

IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



Trish Kumpf

Manager, Aboriginal Services



LEGACY OF COLONIALIST HISTORY



- RESIDENTIAL SCHOOL
- HUMAN RIGHTS VIOLATIONS
- ABORIGINAL CHILD APPREHENSION
- POVERTY
- FASD
- SEXUAL ABUSE

GOAL #1:

Reducing the number of



Aboriginal people in prison

GOAL #2:

Reducing the number of



Aboriginal children in care

“ABORIGINAL” defined inclusively



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

ABORIGINAL LEGAL SERVICES



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



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[BC Association of Aboriginal Friendship Centres](#)

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

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

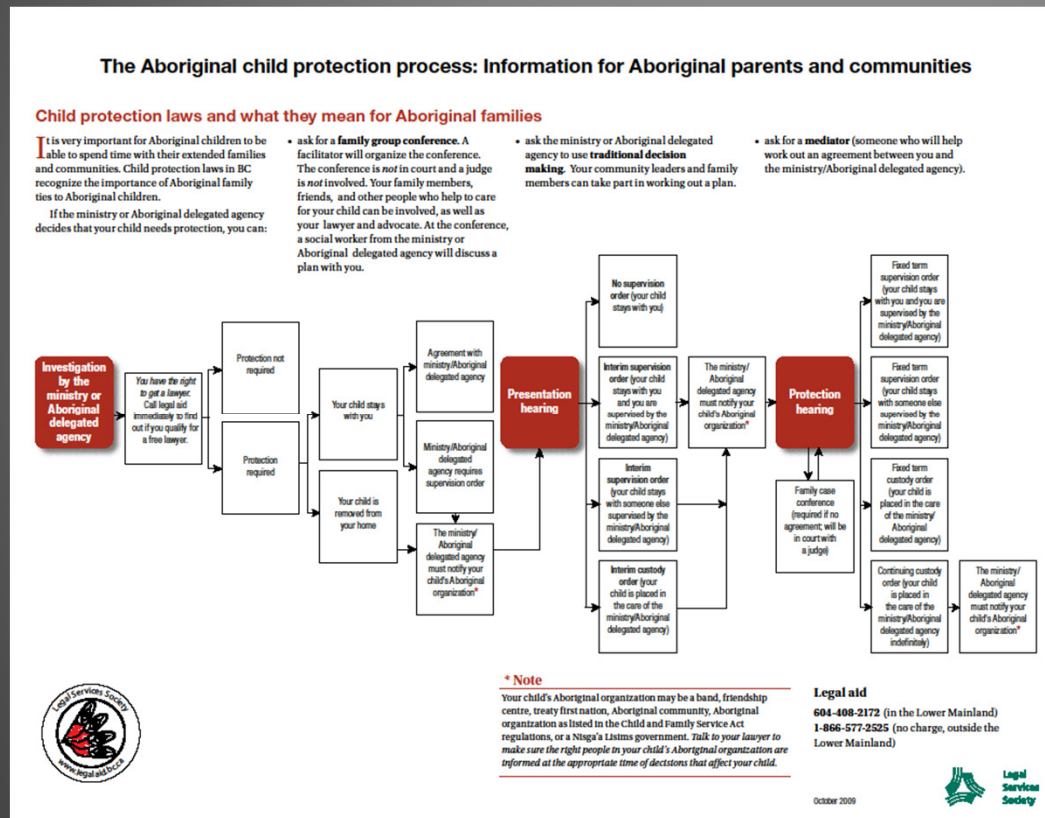
[Clicklaw](#)

Aboriginal publications

Below are links to all of our Aboriginal publications.



ABORIGINAL CHILD PROTECTION PUBLICATIONS



Aboriginal
Child
Protection
poster

1-Page Fact
Sheets

Right to
Counsel
Cards

8 Mediation

EARLY INTERVENTION



Asserting legal rights

Aboriginal Community
Legal Workers

Expanded
Duty Counsel

First Nations Court



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

GLADUE

IN A NUTSHELL
Instructs judges at
sentencing to take notice
of the unique circumstances
of Aboriginal offenders,
and consider all available
sanctions other than
imprisonment



Gladue reports

paint a picture of the defendant



for the court

What are Gladue reports for?

Sentencing
Bail



Restorative Justice

IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



Trish Kumpf
Manager, Aboriginal Services

trish.kumpf@lss.bc.ca 14

Access Pro Bono Society of British Columbia

access|probono
QUALITY LEGAL SERVICES FOR ALL

Agenda

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

Access Pro Bono

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

Vision and Mission

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

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



History

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

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

Our Team

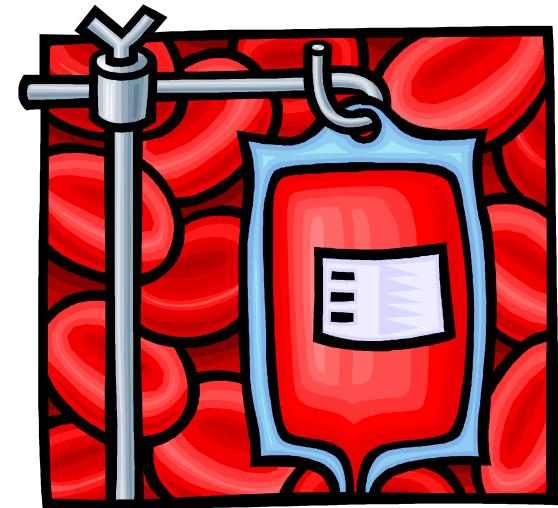


Our Services

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

Funding

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



Means Test

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

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



Summary Advice Clinic Program

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



Highlights of 2012

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

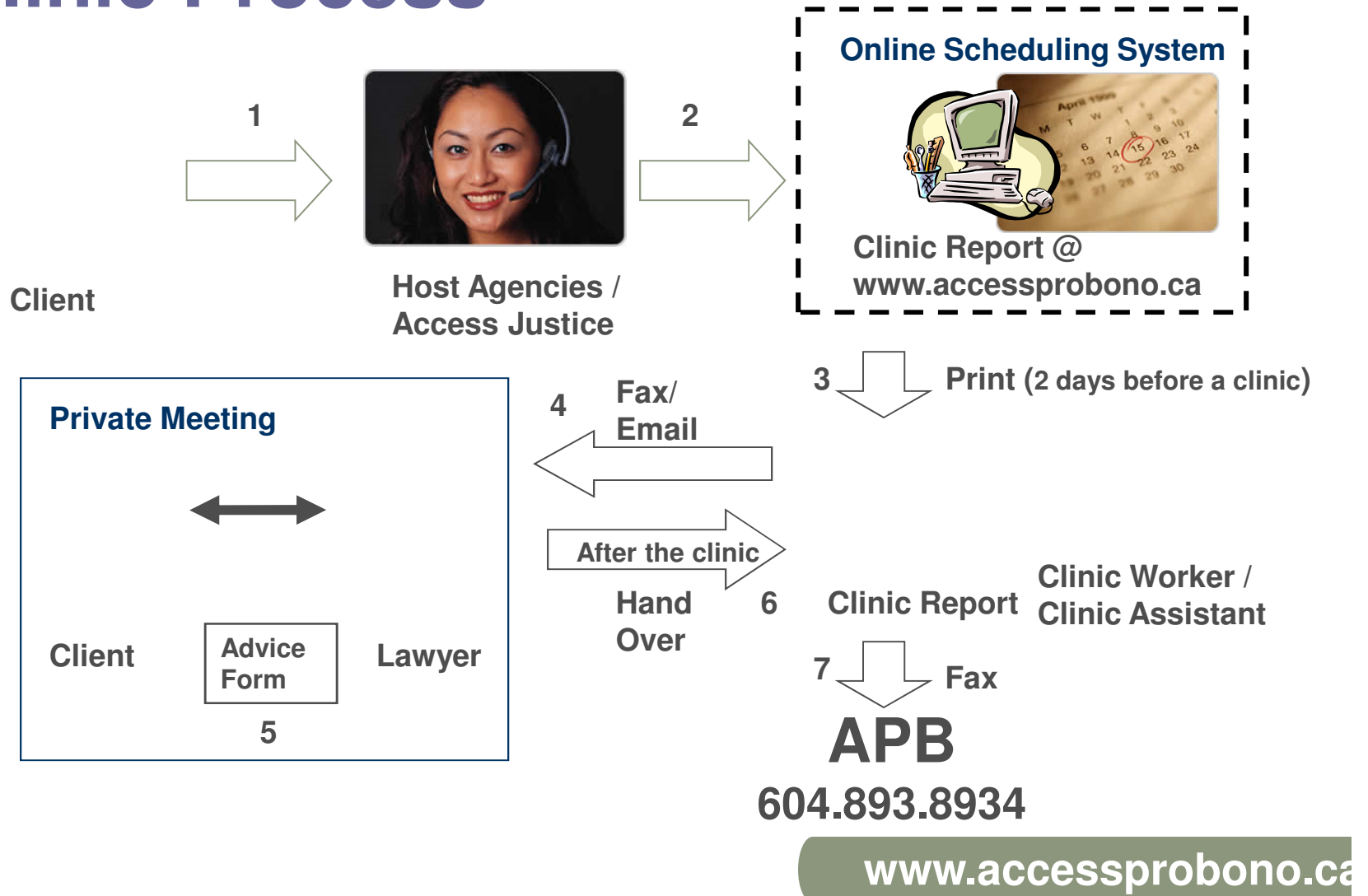
Breakdown of case types:



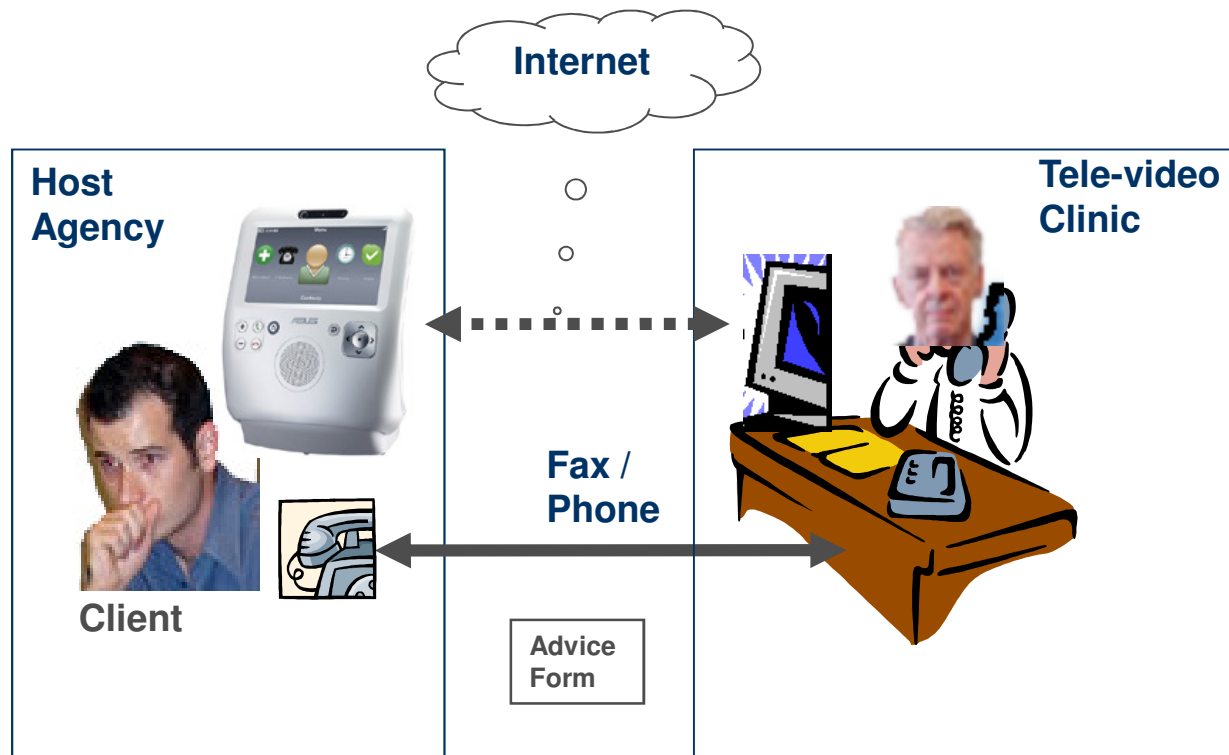
Top 10 Civil Matters in 2012

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

Clinic Process



Videophone Clinics



ASUS
Rock Solid · Heart Touching

skype™



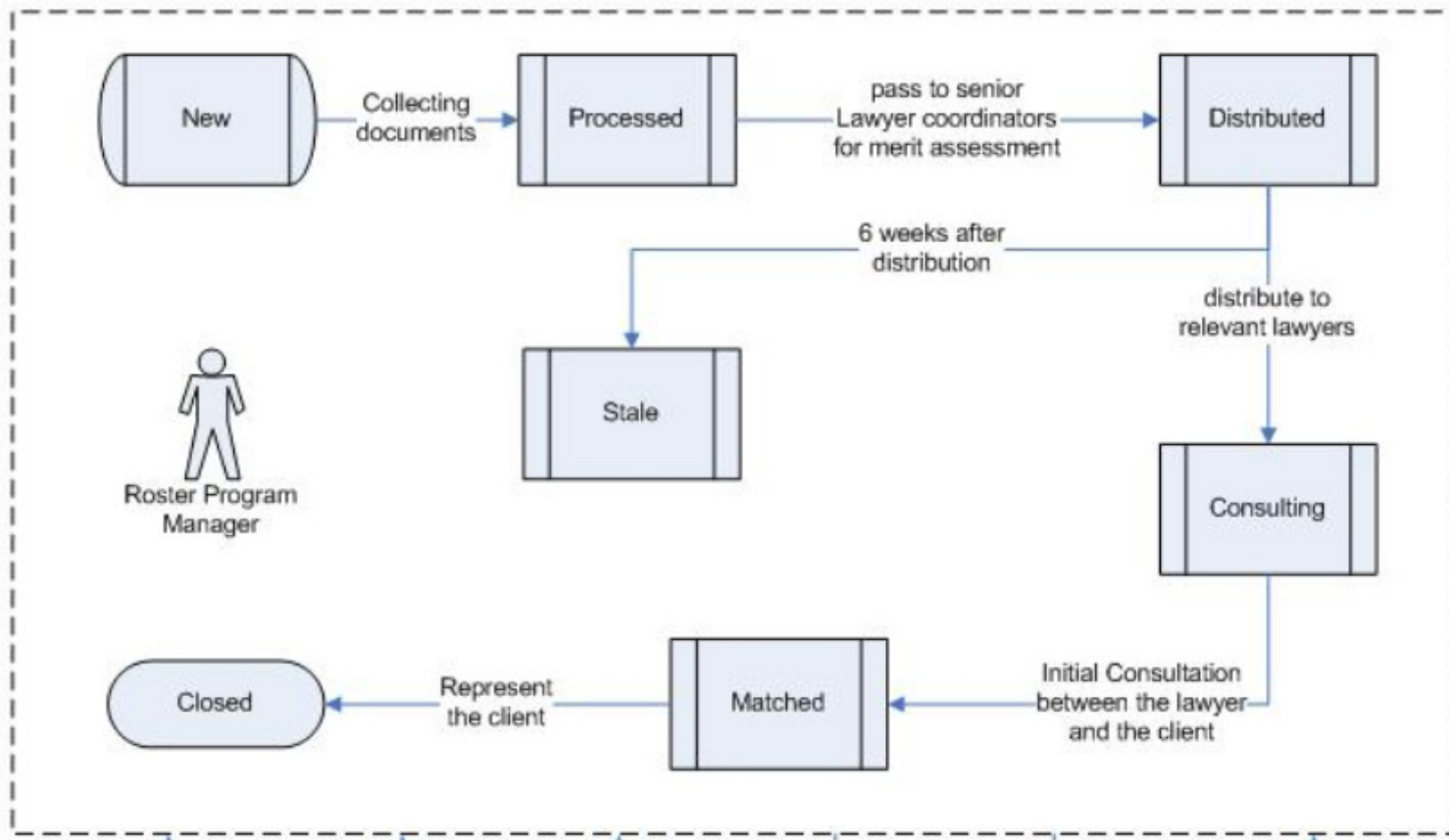
Videophone Clinics

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

Roster Programs

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

Roster Program Process



Main Contacts

Executive Director: Jamie Maclaren

jmaclaren@accessprobono.ca

Clinic Coordinator: Frank Yates

fyates@accessprobono.ca

Roster Manager: Michelle Quigg

mquigg@accessprobono.ca

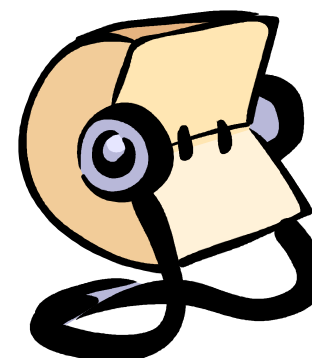
Project & Information Officer: Jimmy Yan

jyan@accessprobono.ca

Phone: 604.482.3195

Fax: 604.893.8934

Email: help@accessprobono.ca



Welcome to my world....

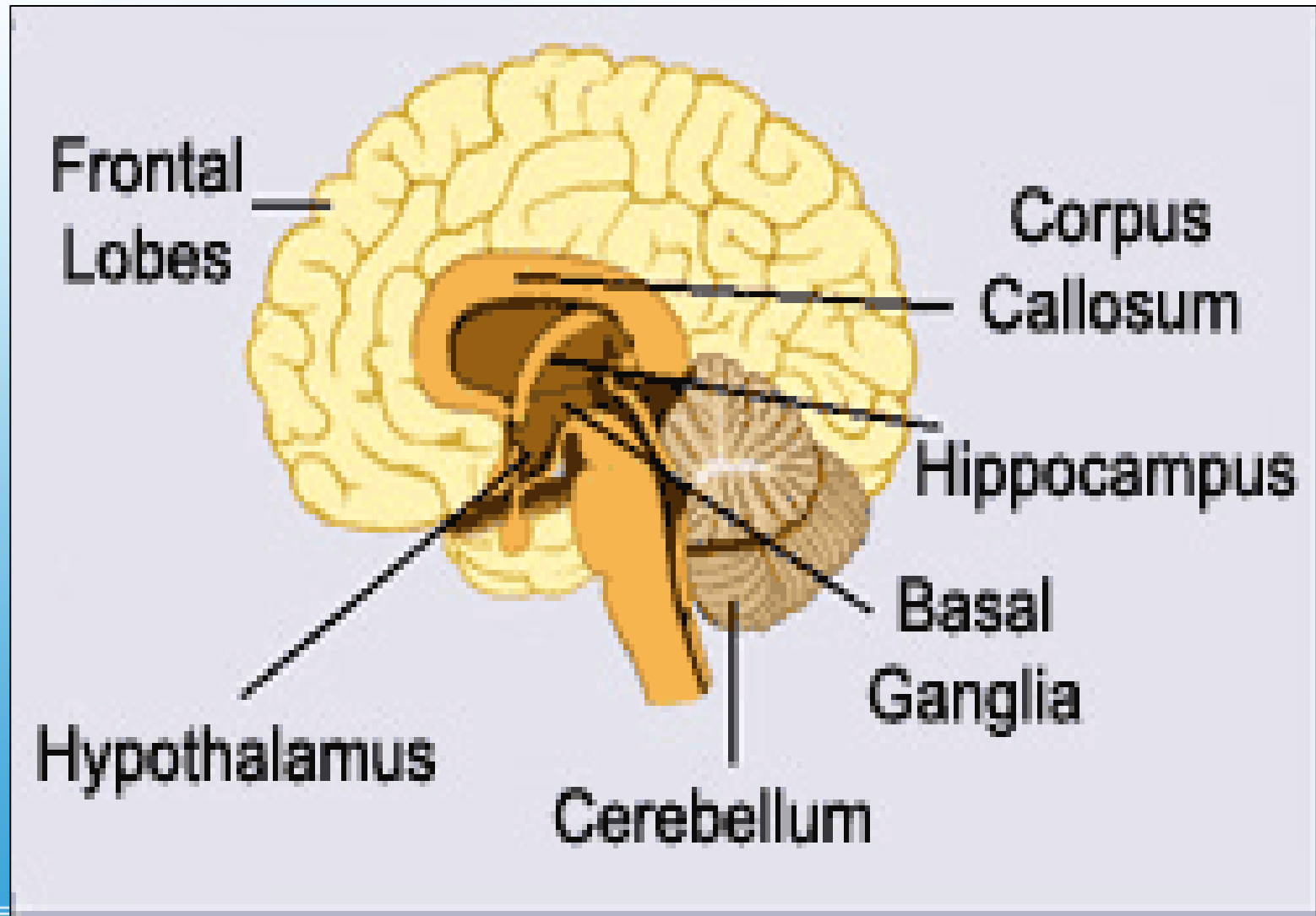
Living and Learning with FASD

***Presented by
Beverly Zorn Consulting
14045 Buckhorn Lake Road
Prince George, B.C. V2N 6A7
(250) 963-7388
blczorn@gmail.com***

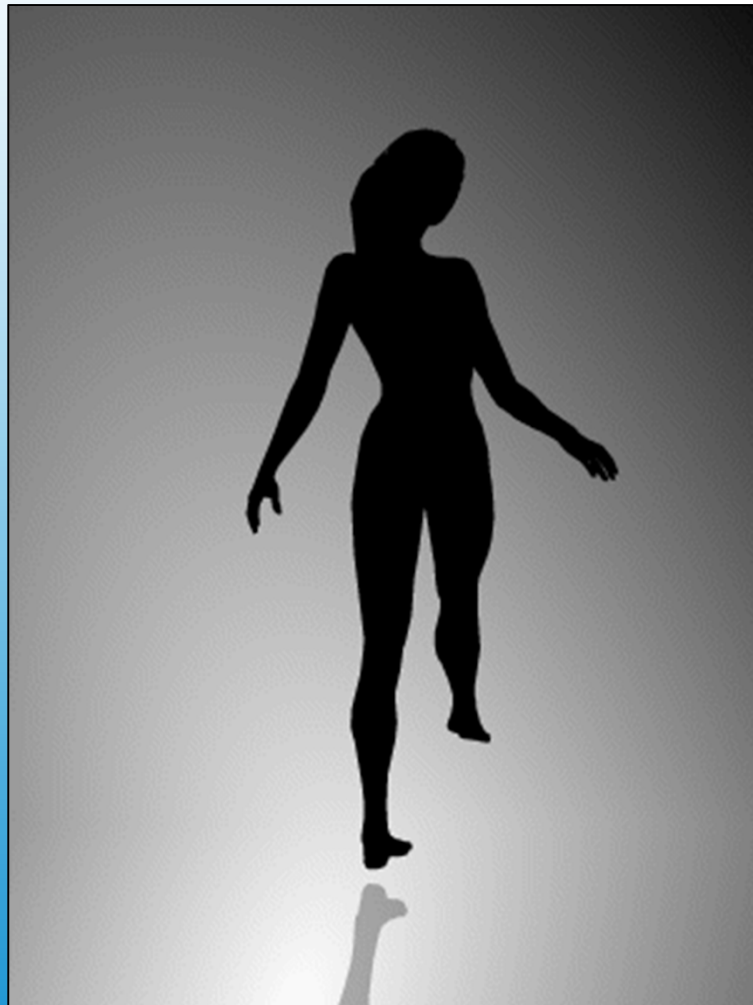
FASD 101

[illegible]

PRE-EMBRYO		EMBRYO DEVELOPMENT IN WEEKS					FETUS DEVELOPMENT IN WEEKS						
		1-2	3	4	5	6	7	8	12	16	20-36	38	
		MAJOR PHYSICAL ABNORMALITIES					FUNCTIONAL DEFECTS AND PHYSICAL ABNORMALITIES						
Egg and sperm can be damaged by alcohol													
			BRAIN										
			HEART										
			ARMS										
			EYES										
			LEGS										
						TEETH							
						PALATE							
							GENITAL AREA						
		EARS											



THIS IS YOUR BRAIN



LEFT OR RIGHT

Primary Disabilities

Compromised executive functioning

Difficulty with memory

Difficulty with abstract concepts

Impaired judgment

Inability to generalize information

Communication challenges

Language problems

Slow cognitive / auditory pace

Perseveration - looping

YELLOW BLUE ORANGE
BLACK RED GREEN
PURPLE YELLOW RED
ORANGE GREEN BLACK
BLUE RED PURPLE
GREEN BLUE ORANGE

Dysmaturity

Impulsivity

Sensory systems dysfunction

- Perseveration - looping
- slow pace/memory/learning/information processing

Secondary Disabilities

Mental health problems

Disruption in school

Poor self esteem

Isolation

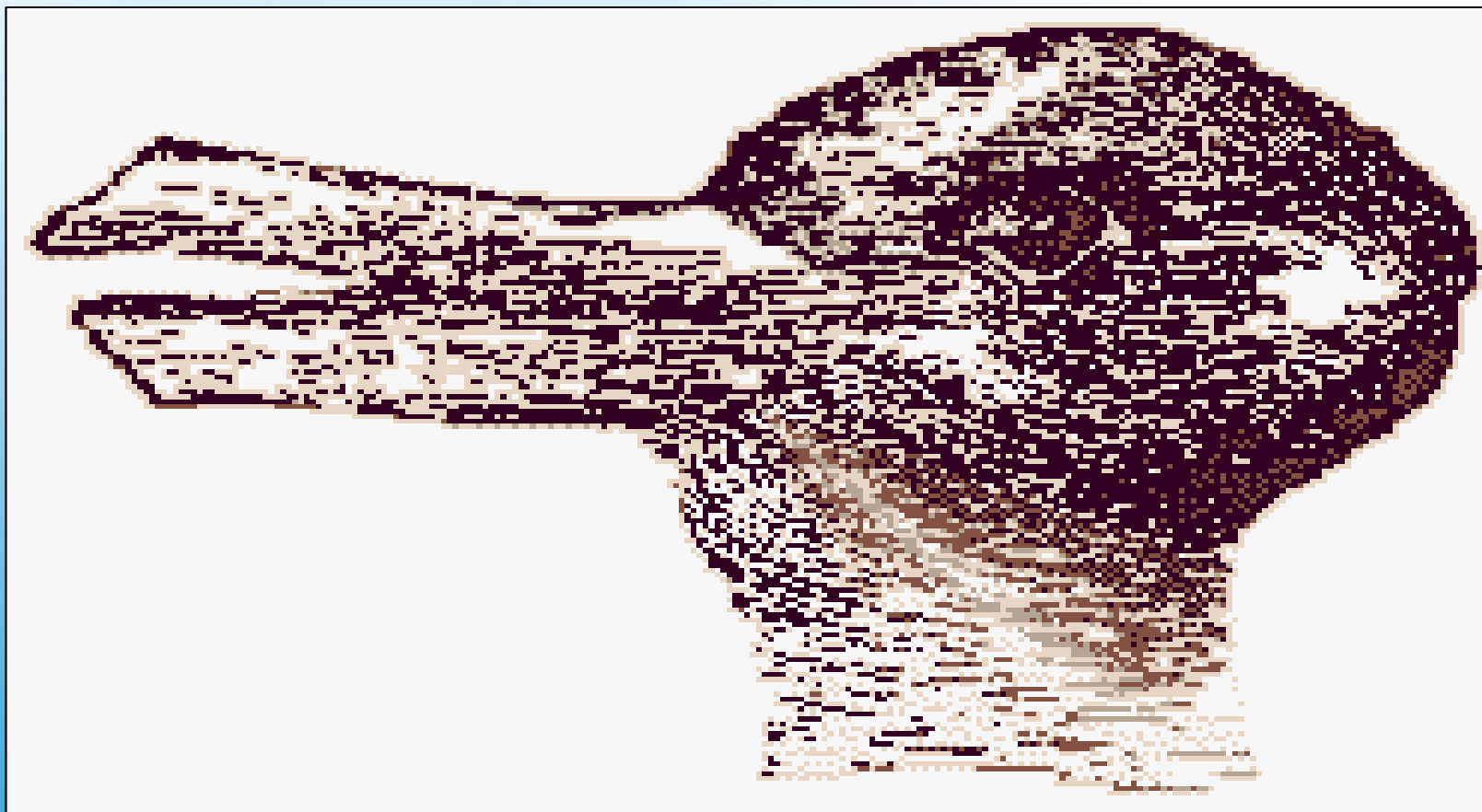
Trouble with the law

Chronic unemployment

Alcohol and drug problems

Homelessness

What do you see...



Gladue Reports, Circuit Courts and Restorative Justice

Presented by Mitch Walker

My Background

- I have been working within or around the Criminal Justice system for close to ten years.
- I have been working closely with Aboriginal populations throughout that time, in both urban and remote settings.
- In that time, I have been a Probation Officer, a counsellor at Baldy Hughes, an instructor in the Criminology/Sociology department at CNC, a Gladue Report Writer and the Director of Justice Services for the Tsay Keh Dene First Nation. I am currently in the process of picking up and moving down to Kelowna where I will teaching at Okanagan College in the Criminology Department.

Congratulations.... but why are you here?

- What I want to talk to you about today is three fold:
 1. Gladue Reports
 2. Circuit Court
 3. Restorative Justice

Disclaimer: Please be advised that my views are not reflective of Legal Services Society and anything offensive I might say is merely the result of my own stupidity.

R v. Gladue – SCC 1999

The Gist

- Jamie Gladue – 1995 stabbing of Reuben Beaver – Pled guilty to Manslaughter
- 3 years jail –
- Appealed - appeal denied by Court of Appeal
- Supreme Court of Canada – appeal denied, 718.2(e) recognized as applicable (urban aboriginal – sentencing judge thought 718.2 did not apply because she was raised in, and lived in, an urban environment)
- The legacy of that decision, for our context, is the Gladue Program run through Legal Services Society and Trish Kumpf

Gladue Report Writers

- LSS maintains a roster of individual writers who have been deemed by LSS to be qualified to write the reports
- Qualifications for joining that roster include:
 - (a) Successfully completed a Gladue report writing training course approved by LSS.
 - (b) Be Aboriginal or be closely connected to the Aboriginal community (e.g. an Aboriginal Justice Worker who does not identify as Aboriginal).
 - (c) Any other relevant factors that LSS deems appropriate, such as training provided by the Native Courtworkers Association, and Correctional Services Canada Aboriginal Liaison program

Writers are spread out throughout the province, but there is a shortage of qualified writers in the North

So what's in a Gladue Report?

- Genealogical and historical information pertinent to the subject and the offence in question
- Family Relationships, Living arrangements, Education, Finances, Health, Employment, Mental Health, Career Goals, Substance Use, FASD, Residential School, Community of Origin, Impacts of Colonization and IRS, Personal Attributes and Other Resources, Connection with Community of Origin, Criminal Record, Attitude regarding the Offence, Available Resources and Willingness to Access these resources, Restorative Alternatives to Custody
- Linear through line – The point being that we are trying to provide the Court with insight, at a level that cannot be acquired from the current structure of the Criminal Justice System

So what's a Gladue Report for?

Purpose

- Can be done for a Bail or Sentencing hearing
- Reduce the over-representation of Aboriginals in jail
- Provide an alternative (see: Restorative) approach to addressing the criminogenic factors present within the subject of the report
- Provide the Court with insightful and expansive information beyond that available from Counsel, or within the system
- “Advocacy without the advocacy” – Gladue writers are not advocates and no personal opinion belongs in the report, but on a macro scale, we are trying to push for the reformation of sentencing for offenders

Sentencing Principles & 718.2(e)

- 718.2 of the Criminal Code directs the Court to take into account aggravating and mitigating circumstances during the sentencing of an offender, in addition to other guidelines regarding sentences
- The Gladue Report revolves around the provision in the Criminal Code (paragraph e) which prompts Judges, at any level, to take into account the unique circumstances that First Nations in Canada face, and have faced for hundreds of years.

I want to take a look at a few specific lines within paragraph (e) and highlight both the intended and actual ramifications for Aboriginal offenders, in my experience.

718.2(e)

- ***“Circumstances of aboriginal people are unique”***
- This is the Court/Government recognizing its role in the current circumstances faced by First Nation populations
 - – Aboriginal people in Canada have higher rates of poverty, unemployment and lack of education, access to health care and services in general than any other ethnicity
- The areas in which First Nations are overrepresented are known contributors to involvement in the Criminal Justice System

- What does this mean for Gladue Reports?

This means that a Gladue Writer must contextualize these facts and show the Court how the issues discussed above contribute, and often force, people into the Criminal Justice system

718.2(e)

- *“While judges may take judicial notice of the broad systemic background factors and the priority given to Restorative Justice, the Court should be provided with case specific information by counsel or in the pre-sentence report”*
- The Courts rely heavily on the structure around them to provide good information – Lawyers, Clerks, Social Workers, Probation/Correctional Officers – the ability of the Court to make an informed decision plays a major role in the sentencing of anyone
- **What does this mean for Gladue Reports?**
- Good information comes from committed people, with time to commit - let’s be honest, aboriginal people are more likely than other populations to be represented by legal aid, legal aid is swamped, aren’t in a position to do hours of research about an individual and their community, the Pre-Sentence includes a Gladue Component, not that extensive and not that individualized
- Gladue Reports can really supplement the gap that exists in information provided to the Court

718.2(e)

- *“for some aboriginal offenders, and depending on the nature of the offence, the goals of denunciation and deterrence are fundamentally relevant to the offender’s community”*
- This is the Court/Government recognizing that, in many ways, Aboriginal communities are just like any other, along with maintaining the idea that we all subscribe to a social contract, whether it benefits us or not
- This is also the Court/Government reiterating that sentencing principles can and do apply to all citizens of Canada and should not be applied or denied based on ethnicity

718.2(e)

- **What does this mean for Gladue Reports?**
- We've established that First Nations populations are over-represented in areas that contribute to involvement with the Criminal Justice System
- If the individual was raised in an environment where they did not learn accountability or responsibility, if they had nobody to teach them these values, can we still expect them to understand them, or find meaning in them when they are applied, can the Court fairly expect people to all share the same values of right and wrong, in the same way, regardless of their upbringing?
- Gladue can enlighten the Court that within these communities, because of things like colonization and IRS and have damaged individuals and families abilities to engage with and learn from denunciation and deterrence

718.2(e)

- *“this provision does not mandate better treatment for aboriginal offenders but rather requires recognition that sentences be individualized and that there are serious social problems with respect to aboriginal offenders that require more creative and innovative solutions”*
- In my experience, The Court/Government, to their credit, will certainly take advantage of opportunities to pursue creative and innovative approaches
- **What does this mean for Gladue Reports?**
- Gladue Writers need to be specific and thorough about the availability and viability of the options available to the subject of the report
- This ties into the question of lack of capacity and capacity building, something we will touch on later

718.2(e)

- *“this paragraph should not, however, be taken as a means of automatically reducing the prison sentence of aboriginal offenders. The sentence imposed will depend upon all the factors that must be taken into account in each individual case”*
- 718.2(e)/Gladue is not an assurance of no jail, it’s an understanding that socialization plays an enormous role in developing our ability to survive within society and that FN people have been exposed to some of the worst socialization processes in our country’s history
- **What does this mean for Gladue Reports?**
- This means that Gladue Writers cannot assume that a report will automatically act as a mitigator, but that we have the opportunity to impact a sentence with well researched “factors” that play a role in the subjects history

718.2(e)

- Overall, 718.2(e) gives the Court the discretion to acknowledge the fact that the historical (and current) treatment of Aboriginal populations in Canada has differed from that of other ethnicities and such a history has led to higher involvement with the Criminal Justice System.
- As Gladue Writers, we can use 718.2(e) to provide the Court with better information than can be received through the structure currently in place.
- Gladue Writers have the opportunity to directly address the Court and contribute the knowledge base of the men and women (judges) who are determining the appropriate sentences for the subject in question

Challenges in the Process

Individual

- Collaterals
- Home Communities
- FASD
- Barriers to Information

Structural

- In a terrible irony, many of the communities Gladue subjects come from do not have the capacity to provide Restorative options, for many of the same reasons that someone is before the Court
- As Gladue writers, you can't help build capacity, only report on it.

But you're white, why are you a writer?

- First of all, you're correct, on both counts.
- Second, as much as this process is about race and ethnicity, it is about justice.
- The attributes that matter most are if you can research, interview and write.
- With that said.....
 - I cannot emotionally understand what it means to be Aboriginal, so I don't bother trying. I invest my emotional energy into exposing the reasons that an individual is before the Court.
 - I look like an undercover cop so I get the door shut in my face on a regular basis.

Circuit Court – The Kwadacha & Tsay Keh Dene Circuit

- Varying Format – you may see weekly, monthly or quarterly sittings in communities across B.C.
- Varying structure – some communities have designated Courtrooms, others have cafeterias, board rooms or school gyms
- Services – frequency, length or sitting, based on how many people are in the community – funds are allocated for sittings based solely on demographics, not socio-economics
- This means that making the case for more services in any given community is based on quantitative measurement, rather than qualitative information
- The result can be, and often is, that small remote communities are left without services available in larger centers
- Depending on the format of the circuit, many different organizations and people make up a typical Court Party
- Judge, Duty Counsel(s), Crown Counsel, Sheriff(s), Court Clerk(s), Probation Officer (Adult and Youth), Social Worker(s), Family Lawyer(s), RCMP Officers, Community Members and Staff

A Typical Week in the Kwadacha/Tsay Keh Dene Court Run

- Monday to Friday
- Monday – Fly to Kwadacha from Prince George – Court in the afternoon until late, Court Tuesday all day until late, Wednesday morning – drive to Tsay Keh Dene (1 hour), Court Wednesday afternoon until late, Court all day Thursday until late, Court on Friday (if necessary), Fly to Prince George on Friday
- Court occurs every four months (October, February, June)
- Lawyer, Probation Officer and general Court contact done by phone

Centralization

- Circuit Court is the Big Mac of the Criminal Justice System – its basically the same everywhere with a few localized alterations
- Based in the idea of centralized justice being the most effective, it's analogous to economic and cultural globalization – yes we can expect the same thing everywhere we go, but we also remove responsibilities from individuals and communities for the administration of justice
- Can supplement through building capacity, as discussed
- In my experience, Judges and Crown Counsel, all the way to Provincial Directors on the Correctional side are open to capacity building to compliment and/or supplement the current format

Effectiveness

- Effectiveness of the Criminal Justice system is often measured by recidivism, or re-offending
- The Court sentences using principles based in denunciation, deterrence, separation from society when necessary, responsibility, reparations and rehabilitation – these are philosophical points of view that require the offender to understand how their behaviour impacts others and how to change
- The Court also relies upon the complimentary systems involved in the administration of justice to carry out its wishes and uphold – Corrections, Health, Police, Victims Services, Employers, Education
- For remote communities like Tsay Keh Dene and Kwadacha, these services either do not exist, are substandard, or are over burdened
- The result is often recidivism amongst a group of individuals who are particularly prolific

Improving Services in Circuit Court Communities

- How can we make them better? – capacity building through RJ
- Getting loud(er) – Regional Managers, Provincial Directors, Assistant Deputy Ministers, Deputy Ministers, MLA's, Media – you need to be passionate and persistent (or an asshole, as a few people have called me)
- Questioning – Why is this way the only way?
- Education – people often do not understand that justice and community safety is out of their control – they see it as RCMP, Courts and Corrections job
- Healing – many of the barriers to capacity building revolve around unresolved trauma, mistrust and past abuses

Restorative Justice

- As Gladue writers, we are tasked with providing the Court with Restorative options for the subjects of our reports.
- Restorative options can take many forms, but the purpose of any Restorative Justice structure must always reflect its principles.
- Let's talk now about just what Restorative Justice is, its principles, what it looks like in practice and how it can help build capacity for Aboriginal populations to supplement the intervention of the Criminal Justice system within their communities.

Overview of the Principles

- Overall, it is built on three pillars.
- One, it is concerned with the *needs* and *roles* of individuals and communities affected by crime and it focuses on harm. It sees harm as something that cannot be correctly repaired by the current Court system.
- Two, it believes that harm results in obligations for the community. This means that the offender must comprehend how their behaviour has harmed others, themselves and the impact this has on their community. Offenders have a responsibility to help repair the harm.
- Finally, Restorative Justice promotes participation. This means that the offender, the victim, friends, family and the community at large (stakeholders) all play a part in deciding how the harm should be repaired and how the parties involved can support each other to during that reparation.

What does it look like?

- a) **Peacemaking/Restorative Circles** – Though the structure and subject matter of these circles can vary, they are all based on the idea that the primary responsibility for addressing crime in any community lies with its members. This means victims, the offenders and family and friends of both. However, Peacemaking Circles do not restrict participation but rather encourage as much as possible. For these to be successful, hearing from as many community members as possible is essential. In terms of subject matter, they are flexible. They can be used to address property crime, person crime or a disagreement between two people or families. The format is adaptable but the process is the same. Peacemaking Circles are looking to discover the underlying problems through conversation and in the process develop a plan to restore harmony and repair harm.
- b) **Re-Integration Circles** – These types of circles could occur for Band Members who are returning to the community after being released from prison. A Re-Integration circle should be used to show support for people returning to the community, but also to remind them of the expectations the community has for them, possibly in conjunction with the Tsay Keh Dene Constitution. They are also a place to create a support circle (see below) for the individual.

What does it look like in practice?

- c) **Victim Offender Mediation** – This is a process whereby offenders and victim(s) meet to find closure and heal open wounds. The presence of a trained mediator is essential. The victim(s) are presented with the opportunity to address the offender in a safe environment. The victim is also able to tell the offender about the physical, emotional and financial impact that the crime has had on their lives. The offender is able to provide answers to questions from the victim and both are able to participate in creating a plan of restitution/reparation for the offender to follow.
- In this process it is crucial that all parties have been briefed by the mediator and are voluntarily willing to participate in the process. It must be understood that this is a place to heal harm that has been done.
- d) **Dispute Resolution Circles** – This circle is similar to that of a Peacemaking Circle, but specifically adapted to address the issue of lateral violence (gossip). For Tsay Keh Dene community members, it should be encouraged that if one individual has an issue with another, gossip should be avoided at all cost and the matter should be brought to a Dispute Resolution Circle.
- .

What does it look like?

- e) **Healing Circles** – This type of circle can be used to discuss any topic that is an issue to the health and well being of the community (historical trauma, addiction, family violence etc.). These circles are restricted to community members.
- f) **Celebration Circles** – These circles should be held to celebrate an individual or community accomplishment. These circles should be organized and held as much as possible to allow people a space to be positive and express feelings of hope, aspiration and love.
- g) **Support Circles** – In conjunction with Re-Integration Circles, or stand alone if the individual has not returned from custody, a support circle is run to establish a set of support structures for an individual who has been convicted of a crime and is now on Probation. It can also be run for someone who is struggling with an issue and is in need of support. The circle needs to consist of friends and family who can listen, provide emotional support and direction to the individual. This circle should meet often, both to remind the individual of their support, but to check in on their well-being

Restorative Justice as Capacity Building

- As noted in the Gladue Report section, capacity is lacking for innovative and Restorative applications of justice, specifically in remote communities.
- The Criminal Justice system is not built to add capacity, it is designed to implement laws, enforce them and apply discretionary sanctions.
- Restorative Justice can be used to build capacity because of its principles of accountability, inclusion and participation.
- Keep in mind, this is extremely difficult, specifically because of the factors we discussed in the discussion around Gladue Reports.

Restorative Justice and Deterrence

- The Criminal Justice System maintains general and specific deterrence under the auspices that everyone has knowledge of the social contract and has actively subscribed to it.
- On paper, this makes sense. The Restorative process invests in the idea that real deterrence does not come from an anonymous, centralized entity, but rather from individual community members taking responsibility for themselves and each other.
- In other words, its far more effective when your grandmother tells you that you hurt her, than for an anonymous Judge to tell you the same.
- For Restorative Justice, real deterrence comes in the form of emotional engagement with those who have been harmed. This is also called shame.

Incorporating Restorative Justice

- As we've discussed, RJ is firm in its principles, but extremely broad in its application, meaning that it is appropriate for many settings, not just dealing with criminal activity
- For your particular organizations, I would encourage you to research and hire a trainer, to teach your employees how to run Healing Circles, Reconciliation Sessions , whatever you feel is appropriate. Your staff can then build and deliver contextualized programs to suit your needs and those of your client base.
- Should you require ideas/recommendations of trainers that are available, I know several good ones and can fill you in.

An Overview of the New *Family Law Act*

John-Paul Boyd
Aaron Gordon Daykin Nordlinger

27 March 2012
Legal Services Society
Legal Information and Resources for Settlement Workers Conference

Determining parentage, the care of children and mobility issues.

CHILDREN

Parentage

- *FLA* determines parentage for all purposes within province except adoption, and therefore binds Vital Statistics Office
- Parents are presumed to be **biological father** and **birth mother**

Parentage

- Donor of egg or sperm **is not parent**, unless assisted reproduction agreement to contrary
- Surrogate mother **is parent**, unless assisted reproduction agreement to contrary
- Agreement may name all of intended parents, donors and surrogate mother as **parents**

Guardianship

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

Guardianship

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

Guardianship

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

Parenting arrangements

- Parenting arrangements are arrangements for **parental responsibilities** or **parenting time** under agreement or order
- No presumptions that parenting time should be shared equally or that parenting responsibilities should be allocated equally or shared equally

Contact

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

Moving with a child

- Guardians wishing to relocate with child must give **60 days' notice** to guardians and persons with contact
- If objection, moving guardian must show that **1** move is made in good faith and **2** reasonable arrangements are proposed to preserve relationship with other guardians
- May be opposed on basis move is not in child's best interests

Moving with a child

- If guardians have equal time, moving guardian must show that **1** move is made in good faith, **2** reasonable arrangements are proposed to preserve relationship with other guardians, and **3** move is in child's best interests

Children's property

- Guardian is not trustee of child's property except for property in prescribed class or of value less than prescribed amount
- Trustee may be appointed by court or by trust instrument
- Trustee must deliver property and accounting to child at age 19 unless order or trust instrument to contrary

Making changes

- Orders about children can be changed if there is a change in the needs or circumstances of a child, including because of a change in someone else's circumstances
- The court can set aside an agreement about children if the agreement is not in the children's best interests

Withdrawal of minors, ranked obligations, effect of agreements, insurance to secure obligation and support binding on estate.

CHILD SUPPORT

Disqualifying minors

- Support obligation may terminate where minor voluntarily **withdraws** from parental charge or **marries**
- Minor may requalify for support on returning to charge of parents

Ranked priorities

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

The not-so-sweet hereafter

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

Making changes

- Orders about child support can be changed if there is a change in circumstances under the CSG or if new evidence about income becomes available
- The court can set aside an agreement about child support if it would make a different order

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

SPOUSAL SUPPORT

Standing

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

Duration and amount

- Entitlement determined determined by *Divorce Act* objectives
- If entitlement, amount and duration determined by *Divorce Act* factors
- Advisory Guidelines not referenced

Reviews

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

Support in the afterlife

- Payor can be required to maintain life insurance policy to secure spousal support obligation in same manner as for child support
- Spousal support can be made binding on payor's estate in same manner and on same test as for child support

Making changes

- Orders about spousal support can be changed if there is a change in means needs and other circumstances of a spouse or if new evidence about income becomes available
- The court can set aside an agreement about spousal support if the agreement was entered into unfairly or with inadequate information, or if the agreement is **significantly unfair**

Family property, family debt and excluded property.

PROPERTY AND DEBT

Standing

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

Family property

- All property owned by either party at the date of separation is **family property**, including assets acquired after separation with family property
- Includes corporate interests, ventures and partnerships, bank accounts, annuities, RRSPs and private pensions
- Includes the increase in value of excluded property

Family debt

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

Excluded property

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

Presumptions

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

Triggering event and valuation

- One-half of all family assets vests in each spouse as tenants in common **on separation**, as well as responsibility for one-half of family debt
- Value of family property is fair market value; valuation date is date of **agreement** or **trial** dividing property or allocating debt

Dividing family property unequally

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

Dividing excluded property

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

Arbitration, mediation, collaborative law, parenting coordination,
conduct orders and enforcement of orders.

DISPUTE RESOLUTION PROCESSES

Dispute resolution processes

- New emphasis on and support for dispute resolution processes out of court
- New duty to make full and frank disclosure imposed on parties not litigating
- Better legislative support of agreements generally, and significantly strengthened support for agreements on property and spousal support

Family dispute resolution

- “Family dispute resolution” means services of family justice counsellor or parenting coordinator; mediation, collaborative law and arbitration; other processes prescribed by regulation
- “Family dispute resolution professionals” include: lawyers, mediators, arbitrators, parenting coordinators

Duties of professionals

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

Family dispute resolution

- Parties required to comply with any mandatory dispute resolution processes prescribed by regulation
- Court may require parties to engage in dispute resolution process
- Court may adjourn proceeding while parties attempt to resolve issues before court

Parenting coordinators

- Parenting coordinators may assist with implementation of **parenting arrangements** or **contact** when appointed by order or agreement
- May resolve disagreements by **consensus** or by **binding determinations**
- Court may enforce, vary or set aside determinations

Conduct orders

- Court may make conduct orders for reasons including to: manage behaviour frustrating resolution, prevent misuse of court process, and facilitate settlement
- Orders include: dismiss or strike pleadings or application, judge seizing self of further applications, attend counselling, attend dispute resolution, restrict communications, restrict contact, maintain family home

Enforcement

- Withholding of or failure to exercise parenting time or contact enforceable by referral to dispute resolution or counselling, make-up time, reimbursement of expenses
- Agreements on children and support can be filed and enforced as orders

General enforcement powers

- Where no specific enforcement provision, may order may be enforced by (1) requiring security, (2) payment of party's **expenses**, or (3) payment of **up to \$5,000** as a fine or to party
- Where nothing else will secure compliance, court may order party be **jailed**
- Provisions not applicable to protection orders, only enforced by ***Criminal Code***, s. 127

Protection orders, best interests of children and screening for violence.

FAMILY VIOLENCE

Protection orders

- Variety of orders may be made to protect “at-risk family member”
- Orders include: restraints on communications, attending or entering place, following person, possessing weapons; directions to police to remove person from property, accompany person to remove belongings, seize weapons; requirement to report; other terms

Protection orders

- Other *FLA* orders suspended to extent of conflict with protection order, including protection order from another jurisdiction and no-contact and non-communication orders under *Criminal Code*
- Only enforceable under s. 127 of *Criminal Code*; no other remedy in *FLA* and *Offence Act* inapplicable

Best interests of child

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

Screening for violence

- New requirement on professionals, including lawyers, mediators and family justice counsellors to screen for family violence and assess impact on safety and capacity of party to negotiate fair settlement

Children, child support, spousal support, property and debt, dispute resolution processes and court processes.

HIGHLIGHTS

Children

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

Children

- Cool new powers to **enforce** parenting time and contact
- Statutory test to determine **mobility** with shifting burden to establish best interests; only guardians may object
- New scheme for management of **children's property**, guardians not automatically trustees

Child support

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

Spousal support

- Regime applies to unmarried couples in short cohabiting relationships who have a child
- The return of **misconduct**, in a limited way
- Remarkable new **deference to agreements** on spousal support
- Obligation may be **binding on estate**
- Advisory Guidelines not referenced

Property and debt

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

Property and debt

- Regime presumes equal liability for debts incurred during relationship
- New deference to agreements on property and debt;

Court processes

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

An Overview of the New *Family Law Act*

John-Paul Boyd
Aaron Gordon Daykin Nordlinger

27 March 2012
Legal Services Society
Legal Information and Resources for Settlement Workers Conference

Working Together with LSS Intake



February, 2014

Chantelle MacLeod
Intake Worker
Tel: 250-564-9717

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

- ▶ Call the LSS Provincial Call Centre 604-408-2172 or toll free 1-866-577-2525 (North America wide)
- ▶ 9:00 to 4:00 on week days (Wednesdays 9:00 to 2:30)



- ▶ **Visit** one of our Legal Aid offices (contact information available on our website www.legalaid.bc.ca.)

Who qualifies?

Child
Protection



Family Law



Refugee



Criminal Law

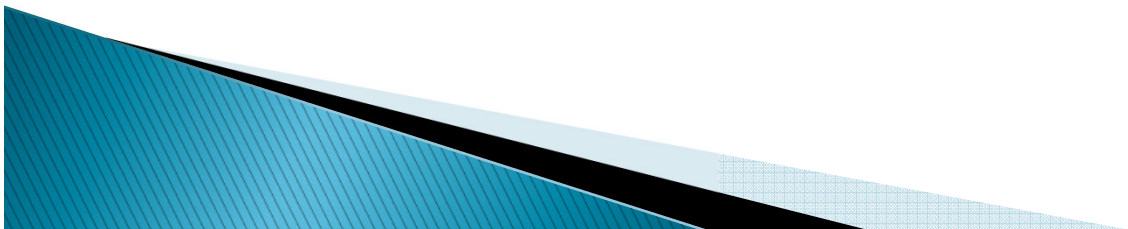
How does a person qualify for legal aid?

The following two criteria must be met:

1. The legal problem must be an issue covered by LSS;

AND

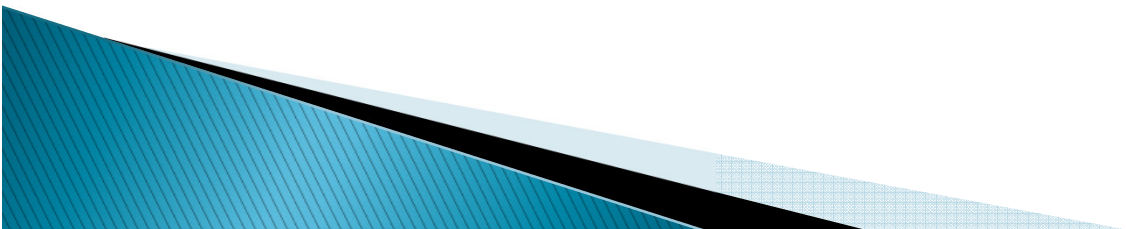
2. The person must qualify financially according to the LSS guidelines.



COVERABLE ISSUES

Always encourage your client to apply for legal aid, even if it appears that they may not qualify.

There may be circumstances that allow them to be approved for a legal aid lawyer.



Criminal applications:

- Where charges are serious and there is a likelihood of jail.
- There is a serious physical or mental disability barrier
- Faces immigration complications that may result in deportation



➤ **Family Law** –serious family law problems such as protection, continuous denial of parenting time or contact, parenting arrangements, guardianship, permanent relocation issues, or they are a respondent in FMEP maintenance enforcement committal hearing proceedings.



➤ **Child protection** – when the BC Director of Child Protection has removed or threatened to remove the child(ren). This may include custody and access issues for children in government care. Pregnant mothers are eligible for a legal aid lawyer where there is a threat of removal once the child is born. The application must qualify financially.



➤ **Immigration issues** – Applicants who wish to claim refugee status, or who face an immigration proceeding that may result in their removal from Canada should apply for legal aid.



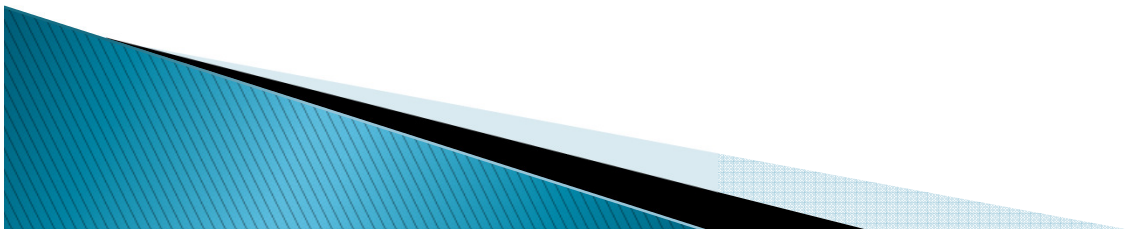
➤ **Reciprocal applications** –an applicant's family matter is in another province or territory, or the applicant resides anywhere outside of BC and has family issues in BC.



Financial Eligibility

Income chart (All case types)

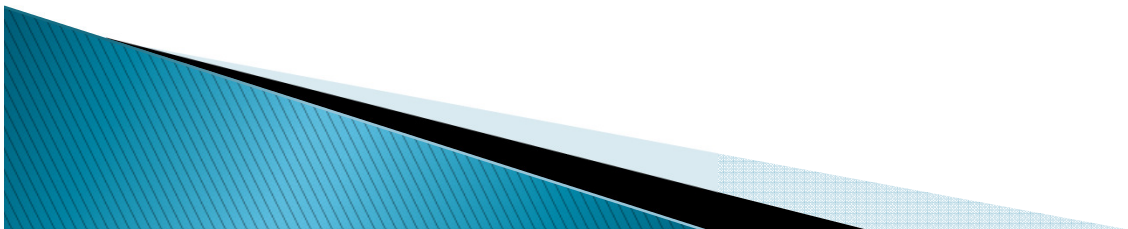
Household Size	Monthly Net Income
1	\$1,480
2	\$2,070
3	\$2,670
4	\$3,260
5	\$3,850
6	\$4,450
7 or more	\$5,040



Financial Eligibility

Personal Property cap (All case types)

Household Size	Exemption
1	\$2,000
2	\$4,000
3	\$4,500
4	\$5,000
5	\$5,500
6	\$6,000
7 or more	\$6,000



Appealing a refusal

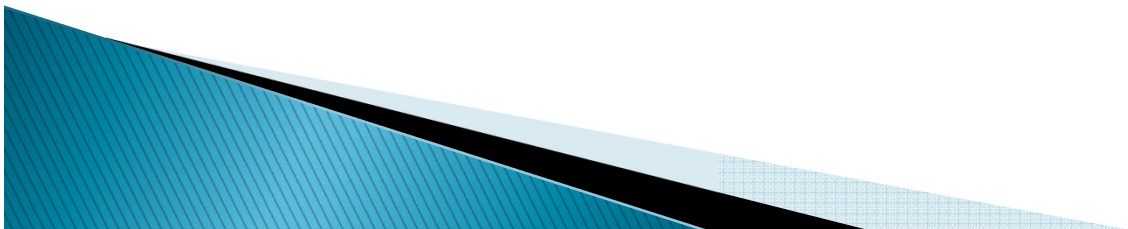
- ▶ If a client is refused legal aid he or she has the right to appeal the refusal.
 - The appeal must be submitted in writing.
 - The client should note the reasons for disagreeing with the refusal.
 - The client should include any supporting documents.
- ▶ Coverage and financial eligibility reviews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

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

Working Together

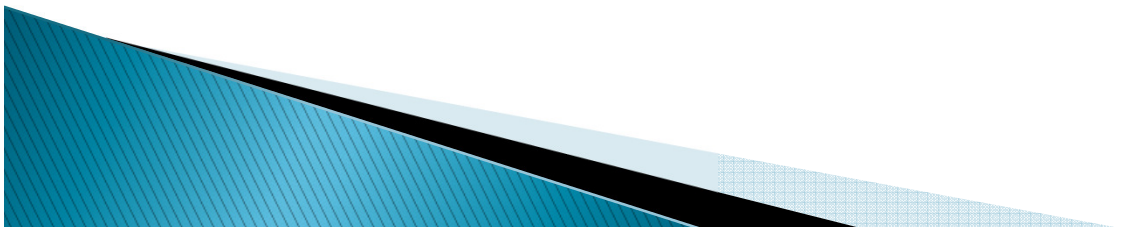
How you can help your clients with the Legal Aid process:

- ▶ Understand the intake process
- ▶ Prepare your client for the interview
- ▶ Help them organize their documentation
- ▶ Make sure they follow up and provide LSS Intake with all requested information
- ▶ Provide your client with public legal information education and information materials



For More information

- ▶ Legal Services Society www.legalaid.bc.ca
- ▶ Family Law in BC www.familylaw.lss.bc.ca
- ▶ QR mobile website link



Family Law Line

- ▶ If a person does not qualify for legal aid, is low income, and has a family law issue, they may be eligible for free family legal advice over the telephone.
 - Call the Vancouver Call Centre and ask for the Law Line.
 - 604-408-2172 (Vancouver),
 - 1-866-577-2525 (Toll Free)
 - Hours of Operation: Mondays to Fridays 9:30 to 3:00 (Wednesdays 9:30 to 2:30)

**Presenter: Chantelle MacLeod
Intake Worker**

- Direct Phone: 250-564-9717
- Intake Fax: 250-564-8636
- Email: macleod@courtyardlane.bc.ca

