often over medication [prescribing anxiety meds doubles over the age of 65, hypnotic medication use more than triples]. **NOTE** – 40% of all emergency department visits by older adults are medication related.

3. SENIORS AND AGE DISCRIMINATION

BC Human Rights Code (the “Code”)

The **Code** applies to all businesses, agencies, and services in B.C., except those regulated by the federal government. It protects older adults from discrimination in **public situations**, which include schools, workplaces, universities, hospitals, medical clinics, stores, restaurants, provincial and local government offices, and transit services. It also protects older adults against discrimination in printed publications and in areas such as employment and tenancy.

Employment

Mandatory retirement has been abolished in BC since January, 2008. An employer cannot refuse to interview, hire, promote or decide to fire an employee because of their age (19 and over). An employer cannot make age an issue or advertise for a certain age when hiring. An ad must not say “young people wanted.” An employer cannot refuse an older applicant because “the job requires a lot of energy and enthusiasm and the company is looking for someone with career potential.” During the hiring process, an employer cannot ask anything that could reveal age, other than whether they are of legal working age. After hiring, an employer might legitimately need to know the employee’s age for a purpose like enrolment in a pension or benefits plan.

There may be some jobs with age limits because of the duties or needs of work or because of safety issues or dangers. These true demands of a job are called “bona fide occupational requirements.” The employer must be able to show that the reasons for the age limits are acceptable under the **Code**. A firefighter in BC is presently fighting his fire department’s mandatory retirement at age 60, which is claimed to be a bona fide occupational requirement.”

Employers’ pension plans can make distinctions based on age. They can set early and standard retirement ages, but cannot force an employee to retire. These age distinctions allow programs to keep operating. Group or employee insurance plans, whether self-funded by employers or provided by a third party, can also make distinctions based on age.

Tenancies

Generally, landlords cannot deny someone the right to occupy space as a tenant because of age. Landlords cannot evict tenants because of their age, and cannot use age as a term or condition of a tenancy agreement.

With some exceptions, the **Code** does not apply to “55+ housing” – landlords can restrict rentals to persons 55 years and over in seniors’ buildings. After someone moves in, the **Code** will apply.

NOTE - Landlords can restrict rentals based on age in a rental unit or house where the person renting will share the use of sleeping, bathroom or cooking facilities with the landlord.

NOTE – the **Code** also does not protect against age discrimination in the purchase or sale of property.

Retail & Public Services

A person or business that provides services to the public cannot discriminate against someone because of their age when providing:

- short-term accommodation, such as a hotel room;
- public services, such as health care, restaurant or retail services;
- government services or transit; and

- other public facilities, such as recreation centres.

Working on Accommodation

As you probably know, people when claiming a benefit or entitlement, are entitled to have their difference accommodated, to the point of undue hardship, under the **Code**. Traditionally, accommodating a “difference” was seen as a joint process – the person claiming the differential treatment helps the other party understand how they can be accommodated to access and benefit from the entitlement. With older adults, a challenge is that the health care and housing systems are very complex. The older adult may not know what resources are available, and may not be able to identify ways they can be accommodated.

Treatment of Age Discrimination Cases

It has been noted:

“Age cases tend to be treated differently than other discrimination cases...The most notable difference from a human rights perspective is the lack of a sense of moral opprobrium linked to age discrimination which in comparable circumstances would generate outrage if the ground of discrimination were say race, sex or disability.”
[Ontario Human Rights Tribunal]

4. INCOME SECURITY

Overall, thanks to income security programs, today's seniors, while not affluent, are financially secure. But there are vulnerable groups:

- Recent immigrants
- Unattached older adults (single, widowed, divorced or separated);
- Aboriginal seniors
- Those with <10 yrs. in the labour force
- Those who worked in 'precarious' work their working life – no pension, little or no savings

Federal Income Security Programs

The federal government manages two major public pension ('income security') programs through Service Canada:

- **Old Age Security (OAS)**, based on years of living in Canada, and
- **Canada Pension Plan (CPP)**, based on years of working in Canada and the amount paid into the plan.

OAS benefits represent about 14% of pre-retirement earnings for someone earning at the average wage, while CPP provides about 25%. It is generally considered that retirement income should replace about 60% to 70% of pre-retirement earnings for retirees to maintain their standard of living in retirement.

Old Age Security Pension (OAS)

OAS is considered "the basic building block of Canada's retirement income system." [*Can. Centre for Policy Alternatives*]. Older adults build on this foundation with CPP pension, savings (RRSPs; TFSA), private pension plans, or GIS and SAFER supplements [see below re SAFER program].

OAS is a flat monthly benefit that goes to everyone who applies. There is no requirement to stop working to receive OAS. You must be a citizen or legal resident of Canada who has lived in the country for 10 or more years as an adult (after turning 18). With 10 years residency you get the minimum pro-rated entitlement, with 10-39 years in Canada a prorated amount, and with 40+ years you receive the full OAS entitlement (presently \$540.12/mo.)

NOTE – even if an older adult doesn't meet the residency requirement, they may still qualify for a pension since Canada has social security agreements with many countries.

Older adults should apply for OAS six months before they turn 65, or when they receive the OAS application form. If they apply late, they are entitled to a maximum 11 months of retro, plus the month in which they receive the application, provided all conditions of eligibility are met.

If the older adult was not born in Canada or has not lived continuously in Canada since age 18, they must submit proof of legal status in Canada such as citizenship or immigration papers. Also, they must submit a statement of all the dates they arrived in Canada and departed Canada from age 18 to present. They may be asked to provide documents to substantiate this. Putting together a complete statement of travels, and adequate documentation, can be a significant challenge for older immigrants. For help in making an application, they should contact their local Service Canada office, or agencies that help seniors in their community.

Claw-back

Pensioners with an individual net income above \$70,954 for 2013 must repay part or all of the maximum OAS amount. For each \$1 above this amount, OAS is reduced by 15¢. The repayment amounts are normally deducted from their monthly payments before they are issued. The full OAS pension is eliminated when a pensioner's net income is \$114,793 or above.

Guaranteed Income Supplement (GIS)

GIS is an additional income-tested monthly benefit paid to those who receive OAS and have little or no other income. Income from OAS is taxable; GIS supplement is not taxable. Older adults must apply to receive GIS – then it will renew each year assuming they file an annual Income Tax return. Sponsored immigrants are not eligible for GIS during their sponsorship period up to a maximum of 10 years – subject to exceptions. In 2011, 34% of all OAS beneficiaries received some GIS. According to one estimate, OAS and GIS combined make up 36% of the average income of seniors. For low-income seniors, it's between 66% - 75%.

Allowance & Allowance for the Survivor

The *Allowance* is extra money for couples who live on only one OAS/GIS pension in the household, and the other spouse is not receiving OAS/GIS as they are under 65 (between 60-64). If the pensioner spouse dies while the other spouse is still between 60-64, this surviving spouse might be eligible for the *Allowance for the Survivor*. **NOTE** – if this other spouse remarries or lives in a common-law relationship for at least one year, their *Allowance* or *Allowance for the Survivor* will end.

Old Age Security Benefit Payment Amounts October -December 2014	
Type of benefit	Maximum amount
Old Age Security pension	\$563.74
Guaranteed Income Supplement (GIS)	
Single, widowed, or divorced	\$764.40
Spouse/common law partner of someone who:	
does not receive an OAS pension	\$764.40
Receives full OAS pension	\$506.86
is an Allowance recipient	\$506.86
Allowance	\$1,070.60
Allowance for the Survivor	\$1,198.58

OAS benefit amounts are reviewed in January, April, July and October to reflect increases in the cost of living as measured by the Consumer Price Index (CPI).

Canada Pension Plan (CPP)

There are three kinds of benefits available from the Canada Pension Plan:

- Retirement pension;
- Survivor benefits which includes a one-time death benefit (intended for funeral expenses), the Survivor pension and the Children's Benefit.

- CPP-D - disability benefit which includes benefits for disabled contributors and for their dependent children

Our focus will be on the CPP retirement pension, which provides income to working Canadians after they retire. The amount of CPP pension income they receive depends on the amount they (and their employer – unless self-employed) paid into the fund from their wages over the years they worked in Canada. An older adult can receive CPP pension if they have contributed and:

- they are 60-64 years old and have stopped working or have a low income, or
- they are 65 years or older.

If they start collecting at 60 yrs. – their rate then remains the same after they turn 65. If a contributor chooses to work past 65, they can apply and be receiving CPP benefits at the same time as their salary. They can also choose to continue paying premiums into CPP up until age 70; this will increase the amount they receive in retirement benefits. Older adults must apply for CPP pension. CPP benefits are taxable income.

CPP pension rights are not affected if an older adult has changed jobs or moved from one province to another. An older adult can apply for and receive their CPP benefits from anywhere in the world.

NOTE – there are special rules for Quebec.

Survivor Benefits

Paid to the person who, at the time of death of the CPP pensioner, is the legal spouse or common-law partner of the deceased. If they are a separated legal spouse and there is no cohabiting common-law partner, they still may qualify for this benefit.

Child-Rearing Dropout Protection

An older adult may qualify for increased benefits if they have contributed to CPP over their working life but they had to ‘drop out’ of the labour force to raise children born after December 31, 1958. **NOTE** – They must request this ‘child-rearing dropout protection’ when they apply for CPP benefits as this is not applied automatically.

Veterans Affairs Canada (VAC)

Veterans Affairs Canada provides a variety of services and benefits for eligible Veterans, their families and caregivers, both at home and in community facilities. These include disability benefits, financial assistance for low-income Veterans and their families, health care, respite care, palliative care, special equipment, and support for home adaptations for Veterans with special needs. VAC can also help bring together services offered by the community and the province to meet the needs of Veterans, and their families and caregivers. For more information, call Veterans Affairs Canada or visit their [web site](#).

EI & Seniors

A discussion of EI benefits is beyond the scope of this course. We will mention that older adults who are still working, or wanting to work, are eligible for EI benefits. They must meet the qualifying and entitlement conditions.

The receipt of pension income does not prevent an older adult from receiving EI benefits. If they return to work and accumulate enough insurable hours and meet the entitlement conditions to set up a claim, most ‘pension’ income will not be deducted from their EI benefits. EI makes a distinction between pension income “resulting from any employment” (e.g. – CPP, employer’s pension plan) and other pension income (e.g. - ‘personal pensions’ such as RRSPs or RRIFs, Survivor’s Pensions, Veteran’s Affairs pensions).

Those 'resulting from employment' are considered 'earnings' and are deductible. If a person re-qualifies for EI benefits after the date on which payment of the pension begins, all or part of the pension is not considered to be earnings. The interaction between EI benefits and pension income is a complicated area and each case should be carefully reviewed.

International benefits

If an older adult has lived and worked in another country, they may be eligible for social security benefits, either from that country or from Canada. For information on how to apply for international benefits, contact the International Benefits Program [see Resources, below].

Provincial Programs For Seniors

Seniors Supplement

The Senior's Supplement is a monthly payment from the provincial government to low-income seniors who need a "top-up" to bring their OAS, GIS or federal Allowance incomes up to BC welfare levels. It is automatic if they qualify – they don't need to apply. The Supplement is also automatically paid to people aged 60 to 64 who receive an Allowance and are married to an OAS pensioner. The Senior's Supplement is available under BC's Employment and Assistance Regulation.

Shelter Aid For Elderly Renters (SAFER)

SAFER provides monthly cash payments to eligible BC residents. They must be 60+ and pay more than 30% of gross (before tax) monthly household income towards the rent. This includes the cost of pad rental for a manufactured home (trailer) owned and occupied. Those living in subsidized housing, equity co-ops, or receiving regular social assistance or PWD are not eligible.

Seniors and Social Assistance

Older adults who are ineligible for OAS or GIS, and need money for food, housing, clothing and other basic needs, may be eligible for provincial welfare. They may also be eligible if they are over 65 and on OAS/GIS but are supporting a spouse and/or dependent children who do not receive any benefits and have very low incomes. If ineligible for welfare (no status) they may be eligible for hardship assistance. Between age 60-64 older adults on welfare are expected to do a job search and to apply for early CPP pension.

Enhanced Medical Coverage

Older adults receiving welfare may qualify for enhanced medical coverage from the Ministry of Health Services. Enhanced coverage includes:

- Medical Service Plan coverage;
- PharmaCare
- MSD-sponsored health assistance such as: orthodontia, medical supplies, medical equipment, extended therapies, orthotics, and medical transportation.

Basic Medical Coverage

Older adults who have moved from provincial assistance to federal income security may still be entitled to some basic coverage:

- Medical Services Plan,
- PharmaCare,
- basic dental, optical, and,
- other approved medical supports.

Appeals

OAS/ CPP/ EI

Appeals of denial of OAS, CPP or EI go to the new Social Security Tribunal (SST), which started operation in April, 2013. In all cases the appellant must have first requested a 'reconsideration' from the respective Ministry involved. The possible steps of an appeal are:

Reconsideration → SST General Division → SST Appeal Division [with leave] → Federal Court [judicial review]

The General and Appeal Divisions each have an *EI Section* and an *Income Security (CPP/OAS) Section*. Appeals of EI decisions are to be filed within 30 days after decision was communicated to appellant, CPP/OAS appeals are to be filed within 90 days. Tribunal members hear appeals in both General and Appeal Divisions by teleconference or videoconference facilities whenever possible. Participation in these 'virtual' hearings, and electronic document filing and communications to and from the Tribunal will present a challenge to older adults (and perhaps even their advocates!). There is no further appeal from the Social Security Tribunal. Review is limited to a 'judicial review' of SST decisions to the Federal Court of Appeal. Judicial review is beyond the scope of this presentation.

Provincial Benefits

Appeals of provincial social assistance go to the Employment and Assistance Appeal Board (EAAT). Discussion of EAAT appeals is beyond the scope of this presentation.

5. SENIORS HOUSING

Introduction

There are various housing programs available for seniors – from help living at home ('aging in place') to various forms of supportive living. A possible path for a senior in terms of their housing might be:

Independent living ⇨ Supportive Housing ⇨ Assisted Living ⇨ Care Facility ⇨ Hospital/Hospice

Independent Living

Most seniors want and will live independently in the community. It is estimated that 93% of BC seniors will live out their lives in an independent living or 'assisted living' arrangement. There are many places that provide independent living opportunities, such as:

- low-income housing
- over-55 apartments, and
- retirement communities.

The older adult must be able to live alone (function without assistance in all daily routines, from meal preparation to taking their own medication to doing their own laundry) and without needing medical care on an ongoing basis.

Home Care/Community Care/Respite Care/Palliative Care

Home and community care services provide a range of health care and support services for seniors with acute, chronic, palliative or rehabilitative health care needs, to assist them in living independently. It also includes support programs for their caregivers. In 2009/10, the health authorities provided home support to more than 24,500 people.

There are four broad goals for these types of care programs:

1. **Maintenance and Prevention** – help people with health and/or functional deficits in the home setting maintain their ability to live independently (in many cases – prevent health and functional breakdowns and eventual institutionalization)
2. **Long Term Care Substitution** – to meet the needs of those who would otherwise require institutionalization.
3. **Acute Care Substitution** – to meet the needs of people who would otherwise have to remain in, or enter, acute care facilities (e.g. – early hospital discharge to recover at home)
4. **Palliative Care** – to meet the needs of older adults who chose to die at home.

Home care

Home care can include:

- **Nursing care** in your own home;
- **Meals** delivery;
- Rehabilitation therapy to
- **Home support workers** to help with personal care such as bathing, dressing, or grooming;

Community Care

Community care includes:

- **Adult day centres** - which bring people together for health, social, and recreational activities;
- **Assessment and treatment centres** – determining health problems and treatment options.

Respite Care:

Respite care gives family caregivers or friends who are providing care some time off. A respite care worker may come into the home or the person who needs care may be asked to enter a care home for a short time.

Palliative Care

In this context, round the clock care for older adults who are terminally ill and who want to be at home. Involves relieving, eliminating and/or controlling symptoms so those facing death, and their loved ones, can devote their energies to embracing the time they have together.

Seniors Supportive Housing

Provides specially modified rental homes in selected subsidized housing developments (50% of income), primarily to low-income seniors who need some assistance in order to continue to live independently.

Support services include:

- one meal per day,
 - 24-hour response,
 - light housekeeping, and
 - social and recreational activities.
-

Assisted Living

Housing for seniors who want to live independently and need some assistance with daily activities, but don't want or need 24 hour care. It is seen as falling between home care and residential care on the spectrum of seniors' care services. There is generally a common dining room and recreational space.

Three key components of assisted living residences:

1. Housing,
2. Hospitality services, and
3. Personal Assistance Services [up to 2 listed services in the Regulations (**NOTE** - 3 or more listed services makes it a Care Facility)]

NOTE - The housing portion of assisted living is not covered by the *Residential Tenancy Act* – if you are given notice or evicted, you will not be able to dispute to the Residential Tenancy Branch. The Ombudsperson has called this a 'protection gap.'

Cost of Assisted Living

Subsidized residents pay a maximum of 70 per cent of their after-tax income. As of March 2010, this amount ranged from \$801 to \$3,860 per month, and averaged \$1,224 per month. People who experience serious financial hardship as a result of paying the monthly rate can apply to their health authority for a hardship waiver. Non-subsidized residents typically pay between \$1,500 and \$5,000 per month.

As of March 2011, there were 194 registered assisted living residences in British Columbia, containing a total of 6,832 units, the majority of them single occupancy. Of this total, 4,380 units were subsidized and 2,452 were not.

A useful summary of the law and issues in Assisted Living is contained in a September 2013 study by the BC Law Institute – *Report on Assisted Living In BC*.

Residential Care Facilities

Residential care is provided in three types of facilities: community care facilities (71%), and extended care hospitals and private hospitals (29%). These care facilities provide 24-hour professional nursing care and supervision, and are intended for seniors and people with disabilities who have complex care needs and

can no longer be cared for in their own homes. The average monthly cost of a care bed is estimated at approximately \$6000.00. As of September 2011, there were 26,491 publicly subsidized residential care beds. People in subsidized residential care pay up to 80 per cent of their after-tax income, provided that they have at least \$325 remaining from their income each month. The residential care fee paid by individuals is referred to as a “co-payment” and ranges from \$898 to \$2,932 per month.

Residential care services include:

- professional nursing care;
- an assisted meal service;
- medication supervision;
- personal assistance with daily activities, such as bathing, dressing or grooming; and
- a planned program of social and recreational activities.

Case managers interview prospective residents and determine the nature, intensity and duration of services that would best meet resident’s needs and arrange their services (a “care plan”). A Care Plan can include plans for:

- adequate nutrition monitoring medication,
- bills being paid and banking is done,
- rehabilitation,
- medication review.

Resident’s Bill of Rights

The *Resident’s Bill of Rights* applies broadly to all facilities that provide residential care to adults: long term care facilities, mental health and substance use care facilities, community living homes and hospices, as well as private hospitals and extended care facilities. Rights include rights to health, safety and dignity; rights to participation and freedom of expression; and, rights to transparency and accountability. Facilities are required to post a copy in a prominent location, and operators are required to comply with its provisions. Patient Care Quality Offices track complaints about non-compliance and file quarterly reports with the Ministry.

BCCEAS’ Advocate’s Manual – Residential Care

Legal Issues in Residential Care: An Advocate’s Manual, is an online guide to legal issues with regard to residential care in British Columbia, and the processes and solutions needed to deal with them. This Clicklaw ‘wiki-book’ is primarily meant for legal and health care professionals working to support people in residential care, as well as the BCCEAS legal team. There are seven sections:

1. Statutory Overview
2. Residents’ Bill of Rights
3. Legal Issues Around Admission & Transfer
4. Legal Issues While Living in Facility
5. Rights, Remedies and Problems Resolution
6. Consent & Capacity
7. Substitute Decision Making

Public Hospitals

Seniors may initially be hospitalized in a public hospital for an ‘acute care’ condition - then they need the support of a care facility (‘chronic care’). But there are likely no spaces available. These patients are then referred to by the hospital as requiring an “*alternative level of care*” (ALC). They are also referred to disparagingly as “bed blockers.” The most common reasons for ALC admissions:

- palliative care (33%),
- waiting for admission to another adequate facility (27%), and

- physical therapy (11%)

The approximate cost per day of an ALC patient is \$550.00. Compare this to the approximate cost in a Long Term Care Facility of approximately \$84/day. Cost is about 6X less! But in discharging a relatively low-cost ALC patient and admitting a relatively high-cost acute care patient (\$900/day), there is a financial disincentive for hospitals to lower ALC utilization. Who are the ones doing the 'bed blocking?'

Hospices

A hospice is a residential home-like setting where supportive and professional care services are provided to British Columbians of any age who are in the end stages of a terminal illness or preparing for death.

Services provided in a hospice may include:

- medical and nursing care;
 - advance care planning;
 - pain and symptom management; and
 - psychosocial, spiritual and bereavement support.
-

COMPLAINTS

BC Housing

For seniors living in BC housing units, and recipients of SAFER (in areas where the complaint process is not defined by SAFER legislation), there is a two-step complaint process. Complaints are first made to the appropriate manager. If not satisfied, a formal review by the BC Housing Complaint Resolution Committee may be requested by completing the Complaint Resolution form.

Assisted Living

Complaints about assisted living residences go to the Assisted Living Registry (health and safety issues). Complaints about subsidized care received go to the Patient Care Quality Office. Assisted Living residences are required by the Ministry and Assisted Living Registry to inform residents, staff and visitors about how to make a complaint, including:

- how to make an internal complaint at the residence;
- how to make a complaint to the **Assisted Living Registry** (health & safety complaints);
- how to make a complaint to the Health Authority's **Patient Care Quality Office** (complaints about care); and,
- ensuring the complaint process and contact information for the Office of the Assisted Living Registrar and the Health Authority Patient Care Quality Office is readily accessible.

Residential Care

Complaints about care facilities should first go the facility itself (Manager of Care or Executive Director). Unresolved complaints go to the licensing office for licensed care facilities, or the Patient Care Quality Office for the region for other facilities. **NOTE** – *if you are not sure which office to use, the Patient Care Quality Office will take your complaint and direct it to the Licensing Officer if need be.*

NOTE- *The Legal Issues in Residential Care: An Advocate's Manual* and a PovnetU course, Seniors Residential Care Advocacy, deal in depth with how to address issues or complaints with care facilities, including involving family and resident councils, and so we will not go into this in any detail here.

6. DEMENTIA AND LEGAL CAPACITY

Terminology

For our purposes, we will be using the following inter-changeably:

- capacity/incapacity
- capability/incapability
- competence/incompetence

Definitions of *capacity* vary across jurisdictions and have evolved over the years. It is now generally understood as the ability:

- to understand the information you need to make a decision
AND
- to appreciate the consequences of making a decision.

In this sense capacity is about a person's decision-making *process*, and it is neutral as to the *outcome* of that process. Therefore, all adults retain the right to make unwise or risky decisions, where they make these choices with capacity. This is regardless of age, disability or illness—even in the context of abuse. There is no illness that, of itself, will lead to a finding of incapacity. Diminished capacity can arise as a result of:

- Mental illness
- Lack of mental development due to a birth defect
- Brain damage at some point after birth
- Extreme physical impediments which prevent communication and understanding

We will be most concerned with brain damage due to dementia. Older adults suffer more often from loss of mental capacity than any other age group because they are susceptible to dementia [see below].

There is no such concept as 'total' or 'global' legal incapacity resulting from mental disability.

"Incompetence is not to be understood in any global sense, but rather as reflecting incapacities with respect to specific decisions or areas of decision." [emphasis added] (*Ont. Enquiry on Mental Competency – Professor David Weisstub*).

Deciding whether someone has capacity or is incapacitated is a legal determination, not a medical determination. A doctor's assessment or opinion can assist us, but it is up to the lawyer or legal advocate to determine capacity. As a legal advocate for older adults, it is important to assess whether there is incapacity, and whether it is a temporary situation (e.g. – acute medical condition, mitigating factors such as grieving, depression). Two main issues for advocates are:

1. Does the client have the capacity to retain us for our services?
2. Does the client have the capacity to complete the legal transaction?

Capacity Tests

There are different standards or tests of legal capacity for different transactions or situations. Most standards are found in the common law – decisions decided over the years. There are a few statutory standards or tests for capacity – for making Enduring Powers of Attorney and Representation Agreements. The **BC Law Institute** is studying the need for more statutory standards, to bring more clarity to this area.

Dementia

Dementia describes a group of brain disorders that cause memory loss and a decline in mental function over time. This results in mild to severe cognitive impairment - depends on number and location of brain

cells destroyed or lost. Dementia should be understood and appreciated as a terminal illness, not just a by-product of aging.

Dementia results in short-term memory loss coupled with poor judgment and reasoning. Symptoms include becoming lost in familiar places, difficulty using or understanding words, and difficulty performing routine tasks that require organization (e.g., balancing a cheque book, making a grocery list, shopping). There is a ‘dementia doubling rule’:

Age	Risk of Dementia
<65	1%
65-69	2%
70-74	4%
75-79	8%
80-84	16%
85-89	32%

NOTE – so even up to 84 years of age, only 16% of the population have a risk of dementia.

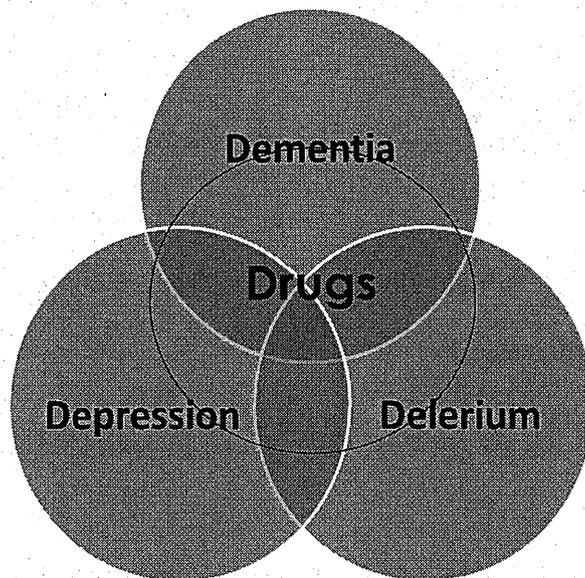
Conditions Often Confused with Dementia

Condition	Description	Symptoms
Depression	a medical illness that causes a persistent feeling of sadness and loss of interest – a common condition for people living with abuse	<input type="checkbox"/> emotional withdrawal <input type="checkbox"/> confusion <input type="checkbox"/> agitation
Delirium	Sudden temporary state of mental confusion and fluctuating consciousness - Results from: high fever, intoxication, shock, malnutrition, dehydration, high/low blood sugar or even things such as bladder or urinary tract infections	<input type="checkbox"/> anxiety <input type="checkbox"/> disorientation <input type="checkbox"/> hallucinations <input type="checkbox"/> delusions, and <input type="checkbox"/> incoherent speech.
Abuse of Drugs/Alcohol	Abuse or misuse of prescription drugs or alcohol	<input type="checkbox"/> Delerium can be resut <input type="checkbox"/> See above symptoms
Aphasia	mild to severe language impairment caused by injury to the brain (e.g., stroke, head trauma, tumor, infection).	<input type="checkbox"/> difficulty speaking <input type="checkbox"/> difficulty understanding <input type="checkbox"/> difficulty reading <input type="checkbox"/> difficulty writing

<p>Paranoia</p>	<p>Irrational behaviour that may be due to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Social isolation (e.g. psychotic depression). <input type="checkbox"/> A type of dementia (Lewy body). <input type="checkbox"/> Progressive sensory decline (e.g., hearing and sight impairment). 	<ul style="list-style-type: none"> <input type="checkbox"/> Irrationally suspicious <input type="checkbox"/> confusion <input type="checkbox"/> agitation
<p>Other Disabling Conditions</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Cerebral Palsy (CP) <input type="checkbox"/> Multiple Sclerosis (MS) <input type="checkbox"/> Parkinson's Disease <input type="checkbox"/> Lou Gehrig Disease (ALS) 	

The 4 D's

We talk about the 4 D's in this area – dementia, depression, delirium and drugs. Any of the first three D's can overlap, and the fourth D, drugs, can be a factor in any of the other three conditions.



Executive Functioning

The frontal lobe of the brain is responsible for what is called 'executive functioning' - intelligence, judgment and behavior. This includes such things as impulse control, abstract thinking and planning. Executive dysfunction is a symptom of dementia. Executive dysfunction can turn an abstainer into a heavy drinker, or a prudent person into a gambler or target for lottery scams etc. Some elder abuse is attributed to a loss of impulse control and judgment caused by dementia.

In some cases there is little damage to other parts of the brain other than the frontal lobe, and this can make identifying/assessing incapacity involving executive dysfunction very challenging. The older adult may present as well dressed, articulate, with good recall – seem perfectly fine. BUT – the older adult may be doing things that waste money or put them in danger - is this in their nature, or has it been caused by incapacity? It may not reflect their values, but have their values changed over time? People do sometimes decide to 'live a little' after a life of prudence. Or is this change the result of dementia?

ABA Handbook – Assessment of Older Adults with Diminished Capacity

The American Bar Association and the American Psychological Association have collaborated on an excellent handbook for assessing older adults who might have diminished capacity. It has a recommended procedure for conducting an assessment and a suggested capacity worksheet. It suggests ways to enhance capacity where possible – there may be what they call ‘mitigating factors’ such as stress, grief, depression, (recent events affecting stability of the older adult); medical factors; time of day variability (‘sundown effect’); hearing and vision loss; and, educational/cultural/ethnic barriers. Finally, the handbook discusses when and how to refer for medical assessments, and how to use and understand capacity assessment reports from specialists.

Observational Tips

When observing an older client, it is important to focus on their decisional abilities, not their cooperativeness or affability. Watch out for what has been called “confabulation” – filling in the gap with stories. Watch out for your own ‘tells’ – inadvertent prompts by you for positive/negative answer – “you didn’t mean to do this, did you?” as you shake your head no. Pay attention to changes over time; history is important if you are able to find it out. Consider whether other factors could explain the behavior. Check your assumptions Beware of ‘ableism’ and ‘ageism’ stereotypes. Just because someone has:

- a diagnosis of a mental illness;
- dementia;
- Alzheimer’s Disease or related disorder;
- a negative assessment; or even
- a ‘Committeeship’ Order

does not automatically mean that they lack decisional capacity.[From Judith Wahl of the Advocacy Centre for the Elderly.]

Gradual Counselling

The ABA Handbook recommends using ‘gradual counseling’ when working with an adult with diminished capacity. This involves:

- Identifying goals
- Stating the problem
- Ascertaining values
- Comparing options to goals
- Giving feedback

This would be an iterative process to ensure the older adult is making a decision in line with their goals and values.

Undue Influence

Part of the assessment of capacity is determining whether an older adult may be subject to ‘undue influence’ by others. The **BC Law Institute** has prepared a guide book for lawyers and notaries writing last wills for clients (“*Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide*”). It includes a checklist of recommended practices and procedures, which can be useful in any situation where undue influence is suspected. It also includes a checklist of ‘red flags.’ We recommend using the recommended practices and the ‘red flags’ checklist whenever you suspect there may be undue influence from a family member with a potential conflict of interest, a new ‘best friend’, etc.

React Capability and Consent Tool

This presentation has dealt with capacity in the context of a solicitor-client relations. For issues of capability and consent regarding health care, finances, facility placement and psychiatric treatment, see the *Capability and Consent Tool* from **re:act**, Vancouver Coastal Health. Includes nine pages of charts with the following columns for each type of issue: Decision/Need; Hierarchy of Decision Makers, Relevant Statute; Incapability Criteria; Incapability Assessor/Witness; and, Limits/Conditions.

7. ADVANCE PLANNING

Advance planning can mean many things. Advance planning can mean advance *care* planning – how will decisions be made concerning health care when the older adult is no longer able to speak for themselves? Advance planning also includes advance *financial/legal* planning regarding financial/legal/property matters – who will manage an older adult's financial and legal affairs when the older adult is no longer capable? Finally, advance planning could also include '*estate planning*' for after the older adult is dead and gone – Wills, trusts, probate, etc. We will be discussing advance care planning and advance financial planning (powers of attorney, joint accounts), but we will not be discussing estate planning in this presentation. Before we discuss advance care planning, we need to review a bit about health care consent.

Health Care Consent

The three general rules regarding health care consent are:

1. Adults can only be given health care with their consent
2. Adults are presumed to be capable of giving consent.
3. Adult must be approached first for a decision about health care

With appropriate communication, and necessary information and support, most adults can make their own treatment decisions and give informed consent.

Consent is *not required* for preliminary examinations such as triage or assessment, when urgent or emergency health care is required, adult is incapable, and there is no committee, representative, advance directive or TSDM available. Consent is also *not required* for involuntary psychiatric treatment is needed under the *Mental Health Act*. Consent is *not possible* when the adult is unconscious, mentally incapable, or, otherwise unable to give consent.

Substitute Decision Making

Substitute decision making applies when consent is not possible. The law recognizes the roles of family and friends who are able and willing to make health care decisions for the adult when consent is not possible. The law sets out a hierarchy of 'substitute decision makers' in this order:

- **'Committee of the Person'** – a court appointed adult guardian
- **'Representative'** – person named by the older adult in a Representation Agreement
- **Advance Directive** – the older adult speaking through a document prepared by the older adult setting out their wishes regarding care and end-of-life decisions
- **Temporary Substitute Decision Maker** ("TSDM") – family member or friend located by medical staff to make decision when required

Committees

The legal term for an adult guardian in BC is '*Committee*' (pronounced kaw-mit-tee), appointed under the *Patients' Property Act*. There are two kinds of Committee:

- **Committee of the Estate** – deals with legal, financial, property decisions
- **Committee of the Person** – deals with personal care and medical matters

There are also two different ways that your affairs can be taken over by a Committee:

- a **Court Order** – signed by a Judge after a hearing where the Judge reviews opinions of two doctors
- a **Certificate of Incapability** – signed by a Psychiatrist, a Director of a Designated Mental Health Facility or a Designated Health Authority staff in the community.

When a health professional determines that a patient is not mentally capable and there appears to be no legal plan in place, the health professional might arrange for a *Certificate of Incapability* to be signed. This *Certificate of Incapability* under the *Patients Property Act* results in the Public Guardian and Trustee (PGT) being the older adult’s ‘public committee’ – but only for their estate. Only a Judge can appoint a Committee of the Person, by Court Order. [NOTE - the Ombudsperson was extremely critical of this process for appointing the PGT under a Certificate of Incapability, in a report entitled “No Longer Your Decision.”]

A Committee of the Person is the highest ranking substitute decision maker regarding health decisions and, unless restricted by the court order making the appointment, can give or refuse or withdraw consent to any health care to which the adult could give or refuse consent when capable, except non-therapeutic sterilization and psychiatric treatment. A Committee of the Person is guided by the best interests of the adult and their family. A Committee should do what the adult would have wanted if they were capable. While you don’t choose who your Committee of the Person will be, many people sign a Nomination of Committee form, which gives the Judge information about who you would prefer to be your Committee, and the Judge may follow this unless there are reasons not to.

Representative under a Representation Agreement

This is the fundamental tool of advance care planning. A Representation Agreement is a written agreement between an adult and one or more Representatives authorizing the Representatives to make decisions or do things on behalf of the adult in relation to his or her personal care and health care. There are two kinds of Representation Agreements, named after the section in the *Representation Agreement Act* where they are referred to.

<p>A Section 7 (‘standard powers’) RA provides for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Minor/major health care <input type="checkbox"/> Personal Care <input type="checkbox"/> Routine financial management <input type="checkbox"/> Obtaining legal services and instructing counsel <p>[NOTE: <u>not</u> end-of-life matters]</p>	<p>A Section 9 (enhanced powers) RA provides for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Minor/major health care + more <input type="checkbox"/> Personal Care + more <input type="checkbox"/> End-of-life decisions <p>[NOTE: <u>not</u> financial or legal matters]</p>
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‘Routine financial management’ includes most day-to-day financial matters, but does not include more complicated financial matters such loans, line of credit, credit cards, mortgages, dealing with real estate, etc. See the definition in the Regulation to the *Representation Agreement Act* setting out what is and is not included in ‘routine financial management.’

NOTE – even if a person is not capable of managing their own finances, they still may be legally capable of granting a section 7 *Representation Agreement* with routine financial management powers to someone else. This can be very useful solution when an older adult is starting to become incapacitated, and has not done any advance financial planning. Refer to section 8 the *Representation Agreement Act* for the test for capacity.

Advance Directives

An *Advance Directive* (called a ‘living will’ in some places) is a document stating how you want medical decisions to be made if you lose the ability to make them for yourself, including and especially ‘end-of-life’ decisions. The directives can be general in their direction, or they can give specific directions about various medical procedures, including whether life-prolonging treatment (e.g. *CPR, intubation, tube-feeding*) should be given in certain circumstances (for instance, if there is a diagnosis of *persistent vegetative state*, or when it is clear the end is near). An Advance Directive that complies with BC law

must be followed by the health care provider when it is clear it addresses the particular health care decision needed at the time (with limited exceptions).

The health care provider can decide not to follow it if they reasonably believe:

- since the Advance Directive was made and while the adult was capable, the adult's **wishes, values or beliefs** in relation to a health care decision significantly changed, and the change is not reflected in the Advance Directive, or
- since the Advance Directive was made, there have been **significant changes in medical knowledge, practice or technology** that might substantially benefit the adult in relation to health care for which the adult has given or refused consent in an advance directive (unless the Advance Directive says to follow instructions therein despite these changes).

Temporary Substitute Decision Maker (TSDM)

If there is no Committee of the Person, no Representative under a Representation Agreement, and no Advance Directive, then a health care provider must look for a 'temporary substitute decision maker.'

There is a hierarchy of 'temporary substitute decision makers' to be approached in order:

- spouse
- child
- parent
- brother or sister
- grandparent
- grandchild
- anyone else related by birth or adoption to the adult
- a close friend of the adult
- a person immediately related to the adult by marriage

To qualify to give, refuse or revoke substitute consent to health care for an adult, a person must:

- be at least 19 years of age,
- have been in contact with the adult during the preceding 12 months,
- have no dispute with the adult,
- be capable of giving, refusing or revoking substitute consent, and
- be willing to comply with the duties of a TSDM

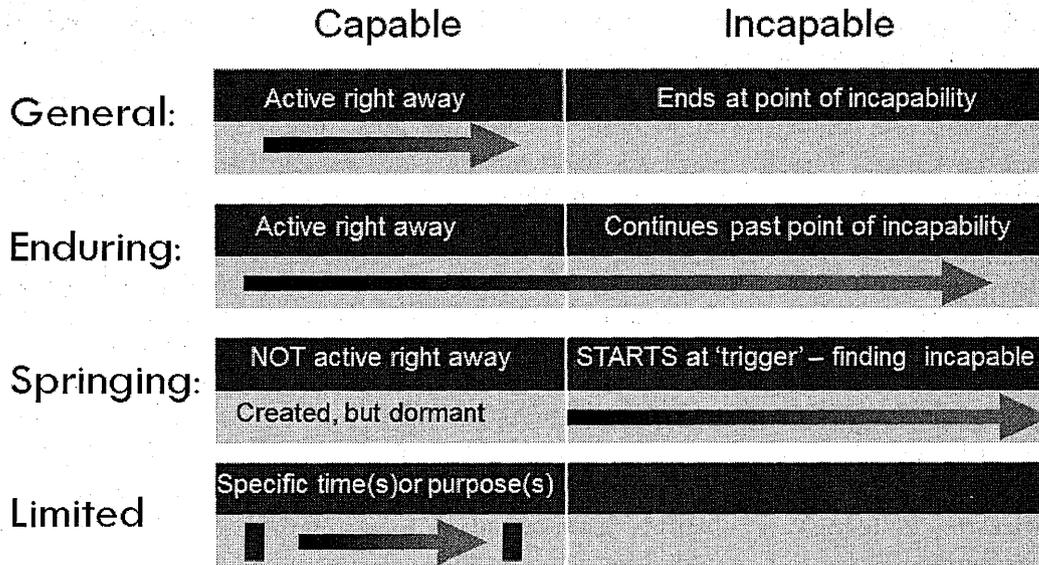
This temporary substitute decision maker is temporary – for each new medical procedure or decision the health practitioner must again look to the list and find the highest ranking person available at that time.

Power of Attorney

A Power of Attorney is a legal instrument giving power from one (competent) adult (known as the "donor") to another (competent) adult (the "attorney") to do certain things or take actions on the donor's behalf regarding financial and legal matters. There is a 7 part statutory test of capability for a Power of Attorney. There are four types of Power of Attorney (see chart next page):

1. **General** – now fairly rare – ends on incapability
2. **Limited** – less common – like general, but for specific purpose(s) and/or limited periods of time
3. **Enduring** – common – active now if necessary and continues into incapability
4. **Springing** – common – not active until incapability (or other 'trigger') and with capability trigger, ends if the donor regains capability

NOTE - These categories are not mutually exclusive – an EPOA or Springing POA can be limited



Rogue Attorney

Older adults have to be very cautious about who they choose as their attorney. They must trust the person implicitly. A power of attorney is a very powerful document – it has been called a “license to steal.” Many older adults have literally been bankrupted by an attorney who has gone ‘rogue.’ Often times the attorney will justify taking funds as this being money they are entitled to anyway once their parent is gone.

Bank Power of Attorney Form

Older adults have to be cautious about signing bank form of power of attorney, or multiple powers of attorney. A standard clause in most power of attorney forms is that it officially revokes any prior powers of attorney. This may not be what is intended. A carefully planned Enduring Power of Attorney may be wiped out by a standard form from the bank.

Joint Bank Accounts

Joint bank accounts are often set up for convenience – when an older adult is having difficulty getting to the bank. They are also often set up to avoid probate fees – like jointly owned property [see below] they pass ‘outside of the will’ (not part of the estate). The intention may be that the surviving child will become entitled to all the money remaining in the bank account at the time of death (‘right of survivorship’).

Older adults often enter into joint accounts without understanding the legal or financial implications such a decision will have – both during their lifetime and after death. Joint bank accounts are easy to abuse – each account holder has access to 100% of the money at any time – another “license to steal.”

The law also says when an adult child is put onto a joint bank account by the older adult, the default legal determination (called a ‘rebuttable legal presumption’) is that the intention was to create a ‘resulting trust’ – when the older adult dies, the surviving adult child is said to be holding the bank account in trust for the estate. They lose entitlement to the money. There needs to be much more consumer information (and training of bank staff) on the implications of joint bank accounts and ‘right of survivorship.’

Joint Property Ownership

As with joint bank accounts, joint property ownership is often done for convenience, or to avoid probate fees. An older adult may put a caregiver on title and allow them to move in exchange for a promise of ongoing care. A principal residence can be passed along to child without property transfer tax and the property passes outside of the Will without probate fees (but there are tax consequences – capital gains taxes are payable, and there is a loss of the principal residence exemption for the portion transferred to the child).

Although a jointly owned property cannot be sold as easily as a joint bank account can be cleaned out, it is possible. If the other owner has a court judgment against them, or goes bankrupt, this can have serious implications for the older adult. A child’s spouse could claim an interest in the property on separation. The child could mortgage or otherwise encumber their interest. There needs to be much more consumer information (and training of notaries and bank staff) on the implications of joint property ownership.

8. ELDER ABUSE – IDENTIFYING AND RESPONDING

Definition

Elder abuse has been defined as “...a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person¹.”

Note that this arises out of the context of an existing relationship of trust, relationships where there is an element of reliance, or someone within in a circle of closeness. Not all abuse is elder abuse. Elder abuse is different from situations where two people are in conflict with each other, may do things to hurt each other, and where fights can escalate to violence. It is elder abuse when there is an imbalance of power, when one person uses their power or influence to take advantage of, or to control, the older adult.

Types & Indicators

Type	Description	Indicators
Physical Abuse	Any act of violence causing injury or physical discomfort, including sexual assault.	<ul style="list-style-type: none"> ▪ Unexplained injuries in areas normally covered (bruises, burns or bites). ▪ Untreated medical problems. ▪ History of “accidents”. ▪ Signs of over or under medication. ▪ Dehydration.
Psychological Abuse	Any action or comment causing emotional anguish, fear or diminished self-esteem or dignity (e.g. threats to do harm, unwanted institutionalization, harassment, abandonment, imposed isolation, removal of decisions making choices).	<ul style="list-style-type: none"> ▪ Fear, anxiety, depression, withdrawal, cowering. ▪ Reluctance to talk openly. ▪ Fearful interaction with caregiver, caregiver speaking on behalf of person and not allowing privacy.
Financial Abuse	Theft or exploitation of a person’s money, property or assets (e.g. fraud, forgery, misuse of Power of Attorney or joint bank account).	<ul style="list-style-type: none"> ▪ Standard of living not in keeping with income or assets. ▪ Theft of property. ▪ Unusual or inappropriate activity in bank accounts, forged signatures on

¹ World Health Organization – Toronto Declaration

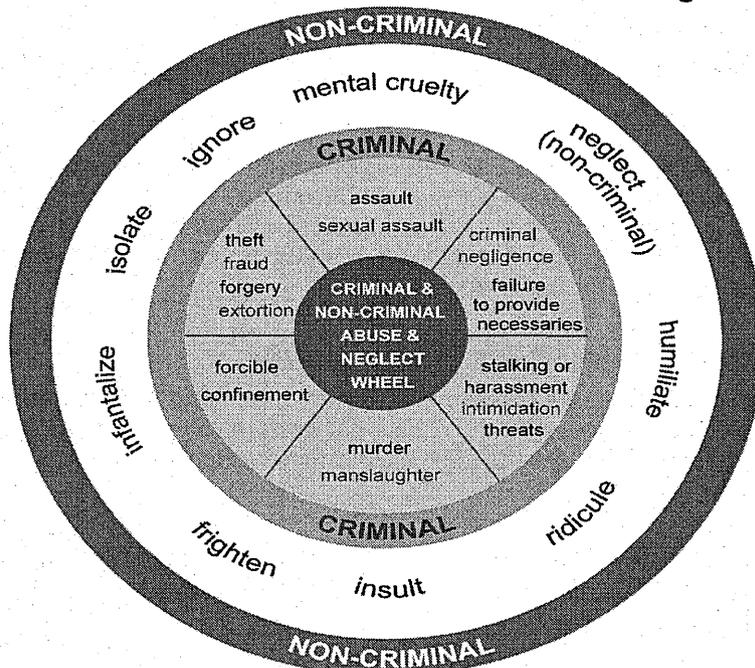
		<p>cheques.</p> <ul style="list-style-type: none"> ▪ Forcing a person to sign over property or execute a will. ▪ Overcharging for services or products, overdue bills.
Neglect	<p>Inability to provide basic or personal care needs (e.g. food, water, required medications, shelter, hygiene, clothing, physical aids, hearing aids, eye glasses, dentures, exercise and social interaction, lack of attention, abandonment, undue confinement, inadequate safety precautions, withholding medical services or treatment).</p> <ul style="list-style-type: none"> ▪ Active Neglect: intentional failure of a caregiver to fulfill their care-giving responsibilities. ▪ Passive Neglect: unintentional failure of a caregiver to fulfill their care-giving responsibilities. 	<ul style="list-style-type: none"> ▪ Unkempt appearance, inappropriate or dirty clothing ▪ signs of infrequent bathing ▪ Living conditions unhealthy, dangerous and/or in disrepair. ▪ Lack of social contact. ▪ bedsores, skin disorders, untreated injuries or medical problem ▪ No regular medical appointments
Self Neglect	<p>Although not a form of elder abuse, it is the person's inability to provide for their own essential needs.</p>	<ul style="list-style-type: none"> ▪ Unkempt appearance, inappropriate or dirty clothing, signs of infrequent bathing. ▪ Living conditions unhealthy, dangerous and/or in disrepair. ▪ Lack of social contact. ▪ No regular medical appointments
Institutional Abuse	<p>Any physical, sexual, psychological, financial abuse or neglect occurring within a facility involving active victimization, withholding or denial of individual care needs, failure to respect individual's rights, overmedication, misuse of chemical or physical restraints and/or failure to carry out reasonable requests.</p>	<ul style="list-style-type: none"> ▪ Any or all of the above

Prevalence

There is little is known about the prevalence of physical elder abuse – estimates are that about 50% of physical abuse of seniors occurs in a spousal relationship . Often this is where there has been a history of domestic violence that has often gone on for 25 years or more. Acts of abuse tend to escalate – a continuum from infantilizing and indignities to gross neglect to malicious assaults that lead to death.

Financial abuse of seniors has been called “the crime of the 21st Century.” One out of 12 (8%) seniors in B.C. have been financially abused – losing an average of \$20,000! Women make up 92% of older adults who have experienced financial abuse.

Criminal and Non-Criminal Abuse & Neglect Wheel



Abuse tends to escalate and crimes often overlap and blend together.

ADAPTED, WITH PERMISSION, FROM ELDER ABUSE: THE HIDDEN CRIME — ADVOCACY CENTRE FOR THE ELDERLY, TORONTO

Profiles – Victims and Abusers

Abusers	Victims
<p>ABUSERS may:</p> <ul style="list-style-type: none"> • resent expectations to provide care or support; • be dependent on the senior for assistance, housing or money; • have substance abuse problems; • have a history of mental illness or emotional problems; or • just seem normal. 	<p>VICTIMS may:</p> <ul style="list-style-type: none"> • be socially isolated; • be under the control or influence of the abuser; • have some degree of physical impairment or incapability; • be physically frail, but mentally capable; • be widowed or living alone; or • not appear to be vulnerable in any way.

Family Pressures and Financial Abuse²

Older adults with some money or equity in a house will often be pressured by family members for:

- Emergency loans
- Places to live when they are out of job
- Help paying for higher education (university)
- Assisting with major purchases (e.g. - a car)

² Adapted from: Charmaine Spencer, *Diminishing Returns* (1995)

- Making down payments for a home
- Co-signing or serving as guarantor for loans
- Using house title as collateral
- Taking out a 'reverse mortgage' to provide funds
- Help avoiding bankruptcy (adult son/daughter) at the point of losing business, home

Undocumented Loans

Many of these family loans are undocumented, and the borrower may later claim it was a 'gift.' Luckily the law has a 'legal presumption' that these types of advancements from an older adult to an adult child are considered a loan rather than a gift, unless the adult child can show proof otherwise (e.g. – money was in a birthday card). For advancements to a minor child (under 19 yrs.) the presumption is reversed, it is presumed to be a gift unless it can be shown to be a loan.

Powers of Attorney & Joint Bank Accounts

Powers of attorney can be seen as part of the solution for an older adult who is unable to manage their funds, but they can also be part of the problem. The most common form of financial elder abuse is a 'rogue' power of attorney – these documents have been called "a license to steal." The attorney can literally bankrupt the older adult.

Similarly, setting up a joint bank account with someone may be seen as part of a solution, to help with banking chores and paying bills. Or it may create another "a license to steal" – each signer on the account is entitled to 100% of the money at any time.

As mentioned before, there is a 'legal presumption' that an adult child put on a joint bank account of an older adult has been put on for convenience and is a 'trustee' for the older adult's money ("resulting trust") and not entitled to it themselves. When the older adult dies, the money would be part of the estate, rather than automatically going to the adult child (most joint accounts have 'right of survivorship' – all of the remaining funds automatically the property of the surviving account holder).

Responding to Abuse and Neglect

Emergencies

The first consideration is always of course whether the older adult is in immediate danger – in which case 911 should be called.

Designated Agencies (DA's)

If it is not an emergency but the adult is being physically abused, neglected or is self-neglected, a referral may be made to a local *Designated Agency* ("DA") under the *Adult Guardianship Act*. The Health Authorities are all DA's for their areas of the province. Providence Health is the DA for Catholic hospitals in Vancouver. Community Living BC is the DA for their residents. The *Public Guardian and Trustee* can be contacted for an investigation and assessment if it is believed that the adult is incapable.

DA's are legally mandated to look into reports of adult abuse and neglect that they receive or become aware of involving adults having difficulty managing their affairs. DA's can offer available and appropriate support and assistance. They are required to report criminal offences against an adult to the police. For adults who cannot get assistance on their own, DA's can also use legal tools under the *Adult Guardianship Act* to protect the adult, which include 3 ways of gaining access (emergency access without a warrant) and restraining orders. The DA can apply for civil no-contact and support orders.

If the older adult is refusing support but is assessed by the PGT as mentally incapable of making this decision, the DA can apply to court for a *Support and Assistance Plan*. This may include admission to a care facility, ‘services of PGT’ or restraining order, etc.

Community Response Networks (CRN’s)

CRNs are groups of local people and organizations who work together to ensure an appropriate and coordinated response to adult abuse, neglect and self-neglect in their community. CRNs around the province are reaching out to their communities to establish a network of community agencies, local businesses and government agencies (DA’s), to provide help for adults experiencing or at risk of experiencing abuse, neglect and self-neglect.

Victim Services Worker (community and police based)

Victim Service Workers offer victims of crime practical support and information. They assist victims and those supporting them to obtain info about status of police investigation or other criminal justice process. They can communicate information about the particular needs or vulnerabilities of an older adult to police or Crown Counsel.

BC Centre for Elder Advocacy and Support (BCCEAS)

BCCEAS provides education and workshops on financial literacy and elder abuse prevention, along with more general information about abuse and neglect of seniors. It operates the Seniors Abuse and Information Line (SAIL) Telephone 7 days/wk, 8 AM-8PM. A legal advocate with BCCEAS assists with income security programs, residential tenancy matters, and debt issues for older adults. The lawyers of BCCEAS’s Elder Law Clinic provide advice and representation on elder abuse, capacity and guardianship issues, residential care facility issues, and age discrimination. Their Victim Services Program provides information, support and referrals fo adults 50+ who are victims of abuse.

Safety Plan

A safety plan for an older adult may include a change to an element of their environment or their relationship which could result in the elimination of the role of the abuser or context of the abuse.

Consider:

- Home visits, telephone contact, contact with other family and friends, regular appointments
- Secure assets (e.g. hide emergency money somewhere outside home.)
- Give copies of important documents and keys to trusted friends or family members
- Plan escape by packing a bag of extra clothing, medicine and personal aids (glasses, hearing aids)
- Keep phone numbers of friends, relatives, shelters or other trusted individuals handy.

BCCEAS’ Elder Abuse e-book

BCCEAS, along with the People’s Law School and the Ministry of Justice, has developed an ‘e-book’ *“Understanding and Responding to Elder Abuse.”* It includes four sections as follows, along

- Elder Abuse and Neglect – types, risk factors, barriers, family stressor with embedded videos
- BC Government Programs and Community Services For Older Adults Victims of Abuse or Neglect
- Working with Older Adult Victims of Abuse, Communication Techniques and Safety Planning
- Resources with Links and Phone Numbers
-

It also includes an electronic index to find topic quickly, and you can do a word search in Adobe or in your browser.

Responding to Financial Abuse

There are some obvious responses to financial abuse and the older adult is capable – for a rogue power of attorney, the power of attorney can be revoked, and another attorney appointed in their place. A joint bank account can be closed. Theft can be reported to the police. Vancouver and New Westminster police have special elder abuse units.

Managing Finances – Capable Adult

For someone who is competent, but still needs help to carry out certain tasks such as signing documents or handling banking, you might consider the following options:

- a family member, friend or trusted other may become the person's Representative under a section 7 Representation Agreement with routine financial management powers;
- a family member, friend or trusted other may become the person's Attorney under an Enduring Power of Attorney;
- for uncomplicated financial situations, a family member, friend or trusted other may become the person's 'pension trustee' - a pension trustee can manage monies paid through OAS/GIS/ CPP only (NOTE –an agency or organization can become pension trustee) ;
- local financial agencies and institutions, trust companies or accounting or law firms may provide advice and assistance;
- a customer service representative at the person's bank or financial institution may be consulted with to see what assistance they may be able to provide (i.e., telephone banking, direct deposits); and,
- other local community support services such as Seniors Tax Clinics and Credit Counseling Service [www.nomoredebts.org].

NOTE – even if a person is not capable of managing their own finances, they still may be legally capable of granting a section 7 *Representation Agreement* with routine financial management powers to someone else. Refer to section 8 the *Representation Agreement Act* for the test for capacity [www.bclaws.ca].

NOTE – The federal Income Security Programs can look into misappropriation and theft of OAS/GIS/ CPP monies (including stopping or redirecting payment of benefits).

Managing Finances – Incapable Adult

For abuse of a power of attorney or representation agreement, referrals can be made to *Assessment and Investigation Services* (AIS) at the PGT. If the incapable adult's assets are at risk, the PGT can freeze assets until it is clearer what the adult's situation is, and can conduct an investigation. The PGT may take over the older adult's finances ('public committee') if no one else available or a concerned family member or friend may be appointed 'private committee' by a court order.

What to Do in Abuse Situations

Acknowledge - Suspicion of abuse may develop over time. Accumulate/document evidence.

Barriers - Fear of retaliation, withdrawal of caregiver support and breach of confidentiality

Urgency - Assess immediate needs and potential risk of physical harm.

Screen - Assess person's physical, emotional and mental capacity to help themselves.

Empower - Inform person of their rights, resources and assist with establishing a safety plan.

Refer - Offer support or consultation from other resources – CRN, BCCEAS, DA's, etc.

9. Seniors Advocate

On March 19, 2014, the Government of British Columbia announced the appointment of Isobel Mackenzie as the first Seniors Advocate for BC. The mandate of this position is to monitor and review system-wide issues affecting the well-being of seniors and raise awareness about resources available to them. There is a plan to put in a rating service for seniors housing. At this point the Office has collected together a useful compendium of information on complaint, investigative and referral agencies for BC, here: [Overview of Complaint, Investigative and Referral Agencies in British Columbia](#)

The Advocate will also make recommendations to government and those who deliver seniors' services related to health care, personal care, housing, transportation and income support. The office is located in Victoria. The appointment of the Seniors Advocate fulfills a commitment in the [Seniors Action Plan](#), released in February 2012.

[Contacting the Office of the Seniors Advocate](#)

So far there is no phone number or website (as of October 22, 2014 – we expect these any day).

At present you can reach the Office of the Seniors Advocate by **mail**:

Office of the Seniors Advocate
1-2, 1515 Blanshard Street
Victoria, BC V8W 3C8

Or by **email**:

seniorsadvocate@gov.bc.ca

Seniors Housing Options Grid – Seniors Services Society

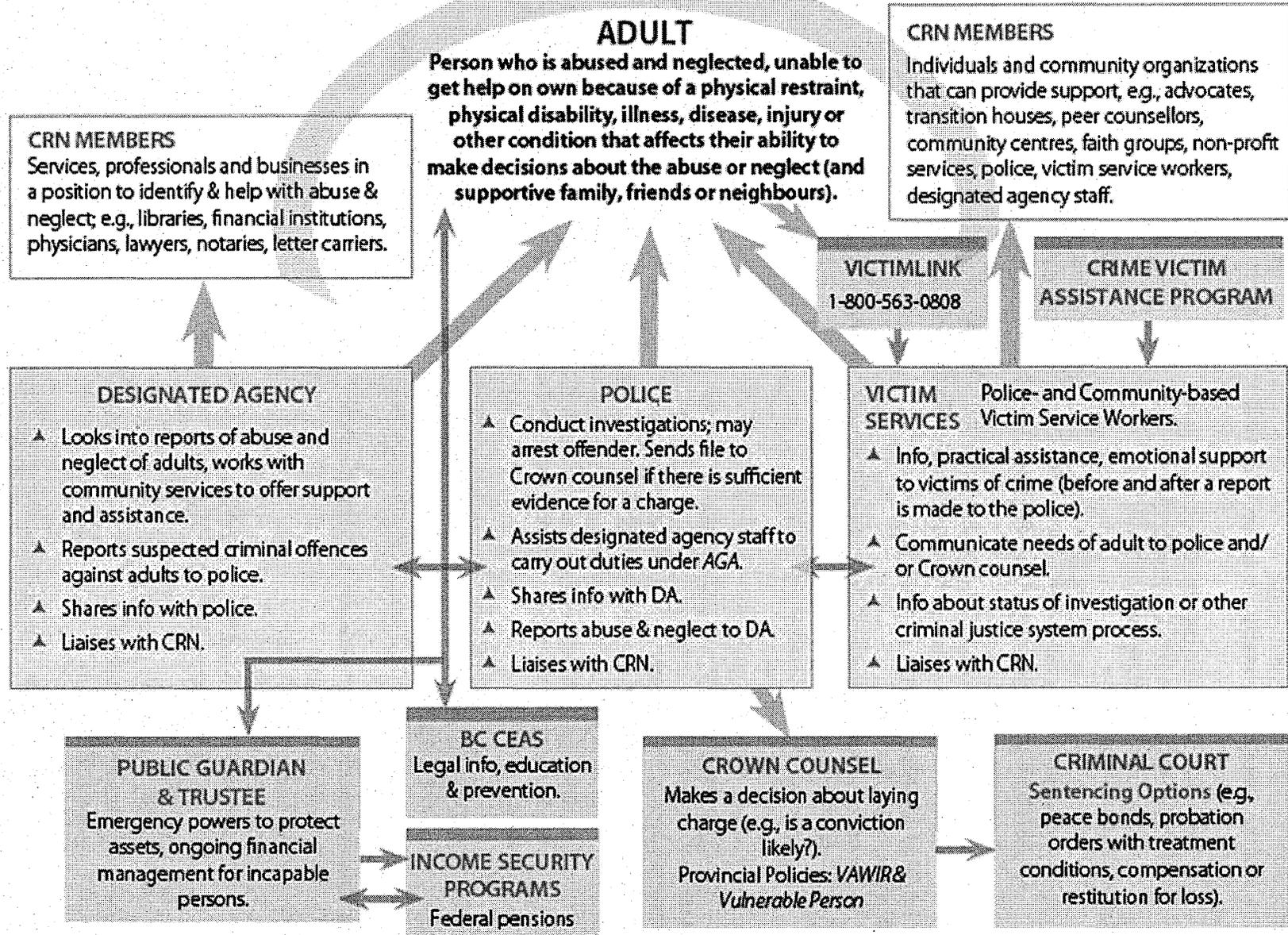
<p style="text-align: center;">INDEPENDENT LIVING</p> <p>93% of BC's seniors will live out their lives in an independent living arrangement. This housing classification includes living independently, in a supportive housing or in assisted living. Most independent living arrangements for the purposes of consumer protection are covered under the <i>Residential Tenancy Act</i> (RTA) or your tenancy agreement. Assisted Living facilities must be registered with the Assisted Living Registrar.</p>	<p style="text-align: center;">RESIDENTIAL CARE</p> <p>7% of BC's seniors will require the 24hour/day care services of licensed care facilities governed by the <i>Community Care Facility Act</i>.</p>
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INDEPENDENT HOUSING	SUPPORTIVE HOUSING	ASSISTED LIVING	RESIDENTIAL CARE
<p>Housing where there usually are no on-site supports, in which case services may be delivered to your home.</p> <p>Some Subsidized Independent Housing buildings may include intermittent supports such as:</p> <ul style="list-style-type: none"> • Meals • Social and recreational activities 	<p>Housing with a combination of on-site support services.</p> <p>Services may include:</p> <ul style="list-style-type: none"> • Housing keeping • Emergency response • Meals <p>NOTE - There are very few public supportive housing units, <i>access to those units are through referral from your local health authority.</i></p>	<p>Provides housing, hospitality and personalized assistance services for adults who can live independently, but require regular assistance with daily activities.</p> <p>Services may include:</p> <ul style="list-style-type: none"> • Help with bathing, grooming, dressing and mobility • Meals • Housekeeping, laundry • social and recreational opportunities 	<p>Residential care is for people who need 24-hour professional nursing care and can no longer be supported in their own homes.</p> <p>Services may Include:</p> <ul style="list-style-type: none"> • assistance with meals • medication supervision • personal assistance with daily activities • a planned program of social and recreational activities • respite

Public	Private	Private	Public	Private	Public	Private
<p>OPTIONS INCLUDE:</p> <p>Rental housing:</p> <ul style="list-style-type: none"> • subsidized rent geared to income or low fixed rent 	<p>OPTIONS INCLUDE:</p> <p>Rental housing:</p> <ul style="list-style-type: none"> • private market rental • private market rental geared to older tenants • co-ops • single room occupancy hotel's (SRO). <p>Purchased housing</p> <ul style="list-style-type: none"> • Strata-titled retirement communities, equity co-ops and co-housing, life lease. 	<p>No referral required. Rates vary, rent portion may qualify for SAFER</p> <p>INCLUDES:</p> <p>Congregate Style Larger scale apartment style</p> <p>Abbeyfield Style Smaller scale housing option. Usually 8-10 seniors living together in a home with their own bedroom and ensuite bathroom, shared meals and congregate areas.</p>	<p>Requires referral through your local health unit. Cost is 70% of after tax income.</p>	<p>To apply contact the building directly. <i>Rates vary from \$1400-6000/m.</i></p> <p>May contain some publicly funded units.</p>	<p>Clients with the highest need and urgency have priority for the first available, appropriate bed, as determined by BC's Residential Access Policy.</p> <p>Requires referral through your local health unit.</p>	<p>May provide all levels of care including residential care.</p> <p>To apply contact the building directly. Rates vary from \$3500- 6000/m.</p>

Community and Justice System Working Together As Partners Under Adult Guardianship Act (AGA)

Community Networks (CRNs): Coordination, Support



Resources Toolkit – Seniors Advocacy

1. **411 Seniors Centre Information & Referral Support**
http://411seniors.bc.ca/?page_id=16
This website contains information on advocacy services for seniors.
2. **Age-Friendly Workplaces**
 - [Promoting Older Worker Participation](#)
 - [A Self-Assessment Tool for Employers](#)
 - [An Age-Friendly Workplace - Charter](#)
3. **American Bar Association –**
 - [Why Am I Left in the Waiting Room – Understanding the 4 C's of Elder Law Ethics](#) [*a useful discussion of how legal workers need to meet with the older client alone if possible*]
 - [ABA Handbook - Assessment of Older Adults with Diminished Capacity](#) [useful handbook on how to assess legal capacity]
 - [Lawyers Toolkit – Advance Planning](#) - a useful set of tools for discussing advance planning with your clients – it is based on American law and terminology – so should be used with reference to BC law.
4. **Alzheimer Society** <http://www.alzheimer.ca>
5. **Assisted Living Registry**
 - [Assisted Living Complaints](#) [useful webpage summarizing complaining about assisted living (health and safety issues).
 - Assisted Living Substantiated Complaints :
 - by community
 - by health authority.
 - [Find Assisted Living – by community](#)
6. **Attorney General BC – Incapacity Planning** - webpage has downloadable pdf forms for basic Enduring Power of Attorney, and s. 7 & s. 9 Representation Agreements along with signing notes.
7. **BC Centre for Elder Advocacy and Support (BCEAS)** <http://bceas.ca/> BCEAS services include a legal advocacy program, elder law clinic, victim advocacy program, education and outreach.
 - [Recognizing and Responding to Abuse and Neglect](#) [a useful reference chart for identifying and responding to elder abuse – including interview strategy, possible interventions, safety plan and help numbers in BC]
 - [Legal Issues in Residential Care: An Advocates Manual](#) (wikibook now on Clicklaw)
 - [Understanding and Responding to Elder Abuse](#) – ebook – includes videos and victim services info
 - [List of Acronyms](#) – various acronyms we use in seniors advocacy – one pager
 - [Seniors Benefits and Programs](#) [summary of federal, provincial and municipal benefits and programs for seniors]
8. **BC Community Response Networks - [BC Community Response Networks](#)**
 - [CRN by Community](#)
9. **BC Housing [BC Housing Registry](#)**
 - [Senior Housing Programs:](#)
 - [Home Adaptations For Independence](#)
 - [Shelter Aid For Elderly Renters \(SAFER\)](#)
 - [Assisted Living](#)
 - [Seniors' Supportive Housing](#)
 - [Seniors' Rental Housing](#)
 - [Subsidized Housing](#)
 - [Complaint Form](#)
10. **BC Human Rights Tribunal – [Guides and Information Sheets](#)**
11. **BC Human Rights Coalition – [Pamphlets, Manuals and other Online Educational Resources](#)**
12. **BC Law Institute –**
 - [Assisted Living Reform Project](#)

- [Rationalizing and Harmonization of BC Common-Law Tests of Capacity](#)
 - [Undue Influence Guide](#)
13. **BC Ombudsperson – Seniors Care Investigation**
- [Best of Care – part 1](#)
 - [Best of Care – part 2](#)
 - [FACT Sheet](#)
 - [Home and Community Care Backgrounder](#)
 - [Home Support Backgrounder](#)
 - [Assisted Living Backgrounder](#)
 - [Residential Care Backgrounder](#)
 - [No Longer Your Decision](#) – a review of the process for appointing the PGT to manage the financial affairs of incapable adults
14. **Benefits Finder** [Canada Benefits](#) [an online survey tool - develops a customized list of federal and provincial programs based on the answers . It puts together useful pages setting out the various benefits programs, both federal and provincial. The sections of the benefits include links to the application forms]
15. **Canada Revenue Agency** [Canada Revenue Agency - Seniors](#) [a webpage that sets out information about income taxes for older adults, about non-resident seniors, and about other taxes and savings programs for seniors (RRSPs at 71; RRIFs, etc.)]
16. **Canadian Association of Gerontology** [Canadian Association of Gerontology](#)
17. **Canadian Centre for Elder Law** [A Practical Guide to Elder Abuse and Neglect Law in Canada](#)
18. **Canadian Centre for Policy Alternatives – Fact Sheet Series** (developed for use in last election, but still a useful summary of issues)
- [BC Seniors Fact Sheet - Health Care](#)
 - [BC Seniors Fact Sheet - Housing](#)
 - [BC Seniors Fact Sheet- Social Support](#)
19. **Council of Senior Citizens Organizations** <http://www.coscobc.ca>
Cosco is an umbrella organization seniors' organizations and individual associate members. It advocates for seniors at all government levels. It is the largest federation of seniors' organizations in the province.
20. **Designated Authorities** [responders for elder abuse] :
- [Vancouver Coastal Health Authority](#)[Vancouver, the North Shore, Richmond and Coast Garibaldi]
 - [Vancouver Island Health Authority](#) [Vancouver Island and the Gulf Islands]
 - [Fraser Health Authority](#)[Burnaby to Hope inclusive]
 - [Interior Health Authority](#) [Thompson Cariboo Shuswap, Okanagan, East Kootenay and Kootenay Boundary, including Williams Lake and south to Hope]
 - [Northern Health Authority](#) [Quesnel and all areas north, east and west]
 - [Community Living BC](#) [Designated Agency for all individuals with a developmental disability who are eligible for CLBC Services]
21. **Determining OAS/GIS Eligibility – Determining OAs/GIS Eligibility for people who came to Canada as adults** [a useful tool to find out if someone will be eligible to apply for OAS/GIS when they turn 65]
22. **Employment and Assistance Appeals Tribunal** <http://www.gov.bc.ca/eaat/>
- [Guide to Employment and Assistance](#) [general information about applying for social assistance in BC]
23. **Government of BC**
- [Residents Bill of Rights](#)
 - **BC Seniors Guide** - [BC Seniors Guide](#) [also available in French, Chinese and Punjabi]
 - [Income Security Programs](#) [a page summarizing federal and provincial benefits available to seniors – including OAS/ CPP/EI; Allowance; Veterans Affairs; Seniors Supplement, Social Assistance – with links – Seniors Guide is available in pdf in [French](#), [Chinese](#) and [Punjabi](#)]
 - **BC Seniors Policy Handbook** - [Seniors Policy Handbook](#)
 - **Find an MLA – MLA Finder**
24. **Government of Canada Elder Abuse and Awareness**
- [What is Abuse of Older Adults? \(PDF\)](#)
 - [Types of Abuse and Neglect \(PDF\)](#)

- [Abuse of Older Adults: Signs and Effects \(PDF\)](#)
- [Why Does Abuse Happen in Later Life? \(PDF\)](#)
- [Help is Available \(PDF\)](#)
- [Thinking About Aging In Place](#)
- **Pension Trusteeship** – a useful way for a person or organization to manage the federal pension monies of an older adult:
 - [Pension Trustee Agreement Form](#) – for an individual
 - [Pension Trustee Agreement Form](#) – for an agency or organization
- **What Every Older Canadian Should Know About** (a series of 9 pamphlets created by Federal/Provincial/Territorial Ministers Responsible for Seniors Forum):
 - [Financial Planning](#)
 - [Income and Benefits from Government Programs](#)
 - [Managing and Protecting Their Assets](#)
 - [Planning for Possible Loss of Independence](#)
 - [Planning for their Future Housing Needs](#)
 - [Having a Will and Making Funeral Plans](#)
 - [Financial Abuse](#)
 - [Frauds and Scams](#)
 - [Powers of Attorney and Joint Bank Accounts](#)

25. Law Students Legal Advice Program Manual –

- Chapter 15 - [Adult Guardianship & Substitute Decision Making - 2014](#)
 - Chapter 16 – [Wills and Estates - 2014](#)
- NOTE** – the law regarding wills and estates changed dramatically in March, 2014 with the implementation of the Wills, Estates and Succession Act [WESA]. Any wills and estates resources prior to that date should not be relied on.

26. Legal Services Society :

- [Getting-Help-from-the-Police-or-RCMP](#)
- [Protection-Orders](#)
- [Safety-Planning-for-Your-Client](#)

27. Ministry of Health –

- [Choosing a Care Facility or Home \(PDF\)](#)
- [Home & Community Care - A Guide to Your Care](#)
- [My Voice](#) - advance planning workbook including Enduring Power of Attorney, Representation Agreements and Advance Directives

28. Ministry of Justice - Eliminating Mandatory Retirement

- [Want to Work Past 65? Now You Can Choose!](#) (English – also available in [Chinese](#) & [Punjabi](#))
- [Information Bulletin](#)
- [Age Discrimination - English, Chinese, Punjabi](#)

29. National Initiative for the Care of The Elderly An organization that supports **networking** and **knowledge transfer** regarding care of older adults. Includes a resource library, tools for addressing [Care Giving](#); [Dementia Care](#); [Elder Abuse](#); [End-Of-Life Issues](#); [Financial Literacy](#); [Law & Aging](#); and, [Mental Health](#).

- [Pocket Tools](#) – *pocket size versions of the tools that can be ordered.*
- [Engaged Services for Seniors Advocates](#) – tools include a charting sheet tool for documenting elder abuse

30. Nidus – [Nidus Personal Planning Resource Centre and Registry](#) - website has various fact sheets on Enduring Power of Attorney, Representation Agreements, Advance Directives, roles & responsibilities, revoking & resignation

31. OAS Clawback Calculator [a useful tool to find out amount of OAS entitlement based on total income] <http://www.retirementadvisor.ca/retadv/apps/clawback/clawback.jsp>

32. Patient Care Quality Office & Review Board – complaints regarding care in care homes go first to the Patient Care Quality Office for the relevant Health Authority ([PHSA - Find a Patient Care Quality Office](#)), and then to the [Patient Care Quality Review Board](#)

- How to Request a Review
 - PCQRB Review Form
33. **People's Law School** –
- Learning About the Law – Elder Law Section
 - When I'm 64 – Benefits [a good free plain language summary of federal and provincial benefits available to seniors – including OAS/ CPP/EI]
 - When I'm 64 – Controlling Your Affairs – booklet on advance planning - Wills, Enduring Power of Attorney and Representation Agreements
 - When I'm 64 – Services – booklet on health care, housing, transportation, and recreation resources
 - Power of Attorney – preparing an Enduring Power of Attorney
 - Writing Your Will – preparing a Last Will and Testament
 - A Death In Your Family – practical steps to take (also a ClickLaw 'wikibook')
 - Being an Executor– what's involved, what steps to take
34. **PovNet Seniors and Elders Resources** - <http://www.povnet.org/issues/seniors-elders>
35. **Provincial Health Services Authority**
1. PHSA - Find a Patient Care Quality Office
 2. Find a Care Facility Licensing Office
36. **Public Guardian and Trustee: Public Guardian & Trustee - Adult Services**
- PGT - Assessment and Intervention Referral Form - e-version [form to request assessment and possible intervention by the PGT in an abuse situation]
 - Guidelines for Issuing a Certificate of Incapability under the Patients Property Act [the table at pages 18-19 of this guidebook, entitled "Options to Consider in Abuse and Neglect Situations" is a very good summary of possible responses when someone has difficulty managing their affairs]
 - Protecting Adults From Abuse, Neglect and Self Neglect [summary of Adult Guardianship, role of DA's, CRN, PGT - *also available in Chinese (simplified and traditional), Punjabi, Spanish and Vietnamese*]
 - How You Can Help - a booklet setting out the options that can be used to help adults who cannot manage their financial and legal affairs on their own.
 - It's Your Choice - Personal Planning Tool" - good plain language planning booklet – Enduring Power of Attorney, Representation Agreements, Advance Directives.
37. **Re:Act Capability and Consent Tool** - <http://vch.eduhealth.ca/PDFs/IB/IB.100.C33.pdf>
38. **RCMP – "E" (BC) Division**
- Match Location & RCMP Detachment
 - Detachment Contact Info
 - Integrated First Nations Unit
 - RCMP Victim Services
39. **Senior Living Magazine** This monthly magazine for seniors is *distributed throughout Vancouver and the Lower Mainland, in Victoria and across Vancouver Island*
- Aging-in-Place Resources
 - Senior Living Housing Directory
 - To Move or Not To Move
40. **Seniors' Advocate for BC**
A 'Seniors' Advocate' for BC was appointed in the Spring of 2014. A website and 1-800 number will be set up shortly.
- Overview of Complaint, Investigative and Referral Agencies in British Columbia
41. **Seniors BC** Seniors BC
- **Together to Reduce Elder Abuse Strategy Fact Sheets**[also available in Traditional Chinese and Punjabi]:
 - Responding to Elder Abuse: Resources (PDF)
 - Financial Abuse: Protecting British Columbia's Seniors (PDF)
 - Are You Dating? Older Adults and Healthy Relationships (PDF)
 - How to Tell Someone You Are Being Abused: Starting the Conversation (PDF)
42. **Seniors Canada** website with info for seniors: Seniors Canada

43. **Seniors Services Society** Seniors Services Society
 - Housing Directory
 - Seniors Housing Options Grid [a useful summary in chart form of the various types of seniors housing in BC]
44. **Service Canada** – Services for Seniors
 - Rate Card – Income Security Programs
 - Table of Amounts – OAS/GIS/Allowances
 - Table of Amounts – CPP/Death Benefit/Disability/Survivor/Children
 - International Benefits - **Phone:** 1-613-957-1954 **Fax:** 1-613-952-8901 **Toll free:** 1-800-454-8731 **TTY:** 1-800-255-4786
 - Veterans – Income Assistance Programs
45. **Simon Fraser University** - SFU Gerontology Research Centre
46. **Social Security Tribunal** Social Security Tribunal [*Appeals of denial of OAS, CPP or EI go to the new Social Security Tribunal (SST)*]
 - EI jurisprudence library [over 60 years of CUBs (Canadian Umpire Benefits decisions), Federal Court and Supreme Court decisions on EI issues]
 - Pension Appeals Board Decisions [searchable database of decisions of the former appeals board for CPP/OAS matters]
47. **The Care Guide** – for caregivers The Care Guide
48. **United Way** – *2011 United Way Seniors Vulnerability Community Profiles and Discussion Papers* – reviewed seniors vulnerability in Greater Vancouver and the Sea-to-Sky region.
 - United Way - Seniors Vulnerability Report - 2011
 - Seniors Vulnerability Community Profiles and Discussion Papers
49. **Vancouver Sun** – Independently Healthy [special publication on BC seniors' housing and care needs]
50. **Veterans Affairs** <http://www.veterans.gc.ca/eng/services>
51. **Victim Services** Victim Services - www.pssg.gov.bc.ca/victimservices
 - Victim Services Directory [a list of all victim services in BC]



Advocacy Resources and Services for Seniors



**Provincial Training
Conference**

October 28, 2014

How BCCEAS Can Help You Help Your Clients

Table of Contents

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Navigation Buttons**Intro to
Older Adults** Older Adults**Practice
Tips** Practice Tips Office Best Practices**Financial
Abuse** Financial Abuse Powers of Attorney Joint Bank Accounts**Remedies** Remedies**Practice
Aids** Practice Aids**PLE
Materials** PLE Materials

3

Older Adults and the Law

Key Legal Issues for Older Adults

4

- Subordination of older adults' interests
- Under-inclusion in the law
- Personal and systemic barriers to access to justice



Intersection of Identities

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- There is often an intersection of factors such as age, gender and disability, or race, family status, or age and mental disability.
- Meyer-Harrington notes “to be old, female and poor is a triple jeopardy”
- Prioritizing one entry point in an HR complaint (“old” “disabled”) or one relation of power to the exclusion of others (i.e. – race, class) oversimplifies and reduces complex systems of oppression, and misrepresents the full diversity of people’s lived realities.*

Elder Law – legal issues

6

Legal Issues elderly people face:

- **Ageism & Age discrimination**
- **Benefits** - obtaining federal benefits such as OAS/CPP and supplemental GIS income & appeals from denials of income and health care benefits
- **Housing** problems, including landlord & tenant issues, property tax exemptions and assessments
- **Abusive or poor quality care home care or institutional care**
- **Mental incapacity and guardianship**
- **Elder abuse** - protective services to guard them from physical, financial, or emotional abuse or self-neglect.
- **Consumer Issues**- various consumer scams are more likely to target older persons.
- **GrandParent Rights**

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The result is that every Canadian Bar Association provincial branch now has an elder law section.



Estate Law

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Elder law could also be seen to include ‘**estate law**’:

- ▣ **Estate Planning** – wills, joint property, trusts
- ▣ **Estate Administration** – probate, intestate, etc.
- ▣ **Estate Litigation** – *Wills Variation Act* claims and other litigation

However, we will not be covering these matters as they don’t usually involve low income older adults.

Barriers to Justice

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Older adult accessing justice face various barriers:

- ❑ May be unaware of their rights, especially in area of rights of residents of seniors housing;
- ❑ Many areas are complex – thick statutes
- ❑ Physical barriers, lack of accessible transportation or services;
- ❑ Those living in care homes – the staff (who may be the problem) may be only link to outside world;
- ❑ Fixed income and limited coverage by BC legal aid;
- ❑ Court proceedings often lengthy
- ❑ Not a strong ‘elder law’ bar

Ongoing Relationship

- Like many low income people, seniors are often dependent on someone else for the necessities of life
- If a legal process pits them against their service provider or family member – they will be reluctant file complaints – as they must continue to use service provider into the future or want ‘peace in the family’
- Advocates may face challenges forcefully putting forward a legal claim
- Many charitable and religious providers expect recipients of their beneficence to be grateful and not bite the hand that feeds – can be worst opponents

Time



10

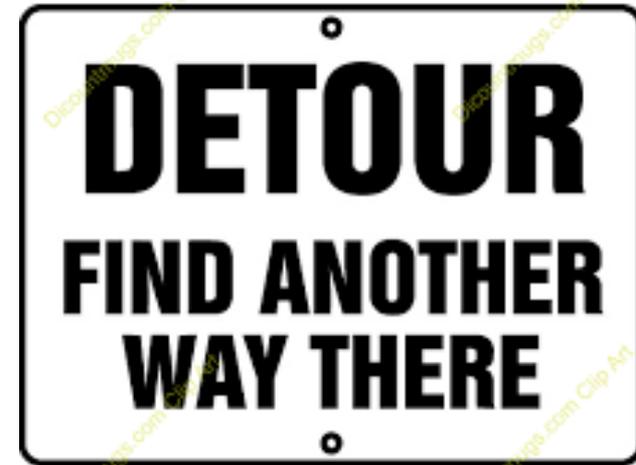
- Timely access is important to older adults with precarious or deteriorating health
- Procedural processes that result in delays can work to systemically disadvantage older adults and may effectively negate their rights, including lengthy reviews or appeals
- On the other hand, many seniors are systemically disadvantaged by the short time frames in areas such as RTA evictions

Illusion of Recourse

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- Sometimes review and appeal routes may exist on paper, but don't really function in reality
- Residents' Bill of Rights without any teeth
- Assisted living – not covered by RTA
- May be no recourse re issues of care

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Practice Tips



Working with the Older Adult Client

Interviewing

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- A thorough initial interview is fundamental to the development of a plan for effective advocacy.
- For example, the information gleaned from a thorough interview allows the legal advocate to assess any financial or housing choices in terms of that client's likely future.
- Medical information including medical history may be important.

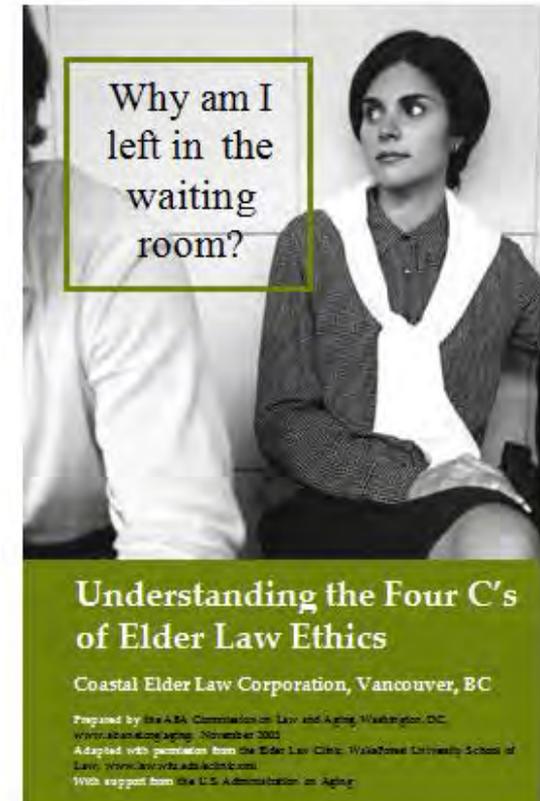
Understanding the Four C's

14

This pamphlet explains to 'friends' and relatives why a legal worker needs to meet with a client alone if at all possible to properly address the four C's:

1. **Client ID** (who is the client – what are instructions)
2. **Conflicts of Interest** (only one client if possible)
3. **Confidentiality** (and protection of privilege)
4. **Competency** (assessing capacity)

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Interview Tips

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PRACTICAL CONCERNS:

- ❑ Early morning vs ‘sundown effect’
- ❑ House calls
- ❑ Good, indirect lighting
- ❑ Some elderly are suspicious of lawyers
- ❑ Some elderly may be confused or paranoid which may be the direct result of medication

Challenges of Older Clients

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Legal advocates must be cognizant of the stress of working with elderly clients who, perhaps more than others, may:

- ▣ fear their own mortality
- ▣ feel anger, or
- ▣ regret their experiences and behavior
- ▣ Regret the behaviour of their children.



Watch Out For

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- Things to avoid:
 - ‘tells’ – “you didn’t intend that, did you?” as you shake your head no.
 - blarney & bafflegab from older adult
 - Questions that all require a Yes answer
 - Your own assumptions



Death – the other ‘D’ word



18

- Death can make an elderly person’s problem moot.
- So it is urgent to get to elderly clients cases – don’t let them be ‘dog files.’
- Older adult or their concerned friend/family member who seeks legal assistance usually need help now, not in the distance future or when it is convenient for the legal worker.

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Office Best Practices

From ABA's Commission on Law & Aging

Best Practices – 1 of 2

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- ✓ All staff trained on dementia recognition & diminished capacity
- ✓ All staff trained in basic communication techniques, aging process, disability concerns, & avoiding stereotypes
- ✓ Do walk-through/wheel through/ checklist to ensure elder/disability friendly office
- ✓ Protocol - interview client alone (unless client asks for support person); stress confidentiality



Best Practices – 2 of 2

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- ✓ Develop ongoing relationship with capacity assessment specialists
- ✓ Be familiar with legal tests of capacity for common legal transactions
- ✓ Understand incapacity provisions of LSBC's Code of Conduct
- ✓ Review ABA's "Assessment of Older Adults with Diminished Capacity: Handbook for Lawyers" and worksheet; use as framework





Financial Abuse

Forms of Financial Abuse

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- Theft of cash, credit cards, bank cards, or valuables
- Cashing in investments without permission
- Monetary gifts that are involuntary—e.g. gifts made under coercion, undue influence or threats
- Misuse of a credit card or bank card by a friend or family member given access to the PIN number in order to assist the older person with specific activities
- Inter-family loans that are not repaid and repeated borrowing
- Misuse of a power under a general or enduring power of attorney
- Misuse of funds in a joint account created ostensibly to allow another person to assist the senior with financial transactions

From – Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts - Canadian Centre for Elder Law (March 2013)

Forms of Financial Abuse [cont'd]

- Private care agreements, whereby a senior transfers title of property in exchange for anticipated care that is not provided
- Withholding of the older person's pension cheque by attorney or other decision-maker or family member with access to the older person's mail
- Forging the older person's name or altering documents to get permission to access or dispose of assets, including forging cheques
- Forcing a senior to sign over their home or a vehicle
- Predatory marriage
- Pressuring an older person to sign documents that they do not have the capacity to understand.

From – Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts - Canadian Centre for Elder Law (March 2013)

Subtle Forms of abuse

Financial abuse includes more subtle dynamics such as:

“circumstances where a senior is financially supporting other family members and/or allowing them to live in his or her home, due to pressure or where this dynamic is causing harm to the senior.”

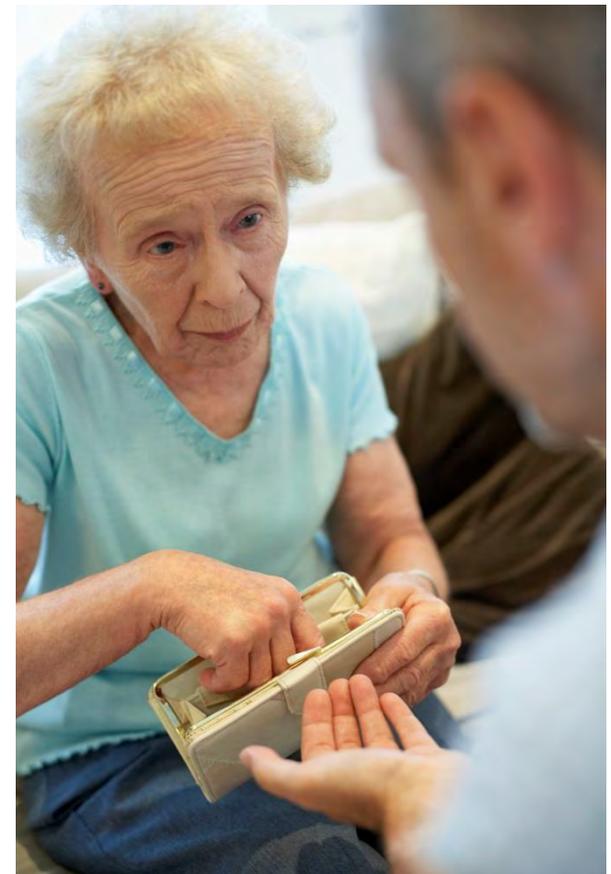
From – Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts - Canadian Centre for Elder Law (March 2013)

Responding to Financial Abuse

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Some keys issues:

- seniors' perspective of why abuse occurs;
- why difficult to prevent
- why some responses may look good but don't solve the abuse
- why victims may refuse help



Financial Abuse & Other Abuse

Financial abuse often occurs in connection with other types of abuse:

- For example, the attorney who refuses to provide a dependent senior with funds to pay for groceries or other necessities is also neglecting an older person for whom he or she has a degree of responsibility.
- The adult child who threatens the senior that he will not let her see the grandchildren unless she guarantees a loan is psychologically abusing the senior as well financially abusing her.

it is useful to be aware that the senior who is being financially abused may also live with fears associated with physical or emotional abuse, as these factors may impact on the appropriate response.

From – Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts - Canadian Centre for Elder Law (March 2013)

Other Impacts of Financial Abuse

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- abuse can have social, mental health and health impacts on the senior.
- As Charmaine Spencer writes,
“older people view financial abuse as [a] fundamental violation of their trust by someone close to them, in many cases someone they loved and cared for throughout their lives. Financial abuse at any age often occurs in conjunction with emotional abuse, robbing people of their dignity and sense of worth.”
- Abuse may also undermine an older person’s sense of personal power and self-determination.

From – Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts - Canadian Centre for Elder Law (March 2013)

Dependent Abusers

29

- Contrary to portrayals of older people as weak, dependent victims, older adults are most often abused by people who are dependent on them.
- Adult children who harm their parents often exhibit various health, mental health and financial problems, including financial dependence on the older person, substance abuse, social isolation, and employment issues.
- The abuser may rationalize the mistreatment with a false sense of entitlement toward the senior's money or belongings: eg. I am the only daughter, I deserve the money, etc.
- These complex dynamics can make identifying the appropriate response to abuse especially challenging.

From – Background Paper: Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts - Canadian Centre for Elder Law (March 2013)

Common Family Pressures

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- ❑ Emergency loans
- ❑ Places to live when they are out of job
- ❑ Help paying for higher education (university)
- ❑ Assisting with major purchases (i.e.. car)
- ❑ Making down payments for a home
- ❑ Co-signing or serving as guarantor for loans
- ❑ Using house title as collateral
- ❑ Help avoiding bankruptcy (adult son/daughter) at the point of losing business, home



Adapted from: Charmaine Spencer, Diminishing Returns (1995)

Undocumented Loans

31

- Family loans are frequently undocumented
- there will not necessarily be a common understanding concerning the terms of repayment and related matters
- Often the result is the family member claims this was always intended to be a “gift”
- Law presumes a ‘bargain’ (loan) not a gift, for adult children





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Powers of Attorney

Powers of Attorney

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- Are they part of the solution?
Or
- Part of the problem?
Or
- Both?



Powers of Attorney

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Some safeguards:

- multiple attorneys
- prohibitions for certain parties with potential conflicts to be named attorneys
- Requirement to record keeping and accounting
- Requirement for confirmation by attorney signing POA



Powers of Attorney

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Other possible safeguards not in legislation:

- Registry?
- Bonding of attorneys?
- third party monitors?
- regular reporting/accountings – to next of kin?
- Requirement for legal advice before signing?
- Legal advice/info to attorney?
- requirement for confirmation of authority/validity with grantor before initial use?
- Requirement for proof of incapacity (if effectiveness only post incapacity) ?



COMMITTEE ON LEGISLATION

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Misunderstandings about POAs

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There is a good deal of misunderstanding of fundamentals about POAs by:

- Seniors
- Families
- attorneys
- service providers (including some front line bank staff and financial advisors)
- Misinformation or overly broad statements in media: “If you don’t have a POA then Government will get your money...”



Misuse of POAs

37

- Requirements by some service providers (Care facilities, retirement homes, community services) for POAs as condition of use of service
- Some Banks/ Financial Institutions refusing customers own POA documents and requiring use of own institutional documents
- These new POAs could revoke a carefully prepared POA



How Can Powers of Attorney Be Abused and Misused?

38



October 28, 2014

Provincial Training Conference

Misguided Beliefs of the Attorney

39

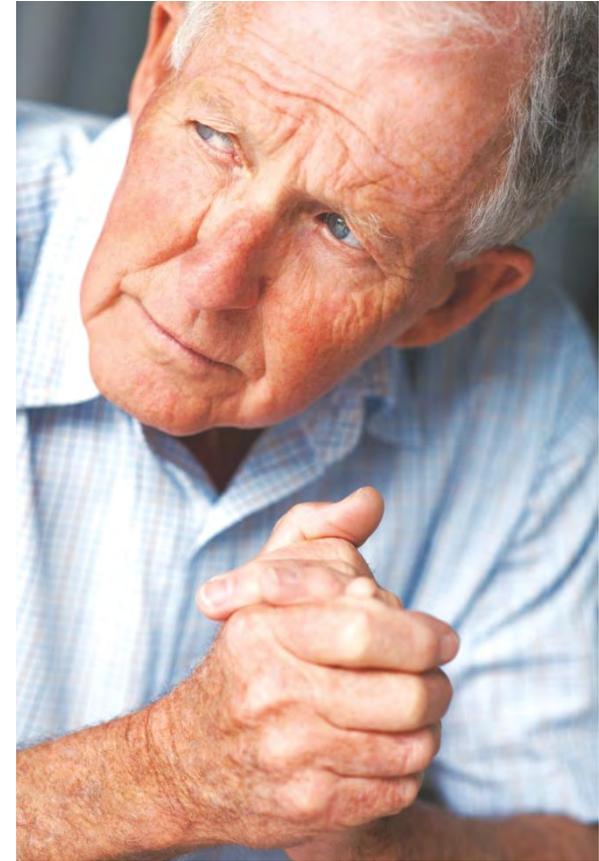


1. Dad isn't using the money anyway.
2. It isn't really her money – Dad earned it for me.
3. I'm just going to inherit it anyway – it's my money he's spending.
4. I don't care what she says – Aunty gave me power of attorney and I know what's best for her...
5. He's so out of it, he'll never even miss it.

Misguided Beliefs of the Donor

40

- My son knows what I'd want.
- She'd never do anything to hurt me.
- I want to be fair to my kids – appoint all of them equally and this will make it all “even.”
- I can't take it back!
- My power of attorney from Ontario is just fine. I've already taken care of it all there...



Rogue Power of Attorney

41

- Most common form of financial abuse
- Can literally bankrupt the donor
- **HAVE TO BE VERY CAREFUL** about who you appoint



Dealing with the Bank

42

- Be cautious about signing bank powers of attorney, or multiple powers of attorney
- New powers of attorney may revoke earlier powers of attorney



Provincial Training Conference

October 28, 2014

I'm sorry, Mr Bates -
she's already switched
the account to the Cayman
Islands in her name!



**TAKE SWIFT ACTION ON JOINT
BANK ACCOUNTS...**

43

Perils of Joint Bank Accounts

- Both parties own 100% - not 50/50
- Easy to abuse
- Talk to your bank manager

Joint Accounts

44

- Older people often enter into joint accounts without understanding the legal or financial implications such a decision will have
- both during their lifetime and after death



Recommended Changes

45

- consumer information on implications of case law on ‘right of survivorship’ when a joint account held by parent/ adult child
- education and Information – to bank staff/ seniors/ lawyers/ police/ crowns/ etc. etc.
- Policy and procedures should focus on the CUSTOMER/senior
- first contact – TALK TO THE SENIOR

Voluntary Commitments and Codes of Conduct
Commitment on Powers of Attorney and
Joint Deposit Accounts

This Commitment sets out the information about Powers of Attorney (POAs) that banks will make available to clients who want to give someone else the authority to do banking for them. The Commitment also sets out information that the banks will make available to their clients about joint deposit accounts (JDAs).

Application and Implementation
This Commitment applies to interactions with clients who are natural persons and their attorneys and, for the purposes of the JDA provisions, to natural persons opening new personal deposit accounts or converting a sole-ownership account to a JDA. For clarity, this Commitment does not apply to business clients or commercial accounts.

Banks will implement the provisions of this Commitment related to disclosure of the required information about POAs and JDAs on their websites by September 1, 2014 and in the branches by December 31, 2014, and will implement the staff training provisions by March 31, 2015.

Required Information
Banks cannot provide legal advice to their clients. Banks will, however, make available information about POAs and JDAs, covering the following topics:

1. A bank may offer its own form of POA to clients as an option, but will not require such form to be used.
2. General information about bank-form POAs, POAs and JDAs
For example, concerning bank-form POAs, if a bank offers a bank-form POA, it will indicate that clients may obtain POAs through other sources, including from legal professionals. It will provide information that the bank-form POA may impact arrangements set out in pre-existing POAs – e.g., it will indicate to the client that advice from a legal professional may be beneficial to identify whether there may be conflicts between a bank-form POA and a pre-existing POA.
For example, concerning POAs, the client may make changes or cancel a POA at any time, as long as he or she is mentally capable.
For example, concerning JDAs, a joint holder of the account might use the funds in the account for their own purposes without the consent of the other JDA holder, or the funds deposited in the account by one JDA holder might be subject to creditors' rights or other claims that might exist against the other joint holder.
This provision will be satisfied if a bank provides the client with *What every older Canadian should know about Powers of Attorney (for financial matters and property) and Joint Bank Accounts*, produced by the Federal/Provincial/Territorial Ministers Responsible for Seniors. Alternatively, a bank may choose to provide its own form of disclosure that contains the information outlined above.
3. The bank's minimum requirements for an account to operate under the authority of a POA.
For example, a bank may require the client or attorney to present the original POA or a notarized copy of the POA, and a bank will require proper identification from both the client and the attorney to meet anti-money laundering and other legal requirements.

ASSOCIATION OF CANADIAN BANKING INSTITUTIONS | CANADIAN BANKERS' ASSOCIATION | www.cba.ca

46

Remedies for Financial Abuse

When things go wrong

47

- Delay in learning of abuse until its too late to do much/too late to recover funds
- Limited legal assistance unless you can afford to pay and remedies may be costly to pursue
- Not wanting adult children (abusers) to “get into trouble”/ Lose contact/ lose contact with grandchildren
- May result in loss of only assistance if dependent
- Emotional impact (embarrassment through to fear) to seek help

From the Advocacy Centre for the Elderly

Issues

48

- Not knowing:
 - ▣ where to get assistance
 - ▣ who to trust
 - ▣ whether assistance will follow through
 - ▣ whether assistance will meet address all needs since impact of abuse may be more than financial (loss of shelter, comforts, care services, loss of safety etc.)
- Assistance/Remedies may not work as expected – i.e. Police and Crowns (too small to investigate, prosecute, "it's a civil matter")
- PGT "service of last resort", alternatives to investigations that may not be appropriate in opinion of person reporting

Requirements & Results

49

Power of Attorney

- ❑ Power of Attorney document
- ❑ Legislated formal validity requirements
- ❑ Legislated duties
- ❑ Access to *all* property, but *no* ownership
- ❑ Death ➡ EPOA ceases

Joint Bank Account

- ❑ Signature cards
- ❑ No legislated duties
- ❑ Access to *only* account, with ownership
- ❑ Death ➡ 'right of survivorship [subject to resulting trust]

Fraud

50

Fraud Civil (common law)

false representation has been made:

- knowingly, or
- without belief in its truth, or
- recklessly, carelessly whether it be true or false.

Fraud Criminal (s. 380)

by deceit, falsehood or other fraudulent means:

- defrauds the public or any person, whether ascertained or not,
- of any property, money or valuable security

Is it Fraud?

51

Power of Attorney

- Attorney has legal authority to do anything the senior can do
- except make a Will

Joint Bank Account

- Joint account holder has a form of legal title on the bank account, or money on deposit

Civil Law

52

- **First step:** Get legal advice!
- Possibly get an order to “Freeze Assets”
- Try to get assets back
- Possibly sue for breach of fiduciary duty
- Can be difficult – may be nothing left



Criminal Code Provisions

53

- Theft by a Person Holding a Power of Attorney (s. 331);
- Theft (s. 322);
- Criminal Breach of Trust (Conversion by Trustee) (s. 336);
- Forgery (s. 366);
- Extortion (s.346);
- Fraud (ss. 386-388); and
- Neglect: Failure to Provide the Necessaries of Life (s. 215) and Criminal Negligence (s. 219).



Other Criminal Abuse

54

- Physical assault (s. 265)
- Sexual assault (s. 271)
- Uttering threats (s. 264.1.)
- Intimidation (s. 423)
- Unlawful confinement (s. 279)

Why Criminal Route May Not Work

- ❑ Criminal prosecutions are often difficult, as the victim may be reluctant to cooperate in a prosecution against the loved one;
- ❑ The victim may have poor health and possible present or impending mental incapacity;
- ❑ The prosecution may take so long that the victim dies before the case goes to court; and
- ❑ The perpetrator may be the only significant person in the victim's life and to report and testify against them would result in loneliness and pain from the perceived consequences of the intervention.

56 Community and Justice System Response

Financial abuse of older adults is a complex problem that requires a **coordinated community and justice system response.**

BC Community Response Networks

57

- Community Response Networks (CRNs) are groups of local people and organizations who work together to ensure an appropriate and coordinated response to adult abuse, neglect and self-neglect.
- This involves prevention, education, advocacy, protocols...



Designated Agencies

58

Designated Agencies that are mandated to look into reports of abuse and neglect of adults under the AGA are:

- Regional Health Authorities; and
- Community Living Services of the Ministry of Children and Family Development (for adults with a developmental disability).





PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

604-660-4444

www.trustee.bc.ca

- Investigates allegations of financial abuse even in the absence of a power of attorney, guardian, representative or substitute decision-maker having been previously appointed.
- Makes health care decisions
- Manages financial decision-making
- Assists and provides resources to substitute decision-makers

Role of Public Guardian and Trustee

60

- Arrange for assessment of incapability *AGA, s.53(5)*.
- Ability to temporarily freeze assets in an emergency *PGT Act, s. 19*.
- Special investigation powers *PGT Act, s. 17 and 18*.
- Inquire into complaints about representatives *Rep Agreement Act, s. 30*.



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

Contact Information for Public Guardian and Trustee

- **Website:** www.trustee.bc.ca — contains info about OPGT services and contact numbers for designated agencies in various communities.
- **Assessment and Investigation Services in Vancouver:**
 - Telephone: 604-775-0202
 - Fax: 604-660-4493
- **Offices in Vancouver, Victoria and Kelowna.**



PUBLIC GUARDIAN
AND TRUSTEE OF
BRITISH COLUMBIA

Federal Pensions Trusteeship

Income Security Programs – this office may:

- after receiving a signed application and medical report, appoint someone (called a trustee) to manage the federal pension benefits for a mentally incapable person; (voluntary & involuntary)
- A person or an organization (e.g. the “Bloom Group” (formerly St. James)) can apply
- ISP can look into misappropriation and theft of pension monies (including stopping or redirecting payment of benefits).

October 28, 2014

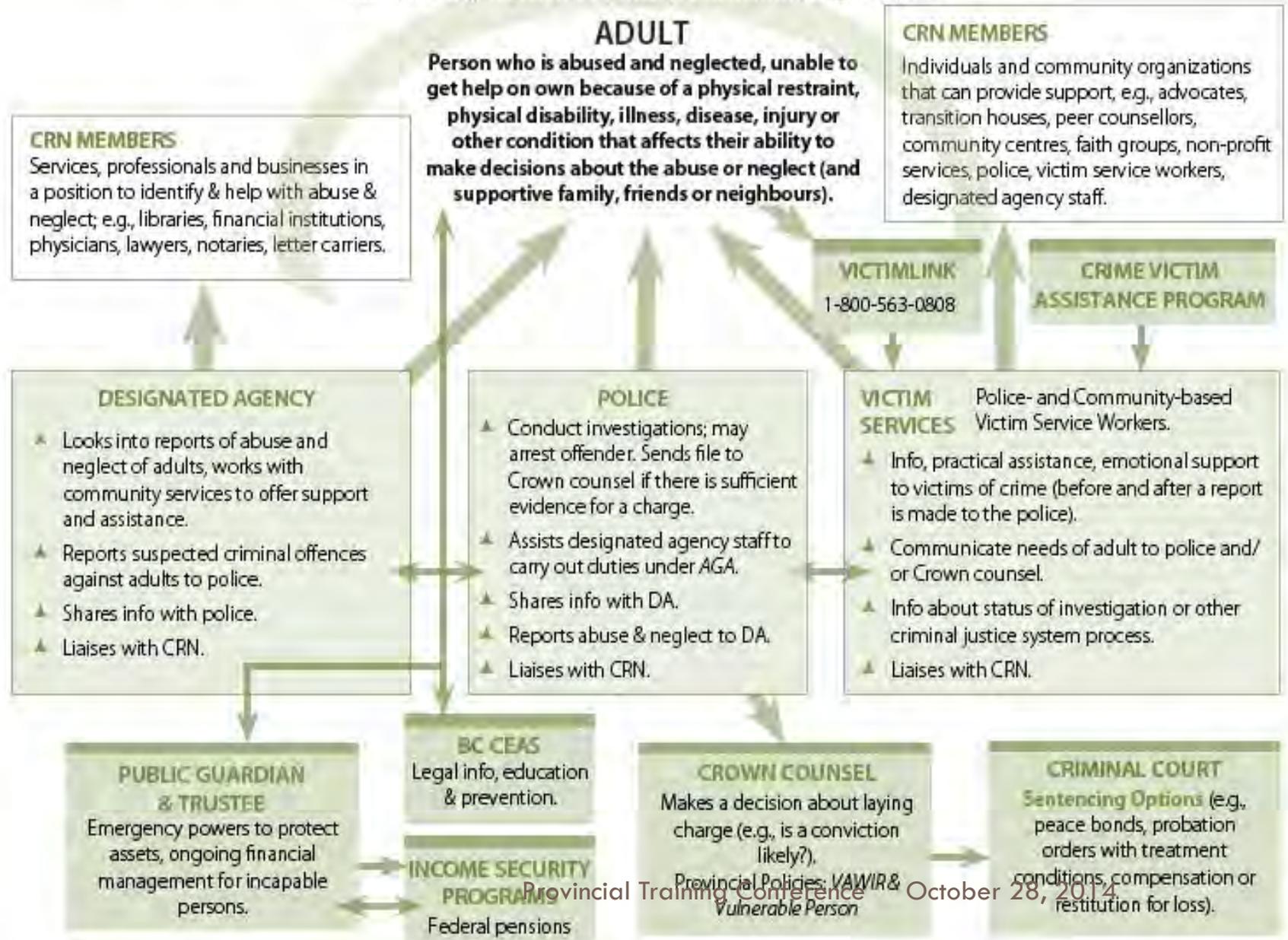
 Service Canada		PROTECTED B (when completed) Personal Information Banks HRSDC PPU 116, 146 and 175	
Agreement to administer benefits under the Old Age Security Act and/or the Canada Pension Plan by a Private Trustee			
<p>Trustees must maintain yearly records of the monies received and spent for our beneficiaries. Should the Minister want an accounting report, the trustee must provide the requested documentation for the applicable year(s).</p> <p>It is very important that you: - use a pen and print as clearly as possible.</p>			
			Beneficiary's Social Insurance Number
<p>The information contained on this form is essential for payments of benefits under the <i>Old Age Security Act</i> and/or the <i>Canada Pension Plan</i> to persons acting on behalf of a beneficiary who is incapable of managing his/her own affairs. It is retained in the information bank relating to the benefit being paid. Under the <i>Privacy Act</i>, the beneficiary has the right to request a copy of this record.</p>			
Old Age Security and/or Canada Pension Plan beneficiary			
<input type="radio"/> Mr. <input type="radio"/> Mrs. Usual First Name and Initial		Last Name	
<input type="radio"/> Ms. <input type="radio"/> Miss			
Home Address - No., Street, Apt., P.O. Box, R.R. and City		Province or Territory	
		Country - If other than Canada	Postal Code
<p>1. the undersigned, agree to receive benefits under the <i>Old Age Security Act</i> and/or the <i>Canada Pension Plan</i> payable to the beneficiary named above and undertake, following the relevant provisions and Regulations, without charge:</p> <p>1. to act on behalf of the beneficiary and, in accordance with any directions, from Human Resources and Skills Development Canada, to administer and expend the benefits in his/her best interests;</p> <p>2. to complete an accounting report for all benefits received and the payments made from them, upon request from Human Resources and Skills Development Canada;</p> <p>3. to notify Human Resources and Skills Development Canada if the beneficiary changes address, becomes absent from Canada, dies, ceases to be incapable of managing his/her own affairs or if the trusteeship ends. And to provide any other information or evidence, and to do anything that the <i>Old Age Security Act</i> and/or the <i>Canada Pension Plan</i> or their Regulations would require from the beneficiary; and</p> <p>4. to return uncashed, if the beneficiary should die, all his/her <i>Old Age Security</i> and/or <i>Canada Pension Plan</i> benefit payments which remain uncashed at the time of his/her death or which may be issued after the month of death, and to reimburse Her Majesty the Queen in Right of Canada for any loss sustained by her through the cashing of such payments.</p> <p>NOTE: If you make a false or misleading statement, you may be subject to an administrative monetary penalty and interest, if any, under the <i>Canada Pension Plan</i> or the <i>Old Age Security Act</i>, or may be charged with an offence. Any benefits you received or obtained to which there was no entitlement would have to be repaid.</p>			
IN WITNESS WHEREOF, I execute this document under seal this _____ day of _____ of the year _____.			
X _____ Signature of Trustee		X _____ Signature of Witness	
Name of Trustee - Please print		Name of Witness - Please print	
Address of Trustee - No., St., Apt., P.O. Box, R.R.		Address of Witness - No., St., Apt., P.O. Box, R.R.	
City, Town or Village		City, Town or Village	
Province or Territory		Province or Territory	
Country	Postal Code	Telephone number	
Country	Postal Code	Telephone number	
Relationship, if any, to the Beneficiary		Occupation of Witness	
Service Canada delivers Human Resources and Skills Development Canada programs and services for the Government of Canada.			
SC ISP-3506 (2011-11-15) E		1 of 2	Disponible en français

BC CEAS (B.C. Centre for Elder Advocacy⁶³ and Support)

63

- Provides education and information about abuse and neglect of seniors.
- Provides legal advice and representation to low income seniors
- Seniors Abuse and Information Line (SAIL) (8 am-8pm 7 days/wk):
 - Telephone: 604-437-1940
 - Toll Free 1-866-437-1940
 - E-mail: info@bcceas.ca
 - Website: www.bcceas.ca

Community Networks (CRNs): Coordination, Support

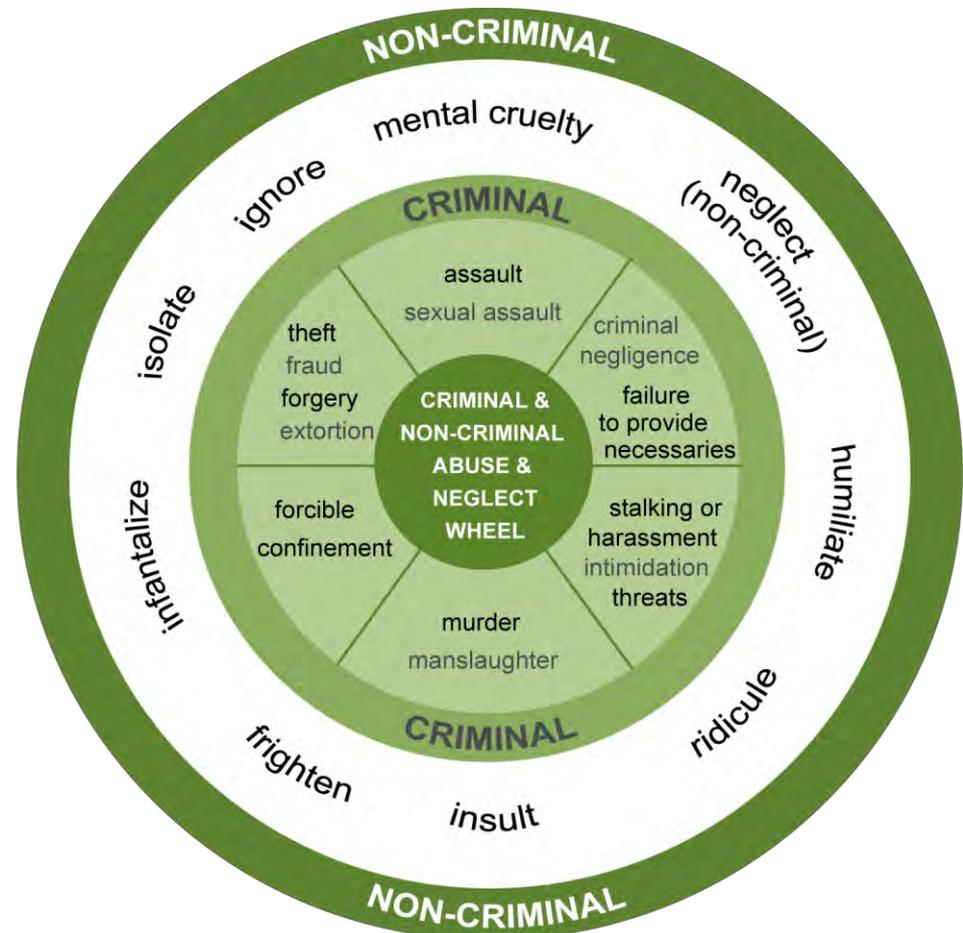




Practice Aids for Advocates

Criminal and Non-Criminal Wheel

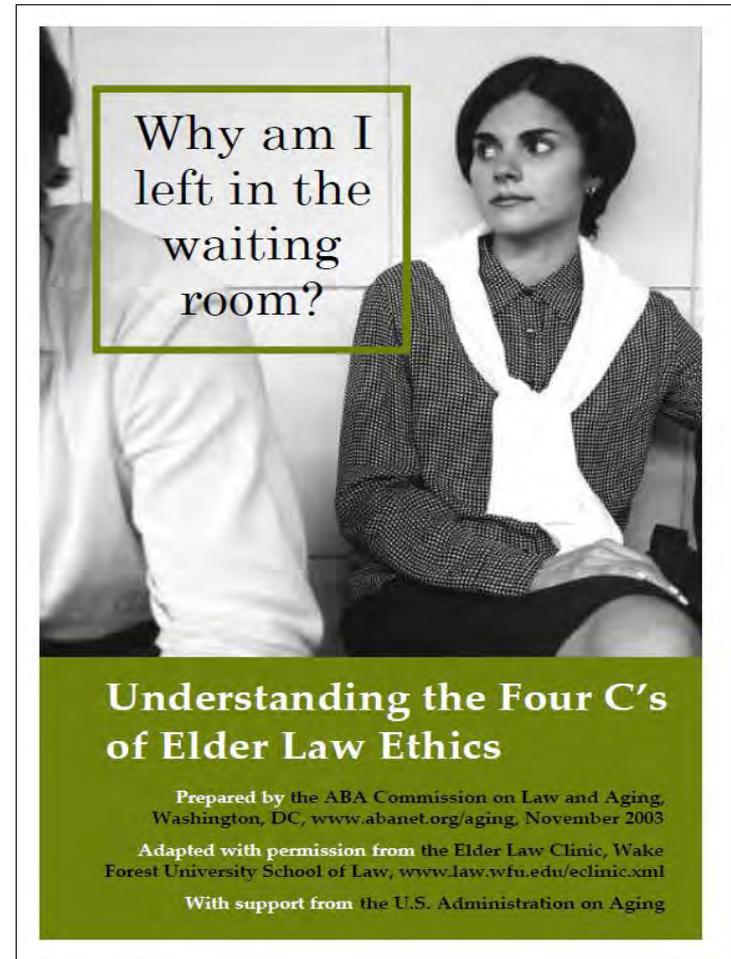
- Abuse tends to escalate and crimes often overlap and blend together
- Adapted, With Permission, From *Elder Abuse: The Hidden Crime* — Advocacy Centre For The Elderly, Toronto



Excluding 3rd Parties from Interviews

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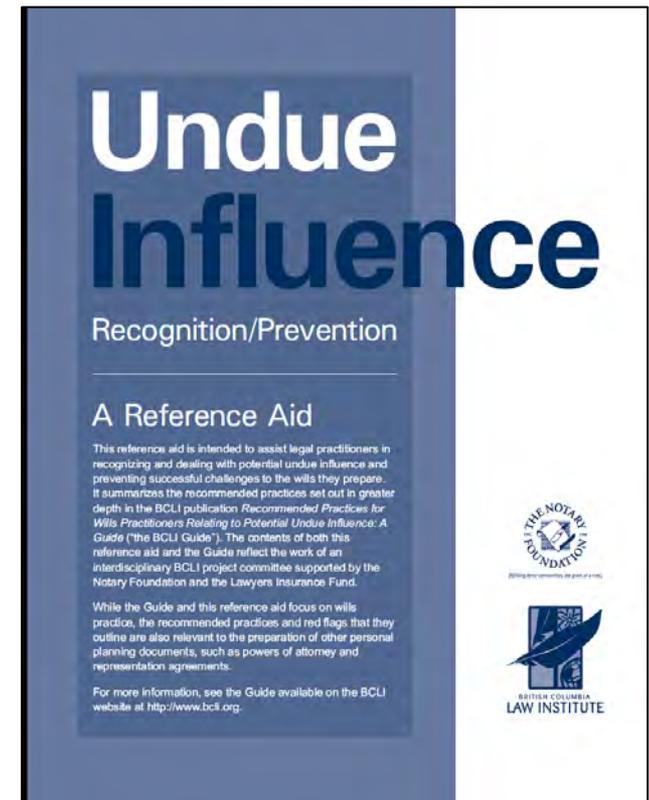
- This ABA pamphlet explains to ‘friends’ and relatives why the lawyer/advocate needs to meet with a client alone if at all possible to properly address the four C’s:
 1. **Client ID** (who is the client – what are instructions)
 2. **Conflicts of Interest** (only one client if possible)
 3. **Confidentiality** (and protection of privilege)
 4. **Competency** (assessing capacity)



Undue Influence

68

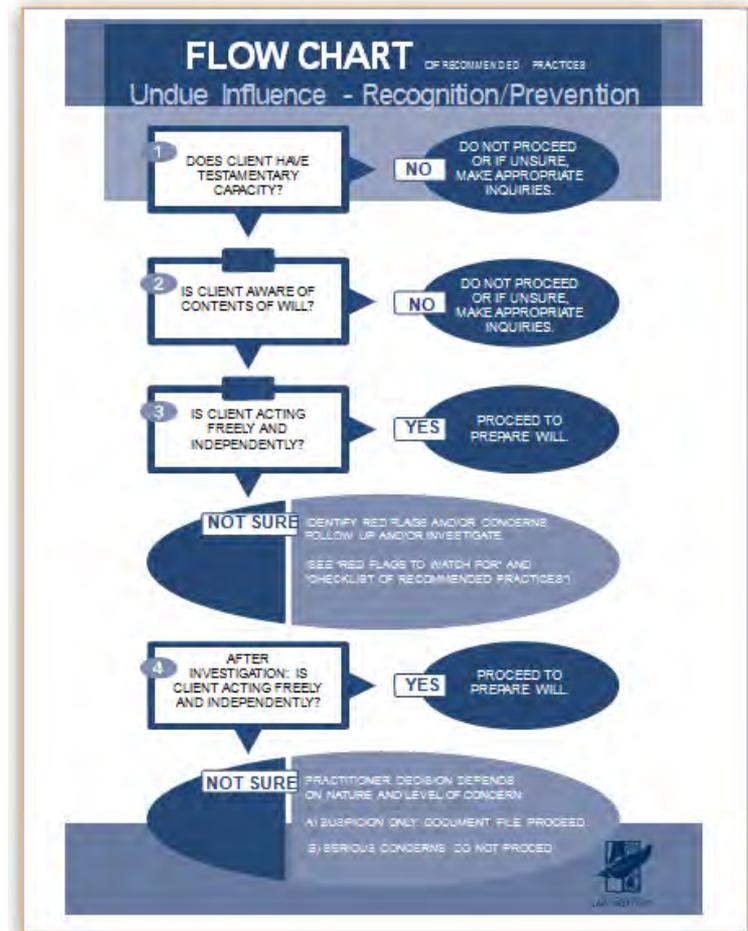
- The BC Law Institute has prepared a guide book (*“Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide”*)
- It includes a Reference Aid-checklist of recommended procedures, useful in any situation where undue influence is suspected.
- It also includes a checklist of ‘red flags’



Undue Influence Flow Chart

69

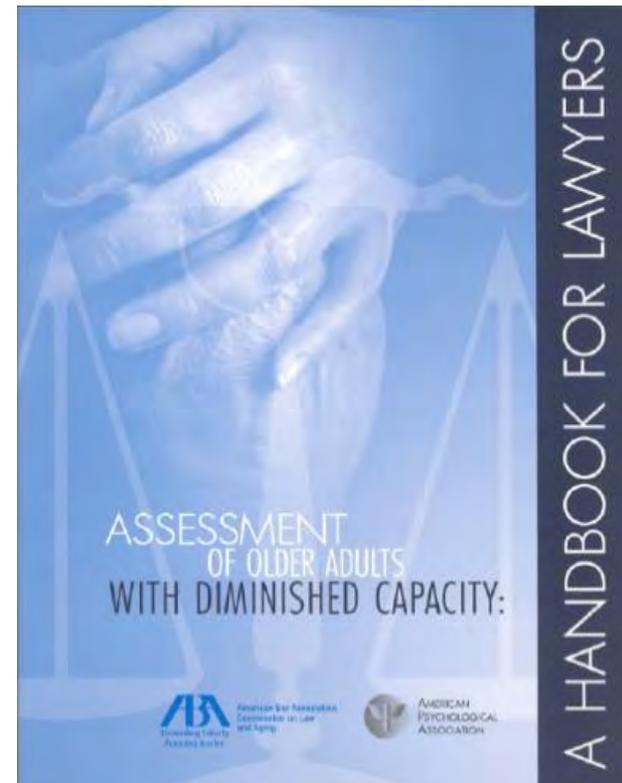
- The flowchart included with the Reference Aid is a useful tool whenever incapacity or undue influence might be suspected



ABA Handbook for Lawyers

70

- Developed by ABA/APA
- This handbook recommends a procedure for conducting an assessment and a suggested capacity worksheet
- Suggests how to enhance capacity where possible
- When/how to refer for medical assessments
- Using and understanding capacity assessment reports



Capacity Worksheet

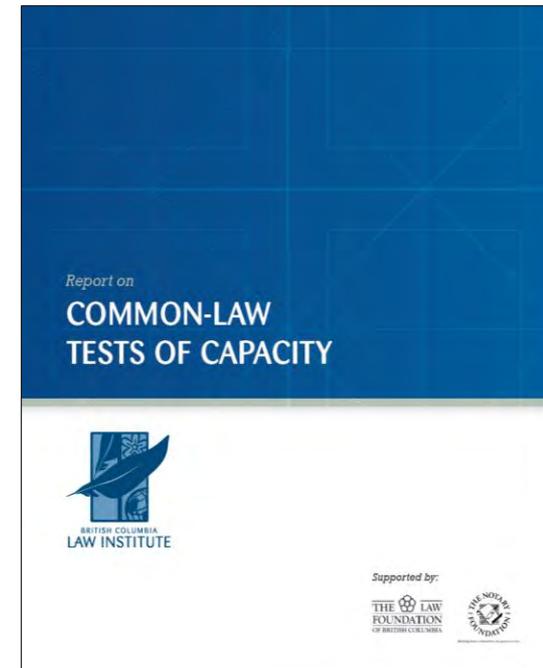
Our capacity worksheet (from the ABA Handbook) helps you identify and organize:

- Observational signs of diminished capacity.
- Mitigating factors affecting capacity.
- Transaction-specific elements of legal capacity.
- Task-specific factors in evaluating capacity.
- Preliminary conclusions about client capacity.

BCCEAS Capacity Assessment Worksheet		 BC CENTRE FOR ELDER ADVOCACY AND SUPPORT
<small>Source: Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers, by the ABA Commission on Law and Aging and the American Psychological Association (2005).</small>		
<i>****Please review the ELC Protocol on Working with Clients with Capacity Issues before completing this worksheet****</i>		
Client Name:	Date of Interview:	
Lawyer:	File #:	
A. PRELIMINARY INFORMATION		
Reason for capacity assessment:		
Medical documentation:		
Legal representative, if applicable:		<input type="checkbox"/> Potentially adverse to client
Notes:		
Other interested parties:		
Other Preliminary Observations/Notes:		

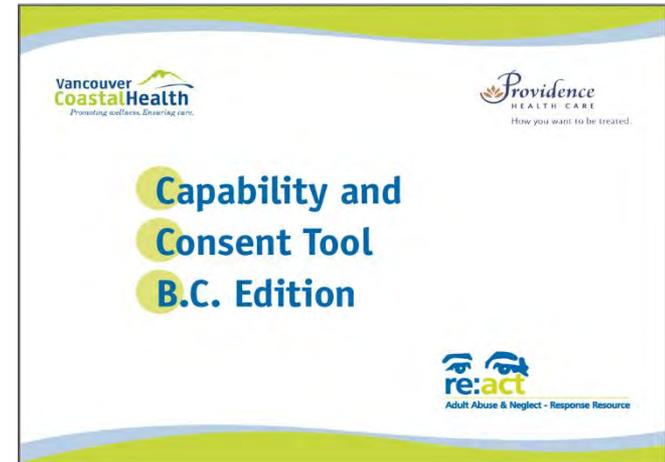
BCLI Study of Capacity Tests

- A study of the common law tests of legal capacity
- Whether there were shortcomings that should be remedied with statutory tests (e.g. – contracts, wills, family law)
- A useful resource for capacity tests for different legal transactions



Other Capacity Questions

- This presentation has dealt with capacity in the context of a solicitor-client relations.
- For issues of capability and consent regarding health care, finances, facility placement and psychiatric treatment, see the *Capability and Consent Tool* from **re:act**, **Vancouver Coastal Health**.
- 9 pages of charts of setting out: Decision/Need; Hierarchy of Decision Makers, Relevant Statute; Incapability Criteria; Incapability Assessor/Witness; and, Limits/Conditions.



DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR/WITNESS	LIMITS/CONDITIONS
<p>HEALTH CARE Anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health and medicine.</p> <ul style="list-style-type: none"> • A notice or sequence of similar treatments or care administered to an adult over a period of time for a particular health problem. • A plan for acute health care that is: <ol style="list-style-type: none"> I. provided for acute health care providers II. made with current and expected health problems III. expires in no longer than 12 months. <p>Major Health Care</p> <ol style="list-style-type: none"> a) major surgery b) any treatment involving general anaesthesia c) major diagnostic/investigative procedure or d) any health care designed for regulation on major health including radiation therapy, IV chemotherapy, kidney dialysis, BCT, laser surgery. <p>Minor Health Care Health care that is not major health care and includes:</p> <ol style="list-style-type: none"> a) routine tests to determine if health care is necessary, and b) routine dental that prevents or treats a condition, regular care (including cavity fillings and extractions) 	<p>Capable Adult</p> <p>Committee of Person Person appointed by the court to make decisions regarding an adult's personal care and health care.</p>	<p>Health Care (Consent) and Care Facility (Admission) Act (HCCFCAA)</p> <p>Patients Property Act (PPA)</p>	<p>The adult demonstrates an understanding of the proposed treatment, the risks and benefits, the conditions for which it is proposed and alternatives, and that it applies to their own situation.</p> <p>An adult who is deemed by a judge to be incapable of managing himself or herself:</p> <ol style="list-style-type: none"> a) because of an illness b) because of an intellectual disability c) because of a mental disorder d) because of an intellectual disability e) because of an intellectual disability f) because of an intellectual disability 	<p>Proscribed Health Care Provider (PCHCP) includes Health Practitioner Act, Hearing Aid, Podiatry Act and Social Workers Act.</p> <p>An Incapability Assessor (IA) is a person who is designated by the court to assess the adult's incapability of consenting to the proposed health care. The IA must submit a report to the court in accordance to the hierarchy of decision makers below.</p> <p>If a Committee of Person has been appointed by the Court, the HCP must obtain consent from the Committee.</p> <p>N.B. No one can consent to non-therapeutic distribution of a person who cannot make that decision themselves.</p>	<p>Consent must be voluntary, not be obtained by fraud or misrepresentation, and be related specifically to the proposed health care.</p> <p>If a Committee of Person has been appointed by the Court, the HCP must obtain consent in accordance to the hierarchy of decision makers below.</p> <p>If a Committee of Person has been appointed by the Court, the HCP must obtain consent from the Committee.</p> <p>N.B. No one can consent to non-therapeutic distribution of a person who cannot make that decision themselves.</p> <p>A Representation Agreement may have a triggering condition, such as incapacity that must have happened in a way that is not a person's opinion. Representation must comply with the representation wishes of which, while capable. Consult with the adult.</p>
	<p>Non Standard or Enhanced Representative Person authorized by a section 19 Representation Agreement to make health care decisions on behalf of another.</p>	<p>Representation Agreement Act (section 19)</p>	<p>Adult may make a non standard representation agreement if the adult understands the nature of the authority and the effect of giving it to the representative.</p>	<p>Agreements must be in writing and signed by the adult, such representative or substitute and 2 witnesses. If the lawyer who signed the representation certificate is the witness, only 1 witness is required. Witnesses should object to the making of a representation agreement when they believe that the adult's capacity, coercion, undue influence by the representative, inconsistency in intent of agreement with current wishes, or errors in the agreement. In these situations the witness should not witness the agreement and report concerns to the PCE.</p>	

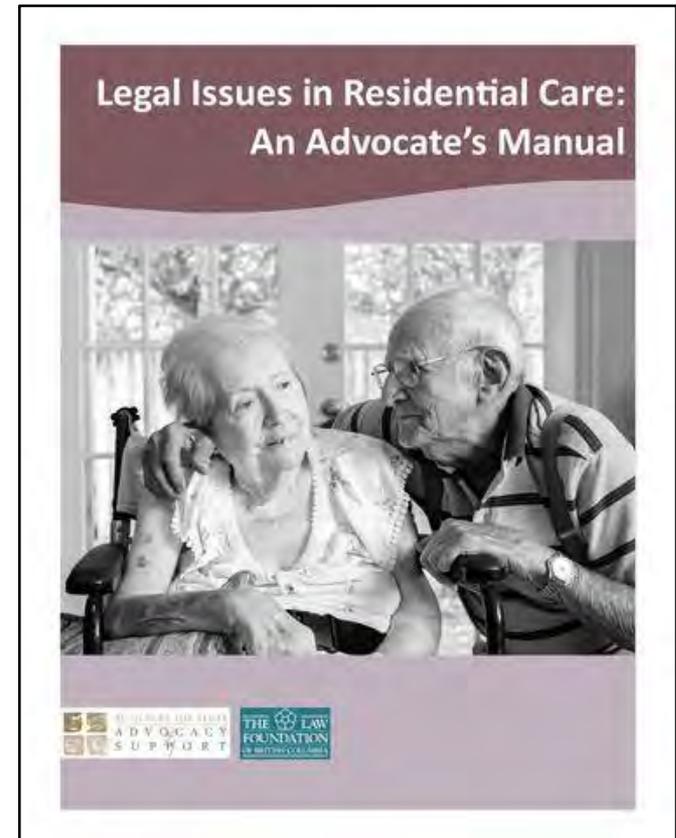
Seniors Housing Options Grid

INDEPENDENT LIVING					RESIDENTIAL CARE 74	
<p>93% of BC's seniors will live out their lives in an independent living arrangement. This housing classification includes living independently, in a supportive housing or in assisted living. Most independent living arrangements for the purposes of consumer protection are covered under the Residential Tenancy Act (RTA) or your tenancy agreement. Assisted Living facilities must be registered with the Assisted Living registrar.</p>					<p>7% of BC's seniors will require the 24hour/day care services of licensed care facilities governed by the BC Community Care Facility Act.</p>	
INDEPENDENT HOUSING		SUPPORTIVE HOUSING	ASSISTED LIVING		RESIDENTIAL CARE	
<p>Housing where there usually are no on-site supports, in which case services may be delivered to your home.</p> <p>Some Subsidized Independent Housing buildings may include intermittent supports such as:</p> <ul style="list-style-type: none"> • Meals • Social and recreational activities 		<p>Housing with a combination of onsite support services.</p> <p>Services may include:</p> <ul style="list-style-type: none"> • Housing keeping • Emergency response • Meals <p>There are very few public supportive housing units, access to those units are through referral from your local health authority</p>	<p>Provides housing, hospitality and personalized assistance services for adults who can live independently, but require regular assistance with daily activities.</p> <p>Services may include:</p> <ul style="list-style-type: none"> • Help with bathing, grooming, dressing and mobility • Meals • Housekeeping, laundry • Social and recreational opportunities 		<p>Residential care is for people who need 24-hour professional nursing care and can no longer be supported in their own homes.</p> <p>Services may Include:</p> <ul style="list-style-type: none"> • assistance with meals • medication supervision • personal assistance with daily activities • a planned program of social and recreational activities • respite 	
Public	Private	Private	Public	Private	Public	Private
<p>74</p> <p>OPTIONS INCLUDE:</p> <p>Rental housing:</p> <ul style="list-style-type: none"> •private market rental •private market rental geared to older tenants •co-ops •single room occupancy hotel's (SRO). <p>Purchased housing</p> <ul style="list-style-type: none"> •Strata-titled retirement communities •equity co-ops and co-housing, •life lease 		<p>No referral required. Rates vary, rent portion may qualify for SAFER subsidy.</p> <p>INCLUDES:</p> <ul style="list-style-type: none"> • Congregate Style Larger scale apartment style • Abbeyfield Style Smaller scale housing option. Usually 8-10 seniors living together in a home with their own bedroom and ensuite bathroom, shared meals and congregated areas. 	<p>Requires referral through your local health unit. Cost is 70% of after tax income</p>	<p>To apply contact the building directly. Rates: vary from \$1400-6000/m.</p> <p>May contain some publicly funded units</p>	<p>Clients with the highest need and urgency have priority for the first available, appropriate bed, as determined by BC's residential access policy.</p> <p>Requires referral through your local health unit.</p> <p>Rates: a monthly rate per the Ministry of Health</p>	<p>May provide all levels of care including residential care.</p> <p>To apply contact the building directly. Rates vary from \$3500- 6000/m.</p>

Legal Issues in Residential Care – 75

An Advocate's Manual

- Our 'wikibook' on residential care issues
- Sets out the rights of people living in residential care and ways for resolving complaints in a timely manner.



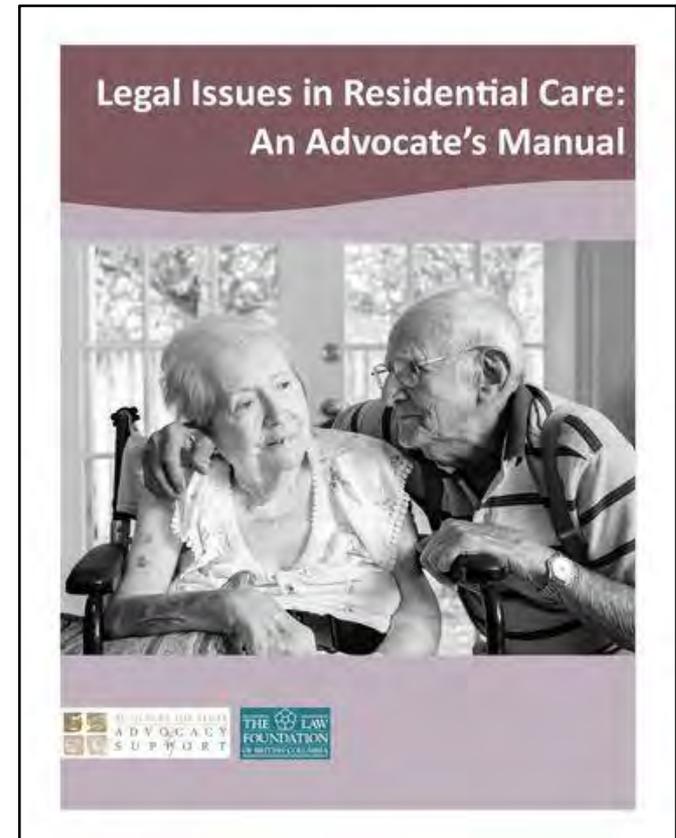
Legal Issues in Residential Care – 76

An Advocate's Manual

76

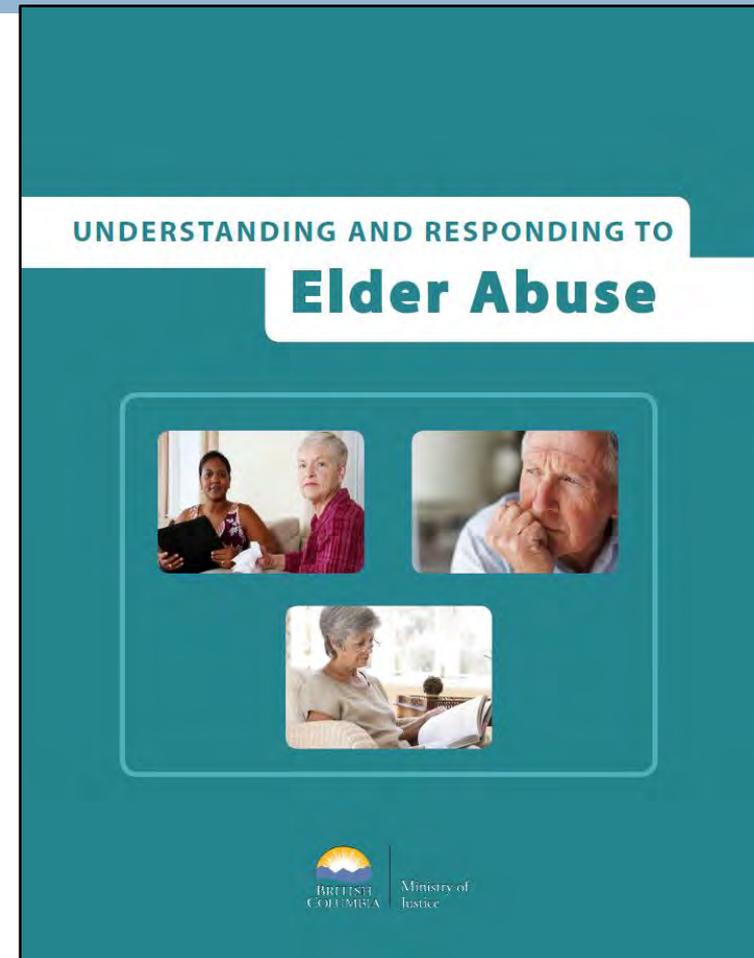
Seven sections:

- ❑ Statutory Overview
- ❑ Residents' Bill of Rights
- ❑ Legal Issues Around Admission & Transfer
- ❑ Legal Issues While Living in Facility
- ❑ Rights, Remedies and Problems Resolution
- ❑ Consent & Capacity
- ❑ Substitute Decision Making



Elder Abuse ebook

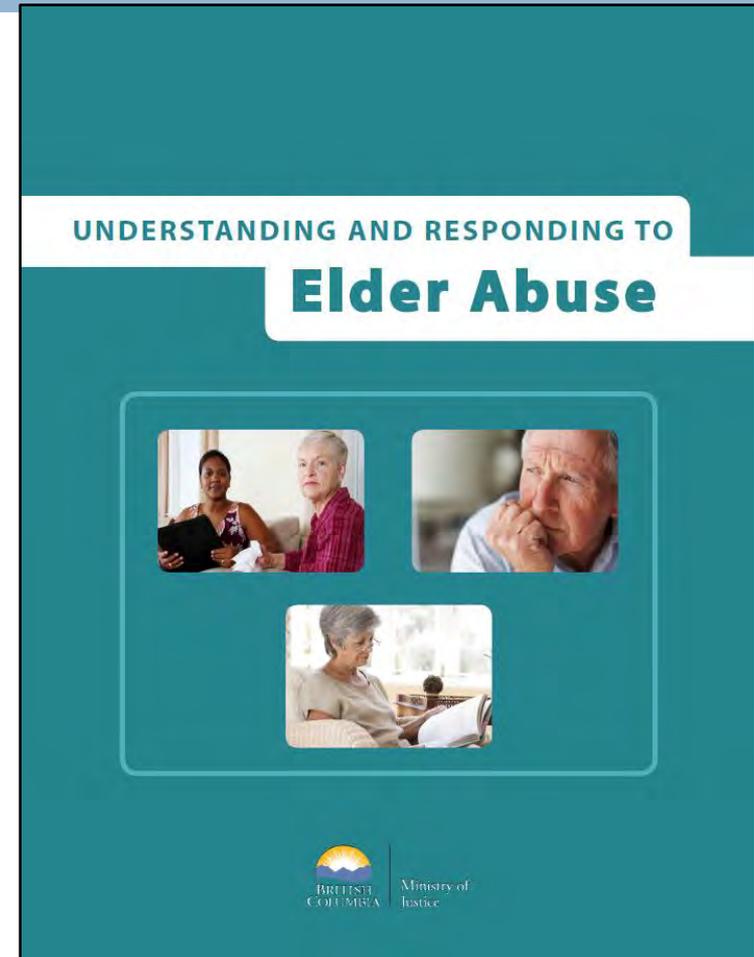
- Useful index to find topic quickly + word search



Elder Abuse ebook

Four parts:

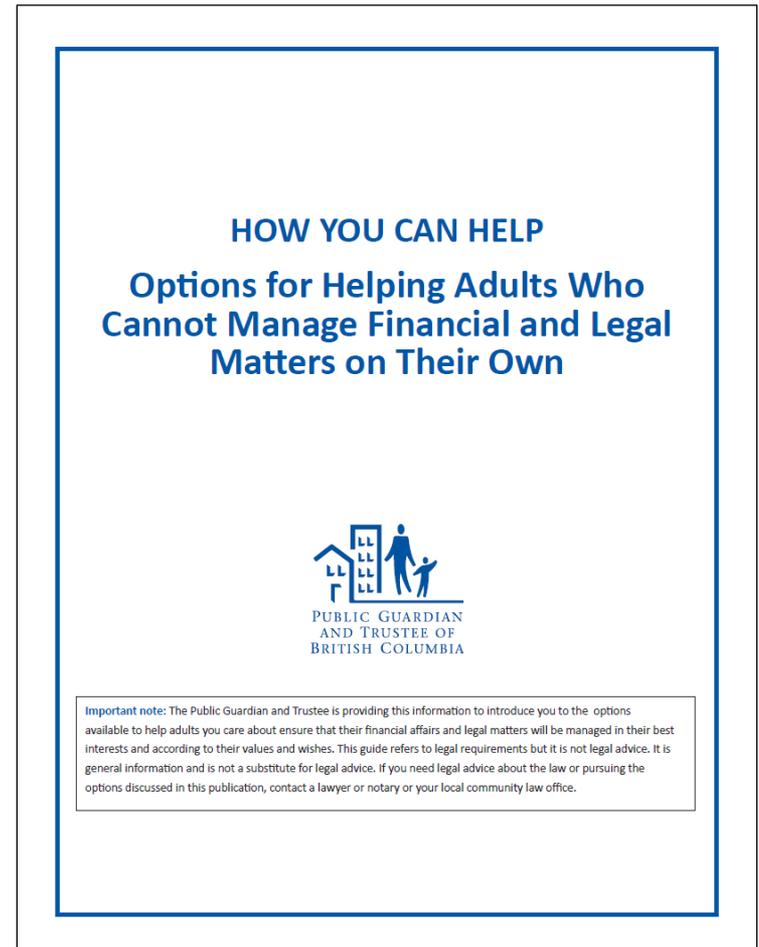
- Elder Abuse and Neglect – written description and embedded videos
- BC Government Programs and Community Services
- Working with Older Adults
- Resources with Links and Phone Numbers



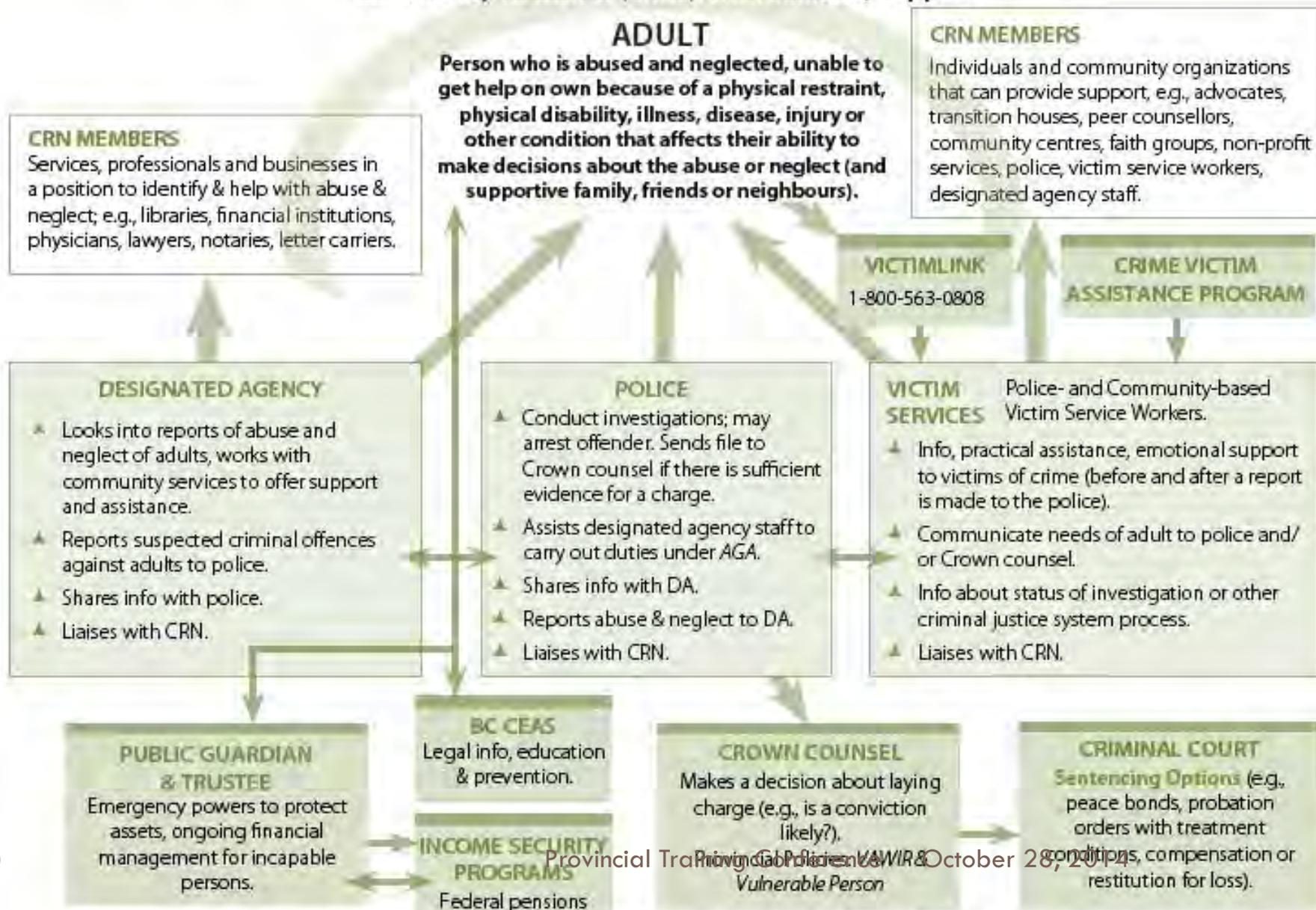
How You Can Help - PGT

79

- How to help an Adult who can no longer manage
- Includes informal options, personal planning documents, and other legal options when there are no planning documents



Community Networks (CRNs): Coordination, Support





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1. Public Legal Education Materials

Some Useful PLE Materials for Older Clients

What every older Canadian should know about

1

FINANCIAL PLANNING

What every older Canadian should know about

2

INCOME AND BENEFITS FROM GOVERNMENT PROGRAMS

What every older Canadian should know about

5

PLANNING FOR THEIR FUTURE HOUSING NEEDS

What every older Canadian should know about

6

HAVING A WILL AND MAKING FUNERAL PLANS

What every older Canadian should know about

3

MANAGING AND PROTECTING THEIR ASSETS

What every older Canadian should know about

4

PLANNING FOR POSSIBLE LOSS OF INDEPENDENCE

What every older Canadian should know about

7

FINANCIAL ABUSE

What every older Canadian should know about

8

FRAUDS AND SCAMS

FEDERAL/PROVINCIAL/TERRITORIAL MINISTERS RESPONSIBLE FOR SENIORS



ISSD-043(3)-05-10

FEDERAL/PROVINCIAL/TERRITORIAL MINISTERS RESPONSIBLE FOR SENIORS



ISSD-043(4)-05-10

FEDERAL/PROVINCIAL/TERRITORIAL MINISTERS RESPONSIBLE FOR SENIORS

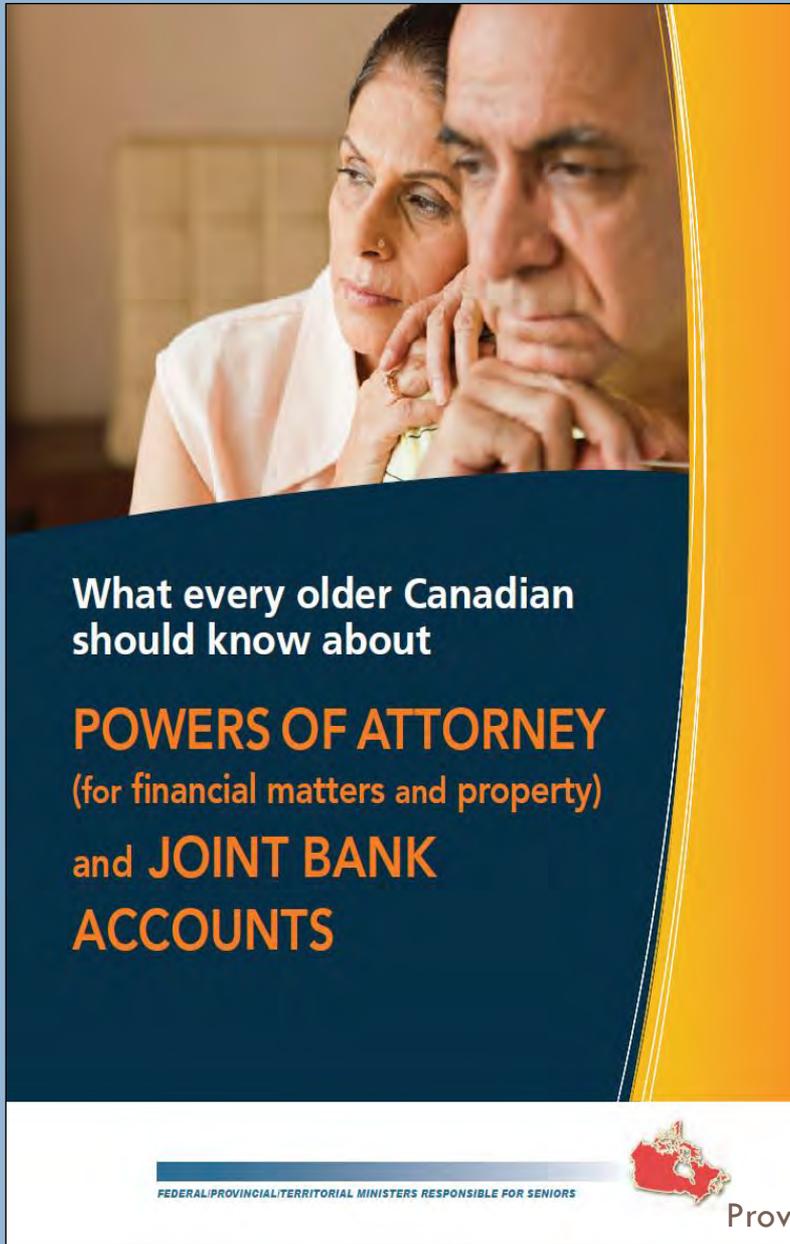


ISSD-043(7)-05-10

FEDERAL/PROVINCIAL/TERRITORIAL MINISTERS RESPONSIBLE FOR SENIORS



ISSD-043(8)-05-10



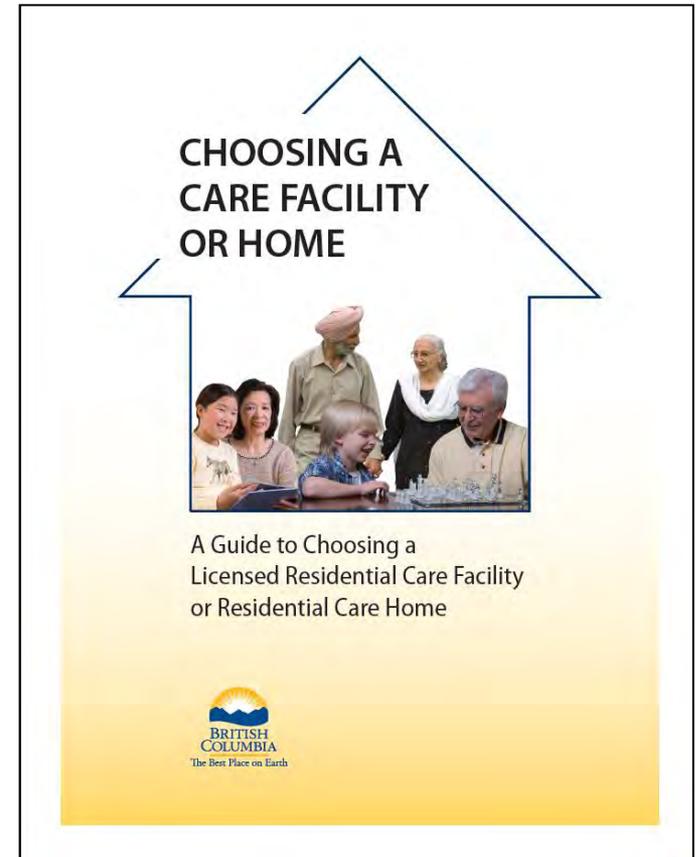
Newest addition to this series is not a pamphlet, but a 24 page booklet on powers of attorney and joint bank accounts, two important tools for managing financial affairs.

Discusses the risks and advantages of both.



Choosing a Care Facility

- intended to help people choose a residential care facility that is licensed under the *Community Care and Assisted Living Act*.
- contains a number of questions they may wish to consider, and space to survey 3 facilities



NIDUS Handouts

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Roles & Responsibilities of an Attorney

Nidus Personal Planning Resource Centre and Registry

Enduring Power of Attorney

Role and Responsibilities of an Attorney

This fact sheet is based on Part 2 of the Power of Attorney Act of British Columbia as amended September 1, 2011. It deals with the main duties and authorities of an attorney named in an Enduring Power of Attorney. While the following may seem complicated, many of the requirements are not new. They used to be understood as part of the 'common law'. Now they are spelled out in legislation.

The requirements apply to attorneys named in an Enduring Power of Attorney (EPA) whether the document was made before, on, or after September 1, 2011. If you were appointed in an EPA made before September 1, 2011, see the Nidus fact sheet on **Amendments and an EPA made before Sept. 1, 2011**.

Your legal duties are outlined in Section 19 of the Power of Attorney Act. Other sections of the Act spell out an attorney's authorities and any necessary conditions for exercising an authority. You can view the Act at www.bc laws.ca.

You must also read the EPA document itself to see if the adult customized your duties or authorities. The following is a plain language outline of an attorney's role and duties.

Being accountable

An attorney is accountable to the adult. Attorneys may also encounter questions from the Public Guardian and Trustee, Health Authorities or Community Living B.C., who have a role to investigate complaints of abuse of adults who are incapable. It is important to know and follow your duties.

Knowing the scope of your authority

The Power of Attorney Act says an EPA covers an adult's financial affairs and "includes an adult's business and property, and the conduct of the adult's legal affairs." Property includes: money, assets such as a vehicle or real estate, and personal effects such as jewelry and clothes.

Exercising the general duties of an attorney

As an attorney, you must act honestly, in good faith and within the law. Generally, you can do anything on behalf of the adult (who appointed you in their EPA) with respect to their legal and financial affairs, except for making or changing the adult's Will, and as long as it is something that the adult could do while considered capable.

Acting in the adult's best interests

Your first legal responsibility as an attorney is to act in the adult's best interests. This means you may make decisions on the adult's behalf, based on your opinion of what is best for them.

When you make decisions about what is in the adult's best interests, you need to take into account the adult's current wishes, their known beliefs and values, and any directions they set out in their EPA document. When it is reasonable to do so, you must also foster the adult's independence and encourage their involvement in decision making, keep their personal effects at their disposal, and give priority to meeting their health and personal care needs.

The Power of Attorney Act recognizes that even as you are required to support the adult's independence and participation and take their wishes and values into account, you may – despite objections the adult makes while incapable – act according to what you believe is best for the management of their financial affairs.

Keeping records

When acting as an attorney on behalf of the adult, you must make a reasonable effort to determine the extent of the adult's property (what they own) and liabilities (what they owe) as of the date you first start acting. This is like taking an inventory.

While you are acting as an attorney, you must keep the following records for one period you are acting:

- A current list of the adult's property and liabilities, including an estimate of their value, if it is reasonable to do so.
- Accounts and other records related to any actions you take as the attorney.
- Invoices, bank statements and other records necessary to create full accounts about receiving or spending capital or income on behalf of the adult.

A journal can help with recording dates, listing the circumstances, people and instructions involved, and noting the decision you made or the action you took.

No delegating your authority

Delegating authority means giving someone else the power to make a decision about the adult's financial affairs. Unless specific wording is provided in the EPA, you cannot delegate any of your decision making authority, except for decisions about investments. See next heading.

Page 1 of 2

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Roles & Responsibilities of a Representative

Nidus Personal Planning Resource Centre and Registry

Role and Responsibilities of a Representative

This fact sheet is based on the Representation Agreement Act of British Columbia as amended September 1, 2011. These duties apply to all representatives whether the Representation Agreement was made before, on, or after September 1, 2011. If you were named as a representative in an Agreement made before September 1, 2011 see the Nidus fact sheet on **Amendments and pre-Sept. 1st Agreements**.

Your legal duties are outlined in Section 16 of the Representation Agreement Act. You can view the Act at www.bc laws.ca. The following is a plain language explanation of the role and duties.

Being accountable

As a representative, you are accountable to the adult. Representatives may also encounter questions from the Public Guardian and Trustee, Health Authorities or Community Living B.C., who have a role to investigate complaints of abuse of adults who are incapable.

Exercising general duties

A representative must act honestly, in good faith and within the law. It helps if you have good communication skills, as you may need to deal with many different people and situations.

Exercising assisted decision making duty

A representative's first legal responsibility is to assist the adult to make their own decisions. For example, you can help with the communication process so the adult can make their own choices.

Exercising substitute decision making duty

When making decisions on the adult's behalf, a representative must still check with the adult first to determine the adult's current wishes. If the current wishes cannot be determined or are not reasonable to follow, then any pre-expressed wishes must be followed – things that the adult said or wrote down when they were capable. If these are unknown, then decisions are made according to the adult's values and beliefs. The adult is always at the centre of all decisions. Only as a last resort does a representative impose their opinion of what is best for the adult.

Keeping records

You must keep a record of the things you do while acting as a representative. The monitor (if one is named in the Agreement) or the Public Guardian and Trustee may request to see your records.

These, as which notes you must produce them. A journal can help for writing down dates, outlining a brief description of the circumstances, listing the people involved (e.g., name of doctor, dentist, etc.), and recording the decision you made or the action you took and why.

For financial matters, you must make a reasonable effort to determine and keep a list of the adult's property (what the adult owns) and liabilities (what the adult owes) when you first start acting on behalf of the adult. For the period you are acting as the representative, you must keep a current list of the adult's property and liabilities, including an estimate of their value. You must also keep a record of all invoices, bank statements, receipts, bills and other records related to any financial activities.

For health care and personal care matters, you must keep a copies of any record the adult made of their instructions, wishes, beliefs and values.

You must also keep a record of events in the adult's life related to the following:

- Any changes to the adult's residence;
- Any changes in the adult's health or personal care needs; and
- Whether you authorized the adult to be physically restrained, moved, or managed under the authority granted in Section 9 of the Restraint and Seclusion Act, or under any other enactment.

You must also keep a record of decisions you make related to the following:

- Major health care;
- The adult's admission or continued residence in a care facility; and
- Any restrictions on who may contact or associate with the adult.

If you are named as a representative in an Agreement with Section 9 broader powers, the adult may have included a section on how to modify or omit the specific health and personal care requirements listed above. However, it is likely important and useful to keep a record of your actions and decisions in order to carry out your duties.

No delegating your authority

The Representation Agreement Act says that you cannot delegate your authority as a representative to anyone else. Delegating authority means giving someone else the power to make a decision for the adult. There is one exception regarding investments. See the next page.

Page 1 of 2

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Nidus Registry

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- Can register personal planning information – lawyers can be registration agents
- Can register a copy of completed document(s) [optional].
- Was ‘offline’ for time – not all documents added to registry
- **Registry fees** (per person):
 - \$25 first document/\$10 for each additional document
 - no fee for updating contact information or replacing document
- Scanned copies should be in pdf format, and emailed to info@nidus.ca

Nidus Personal Planning Resource Centre and Registry

Your choice. Your plan. Your future.

Home | Information | Self-Help | News | **Registry** | A A A

NIDUS PERSONAL PLANNING REGISTRY

It's a relief to have our important information and documents in one place
—that we can manage ourselves 24/7

The Nidus Personal Planning Registry™ lets you store information and documents related to personal planning and other arrangements such as memorial wishes—and make them available when needed.
Read more in the [Registry brochure](#).
Watch Registry [How-to Videos](#)

REGISTERING ONLINE

1. Check for an existing account. The Nidus Registry has been operating since 2002 and records in the old system have not yet been moved over to the new online system.

HIGHLIGHTS

What's New?
Getting Started
Presentations
Personal Stories
RA Forms

CONTACT

NIDUS NEWS *Subscribe to our news*

15 *Appointments BOOK NOW*

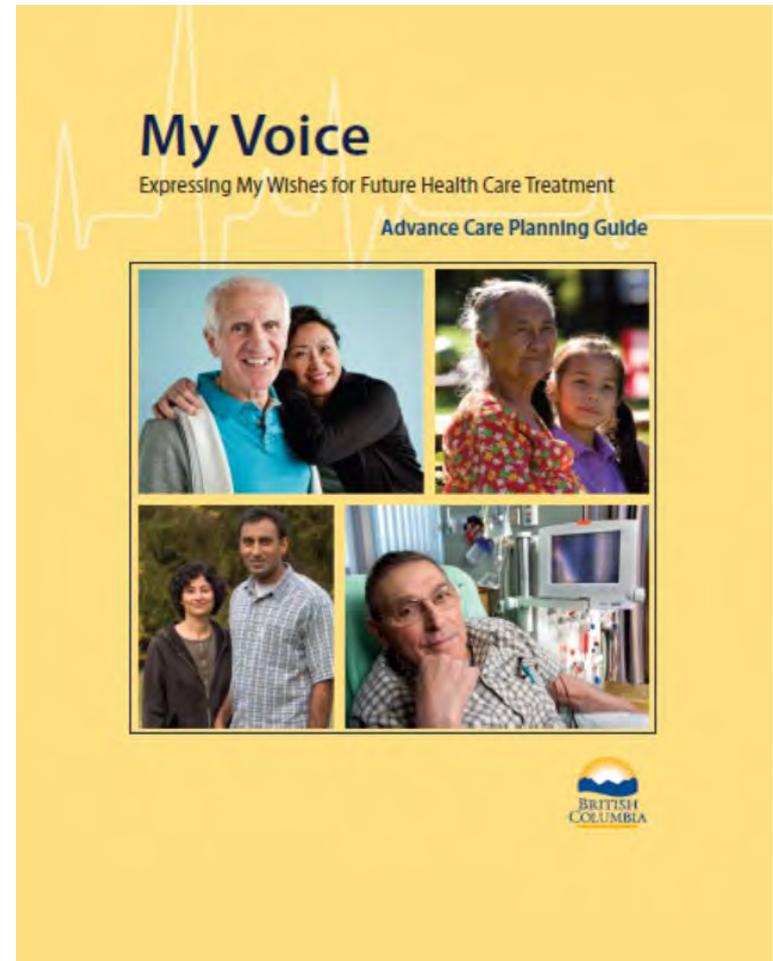
QA *Ask Joanne*

My Voice

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A 56 page personal planning workbook including:

- Beliefs, Values and Wishes Worksheet
- EPOA
- RA's (s. 7 & s. 9)
- TSDM list
- Advance Directive
- Wallet Card



It's Your Choice - PGT

The PGT also has a 26 page personal planning book, that covers:

- Enduring Powers of Attorney,
- Representation Agreements
- Advance Directives
- Nomination of Committee



Attorney General - BC

The AG for BC has an incapacity planning page, with information on:

- RAs,
- EPOAs and
- ADs
- Also blank forms for EPOA and RAs with accompanying notes on how to complete and sign & witness.



Ministry of Justice

**Incapacity Planning:
Representation Agreements and Enduring Powers of Attorney**

Representation agreements and enduring powers of attorney are two types of legal documents which allow individuals to plan for the possibility of future incapability. These are tools that allow an individual to name another person to manage their personal and health care needs and financial matters in the event they are not able to do so on their own.

Amendments to legislation relating to representation agreements and enduring powers of attorney came into force on **Sept. 1, 2011**. (Please see below for more information on the legislation.)

Forms

The standard forms published by the Ministry of Justice are intended to assist individuals to plan for possible future incapability. The use of these forms is optional. An individual who wants to make a representation agreement or an enduring power of attorney does not need to use these standard forms, but still must make sure that their document complies with the requirements of the legislation.

The standard forms may not be appropriate for use by everyone because they provide only one option of how a representation agreement or enduring power of attorney may be made. For example, these forms provide for the appointment of only one representative or attorney to act at a time. There are also many other options provided in the legislation that are not reflected in these forms: for example, the type of authority that may be given or when the document will come into effect.

Please note that the forms and accompanying notes do not constitute legal advice. For further information, consult the legislation or seek legal advice.

[Representation Agreement \(Section 9\) Form](#)

With this form, an adult may name a representative to do anything that the representative considers necessary in relation to the personal care or health care of the adult.

When I'm 64 Series

- From People's Law School & BCCEAS
- Three booklets on services, benefits and advance planning for older adults



Questions?

THE END

October 28, 2014

How BCCEAS Can Help You Help Your Clients

Provincial Training Conference for Legal Advocates

October 30th, 2014

Wills and Estates (WESA) Update

Mary Childs

Ethos Law Group LLP

Key Changes in WESA

1. Language updated to refer to:
 - a. Will-maker (not testator or testatrix)
 - b. Intestate successor (not heir)
2. Survivorship rules: a person who does not survive the deceased by five days will be deemed to have died first (s.10).
3. Joint tenancies: if joint tenants die within five days of each other, a tenancy-in-common arises and the property is distributed as if each had predeceased the other (s.10). Can be altered by a contrary intention in the will.
4. Making Wills.
 - a. Minimum age reduced from 19 to 16 (but only for wills, not for POA or Representation Agreements)
 - b. Witnesses must be 19 or older.
 - c. Two witnesses still required, but
 - i. Court has the power to cure a non-compliant execution;
 - ii. Court may declare valid a gift to a witness or spouse of a witness.
 - d. Subsequent marriage no longer revokes a will.
 - e. Presumption of undue influence extended (s.52)
 - f. Generally, greater discretion of courts to correct defects and order rectification (ss.58 &59)
5. Certain common-law presumptions abolished (s.53):
 - a. Presumption of advancement
 - b. Presumption that legacy revoked by lifetime gift of same amount;
 - c. Presumption that debt is satisfied by bequest of same amount.
6. Presumption of undue influence reversed – party seeking to uphold gift has onus of proving absence of undue influence (s.52)
7. Greater scope for use of extrinsic evidence to help with interpretation (s.4).
8. Assets encumbered by registered charges devise subject to encumbrances (s.47)

9. Spouses

- a. New definition (s.2) includes those who live in a continuous marriage-like relationship for 2 years;
- b. Separation no longer requires mutual intention;

10. Children

- a. Adoptive children treated as biological children, and adoption ends right to claim from pre-adoption parent's estate other than via gift in will (s.3).
- b. WESA provides for posthumous (s.8) births and posthumous conception (s.8.1)
- c. Will maker can still designate a guardian but consider whether it is better to designate a stand-by guardian under the *Family Law Act*, and be aware that the stand-by guardian will normally be permitted to continue unless contrary intention is expressed in the document appointing him/her.

11. Wills Variation

- a. Service on executor required within 30 days following expiry of the 180 day limitation period;
- b. Certificate of pending litigation is registrable ten days after proceeding has been commenced.

12. Intestacy Rules

- a. No spousal home interest; surviving spouse has 6 months in which to buy the house from the estate at fair market value;
- b. Intestate inheritance rights based upon parentelic system (s.23)
- c. If intestate deceased leaves spouse only, spouse takes all;
- d. If intestate deceased leaves 2 or more spouses, spousal share divided between them by agreement or court order;
- e. If intestate deceased leaves spouse and children, spouse gets all household furnishings, first \$300,000 of assets and 50% of the remainder;
- f. If intestate deceased leaves spouse and deceased's children from a previous relationship, spouse takes all household furnishings, first \$150,000 and 50% of remainder.
- g. "hotchpotch" abolished, so *inter vivos* gifts to offspring don't affect intestate division (s.92)

13. Priority ranking of who can apply to be administrator(ss.130 and 131)

14. Beneficiary designations

- a. Now permitted even if the plan itself makes no provision for them;
- b. Can be made in the will or in a separate document;
- c. Designations outside the will need not be witnessed, although they must be written and signed;
- d. Designation in a will must, to be effective, refer expressly to a benefits plan;

- e. Designation in a will can be revoked by a subsequent designation outside a will;
BUT
 - f. An irrevocable designation can be made by filing with the office specified by the benefits plan administrator. It cannot be made in a will.
15. Special rules for estates of Nisga's citizens or members of treaty first nations (ss.12 to 18.3)
16. Passing Accounts
- a. Statement of account affidavit (Form P40) sets out what information must be filed

Consequences for Practice

- If you are helping someone who is deciding what to do in his or her will, take detailed notes of intention, as they may be needed in the event of an application to correct an ambiguity or error;
- Check carefully when advising clients who may prefer to die intestate, as rules have changed.

Other resources

- <http://www.cbabc.org/For-the-Public/Dial-A-Law/Scripts/Wills-and-Estates>
- <http://www.ag.gov.bc.ca/legislation/shareddocs/wesa/WESAExplanation.pdf>
- New probate forms are available online, including in fillable pdf format:
http://www.ag.gov.bc.ca/courts/other/supreme/2010SupRules/info/index_probate.htm
- BCLI Report #45 <http://www.bcli.org/project/wills-estates-and-succession-modern-legal-framework#tabs-projects-1>

CONDITIONAL PERMANENT RESIDENCE

Dangers of Making Immigration Status Conditional on Living with a Spouse

Lobat Sadrehashemi
BC Public Interest Advocacy Centre



1

WHAT IS CONDITIONAL PR?

On October 25, 2012 the Federal Government amended Canada's immigration regulations by introducing "conditional permanent residence"

Some sponsored spouses MUST as a condition of their permanent residence:

- co-habit in a conjugal relationship with their spouse
- for a period of TWO years after they receive permanent residence



Who is Impacted by the Change?

Not ALL spouses who are sponsored will receive conditional permanent residence.

The following **three** conditions must be present:

The sponsorship application was filed **on/after October 25, 2012**

At the time the application was filed, the spouses had **been married or in a common-law relationship for less than two years.**

At the time the application was filed, the couple had **no children in common.**



Abuse and/or neglect exception

There is an exception provided for in the legislation for abuse and neglect

The exception can apply because of abuse and/or neglect by:

- The sponsor,
- A family member of the sponsor, whether or not the family member lives with the sponsored spouse

The abuse and/neglect would have to be directed at:

- The sponsored spouse, or
- The child of either the sponsored spouse or the sponsor, or
- Another family member who habitually lives in the home



Definitions of Abuse and Neglect

Abuse is defined as including any of the following:

- Physical abuse
- Sexual abuse
- Psychological abuse
- Financial abuse

Neglect is defined as:

- "the failure to provide the necessities of life, such as food, clothing, medical care or shelter, and any other omission that results in serious"

How to prove you fit in the exception

A sponsored spouse would have to demonstrate two things:

You were cohabiting continuously in a conjugal relationship with your spouse until the abuse/neglect happened

Your sponsor or the family member of your sponsor was abusive and/or neglectful.

Types of evidence

Evidence relating to the genuineness of the relationship and the cohabitation in Canada

- joint bank accounts, lease, photographs, letters from friends or family members

Evidence relating to the abuse/neglect

- letters of friends or family members, personal statement or affidavit, police reports, medical reports, photographs, emails, texts, etc.



Enforcement

Citizenship and Immigration Canada (CIC) has said:

- it will do random investigations of conditional permanent residents during the two year period and/or
- May rely on tips from others to decide when to investigate



When to raise the exception

The abuse/neglect exception can be raised:

- At the time of an investigation by Citizenship and Immigration Canada (CIC) or Canada Border Services Agency (CBSA); or
- A sponsored spouse could pro-actively call CIC to inform them that they have left the home and are seeking an exception

good idea to get legal advice when responding to an investigation
OR when making a pro-active disclosure



Legislative exception does not protect victims of abuse

"Immigration told me I had to live with him for two years or I could lose my status."

"I will wait the two years out - I don't want to take any risk that I could lose my status."

"My husband told me if I leave he will tell them that I made up the abuse - they won't believe me and I will be deported."

"I heard that if you don't live with your spouse they can deport you."



Collecting Evidence

Your thoughts on collecting evidence – a sample grid ??

Date of consult/ Intake	Filed sponsorship application after	Abuse and/or neglect	Left the home prior to conditional period ending	Asked for exception / result of request	Waiting the two years out living with spouse	Not a conditional PR but believed had to remain with spouse	Doesn't know what she/he will do
	Oct.25, 2012						



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