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**Provincial Training Conference for Legal Advocates**  
**October 17,18,19, 2017**

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- Consultation on Your Welfare Rights (Day 1)
- Technology and Privacy Issues (Day 1)
- Helping Clients get ID (Day 2)
- Having your Say on a New Human Rights Commission (Day 2) (see Tab 4 NEW Resources and Services)
- Client Encounters with Police in Indigenous Communities: A Consultation (Day 3) (see Tab 3)
- Overview of Key Issues Affecting Seniors (Day 3)

# AGENDA

## Provincial Advocates Conference



TUESDAY 17 OCTOBER 2017 – DAY 1

Times	Room	Workshop	Resource persons
8:00 – 8:30 am	<i>Registration and materials pick-up</i>		
8:30 – 9:00 am	<i>Opening and Welcome - Wayne Robertson, Law Foundation; Mark Benton, Legal Services Society; Debra Sparrow, Musqueam Nation</i>		
9:00 – 10:30 am	Ballroom A,B	<b>Why Indigenous Specific Cultural Safety? Getting to the Roots of Tolerance – <u>LAW FOUNDATION funded advocates</u></b>	Yvette Ringham-Cowan and Laurie Harding - Knowledge Integration Leads, San'yas, ICS Makonen Bondoc - Facilitator, San'yas, ICS
	Ballroom C	<b>Best Practices for Applying for Legal Aid - <u>LEGAL SERVICES SOCIETY advocates</u></b>	Branka Matijasic - Intake Manager, Legal Services Society Andrea Vollans - Advocate, YWCA
10:30 – 10:45 am	<i>Coffee Break</i>		
10:45 – 12:15 am	Ballroom A,B	<b>Why Indigenous Specific Cultural Safety? Getting to the Roots of Tolerance – <u>LAW FOUNDATION funded advocates</u> (continued)</b>	Yvette Ringham-Cowan and Laurie Harding - Knowledge Integration Leads, San'yas, ICS Makonen Bondoc - Facilitator, San'yas, ICS
	Ballroom C	<b>Gladue, First Nations and Criminal Justice – <u>LEGAL SERVICES SOCIETY advocates</u></b>	Anisa White - Gladue Report Writer Rhaea Bailey - Manager, Indigenous Services, Legal Services Society Terry Laliberte, Criminal Defence Lawyer
12:15 – 1:15 pm	<i>Lunch</i>		
1:15 – 1:45 pm	Ballroom A,B,C	<b>PLENARY: Consultation on Your Welfare Rights - <u>ALL ADVOCATES</u></b>	Penny Goldsmith - Writer Patricia Lim - Publications Development Coordinator, Legal Services Society
1:45 – 3:15 pm	Ballroom A,B	<b>Why Indigenous Specific Cultural Safety? Getting to the Roots of Tolerance - <u>LEGAL SERVICES SOCIETY advocates</u></b>	Yvette Ringham-Cowan and Laurie Harding - Knowledge Integration Leads, San'yas, ICS Makonen Bondoc - Facilitator, San'yas, ICS
	Ballroom C	<b>Law Foundation Advocates meeting</b>	<i>Law Foundation staff and advocates</i>
3:15 – 3:30 pm	<i>Coffee Break</i>		
3:30 – 5:00 pm	Ballroom A,B	<b>Why Indigenous Specific Cultural Safety? Getting to the Roots of Tolerance - <u>LEGAL SERVICES SOCIETY advocates</u> (continued)</b>	Yvette Ringham-Cowan and Laurie Harding - Knowledge Integration Leads, San'yas, ICS Makonen Bondoc - Facilitator, San'yas, ICS
	Ballroom C	<b>Best Practices for Applying for Legal Aid (repeat) <u>LAW FOUNDATION funded advocates</u></b>	Branka Matijasic - Intake Manager, Legal Services Society Andrea Vollans - Advocate, YWCA
	Cambie	<b>Technology and Privacy Issues - <u>LAW FOUNDATION funded advocates</u></b>	Tamara Hunter - Lawyer, DLA Piper
6:00 pm	<i>LSS/Law Foundation Hosted Dinner and Cash Bar</i>		

## CONFERENCE SESSION DESCRIPTIONS - TUESDAY 17 OCTOBER 2017 - DAY 1

<p><b>Why Indigenous Specific Cultural Safety? Getting to the Roots of Tolerance</b></p> <p><b>2 SESSIONS</b></p> <p><b>- <u>Morning session for Law Foundation funded advocates and supervising lawyers</u></b></p> <p><b>- <u>Afternoon session for Legal Services Society sponsored advocates</u></b></p>	<p><i>Are we all tolerated equally? Many professionals across Canada are asking this critical question in their efforts to improve the quality of services and relationships with Indigenous people. We all know that attitudes are connected to particular behaviours. This connection is the foundation for understanding how and why Indigenous cultural safety is needed for transformation of over-representation in justice systems today. This workshop will explore the connection between attitudes and behaviours through a variety of engaging and thought-provoking activities and exercises. Participants will be able to reflect on their own attitudes and beliefs through an individual activity, and then apply this knowledge and insight to specific scenarios related to legal advocacy. "Getting to the Roots of Tolerance" provides participants with a unique experience to step out of the everyday and look at the roots of the issues that impact their understanding, the efficacy and the safety of services provided to Indigenous people.</i></p>
<p><b>Best Practices for Applying for Legal Aid</b></p> <p><b>2 SESSIONS</b></p> <p><b>- <u>Morning session for Legal Services Society sponsored advocates</u></b></p> <p><b>- <u>Afternoon session for Law Foundation funded advocates</u></b></p>	<p><i>A session that will provide advocates with information about how to best help clients prepare when they are applying for legal aid.</i></p>
<p><b>Gladue, First Nations and Criminal Justice</b></p> <p><b>for Legal Services Society sponsored advocates</b></p>	<p><i>A session that will review the role of Gladue Reports, the guidelines for such reports, when they can be helpful to clients, and where clients and advocates can get support to have a Gladue Report written.</i></p>
<p><b>Plenary: Consultation on Your Welfare Rights</b></p> <p><b>For all advocates</b></p>	<p><i>An opportunity to give input and feedback to those involved with developing new publications about welfare at LSS.</i></p>
<p><b>Law Foundation Advocates meeting</b></p>	<p><i>Law Foundation funded advocates will meet with Law Foundation staff for updates and discussion.</i></p>
<p><b>Technology and Privacy Issues</b></p> <p><b>For Law Foundation funded advocates</b></p>	<p><i>Guidelines for clients to protect their privacy, and for advocacy groups wanting to ensure that the systems they use protect privacy.</i></p>



# AGENDA

## Provincial Advocates Conference

**WEDNESDAY 18 OCTOBER 2017 – DAY 2**

Times	Room	Workshop	Resource persons
8:30 – 10:00 am	Ballroom A, B, C	<b>Plenary: Systemic Poverty Law Updates</b>	<i>Erin Pritchard and Kate Feeney - Staff lawyers, BCPIAC BC Public Interest Advocacy Centre</i> <i>Alison Ward - Staff lawyer, CASL line, Community Legal Assistance Society CLAS</i> <i>Sam Turcott - DABC Disability Alliance BC</i>
10:00 – 10:15 am	<i>Coffee Break</i>		
10:15 – 11:45 am	Cambie	<b>Bedbug best practices</b>	<i>Emily Rogers - Advocate, TAPS Together Against Poverty Society</i> <i>Andrew Sakamoto – ED, TRAC</i>
	Ballroom C	<b>Indigenous Legal Issues: An Update and Discussion of Best Practices</b>	<i>Patricia Barkaskas - Academic Director, Indigenous Community Legal Clinic</i> <i>Emma Ronsley - law student</i>
	Ballroom A, B	<b>Family Law Update</b>	<i>Agnes Huang - Lawyer</i>
11:45 - 12:45 pm	<i>Lunch</i>		
12:45 - 1:45 pm	Ballroom A, B, C	<b>Plenary: NEW Resources and Services</b>	<i>Children's Lawyer</i> <i>Human Rights Commission</i> <i>BC Courthouse Libraries</i> <i>AskAnAdvocate</i> <i>People's Law School</i> <i>Justice Education Society</i>
1:45 - 3:15 pm	Ballroom A, B	<b>Welfare Eligibility Issues – selected case studies</b>	<i>Alison Ward - Staff lawyer, CLAS</i> <i>Sam Turcott - Advocate, DABC</i> <i>Matt Granlund - Advocate, Women's Contact Society</i> <i>Stephanie Smith - Advocate, First United</i> <i>Jen Matthews - Advocate, TAPS</i>
	Ballroom C	<b>Section 211 Reports</b>	<i>Chandan Sabharwal - Lawyer, Sabharwal Law Group</i>
	Cambie	<b>Subtenants, Occupants and Assignments</b>	<i>Yuka Kurokawa - Advocate, TAPS</i> <i>Danielle Sabelli - Staff Lawyer, CLAS</i>
3:15 – 3:30 pm	<i>Coffee Break</i>		
3:30 – 5:00 pm	Cambie	<b>Helping Clients get ID</b>	<i>Aubrey Fearey - Advocate, Kettle Friendship Society</i> <i>Mary Ellen Glover - Carnegie Centre</i> <i>Amber Prince - Atira</i>
	Ballroom A, B	<b>Arguing against Exemptions from the RTA</b>	<i>Kevin Love - Staff lawyer, CLAS</i>
	Bridgeport	<b>Have your say on a New Human Rights Commission</b>	<i>Lisa Nakamura – Senior Innovation Advisor</i>
	Ballroom C	<b>Best Practices for Child Welfare with Indigenous Families</b>	<i>Pamela Shields - Lawyer</i>

## CONFERENCE SESSION DESCRIPTIONS - WEDNESDAY 18 OCTOBER 2017 - DAY 2

<b>Plenary: Systemic Poverty Law Updates</b>	<i>A comprehensive update for all advocates helping low-income clients with welfare and related issues. We review changes to welfare legislation over the last year as well as work being done on various issues in the poverty law field. This is information all advocates need to know.</i>
<b>Bedbug best practices</b>	<i>Information about the legal issues that could arise as well as the practical solutions that landlords should use.</i>
<b>Indigenous Legal Issues: An Update and Discussion of Best Practices</b>	<i>A session that provides an overview of significant legal issues and allows advocates an opportunity to ask questions about housing, matrimonial property, wills and estates, employment and other issues that arise in their practice.</i>
<b>Family Law Update</b>	<i>A review of important Family Law cases from the past year.</i>
<b>Plenary: NEW Resources and Services</b>	<i>Information about new services, resources, and opportunities for consultation on developments in BC that will be useful for all advocates.</i>
<b>Welfare Eligibility Issues – selected case studies</b>	<i>It's like the PovNet welfare list gone live! Join us for presentations by and discussion among senior advocates about significant cases that deal with common financial eligibility issues (e.g. beneficial interests in property, size of family unit) and other factors that determine eligibility for welfare (e.g. two year independence test, warrants, etc.). Look out for advocacy lessons gleaned from particular cases, sharing of submissions and decisions, and lively discussion.</i>
<b>Section 211 Reports</b>	<i>An overview of various strategic issues relating to section 211 reports such as: when to apply for a report, how to arrange reports, and how to challenge reports.</i>
<b>Subtenants, Occupants and Assignments</b>	<i>This session will look at the similarities and differences among these three types of tenancy, and the implications of each in housing and income assistance.</i>
<b>Helping Clients get ID</b>	<i>Practical suggestions for helping clients get ID - birth certificates, BC ID and BC Services Card, replacement citizenship documents, and documents for transgender clients.</i>
<b>Arguing against Exemptions from the RTA</b>	<i>What to do when landlords claim exemptions as transitional housing, housing-based health care facilities, or try to avoid the requirements of the RTA</i>
<b>Have your say on a New Human Rights Commission</b>	<i>An opportunity to meet with government staff consulting with groups throughout the province about the potential roles, functions and priorities for a re-established Human Rights Commission</i>
<b>Best Practices for Child Welfare with Indigenous Families</b>	<i>A session that will consider how best to help Indigenous families who are dealing with the child welfare system.</i>

# AGENDA

## Provincial Advocates Conference



THURSDAY 19 OCTOBER 2017 – DAY 3

Times	Room	Workshop	Resource persons
8:30 – 10:00 am	Ballroom C	<b>Displacement</b>	<i>Yuka Kurokawa - Advocate, TAPS Zuzana Modrovic - Advocate, TRAC DJ Larkin - Lawyer, PIVOT</i>
	Bridgeport	<b>Legal and Non-Legal Responses to MSDPR Service Delivery Problems</b>	<i>Erin Pritchard and Kate Feeney - Staff lawyers, BCPIAC Jennifer Matthews, TAPS</i>
	Ballroom A, B	<b>Family Law Cases involving both FLA and MCFD</b>	<i>Karen Tse - Lawyer, Rockies Law Group</i>
	Cambie	<b>CPPD: Best practices for applications and reconsiderations</b>	<i>Ashley Silcock - Advocate, DABC</i>
10:00 – 10:15 am	<i>Coffee Break</i>		
10:15 – 11:45 am	Ballroom A, B	<b>Adjudicating PWD Designations</b>	<i>Melissa Bauer - A/Director, Reconsideration and Appeals SDPR-CFD Legislation, Litigation and Appeals Branch Steve Forland - A/Director, Service Delivery Virtual Services - Health Assistance, MSDSI Cary Chiu - Director, Reconsideration and Appeals Sarah Khan - Staff Lawyer, BCPIAC</i>
	Ballroom C	<b>Applying for Guardianship</b>	<i>Jessie Caryl - Parent Support Services</i>
	Bridgeport	<b>Housing Subsidies</b>	<i>Kevin Love - Staff Lawyer, CLAS</i>
11:45 - 12:45 pm	<i>Lunch</i>		
12:45 – 1:45 pm	Ballroom A,B,C	<b>Plenary: LSS Update on Services, New Initiatives and Resources</b>	<i>Susanna Hughes - Coordinator, Family Law Projects and Services, Legal Services Society Patricia Lim - Publications Development Coordinator, Legal Services Society</i>
1:45 – 3:15 pm	Ballroom C	<b>Client Encounters with Police in Indigenous Communities: A Consultation</b>	<i>Dylan Mazur - BC Civil Liberties Association</i>
	Bridgeport	<b>An Overview of Key Issues Affecting Seniors</b>	<i>Jack Micner - Lawyer, Spry Hawkins Micner</i>
	Ballroom A, B	<b>Supporting Self-represented Family Clients</b>	<i>Salima Samnani - Lawyer Zara Sulemann - Lawyer</i>
	Cambie	<b>RTB's Improved Online Application for Dispute Resolution</b>	<i>Alexis Gordon - Policy Analyst, RTB Innovation and Continuous Improvement Team   Ministry of Municipal Affairs and Housing Rich McLay, Residential Tenancy Branch</i>
3:15 – 3:30 pm	<i>Closing</i>		

### CONFERENCE SESSION DESCRIPTIONS – THURSDAY 19 OCTOBER 2017 - DAY 3

<b>Displacement</b>	<i>A discussion about displacement - looking at mass evictions for service/repair, natural disasters, demolition, and how the RTA can help or hinder access to justice in these situations. The session will also provide information about how some of the technical issues related to making a joint application.</i>
<b>Legal and Non-Legal Responses to MSDPR Service Delivery Problems</b>	<i>A facilitated discussion about service delivery issues at MSDPR that are effectively barring people from critical income supports. Facilitators will offer practical legal and non-legal responses to these problems, and the session will provide an opportunity to brainstorm with other advocates about what has worked/not worked in their home communities.</i>
<b>Family Law Cases Involving Both FLA and MCFD</b>	<i>A review of situations in which FLA and MCFD matters both exist and how they interact.</i>
<b>CPPD: Best practices for Applications and Reconsiderations</b>	<i>A discussion of strategies for effective applications and success at reconsideration, as well as looking at when to apply for CPPD or PWD.</i>
<b>Adjudicating PWD Designations</b>	<i>A session that will look at PWD applications and reconsiderations. Advocates will talk about challenges they encounter and what they have found to be the most effective response. Ministry representatives will be invited to explain the process from their end. Information about the training of tribunal members may be included.</i>
<b>Applying for Guardianship</b>	<i>The session will look at the procedures, timelines and consequences of applying for guardianship. It will include an overview of the pros and cons of applying for guardianship under the FLA or through MCFD.</i>
<b>Housing Subsidies</b>	<i>A session that will look at what to do if a landlord says they are cancelling a subsidy. The session will also consider issues of disclosure (disclosing trusts or other income) and look at operating agreements.</i>
<b>Plenary: LSS Update on Services, New Initiatives and Resources</b>	<i>An update from LSS about several new services and initiatives to improve access to justice in BC.</i>
<b>Client Encounters with Police in Indigenous Communities: A Consultation</b>	<i>An opportunity to discuss with staff from BC Civil Liberties Association who will be doing research into how the police interact with Indigenous clients and communities. Please come ready to discuss your experiences and provide your input.</i>
<b>An Overview of Key Issues Affecting Seniors</b>	<i>A session that will provide advocates with an overview of the key legal issues that affect seniors.</i>
<b>Supporting Self-represented Family Clients</b>	<i>An overview of tactics for supporting clients in BCSC and Chambers applications. Issues addressed will include: interim applications, waiving fees.</i>
<b>RTB's Improved Online Application for Dispute Resolution</b>	<i>The RTB's Improved Online Application for Dispute Resolution makes it faster and easier to submit an application to resolve a tenancy problem. A demonstration will highlight the tool's customer-focused features, benefits and built-in intelligence to support an efficient, simple dispute resolution process.</i>

**Provincial Training Conference**  
**Sponsored by the Law Foundation and Legal Services Society**  
**October 17<sup>th</sup> to October 19<sup>th</sup>, 2017**

**Radisson Hotel Vancouver Airport**  
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Patricia has held senior roles in diverse legal education organizations throughout her career. She was a senior member of the management team for the Justice Education Society of BC for seven years. Prior to this, she served the legal community in Toronto and Vancouver for 10 years through her work as Director of Professional Development with the Ontario Bar Association, Faculty Member for the Bar Admission Course in BC (PLTC) and Program Lawyer for the Continuing Legal Education Society of BC. In addition to her work in legal education, Patricia worked as a practicing business lawyer for nine years.

**Jessie Caryl**

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Jessie Caryl is a family lawyer who also works as Advocate-Lawyer on the Grandparents Raising Grandchildren (Kinship Care) Support Line with the Parent Support Services Society of BC. She has a Juris Doctor from the University of British Columbia, articulated in child apprehension and family law and was called to the BC Bar in May 2015. She has appeared before the Provincial and Supreme Courts of British Columbia and the BC Human Rights Tribunal. She is a member of the Canadian Bar Association BC Children's Law Section Executive and is the Legislative Liaison of the Social Justice Section. She is also the vice president of the board of directors of grunt gallery artist-run centre.

**Cary Chiu**

Director, Reconsideration and Appeals; currently Director, Litigation  
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Cary has led the ministry's Reconsideration and Appeals Section for the last nine years. He has served on working groups and worked individually with provincial advocates on reconsideration cases and issues. Before working for the ministry, Cary was an investigator with the BC Ombudsperson's Office. He was the co-author of the 2009 Ombudsperson Report "Last Resort: Improving Fairness and Accountability in British Columbia's Income Assistance Program".

**Aubrey Fearey**

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Aubrey is a mental health advocate with the Kettle Society. She has worked for the Kettle for a year and half. Aubrey works with clients living with mental illness who need help finding mental health resources, navigating the MSDPR system, have issues with tenancy and debt. She often helps clients get ID replaced. Prior to The Kettle, Aubrey worked for Providence Health Care as a clinic assistant at Crosstown clinic on the DTES.

**Kate Feeney**

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Kate returned to BCPIAC in March 2016 after working as a legal aid family and child protection lawyer (parent's counsel). She articulated with BCPIAC in 2013/2014. Kate is involved in both BCPIAC's anti-poverty and regulatory work. She has a particular interest in BCPIAC's campaign to expand access to legal aid and increase legal aid coverage.

**Steve Fordlam**

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Mary Ellen has a background in Urban Studies and over 8 years of experience of front-line and supervisory experience in the Homelessness Services Sector at the Carnegie Outreach program. She has extensive knowledge of the provision of services to homeless people including housing, income and health supports. She has a thorough understanding of program delivery, and

contributed leadership at the Carnegie Outreach Program which has given her a deep understanding of the issues relevant to the vulnerable homeless population.

**Penny Goldsmith**

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Penny was PovNet's co-ordinator for 18 years from 1997 until 2015. She is a long-time anti-poverty activist and community worker. She is currently a plain language writer and editor and the co-author of a graphic story: "Storming the Digital Divide, the PovNet Story." She is also the chairperson of the Highs & Lows Choir, a choir for people with lived experience of mental illness and their allies.

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Alexis Gordon joined the Residential Tenancy Branch in 2014. Alexis comes from a social policy background, has deep knowledge of RTB operations, process, and legislation, and now leads the RTB Innovation team's marketing, communications, and change management efforts. Both are part of the Residential Tenancy Branch's Innovation and Continuous Improvement Team, which is focused on defining, enabling and executing on new approaches to service delivery excellence and operational efficiency.

**Matthew Granlund**

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Laurie is a White Settler with Scottish and English ancestry and has been working as a cultural safety facilitator with the San'yas team for seven years. She supports non-Indigenous Settlers and organizations to increase their capacity to create safer interactions and environments. Her

doctoral research is focused on the impact of Indigenous stereotypes on service providers' attitudes and actions. Laurie is currently an Indigenous Cultural Safety Integration Lead, which involves working to help providers integrate Indigenous Cultural Safety knowledge into their work or practice.

**Agnes Huang**

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Agnes is a sole practitioner, focusing primarily in the area of family law. Agnes is a member of the Legal Aid Action Committee of the Trial Lawyers Association of BC's and legal committee of West Coast LEAF. She is also on the executive of the LGBTQTS section (SOGIC) of the Canadian Bar Association, BC Branch and of the Federation of Asian Canadian Lawyers (BC Chapter). Prior to entering the practice of law, Agnes worked in the feminist movement for many years, including at Vancouver Status of Women/Kinesis and Breaking the Silence in the Downtown Eastside, and with Direct Action Against Refugee Exploitation which advocated for the Chinese women who arrived by boat in 1999/2000.

**Susanna Hughes**

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Ms. Hunter earned her law degree from the University of British Columbia. She was called to the Bar in 1992 and is a member of the Litigation Department at Davis LLP. She practises in the areas of administrative law, professional regulation law, freedom of information and privacy law and commercial litigation. She has assisted numerous private and public sector organizations with privacy law compliance and has often represented clients before the Office of the Information and Privacy Commissioner for BC and in related litigation. She acts for a variety of professional regulatory bodies on matters involving registration, professional disciplinary proceedings and related litigation. She has conducted numerous hearings before professional disciplinary tribunals and has represented professional regulatory bodies before the Office of the Information and Privacy Commissioner, the British Columbia Human Rights Tribunal, the Supreme Court of British

Columbia and the British Columbia Court of Appeal. Ms. Hunter obtained a Bachelor of Arts degree from Simon Fraser University in 1988 where she majored in both economics and business administration. Prior to joining Davis, Ms. Hunter was a Law Clerk to the Right Honourable Chief Justice Lamer of the Supreme Court of Canada.

**Sarah Khan**

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Sarah Khan is a staff lawyer at the BC Public Interest Advocacy Centre, where she develops and litigates constitutional, administrative law and human rights cases in various areas of the law including income assistance, disability benefits, access to legal aid, employment standards, employment insurance, and residential tenancy. Sarah also represents a coalition of anti-poverty, seniors' and tenants' organizations in proceedings before the BC Utilities Commission in order to increase affordability of electricity and natural gas for low income BC Hydro and Pacific Northern Gas residential customers.

Sarah has been a guest lecturer and presenter at the University of BC and University of Victoria faculties of law, and at many Provincial Training Conferences. Sarah currently is a board member of Willing Hearts International Society of Canada (community projects in Kenya) and has been a board member of West Coast Environmental Law and Spectrum Society for Community Living. Sarah received her law degree from the University of Victoria.

**Yuka Kurokawa**

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Yuka has been working as a Legal Advocate at TAPS for the past 5 and a half years, primarily specializing in tenancy and housing. In her spare time she enjoys hiking, climbing, cooking, and playing the ukulele.

**Terry LaLiberte, QC**

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Mr. La Liberté, Q.C. is the founding member of this firm, and has vigorously defended clients facing criminal charges for almost 40 years. He has conducted literally hundreds of jury trials,



and has appeared before every level of court within this Province, and across the country as far as Newfoundland and the Supreme Court of Canada. He previously served as a standing agent for the Federal Department of Justice for 19 years, and for over 14 years served as Crown Counsel and represented the Superintendent of Family and Child Services for the entire Central Coast while also defending throughout the province. In addition to his legal practice, Mr. La Liberté, Q.C. has been an active member in all aspects of the legal community. He received his Queens Counsel designation in 1992. He taught Trial Advocacy for over 20 years as an Adjunct Professor at the University of British Columbia Faculty of Law, acted for over 30 years as a supervising lawyer for the Clinical Criminal Law course offered at U.B.C. Faculty of Law. He is a member of the International Society for the Reform of the Criminal Code. He is past President of the Canadian Bar Association (B.C. Branch), and past member of the National Executive. He was a Bencher of the Law Society of British Columbia and now is a Life Bencher. Mr. La Liberté, Q.C. was on the Board of Directors of the Legal Services Society and a member of Judicial Counsel. He is past Chair of the Native Courtworkers Board of Directors, and is a past member of the Board of Governors of the Trial Lawyers Association of B.C., and is Co-Founder of the Lawyers Benevolent Society.

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DJ Larkin is a staff lawyer with the Pivot Legal Society. Her work focuses on issues relating to housing marginalization and homelessness. She has represented clients in cases relating to the rights of homeless people living in public spaces, people living in substandard SRO housing and buildings facing building-wide rent increases and is currently partnering on a study of the processes and health impacts of evictions of people who use drugs in the Downtown Eastside of Vancouver.

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Patricia is the Publications Development Coordinator for the Legal Services Society of BC. She develops and evaluates Public Legal Education and Information (PLEI) materials and resources.

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Kevin has worked at Community Legal Assistance Society since 2006. He presently works in CLAS' Community Law Program, primarily in the areas of workers' rights and mental health.

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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 in BC.

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Jen was initially connected with TAPS through the Masters of Social Work Program at the University of Victoria. She has worked in the Income Assistance Advocacy Project as a Legal Advocate for the past three years.

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Dylan has 15 years experience as a senior manager in the non-profit sector. He has collaborated with diverse communities in Canada and Latin America on programs to promote human rights, mental health, and community development. Dylan has recently started work as a staff lawyer at BC Civil Liberties Association.

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Rich joined the Residential Tenancy Branch in 2014. Rich has deep experience in optimizing service delivery operations through management, team building, technology, and business change management, and has worked in both the private and public sector.

**Jack Micner**

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Jack attended UBC in the combined Commerce-Law program, graduating in 1982. He practises in Richmond in the area of Wills and Estates and Foreclosure. He also teaches at the BC Real Estate Association, UBC Continuing Education, Worksafe BC and other community groups.

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Lisa career in the public service has been focused on A2J policy and program development, including legal aid, public legal education and information and new approaches to service provision, like the Civil Resolution Tribunal. When she isn't supporting the public engagement on the Human Rights Commission, she is getting to work directly with family justice system users and service providers via the Family Justice Pathfinder project in Kamloops.

**Dave Nolette**

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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.

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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. Prior to her employment with BCPIAC, Erin worked as a legal advocate with Together Against Poverty Society (TAPS) in Victoria, where she assisted clients with appeals concerning income assistance and disability benefits. Erin is currently a board member of PovNet, and is on the steering committee of the Poverty Reduction Coalition. In her spare time, she enjoys running, practicing yoga, and attempting to play bluegrass music.

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Yvette is of mixed Kwakwaka'wakw and English ancestry and has been working as a cultural safety facilitator for several years, focusing on supporting non-Indigenous folks to increase their own and their organization's capacity to create culturally safe interactions and environments. She has joined the San'yas team from Vancouver Island Health. Yvette holds the position of ICS Integration Lead working on the development and implementation of ICS knowledge integration activities and the ICS Strategy.

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Emily works as an advocate at Together Against Poverty Society.

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Emma is a third-year J.D. student at the Peter A. Allard School of Law (UBC). She has worked as a legal intern with the Bella Coola Legal Advocacy Program and as a clinician at the UBC Indigenous Community Legal Clinic. Before law school, Emma worked in youth educational programming in the Cree Nation of Mistissini (northern Quebec).

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Danielle was called to the BC British Columbia bar in December 2014. Until recently she worked as a legal advocate with First United Church Community Ministry Society, practising primarily in the areas of residential tenancies and income assistance. She is now a staff lawyer at CLAS.

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Chandan Sabharwal was called to the Bar in January 2008. She practices in the area of family law. She is also active as a Board member of the CBA National Board of Directors.

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Andrew started with the Tenant Resource & Advisory Centre (TRAC) in 2010 and has been the Executive Director since 2013. Born and raised in Burnaby, BC, he graduated from Simon Fraser University with a Communications degree and has worked in the non-profit sector ever since. During his time at TRAC, Andrew has developed a passion for finding collaborative and innovative ways to improve access to justice for BC's 600,000+ tenant households.

**Salima Samnani**

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Salima runs her own firm where she practices in the areas of family, employment and wills and estates. She utilizes a social justice lens in all her files and focuses on working with marginalized people. Salima is the supervising lawyer for Disability Alliance BC and Pro Bono BC.

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Pamela belongs to the Blood Band (Kainia) of the Blackfoot Conferacy, southern Alberta. I am also the 3rd generation of women to attend Indian Residential School: St. Paul's Anglican Indian Residential School. I was called to the bar in 2007. She lives in Seattled and practised in the Fraser Valley

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Ashley is an Advocate with the BC Coalition of People with Disabilities. She helps people with applications and appeals including those involving Canada Pension Plan Disability benefits.

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Zara practices family law exclusively with a focus in fertility law and she is also a certified family law mediator and collaborative law practitioner. Zara has also been actively involved in presenting, training, writing and editing materials on family law issues. Prior to law school Zara was a front-line community advocate for over a decade, working extensively on issues involving violence against women and children, anti-racism, immigrant and refugee issues, legal aid reform, custody and access advocacy, anti-poverty initiatives and specific coalition work with South Asian women. Zara holds a Bachelor of Arts degree in Communications and Women's Studies from Simon Fraser University (1994); a Law degree from the University of Ottawa (2004); and a Master of Laws degree from the University of Victoria (2006). Zara has successfully represented clients through BC Provincial Court, BC Supreme Court and the BC Court of Appeal. Zara has been involved with West Coast Women's Legal Education & Action Fund (WCLEAF) for many years, while at West Coast LEAF Zara coordinated their research and intervention application in the Supreme Court of Canada case, *Rick v. Brandsema*. Zara currently sits on the WCLEAF Family Law Advisory. Zara is also a Board Member for the Rise Women's Legal Centre and Zara is a Board Member of the Shia Ismaili Muslim Conciliation and Arbitration Board (CAB) of B.C. Zara works as a sole practitioner in her firm Suleman Family Law.

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Karen Tse is a lawyer and family law mediator. She practices in the East Kootenays at Rockies Law Corporation. Her practice focuses on finding solutions for her clients on issues of parenting time, spousal and child support, property division, divorce and child protection. Karen serves on the board of the Fernie Women's Resource Centre, Fernie & District Historical Society, and Canadian Bar Association Rural Education and Access to Lawyers Initiative. She is the recipient of Fernie's Volunteer of the Year award in 2016.

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Through his work with Disability Alliance BC's Advocacy Access program Sam assists people with disabilities to access income supports and other support services. Sam specializes assisting clients who have been denied services from the Ministry of Social Development and Social Innovation to conduct reconsiderations and appeals for the PWD designation and other supplements. He also provides summary advice and referrals through the province-wide Advocacy Access phone line on issues which impact people with disabilities. Sam also delivers workshops and presentations on disability issues for community groups and other organizations around BC.

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Andrea has been the legal educator at the YWCA for 10 years. Andrea primarily works with women who've experienced violence by an intimate partner to navigate the legal systems that impact them (family law & child protection mainly). Andrea also does extensive work with mothers without legal status – women who have family law issues that do not allow them to leave Canada with their children, but whose immigration status does not allow them to stay permanently. Andrea



has also done considerable work in the area of court-related abuse and harassment. In 2012 Andrea won an Award of Excellence from the BC Representative for Children and Youth.

**Alison Ward**

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Alison is a staff lawyer at the Community Legal Assistance Society (CLAS) in Vancouver, where she runs the Community Advocate Support Line (CASL) program. Through CASL, Alison collaborates with and advises advocates around BC on poverty law and family law issues. She is also a PovNet board member. Alison has run the CASL program since it first started at the Legal Service Society in 2006.

Before working at CLAS, Alison spent 16 years as a staff lawyer at the Legal Services Society in Vancouver. She practiced poverty law until 2002, and then child protection and family law in LSS's family law clinic. She subsequently worked on LSS's LawLINE, and then started and ran CASL at LSS, until it moved to CLAS in 2010.

Alison is grateful to be able to work with so many wonderful advocates!

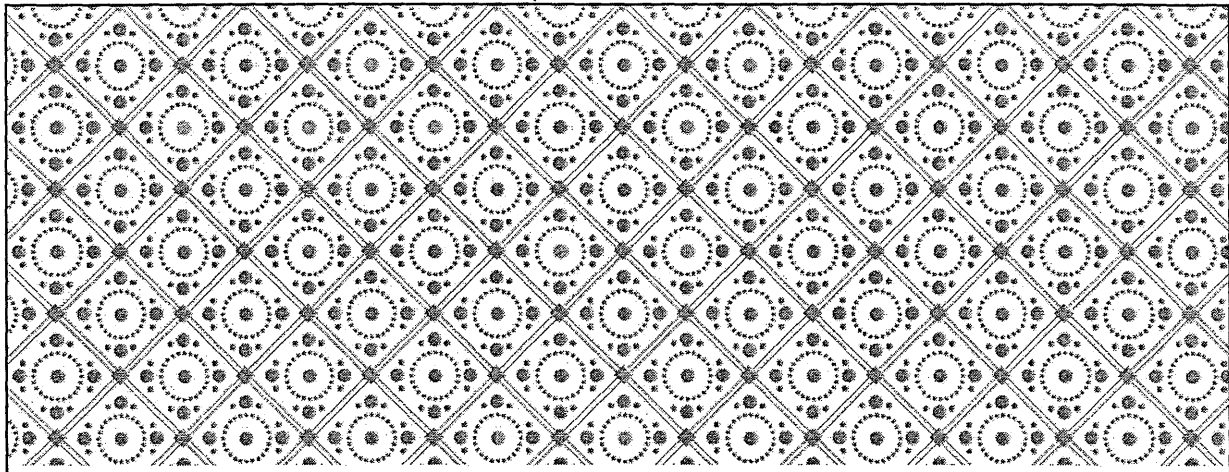
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Anisa White, is Plains Cree-Métis (North Eastern Alberta). Anisa is the Chairperson and co-founder of the Gladue Writers Society of British Columbia (GWSBC). Anisa is an independent Gladue Writer on the Legal Services Society (LSS) Gladue Writers roster. Anisa holds a Bachelor Degree in Commerce and a Bachelors Degree of Law. Anisa is the principal at Nitotemak Justice Advisory (Nanaimo, BC). Anisa specializes in developing Best Practices in Gladue Report writing preparation, drawing from her legal training and oral history research with Indigenous Traditional Knowledge Keepers in BC and Quebec. She is a curriculum developer and instructor for Vancouver Community College, offering the first Gladue Report Writing training in Canada setting the national standard for Gladue Reports in Canada. In 2016, Anisa co-delivered the Gladue Writer's Training at the Justice Institute of British Columbia (JIBC). Anisa frequently guest lectures to academic and community audiences, sharing her tools and Indigenous Research Methodologies, all of which have been proven to produce neutral, objective, meaningful and practical reports for the judiciary. In 2015, Anisa collaborated with the University of Victoria Indigenous Law Research Unit on a video to educate legal practitioners, students, and the broader public, on the importance of Indigenous Legal Orders in Gladue report preparation.

## **1. Family and child protection**

- **Family Law Update (Day 2)**
  - Materials provided in session
- **Section 211 Reports (Day 2)**
  - Materials provided in session
- **Best Practices for Child Welfare with Aboriginal Families (see Aboriginal Issues) (Day 2)**
- **Family Law Cases Involving both FLA and MCFD (Day 3)**
  - Powerpoint
- **Applying for Guardianship (Day 3)**
  - Relevant forms
- **Supporting Self-Represented Family Clients (Day 3)**
  - Materials provided in session



**WORKING WITH CLIENTS WITH BOTH  
CFCSA & FLA ISSUES**

Presented by **Karen Tse** of  
Rockies Law Corporation

## BC FAMILY AND PARENTING LEGISLATION

### ***Child, Family and Community Service Act (CFCSA)***

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

### ***Family Law Act (FLA)***

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

## HIGHLIGHTS OF THIS PRESENTATION

This presentation will be presented via Case Studies which explore things to consider when working with a client who is involved with the Ministry and also:

- have an ongoing family law file
- may want to start a family law file
- may have protection and safety concerns
- have needs that can be addressed through child support, spousal support or property division (including exclusive occupation of the family home)
- The case studies shown are based on actual situations I have encountered, but names and facts have been changed to protect client confidentiality

## CASE STUDY — BOTH PARENTS ARE USING DRUGS/DRINKING HEAVILY

### Background

- Fernando is your client. He has a 2-year old son with his girlfriend Soo-jin
- Recently, the Ministry became involved for the first time because they received numerous reports about the two using drugs and drinking heavily while caring for their son
- Fernando and Soo-jin have since broken up. They argue all the time about who's turn it is to care for their son
- The Ministry has not removed the child from their care, but are suggesting it might do so unless the parties' situations improve
- The Ministry is seeking supervision terms (counselling, no drug/alcohol use, unannounced home visits)

## USING AN FLA APPLICATION TO RESOLVE MATTERS

### Goal

- Fernando hopes that the Ministry will cease its involvement as soon as possible. He feels he is constantly under the microscope
- He also wants to sort things out between him and Soo-jin to reduce conflict

## USING AN FLA APPLICATION TO RESOLVE MATTERS

### FLA Application

- Fernando can begin an FLA application for guardianship and parenting time

### How?

- He will need an "Application to Obtain an Order"
- Can be picked up in person at courthouse, or online: Google "Provincial Court Family Forms"
- <http://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms/prov-family-forms>

## THE APPLICATION

**APPLICATION TO OBTAIN AN ORDER**  
in the Provincial Court at British Columbia

Case Name: Barbara	<b>In the case between:</b>		
Document ID: 10000000000000000000	Ref:		
The person making this request is:	Name:	Address:	APPROVED
Other address:	Status:	Date:	RESPONSE
When will money be paid to this respondent?	Amount:	Date:	
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**IMPORTANT NOTE TO RESPONDENT:**  
 If you include payment in your response, you are required to file this information with your reply. If you don't, the court will automatically deny your request for support for 30 days. The applicant has submitted your request for support for 30 days and has not filed a response.

**NOTE TO THE COURT:**  
 If you are a party named in the request, please contact the court clerk and provide your contact information. If you are not a party named in the request, please contact the court clerk and provide your contact information.

**Case Summary:**  
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**APPLICATION TO OBTAIN AN ORDER**

## THE APPLICATION

**If this application includes a claim for support, you are required to file financial information with your reply.** If you do not, the court may attribute income to you and set the amount of support to be paid. The applicant has indicated your gross annual income as follows set out in item 2 below:

**You will receive notice if any part of the proceeding and the court may make an order against you.**

**I am applying for:**

<input type="checkbox"/> guardianship	<input type="checkbox"/> spousal support
<input type="checkbox"/> contact with a child	<input type="checkbox"/> child support
<input type="checkbox"/> parenting time	<input type="checkbox"/> protection order
<input type="checkbox"/> allocation of parental responsibilities	<input type="checkbox"/> other order (specify) _____

**Attach copies of:  
any orders or written agreements.**

**1. Orders and agreements**  
Are there any court orders or written agreements between the parties concerning separation, guardianship, parenting arrangements, contact with a child or support?

<input type="checkbox"/> No orders	<input type="checkbox"/> I am attaching copies of all orders
<input type="checkbox"/> No written agreements	<input type="checkbox"/> I am attaching copies of all written agreements

**2. Children**  
**Name(s) of child(ren)** \_\_\_\_\_ **Identified parent(s)** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**My relationship to the child(ren) is** \_\_\_\_\_  
**The respondent's relationship to the child(ren) is** \_\_\_\_\_  
**The proposed arrangements for guardianship, parenting arrangements or contact with the child(ren) are:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(Complete the following if you are asking for guardianship, parenting arrangements or contact with a child.)**  
**I am asking for guardianship, parenting arrangements or contact with a child as follows:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRINTED NAME OF APPLICANT**  
I am \_\_\_\_\_

**COURT FILE**

**PAGE 1 OF 2**

COURT FILE

Page 5 of 22

## COMMONLY REQUESTED ORDERS

### **Guardianship**

- The Applicant is declared a guardian and will solely have parental responsibilities
- The parties are declared guardians and will *share* all the parental responsibilities

### **Residence**

- The Child shall reside primarily with the Applicant
- [Other parent] will have reasonable parenting time with the Child at such dates and times as may be agreed between the parties [or include a specific schedule]
- The parties will share parenting time equally on the following schedule: [schedule]

### **Relocation**

- The Applicant may relocate the Child's residence to [location] on or after [date]

### **Prohibiting Relocation**

- Neither party may relocate the Child's residence from [location] with the written consent of the parties or further Court Order

## COMMONLY REQUESTED ORDERS

### **Restrictions**

- [Name] shall not consume [or possess] any alcohol and/or controlled substance within the meaning of section 2 of the *Controlled Drugs and Substances Act* except as prescribed by a licensed physician, during or for [number] hours before having contact or parenting time with the Child
- The parties will ensure that [name] is not present during any parenting time
- [name]'s parenting time shall be supervised by [name] / a third party as may be agreed to between the parties

### **Telephone and Skype**

- [name] shall have reasonable telephone or Skype contact with the Child between [7:00 and 7:30 p.m.] every [Thursday]

## COMMONLY REQUESTED ORDERS

### Travel

- Each party may travel out of province and out of country with the Child during his or her holiday parenting time [for up to two weeks, unless the parties otherwise agree], provided that reasonable notice [not less than 7 days' notice] has been given to the other party
- Neither party shall deny a reasonable request from the other party to use the Child's passport and birth certificate. Each party will cooperate with the other party in the provision of passports, consents to travel and other necessary documents as may be required to allow the Child to travel. Upon receiving a reasonable request from the other, each party shall provide the other with a letter consenting to the Child's travel with the other party
- The traveling party shall ensure that the Child is able to communicate regularly with the other party over the phone or via e-mail while on holidays. Each party shall provide the other with emergency contact numbers and the travel itinerary, including methods of travel, copies of transportation tickets, and list of accommodations

### Non Removal

- Neither party may remove the Child from [location] without the written consent of the other party or a Court Order

## FILING THE APPLICATION

### FLA Application Steps

- After Fernando files the Application and has someone serve the other party, there is a waiting period of 30 days (for Soo-jin to file a Reply)
- The person who helped Fernando serve the papers needs to attend at the Registry to swear an "Affidavit of Service"
- At the conclusion of the 30 days, Fernando should visit the Registry and confirm when the First Appearance has been scheduled
- At the First Appearance, the parties can request a Family Case Conference (which is like a mediation with the Judge)
- The parties can discuss a parenting schedule. Both can agree to abstain from drugs and alcohol while caring for their child



## USING AN FLA APPLICATION TO RESOLVE MATTERS

### If a Consent Order is reached

- The resulting Consent Order can be presented to the Ministry to show that:
  - the parties have resolved issues / there is no further conflict
  - the parties are willing to act reasonably and responsibility
  - the Ministry's involvement is no longer necessary so the Ministry can close its file / alternatively, the parties can agree to a supervision order with the Ministry with complimentary terms

## CASE STUDY — CHILDREN TAKEN INTO CARE, ESTRANGED BIOLOGICAL FATHER FINDS OUT

### Background

- Wei has not had any contact with his ex-girlfriend, Linda, for nine years
- When they broke up, Linda was pregnant. She has since given birth to a boy and they have lived in Cranbrook for nine years unbeknownst to Wei
- Wei was not aware of what has transpired until the Ministry contacted him a week ago
- Their child has been removed from Linda because Linda was charged with robbery and is currently in jail pending trial
- Wei is not a guardian (he was not with Linda when the child was born, and has never had regular care of the Child)
- The Ministry advised that they cannot "return" the child to Wei unless he is a "parent apparently entitled to custody"
- Currently, the Child is in foster care pending a resolution

## HOW CAN AN FLA APPLICATION HELP WEI?

### What to do?

- Wei must apply under the FLA to become a Guardian
- This can be a time-intensive process, so he should get started as soon as possible
- The goal is to transition the child from foster care to Wei

### Legal Help

- Wei may wish to apply for legal aid if he cannot otherwise afford private legal services

## LEGAL AID

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

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

## DOESN'T QUALIFY FOR A FULL LEGAL AID FILE

### Alternatives

#### ▪ Family LawLINE

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

#### ▪ Duty Counsel

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

#### ▪ Canadian Bar Association Lawyer Referral Service

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

## STEPS TO BECOMING A GUARDIAN

### Required:

- Application to Obtain an Order, seeking guardianship and parenting time
- Consent for Child Protection Record Check form
- Protection Order Registry Search form
- \*note: Wei has to check back with the Registry to get the records results
- Criminal Record Check
- Once all checks are completed: file a Guardianship Affidavit (form 34)
- Court documents must be served on Linda (through the jail)
- Then, Wei needs to ask the Registry for a Court date before a Judge

## IF WEI'S FLA APPLICATION IS SUCCESSFUL

### **Guardianship Application**

- If Wei's FLA guardianship application is successful, he will be appointed a guardian of the child
- Ministry may now place the child with Wei on a permanent basis
- At this point, the Ministry may close the file, or seek to put a supervision order in place with conduct terms for Wei and Linda

## CASE STUDY - FAMILY VIOLENCE

### **Background**

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

## HOW CAN AN FLA APPLICATION HELP AMY?

### Goal

- Demonstrate to the Ministry that Amy is willing to protect the children
- Amy wants to ensure that the children are not removed from her

## HOW CAN AN FLA APPLICATION HELP AMY?

### Make the following applications under the FLA

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



## NOTICE OF MOTION

When is this hearing? Check a date and time from the registry.

What are you asking for in this application? Check the appropriate box(es) and fill in any required information.

For extended time, indicate in instruction sheet.

Note: Use of affidavit is optional.

Sign your name and state today's date.

will apply to this court at \_\_\_\_\_

on \_\_\_\_\_ at \_\_\_\_\_ applying for:

☐ An order shortening or extending a time limit set out in the Provincial Court (Family) Rules

☐ An interim order under section 216 or 217 of the Family Law Act

☐ An order changing, suspending or terminating the attached order made in my absence

☐ An order settling the terms of an order made \_\_\_\_\_

☐ An order that a person not remove, or that a person be allowed to remove, a child from a geographical area

☐ An order to prohibit the relocation of a child

☐ An order for blood or tissue samples, for paternity tests, to be taken from \_\_\_\_\_

☐ An order for service of \_\_\_\_\_ by \_\_\_\_\_

☐ An order for access to information under section 242 of the Family Law Act

☐ An order for information to be disclosed by \_\_\_\_\_

☐ An order transferring this file to the court registry at \_\_\_\_\_

☐ Directions on a procedural matter

☐ An order changing or setting aside the determination of a parenting coordinator dated \_\_\_\_\_

☐ An order to enforce: \_\_\_\_\_

☐ the order made \_\_\_\_\_

☐ the agreement dated \_\_\_\_\_

☐ compliance with the determination of a parenting coordinator dated \_\_\_\_\_

☐ A review of a third agreement or other respecting spousal support or maintenance under the Family Law Act or the Family Relations Act

☐ An order determining whether there are arrears owing under a support order made under the Family Law Act or under a support or maintenance order made under the Family Relations Act and, if so, the amount of those arrears

☐ Other order \_\_\_\_\_

Details of order(s) requested: \_\_\_\_\_

**NOTICE: If you do not appear, the Court may make an order in your absence.**

☐ Any affidavits in support of this notice of motion are attached.

## EVIDENCE FOR FLA FILE

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

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

#### Suggestions

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

## OBTAINING MINISTRY DISCLOSURE FOR AN FLA FILE

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

### The Disclosure Process

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

## CASE STUDY — MINISTRY APPLYING FOR PERMANENT TRANSFER

### Background

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



## HOW CAN AN FLA APPLICATION HELP VANESSA?

### Goal

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

### FLA Consent Order

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

## CASE STUDY — LACK OF RESOURCES

### Background

- Rebecca, who is single mom, has been struggling for lack of funds
- The children's teachers have noticed they were without proper clothing and lunches
- Rebecca has also had to move numerous times due to eviction for non-payment of rent
- The children's father, Don, works as a heavy duty mechanic at Sparwood, BC, but she has not been in touch with him for several years
- The Ministry is involved as it believes the children may be neglected and malnourished

## HOW CAN AN FLA APPLICATION HELP?

### **FLA Application**

- Rebecca should file an FLA Application for Child Support and Spousal Support
- If Rebecca does not know where Don is, she can apply for substituted service through Don's email address / Facebook message / last known address / newspaper advertisement / Don's family members
- She can ask for an income of a typical heavy-duty mechanic working in Sparwood to be imputed to Don
- She can seek child support and spousal support to be based on the Guideline figures

## HOW CAN AN FLA APPLICATION HELP?

### **After the FLA Application**

- After obtaining an Order, she can register the Order through Family Maintenance Enforcement Program
- The Family Maintenance Enforcement Program (FMEP) is a free service of the BC Ministry of Attorney General which help in collecting support payments under an order or agreement
- FMEP can help locate the payor and garnish wages through his employer, then pass those funds on to Rebecca

## ONCE REMOVAL HAPPENS

### **In CFCSA cases where a removal has happened**

- ... and the Director has obtained temporary / interim custody of the Child
- Then even if there are ongoing FLA Orders with respect to parenting time / primary residency, those Orders would all now be superseded by the CFCSA Order
- Any new application the parents may file should be served on the Director
- Depending on the circumstances and what the application is for, the Director can:
  - Take no position on the Application
  - Oppose the Application
  - Support one party or another
  - Cease its involvement

## HEARING BOTH FILES TOGETHER

If the FLA file and CFCSA file are both looking like they will be contested at a hearing (trial), then all parties will have to decide:

- If they are joining the two files for the trial...
- Or if the CFCSA trial will be heard first

### **Sometimes, when the CFCSA file is heard first**

- The Judge might make a particular finding that Parent A has failed to care for the children inappropriately, and the children should be with Parent B
- In that case, the FLA trial is greatly shortened, and there will not need to be a hearing about parenting time
- At that point, the remaining FLA trial may be limited to just issues of child support

## WHAT IF THE TWO HEARINGS ARE HELD TOGETHER?

### **There are many benefits to hearing both the CFCSA file and the FLA file together**

- If the client has retained a lawyer, this should reduce the number of hours the lawyer spends (one large hearing vs. preparing for two separate hearings)
- If the client's interests are largely aligned with the Ministry (i.e. the client did very little wrong, the other parent was mostly the one acting inappropriately), then joining the two files make sense
- The Director will lead most of the Direct Examination, and prepare the expert witnesses and professionals (social workers / teachers / child care workers, etc.)

## TRIAL CONSIDERATIONS

### **Should FLA and CFCSA files be heard together by the same judge at the same time?**

Things to consider in answering this question:

- How much evidence that is negative to your client does the Ministry have?
- In Ministry files, the rules of evidence are relaxed
- For example, hearsay can be used. This is typically not the case in FLA hearings.
- Joining the two would mean the Judge would hear evidence typically otherwise excluded under an FLA hearing

## EXAMPLE WHERE FLA AND CFCSA SHOULD NOT BE JOINED

### Background

- Juan is your client. His siblings and extended family are all alleged to be involved in the drug trade
- Juan is not a drug user, and can provide clean hair/urine samples
- In this situation, it may not be in Juan's best interest to have a CFCSA and FLA file heard together
- It would not be helpful to Juan's family case if hearsay surrounding Juan's family was introduced
- It is better for Juan to resolve his CFCSA file (such as with a supervision order prohibiting drug use), following which Juan can resume his FLA file to argue who should be the primary custodial parent

## FLA APPLICATIONS: PROVINCIAL OR SUPREME

### Which Court to begin an application

- Provincial (parenting issues, child and spousal support, protection)
- Supreme (everything Provincial Court does, PLUS property division and divorce)

### General Considerations

- Provincial Court forms are much simpler
- Starting an action in Provincial Court does not cost money
- Fees in Supreme Court are higher, forms are more complicated
- If you lose an application in Provincial Court, typically there is no award of costs against you
- In Supreme, if you win an application, you can sometimes win costs. However, if you lose, costs may be awarded against you
- It is possible to deal with parenting issues in Provincial, and have other claims heard in Supreme
- Other jurisdictions sometimes will only enforce a "Supreme Court" order

## QUESTIONS?

**Thank you for your attention during my presentation.**

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



BRITISH  
COLUMBIA

Ministry of Children  
and Family Development

## CONSENT FOR PRIOR CONTACT CHECK

The personal information requested on this form is collected under the authority of and will be used for the purpose of administering the *Adoption Act* and/or the *Child, Family and Community Act* (CFCS Act). Under certain circumstances, the collected information may be subject to disclosure as per the CFCS Act and/or the *Freedom of Information and Protection of Privacy Act*. If you have any questions about the collection, use or disclosure of this information, please call Enquiry BC at 1 800 663-7867 and ask for the listing for the Child Welfare Policy Office or the Adoption Division.

### SECTION 1 APPLICANT IDENTIFICATION

SURNAME		GIVEN NAME(S)	
GENDER <input type="checkbox"/> M <input type="checkbox"/> F	DATE OF BIRTH (YYYY/MM/DD)	PHONE NUMBER (     )	PREVIOUS SURNAME(S)
FIRST NAME OR ALIAS			

### SECTION 2 INFORMED CONSENT

As part of the screening and assessment process to ensure safety and well-being of children, I authorize a prior contact check to be conducted on me by a delegate of a Director under the *Child, Family and Community Service Act* or the *Adoption Act*. A prior contact check is a review of all records about me collected under the *Family and Child Service Act*, the *Child, Family and Community Service Act* and/or the *Adoption Act*. It includes all current and/or past (closed) assessment only files, intake files, child protection files, family service files, child in care files, resource files and adoption files that are either in hard copy and/or electronic format.

If information is found through the prior contact check and it is relevant to assessing my ability to care for a child or children, I will be contacted by a delegated worker to discuss the information.

The information will not be disclosed to any person, organization, or agency out of the Ministry of Children and Family Development or Delegated Aboriginal Agency without my knowledge and consent. The form Consent to Disclosure of Information (CF0609) should be used to obtain consent for this purpose.

### SECTION 3 SIGNATURE

This consent and acknowledgement is valid for a period of one year from the date of signature.

SIGNATURE OF APPLICANT	DATE (YYYY/MM/DD)
------------------------	-------------------

### SECTION 4 REQUESTING OFFICE

NAME OF DELEGATED SOCIAL WORKER OR ADMINISTRATOR	TITLE	ORGANIZATION	PHONE NUMBER (     )	FAX NUMBER (     )
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## CONSENT TO A CRIMINAL RECORDS REVIEW ACT (CRRRA) CHECK - ONLY USED FOR EMPLOYEES OF MCFD / DELEGATED ABORIGINAL AGENCIES AND APPROVED FOSTER CAREGIVERS

**IMPORTANT:** Please read information and instructions located below and on page 3. To avoid processing delays, ensure all relevant fields are complete. Providing your Driver's Licence Number may expedite the process.

**Employees of MCFD or Delegated Aboriginal Agencies:** The *Criminal Records Review Act* (CRRRA) requires that anyone in British Columbia who is employed or contracted by the government and who works with children or may have unsupervised access to children through their position, obtain a criminal record check under the CRRRA.

**Foster Caregiver:** There are two criminal record checks required for foster caregivers:

**Step 1:** A Consolidated Criminal Record Check (CCRC)<sup>[1]</sup> **must be completed before the home study is completed.**

**Step 2:** Anyone who is offered a family care home agreement or contract is required to undergo a separate criminal record check under the CRRRA. **The CRRRA check is to be completed after the home study is completed and the foster parent is being approved but before a family care home agreement or contract is offered.**

### **Required: To be completed by the organization**

- ☐ The applicant has received an offer of employment or is an Employee of MCFD or a Delegated Aboriginal Agency OR  
☐ The applicant has completed a Consolidated Criminal Record Check (CCRC) and home study and is an approved foster caregiver.

**Note:** If the applicant does not fit one of the above categories, the CRRRA does not have jurisdiction to conduct a criminal record check. Any incomplete or inaccurate forms will be returned to the sender.

CCRC or CRC Service # \_\_\_\_\_

Date of Local Police Record Check (Contracted Agencies Only) \_\_\_\_\_

Please review the below noted table which outlines MCFD's requirements to complete the Criminal Record Check by the CRRRA versus the Consolidated Criminal Record Check or Police Record Check Process.

Status	Consolidated Criminal Record Check or Local Police Record Check (Contracted Agencies Only)	Criminal Records Review Act Check
Prospective foster caregivers	Yes	No
Approved foster caregivers	Yes	<b>Yes</b>
Those age 18 years or older associated with the foster caregiver	Yes	No
Prospective adoptive parents	Yes	No
Those age 18 years or older associated with the prospective adoptive parents	Yes	No
Prospective out of care care-provider	Yes	No
Those age 18 years or older associated with the out of care care- provider	Yes	No
Prospective 54.1 and 54.01 guardian	Yes	No
Those age 18 years or older associated with the prospective 54.1 or 54.01 guardian	Yes	No
Prospective relief care providers	Yes	No
Those age 18 years or older associated with the relief care-provider	Yes	No
Employees of MCFD, Delegated or Contracted Agencies who work with children	No	Yes

<sup>1</sup> As outlined in the *Criminal Record Check Policy and Procedures for Caregivers*. Contracted Agencies, as per the *Policy and Standards for the Assessment and Approval of Caregivers by Contracted Agencies*, instead require that a local police record check be completed prior to offering a family home care agreement or contract.





**CONSENT TO A CRIMINAL RECORDS REVIEW ACT (CRRRA) CHECK**  
**- ONLY USED FOR EMPLOYEES OF MCFLD /**  
**DELEGATED ABORIGINAL AGENCIES AND**  
**APPROVED FOSTER CAREGIVERS**

**WORKS WITH** (Choose one): ☐ children ☐ vulnerable adults ☐ children and vulnerable adults

**PART 1: APPLICANT INFORMATION:**

Legal Surname / Last Name:		Legal Given / First Name:		Legal Middle Name:	
Date of Birth: YYYY   MM   DD		Gender: <input type="checkbox"/> M <input type="checkbox"/> F		Birthplace: _____	
Additional Names (Alias, Maiden Name, etc.):					
Surname / Last Name:		Given / First Name:		Middle Name:	
Mailing Address:		City:	Province:	Country:	Postal Code:
Contact Area Code & Phone No.:			Driver's Licence #:		

**PART 2: ORGANIZATION INFORMATION:** To be completed by the organization

**SECTION A** Complete this section if you have been provided an ID number by the Criminal Records Review Program.

Organization Name:	
Organization Contact Name or Title (The person receiving the result of the check):	ID Number:

**SECTION B** If you are unable to provide an ID Number please complete ALL of Section B.

Organization Name:			
Mailing Address:			
City:	Province:	Country:	Postal Code:
Office Area Code & Phone No:		Fax:	

**SECTION C**

Applicant's Position / Job Title with Organization:	ID MUST be verified

**CONSENT FOR RELEASE OF INFORMATION AND ACKNOWLEDGMENTS**

*I have read and understand the Consent for Release of Information and Acknowledgements on page 3. I hereby consent to these terms as indicated by my signature below:*

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Parent or Guardian Signature for Applicant  
Under 19 Years of Age

\_\_\_\_\_  
Date Signed YYYY / MM / DD



## CONSENT TO A CRIMINAL RECORDS REVIEW ACT (CRRA) CHECK - ONLY USED FOR EMPLOYEES OF MCFD / DELEGATED ABORIGINAL AGENCIES AND APPROVED FOSTER CAREGIVERS

### Consent to a Criminal Record Check

#### CHECKLIST for Applicant

- ☐ - I have completed the applicable sections of the form truthfully, clearly, and legibly, and signed and dated it.
- ☐ - I have read and understand the Consent for Release of Information and Acknowledgements and information regarding the Freedom of Information and Privacy Act (FOIPPA).
- ☐ - My employer or organization has verified my ID in person to confirm my identity and information on the consent form is accurate.
- ☐ - My employer or organization will retain the originals of the forms I have completed.

#### CHECKLIST for Organization

- ☐ - The employee / applicant will provide you with the original, completed and signed consent form.
- ☐ - Verify the ID of each employee / applicant in person to confirm their identity and ensure the information matches what was provided on the consent form. NOTE: Please use a Canadian Driver's Licence if the applicant has one.
- ☐ - Retain the original form(s) for five years.
- ☐ - Forward a copy of the forms(s), to the Criminal Records Review Program by mail or fax:

MAIL: Criminal Records Review, Ministry of Public Safety and Solicitor General,  
PO Box 9217 Stn Prov Govt,  
Victoria BC V8W 961  
FAX: 250-953-0408

#### NOTE: The Consolidated Criminal Record Check

For questions regarding the Consolidated Criminal Record Check process, please consult MCFD's *Frequently Asked Questions and Answers for Social Workers and the Criminal Record Check Policy and Procedure for Caregivers*. For Contracted Agencies, please refer to MCFD's *Policy and Standards for Assessment and Approval of Caregivers by Contracted Agencies*.

#### Consent for Release of Information and Acknowledgements

##### PURSUANT TO THE B.C. CRIMINAL RECORDS REVIEW ACT

- I hereby consent to a check for records of criminal charges and convictions to determine whether I have a conviction or outstanding charge for any relevant or specified offence(s) under the *Criminal Records Review Act*;
- I hereby consent to a check of all available law enforcement systems, including any local police records.
- I hereby consent to a vulnerable sector search to check if I have been convicted of and been granted a pardon for any sexual offences to the *Criminal Records Review Act*.
- I understand a criminal record check under the *Criminal Records Review Act* is required at least once every 5 years.
- Visit the RCMP website for additional details on vulnerable sector checks: <http://www.rcmp-grc.gc.ca/en/faqs-about-vulnerable-sector-checks>
- I hereby authorize the release to the Deputy Registrar any documents in the custody of the police, the court, corrections, and crown counsel relating to an outstanding charge or conviction of any relevant or specified offence(s) as defined under the *Criminal Records Review Act* or any police investigations deemed relevant by the Registrar.
- Where the results of this check indicate that a criminal record or outstanding charge for a relevant or specified offence(s) may exist, I agree to provide my fingerprints to verify any such criminal record.
- The Deputy Registrar will notify me and my organization that I have an outstanding charge or conviction for any relevant or specified offence(s) and the matter has been referred to the Deputy Registrar;
- The Deputy Registrar will determine whether or not I present a risk of physical or sexual abuse to children and / or physical, sexual or financial abuse to vulnerable adults as applicable.
- The Deputy Registrar's determination will be disclosed to my organization and it will include consideration of any relevant or specified offence(s) for which I have received a pardon.
- If I am charged with or convicted of a relevant or specified offense(s) at any time subsequent to the criminal record check authorized herein, I further agree to report the charge or conviction to my organization and provide my organization, in a timely manner, with a new signed Consent to a Criminal Record Check form.

The information requested on this form is collected under the authority of the *Criminal Records Review Act* section 4(1) and section 26(c) of the **Freedom of Information and Protection of Privacy Act (FOIPPA)**. The information provided will be used to fulfil the requirements of the *Criminal Records Review Act* for the release of criminal records information and is in compliance with the FOIPPA. If you have any questions about the collection of your personal information, please contact the Policy Analyst, Criminal Records Review Program, PO Box 9217 Stn Prov Govt, Victoria, BC V8W 9J1 or by phone at 1-855-587-0185.

**Form F101  
(Rule 15-2.1)**

This is the  
of  
in this case and was made on

No

*In the Supreme Court of British Columbia*

Claimant

Respondent

**AFFIDAVIT**

I, null SWEAR (OR AFFIRM) THAT:

1. I am applying under the *Family Law Act* to become a guardian of the following child(ren):

Full name of child	Birth date	Name(s) of current guardian(s) of child	Name(s) of parent(s) who is/ are not current guardian(s) of child

2. My date of birth is .

3. The nature and length of my relationship with the children referred to in section 1 of this affidavit is as follows:

Name of child	Nature of relationship	Length of relationship

4. The current living arrangements applicable to the child(ren) referred to in section 1 of this affidavit are as follows:

Name of child	Current living arrangements

5. I plan to care for the child(ren) referred to in section 1 of this affidavit as follows:
6. I am not aware of any incidents of family violence, as that term is defined in section 1 of the *Family Law Act*, that affect the child(ren) referred to in section 1 of this affidavit.
7. I am not a parent, step-parent or guardian of any children except that child / those children referred to in section 1 of this affidavit.
8. I have not been involved in court proceedings in British Columbia under the *Child, Family and Community Service Act*, the *Family Relations Act*, the *Family Law Act* or the, *Divorce Act* (Canada) concerning children under my care, or in any other court proceedings under comparable legislation in any other jurisdiction concerning children under my care.
9. Attached to this affidavit and marked as Exhibit null is a British Columbia Ministry of Children and Family Development records check dated .
10. Attached to this affidavit and marked as Exhibit null is a copy of a Protection Order Registry protection order records check dated .
11. Attached to this affidavit and marked as Exhibit null is a copy of a criminal records check dated obtained from the null.
12. There are no criminal offences, other than those, if any, specified in the criminal records check referred to in section 11 of this affidavit, of which I have been convicted and not pardoned.
13. I am not currently charged with any criminal offences.

# REQUEST FOR PROTECTION ORDER REGISTRY SEARCH

- ☐ In the Provincial Court of British Columbia  
☐ In the Supreme Court of British Columbia

COURT FILE NO.:

COURT LOCATION:

**In the case between:**

NAME \_\_\_\_\_

**And:**

NAME \_\_\_\_\_

**Re: Please conduct POR search on the following individual**

Name: \_\_\_\_\_  
FIRST MIDDLE LAST

Aliases: \_\_\_\_\_

Date of Birth: \_\_\_\_\_  
DD/MM/YYYY

Gender: ☐ Male ☐ Female ☐ Unknown

*Court Registry Use Only*

To: Protection Order Registry (POR)  
Security Programs Division

Fax: 1-250-356-2185  
Phone: 1-855-587-0185

Court Registry Fax Number: \_\_\_\_\_

(Place Registry Stamp Here)

This message is intended for the use of the addressee. Disclosure of message content may breach one or more laws. If you have received this communication in error notify the sender immediately by phone.

REQUEST FOR PROTECTION ORDER REGISTRY SEARCH

## CONSENT FOR CHILD PROTECTION RECORD CHECK

**NOTE: This form must be completed by any person applying for guardianship of one or more children, and must be provided to the court registry at which the materials in support of that guardianship affidavit have been filed.**

### SECTION 1 IDENTIFICATION OF PERSON SEEKING CHILD PROTECTION RECORD CHECK

First Name: \_\_\_\_\_  
Middle Name: \_\_\_\_\_  
Last Name/Family Name: \_\_\_\_\_  
Other names used (include maiden name): \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_  
Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Gender: ☐ Male ☐ Female  
Primary ID (Type and No.): \_\_\_\_\_  
Second ID (Type and No.): \_\_\_\_\_

### SECTION 2 CHILD PROTECTION RECORD CHECK

A Child Protection Record Check (CPRC) is a report prepared for the purpose of identifying past and present child protection concerns, if any, under the *Child Family and Community Service Act* (CFCSA) or its predecessor, the *Family, Child Service Act* (FCSA), respecting an applicant for guardianship of a child (the "applicant") under the *Family Law Act* (FLA). A CPRC is prepared by a child welfare worker at the Ministry of Children and Family Development (MCFD) Provincial Office After Hours department. The CPRC includes a search of records respecting the applicant collected under the FCSA and the CFCSA. The search pertains only to the applicant as an adult and does not include records dating back to when the applicant was a child. A CPRC only documents child protection reports that required an investigation or a family assessment and does not include services that may have been provided to the applicant under the CFCSA or FCSA on a voluntary basis.

- ☐ I have not been involved at any time in the past, as an adult or parent, with child protection services.
- ☐ I have been involved in the past, as an adult or as a parent, with child protection services, with my first involvement occurring in \_\_\_\_\_  
[year]

### SECTION 3 REASON FOR REQUESTING A CPRC

Section 51(2) of the FLA requires an applicant to provide evidence, in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules, respecting the best interests of the child. An applicant must submit a CPRC to the court to assist the court in determining the best interests of the child.

I am applying in the \_\_\_\_\_ Registry of the ☐ Supreme Court ☐ Provincial Court  
under Action No. \_\_\_\_\_ for the guardianship of:

Name of child	Child's date of birth	Child's place of residence
		<input type="checkbox"/> this child currently resides with me
		<input type="checkbox"/> this child does not currently reside with me but will be coming to live with me

### SECTION 4 POSSIBLE CONSEQUENCES OF A CPRC

A CPRC may result in any of the following:

1.	If a CPRC indicates that there is reason to believe that a child who is currently in, or about to come into, the applicant's care may need protection under section 13 of the CFCSA, the child welfare worker conducting the CPRC will make a report to a local child welfare worker for further assessment under the CFCSA.
2.	If a CPRC indicates that the applicant currently has an open child protection file, the delegated child welfare worker conducting the CPRC will notify the child welfare worker with conduct of the open file that the applicant is seeking guardianship under the FLA.
3.	In response to a CPRC, a judge may order that more CFCSA or FCSA records be provided to the court.
4.	In response to a CPRC, a judge may order an assessment of the applicant's ability and willingness to satisfy the needs of the child under section 211 of the FLA.
5.	The director of the CFCSA may apply for leave to intervene in the guardianship proceedings under the FLA if the Director considers it in the best interest of the child to do so.

SECTION 5      CONSENT

I have read and completed section 1 to 4 and understand what a CPRC will entail, why a CPRC is required for my guardianship application and the possible consequences of a CPRC. I consent to a child welfare worker from MCFD conducting and completing a CPRC for me to submit to the court as evidence in my guardianship application. This consent is valid for 1 year from the date of signature.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
I SWEAR (OR AFFIRM) THAT I am the person referred to in section 1 of this consent, that the information in sections 1 and 3 of this consent is true and complete and that I have signed section 5 of this consent.

SWORN (OR AFFIRMED) BEFORE

ME at \_\_\_\_\_, British Columbia

on \_\_\_\_\_

\_\_\_\_\_  
A commissioner for taking affidavits for  
British Columbia

)  
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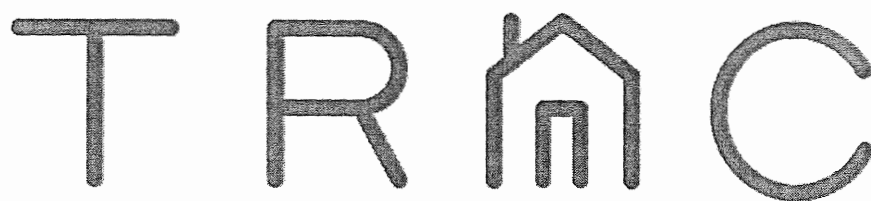


## **2. Housing**

- **Bedbug best practices (Day 2)**
  - Powerpoint
- **Subtenants, Occupants and Assignments (Day 2)**
  - Powerpoint
- **Arguing Against Exemptions from the RTA (Day 2)**
  - Powerpoint
- **Displacement (Day 3)**
  - Wildfire Information Sheet
- **Housing Subsidies (Day 3)**
  - Powerpoint
- **RTB's Improved Online Application and Dispute Resolution (Day 3)**

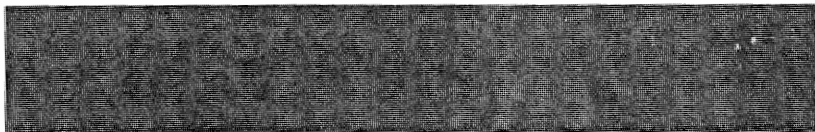
## BED BUGS AND THE RTA

Andrew Sakamoto and Emily Rogers

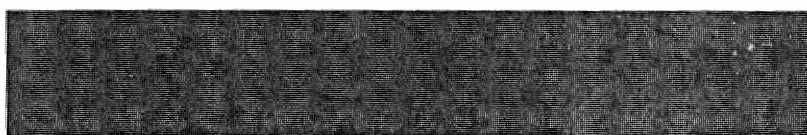
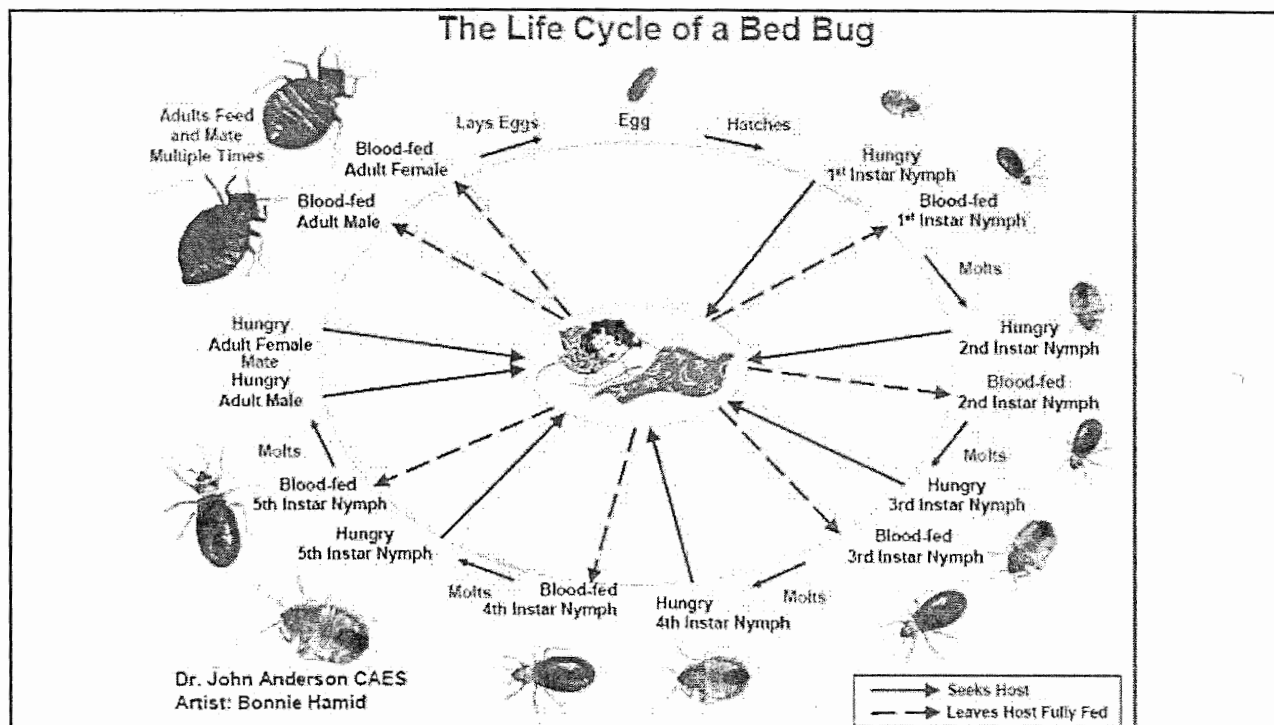


TENANT RESOURCE & ADVISORY CENTRE

## PRACTICAL FACTORS

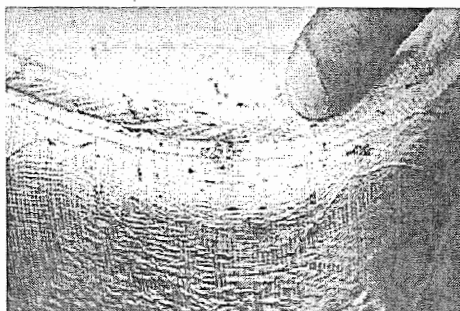


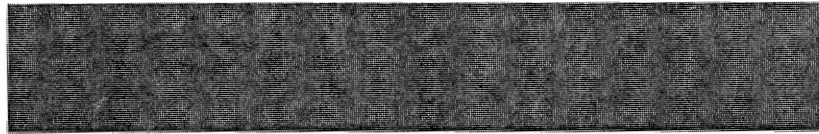
- ❖ Bed bugs hide in cracks and crevices and emerge every few nights to feed.
- ❖ All stages of the bed bugs feed on mammal blood and require a blood meal to molt (nymphs) and reproduce (adults).
- ❖ Common in 1930's and 1940's but mostly eradicated after WWII.
- ❖ Resurgence due to increased travel, increased second-hand furniture trade, and resistance to pesticides.
- ❖ \$409 million revenue generated in 2011 by USA pest control industry specific to bed bug detection and control
- ❖ Bed bugs can reproduce 5-8 weeks after birth and a Female can lay up to 500 eggs in her lifetime



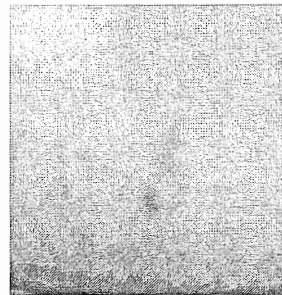
❖ Basis of all control strategies starts with an inspection to determine if bed bugs are present and the extent of the infestation

❖ Early detection is extremely important as large infestations are incredibly difficult to eradicate once they are established

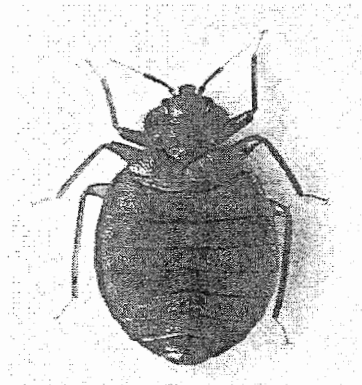


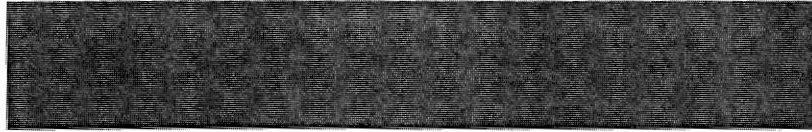


- ❖ Detection techniques range from visual detection, passive monitoring techniques and canine detection
- ❖ "Breakfast-lunch-dinner" pattern of hard swellings on uncovered body parts
  - ❖ Only 30% of population reacts to bites
  - ❖ Reactions can have delayed onset of up to 11 days
- ❖ Other insects, such as fleas or carpet beetles, could be mistaken for bed bugs by the untrained eye → insect debris not reliable



- ❖ No wings
- ❖ Flat, oval-shaped bodies that are half a centimetre long
- ❖ Light brown colour that changes to rust-red after they feed
- ❖ Six legs and a large antennae with a squat head

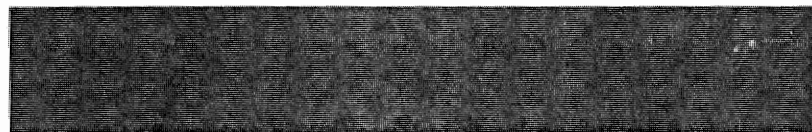




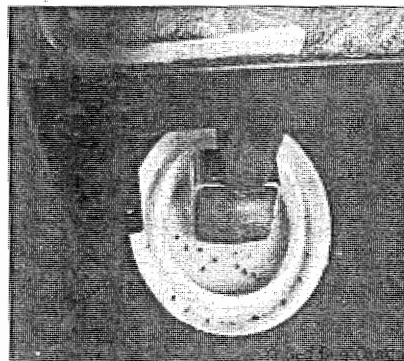
- ❖ Often found in dwellings that have a high rate of occupant turnover such as motels, hostels, hotels, apartment complexes and shelters.
- ❖ Look for bed bugs, eggs, skin shells, fecal matter and blood stains at the edges of the mattress and box spring, as well as behind pictures, in dressers, and along baseboards.
- ❖ An unpleasant musty, sweet and almond-like smell may be present in heavily infested rooms.

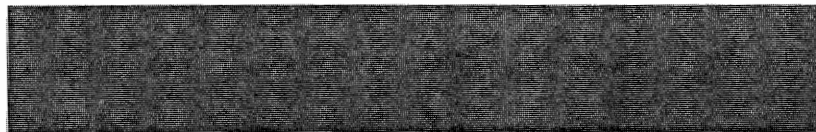


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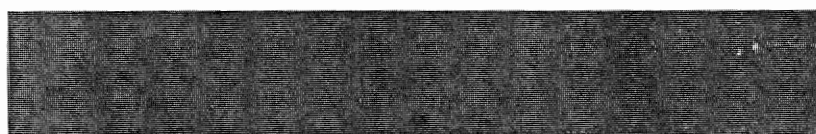
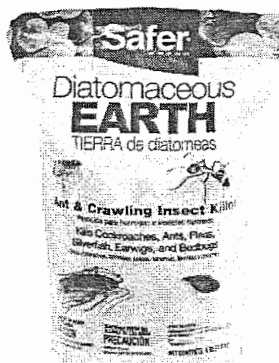
- ❖ Mixed reviews on commercial and DIY traps, but Bed Leg Protectors can be somewhat effective.
- ❖ Put a layer of masking / medical tape on the outside of the container so that bed bugs can crawl into the container. Then put baby powder with talc in the container to prevent bed bugs from getting out of the leg protectors





#### ❖ Diatomaceous Earth

- ❖ Crushed up seashells with pesticides
- ❖ Messy but effective... to a point.
- ❖ Kills living bed bugs only, so the life cycle persists.

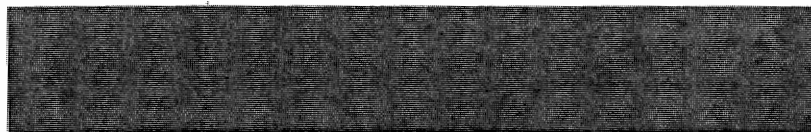


#### ❖ Pesticide treatment

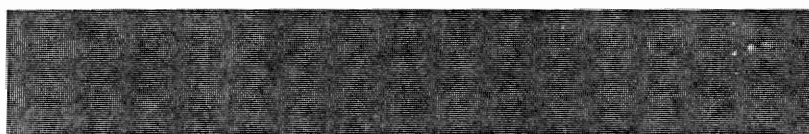
- ❖ Drione (Pyrethrins 1% + Silica Aerogel 40% ) and Bedlam (D-Phenothrin 0.4%)
- ❖ People and pets required to vacate unit for 2-4 hours
- ❖ Ventilate unit upon re-entry
- ❖ Bed bug encasements may be installed on box spring or mattress
- ❖ Interceptor traps may be installed near bed
- ❖ Second treatment 10-14 days later often required

#### ❖ Heat treatment: raises temperature of home to 140F/60C

- ❖ Only one treatment required because it also kills the eggs
- ❖ Generally more expensive than pesticide treatment
- ❖ Better for smaller apartments, where it's easier to achieve ideal heat throughout unit

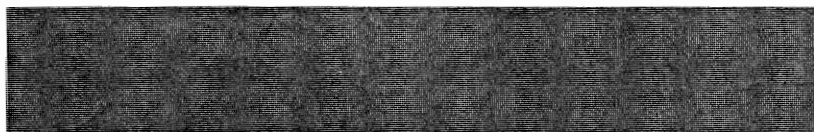


- ❖ Have unit as clear of clutter as possible
- ❖ Remove bedding, but don't move mattress or box spring
- ❖ Have space available for technician to move your mattress
- ❖ Have space available for the technician to turn over chairs and couches
- ❖ Do not flip any furniture, especially mattresses, as this can cause bed bugs to scatter and hide elsewhere
- ❖ Remove any unwanted cardboard
- ❖ Tidy all clothing and items on floor



- ❖ Unplug any and all electronics – TVs, Radios, Computers, Clocks etc.
- ❖ Do not bag and remove anything remaining in unit that isn't going to be put in the washer and/or dryer, as it could hide the bed bugs from treatment.
- ❖ Vacuum all floor areas and dispose of the bag immediately in an outside garbage bin.
- ❖ After treatment, clothing and linens should be hot laundered and then put in the dryer on medium to high heat for a minimum of 30 minutes.
- ❖ If an item cannot be laundered:
  - ❖ place it in the dryer for 60 minutes,
  - ❖ put it in the freezer for over a week, or
  - ❖ ask the pest management company if the item can be left in the unit to be treated.
- ❖ Do not put laundered items back in their original bags.

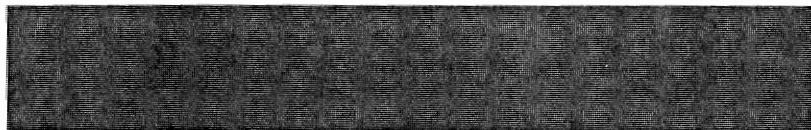




**Remove the following items from treatment area:**

- ❖ Aerosol Cans, fire extinguishers and other
- ❖ Combustible items.
- ❖ Persons, Plants and Animals
- ❖ Candles, Wax & Crayons.
- ❖ Musical instruments
- ❖ Valuable oil paintings & Acrylics (artwork).
- ❖ Plastic & Vinyl Blinds.
- ❖ Arts & Crafts using glue, wax or vinyl.
- ❖ Lipstick & other heat sensitive cosmetics.
- ❖ Fresh Fruit, Vegetables, Carbonated Beverages &
- ❖ Alcohol (place in fridge).
- ❖ Medicines & Vitamins (place in fridge).

**LEGAL CONSIDERATIONS**



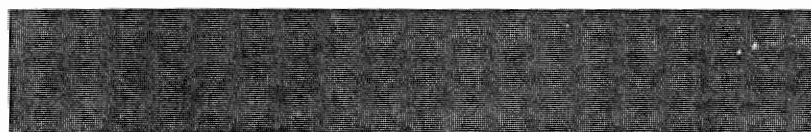
❖ **Section 32: Landlord and tenant obligations to repair and maintain**

A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant

❖ **Policy Guideline #1, page 7: Property Maintenance**

The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.



- ❖ It is the landlord's responsibility to treat the infestation within a reasonable period of time.
- ❖ If they believe the tenant caused the infestation, they must still treat the infestation and apply for dispute resolution later.
- ❖ Landlords should not be treating bed bugs on their own (e.g. Raid) without the help of a professional pest management company

### ❖ Section 32: Landlord and tenant obligations to repair and maintain

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

### ❖ Proper procedure when a tenant detects a bed bug infestation:

1. document the infestation with photos and witnesses.
2. notify the landlord immediately in writing (TRAC has template letters at [www.tenants.bc.ca/template-letters](http://www.tenants.bc.ca/template-letters)).
3. wait a reasonable period of time for the landlord to correct the situation.
4. apply for dispute resolution to seek a repair order and possibly compensation.

#### Bedbugs, Rodents, or Pests

Dear [Landlord Name],

I am writing to you regarding a bed bug infestation in my rental unit at [Address]. I have noticed bed bugs in my unit and I am concerned about my health and the health of my family. I have taken steps to clean and treat my unit, but I need your assistance to resolve this issue.

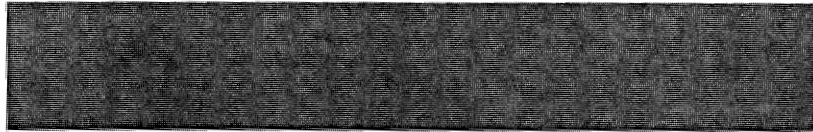
I have attached photos of the bed bugs for your reference. I have also notified the appropriate authorities and they have confirmed the presence of bed bugs.

I am requesting that you take immediate action to resolve this issue. I am asking you to:

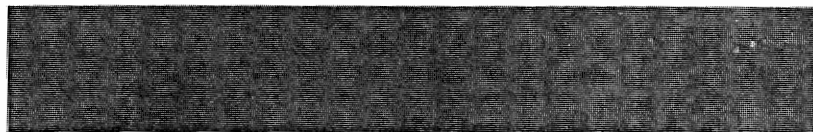
1. Arrange for a professional pest control service to inspect and treat the unit.
2. Provide me with a written report of the inspection and treatment.
3. Cover the cost of the pest control service.
4. Provide me with a written report of the inspection and treatment.

I am requesting that you respond to this letter within 10 business days. If you do not respond, I will be forced to take legal action to resolve this issue.

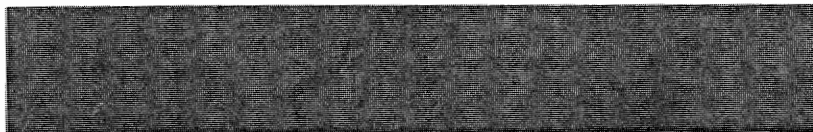
Sincerely,  
[Tenant Name]



- ❖ Don't be embarrassed about bed bugs or scared that your landlord will blame you.
- ❖ Do not try to treat the infestation on your own.
- ❖ If you delay in notifying your landlord and the infestation spreads, you could be held responsible for the problems getting worse.



- ❖ Four part test for damages (Policy Guideline #16)
  1. A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
  2. Loss or damage has resulted from this non-compliance
  3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss
  4. The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

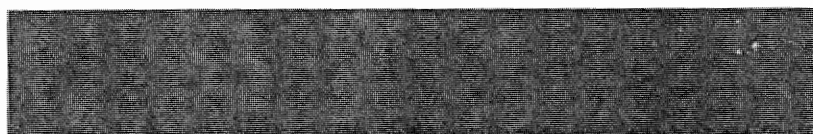


❖ **Landlord's obligation:**

- ❖ Investigate and treat bed bug complaints quickly and fully
- ❖ If the tenant has a disability, it is the landlord's responsibility to accommodate that disability to the point of undue hardship, and help the tenant prepare for treatment.

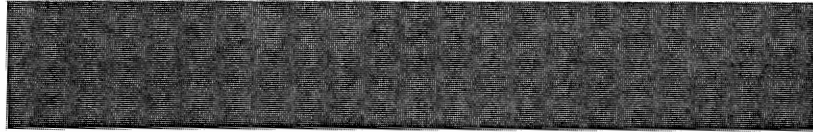
❖ **Tenant's obligation:**

- ❖ Inform the landlord of the problem immediately in writing
- ❖ Do not deny the landlord and pest management company reasonable access to the rental unit.
- ❖ Cooperate and follow the instructions provided by the pest management company (bagging and laundering clothing, reducing clutter throughout unit, etc.)

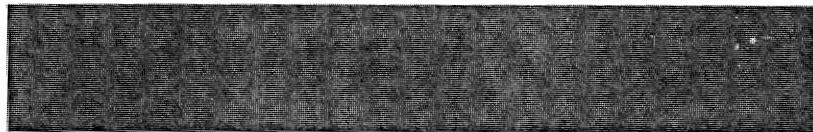


"Although I find the tenant has undergone a very unpleasant and traumatic experience, I find insufficient evidence that her losses occurred because of the actions or neglect of the respondent landlord and in violation of the tenancy agreement or the Act. The records show that she reported an issue with bed bugs on January 16, 2017 and the landlord's manager immediately took steps to have it treated.

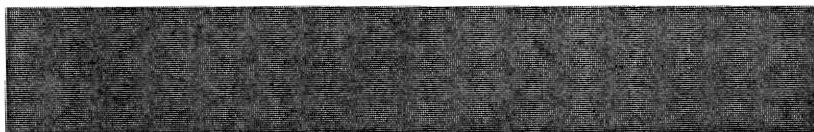
I dismiss the application of the tenant in its entirety without leave to reapply as I find she has not proved on a balance of probabilities that the landlord was negligent or that the landlord's negligence or non-compliance with the Act resulted in her losses"



"I find that there were bedbugs in the second unit occupied by the tenant when he moved into it. I further find that the landlords were made aware of this issue and failed to address it in a timely way. I am satisfied that the tenant mitigated to the best of his ability as required by S. 7(2) by washing all of his bedding and clothing daily, vacuuming daily, steam cleaning, using bug spray and discarding affected furniture at his own expense".



- ❖ Damages must be from the landlord's negligence, not simply the presence of bed bugs.
- ❖ If the landlord acts appropriately after being notified, the tenant will likely be expected to cover some associated costs (e.g. laundry).
- ❖ Keep all correspondence, receipts, photos and other evidence associated with the infestation
- ❖ Keep written record of how the problem has effected physical and mental well-being and unreasonably disturbed your right to quiet enjoyment under RTA Section 28.
  - ❖ Bed bugs can be seen as psychosocial stressors resulting in insomnia, anxiety, depression and other mental health issues.
  - ❖ Bed bug bites can cause allergic reactions
  - ❖ Scratching can cause secondary infection
- ❖ Apply for order to comply with the law + compensation + ability to reduce rent until problem has been addressed
- ❖ Apply for aggravated damages in particularly egregious cases



- ❖ The landlord must pay for the treatment, but could apply for compensation to recover costs from the tenant if they believe the tenant was negligent in bringing the bed bugs into the unit.

"I find, on a balance of probabilities, that the bed bug infestation was caused when the tenant's mother came to stay with her just prior to her complaint that her unit had bed bugs. I make this finding, at least in part, because there is no evidence submitted by either party that there has been a previous infestation in this rental unit or any other unit or common areas of the residential property.

As I have found that the tenant is responsible for the bed bug infestation, I find that the tenant is responsible for the cost of treatment pursuant to Section 32(2)."

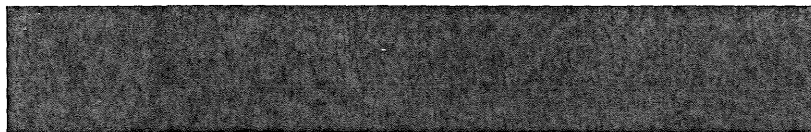


- ❖ No laboratory evidence supports the role of bed bugs as biological vectors of any virus, bacteria, or protozoa → not considered health risk
- ❖ Do not treat bed bugs as an emergency repair, as defined in RTA Section 33:

#### Emergency repairs

33 (1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.



❖ Be careful ending a tenancy early for breach of a material term under RTA Section 45(3).

"In order to establish that they had the right to end the tenancy before the expiry of the fixed term, the tenants bear the burden of proving that the landlord breached a material term of the tenancy agreement. I have concluded that the tenants have failed to prove their claim on the balance of probabilities.

The tenants found bugs which they identified as bedbugs, but in the absence of independent verification it is impossible to determine that they were bedbugs rather than some other, more innocuous bug. I accept that the tenant had numerous bites, but these have not been confirmed by a medical professional as bedbug bites and I find it entirely possible that some other type of insect could have bitten her.

I find the landlord is entitled to recover loss of income for the month of November and I award the landlord \$850.00".

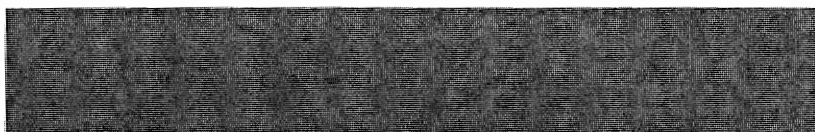


❖ In extreme circumstances, landlord may be entitled to end the tenancy early pursuant to Section 56

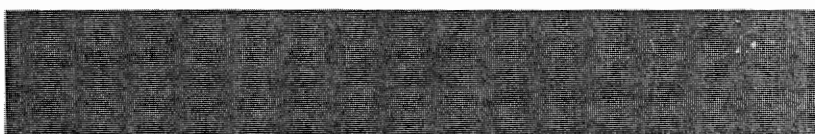
"The parties agree that the tenant's unit has a large infestation of bed bugs and pest control states they can't fumigate until the unit is empty. The tenant said he is not bothered by bites. The landlord said it is unfair to the other tenants to have to wait for a one month notice to end tenancy and continue to endure this significant disruption to their peaceful enjoyment.

I find it would be unfair and unreasonable to wait for a notice to end tenancy to take effect in this case."

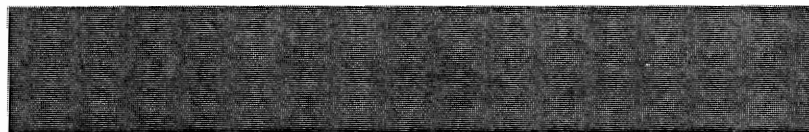




- ❖ An alternative recourse to dispute resolution could be your municipality's Standards of Maintenance or Good Neighbour Bylaw.
- ❖ When notifying your landlord of the infestation, make sure to directly reference the section of your bylaw about "bed bugs", "insects" or "pests".
- ❖ If the landlord refuses to treat the infestation, consider contacting the municipality to see what can be done. A bylaw officer may be able to inspect units, issue warnings and fines, or otherwise enforce the bylaw.



- ❖ The following municipalities have Standards of Maintenance or Good Neighbour Bylaws that specifically reference "bed bugs", "insects" or "pests":
  - ❖ Vancouver
  - ❖ North Vancouver
  - ❖ West Vancouver
  - ❖ New Westminster
  - ❖ Chilliwack
  - ❖ Prince George
  - ❖ Abbotsford
  - ❖ Williams Lake
  - ❖ Mission
  - ❖ Port Coquitlam
  - ❖ Prince Rupert
- ❖ For links to BC's various Standards of Maintenance and Good Neighbour Bylaws, see TRAC's webpage at [www.tenants.bc.ca/Repairs-and-Maintenance](http://www.tenants.bc.ca/Repairs-and-Maintenance).

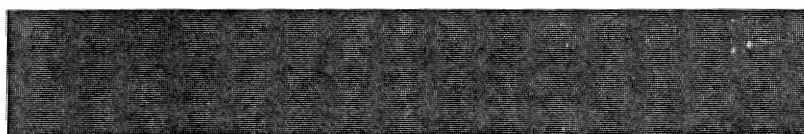


❖ **Standards of Maintenance Bylaw – No. 5462**

21.10. Every lodging house owner shall at all times keep or maintain the lodging house:

(b) free of pests, including insects and rodents

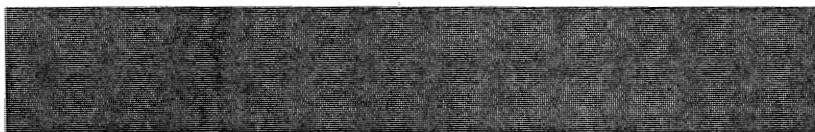
23.2. The City Building Inspector may issue an order to an owner of a building or land directing that the building or land be brought into compliance with a provision of this By-law.



❖ **Building Maintenance and Occupancy Standards Bylaw – No. 3733**

2.1. An owner shall ensure that residential premises are kept free of rodents, vermin, and insects at all times, and appropriate extermination measures shall be taken as necessary.

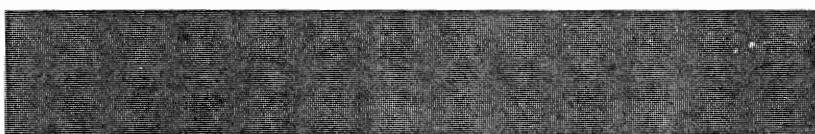
16. If the obligations set out for an owner in an Order to Comply are not performed by the date set out in the order, the City, by its employees and others may enter the residential premises and perform the obligations at the expense of the owner. The Bylaw Enforcement Officer shall certify all costs incurred by the City in performing any such obligations and the costs constitute a debt due and owing by the owner to the City.



❖ **Good Neighbour Bylaw – No. 5524**

16.1. Every Owner or Occupier of Land must prevent, or cause to be prevented, or remove the infestation of the Land of the Owner or Occupier by vermin or other Noxious or destructive **insects**...

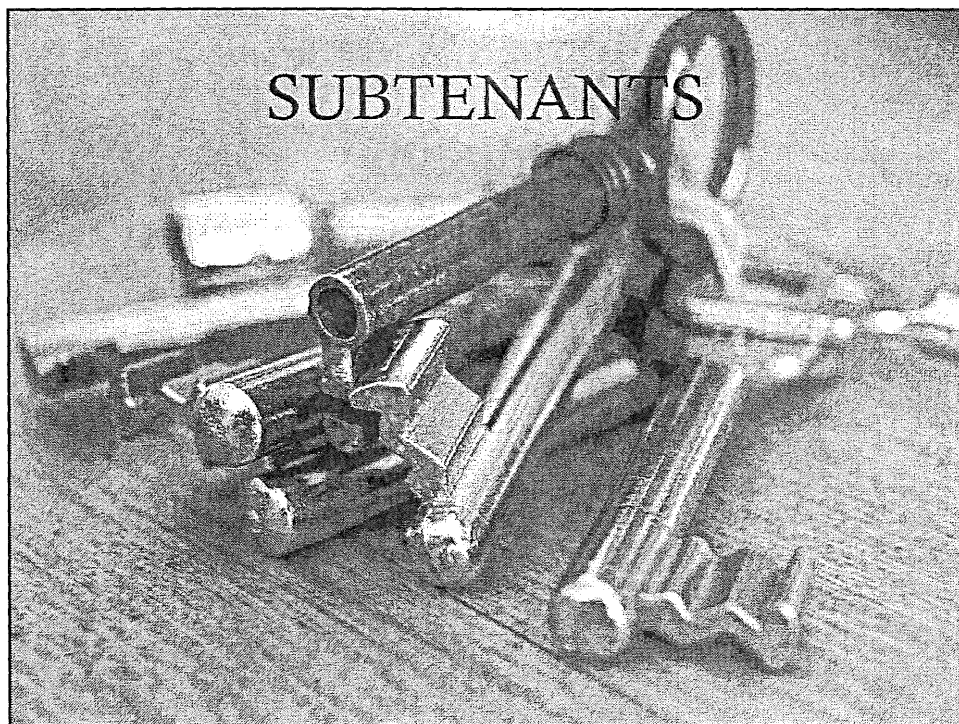
23.5. Where a Bylaw Enforcement Officer determines that the regulations, prohibitions, and requirements of this Bylaw are not being met with respect to the Lands of an Owner or Occupier; the Bylaw Enforcement Officer may, by written notice, require the Owner or Occupier of the Land to comply with this Bylaw within the time period stated in the notice.



- ❖ Does anyone have any stories about bed bugs?
- ❖ Has anyone handled a case at the RTB involving bed bugs?
- ❖ Has anyone contacted their municipality about a bed bug infestation?

# Subtenants, Occupants and Assignments

Yuka Kurokawa, TAPS & Danielle Sabelli, CLAS



## SUBTENANTS

- What is a subtenant?
  - Under the RTA, situations where the original tenant moves out of the rental unit and has a subletting agreement (sublease) with a third party(subtenant).
  - Arbitrators will assess whether or not the relationship between the original tenant and the sub-tenant constitutes a tenancy agreement
    - Is there a landlord/tenant relationship?

## SUBTENANTS

### Exemptions

- S 2 of the Residential Tenancy Regulation sets out the following exemptions to subletting and assignments:
  - the British Columbia Housing Management Commission;
  - (b) the Canada Mortgage and Housing Corporation;
  - (c) the City of Vancouver;
  - (d) the City of Vancouver Public Housing Corporation;
  - (e) Metro Vancouver Housing Corporation;
  - (f) the Capital Region Housing Corporation;

## SUBTENANTS

### Exemptions Cont'd

- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
  - (i) the government of British Columbia;
  - (ii) the British Columbia Housing Management Commission;
  - (iii) the Canada Mortgage and Housing Corporation;
  - (iv) a municipality;
  - (v) a regional district;
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

## SUBTENANTS

### Effects of Subleases Cont'd

- Pursuant to the RTA, the definition of landlord includes:
  - A person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit.

## SUBTENANTS

### Effects of Subleases

- During a sublease, the original tenancy agreement remains in place between the original tenant and the landlord.
- A new agreement (a sublease) is typically entered into by the original tenant and the subtenant.
- The original tenant remains the tenant of the original landlord, and becomes the “landlord” of the subtenant.

## SUBTENANTS

### Duration

- For a sublease to exist, the original tenant must retain an interest in the rental unit.
  - A sublet is temporary;
  - Sublease must be for a shorter period of time than the original fixed term tenancy agreement—even if it is only 1 day shorter.
  - Periodic tenancies—there would need to be an agreement that the sublet continues on a month to month basis, less 1 day.
- If the sublet is for the full period of the tenancy, and does not reserve some period of time at the end of the sublease, the agreement likely amounts to an assignment, not a sublease.

## SUBTENANTS

### Rights and Responsibilities

- Tenant must obtain written permission to sublet the rental unit from the landlord (RTA).
  - There are exceptions to this for manufactured home parks.
  - If a tenant does not obtain written permission to sublet the rental unit from the landlord, the landlord may provide the tenant with a One Month Notice to End the Tenancy.
  - Landlord cannot unreasonably withhold consent if the tenancy agreement is for a fixed term of 6+ months (RTA).
- Subtenant usually pays rent to the original tenant—original tenant still bears responsibility to provide the rent to the landlord.

## SUBTENANTS

### Rights and Responsibilities Cont'd

- The subtenant's contractual rights and obligations should be set out in the sublease.
- the subtenant does not acquire the full rights provided to tenants under the Act.
- No contractual relationship between the subtenant and the landlord.
- If the landlord ends the tenancy with the original tenant, the tenancy ends for the subtenant as well.
- The subtenant would not be able to dispute a notice to end the tenancy provided to the original tenant; it would be up to the original tenant to dispute the notice.



## SUBTENANTS (MHP)

### Creating Subleases

- A tenant may sublet a manufactured home site only if one of the following applies (s 28 of the MHPTA):
  - (a) the tenant has obtained the prior written consent of the landlord to the sublease, or is deemed to have obtained that consent, in accordance with the regulations;
  - (b) the tenant has obtained an order of the director authorizing the sublease;
  - (c) the tenancy agreement authorizes the sublease.

## SUBTENANTS (MHP)

### Written Requests

- Before requesting the landlord's consent to a sublease, a home owner must provide a copy of the following (s 43 of the MHPT Regulation):
  - any rules and any part of the tenancy agreement that are in writing and applicable to the sublease, to a proposed subtenant.

## SUBTENANTS (MHP)

### Written Requests Cont'd

- s 44 of the MHPT Regulation outlines how the homeowner must serve the written request to sublet.
- Landlord must respond to the homeowner's request within 10 days of receipt of the homeowner's request.
- Deemed consent if the landlord does not respond within the 10 day period.

## SUBTENANTS (MHP)

### Grounds for Withholding Consent

- Landlord can withhold consent to assign or sublet for one or more of the following s 48 of the MHPT Regulation:
  - The purchaser or subtenant does not meet the age requirement in a park where every site is reserved for tenants who are at least 55 years;
  - The proposed purchaser or subtenant does not intend to reside in the manufactured home and intends to use the manufactured home for business purposes or purchased more than one manufactured home in the park;
  - the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed;

## SUBTENANTS (MHP)

### Grounds for Withholding Consent Cont'd

- Landlord has insufficient information to make a decision about the request (references);
  - the home owner owes the landlord arrears of rent or an amount due under an order of the director;
  - the manufactured home does not comply with housing, health and safety standards required by law.

## SUBTENANTS (MHP)

### Grounds for Withholding Consent Cont'd

- Landlord has reasonable grounds to conclude that the proposed sublease is likely to result in a breach of the home owner's obligations under the tenancy agreement and rules;
- Tenant agreed not to sublet.

## SUBTENANTS (MHP)

### Effects of a Sublease

- A homeowner who subleases a rental unit becomes the landlord of the subtenant under a sublease agreement.
- Homeowner continues to be the tenant of the landlord under the tenancy agreement.
- Homeowner is liable to the landlord of for any breach or obligation under the Act or the tenancy agreement during the sublease.

## SUBTENANTS (MHP)

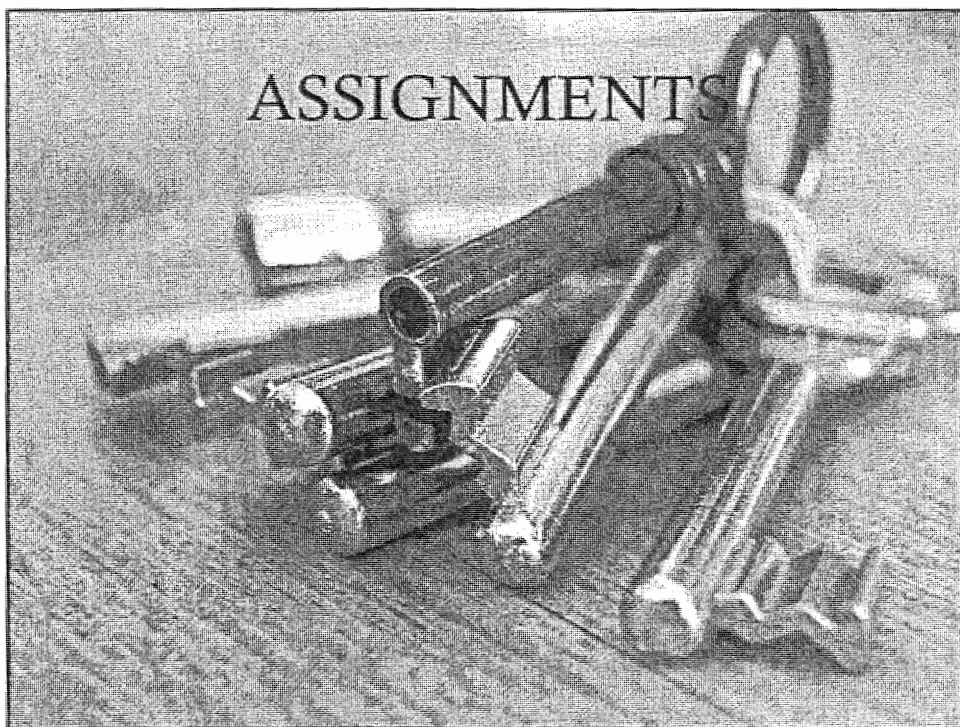
### Effects of a Sublease Cont'd

- Homeowner must include in the sublease the rules and the terms of the tenancy agreement that are relevant to the sublease.
- Homeowner must ensure that the terms of the sublease do not conflict with the tenancy agreement.

## SUBTENANTS (MHP)

### Duration

- A sublease of a manufactured home site, including a manufactured home site rented under a monthly tenancy, may be for a fixed term or on a monthly basis.



## ASSIGNMENTS

- What is an assignment?
  - Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

## ASSIGNMENTS

### Effects of an Assignment

- When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment.

## ASSIGNMENTS

### Effects of an Assignment

- Under s. 34 of the RTA, a tenant must not assign a tenancy agreement unless the landlord consents in writing. A landlord must not unreasonably withhold consent if the tenancy agreement is for a fixed term of six months or more.

## ASSIGNMENTS (MHP)

### Creating Assignments

- The assignment provisions apply only in the context of a sale of the manufactured home that is situated on the manufactured home site.
- A tenant may assign a manufactured home site if one of the following apply (s 28 of the MHPTA):
  - the tenant has obtained the prior written consent of the landlord to assignment, or is deemed to have obtained that consent (MHPT regulations);
  - the tenant has obtained an order of the director authorizing the assignment or sublease;
  - the tenancy agreement authorizes the assignment or sublease.

## ASSIGNMENTS (MHP)

### Written Requests

- Before requesting the landlord's consent to an assignment, a home owner must provide a copy of the following (s 43 of the MHPTA):
  - (a) any part of the tenancy agreement that is in writing, and any rules in writing and applicable to the tenancy agreement, to a proposed purchaser.

## ASSIGNMENT (MHP)

### Grounds for Withholding Consent

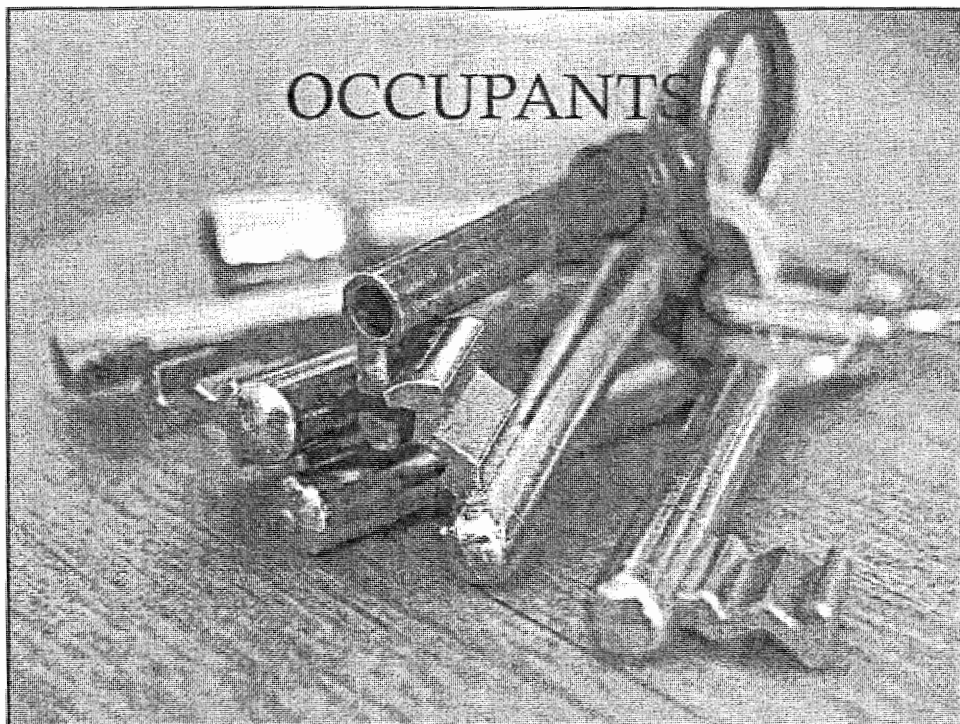
- Landlord can withhold consent to assign or sublet for one or more of the following (s 48 of the MHPT Regulation):
  - The landlord has reasonable grounds to conclude that the purchaser is unlikely to comply with the tenancy agreement or applicable rules, or
  - the landlord, has reasonable grounds to conclude that the proposed purchaser is unable or unlikely to pay the rent;
  - The purchaser does not meet the age requirement in a park where every site is reserved for tenants who are at least 55 years;



## ASSIGNMENT (MHP)

### Grounds for Withholding Consent Cont'd

- The proposed purchaser does not intend to reside in the manufactured home and intends to use the manufactured home for business purposes or purchased more than one manufactured home in the park;
- the tenancy agreement is a monthly tenancy and the manufactured home has been removed from the manufactured home site or destroyed.



## OCCUPANTS

- Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit.
- Generally, if the tenant remains in the rental unit, the third party would be considered an occupant/roommate-- if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party, unless the tenant is an agent of the landlord.
- Occupants/roommates have no rights or responsibilities under the RTA; no landlord or tenant relationship with anyone.
  - Need to refer to the tenancy agreement for guidance on occupants.
- Roommates and landlords may wish to enter into a separate tenancy agreement to establish a landlord/tenant relationship between them or to add the roommate to the existing tenancy agreement in order to provide protection to all parties under the legislation.

## PRACTICAL IMPLICATIONS

- ⊗ Subletting
  - ⊗ Original tenant and subtenant can be affected by each other's actions
  - ⊗ Where the original tenant is living with other third party renters – are they tenants, subtenants or occupants?
  - ⊗ Original tenant and income assistance
  - ⊗ Subletting tenant and income assistance
  - ⊗ Other implications?

## PRACTICAL IMPLICATIONS

- Assignments
  - Any implications?

## Practical Implications

- Occupants
  - Tenants are legally responsible for the actions of their occupants
  - Occupants do not have legal protections in respect to how they are evicted
  - Occupants might be moving into or living in a place where additional occupants are not allowed as material terms of the tenancy
  - Occupants might be moving into or living in a place where strata rules prohibit additional occupants
  - Occupants and MSDPR shelter assistance
  - Original tenant and income assistance
  - Other implications?

## Sublet, Assignment, or Occupant?

Bilbo Baggins rents a decent sized one bedroom hobbit hole in the Shire. After receiving an invitation from his friend Gandalf, Bilbo decides to set off on a great adventure abroad. Bilbo sends a letter to his landlord asking whether his friend Billa can take over his lease, and the landlord agrees. Bilbo packs up his things and sets off with Gandalf – leaving Billa to enjoy her new tenancy.

Is Billa a subletter, does she have an assigned tenancy, or is she an occupant?

## Sublet, Assignment, or Occupant?

Marty has been living with his friend and co-tenant for the last four years. Marty's friend suddenly passes and he is left without a roommate. He posts an ad on Craigslist and gets a response from a scientist named Dr. Brown. Doc moves into Marty's second bedroom. They become fast friends and travelling companions.

Is Doc a subletter, has the tenancy been assigned to him, or is he an occupant?

## Sublet, Assignment, or Occupant?

Veronica rents a four bedroom house. Feeling the urge to travel, Veronica books a six-month trip to Iceland to visit Archie, who works there as a volcanologist. Veronica wants to keep her place for when she returns so puts up a poster at Pop's Chock'lit Shoppe and eventually recruits four subtenants— Betty, Midge, Ethel, and Josie - with the landlord's permission. Four months into her travels, Veronica gets homesick and heads back to Riverdale. Surprised by her unexpected return, the subtenants make an agreement with Veronica that they would all live together. Veronica is still in charge of collecting and paying rent.

Are Betty, Midge, Ethel, and Josie subletters, has the tenancy been assigned to them, or are they occupants?

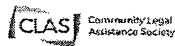
Other case examples?

THANK YOU!

*The Residential Tenancy Branch:  
Better Than Nothing I Guess*

Fighting landlords who try to avoid the RTB's jurisdiction

Kevin Love  
Community Legal Assistance Society  
October 18, 2017



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OVERVIEW

- Look at three situations:
  - Total exemptions from the RTA
  - Partial exemptions from the RTA
  - Specific disputes that are exempted from the RTA

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TOTAL EXEMPTIONS

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### TOTAL EXEMPTIONS

- Listed in section 4 of the RTA.
- Can loosely be grouped:
  - Housing/tenancies governed by some other law
  - No intention to form a tenancy
  - Housing being offered in order to provide some other service

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### SOME OTHER LAW APPLIES

- Commercial tenancies: Covered by *Commercial Tenancy Act*
- Coops renting to their members: covered by *Cooperative Associations Act*
- Manufactured home park tenancies: Covered by *Manufactured Home Park Tenancy Act*

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### SOME OTHER LAW APPLIES: Commercial (Business) Tenancies

- First question: Is it a single agreement?
- Second question: What is "predominant purpose"?
- *Gardiner v. 857 Beatty Street Project*, 2008 BCCA 82
  - Live / work artist studio. Tenant ceased producing art.
  - Look at both actual use and use that was agreed to.
  - Development permit, zoning, and lease agreement all relevant.
  - Not covered by RTB.

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### SOME OTHER LAW APPLIES Commercial (Business) Tenancies

- Policy Guideline #14
  - Confirms "predominant cause" test
  - Identifies other factors:
    - » relative square footage of the business use compared to the residential use
    - » employee and client presence at the premises
    - » visible evidence of the business use being carried on at the premises
- *Henricks v. Hebert*, 1998 CanLII 1909: Tenant rents numerous pads, then re-rents them as a business. Covered by RTA.

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### SOME OTHER LAW APPLIES: RTA v. MHPTA v. Coop

- Nothing in law is clear and simple:
  - Non-members occupying coop housing
  - Tenant is renting both a pad and a trailer in a park
  - Tenant "rents to own" a trailer
- RTB has jurisdiction over RTA and MHPTA, so less of an issue

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### NO INTENTION TO FORM TENANCY

- Sharing bathroom and kitchen
- Emergency shelters or transitional housing
- Housing in a correctional institution
- Vacation or travel accommodations

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### NO INTENTION TO FORM TENANCY Sharing Bathroom or Kitchen

- Only have to share one or the other, not both
- Must share with owner, not simply landlord or agent
- *Brown v. Residential Tenancy Branch*, 2010 BCSC 861
  - Landlord stayed in the suite with tenants for short period of time
  - Not unreasonable for RTB to find RTA still applied
  - Note: Some RTB decisions seem to contradict this
- RTB has declined jurisdiction where landlord has right to use kitchen or bathroom, but did not actually do so

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### NO INTENTION TO FORM TENANCY: Shelters and Transitional Housing

For the purposes of section 4 (f) of the Act [*what the Act does not apply to*], "**transitional housing**" means living accommodation that is provided

- (a) on a temporary basis,
- (b) by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation, and
- (c) together with programs intended to assist tenants to become better able to live independently.

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### NO INTENTION TO FORM TENANCY: Shelters or Transitional Housing

- Policy Guideline #46
- Differentiates between shelters, transitional housing, and supportive housing
- Shelters and transitional housing excluded, supportive housing covered
- "Transitional housing is intended to include at least a general plan as to how the person residing in this type of housing will transition to more permanent accommodation."

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HOUSING OFFERED TO PROVIDE OTHER SERVICES

- Housing owned or operated by educational institution for students
- Hospitals and Health facilities

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HOUSING OFFERED TO PROVIDE OTHER SERVICES  
Hospitals, Health and Care Facilities

(g) living accommodation

- (i) in a community care facility under the Community Care and Assisted Living Act
- (ii) in a continuing care facility under the Continuing Care Act
- (iii) in a public or private hospital under the Hospital Act
- (iv) if designated under the Mental Health Act, in a Provincial mental health facility, an observation unit or a psychiatric unit
- (v) in a housing based health facility that provides hospitality support services and personal health care, or
- (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services

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HOUSING OFFERED TO PROVIDE OTHER SERVICES  
Housing Based Health Facilities

- Must be a health facility
- Must provide both hospitality support services and personal health care
- No decisions from court (yet)
- Decisions from RTB are all over the map and incoherent

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## HOUSING OFFERED TO PROVIDE OTHER SERVICES Rehabilitative or Therapeutic Services

Situations where RTB found tenancy not covered by RTA

- Housing that required mandatory participation in methadone program
- Recovery houses, both licensed and unlicensed
- Supportive housing dispensing medicine, financial assistance, and other life skills training in which residents must participate

Situations where RTB found tenancy was covered by the RTA

- Retirement home providing supportive independent living where services were not mandatory

Take Away: RTB seems to be putting weight on whether services are mandatory or optional

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## RANDOM

- Tenancy agreements with a term exceeding 20 years

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## PARTIAL EXEMPTIONS

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## Partial Exemptions

- Tenancy still subject to RTA generally
- Just exempt from rent control and subletting provisions

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## Section 2 of Residential Tenancy Regulations

Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act (assignment and subletting, rent increases) if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
  - (i) the government of British Columbia;
  - (ii) the British Columbia Housing Management Commission;
  - (iii) the Canada Mortgage and Housing Corporation;
  - (iv) a municipality;
  - (v) a regional district;
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

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## Who is Exempt?

1. Is housing operated by an organization on the list in 2(a) to (f)? Not all subsidized housing providers are exempt!
2. If not, is the housing operated by some other housing society or non-profit municipal housing corporation?
  - a. Is there, or was there ever, an operating agreement with an organization listed in 2(g); and
  - b. Is rent actually related to tenants income?

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### *Samji v. HFBC Housing Foundation*

- 2012 BCSC 1367
- Not necessary that landlord have operating agreement respecting the actual building the rental unit is in.
- If landlord has multiple building, some subject to operating agreements and some not, all buildings are exempt.

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### SPECIFIC DECISIONS THAT ARE EXEMPT

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### SPECIFIC DECISIONS THAT ARE EXEMPT

- Monetary disputes over \$35,000
- Disputes substantially link to a matter before the BC Supreme Court

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**SPECIFIC DECISIONS THAT ARE EXEMPT:**  
Claims over \$35,000

- Gates v. Sahota, 2017 BCSC 485 (under appeal)
  - Seems to say that in joint claims, it's the total of all the tenant's claims
  - Seems to say that RTB may not have jurisdiction if value of repairs could exceed \$35,000

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**SPECIFIC DECISIONS THAT ARE EXEMPT:**  
Substantially link to matter before BCSC

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- Gates v. Sahota, 2017 BCSC 193
  - Claims made jointly against a landlord and non-landlord (like the city) can be brought together in BCSC
- Heckert v. 5470 Investments Ltd., 2008 BCSC 1298
  - Seems to suggest that if you can hive out a discrete part of the claim for RTB, must go to RTB for that portion.

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**QUESTIONS?**

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## 1. Information for Landlords and Tenants

These are difficult times. While the law provides mechanisms to settle disputes, landlords and tenants are encouraged to work together and find ways to keep everyone involved safe and secure. For complete information about the rights and responsibilities of tenants and landlords, visit [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

Serving documents during an evacuation can be challenging. The Director of the Residential Tenancy Branch has issued an order regarding substituted service for addresses for service affected by evacuation orders and suspension of Canada Post delivery services.

- View [Residential Tenancy Branch order allowing substituted service in response to 2017 Wildfires](#)

The Director issued a Practice Directive to provide guidance to arbitrators on requests for an extension of time for Applications for Dispute Resolution filed during the time when evacuation orders and suspension of Canada Post delivery services may be in place.

Despite this Practice Directive, the Residential Tenancy Branch cannot extend the time limit to apply for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the notice and may not extend the time limit for a tenant to pay overdue rent without the agreement of the landlord or unless the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

- View [Practice Directive 2017 Wildfire State of Emergency and Director's orders: changing time limits](#)

## 2. What should be done if the rental unit was damaged in the fire? Can the tenancy agreement be broken?

If a rental unit or manufactured home park has been damaged by fire, but remains inhabitable, the tenant should inform their landlord in writing of any damage to the rental unit or manufactured home park, so that the landlord has a reasonable opportunity to make repairs.

If the unit or manufactured home park was damaged to the point that it is uninhabitable, the tenancy agreement could be "frustrated." This means it is not possible for the tenant to continue living in the unit or manufactured home park through no fault of either the landlord or the tenant.

A tenant who believes the tenancy agreement has been frustrated should inform their landlord in writing that they are treating the tenancy agreement as frustrated. If the landlord agrees that the tenancy agreement is frustrated, then the tenancy is ended and the tenant does not have to continue paying rent. It is advisable to get this agreement in writing.

The landlord would be required to return any rent paid for renting the unit or site after the tenancy agreement was frustrated. For example, if rent was paid on the 1st and the tenancy was frustrated on the 5th, the landlord would be required to reimburse the tenant for pro-rated amounts for rent from the 6th to the end of the month. If the landlord does not reimburse this amount, the tenant may make an Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement.

For residential tenancies, the landlord would be required to return the security deposit and pet damage deposit **after the tenant provides their forwarding address in writing**—this address can be the address of a trusted friend or family member.

Document the condition of the property with photos and video in case there is a dispute about whether the tenancy is frustrated.

If the landlord believes the tenancy agreement has been frustrated, but the tenant does not agree, the landlord may make an Application for Dispute Resolution for an order of possession: tenancy frustrated under section 56.1 of the *Residential Tenancy Act* or section 49.1 of the *Manufactured Home Park Tenancy Act*.

**3. What happens when a landlord and tenant don't agree whether a tenancy agreement has been frustrated?**

If the landlord disagrees that the tenancy agreement is frustrated and the tenant has stopped paying rent, the landlord may make an Application for Dispute Resolution through the Residential Tenancy Branch to claim compensation for unpaid rent and, for residential tenancies, to keep some or all of the security deposit. The tenant may make a cross-application if they believe they are owed monies or, for residential tenancies, believe the landlord should not keep your security deposit or pet damage deposit. Both the tenant and landlord should be prepared to provide proof of the condition of the unit or manufactured home park and what caused the tenancy to be frustrated.

If the landlord believes the tenancy agreement has been frustrated, but the tenant does not agree, the landlord may make an Application for Dispute Resolution for an order of possession: tenancy frustrated under section 56.1 of the *Residential Tenancy Act* or section 49.1 of the *Manufactured Home Park Tenancy Act*.

**4. Who is responsible for cleaning and repairing fire damage?**

The landlord must provide and maintain the rental unit or manufactured home park in a state of decoration or repair that complies with the health, safety and housing standards required by law. In most cases, the landlord, or the landlord's insurance company, will pay for repairs to the unit or manufactured home park. In a manufactured home park the landlord is usually not responsible to pay the tenant for loss of the manufactured home and in a residential tenancy the landlord is usually not responsible for the tenant's loss of personal property in the rental unit.

**5. How long does a landlord have to repair a damaged rental unit?**

There is no set period for a landlord to repair a rental unit or manufactured home park, unless ordered to make repairs by the Residential Tenancy Branch or another agency. However, landlords should attempt to repair the unit or park within a reasonable time.

Tenants who are unable to use all or part of their rental unit for a period of time can make an Application for Dispute Resolution either for compensation for loss of unit, to obtain a rent reduction or to end the tenancy. If tenants believe it is taking too long to repair the unit they can make an Application for Dispute Resolution either for compensation for loss of use, to obtain a rent reduction or to end the tenancy. If the failure of the landlord to complete the repairs resulted in a breach of a material term of the tenancy, and the tenant gave notice to the landlord of the breach, then the tenant may end the tenancy. (amended July 31, 2017)

**6. The tenant's belongings were damaged. Who is responsible for cleaning, repairs or replacement?**

Tenants are usually responsible for their belongings. If the tenant has tenant's insurance, they should read their policy closely to see what kind of damage is covered and call their insurer with any questions.

**7. The tenant wasn't able to live in the rental unit for several days because of the evacuation order. The landlord had to make some repairs before the tenant could move back in. Does the tenant still pay rent for the time they weren't living in the unit?**

Tenants and landlords should have a discussion about what is expected for rental payments. Any agreement made by landlords and tenants should be in writing. If the tenant and landlord are not able to come to an agreement about the rent, the tenant should pay their rent as set out in their tenancy agreement or effective Notice of Rent Increase. A tenant who is unable to use their rental unit for a period of time may be entitled to compensation for that loss and can make an Application for Dispute Resolution through the Residential Tenancy Branch for an order to temporarily reduce their rent.

Landlords should check with their insurance company to determine if loss of rental income is covered under their insurance policy. (amended July 31, 2017)

**8. Who is responsible for covering the cost of alternate accommodations?**

Tenants are responsible for the cost of alternate accommodations unless otherwise stated in the tenancy agreement.

**9. Can a landlord change the locks to a rental unit during an evacuation? Is this legal?**

No, this is not legal. A landlord must not change the locks or other means that give access to residential property or manufactured home park unless they provide each tenant with new keys or other means that give access to the residential property.

If the landlord has changed the locks and has not provided the tenant with a key, the tenant should try contacting the landlord to request a key by phone **and in writing**—the tenant should keep a copy of the written request for a key in case it is needed later. If the landlord does not provide a key as required, the tenant may make an Application for Dispute Resolution through the Residential Tenancy Branch requesting an order of possession for the tenant and compensation for damage or loss. The landlord may be also required to pay for the costs of alternate accommodation from the time the tenant requested the key until the landlord provided a key.

**10. Rent is usually paid in cash, but I am not able to meet with my landlord/tenant because I have been evacuated to a different community. What should I do?**

Tenants remain responsible for payment of rent during an evacuation. If the tenant has their landlord's email address, they may want to see if they can transfer their rent money electronically. If the landlord issues a 10 Day Notice to End Tenancy for non-payment of rent or utilities, the tenant have five days after receiving the notice to pay the unpaid rent or utilities or make an Application for Dispute Resolution to cancel the Notice to End Tenancy.

If the area is subject to an evacuation order or Canada Post suspension of mail delivery, there is a special order in place that addresses service of documents. This order may allow the landlord to serve documents by email or sets out when documents served by mail are considered to be received. See [more information in question 12](#).

**11. I can't get in touch with my landlord/tenant. What should I do?**

Under the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*, the landlord must provide the tenant with the address for service and telephone number of the landlord or the landlord's agent. The landlord must also post and maintain in a conspicuous place, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. During an evacuation, it is possible that the landlord or tenant may not have access to the other party's contact information.

If the tenant does not have this address, they should communicate in writing to the address on the tenancy agreement.

If the area is subject to an evacuation order or Canada Post suspension of mail delivery, there is a special order in place that addresses service of documents. This order may allow landlords and tenants to serve each other with documents by email, in addition to the allowable methods under section 88 and 89 of the *Residential Tenancy Act* or section 81 and 82 of the *Manufactured Home Park Tenancy Act*, and sets out when documents served by mail are considered to be received. See [more information in question 12](#).

**12. What can I do if I cannot locate my landlord/tenant to serve them with documents or an Application for Dispute Resolution and corresponding hearing package?**

The Residential Tenancy Branch has issued a temporary order that allows for service of documents by email in limited circumstances. This same order establishes when documents served by mail are considered to be received in areas subject to an evacuation order or suspension of Canada Post mail delivery service.

- View [Residential Tenancy Branch order allowing substituted service in response to 2017 Wildfires](#)

See [more information in question 25](#)

In rare cases, you may have difficulty serving a document using one of the available options. To serve documents in a different way you need to apply for a special order. (amended July 31, 2017)

- Application for Substituted Service (RTB-13)

Proof is required that shows:

- Reasonable effort to serve the documents via one of the available options was unsuccessful
- The other party is likely to receive the document using a method proposed.

For more information, visit our website at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).

**13. Can a landlord use their tenant's security deposit to pay for repairs due to fire damage?**

No. Security deposits or pet damage deposits held for residential tenancies are to cover items within the tenant's responsibility, such as cleaning costs, unpaid rent or repairing damage beyond normal wear and tear.

**14. As a landlord, do I need to consult with my local government before I let tenants return?**

You are not required to consult with your local government. However, an inspection is recommended if there is a health or safety concern.

**15. The tenancy agreement was terminated but the tenants left many of their belongings. What can I do with everything?**

Abandoned property valued at \$500 or more must be placed in storage for at least 60 days, unless it would be unsafe or unsanitary to store the items. If the goods are valued at less than \$500, landlords can dispose of them as they see fit; however, in the case of a disaster where tenants had to leave on short notice, landlords may wish to show consideration about disposing personal documents (passports, tax information, etc.) and items that may have personal value such as photo albums.

Learn more on our website at: <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/items-left-behind#Abandonment>

**16. What if my landlord will not allow me back into the rental premises?**

A landlord must not unreasonably restrict access to a residential property or manufactured home park by the tenant or a person permitted on the property by that tenant.

Although tenants will be anxious to return to their homes, landlords may be hesitant to allow tenants re-entry into their units if there is uncertainty whether the premises are habitable. A landlord must ensure the state of the residential property or manufactured home park complies with the health, safety and housing standards required by law. Tenants should also be mindful of any local government or provincial order(s) not to enter the property.

In these circumstances landlords and tenants should keep in contact. The landlord should communicate reasons for any delay in the tenant returning home, and tenants may wish to check with their landlord on the availability of their rental unit prior to returning.

If all efforts to resolve the matter between landlord and tenant fail and a tenant feels the landlord is unreasonably restricting access to the rental unit, the tenant may make an Application for Dispute Resolution through the Residential Tenancy Branch.

**17. Can a landlord enter the tenant's rental premises when they are not there?**

A landlord must not enter a rental unit or manufactured home sit without notice or consent unless the landlord has reasonable grounds to believe there is an emergency or the tenant has abandoned the rental unit or manufactured home site.

Otherwise, landlords require the permission of the tenant, or must provide the tenant with 24 hours written notice of the purpose of entering the unit and the date and time of entry, or have an order of the director authorizing entry. The tenant is not required to be present when the landlord enters.

Section 88 of the *Residential Tenancy Act* and section 81 of the *Manufactured Home Park Tenancy Act* set out how documents can be given or served. If your area is subject to an evacuation order or suspension of Canada Post mail delivery service, the Residential Tenancy Branch has issued a temporary order that allows for service of documents by email in some circumstances. [Learn more about the temporary order in question 12.](#)

Tenants who have evidence the landlord may have entered their rental unit improperly can make an Application for Dispute Resolution

#### **18. My tenancy agreement expires on July 30, 2017. Now what happens?**

If the fixed-term tenancy agreement includes a clause that requires the tenant to vacate the rental unit at the end of the fixed term, the tenancy ends unless the landlord and tenant agree to continue the tenancy. If the fixed-term tenancy agreement does not require the tenant to vacate the rental unit at the end of the fixed term, then the tenancy continues until it is lawfully ended.

Tenants who have a fixed-term tenancy with a vacate clause that expires during the 2017 Wildfires should discuss options with their landlord to remove their personal property once re-entry is allowed or the possibility of continuing the tenancy on a fixed term or periodic basis. Tenants who do not vacate the property at the end of their fixed-term tenancy and have not made arrangements with the landlord to remain in the property may be deemed overholding tenants by the landlord, and the landlord may make an Application for Dispute Resolution through the Residential Tenancy Branch for an order of possession and/or compensation.

#### **19. Can the tenant be evicted if they haven't paid rent?**

Yes, landlords may serve a 10 Day Notice to End Tenancy for non-payment of rent on the tenant any day after the rent is due. The tenant has five days after receiving the 10 Day Notice to End Tenancy to pay the unpaid rent or make an Application for Dispute Resolution to cancel the 10 Day Notice to End Tenancy.

If the tenant files an Application for Dispute Resolution to cancel the Notice to End Tenancy, a teleconference hearing will be scheduled. Both parties can submit and exchange evidence to support their arguments and provide testimony in the hearing.

At any time, a landlord and tenant can mutually agree to end the tenancy by a certain date and save the expense of taking the matter to the Residential Tenancy Branch.

The *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* provide other reasons for ending a tenancy and corresponding timeframes for notice. [Learn more at www.gov.bc.ca/landlordtenant/ending](http://www.gov.bc.ca/landlordtenant/ending)

#### **20. Can a landlord raise the rent?**

Yes. Landlords can increase rent annually by a percentage equal to the inflation rate plus 2 per cent. The 2017 maximum allowable rent increase limit is 3.7 per cent.

#### **21. The landlord removed my refrigerator/freezer. Can they do this?**

Although the *Residential Tenancy Act* does not specifically address refrigerators or freezers, tenancy agreements must include which services and facilities are included in the rent and should indicate if a refrigerator or freezer is provided.

Following an extended power outage, growth of mold and bacteria in the refrigerator or freezer may cause a safety hazard. If a landlord removes a refrigerator or freezer and does not replace it as soon as is reasonably possible or does not provide proper notice and a corresponding rent reduction, the tenant may make an Application for Dispute Resolution seeking compensation for damages or loss or a rent reduction.

## 22. How can disputes be settled?

Landlords and tenants who have concerns related to a termination of tenancy, unpaid rent/utilities, security deposit, damages, repairs or other common disagreements may make an Application for Dispute Resolution through the Residential Tenancy Branch. Disputes are heard by an arbitrator who is authorized to make final and binding decisions on claims of up to \$35,000 involving tenancy disputes. For more information, visit [www.gov.bc.ca/landlordtenant/online](http://www.gov.bc.ca/landlordtenant/online).

## 23. How can I file my application with the Residential Tenancy Branch?

You may make an Application for Dispute Resolution by completing the online application and paying the \$100 filing fee (or submitting an Application to Waive Filing Fee if you are a tenant with a very low income) or by submitting a paper Application for Dispute Resolution to any Service BC Office or the Residential Tenancy Branch office at 400 - 5021 Kingsway in Burnaby along with the \$100 filing fee (or an Application to Waive Filing Fee if you are a tenant with a very low income).

## 24. I have a hearing coming up in the next few days and I am not in a position to be able to attend or present my case. What can I do?

Contact the other party and see if they will consent to adjourning the hearing to another date. If possible, obtain their consent in writing, such as an email. If it is not possible to contact the other party, or if they are not willing to consent to adjourn the hearing, phone into the hearing. If you don't have the telephone number and access code for your hearing, you may contact the Residential Tenancy Branch to obtain that information. You may phone into the hearing and request an adjournment from the arbitrator if you are not able to participate fully because of the evacuation (for example, you don't have access to the evidence you need or you are in immediate danger)

If you are unable to phone into your hearing and miss it, because of the evacuation, you may complete an Application for Review Consideration on the grounds that you were unable to participate for reasons beyond your control. You must file your Application for Review Consideration within the statutory time limits; however, those time limits are based on when you receive the decision or order.

## 25. I couldn't meet a time limit required under the Act because of the fire. What can I do?

The Legislation contains provisions for the time frames within which a person must act upon having received documents. The Residential Tenancy Branch cannot extend the time limit to apply for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the notice and may not extend the time limit for a tenant to pay overdue rent without the agreement of the landlord or unless the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

The date a person receives documents is what is used to calculate time. If service or the time frame for having responded is in dispute, at the dispute resolution hearing, an arbitrator may consider evidence from both the party receiving the document and the party serving the document to determine the date of service and the calculation of time a respondent had for responding. Section 71 (2)(b) of the *Residential Tenancy Act* and section 64 (2)(b) of the *Manufactured Home Park Tenancy Act* give an arbitrator the authority to order that a document has been sufficiently served for the purposes of the Act on a date the arbitrator specifies, upon consideration of procedural fairness and prejudice to the affected party. For more information on rebuttable presumption, please refer to Policy Guideline 12: Service Provisions. (amended July 31, 2017)

For other time limits set in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*, an arbitrator may extend a time limit in exceptional circumstances. The director of the Residential Tenancy Branch has issued a Practice Directive to arbitrators that may reduce the amount of proof required to obtain an extension of time for those affected by the fires.

- View [Practice Directive 2017 Wildfire State of Emergency and Director's orders: changing time limits](#)

For more information, visit [www.gov.bc.ca/landlordtenant/online](http://www.gov.bc.ca/landlordtenant/online).

- [Landlord Application for Dispute Resolution \(RTB-12L\)](#)
- [Tenant Application for Dispute Resolution \(RTB-12T\)](#)
- [Application to Waive Filing Fee \(RTB-17\)](#)

## Appendix A: Director's Order for Substituted Service



### Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

In matters of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended or the *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77, as amended

#### ORDER

Pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act* and sections 64(2)(b) and (c) of the *Manufactured Home Park Tenancy Act*, I order that, until the resolution of the interface fire emergency described in Ministerial Order No. M245 dated July 7, 2017 (the "2017 Wildfires") and unless the director otherwise orders:

- a document served by ordinary mail or registered mail in accordance with section 88 or 89 of the *Residential Tenancy Act* or section 81 or 82 of the *Manufactured Home Park Tenancy Act* is deemed to have been sufficiently served on the following dates:
  - if the address for service is in an area subject to an evacuation order related to the 2017 Wildfires:
    - 12 days after the issuance of the evacuation order for the area; or
    - five days after the evacuation order is rescinded; or
  - if the address for service is in an area where evacuation orders related to the 2017 Wildfires are issued and re-issued consecutively:
    - 12 days after the issuance of the last consecutive evacuation order for the area; or
    - five days after the last consecutive evacuation order for the area is rescinded; or
  - if the address for service was in an area to which Canada Post suspended mail delivery service as a result of the 2017 Wildfires, five days after resumption of mail service to the area; and
- a document of the type described in section 88 or 89 of the *Residential Tenancy Act* or section 81 or 82 of the *Manufactured Home Park Tenancy Act* is deemed to have been sufficiently served for the purposes of the applicable Act if:
  - an evacuation order or suspension of Canada Post mail delivery service as a result of the 2017 Wildfires makes service in a manner described in section 88 or 89 of the *Residential Tenancy Act* or section 81 or 82 of the *Manufactured Home Park Tenancy Act* impossible or unreasonable; and
  - the document is served on the person by email in one of the following ways:
    - the document is sent by email to the email address of the person to be served, and the person confirms receipt of the document in a response email, in which case the document is considered to have been received on the date the person confirms receipt;



- the document is sent by email to the email address of the person to be served, and the person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is considered to have been received on the date the person responds to the email; or
- the document is sent by email to the email address that the person to be served routinely uses for correspondence regarding tenancy matters, in which case the document is deemed to have been served five days after it was sent to the person by email.

Dated: July 12, 2017



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K. Elder, Executive Director

## Appendix B: Practice Directive 2017 Wildfire State of Emergency and Director's orders: changing time limits



Residential Tenancy Branch  
Office of Housing and Construction Standards

### RESIDENTIAL TENANCY BRANCH PRACTICE DIRECTIVE 2017-01

#### 2017 Wildfire State of Emergency and Director's orders: changing time limits July 10, 2017

##### Purpose

This Practice Directive deals with circumstances where interface fires threatening lives and property in British Columbia, as described in Ministerial Order No. M245, ("2017 Wildfires") prevent a landlord or tenant from complying with a time limit established under the *Residential Tenancy Act* (RTA) or the *Manufactured Home Park Tenancy Act* (MHPTA) due to the closure of Service BC offices, evacuation orders, suspension of Canada Post mail delivery services or other similar circumstances.

##### Relevant Legislation

Section 66 of the RTA and section 59 of the MHPTA establish the provisions for director's orders on changing time limits.

RTA	<p><b>Director's orders: changing time limits</b></p> <p><b>66</b> (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [<i>starting proceedings</i>] or 81 (4) [<i>decision on application for review</i>].</p> <p>(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) [<i>landlord's notice: non-payment of rent</i>] for a tenant to pay overdue rent only in one of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) the extension is agreed to by the landlord;</li> <li>(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.</li> </ul> <p>(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.</p>
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MHPTA	<p><b>Director's orders: changing time limits</b></p> <p><b>59</b> (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52 (3) [<i>starting proceedings</i>] or 74 (4) [<i>decision on application for review</i>].</p> <p>(2) Despite subsection (1), the director may extend the time limit established by section 39 (4) (a) [<i>landlord's notice: non-payment of rent</i>] for a tenant to pay overdue rent only in one of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) the extension is agreed to by the landlord;</li> <li>(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.</li> </ul> <p>(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.</p>
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### Relevant Residential Tenancy Branch Policy Guideline

Policy Guideline 36: Extending a Time Period sets out the considerations for extending a time period in exceptional circumstances.

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide that an arbitrator may extend or modify a time limit established by these Acts **only in exceptional circumstances**. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

#### Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

### Background and Existing Practice

The Residential Tenancy Branch has not provided any previous policy direction beyond Policy Guideline 36. Arbitrators consider each application for an extension of time on its merits.

### Practice Directive

While an arbitrator may not extend the time limit to apply for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the notice and may not extend the time limit for a tenant to pay overdue rent without the agreement of the landlord or unless the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director, **arbitrators are directed to consider the 2017 Wildfires in exercising discretion when considering requests for director's orders to change time limits from landlord or tenants who:**

- (a) reside or do business as a landlord in the catchment area of a Service BC Office closed due to the 2017 Wildfires; or
- (b) reside or do business as a landlord in an area that was subject to an evacuation order due to the 2017 Wildfires; or
- (c) reside or do business as a landlord in a community where Canada Post suspended mail delivery service due to the 2017 Wildfires; or
- (d) were otherwise unable to make an Application for Dispute Resolution or submit and exchange evidence as required by the RTA or MHPTA and the Dispute Resolution Rules of Procedure due to the 2017 Wildfires.

While Policy Guideline 36: Extending a Time Period requires "persuasive evidence to support the truthfulness of what is said," arbitrators should exercise discretion to ensure landlords and tenants affected by the 2017 Wildfires are not prejudiced.

For example:

1. landlords or tenants who meet the criteria in (a) above must only demonstrate that at the relevant time they resided in, or did business as a landlord in, the catchment area of a Service BC Office closed due to the 2017 Wildfires and that the closure prevented them from complying with the time limit;
2. landlords or tenants who meet the criteria in (b) above must only demonstrate that at the relevant time they resided in, or did business as a landlord in, an area that was subject to an evacuation order due to the 2017 Wildfires and that the evacuation order prevented them from complying with the time limit;
3. landlords or tenants who meet the criteria in (c) above must only demonstrate that at the relevant time they resided in, or did business as a landlord in, an area in which Canada Post suspended mail delivery service due to the 2017 Wildfires and that the service suspension prevented them from complying with the time limit;
4. landlords or tenants who meet the criteria in (d) above must provide evidence to the Residential Tenancy Branch and the other party to show how the 2017 Wildfires prevented them from complying with the time limit for making an Application for Dispute Resolution or submitting and exchanging evidence established by the RTA or MHPTA and the Residential Tenancy Branch Rules of Procedure.

### Exceptional Circumstances

Where the arbitrator decides to use an approach not outlined in this Practice Directive, the arbitrator should explain in the decision the reasons for doing so.

# SUBSIDIES: WHAT TO DO WHEN THEY GET TAKEN AWAY

Kevin Love  
Community Legal Assistance Society  
October 19, 2017



## OVERVIEW

- Who is actually exempt from rent controls?
- Evictions due to subsidy disputes
- Other options for tenants
- What can landlords force tenants to disclose in subsidy applications

## The Problem

- Process for calculating and withdrawing subsidies is often a black box
- (Maybe) No mechanism to review subsidies directly at RTB
- Dispute resolution processes are up to the housing provider. Many don't have one
- Subsidies come from many different places and are administered in many different ways
- Who is responsible? Housing provider? BC Housing? Someone else?

## Who is Exempt?

- Critical to understand difference between being exempt from entire RTA and being exempt from rent controls
- Many (though not all) subsidized housing providers are exempt from rent controls, but still subject to RTA generally

## Section 2 of *Residential Tenancy Regulations*

Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]* if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
  - (i) the government of British Columbia;
  - (ii) the British Columbia Housing Management Commission;
  - (iii) the Canada Mortgage and Housing Corporation;
  - (iv) a municipality;
  - (v) a regional district;
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

## Who is Exempt From Rent Control?

1. Is rent actually related to income?
2. Is housing operated by an organization on the list in 2(a) to (f)?
3. If not, is the housing operated by some other housing society or non-profit municipal housing corporation?
  - a. Is there, or was there ever, an operating agreement with an organization listed in 2(g); and
  - b. Is rent actually related to tenants income?

Not all subsidized housing providers are exempt!

## *Samji v. HFBC Housing Foundation*

- 2012 BCSC 1367
- Not necessary that landlord have operating agreement respecting the actual building the rental unit is in.
- If landlord has multiple building, some subject to operating agreements and some not, all buildings are exempt.

## RTA Still Applies

- Myth that RTB has no jurisdiction at all to deal with subsidies or subsidized housing.
- RTB can still:
  - Review notices to end tenancy
  - Interpret tenancy agreements
  - Make orders that landlord comply with tenancy agreement or the RTA



## Reviewing Notices to End

- Landlords generally use one of three methods to evict:
  - Issue two month notice on basis that tenant ceases to qualify for rental unit;
  - Issue 10 day notice for failing to pay higher rent; or
  - Issue one month notice for breach of material term, generally for failing to fill out income declaration

## Two Month Cease to Qualify

1. Housing must be operated by or on behalf of a public housing body (see Regs, s.3.1 and 2(a) to (g))
2. The tenant must have been required to meet some criteria (income, health, occupants etc) before entering into tenancy
3. The right to evict for ceasing to qualify must be in the tenancy agreement
4. The tenant must actually cease to qualify for the unit, not just the subsidy

## 10 Day Notice

- Is the landlord actually exempt from rent controls?
- If so, does the rent increase comply with the tenancy agreement?

## 10 Day Notice

- Some arbitrators have held that issuing a 10 day after withdrawing subsidy is an impermissible circumvention of the RTA.
- Some arbitrators have held that that there is a burden on landlord to show rent arrears are not artificial.

## Breach of Material Term

- Usual rules about material breach apply
- Term must be so important that the most trivial breach of that term gives the other party the right to end the agreement
- Was there a written warning:
  - Identifying problem
  - Stating that the problem is a breach of a material term
  - Stating that the problem must be fixed by a deadline that is reasonable
  - Stating that tenancy will end if not fixed

## Other Options for Tenants

- Approach landlord to see if situation can be corrected, particularly for failing to provide documentation
- If tenancy agreement does not provide for rent increases, apply for an order that landlord comply with tenancy agreement
- Conceivably judicial review, though unlikely

## What Must A Tenant Disclose?

- S.A. v. Metro Vancouver Housing Corporation, 2017 BCCA 2
- Court held the MVHC can require tenant to disclose discretionary trust and consider it in setting subsidies
- Confirms that decision to give subsidy is highly discretionary

Questions?

### **3. Indigenous Issues**

- **Why Indigenous Specific Cultural Safety? Getting to the Roots of Tolerance (Day 1)**
  - Materials provided in session
- **Gladue, First Nations, and Criminal Justice (Day 1)**
  - Materials provided in session
- **Indigenous Legal Issues (Day 2)**
  - Powerpoint
- **Best Practices for Child Welfare with Aboriginal Families (Day 2)**
  - Powerpoint
- **Client Encounters with Police in Indigenous Communities (Day 3)**
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# Housing and Employment On Reserve

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EMMA RONSLEY

PETER A. ALLARD SCHOOL OF LAW AT UBC

## Types of Housing On Reserve:

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- Certificate of Possession
- Certificate of Occupation
- Custom allotments
- Lease of Band designated lands
- Private tenancy

## Possession of land on reserve: Certificate of Possession ("CP")

Under s. 20(2) of the *Indian Act*, the Minister "may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein."

A person who holds a CP has the right to exclusively possess and use the land. However, the land title remains with the State.

The legal right to possession under s. 20(1) is created by way of Band Council Resolution, approved by the Minister and registered in the Indian Lands Registry.

When issuing individual allotments, the Band must follow the principles of administrative fairness and procedural rules of Band Council Resolutions (*Kamloops Indian Band v. Gottfriedson*, [1982] 1 C.N.L.R. 60) (B.C.S.C.).

A CP holder can:

- Transfer his/her allotment to another band member or to the Band (subject to Minister approval)
- Leave the allotment to another Band member in his/her will (subject to Minister approval)
- Lease the allotment

If a CP holder's Band membership is terminated, the allotment must be transferred to another Band member or to the Band.

## Possession of land on reserve: Certificate of Occupation ("CO")

Under s. 20(4), the Minister may withhold approval of the CP and authorize the Band member to occupy the land temporarily.

Where the Minister withholds approval under s. 20(4), he will issue a Certificate of Occupation which entitles the Band member to occupy the land for 2 years.

- This 2-year term can be extended for a further 2 years
- Once the term expires, the Minister may issue a CP or decline to do so (s. 20(6))
- The Minister can impose conditions (for e.g., build a house) that the person must satisfy before the Minister will approve the CP

## Custom Landholding On Reserve

- More than half of all Bands do not use CPs and most of those that do have less than 5% of their land covered by CPs: only 3% of total reserve acreage is covered by CPs (Brinkhurst & Kessler (2013) "Land Management on First Nations Reserves: Lawful Possession and its Determinants").
- Some bands have opted to create customary allotments
  - Customary allotments are created by way of Band Council Resolution but not approved/registered by the Minister.
  - Customary allotments are not legally enforceable without Minister approval.

## Renting On Reserve

### ***Leases of designated Band lands:***

- Band Councils are authorized to make housing decisions (for e.g., regarding eligibility and assignment of leases) or delegate this authority to a Housing Committee
- Some Bands have a housing policy by which leases are assigned and managed
- Often, the Band's housing policy will create a system in which a person who is dissatisfied by a decision of the Housing Committee can request a reconsideration by the Chief and Council within a prescribed time frame.
- How can you assist someone who wishes to challenge a housing decision made by the Band Council / Housing Committee (e.g., eviction, assignment of a lease to a different Band member)?
  - Find out if the Band has a housing policy
  - Verify that the Band's own policy has been followed
  - If the policy has not been followed, pursue the Band's appeal process if there is one
  - Judicial review (discussed later in the presentation)

### ***Gap in the law: private tenancies on reserve:***

- The Court of Appeal ruled in *Sechelt Indian Band v. British Columbia*, 2013 BCCA 262 that the *Residential Tenancy Act* does not apply to tenancies on reserve unless the landlord is not Aboriginal (in which case, there may be limited jurisdiction for the Residential Tenancy Branch)





## First Nations in BC with operating land codes (cont'd)

First Nation	Individual Agreement & Land Code in Effect
Squiala	July 2008
Tzeachten	August 2008
Matsqui	February 2009
Seabird Island	September 2009
We Wai Kai (Cape Mudge)	December 2009
Leq'a:mel	February 2010
Skawahlook	August 2010
Songhees	October 2011
Sumas	November 2011
Campbell River	January 2013

Version 1.1 (11/15/2016) www.sandridge.ca/eng/32750381039/240716913440

## Housing on Reserve: Common Problems

- Attempting to will a property that is not lawfully possessed (i.e., not CP land)
  - Confusion about whether someone has a rent-to-own arrangement versus a lease
- Dissatisfaction with a Band decision regarding the assignment of a lease after the previous leaseholder dies
- Eviction by the Band
- Private tenancy disputes

## Housing on Reserve: Initial Questions for Advocates

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1. What law applies in the community?
  - *Indian Act* or First Nations Land Code
  - *FHMIRA*
2. What type of housing does the client have?
  - CP (does the Band issue CPs?)
  - CO
  - Lease
  - Custom holding
  - Rent-to-own
3. Does the Band have a housing policy?
  - Band housing policies are often not available to the public. However, Band members are entitled to a copy.
  - Does the policy provide a process for appealing Housing Committee decisions to the Chief and Council? If so, what is the time limit for appealing the decision?
4. Judicial review in Federal Court

## Housing on Reserve: Judicial Review

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- Band Councils are considered to be federal tribunals under the *Federal Courts Act*, R.S.C. 1985, c. F-7
- Band Council decisions are subject to judicial review in Federal Court for administrative fairness (*Vollant v. Sioui*, [2007] 2 C.N.L.R. 375 (F.C.T.D))
- Once a Band Council decision is made, the applicant has 30 days to apply for judicial review

## Encourage CP-holders to make a will

Subject to approval by the Minister (*Indian Act* s.49), a CP holder can will their allotment to another band member.

If there is no will, the CP land passes to the spouse or children according to the intestacy provisions of the *Indian Act* (s.48).

Nieces and nephews cannot inherit CP land on intestacy; if there is no will and the only people entitled to inherit are nieces and nephews, the CP land reverts to the Band (*Indian Act* s. 48(8))

## Aboriginal Employment: What Law Applies?

- First Nations employers can be federally or provincially regulated
- There are differences between federal and provincial employment legislation and so it is important to know which law applies

	Federal	Provincial
Employment rights	<i>Canada Labour Code</i>	<i>BC Employment Standards Act</i>
Human Rights	<i>Canada Human Rights Act</i>  Administered and enforced by the Canadian Human Rights Commission and Tribunal.	<i>BC Human Rights Code</i>  Administered and enforced by the BC Human Rights Tribunal.

## Aboriginal Employment: Jurisdictional Issues

- o The starting presumption is that labour and employment relations falls under **provincial** jurisdiction and are therefore governed by provincial law.
- o However, there can be exceptions in respect of First Nations employers due to the federal government's jurisdiction over "Indians and Lands reserved for the Indians" pursuant to section **91(24)** of the *Constitution*.
- o In order to determine whether a First Nations employer is provincially or federally regulated, the SCC has established a **two-part test** (*Four B Manufacturing v. United Garment Workers* (1979), [1980] 1 S.C.R. 1031 at p. 1045; *NIL/TU, O Child and Family Services v. B.C. Government and Service Employees' Union*, 2010 SCC 45 at para 6)
  - a) The first part is a functional test where the nature, operations and habitual activities of the entity are examined to determine whether it constitutes a **federal undertaking**. Here, the focus is on what the entity *does* and not the community that it serves or operates in (*Nishnawbe-Aski Police Services Board v. PSAC and Attorney General of Ontario*, 2015 FCA 211 at para 69).
  - b) If the first step does not provide a conclusive answer, the decision-maker must proceed to the second-step: Would provincial regulation of the entity's labour relations impair the **"core"** of the federal head of power?
- o These two categories of exceptions tend to be interpreted narrowly; "the presumption of provincial jurisdiction is not lightly displaced" (*Ramkey Communications Inc. v. LIUNA*, Ontario Provincial District Council 2017 CarswellOnt 4568, [2017] O.L.R.B. Rep. 261 at para 150).

## Examples from The Case Law

- o The question of whether an employer is federally or provincially regulated will depend on the specific facts of each case. However, we can look to the case law for some examples:

Federally Regulated Employers	Provincially Regulated Employers
<ul style="list-style-type: none"> <li>• Tribal Council (<i>Nelson v. Lower St'at'imx Tribal Council</i>, [2011] CLAD No 90)</li> <li>• First Nation Band (<i>Canada (Attorney General) v. Munsee-Delaware Nation</i> 2015 FC 366)</li> <li>• Teachers employed by school boards operating on reserve (<i>Tobin v. Aroland First Nations</i>, 2012 HRTO 2360)</li> </ul>	<ul style="list-style-type: none"> <li>• First Nation child and family welfare service agency (<i>NIL/TU, O Child and Family Services Society v. BC Government and Service Employees' Union</i>, 2010 SCC 45)</li> <li>• Addictions treatment centre located on reserve (<i>White Man v. St. Paul Treatment &amp; Training Centre for Alcohol and Drug Abuse</i>, [2012] CLAD No 211)</li> <li>• Bus driver employed in Educational Department of First Nation (<i>Marsden v. Alderville First Nation</i>, 2015 HRTO 812)</li> <li>• Negotiation office of First Nation (<i>Fox Lake Cree Nation v. Denis Anderson</i> 2013 FC 1276)</li> <li>• Nursing services operating on reserve (<i>United Nurses of Alberta (Re)</i>, [2013] 236 CLRB 152)</li> <li>• First Nation police board (<i>Nishnawbe-Aski Police Services Board v. PSAC and Attorney General of Ontario</i>, 2015 FCA 211)</li> </ul>

## What does this mean in practice?

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- The fact that an entity serves an Aboriginal community, is managed by Aboriginal people, or is located on-reserve does not necessarily mean that it will be exempted from provincial jurisdiction.
- The federal exception will likely apply to entities whose function is First Nations governance, management of reserve lands, or Indian status.
- All other types of First Nations-related employers will likely be provincially regulated.

## Practice Tips for Status and On-reserve Clients

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### **Tax exemption & Employment Insurance:**

- If the income that gave rise to the EI benefits was tax-exempt pursuant to s. 87 of the *Indian Act*, the EI will also be tax-exempt.

### **Indian Status where the father is omitted from the birth certificate:**

- If the father is omitted from the birth certificate, he is presumed to be non-status. This can result in a child being registered incorrectly under 6(2) or not at all.
- The father does not need to be added to the birth certificate for the purposes of correcting a child's status.
- INAC requires a Statutory Declaration from the parents affirming the identity of the father and his status.

### **Support from INAC Estates Officers:**

- The Minister can declare a will void for a number of reasons including if it is too vague (*Indian Act* s.46(1))
- Each Band has an INAC Estates Officer assigned to it. The Estates Officer is available by phone and can provide tailored assistance to clients/advocates when making a will.



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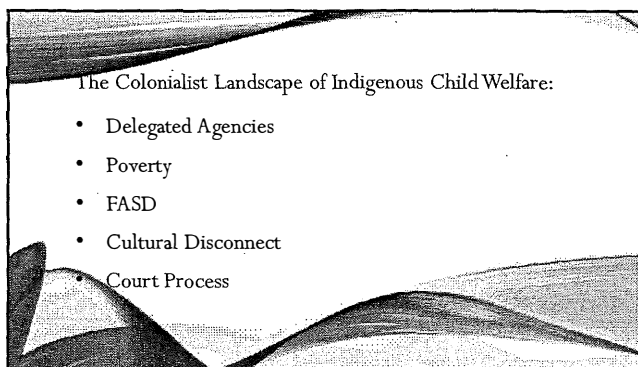
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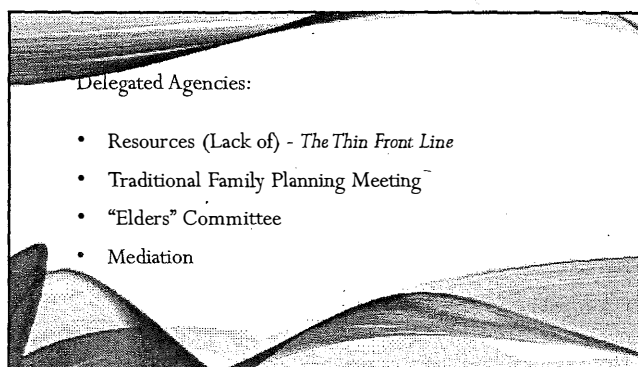
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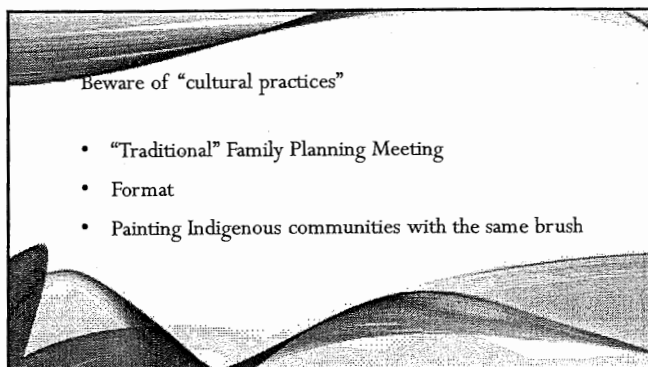
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Beware of "cultural practices"

- "Traditional" Family Planning Meeting
- Format
- Painting Indigenous communities with the same brush

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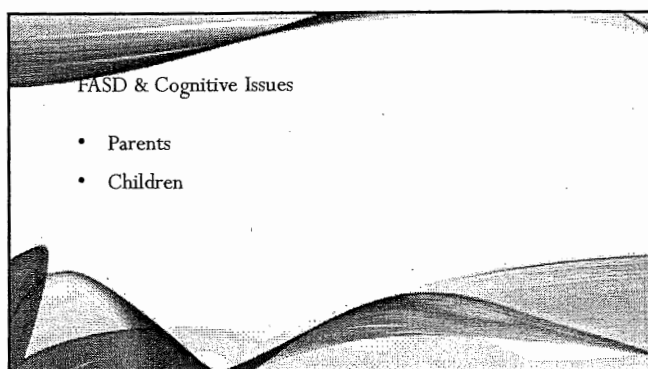
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FASD & Cognitive Issues

- Parents
- Children

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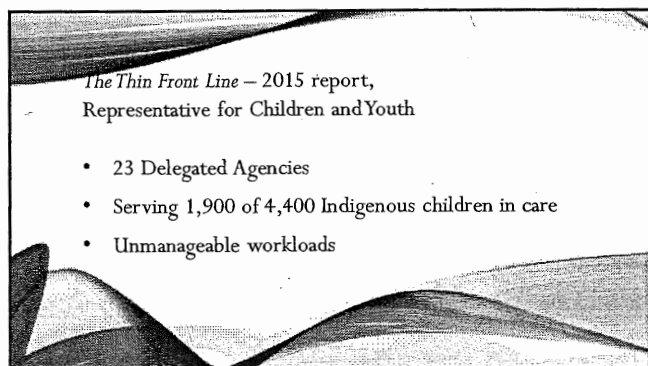
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*The Thin Front Line* – 2015 report,  
Representative for Children and Youth

- 23 Delegated Agencies
- Serving 1,900 of 4,400 Indigenous children in care
- Unmanageable workloads

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Running out of time: the CFCSA Clock

- Interim
- Temporary Custody Order
- Continuing Custody Order
- Presentation hearings
- Protection hearings



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Wrapping Our Ways Around Them<sup>®</sup> - Ardith Walkem

- *The Child, Family, Community Services Act*
- Community involvement
- Preserving the child's Aboriginal identity



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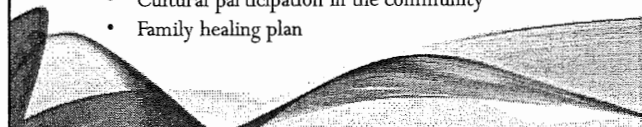
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The Indigenous community

- Think Remedial
- Te Lelum, Sts'ailes First Nation
  - On reserve
  - Cultural participation in the community
  - Family healing plan



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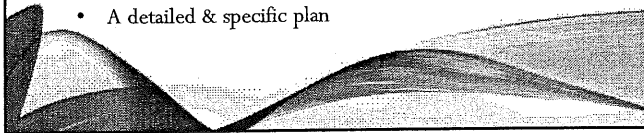
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Maintaining a Child's Indigenous Culture

- Not just a box to check
- Involve the Band
- Avoid "dispensing with service" orders
- A detailed & specific plan



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Cultural plan

- A detailed & specific plan



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Involve the band

- Be the squeaky wheel
- Band representatives



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#### Mediation

- Front-end advocacy
- Indigenous mediators
- File the agreement
- Family Case Conference follow-up

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#### Working with lawyers

- Paperwork, court docs, including criminal matters
- Support person at mediation, TFP
- Support person at the Family Case Conference

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#### Resources

- The Representative for Children & Youth  
<https://www.rcybc.ca/>
- *Wrapping Our Ways Around Them*  
[http://cwrp.ca/sites/default/files/publications/en/wor\\_around\\_bc\\_cfcsa\\_1.pdf](http://cwrp.ca/sites/default/files/publications/en/wor_around_bc_cfcsa_1.pdf)

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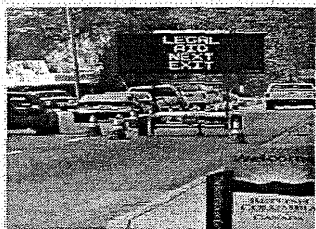
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#### **4. Resources and Services**

- **Consultation on Welfare Fact Sheet (Day 1)**
  - Front pocket of binder or in folders
- **Best Practices for Applying for Legal Aid**
  - Powerpoint
- **NEW Resources and Services (Day 2)**
  - Society for Children and Youth
  - Human Rights Commission
  - Courthouse Libraries BC
  - AskAnAdvocate
  - Peoples Law School
  - Justice Education Society
- **LSS Update on Services, New Initiatives and Resources (Day 3)**
  - Powerpoints

## Working with LSS Intake



October 2017

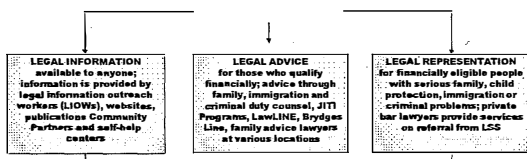
Legal Information Outreach (LIO) and Legal Aid  
Programs, Immigration and Naturalization Service

## Our Clients





## Services Overview

### Legal Aid



## Legal Information

**Legal Information  
Outreach Worker**



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## Legal Advice



**Duty Counsel      Family LawLINE**

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## Applying For Legal Aid

Come into one of our Legal Aid offices, their contact information is available on our website [www.legalaid.bc.ca](http://www.legalaid.bc.ca)



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

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

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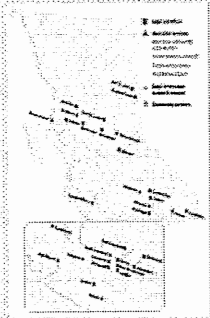
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## Legal Aid Offices

**There are 35 communities in BC where a person can apply for legal aid and get legal information**




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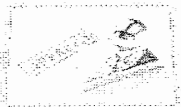
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## Who Qualifies for Legal Aid?

**A client qualifies for legal aid when:**

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




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## What Legal Problems Are Eligible For Coverage?

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




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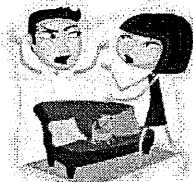
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**Family Law** - Serious family situations regarding guardianship, parenting arrangements or protection orders. The issues need to be addressed immediately to ensure the safety of the children and/or the client.




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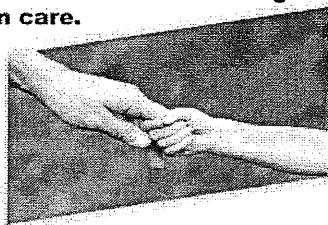
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**Child Removal** - Where the Ministry of Children and Family Development or a Designated Agency has removed a child or there is a risk or threat of a child being removed. This could also include custody and/or access issues arising from a child in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




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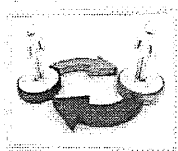
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**Reciprocals** - Where the client's legal matter may be in another province. This generally includes family and child apprehension issues where the other party or the client lives in another province. However, sometimes criminal and immigration cases have gone through the reciprocals department.




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




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## Financial Eligibility Representation Income Chart

Household Size	Monthly Net Income
1	\$1,550
2	\$2,160
3	\$2,780
4	\$3,400
5	\$4,020
6	\$4,640
7 or more	\$5,250




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## Financial Eligibility LEGAL ADVICE GUIDELINES

Household Size	Monthly Net Income
1 - 4	\$3,400
5	\$4,030
6	\$4,670
7 or more	\$5,280




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## Financial Eligibility

### Personal Property (All case types)

#### Household Size      Exemption

1	\$2,000
2	\$4,000
3	\$4,500
4	\$5,000
5	\$5,500
6 or more	\$6,000




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## What if your client doesn't qualify for legal aid representation?

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Client name:  
Client birthdate:  
LSD client no.      LSD case no.  
Initial legal assistant's initials:      LSD office:  
Date:      Fax no.

#### Legal Aid Representation Services — Refused

The Legal Services Society (LSS) cannot provide a lawyer for everyone. We are refusing your application because (see the reason listed below):

- ☐ You do not qualify financially.  
☐ You did not provide enough information about your income and assets.  
☐ Your situation does not qualify.  
☐ Your situation does not qualify under exception review.  
☐ Legal representation is not available for your issue. LSS cannot review this refusal.

#### After you receive this form:

- If you have new information regarding your case, please contact your local office to re-apply.  
 • You may ask for a review of this refusal unless legal representation is not available for your issue.  
 • To ask for a review, follow these steps:

- Send us a letter asking for a review within 30 days from the date of refusal.  
 • In the letter, explain as clearly as possible why you do not agree with our decision.  
 • Put your case number in the letter.  
 • Attach a copy of this form and any related documents to the letter.  
 • Mail or fax your letter to:

Provincial Supervisor, Legal Aid Applications  
 #425 — 510 Burrard Street  
 Vancouver, BC  
 V5C 3A8

Fax: 604-682-0787

The decision may take up to three weeks. We will mail the decision to you.

Note: Do not send original documents; they will not be returned to you.

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## Requesting A Review of A Denial

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

- > Request must be in writing
- > Needs to set out why they disagree with the decision and explain why they believe they should be given a lawyer
- > Include all supporting documents

Reviews must be submitted within 30 days of the decision to:

Provincial Supervisor  
Vancouver Regional Centre  
400 - 510 Burrard Street  
Vancouver, BC V6C 3A8  
Email: provincialsupervisors@lss.bc.ca  
Fax: 604-682-0787




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## Working Together

You can help your clients:

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




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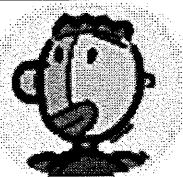
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## Presenters:

Sherilyn  
Provincial Supervisor, Legal Aid Applications  
Phone: 604-601-6093  
Fax: 604-682-0787  
E-Mail: sherilyn.vancouver@lss.bc.ca



Branka Matijasac  
Manager, Intake and Referral Services  
Phone: 604-601-6209  
E-Mail: branka.matijasac@lss.bc.ca

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## **Society for Children and Youth of BC**

### **Child and Youth Legal Centre Opening soon**

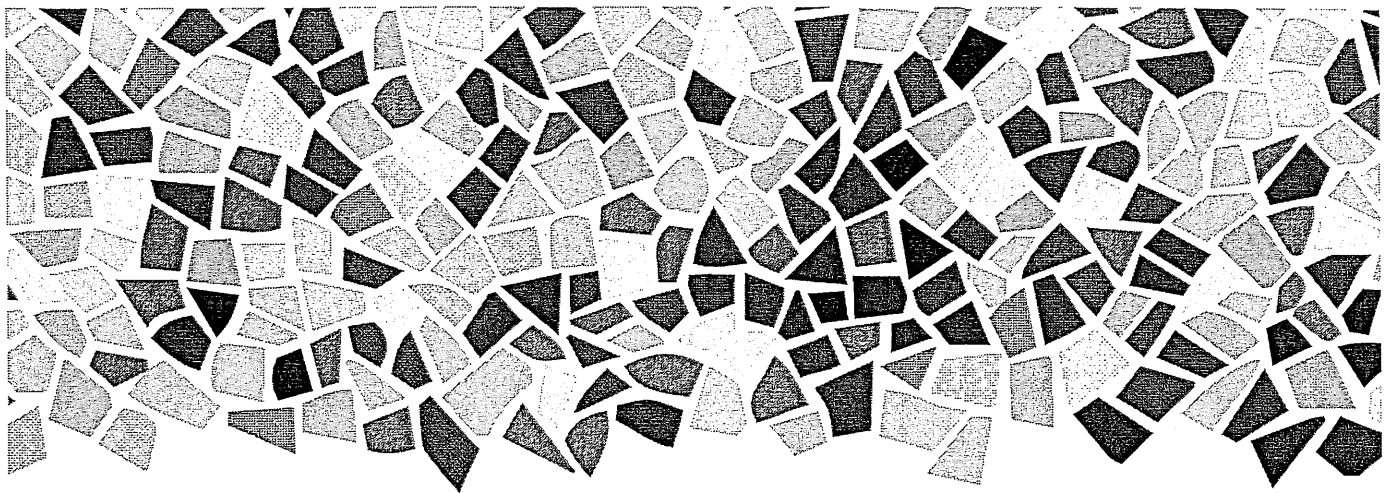
Child and Youth Lawyers: Donna Maser and Suzette Narbonne

We will be providing access to legal services for children and youth in BC relating to family matters, child protection, and other child and youth law matters.

We will focus on addressing the needs of vulnerable young people in BC including street involved, LGBTQ, and Indigenous children and youth.

Information on the program including eligibility criteria will be posted on our website soon. [www.scyofbc.org](http://www.scyofbc.org)

For more information, please contact us at [info@scyofbc.org](mailto:info@scyofbc.org).



# **JOIN THE DISCUSSION ON HUMAN RIGHTS IN B.C.**

The Government of British Columbia is re-establishing the B.C. Human Rights Commission. Your stories, ideas and concerns can help shape the direction and priorities of the new commission. Join us online and talk to Parliamentary Secretary Ravi Kahlon about what matters to you.

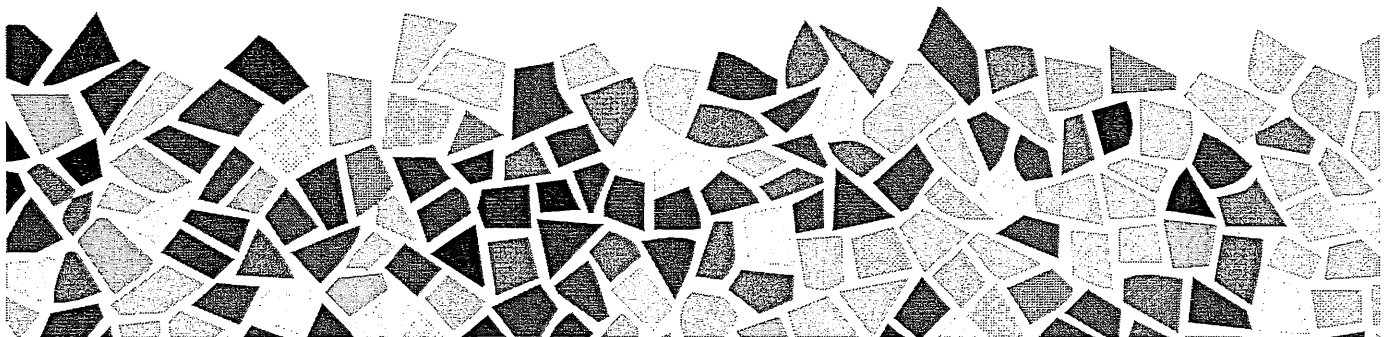
Join the public online discussion before November 17 at  
[engage.gov.bc.ca/bchumanrights](https://engage.gov.bc.ca/bchumanrights)

## **CONTRIBUTE TO A STRONG FUTURE FOR HUMAN RIGHTS IN B.C.**

**#BCHUMANRIGHTS**



**BRITISH  
COLUMBIA**



## ***BC Family Unbundled Legal Services Project***

### **What is "unbundling"?**

Legal services are unbundled when a lawyer completes specific tasks, but the client takes ultimate responsibility for handling the rest of their legal problem.

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### **What are the benefits?**

Unbundling allows clients the opportunity to retain control of their case, pay only for the legal services that they can afford, and receive legal advice to make informed decisions about their case.

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### **Who can benefit?**

Unbundled legal services are not suitable for all clients.

Unbundling means breaking up a complex matter into a list of tasks or activities and allocating them between the client and their unbundled lawyer. The client is essentially self-represented, and responsible for those tasks allocated to them.

Clients will need to accurately assess their own strengths, weaknesses and resources as well as the nature of their legal problem to determine if unbundling is appropriate for them. Some of the issues a client should consider are listed on the BC Family Unbundling Roster Website: [unbundling.ca](http://unbundling.ca)

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### **What kind of help can a client get?**

An unbundled lawyer may:

- Provide legal advice before, during or after court or mediation
- Draft court documents or other materials
- Provide independent legal advice on an agreement

## ***Get Help in the Community***

**Get information.**  
**[clicklaw.bc.ca](http://clicklaw.bc.ca)**

**Find plain language legal resources** provided by trusted contributor organizations in BC – browse with ease on your mobile phone, tablet, or computer.

**Find commonly asked questions on:** family law, wills, employment, housing, seniors issues, and more.

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**Talk to someone.**  
**[clicklaw.bc.ca/helpmap](http://clicklaw.bc.ca/helpmap)**

**Find free, nominal-fee or sliding scale community help near you:** filling out court forms (Search for: "court forms"), legal advice clinics, mediation programs, help lines, referral services, counselling, government services, etc.

Search by **area of law** and/or your **city/town**.  
Updated monthly.

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**More information.**  
**[wiki.clicklaw.bc.ca](http://wiki.clicklaw.bc.ca)**

**Plain language "Wikipedia-style" legal info** in BC.

One popular Wikibook is **JP Boyd on Family Law**, a practical manual of BC family law. Includes a "How Do I?" section with help on common processes & procedures, and court forms with completed examples.

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**Need more help?**  
**[courthouselibrary.ca](http://courthouselibrary.ca)**

**Talk to a librarian** at a Courthouse Library location near you, in-person, over the phone (1.800.665.2570) or by email.

They can help you get started in the right direction, with finding: information, guides for court forms, precedents, and more.

# Clicklaw



Have a legal issue or problem? Want to learn about your legal rights in BC?

Start at [clicklaw.bc.ca](http://clicklaw.bc.ca) for:

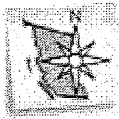
- (1) a searchable database of legal education and information resources;
- (2) a HelpMap to find different types of legal help services near you; and
- (3) Common Questions that direct you to good starting resources.

The collage shows the Clicklaw website interface with several callouts explaining key features:

- 1 In Solve Problems**, find understandable information on your legal rights and options. This points to the 'Solve Problems' section on the website, which lists categories like 'Your money', 'Your safety', 'Your communities', and 'Your legal system'.
- 2 Find resources and services that are in languages other than English**. This points to the 'HelpMap' section, which allows users to find legal help services near them.
- 3 On HelpMap** search for someone in your community who can help with legal problems. This points to the 'HelpMap' search functionality.
- 4 Choose from over 150 common questions**, which offer starting points for common legal problems. This points to the 'Common questions' section, which lists popular and new or updated questions.
- 5 See what's new on the Clicklaw blog or find us on Facebook or Twitter**. This points to the 'Tweets' section at the bottom of the website screenshot.

On the right side of the collage, there is a screenshot of the Clicklaw mobile app, showing the same 'Welcome to Clicklaw' page with a search bar and navigation links.





## HelpMap

Find someone in your community who can help with legal problems.

## Find legal help.

Use the [Clicklaw HelpMap](#) to find people near you who can help. Includes **free and subsidized** services.

*For example: legal advice clinics, court form clinics, Justice Access Centres, Family Justice Centres, information programs, counselling, government services.*

1

Search by **keyword** and/or **city/town**

Or browse by topic

Search the HelpMap for law related help with a **Keyword OR Location**

Keyword

or

Location

Go

Campbell River  
Chilliwack  
Clinton

### Refine your search results

#### Topic

clear selected

- ☐ Aboriginal (13)
- ☐ Abuse & family violence (27)
- ☐ Accidents & injuries (14)
- ☐ Alternatives to court (24)

2

**[optional]**  
Refine your search by **topic, location, language, and more**

- ☐ Debt (25)
- ☐ Disabilities (8)
- ☐ Employment (28)
- ☐ Environment (5)
- ☒ Family law (53)
- ☐ Gay, lesbian, trans & bisexuals (2)
- ☐ Health (17)
- ☐ Housing, tenancy & neighbours (33)
- ☐ Immigration & refugees (10)

### Your search results

Showing 1-5 of 63 results

Sort by: relevance

#### Lawyer Referral Service

Lawyer Referral Service is a program that connects you with the right lawyer. Lawyers who participate in the program offer an initial consultation of up to 30 ...

From The Canadian Bar Association, BC Branch (CBA BC)

Phone/Online only (serving all of BC)

604-687-3221  
1-800-663-1919

[Go To Website](#)

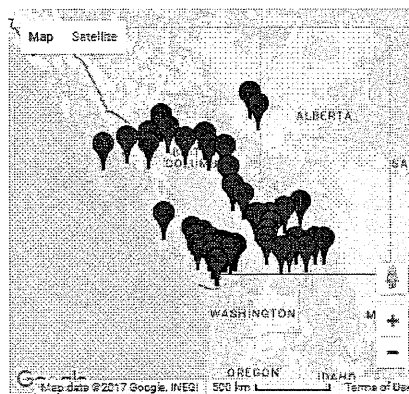
#### Legal Aid Intake Services

The Legal Services Society (LSS) provides intake at more than 50 legal aid office and courthouse locations across BC. To qualify for a legal aid lawyer, ...

From Legal Services Society

Abbotsford Courthouse  
32203 South Fraser Way, Abbotsford, BC, V2T 1W6

[Abbotsford Courthouse](#)



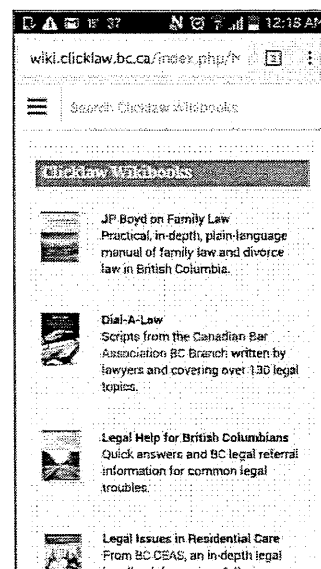
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Click on a service name to see more details

## Clicklaw Wikibooks: [wiki.clicklaw.bc.ca](http://wiki.clicklaw.bc.ca) →

A **wiki** of legal information for people in BC.

- Clicklaw Wikibooks can be read online, downloaded as a PDF or eBook, or ordered in print version.
- Learn about your rights** as a renter, paying taxes in BC, writing a will, and much more.
- The Wikibooks are contributed to by over 50 lawyers and other legal professionals.



## Welcome to Ask an Advocate Presentation



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## Introduction

Tatiana Belyaeva — Project Coordinator



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## Ask an Advocate Project Objective

*Increase community capacity and  
awareness to address homelessness*



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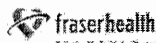

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## Ask An Advocate Project

**Phase 1 & 2 – website development**  
Launched in July 2016

Funded by:

**Ask An Advocate**  
Information, Resources, Help & Support

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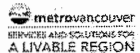
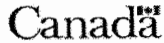
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## Ask an Advocate project

**Phase 3 – support / training to service providers**  
Project Timeline - October 2016 to March 2019

Funded by:

**Housing Partnering Strategy (HPS)**

**Ask An Advocate**  
Information, Resources, Help & Support

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## Project Objective

*Increase community capacity and awareness to address homelessness*

- Coordinate and provide access to income supports and tenancy advice to service providers working with individuals who are homeless or at risk of homelessness.
- Provide a regional network for organizations and service providers, offering information, resources and training.

**Ask An Advocate**  
Information, Resources, Help & Support

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## Benefits

- **Accessibility** - access information, anytime, anywhere, via computer
- **Alleviates demand** on service
- **Increases capacity** across the region we serve
- **Promotes self-advocacy** amongst our clients
- **Supports Service Providers** in helping clients



**Ask An Advocate**  
Information, Resources, Help & Contacts

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## Areas of focus

income assistance 	disability 
tenancy & housing 	other income support 



**Ask An Advocate**  
Information, Resources, Help & Contacts

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## Ask an Advocate website





**Ask An Advocate**  
Information, Resources, Help & Contacts

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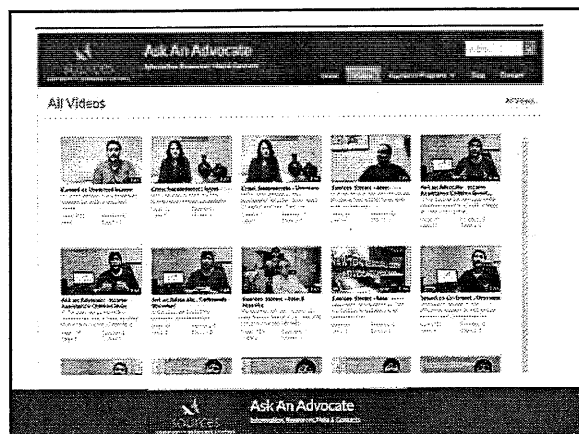
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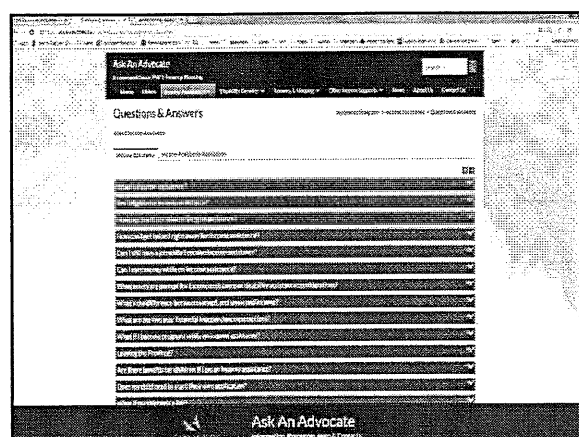
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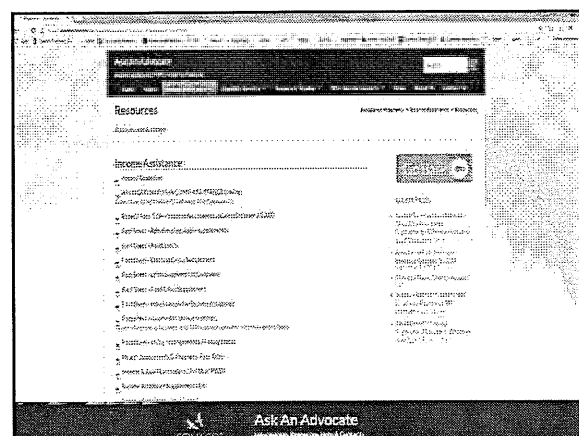
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
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### Scenario 1

Julie is 23, on income assistance and is 6 months pregnant. She is on her own with no partner for support and is worried about how she will make ends meet.

As a requirement for receiving income assistance, she has been looking for work and attending workshops at the local WorkBC Employment Centre. Now that she is pregnant, she wonders what her options are, whether she can get more money and if so, how much. She is also wondering about if she is still supposed to look for work after the baby is born.

**ASK AN ADVOCATE**  
Information, Resources, Help & Contacts

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### Scenario 2

John is 49 and became disabled in 2015 as a result of a car accident. Recently John was approved for Canada Pension Plan Disability, and he is receiving \$800 per month. He is also significantly restricted in his daily living activities, receiving ongoing help from his adult son who does the cooking, grocery shopping and the housecleaning. The son also provides emotional support to his Dad who is experiencing anxiety and depression. Currently he has no medical / prescription coverage.

What are John's options for receiving additional benefits?

**ASK AN ADVOCATE**  
Information, Resources, Help & Contacts

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### Scenario 3

Shelley is a single mum with a 2 year old son living in Surrey. She has MS and is receiving PWD benefits. She has recently received an eviction notice from her landlord saying that she has to move out as he wants the basement suite back for family reasons. After looking at local rent prices, Shelley decides to move back to Kamloops where rent for a similar suite is \$150 cheaper and her parents also live nearby. Although she will be able to save money on rent each month, she does not have the money to cover the cost of moving, what can she do?

**ASK AN ADVOCATE**  
Information, Resources, Help & Contacts

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**Ask an Advocate – next stage**

- Service Provider membership
- In person and online Training & Consultation for Service Providers
- On-line Chat Feature (April 2018)

**Ask An Advocate**  
Information, Resources, Help & Contact

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**Online Training (April 2018)**

Training Materials      Members Area > Training Materials

**Contents**

1. Service Providers
2. Service Providers' Families
3. Provider's Family Support
4. CDDA
5. Service With Disability
6. Service Providers' Family Support

**Ask An Advocate**  
Information, Resources, Help & Contact

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**Income Assistance**

**Module 1: Overview**

- Unit 1: Overview of Social Development and Service Regulation
- Unit 2: Income Assistance Program
- Unit 3: QCL

**Module 2: Eligibility for Income Assistance**

- Unit 1: Eligibility
- Unit 2: 16-Week Continuous Eligibility
- Unit 3: 2-Year Independence Test
- Unit 4: Return to Work
- Unit 5: QCL

**Module 3: How To Apply for IA**

- Unit 1: Applying for IA

**Module 4: Employment Plans and Return to Work**

- Unit 1: Employment Plan
- Unit 2: Overview of Return to Work
- Unit 3: Production of Receipts
- Unit 4: QCL

**Module 5: Living Arrangements**

**Ask An Advocate**  
Information, Resources, Help & Contact

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**Questions?**



 **Ask An Advocate**  
Information, Resources, Help & Contacts

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**Interested in training?**

income assistance 	disability 
tenancy & housing 	other income support 

**Contact:**  
Tatiana Belyaeva  
Project Coordinator – Ask an Advocate  
[tbelyaeva@sourcesbc.ca](mailto:tbelyaeva@sourcesbc.ca)  
  
[www.askanadvocate.ca](http://www.askanadvocate.ca)

 **Ask An Advocate**  
Information, Resources, Help & Contacts

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**Thank you**

 **Ask An Advocate**  
Information, Resources, Help & Contacts

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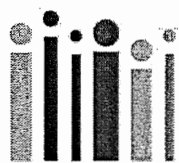
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People's  
Law  
School

# People's Law School Update

Helping people take action  
on everyday legal problems

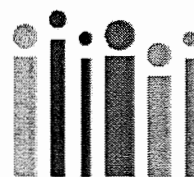
LSS Community Partners, Law Foundation Legal  
Advocates  
October 17-18, 2017



Patricia Byrne  
People's Law School

## Who we are

- A non-profit serving British Columbia
- We help people "work out life's legal problems"
- We provide plain language information and education on the law
- We help people help themselves



People's  
Law  
School

Work out life's legal problems

## Information and education channels

- Print: 22 individual titles
- Classes: in-person, throughout BC
- Schools: Justice Theatre
- Information and referrals: in-person, phone, Q&A through website
- Website



## New website: Helping people take action on everyday legal problems

- **User-centered**  
In language that is understandable
- **Engaging**  
Featuring interactivity and user stories
- **Practical**  
Steps & tools people can use to take action
- **Authoritative**  
Connecting people with legal expertise



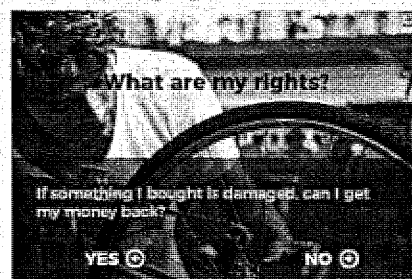
## Now available at peopleslawschool.ca

- **User-centered**  
Highlighting everyday problems in gap areas
- **Engaging**  
'Test your knowledge' quizzes & user stories
- **Practical**  
Template letters and a 'document builder'
- **Authoritative**  
Enabling people to 'Ask-a-Question'

### If There Is a Problem with a Purchase

© 2016-2017, The Government of British Columbia. All rights reserved. | Revised May 2017

Test your knowledge: If there is a problem with a purchase



If something's gone wrong with an item you've bought, you may be entitled to a refund, repair or replacement. Learn about your rights and options if there's a problem with a purchase.

### Understand your legal rights

#### Your options if the other party is in breach of contract



*"I bought a bicycle from my local bike shop. On my first long distance ride, I broke a spoke. It gave me second thoughts about the bike. I asked the shop if they would return it for a refund. The shop said no. But they did fix the spoke at no cost. In other words, they wouldn't let me cancel the contract, but they did perform the contract by replacing the spoke."*

- Harry, Delta

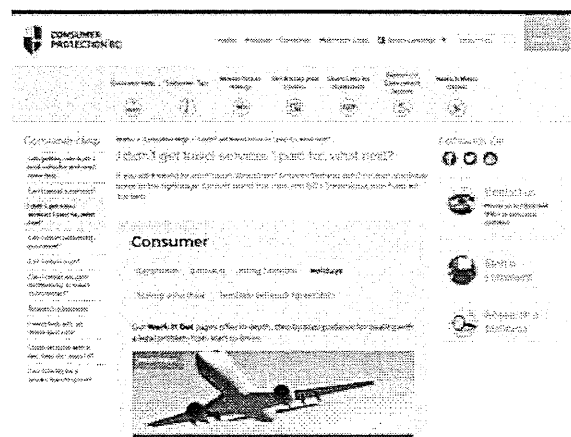
When you make a purchase, you are making a contract. As parties to the contract, you and the seller have certain legal rights and obligations. If a party does not do what they said they would under a contract, they are in breach of contract.

The law offers three different solutions when a contract has been breached.

## Coming this fall: Embed widget

Enables other organizations to embed content from People's Law School on **their website**

- **You get free content**  
You get plain language, user-oriented content on the topics of your choosing
- **Updated regularly**  
Updates automatically flow through to your site
- **Easy to set up**  
We help you embed the content; it takes only minutes



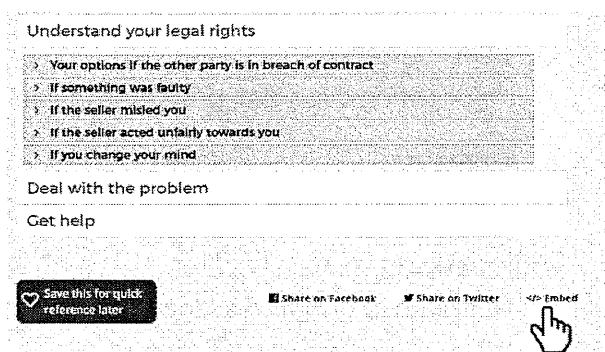
## Coming this fall: Embed widget

### Content now available

- Consumer issues
- Wills & estates

### Coming in months ahead

- Money & debt
- Work
- Accidents & injuries
- Neighbours



To participate as a test site to embed content,  
contact [pbyrne@peopleslawschool.ca](mailto:pbyrne@peopleslawschool.ca)

Thank you to our funders and supporters



Building from commitment, the power is a word.



**Canada**



Department of Justice  
Canada

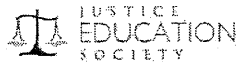
Ministère de la Justice  
Canada






JUSTICE  
EDUCATION  
SOCIETY

## Improving the legal capability of British Columbians



How does JES  
help people  
with legal issues?







JUSTICE  
EDUCATION  
SOCIETY

# 1-in-6 British Columbians use JES web resources

## 2016-17



### 768,000 Visitors / 2 Million Pages





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SOCIETY

## New website launched in May 2016

JES BCJES INTERNATIONALContact Us



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HomeLegal HelpLearn About LawProgramsAbout Us

### Everyday issues can become legal problems - we can help.

Justice Education Society improves the legal capability of individuals and builds the capacity of justice systems.

Family

Working

Housing

Dispute

Legal Help

Chat Live & Get Legal Help  
Mon - Fri 11am - 2pm PST

Ask JES  
Get legal help

Rights

Wills & Estates

Driving

Consumers & Debt

Language & Legal System



With your support, we can help introduce  
JES courts to 20,000 students next year.

Donate Now

2

Legal Help 	Family 	Working 	Housing 	Crime 
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## 150+ Legal Help Guides

Asistencia de Discapacidad 

**¿Qué es la asistencia discapacidad?**

La discapacidad es la asistencia para las personas que - a través de la discapacidad - no pueden trabajar o que tienen dificultades para trabajar a tiempo completo. El gobierno ayuda a estas personas a través de la ayuda financiera, programas de formación y educación. Si usted tiene discapacidad, usted puede calificar para personas con discapacidad los beneficios (PVID).



## 90+ Legal Help Videos

When You Can't Pay Your Debts




00:54 100% HD



## 100+ Languages



Wills & Estates 	Driving 	Consumers & Debt 	Lawsuits & Legal System 	Rights 
--	--	---	---	---

Legal Help 	Family 	Working 	Housing 	Crime 
---	---	--	---	--

# JES answers legal questions



**Weekdays: 11am to 2pm**

**Toll Free: 1-855-875-8867**

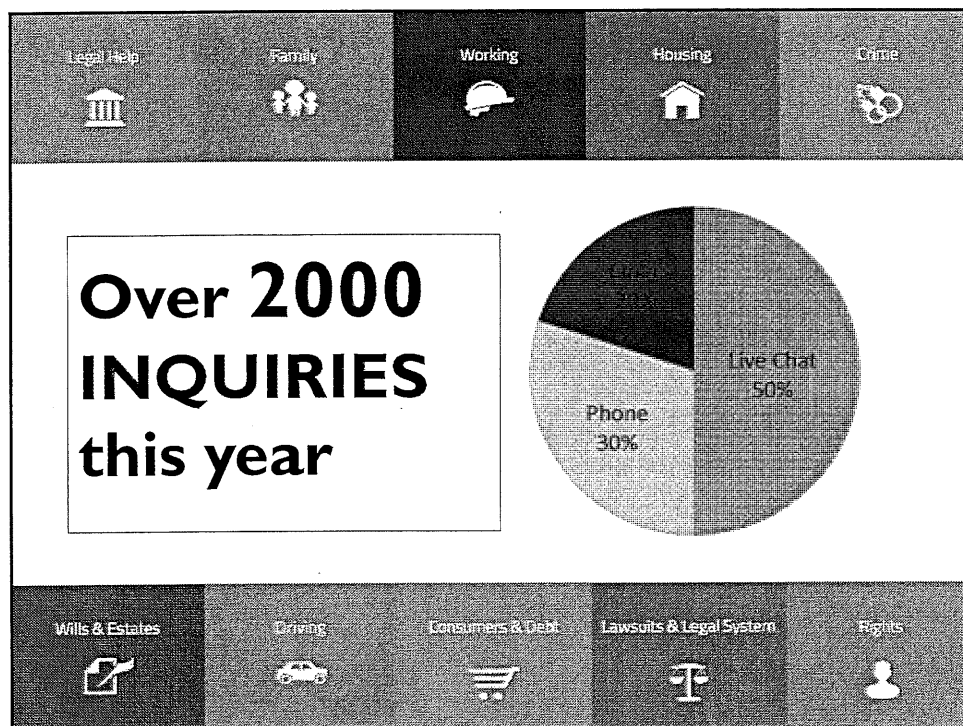
**Chat live @ JusticeEducation.ca**



## Ask JES

Wills & Estates 	Driving 	Consumers & Debt 	Lawsuits & Legal System 	Rights 
--	--	---	---	---





JUSTICE EDUCATION SOCIETY

Ask JES is also available on these sites...

**Legal Rights FOR YOUTH**

Need Legal Help?

**Ask JES**

LIVE Mon - Fri 11am - 2pm  
Call Free: 1-855-875-8867

EMAIL NOW

Age-Based Legal Rights

Family Break-up

Work

Driving

Medical Rights

**Renting It Right** Course Outline Resources Log in

**Part 1 FINDING A HOME** Part 2 REPAIRS AND SERVICES Part 3 GOING TO COURT

Home » 3.1 Introduction

# Section 3

## Repairs & Services

prev **3.1 Introduction** next

Section 3 - Repairs and Services

**Need Legal Help?**

Ask **JES**

LIVE Mon - Fri 11am - 2pm  
Call Free: 1-855-875-8867

**3.0 Repairs and Services**

- 3.1 Introduction**
- 3.2 Standard Repairs
- 3.3 ACTIVITY: Repairs
- 3.4 Emergency Repairs
- 3.5 ACTIVITY: Emergency Repairs
- 3.6 Essential Services
- 3.7 Non-Essential Services

**How to Separate** Resources Get Legal Help Search JUSTICE EDUCATION SOCIETY

**Part 1: Working it Out**

- 1. Dating Started
- 2. Key Issues
- 3. Preparing Yourself
- 4. Getting Help
- 5. Reaching Agreement

**Part 2: Going to Court**

- 6. Court
- 7. Building your case
- 8. Court Orders
- 9. Court Process
- 10. Preparing for Court
- 11. Orders and Agreements

**Select Language**

## Help for separating couples in BC

**About this course**

- How to Separate is an online course that helps people in BC move through separation or divorce.
- Access any part of the course to address your specific needs.
- Part I: Learn about key issues, key decisions, who can help and getting to agreement.
- Part II: Prepare to go to court, build your case and prepare for trial.

**Who this course is for**

- This course will help BC spouses who are going through the process of separation or divorce.
- It is for those who can work it all out on their own, as well as those who need the court to make family decisions.
- If there is a threat of violence, it is important to address safety issues first, before going through the course content. [Learn more](#)


Home Getting Started **Court Forms** Court Processes Court Decisions Court Locations FAQ

## Small Claims BC Online Help Guide

Visit our other websites: Select one...

**Court Forms: Notice of Claim** **Court Forms: Reply to a Claim**


### Court Forms

Call Free: 1-855-875-8867  [EMAIL NOW](#) 

In order to move your case forward in Small Claims Court, you will need to use standard court forms. There are fees associated with filing court forms and these are listed in Schedule A of Small Claims Court Rules.

The list below provides links to the forms you may use in your small claims case. To get help to complete the forms, use the Filing Assistant or see the Small Claims Procedural Guides. There are two types of forms available: PDF forms and Filing Assistant forms. The Small Claims Court Filing Assistant lets you complete forms online and provides helpful information for each of the required entries.

**Court Forms Video Tutorial**  
Learn how to file using the online filing assistant.  
[PLAY VIDEO](#)



## Supreme Court BC Online Help Guide

Visit our other websites: Select one...

Home Introduction **Civil** Family Criminal Glossary

### Family Law

Call Free: 1-855-875-8867  [EMAIL NOW](#) 

**Family Resources**

[Court Forms](#) | [Court Rules](#) | [Court Fees](#)

The Justice Education Society, Legal Services Society, the BC Ministry of Justice and other agencies have published a range of information to help couples deal with family law issues.

Select the family matter that best applies to your situation.

**Divorce & Separation**  
Discover resources and information about where you can go to get help with your divorce or separation – including information on the new Family Law Act.

**Parenting After Separation**  
Learn about workshops and resources that help parents make decisions that are in the best interests of their children.


**Divorce Cases**



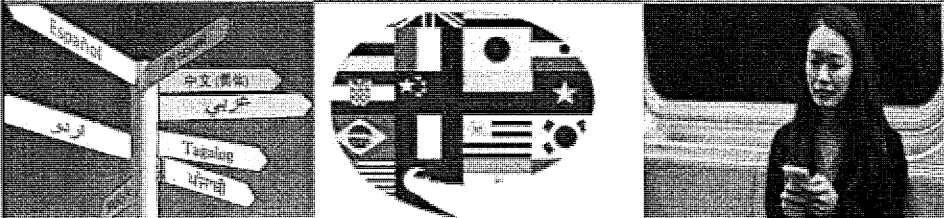
In BC, both the Supreme Court and the Provincial Court hear family law cases. The Supreme Court hears cases involving divorce, adoption, and the division of family property. It also hears cases involving parenting arrangements resulting from a separation.


Child protection matters must be heard in Provincial Court. If a case involves guardianship, parenting time, or child support, these matters can be heard in either court.

If you and your spouse agree on issues relating to the



 JUSTICE EDUCATION SOCIETY

# What about multilingual Legal Help?



 JUSTICE EDUCATION SOCIETY

## Court Information Program for Immigrants

**CONTACT US**  
604-760-5772


**We provide free information and referrals to new immigrants and refugees who are appearing in court.**


We provide services in English, Chinese, Vietnamese, Punjabi, and Hindi to help new immigrants understand BC court processes.


Services are provided in person, by telephone or by email. Clients can be new immigrants or refugees who will be appearing in court as an accused, victim, witness or party in a civil suit.

**Our multilingual court workers can:**

- Explain court processes for criminal, family, youth and civil trials
- Explain court documents and legal terms
- Show clients the courtroom
- Describe the roles of court personnel
- Provide referrals to organizations and publications that may help
- Lead educational workshops for community groups

Legal Help Guides
100+ Languages





**Working**

23 Info Sheets / 9 Videos +

Getting Hired
Working in BC
Termination
Assistance Programs
Young Workers

**Getting Hired**

- Legally Allowed to Work
- Employment Basics
- Employment Contracts

**Working in BC**

- Employment Basics
- Five Ways to Protect Yourself As a Worker
- Getting Paid
- Complaints against an Employer
- Discrimination in the Workplace
- Foreign Workers and Domestic Workers
- Pregnant? You have rights

**Termination**


- Employment Termination
- If You're Fired – Wrongful Dismissal

**Young Workers**

- Introduction
- When You Can Work
- Applying for Work
- Employment Basics for Youth
- Safety at Work
- Leaving Your Job

**Assistance Programs**

- Workers' Compensation
- Applying for Employment Insurance Benefits
- Employment Insurance
- Social Assistance
- Disability Assistance
- Income Assistance for Youth


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**Coming soon...**

**Ask JES**

**Multilingual Legal Help**

- Digital translation
- Referral to CIPI staff

hello  
bonjour  
guten tag  
hola  
bon giorno  
yia sou  
ni hao  
namaste  
zdravstvuite  
dia duit  
dobry rano  
shalom  
hej



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## **Improving the legal capability of British Columbians**

Need Legal Help? Ask JES

Call free: 1-855-875-8867 or 604-660-9870 | [www.JusticeEducation.ca](http://www.JusticeEducation.ca)

## *LSS Update on Services, New Initiatives and Resources*



*Provincial Advocates Conference*  
Presentation By:

*October 17 - 19, 2017*  
*Susanna Hughes*  
*Coordinator, Family Law Services*  
*Legal Services Society*

- \* British Columbia government gave LSS funding of \$2 million/year for 3 years for new initiatives
- \* 5 Pilot Projects ran from April 1, 2014 to March 31, 2017
- \* Two independent evaluations of each pilot project provided information to government for consideration of continuation/expansion of these projects

## 5 PILOT PROJECTS

1. Expanded Criminal Duty Counsel – Port Coquitlam
2. Expanded Family Duty Counsel - Victoria
3. Family LawLINE – province-wide
4. Mediation Referral – province-wide
5. Parents Legal Centre – Vancouver

## Expanded Criminal Duty Counsel (EXP CDC)

### *Available in Port Coquitlam*

- \* *Client must have a Port Coquitlam matter & contact CDC there*
- \* *Out of custody duty counsel*
- \* *Goal is to get clients connected with one lawyer early in their court process so they get an early resolution for less complex matters*



## How is Expanded CDC different?

- \* Continued service from the same lawyer prior to fixing a trial date
- \* In addition to assistance on court remand days, clients can also make appointments to discuss and prepare for their case with the CDC lawyer on non-remand days
- \* Number of court appearances have been reduced by approximately 50% – from 7.4 to 3.8 appearances/client from first appearance to resolution
- \* Length of time to reach resolution is being reduced from an average of 197 days to 56 days from date of first appearance

## Family Advice Services

- \* Family Duty Counsel
- \* Family LawLINE

## Family Advice Services The five W's

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

## Who are the lawyers?

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

## Who are the clients?

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

## Family Advice Services Financial Eligibility Test

### Do I qualify financially for legal advice?

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

#### Family advice services

Family legal advice services have a financial eligibility test.

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

Household size* <small>(number of family members)</small>	Net monthly income** <small>(income after deductions)</small>
1 - 4	\$3,400
5	\$4,030
6	\$4,670
7 or more	\$5,280

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

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

## Who are the clients (continued)?

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

## What do the lawyers help with?

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

## What does FDC help with (continued)?

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

## What FDC cannot do

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

## Why would you send a client to Family Duty Counsel?

### Examples:

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

## Case conferences

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

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

## Where is FDC?

- \* At most Provincial Court locations on family list days
- \* At larger locations, also available for advice on some non-list days
- \* Full-time lead lawyers in Kelowna, New Westminster, Surrey, Vancouver and Victoria
- \* Part-time lead lawyers in Fraser Valley, Kamloops, Nanaimo, Port Coquitlam and Prince George
- \* Check LSS website for locations and hours

## Expanded Family Duty Counsel (EXP FDC)

***Available at the Victoria Justice Access Centre***

- \* *Clients receive up to 6 hours of service*
- \* *Operated by a team of two lead lawyers, two administrative assistants, plus a roster of family duty counsel lawyers*
- \* *Client files are maintained to allow for continuity of service*
- \* *Clients can book follow-up appointments with the same lawyer*
- \* *Provides legal coaching to help people who are self-representing*

## Expanded Family Duty Counsel (EXP FDC) continued

- \* Referrals to other services, including online resources and other public agencies
- \* Other services are co-housed in the Justice Access Centre which allows for coordination of referral services and additional support for clients
- \* Interpreters provided for office appointments if pre-arranged
- \* Phone 1-250-356-7035 to make an appointment (Monday to Friday from 8:30 a.m. to 4:00 p.m.)

## Expanded Family LawLINE

### **Available province-wide**

- \* Lawyers located around the province give information, advice, and assistance on family law and child protection matters
- \* Operated by a lead lawyer, administrative assistants, and a roster of lawyers located around the province
- \* Hours of service for telephone advice are expanded
  - Mon, Tues, Thurs, Fri 9:00 am – 3:00 pm
  - Wed 9:00 am – 2:30 pm
- \* Additional hours for appointments
- \* Clients are referred to the service via LSS Intake, Family Justice Counsellors, community agencies, advocates and support workers



## Expanded Family LawLINE continued

- Clients receive up to **6 hours** of telephone advice
- Clients are encouraged to schedule a telephone appointment for up to 45 minutes per session
- Administrative assistant maintains digital client files and records, sets appointments, etc.
- Digital client files are maintained to allow for continuity of service by a roster of lawyers located throughout the province
- Lawyers advise and support clients who have court or non-court matters and are not able to access Family Duty Counsel lawyers in person

## Expanded Family LawLINE continued

- \* Lawyers advise and support Family Justice mediation clients
- \* Referrals to other services, including online resources and other public agencies
- \* Legal coaching to help people who are self-representing
- \* Interpreters available if needed
- \* First-time Family LawLINE clients call 604-408-2172 or toll-free 1-866-577-2525

## Mediation Referrals

### **Available province-wide**

- \* **This project ended on March 31, 2017**
- \* Very low client volumes did not justify continuation of this project past the pilot test
- \* To help families reach out of court agreements
- \* Mediators from Mediate BC provided up to 6 hours of mediation
- \* Distance mediation available if no mediator in client's community
- \* One party must be financially eligible, but did not have a legal issue that qualified client for representation by a legal aid family lawyer

## Parents Legal Centre (PLC)

### **Available in Vancouver (Robson Square)**

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

#### **HOW TO APPLY:**

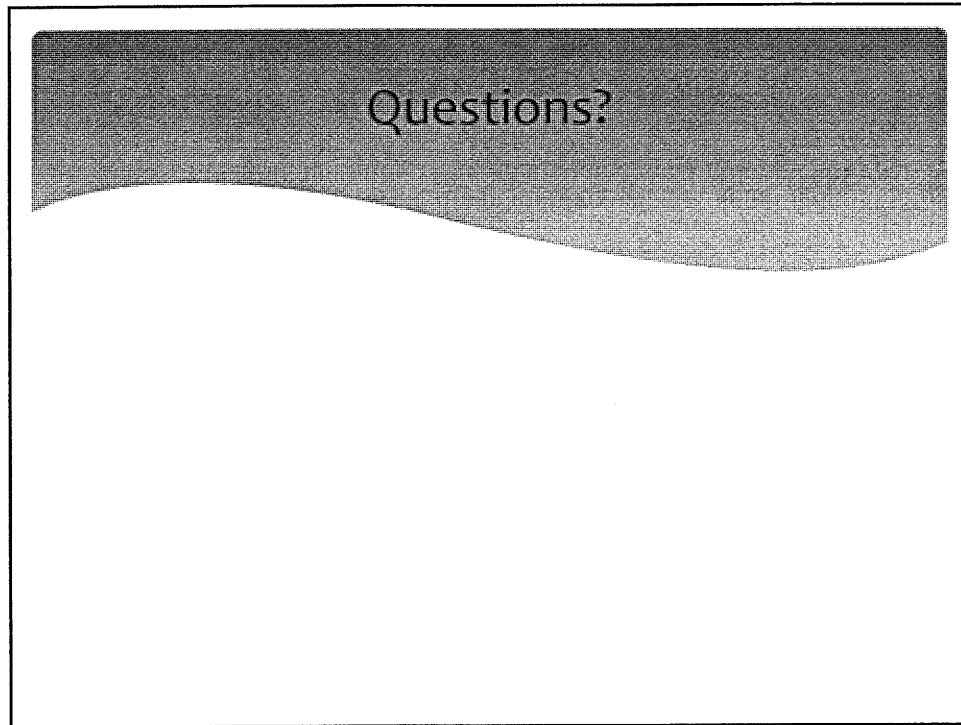
Contact LSS Intake in Vancouver or the Provincial Call Centre

## Parents Legal Centre (PLC) continued

- \* PLC has two full-time lawyers, an advocate and an administrative assistant
- \* Designed to be culturally sensitive and easily accessible to the clients served
- \* The lawyers and the advocate work with and on behalf of parents to focus on early collaborative solutions
- \* "Early?" = often before the children are even taken into government care, or prior to birth of the child
- \* Expanded financial eligibility criteria – some PLC clients would have otherwise been without representation as they would not have qualified for a tariff contract

## Parents Legal Centre (PLC) continued

- \* Grand Chief Ed John's report on Indigenous Child Welfare released November 21, 2016 recommended expansion of the PLC
- \* LSS has received additional funding from the BC government to expand the PLC to Surrey and to explore expansion to other locations based on the Grand Chief's recommendations
- \* Actively working on planning for the Surrey PLC – will open early in 2018
- \* Consulting with Grand Chief Ed John and others on possible locations for another PLC outside Metro Vancouver, which would serve both a central hub and smaller/more remote communities





Legal  
Services  
Society

British Columbia  
www.lss.bc.ca



## **LEGAL INFORMATION UPDATES: LSS WEBSITES AND PUBLICATIONS**

Patricia Lim, 604-601-6054  
Patricia.Lim@lss.bc.ca



## **PUBLIC LEGAL EDUCATION AND INFORMATION**

- Publication updates
- Website updates
  - Legal Aid website
  - Family Law website
  - Aboriginal Legal Aid in BC
  - MyLawBC
- How to get the latest LSS updates



# PUBLICATION UPDATES

## AUDIENCE & ACCESSIBILITY

### LSS Publication Readability

#### How much legal understanding is needed?

##### Level 1 — None needed.

No legal understanding required. Outline or "first step" information, written in clear language for those with no previous knowledge or experience with the law.

##### Level 2 — Some helpful.

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

##### Level 3 — Some needed.

Basic familiarity assumed. Detailed material, written primarily as a reference for the advocate/intermediary audience, although accessible to members of the public with adequate literacy skills.

[mylawbc.com/pubs](http://mylawbc.com/pubs)

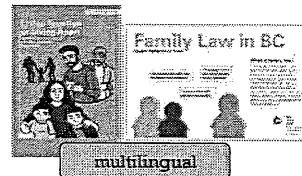


## NEW AND REVISED PUBLICATIONS

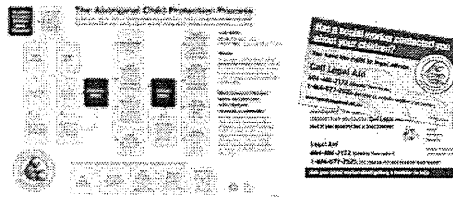
### Abuse & family violence



### Family



### Child protection



## NEW AND REVISED PUBLICATIONS, CONT'D

### Welfare & income assistance



### Legal Aid



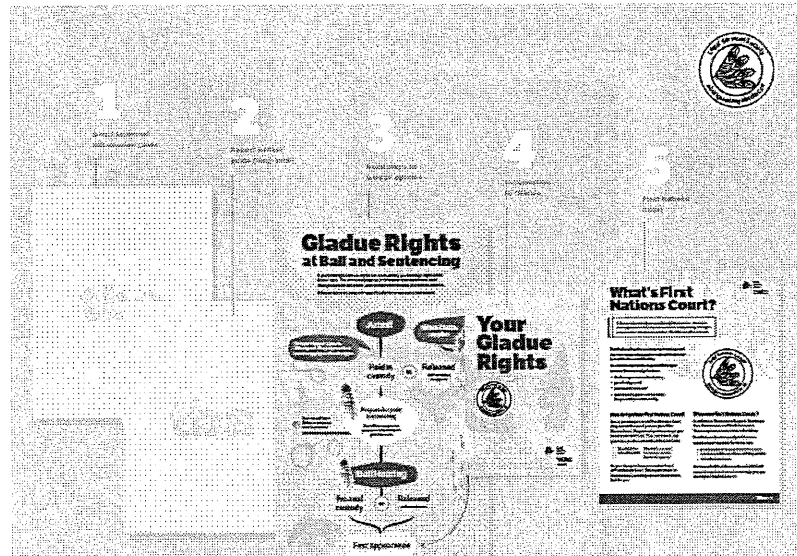
### Criminal



### Refugee



## NEW AND UPCOMING PUBLICATIONS ABOUT GLADUE AND FIRST NATIONS COURT



## OTHER UPCOMING PUBLICATIONS



### New publications

- Your Welfare Rights: Available Benefits (second in the series)

### Revised according to new legislation/testing results

- Sponsorship Breakdown booklet
- Guide to Aboriginal Harvesting Rights
- How to Appeal Your Conviction/Sentence

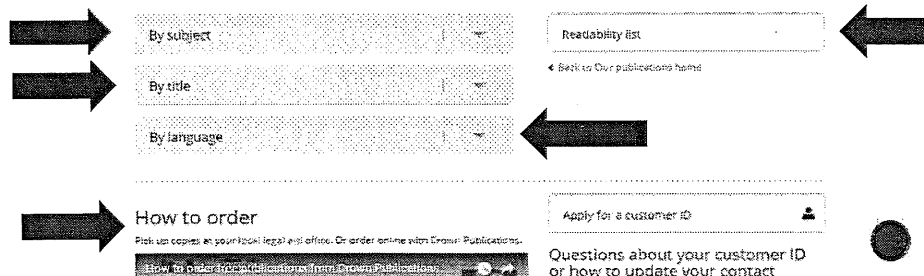
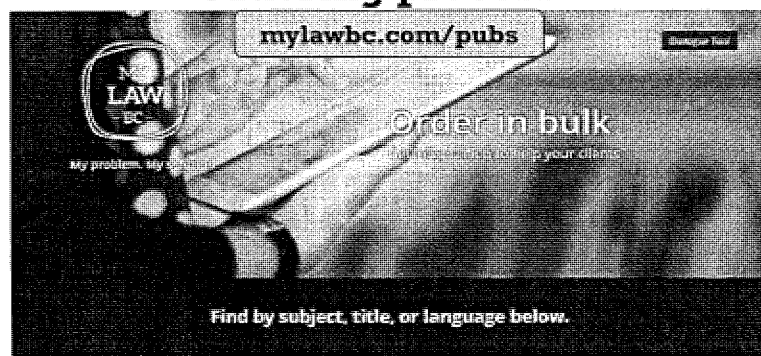
### More languages

- Legal Aid poster
- Mothers Leaving Abusive Partners booklet
- Is that Legal booklet
- Live Safe End Abuse fact sheet folder



# ● HOW TO ORDER PUBLICATIONS FOR FREE

## Ordering process



## Crown Publications



**CROWN PUBLICATIONS**  
Queen's Printer for British Columbia

Items: 0  
Total: \$0

Account #  Customer #  Postal Code

[Home](#) [Other Organizations](#) [Legal Services Society](#) [Your Gladue Rights \(English\)](#)



### Your Gladue Rights (English)

Plain language booklet about Aboriginal peoples' rights under the Criminal Code of Canada called Gladue rights. It explains:

- restorative justice,
- how Gladue is applied in court,
- the history of Gladue, and
- Gladue reports and oral Gladue submissions.

See also: [Gladue Rights at Bail and Sentencing](#) (infographic poster) and [What's First Nations Court?](#)

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

Stock: 3587  
Price: Free Each

Publish Date:

ISBN:

Product No.:

Format:

Additional Information:

This item is found in:

March 1, 2017

2560-5247

7550005105

Booklet

[Click Here](#)

Aboriginal, Legal Services Society

Quantity:   
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[www.crownpub.bc.ca](http://www.crownpub.bc.ca)

[distribution@lss.bc.ca](mailto:distribution@lss.bc.ca)

604-601-6000

## WEBSITE UPDATES

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



**Legal Services Society**  
Legal aid can help

[Home](#)
[Legal Aid](#)
[Lawyers](#)
[Community workers](#)
[LSS news](#)
[About us](#)

## We're here to help

We provide legal aid in BC. The law is complicated, but not everyone can afford a lawyer. We can help you with your legal issue.

Apply at an office near you or call  
1-866-577-2525 - 604-408-2172 (local)






[Our locations](#)
[Our services](#)
[Our qualifications](#)
[Contact us](#)

### Our other sites



**MyLawBC**  
Quickly get a plan to help you resolve your legal problem.

### Updates

**Additional federal funding for immigration and refugee legal aid**  
The Legal Services Society has received confirmation that the federal government will provide additional funding to ensure continued legal services for immigrants and refugees.

[legalaid.bc.ca](http://legalaid.bc.ca)



**Family Law**  
In British Columbia

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[Our community](#)
[Legal system](#)
[Staying out of court](#)
[Shortcuts](#)



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Overhead copiers

### What's new

Find out about the latest changes to family law

Find out what's new on this website

[Feedback](#)

**Live Help**  
Available

Live Chat by Lawline

BC's Legal Services Society maintains this site. If you're having a family problem, you may qualify for free or low cost legal aid. Contact Legal Aid to find out.

[familylaw.lss.bc.ca](http://familylaw.lss.bc.ca)

[Home](#)
[Your family](#)
[Your rights](#)
[On reserve](#)
[We can help](#)

## Your home on reserve

The laws have changed. If you break the law, your partner or your partner dies, you may be able to stay in your home.

[Learn more](#)

Helping Aboriginal people across BC understand their legal rights.

**Is this site for you?**

This website is for anyone who needs to understand their legal rights.

[Learn more](#)

**Do you know about First Nations Court?**

There are 10 First Nations Courts in BC. You may be able to use one, depending on the law.

[Learn more](#)

**Find out more in a publication**

We have two publications. One is a book and the other is a pamphlet.

[Learn more](#)

**Community events**

**2014-15 Family Violence Prevention Fund—Youth Grants**

The two-hour and thirty-minute presentation will discuss the importance of family violence prevention, the role of the community, and the role of the youth.

[Read more](#)

**2014-15 Family Violence Prevention Fund—Youth Grants**

The two-hour and thirty-minute presentation will discuss the importance of family violence prevention, the role of the community, and the role of the youth.

[Read more](#)

[aboriginal.legalaid.bc.ca](http://aboriginal.legalaid.bc.ca)

My problem. My solution.

**Click a pathway to get started.**

Pathways help you find solutions to your legal problem.

[Separation, divorce & family orders](#)

[Abuse & family violence](#)

[Missed mortgage payments](#)

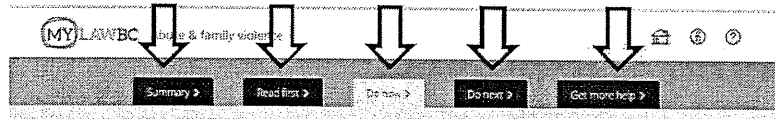
[Wills & personal planning](#)

[Our publications](#)

[Our other sites](#)

[mylawbc.com](http://mylawbc.com)

## Action plan



### Your first steps WHAT TO DO NOW

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

[Get checklist](#)

#### Learn about staying safe

##### Get safe housing

If you're afraid of your partner, there are safe places you can go. Shelters and transition houses are temporary places to live that provide support services to women and their children. Contact VictimLink or BC Society of Transition Houses 604-669-6645 or 1-800-661-1640 to find housing in your community.

##### Make a safety plan

When you're afraid, it's very difficult to think clearly. Getting information and making some planning decisions before a crisis can keep you safe.

It's important to have a plan whether you decide to leave or stay in the relationship.

If you're thinking about leaving your partner, it's important to plan what to do both before and after you leave. Be aware that your safety may be at a higher risk immediately after separation from your partner.

A safety plan can help you protect yourself and your children, both at home and outside your home.

Children who have witnessed or experienced abuse can be greatly affected by what they've seen. Safety planning is very important for any children who have been traumatized by abuse against themselves or someone they love.

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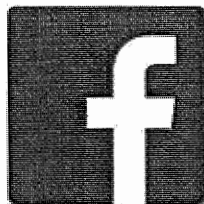
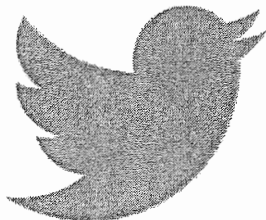
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## **5. Welfare and Disability Benefits**

- **Consultation on Your Welfare Rights (Day 1)**
  - Front pocket of binder or folder
- **Systemic Poverty Law Update (Day 2)**
  - Welfare Law Update
- **Eligibility for Income Assistance (Day 2)**
  - DABC case
  - Matt Granlund Materials
  - Jen Matthews – Took case
  - Welfare and Outstanding Warrants
- **Legal and Non-Legal Responses to MSDPR Service Delivery Problems (Day 3)**
  - No materials
- **CPPD Best Practices for Applications and Reconsiderations (Day 3)**
  - Powerpoint
  - Sample Sheets for MQP
- **Adjudicating PWD Designations (Day 3)**
  - No Materials



## **Welfare Law Legislative Update: October 1, 2016 to October 1, 2017**

*\*Prepared by Alison Ward, Barrister and Solicitor, Community Legal Assistance Society, October 17, 2017*

There have been a number of significant changes to welfare law since the last Provincial Advocacy Training Conference in early October 2016.

Among other changes, the welfare ministry has a new name: the Ministry of Social Development and Poverty Reduction ("MSDPR"), effective July 2017.

### **SUMMARY**

1. Exemption of EI maternity and parental benefits, and EI benefits for parents caring for critically ill children as unearned income, effective October 1, 2016
2. Exemption, as both income and assets, of money paid to a person in a legal proceeding against Community Living BC ("CLBC"), or against the government of BC, for damages or losses caused by CLBC or MSDPR employees or contractors, effective December 6, 2016.
3. Effective April 1, 2017, exemption as income and as an asset of:
  - a disabled contributor's child's benefit payable under the Canada Pension Plan;
  - payments under section 94 of the *Child, Family and Community Service Act* (i.e. foster care payments); and
  - money paid to a child from property that is held by the Public Guardian and Trustee
4. Disability assistance support rate was increased by \$50/month, as of April 1, 2017.
5. New alternative hearing assistance supplement introduced, effective April 1, 2017.
6. Effective July 1, 2017, a number of changes related to federal benefits for children
  - a) Canada child benefit
  - b) BC Child adjustment amount
  - c) New advance for lost or stolen Canada child benefit cheque
  - d) New supplement for delayed, suspended or canceled Canada Child Benefit
  - e) Automatic Child Benefits top-up supplement
7. The hearing fees paid to panel members of the Employment and Assistance Appeal Tribunal increased as of September 1, 2017.
8. Underage welfare recipients eligible for general health supplements, orthodontic and dental supplements, school start up supplement and alternative hearing assistance supplement, effective September 1, 2017
9. Dental supplement coverage and amounts and hearing-related supplements increased for eligible children, effective September 1, 2017

10. Updated Schedule of Fee Allowances for Dentists, Denturists and Dental Hygienists, as of September 1, 2017
11. Money paid from a settlement in respect of Treaty 8 agricultural benefits is exempted as income and as an asset from all forms of welfare, effective September 29, 2017.
12. Earnings exemptions for income assistance, PPMB benefits and disability assistance were increased by \$200/month, effective October 1, 2017
13. Effective October 1, 2017, welfare support rates were increased by \$100 per month per family unit.
14. Expected change as of January 1, 2018: \$52 per month in new money for recipients with the PWD designation, as a transportation supplement, and resulting increase in disability support rate.

## **DETAILS**

### **1. Exemption of EI maternity and parental benefits, and EI benefits for parents caring for critically ill children as unearned income**

Effective October 1, 2016, EI maternity and parental benefits, and EI benefits for parents caring for critically ill children, are exempted as unearned income for recipients of disability assistance, and income assistance.

See: the *Employment and Assistance ("EA") Regulation* and *Employment and Assistance for Persons with Disabilities ("EAPD") Regulation*, Schedule B, section 7(1)(g).

### **2. Exemption, as both income and assets, of money paid to a person in a legal proceeding against Community Living BC ("CLBC"), or against the government of BC, for damages or losses caused by CLBC or MSDPR employees or contractors, as of December 6, 2016.**

If a person is paid money by Community Living BC or the Ministry as a result of an award in a legal proceeding, or settlement of a claim for injury, loss or damage caused by CLBC or MSDPR, that money is exempted as both income and an asset for all forms of welfare benefits, including hardship assistance, effective December 6, 2016.

See: EA Regulation, sections 1(1), (11)(1)(xx)(yy) and Schedule B, Sections 1(a)(xlix) and (l); and Schedule D sections 6 (ww) and (xx)  
EAPD Regulation, section 1(1), section 10(1)(xx)(yy), Schedule B section 1(a)(liii) and (liv), and Schedule D section 6(aaa).

### 3. Effective April 1, 2017, exemption as income and as an asset of

- a disabled contributor's child's benefit payable under the Canada Pension Plan;
- payments under section 94 of the *Child, Family and Community Service Act* (i.e. foster care payments); and
- money paid or payable to a child from property that is held by the Public Guardian and Trustee

These new exemptions of money paid out in relation to children largely mirror the Ministry's earlier exemption from income of child support payments (Sept. 1, 2015); CPP orphan's benefit (Sept 1, 2015); Worksafe benefits paid to children whose parent(s) died as a result of a work-related injury or accident (March 18, 2016); and EI benefits paid to parents caring for critically ill children (October 1, 2016).

These three new income and asset exemptions are as follows:

- a) **CPP disabled contributor's child's benefit:** these are monthly benefits paid to the biological, adopted or *de facto* children of people who are in the care or custody or a parent or guardian who receives CPP disability benefits. Such a child can receive this monthly benefit while they are under 18. Benefits can continue from age 18 to 25 if the young person is in full time attendance at a recognized school or university. The amount of the monthly benefit for 2017 is \$241.02; it is adjusted annually for inflation.

The CPP disabled contributor's child's benefit is now exempt as both income and as an asset for income assistance, PPMB benefits, disability assistance, and all forms of hardship assistance.

See: EA Regulation, section 11(1)(zz); Schedule B Section 1(li), and Schedule D, section 6(yy)  
EAPD Regulation, section 10(1)(zz); Schedule B section 1(a)(lv), and Schedule D, section 6(ccc).

- b) **Foster care payments from the Ministry of Child and Family Development** ("MCFD"), which are paid under section 94 of the child protection legislation: In BC, foster families receive a monthly maintenance fee for caring for a child who is legally in the care, custody and/or guardianship of MCFD. (Note: monies paid by MCFD under kith and kin agreements are already exempted as income and an asset for all forms of welfare benefits).

The basic foster care rate in BC is \$803.81 monthly per child for children under 12; and \$909.95 per month for children 12 to 19. Specialized foster care homes care for foster children with more complex needs and receive higher foster care rates.

Foster care payments are now completely exempt as income and as an asset for income assistance, PPMB benefits, disability benefits and all forms of hardship assistance.

See: EA Regulation, section 11(1)(aaa); Schedule B Section 1(lii), and Schedule D, section 6(zz)  
 EAPD Regulation, section 10(1)(aaa); Schedule B section 1(a)(lvi), and Schedule D, section 6(ddd).

- c) **Money paid or payable to a child from property that is held by the Public Guardian and Trustee (“OPGT”).** This may include, for example, damages awarded by a court for a person under 19 that are paid to the OPGT in trust for the minor; inheritances held by the OPGT for people under 19, or other arrangements.

Regardless of how the property came to be held by the OPGT for the person under 19, any money paid or payable to the minor from that amount, are exempted as income and as an asset for income assistance, PPMB benefits, disability assistance, and all forms of hardship assistance.

See: EA Regulation, section 11(1)(bbb); Schedule B section 1(liii), and Schedule D, section 6(aaa)  
 EAPD Regulation, section 10(1)(bbb); Schedule B section 1(a)(lvii), and Schedule D, section 6(eee).

#### **4. Disability assistance support rate was increased by \$50/month, as of April 1, 2017**

As of April 1, 2017, the support rate for family units with one person designated as a Person with Disabilities increased by \$50 per month (from \$556.42 to \$606.42 per month). For couples where both adults have the PWD designation, the support rate increased by \$100 per month (for a childless couple, from \$999.06 to \$1099.06 per month). This increase in the support rate also applies to disability hardship assistance.

The support rate for a person with the PWD designation receiving room and board from their parent or child also increased \$50 per month, from \$25 to \$75 per month.

Finally, the comforts allowance for a person with the PWD designation receiving care in an eligible special care facility, increased by \$50 per month, from \$120 to \$170 monthly.

See: EAPD Regulation, Schedule A, sections 2(1), 6(1)(a)(iii), and 8(1)(b). Also see EAPD Regulation, Schedule D, Table 1.

#### **5. New alternative hearing assistance supplement introduced as of April 1, 2017**

A new hearing assistance supplement of \$100/month was introduced as of April 1, 2017 for eligible people with permanent “profound hearing loss” in both ears who cannot benefit significantly from using a hearing instrument (hearing aid) to understand verbal speech. “Profound hearing loss” is defined as a hearing loss of 91 decibels or greater across all frequencies, as confirmed by an audiologist. The funds are intended to help the person access other technologies that assist them in communication (e.g. email, text etc).

This supplement is available to people who are eligible for general health supplements (i.e. Schedule C coverage) from MSDPR. As of September 1, 2017 (see items 8 and 9 below), it is also available to underage welfare recipients and to children in the Healthy Kids program (i.e. families who receive MSP premium assistance).

See: EA Regulation, section 77.02, Schedule C, sections 3.11, and 11.  
EAPD Regulation, section 70.02, Schedule C, section 3.11, and 11.

## **6. Effective July 1, 2017, a number of changes related to federal benefits for children**

The highlights of these changes are:

### **a) Canada child benefit**

What was previously the "Canada child tax benefit" is now called the "Canada child benefit" as of July 1, 2017. The Canada child benefit includes the old Universal Child Care Benefit for children under 6, the former Canada Child Tax Benefit, and what was called (until 2016) the national child benefit supplement.

### **b) BC Child adjustment amount**

These amendments also define a new concept, called the "BC child adjustment amount," described in the table below.

Number of Children	Maximum BC child adjustment amount)
One	\$195.02 per month
Two	\$367.56 per month
Each additional child beyond two	\$164.18 per child, per month

The BC child adjustment amount is defined as being indexed to inflation. Specifically, it is to be every year on July 1<sup>st</sup>, by the percentage increase in the Consumer Price Index for the 12 months prior to September 30th of the prior year.

See: EA and EAPD Regulations, section 1(1) (definitions)

### **c) New advance for lost or stolen Canada child benefit cheque**

As of July 1, 2017, a new (repayable) advance from MSDPR is available for recipients of income assistance, hardship assistance, PPMB benefits or disability assistance where a person's Canada child benefit cheque is lost or stolen (previously, such an advance was only available for the BC Family Bonus portion of a child benefits cheque). To qualify,

- MSDPR must agree that the advance is needed to meet basic needs of clothing, food or shelter;
- MSDPR must agree the person is taking steps to have the cheque reissued by the Canada Revenue Agency; and
- the recipient agrees in writing to repay the advance.

The amount of the advance for lost or stolen Canada Child Benefit cheques is the **lesser** of the amount of lost or stolen cheque that is attributable to the Canada Child Benefit, and the new, BC child adjustment amount.

See: EA Regulation section 60.1, and EAPD Regulation section 58.1

**d) New supplement for delayed, suspended or canceled Canada Child Benefit**

As of July 1, 2017, a new supplement from MSDPR is available for recipients of income assistance, hardship assistance, PPMB benefits or disability assistance where payment of a person's Canada Child Benefit is delayed, suspended or cancelled under the Income Tax Act, *unless* that happened because the person refuses to apply for, or accept, or provide information to determine their eligibility for the Canada child benefit. Previously this supplement was only available for the BC Family Bonus portion of a child benefits cheque.

If a recipient's Canada Child Benefit is delayed, suspended or cancelled for any other reason, the person may be eligible for this supplement if MSDPR considers the person needs it for basic needs of food, clothing or shelter. The amount of the supplement is equal to the BC child adjustment amount minus the amount (if any) the family unit received for the Canada child benefit the previous month.

See: EA Regulation, section 61.1, and EAPD Regulation section 59.1.

**e) Automatic Child Benefits top-up supplement**

Where a family unit has dependent children (including children who turn 19 while completing high school) and their Canada Child benefit payment is less than the BC child adjustment amount for the number of children in their family, the family's support allowance is topped up to the amount of the BC child adjustment amount, minus the amount (if any) the family received the previous month for the BC family bonus, Canada Child benefit payment, or supplements related lost, cancelled or delayed Canada Child benefits.

See: EA Regulation and EAPD Regulation, Schedule A, sections 2(2) to 2(6)

**7. The hearing fees paid to panel members of the Employment and Assistance Appeal Tribunal were increased as of September 1, 2017.**

The fee paid for each appeal heard increased as follows:

- a) For panel chairs, from \$175 per hearing to \$225 per hearing. Where "the chair of the tribunal determines that the appeal is extraordinarily complex and requires an

extraordinary amount of time to prepare for, hear and provide written reasons,” the panel chair’s remuneration increased from \$350 per hearing, to \$450 per hearing.

- b) For other panel members, from \$115 per hearing to \$145 per hearing.

See: EA Regulation, sections 83(1)(a) and (b).

**8. Underage welfare recipients eligible for general health supplements, orthodontic and dental supplements, school start up supplement and alternative hearing assistance supplement, effective September 1, 2017**

An “underage welfare recipient” refers to a person under 19 who receives welfare benefits (other than an 18 year old with the PWD designation receiving disability assistance) and does not have an adult in their family unit. Effective September 1, 2017, people under 19 in this situation now have the same access to general health supplements, dental supplements, orthodontic supplements, alternative hearing assistance supplement, and the school start up supplement as do “dependent children” of adult welfare recipients.

Where an underage welfare recipient receives hardship assistance, they now have the same access to general and health supplements as do “dependent children” on hardship assistance (either IA, PPMB or disability hardship).

See: EA Regulation, section 62.1(school start up supplement); section 67(1) (general health supplements); section 68 (dental coverage); section 71(1) (orthodontic supplement); and section 77.02 (alternative hearing assistance supplement).

See EAPD Regulation, section 60.1, 62(b), 63(b), 65, and 70.02(b)

**9. Dental supplement coverage and amounts and hearing-related supplements increased for eligible children, effective September 1, 2017**

1) Dental supplement for children increased

Children who are eligible for the dental supplement now have a two year basic dental limit of \$2000 (up from \$1400). The “two year” period begins on January 1, 2017.

As of September 1, 2017, children eligible for dental supplements include:

- Dependent children of all welfare recipients;
- Underage welfare recipients (this is a new addition; see above);
- Children for whom Child in the Home of a Relative (CIHR) benefits are paid; (this is a new addition as of Sept 1/17: , see EA Regulation, Schedule C, section 4(1)(a); and
- Children enrolled in the Healthy Kids Program (i.e. whose families receive MSP premium assistance);

- Recipients of disability hardship assistance who are under 19 (this is a new addition as of Sept 1/17; see EAPD Regulation section 63(b).

See: EA Regulation and EAPD Regulation, Schedule C, section 4(1.1)(a)

2). Hearing instrument supplement and alternative hearing assistance supplement

Children enrolled in the Healthy Kids program (i.e. children whose families receives MSP premium assistance) are eligible for the hearing instrument supplement and the new alternative hearing assistance supplement, as of September 1, 2017.

See: EA Regulation, sections 72.1 and 77.03, and Schedule C, section 7.1

# **10. Updated Schedule of Fee Allowances for Dentists, Denturists and Dental Hygienists**

Effective September 1, 2017, MSDSR has a new Schedule of Fee Allowances, which sets out what rates it will pay for specific types of dental work by dentists, denturists, and dental hygienists. This is the first update to that fee schedule since April 1, 2010. The new fee schedule is available online through the Ministry's policy and procedures manual.

# **11. Money paid from a settlement in respect of Treaty 8 agricultural benefits is exempted as income and as an asset from all forms of welfare, effective September 29, 2017.**

*"Treaty 8 was one of the few historical treaties signed with First Nations in BC during the 19th and early 20th centuries. The treaty, which was originally negotiated with Alberta First Nations, was extended to cover part of north eastern BC in 1899. Eight Bands in BC have adhered to the treaty: Blueberry River, Doig River, Fort Nelson, Halfway River, Prophet River, Saulteau, West Moberley Lake, and McLeod Lake (which adhered in March 2000)" (from Indigenous and Northern Affairs Canada website).*

Among other things, Treaty 8 promised "cows and plows" to First Nations that wanted to take up farming, but claims have only been paid out very recently. This year at least five First Nations in British Columbia have received this compensation. Saulteau First Nation was the first, in August 2017. Payments are disbursed to band members.

These "agricultural benefits" are now exempt as income and assets from all forms of welfare benefits, including hardship benefits.

See: EA Regulation, section 11(1)(ccc), Schedule B section 1(1)(liv), and Schedule D Section 6(bbb).

EAPD Regulation, section 10(1)(ccc); Schedule B section 1(1)(lviii) and Schedule D, section 6 (fff).



**12. Earnings exemptions for income assistance, PPMB benefits and disability assistance were increased \$200/month, effective October 1, 2017**

Existing earnings exemptions were increased by \$200/month for recipients of income assistance, PPBM and disability assistance, effective October 1, 2017. Note: recipients of hardship assistance do not have an earnings exemption.

**Earnings exemptions as of October 1, 2017**

	<b>Income Assistance</b>	<b>PPMB</b>	<b>PWD annualized earnings exemption</b>
<b>Single</b>	\$400/month (up from \$200)	\$700/month	\$12,000 per year (up from \$9600)
<b>Couple</b>	\$400/month	\$700/month	a) If one PWD, \$14,400 per year b) If two PWDs, \$24,000 per year
<b>Family unit with children</b>	\$600/month (up from \$400)	\$700/month	a) If one PWD, \$14,400 per year b) If two PWDs, \$24,000 per year
<b>Family unit with disabled child precluding employment over 30 hours/ week</b>	\$700/month (up from \$500)	\$700/month	a) If one PWD, \$14,400 per year b) If two PWDs, \$24,000 per year

See: EA Regulation, Schedule B, section 3(6)  
EAPD Regulation, Schedule B, sections 3(1) and 3(8)

**13. Effective October 1, 2017, welfare support rates were increased by \$100 per month per family unit.**

The support rate for each family unit receiving income assistance, PPMB benefits or disability assistance increased by \$100/month effective October 1, 2017.

This increase in the support allowance also applies to all forms of hardship assistance.

The increase does *not* apply to people receiving room and board from a child or parent, or people receiving care and accommodation in a special care facility.

Current monthly rates for a single person are as follows:

	Support	Shelter	Total
Income assistance	\$335.00	\$375.00	\$710.00
PPMB benefits	\$382.92	\$375.00	\$757.92
Disability assistance	\$706.42	\$375.00	\$1081.42

See: EA Regulation and EAPD Regulations, Schedule A section 2(1) table, and Schedule D, table 1.

**14. Expected change as of January 1, 2018: \$52 per month in new money for recipients with the PWD designation, as a transportation supplement, and resulting increase in disability support rate.**

MSDPR has announced that effective January 1, 2018 it will introduce a new transportation supplement of \$52 per month for recipients of disability assistance with the PWD designation. Clients can choose how to spend this money. Clients who want a bus pass can use the \$52 to obtain a bus pass through the Ministry, on a month by month or annual basis. It is not expected that there will be any kind of administrative fee for bus passes other than this new \$52 per month.

At the same time, the \$52 per month currently issued by MSDPR as a transportation support allowance to people with the PWD designation (since September 1, 2016) is expected to be subsumed into the PWD support rate, resulting in a \$52 increase in that rate.

The Regulations implementing this announced change have not yet been drafted so it is impossible to know exactly what form these changes will take. Regulations are expected soon, as the new \$52 amount is to be issued on the December 20, 2017 cheque issue date for January 2018 benefits.

**Welfare Eligibility Issues: front line advocates' panel**

**(Day two: Wednesday October 18, from 1:45 to 3 pm)**

Presentation by: *(Matthew Granlund  
From Women's Contact Society, William Lake)*

**Summary of Legal Issue:**

To be approved for Income Assistance by the Ministry of Social Development and Social Innovation, an applicant must satisfy the two-year independence requirement. That is, at least one applicant in the family unit must demonstrate that they have been financially independent for at least two consecutive years prior to applying for assistance. Alternately, the applicant must show that he or she worked for part of two years and collected (or waited for) Employment Insurance [Employment and Assistance Act, s8].

The Ministry has discretion to consider the applicant's life circumstances before denying assistance. In particular, the Employment and Assistance Regulation states:

*(4) Section 8 of the Act does not apply to the family units of applicants if, in the minister's opinion,*

*(a) the applicant, due to circumstances beyond the applicant's control, has been prevented from searching for, accepting or continuing employment, and*

*(b) the family unit will otherwise experience undue hardship.*

The applicant was denied for not satisfying the two-year independence requirement. The Ministry, in denying the applicant, did not utilise its discretion to take into account the applicant's lack of opportunity to find substantive work on his reserve, that would enable him to meet the two-year independence requirement.

**Summary of Facts:**

The applicant, a 20 year-old male, was employed on a short term contract in 2016, building trails on his reserve outside Williams Lake, British Columbia. This contract did not amount to enough hours to satisfy the two-year independence requirement outright. The applicant, with no resources available to provide for his basic needs, moved to Williams Lake to seek suitable employment, and thus applied for Income Assistance. In May 2017, the applicant began a three week course on Environmental Field Skills at Cariboo Chilcotin Aboriginal Training Employment Centre Society (CCATEC). The applicant had previously been in receipt of Income Assistance for about a year after moving to Williams Lake, due to the limited opportunities for employment in his community. He was forced to relocate back to the reserve after being evicted from an apartment. So at the time of re-applying for Income Assistance, this was at least the applicant's

second attempt to find substantive work in a larger a community than this home reserve.

### **Substantive Argument at Reconsideration**

The reconsideration submission argued in favour of the Ministry and overturning the original decision after considering the applicant's life circumstances that prevented him from satisfying the two-year independence requirement. The applicant was not able to find substantive work on his home reserve and he was in need of Income Assistance so that he could support his basic needs while completing his training course at CCTEC and undertaking his job search. The reconsideration noted that the applicant was no longer able to rely on the support of friends and he was thus at risk of being forced into an extended stay in the local minimum barrier shelter, where diminishing self esteem could open him to being exposed to drugs and alcohol and the possible influence of local gangs.

### **Steps taken and outcome at each step:**

A reconsideration was submitted to the Ministry after gathering contextual information from staff at the Cariboo Friendship Society shelter and Homeless Outreach Worker Wayne Lucier, with the Canadian Mental Health Association. I believe it was approved.

### **What was challenging about this case:**

The advocate unfortunately didn't get a signed consent form the one and only time he was able to speak to the applicant. The applicant did not have a phone and did not return for follow-up appointments. Wayne Lucier, Homeless Outreach worker with the Canadian Mental Health Association, who assisted the applicant with his initial application, believes the applicant struggles with the cognitive deficits associated with Fetal Alcohol Spectrum Disorder or FASD (he estimates that more than 50% of the homeless applicants he sees who have been denied Income Assistance based on inability to satisfy the two-year independence rule, are undiagnosed sufferers of FASD). The advocate was not able to speak to an FASD diagnosis at reconsideration, without the client's self-disclosure of a diagnosis, which prevented an argument based on 18 (3) (c) of the Regulation i.e.

*applicants who have a medical condition that, in the opinion of the minister,*

*(i) will prevent the applicant from working for at least the next 30 days, or*

*(ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form,*

### **Lessons learned from this case:**

Always have a client sign consent forms immediately, as there are no guarantees that the client will be contactable again. Further contact enables the advocate to gather more information that can assist with the reconsideration process. For instance, the advocate could have benefitted from being able to speak with a social assistance worker on the applicant's reserve and staff at CCTEC, to help understand the applicant's life circumstances better, for the purposes of the reconsideration.

# EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

12 May, 2017

*Applicant*  
*SIN:*



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THE ACT AND/OR REGULATIONS THAT APPLY TO THIS DECISION ARE:

BC EMPLOYMENT & ASSISTANCE Part 2(8)(1)(a)(b)  
BC EMPLOYMENT & ASSISTANCE Regulation: Division 3 Section 18(1)(2)(3)(d)

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***ISSUE: Denial of income assistance due to the two-year independence rule.***

***REASON FOR REQUEST FOR RECONSIDERATION (attachment)***

Applicant applied for Income Assistance on April 7, 2017 and was denied for not satisfying the two-year independence rule, as per Section 8 of the Employment and Assistance Act.

Applicant states that he was employed on a short term contract in 2016, building trails on his reserve outside Williams Lake, British Columbia. Employment opportunities are very limited due to the size of the community so he has made the responsible decision to move to Williams Lake to try to seek suitable employment. On May 2, 2017, Applicant began a three week course on Environmental Field Skills at Cariboo Chilcotin Aboriginal Training Employment Centre Society (CCATEC).

**8** (1) for a family unit to be eligible for income assistance, at least one applicant in the family unit must have

(a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,

(b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or

Applicant also states that he had previously been in receipt of Income Assistance for about a year after moving to Williams Lake due to the limited opportunities for employment in his community. He was forced to relocate back to the reserve after being evicted from an apartment. Now, after the above-mentioned short period of work on reserve, he is renewing his efforts to find work in Williams Lake, and is in need of Income Assistance to help satisfy his basic needs for accommodation and food, while he is completing his course at CCATEC and beginning his work search.

**18** (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.

(2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7 000 in each of the 2 consecutive years.

Applicant states that it is impossible to be employed for at least 840 hours per year and earn at least \$7000 per year when he resided on a reserve that has very limited employment opportunities.

- (4) Section 8 of the Act does not apply to the family units if, in the minister's opinion  
(b) the family unit will experience undue hardship.

Applicant is in need of Income Assistance so that he can support his basic needs while completing his training course at CCTEC and undertaking his job search. If Applicant is no longer able to rely on the support of friends, he is at risk of being forced into an extended stay in the local minimum barrier shelter, where diminishing self esteem could open him to being exposed to drugs and alcohol. At worst, he may be forced into crime and/or gang life.

Staff at the Cariboo Friendship Society shelter in Williams Lake told me that they have identified a number of clients who stay at the shelter after being refused income assistance for not meeting the two-year independence requirement. They are stuck with no income, no work experience, no home address to even put on a resume, and hence little hope of building a meaningful life. Some clients are forced back to the reserve where they remain stuck in an environment where there are no jobs and few training opportunities. Being denied for not meeting the two-year independence rule forces them into desperate situations, in a short period of time, when their work search proves unfruitful. The shelter has a 30 day limit so it does not provide adequately stability for a sincere work searcher, or someone lucky enough to even have found work within those 30 days.

In short, it takes time and money to secure the raw essentials for a secure existence and Income Assistance is necessary for those, like Applicant, who genuinely need it.

I draw your attention to the Interpretation Act of British Columbia which states that the Interpretation Act applies to all enactments in British Columbia. The Interpretation Act states that every 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.

Therefore, I request you set aside the Ministry's decision and approve [REDACTED] application for income assistance.

Respectfully submitted on behalf of my client,

Matthew Granlund  
*Legal Advocate*

## Employment and Assistance Act

### Requirement for 2 years employment

8 (1) For a family unit to be eligible for income assistance, at least one applicant in the family unit must have

- (a) been employed for remuneration for at least the prescribed number of hours in each of two consecutive years,
- (b) earned remuneration for employment in at least the prescribed amount in each of two consecutive years, or
- (c) been employed for remuneration for a portion of two consecutive years and for the balance of those years either
  - (i) served a waiting period in respect of, or received benefits under, a claim under the *Employment Insurance Act* (Canada), or
  - (ii) received income under a public or private income replacement program or plan.

(2) The Lieutenant Governor in Council may prescribe categories of applicants to whose family units this section does not apply.

## **Employment and Assistance Regulation**

### **Requirement for 2 years employment**

**18** (1) For the purposes of section 8 (1) (a) of the Act, an applicant must have been employed for remuneration for at least 840 hours in each of the 2 consecutive years.

(2) For the purposes of section 8 (1) (b) of the Act, an applicant must have earned remuneration for employment of at least \$7 000 in each of the 2 consecutive years.

(3) Section 8 of the Act does not apply to the family units of the following categories of applicants:

- (a) applicants who have not reached the age of 19;
- (b) applicants who are pregnant;
- (c) applicants who have a medical condition that, in the opinion of the minister,
  - (i) will prevent the applicant from working for at least the next 30 days, or
  - (ii) has prevented the applicant from working for a total of at least six months of the 2 years immediately preceding the date of the applicant's submission of the application for income assistance (part 2) form;
- (d) applicants with dependent children;
- (e) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (f) applicants who are providing care to a child in care;
- (g) applicants who were supported by an employed spouse for at least 2 years;
- (h) applicants who were supported by an employed spouse for a portion of a two year period and met a requirement of section 8 (1) of the Act for the balance of the two year period;
- (i) applicants who were incarcerated in a lawful place of confinement for at least 6 months of the 2 year period immediately preceding the date of application for income assistance;



(j) applicants who were in the care of a director under the *Child, Family and Community Service Act* or who had an agreement with a director under section 12.2 of the *Child, Family and Community Services Act* until the applicant's 19th birthday;

(k) applicants who

(i) have separated from an abusive spouse, or

(ii) changed place of residence to flee an abusive relative, other than a spouse,

within the past 6 months if, in the minister's opinion, the applicant's ability to work is consequently impaired;

(l) applicants who have been awarded a 2 year diploma or certificate, a bachelors degree or a post-graduate degree from a post-secondary institution;

(m) applicants who have persistent multiple barriers to employment;

(n) applicants who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the applicant from leaving home for the purposes of employment;

(o) applicants who are providing care for a child under an agreement referred to in section 8 of the *Child, Family and Community Service Act*;

(p) applicants who are providing care for a child under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

(4) Section 8 of the Act does not apply to the family units of applicants if, in the minister's opinion,

(a) the applicant, due to circumstances beyond the applicant's control, has been prevented from searching for, accepting or continuing employment, and

(b) the family unit will otherwise experience undue hardship.

DABC-ST



Ministry of  
Social Development  
and Social Innovation

## EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

### SECTION 1 and 2 TO BE COMPLETED BY WORKER

#### SECTION 1 REQUESTOR INFORMATION

SR NUMBER

REQUESTOR'S NAME

SOCIAL INSURANCE NUMBER

CASE NUMBER

REQUESTOR'S ADDRESS

WORKER'S NAME

WORKER NUMBER

EMPLOYMENT AND ASSISTANCE OFFICE

#### SECTION 2 DECISION TO BE RECONSIDERED

You are a single person formerly in receipt of Employment and Assistance benefits. You are requesting a reconsideration of a ministry decision to deny income assistance due to excess income.

On February 8, 2017 you requested a reconsideration of the decision to deny you income assistance due to excess income.

A review of your file shows:

- On October 7, 2016 you completed the first step in the application process for income assistance.
- On October 19, 2016 your eligibility for income assistance was assessed and it was determined that you were not eligible for income assistance benefits because you had assets in excess of the allowable limit. However, you had stated you wanted to apply for Persons with Disabilities (PWD) designation and, as your assets were within the allowable limit for PWD, you were determined to be eligible for income assistance while you apply for PWD.
- On December 20, 2016 the ministry received information from Canada Pension Plan (CPP) that you had received a one-time lump sum payment of \$15,924.06 issued in the month of November, 2016 and that your ongoing monthly disability pension would be \$1,140.33.
- On January 3, 2017 you contacted the ministry to inquire about your income assistance as you had not received any assistance for the month of January. The worker confirmed with you that you had received the lump sum of CPP disability benefits as well as your regular monthly payment. The worker advised you that your CPP is more than income assistance rates, as well as PWD rates, and you are no longer eligible for assistance.
- On January 19, 2017 your file was closed. You last received income assistance for the month of December, 2016.
- On January 27, 2017 you contacted the ministry and the worker again advised you that, as your income is more than income assistance and PWD rates, you are not eligible for income assistance benefits.
- On February 8, 2017 you contacted the ministry again and advised that you wanted to pursue PWD designation. The worker advised you that your income is more than PWD rates and that you are not eligible for any benefits. The worker advised you of your right to reconsideration which you requested.

Legislation defines CPP as "unearned income". No exemptions are permitted on unearned income, therefore, your pension must be fully deducted from any assistance issued to you.

Your monthly income assistance entitlement for a single person is \$235 support + \$375 shelter (if your costs are \$375 or higher) = \$610. Your monthly CPP income of \$1,140.33 is then deducted from your income assistance. As your income is greater than your income assistance entitlement, you are not eligible for income assistance benefits.

#### Attachments:

- Reconsideration brochure
- Legislation



## EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

- Advocate information
- CPP Income screen print

You have the right to an advocate to help you with your reconsideration. Attached to this reconsideration is a list of advocates in your area. You can also contact the ministry at 1-866-866-0800 or go to your local ministry office.

**PLEASE NOTE:** If you require an extension to complete your reconsideration, you must submit your request in writing with a signed copy of this form (section 4) no later than the due date indicated on this form below. Generally a decision is mailed to you within 10 business days. A request for an extension can provide an additional 10 business days from the date you submit your signed Request for Reconsideration, therefore it is recommended that you submit your request just prior to the relevant due date, as the extension period may begin on the date the request for the extension has been submitted. If you request an extension of your reconsideration, please contact the ministry at 1 866 866 0800 after 48 hours to confirm if your extension was granted.

You may be eligible for a Reconsideration or Appeal Supplement. Please see the attached brochure for details.

ASSISTANCE / ELIGIBILITY  
HAS BEEN:

☒ DENIED

☐ DISCONTINUED

☐ REDUCED

☐ PWD RESCIND

THE ACT AND / OR REGULATIONS THAT APPLY TO THIS DECISION ARE:

Employment and Assistance Act section 2.

Employment and Assistance Regulation section 1 definition of "unearned income"; section 10; section 28; schedule A and schedule B.

MONTH DECISION EFFECTIVE (YYYY-MM-DD)

2017-Jan-01

RELEVANT DATES:

DATE REQUESTOR INFORMED OF DECISION (YYYY-MM-DD)

2017-Feb-08

DATE REQUESTOR MUST SUBMIT FORM BY (YYYY-MM-DD)

2017-Mar-09

DATE (YYYY-MM-DD)

2017-Feb-16





## EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

### SECTION 3 REASON FOR REQUEST FOR RECONSIDERATION

(TO BE COMPLETED BY THE REQUESTOR ONLY AFTER SECTIONS 1 AND 2 HAVE BEEN COMPLETED BY WORKER)

Mar 8/17. The Requestor respectfully submits that he meets the eligibility criteria to receive a disability assistance top-up. Please see the enclosed submission.

### SECTION 4 NOTICE OF REQUEST FOR RECONSIDERATION

(ATTACH ADDITIONAL PAGES IF REQUIRED)

(TO BE COMPLETED BY THE REQUESTOR)

**IMPORTANT:** The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Data Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.



DATE (YYYY-MM-DD)

2017-MAR-08

TELEPHONE



REQUEST FOR RECONSIDERATION  
TO BE REFERRED TO:

- ☒ Health Reconsideration Branch (HRB)  
☐ Regional Office

Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.



## Advocacy Access Program

March 8, 2017

Re: [REDACTED] – Advocate Submission – Application for disability assistance

### Summary

[REDACTED] ("the Requestor" or [REDACTED]) is a single parent with fifty-fifty custody of his teenage son. For the reasons outlined in this submission, we respectfully submit that the Ministry of Social Development and Social Innovation ("the Ministry") has authority to designate his son as his dependent child and that this would result in a determination that [REDACTED] is eligible for a disability assistance top-up. Lastly, we submit that the Ministry has legislative authority to designate [REDACTED] as a Person with Disabilities ("PWD") without going through the standard application process.

### Submissions to the Evidentiary Record

The following are submitted to the evidentiary record in support of [REDACTED] request:

- 1) Order of the Supreme Court of British Columbia between [REDACTED] and [REDACTED] determining joint custody and guardianship of the child of the marriage, namely [REDACTED], born [REDACTED] 2002 (3 pages). ("Court Order");
- 2) Letter from [REDACTED] dated and signed March 5, 2017 consenting to the designation of [REDACTED] as the dependent child of [REDACTED] (1 page) [REDACTED] and
- 3) Letter from [REDACTED] dated and signed March 1, 2017 consenting to the designation of [REDACTED] as his dependent child (1 page) [REDACTED]

### Legislative Authority

#### *Employment and Assistance for Persons with Disabilities Act*

##### **Persons with disabilities**

2(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons ...

#### *Employment and Assistance for Persons with Disabilities Regulation*

##### **Definitions**

## Advocacy Access Program

1(2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under

- (a) an order of a court in British Columbia,
- (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
- (c) an agreement filed in a court in British Columbia,

the child is a dependent child of the parent who is designated in writing by both parents.

### Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2(2) [persons with disabilities] of the Act:

...

- (e) a person who is considered to be disabled under section 42(2) of the Canada Pension Plan (Canada).

### Limits on income

9 (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.

### Schedule A – Disability Assistance Rates

#### Monthly support allowance

2(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(a.1) subject to section 24.1 [disability assistance in the form of transportation support allowance], the amount set out in Column 4 of the following table for the family unit, plus

## Advocacy Access Program

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of base support	Column 4 Amount of transportation support
2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$697.08	\$52.00

### Monthly shelter allowance

4(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

### Arguments

██████ applied for PWD as a sole applicant and was denied as his disability assistance entitlement was lower than his monthly disability pension. ██████ is requesting the Ministry reconsider his application as an applicant applying for PWD as a sole applicant with a dependent child. Pursuant to Schedule A of the *EAPWD Regulation*, as a single PWD and one dependent, ██████ monthly disability assistance entitlement is \$697.08 for support, \$52.00 for transportation support, and \$570.00 for shelter (given that his costs are higher than \$570.00), for a total of \$1,319.08. As this amount is higher than his monthly disability pension and net income of \$1,140.33, section 9(2) of the *EAPWD Regulation* does not apply.

## Advocacy Access Program

Section 1(2) of the *EAPWD Regulation* permits, for assistance purposes, that where parents have a shared custody court order specifying a fifty-fifty custody arrangement, parents designate in writing that a child is a dependent child of one parent, and that any written confirmation that states the parents' agreement and is signed by both is acceptable. We submit that the Court Order determining [REDACTED] and [REDACTED] as having a fifty-fifty custody arrangement of their son [REDACTED] together with [REDACTED] Letter and [REDACTED] Letter confirming their agreement that [REDACTED] be designated as the dependent child, are sufficient evidence to designate [REDACTED] as [REDACTED] dependent child for disability assistance purposes.

Furthermore, [REDACTED] has been determined to be disabled for the purposes of the Canada Pension Plan (CPP) and is currently in receipt of CPP Disability Benefits from Employment and Social Development Canada. Pursuant to section 2(2) of the *EAPWD Act*, we submit that that the Ministry has legislative authority to designate [REDACTED] as a PWD without going through the standard application process as he has already been determined as disabled by the Government of Canada and eligible for the CPP Disability Benefit.

### Conclusion

For the reasons outlined in this submission, we respectfully submit that the Ministry has legislative authority, pursuant to the *EAPWD Act* and the *Regulation*, to determine that [REDACTED] is eligible for PWD designation.

We kindly thank you for your time and consideration in reviewing this important matter. Please contact us if you require further information or details related to this submission or [REDACTED] request.

Kind regards,

[REDACTED]



CASE NOTE:

Court ORDER: Divorce between Client (Defendant) and Ex-Spouse (Plaintiff)

[REDACTED]

**In the Supreme Court of British Columbia**

Between:

[REDACTED]

[REDACTED]

Plaintiff

[REDACTED]

Defendant

[REDACTED]

[REDACTED]

THIS COURT ORDERS that

1. Subject to section 12 of the *Divorce Act* (Canada), the Plaintiff, [REDACTED], and the Defendant, [REDACTED] who were married at Burnaby, British Columbia on the [REDACTED] 1999, are divorced from each other, the divorce to take effect on the 31st day after the date of this order.

2. [REDACTED]
3. [REDACTED]
4. The parties shall have joint custody and guardianship of the child of the marriage, namely:  
[REDACTED] born [REDACTED] 2002 ("Child").
5. The Child shall be in the primary day to day care of the Plaintiff while the Defendant remains unable to work and thereafter the parties shall have equal co-parenting time with the child with liberty to the parties to apply for variation of primary day to day care without having to establish a change in circumstances.
6. The Defendant shall have reasonable access to the Child as agreed to by the parties from time to time with liberty to apply in the absence of agreement without having to establish a change in circumstances..
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. Until he obtains employment, the Defendant pay to the Plaintiff the sum of \$50.00 per month commencing on the first day of the month following pronouncement of this Order and payable on the first day of each month thereafter as a contribution to any extraordinary expenses for the Child,
11. [REDACTED]



12.



CASE NOTE: Letter from Ex-spouse of Plaintiff

To whom it may concern:

**Re: Consent to designate son as a dependent for income assistance and disability assistance**

I am writing to confirm that I, [REDACTED] and my ex-husband [REDACTED] have a shared custody court order specifying a fifty-fifty custody arrangement over our son, [REDACTED]. I consent to designating our son as a dependent child of [REDACTED] for the purposes of applying for and receiving income assistance, disability assistance, or other supports from the Ministry of Social Development and Social Innovation.

I reserve the right to revoke this consent at any time by giving notice in writing to the Ministry of Social Development and Social Innovation.

Sincerely,

[REDACTED]

CASE NOTE: Letter from Client

To whom it may concern:

**Re: Confirmation to designate child as a dependent for income assistance and disability assistance**

I am writing to confirm that I, [REDACTED] and my ex-wife, [REDACTED], have a shared custody court order specifying a fifty-fifty custody arrangement over our son, [REDACTED]. I am writing to confirm that [REDACTED] is my dependent child for the purposes of applying for and receiving income assistance, disability assistance, or other supports from the Ministry of Social Development and Social Innovation.




Sincerely,

[REDACTED]



CASE NOTE: Letter from Dependent Child of Client



Dear 

My name is  the son of  I am  and currently live in joint custody with both my mom and dad. I spend one week with my dad and one week with my mom. However, during Summer, Winter and Spring breaks, I am primarily residing with my dad. We constantly go on vacations during these breaks as my mother has work. Thus, I spend more time with my father due to this.

Please contact me if you have any further questions.

I am happy to answer them. My personal email is  and my phone number is: . Do not hesitate to contact me.

Warm Regards,



2017 Provincial Advocacy Training Conference

**Welfare Eligibility Issues: front line advocates' panel**

**(Day two: Wednesday October 18, from 1:45 to 3 pm)**

Presentation by: Jennifer Matthews  
Together Against Poverty Society

**Summary of Legal Issue:**

Whether the Ministry appropriately applied an overpayment of \$16,470 for assets in excess and failure to pursue income to Mr. Took's file for income assistance he received between 2009 and 2016.

**Summary of Facts:**

Mr. Took had an employer-sponsored pension from work he carried out in the late 1980s/early 1990s. On several occasions he considered transferring his pension funds elsewhere, and requested Termination Selection Statements from his plan holder in June 2000 and in October 2006. Both Termination Selection Statements gave Mr. Took the option of fully refunding his pension, as his pension value was under the amount that would have required him to lock-in a portion under the *Pensions Benefits Standard Act (PBSA)*.

Mr. Took decided to transfer his pension to his financial institution in March 2008. Because the commuted values in the 2006 Termination Selection Statement were only valid for 6 months, he was provided a new statement. In recalculating his commuted values, Mr. Took's plan holder determined his pension funds had grown to the extent that he would be required to lock-in a portion of his pension as per the *PBSA*. Mr. Took was provided a cash payout of roughly \$17,000, and the remaining \$29,000 (commuted value of all pensionable services) was transferred directly to a locked-in retirement account (LIRA).

As a seasonal, low-wage worker, Mr. Took used his pension payout to supplement his earnings. By December 2008 he had exhausted most of his payout, and applied for income assistance. He received income assistance periodically from January 2009 to March 2016 (total of 27 months), typically re-applying for income assistance in the fall or winter months each year.

Mr. Took's last application for income assistance was made in December 2015. Following his approval for assistance his file was transferred to PLMS for review. Over the course of his file review the Investigative Officer (IO) advised Mr. Took that he could have transferred his LIRA to a Life Income Fund (LIF) when he turned 55 in June 2013, and therefore determined that he had failed to pursue income available to him. The IO also determined that he had failed to pursue an asset as he did refund his full pension when it was available to him in 2006. Finally the IO determined that he had assets in excess of the allowable amount for the duration he received assistance.

An overpayment of \$16,470 (equal to all assistance he received between 2009 and 2016) was calculated to his file. Mr. Took disagreed with the Ministry's conclusion and requested a reconsideration.

### **Substantive Arguments:**

- 1) The Ministry failed to appropriately apply s. 14(1) "Consequences of not accepting or disposing of property" of the *EA Act* in determining that Mr. Took failed to pursue an asset available to him as it did to consider the relevant limitation period set out in the statute.
  - S. 14(1) gives the minister authority to take action if, within a two year period before the date of application for income assistance, the applicant or recipient failed to accept or pursue income/assets
  - The commuted values on Mr. Took's 2006 Termination Selection Statement were only valid for 6 months (expired March 2007). Mr. Took did receive one income assistance cheque within two years of when the 2006 Termination Selection Statement expired, but only one. All other assistance he received was outside of two year limitation period.
  - Furthermore, Mr. Took did pursue the asset in 2008, prior to applying for income assistance, but at this time was unable to access the full amount because of the *PBSA*.
- 2) The Ministry's determination that Mr. Took's assets were in excess of the allowable amount as per s. 11 "Asset Limits" of the *EA Regulation* is unreasonable as the assets in his LIRA are locked-in, and therefore not accessible to him.
  - Ministry policy entitled "Types of Assets (December 1, 2015)" states that RRSPs and RRIAs locked-in pursuant to the *PBSA* do not impact a client's eligibility as they are unavailable to the client and therefore not considered assets.
  - The 2008 Termination Selection Statement clearly states that the portion of Mr. Took's pension that was not paid out to him needed to be locked-in pursuant to the *PBSA*
  - Although Mr. Took could have transferred funds in his LIRA to a LIF on July 1, 2013, this account would have also been locked-in, despite monthly payments from it. In a letter included with the reconsideration, Mr. Took's branch manager explained the LIF itself is a locked in account, and therefore he could not have accessed the full amount in it.
- 3) The Ministry failed to apply the correct consequence for failing to pursue income that would have been available to Mr. Took had he transferred funds in his LIRA to a LIFA when he turned 55
  - Consequences of failing to pursue income or assets are set out in s. 14(3) of the *EA Act*, which provides that the minister may either (a) reduce the amount of income assistance provided by the prescribed amount for the prescribed period, or (b) declare the person ineligible for income assistance for the prescribed period.
  - Mr. Took was not receiving income assistance at the time of reconsideration, therefore the consequence outlined in 14(3)(a) wasn't applicable. The prescribed period for consequences under 14(3)(b) are set out in s. 31(2) of the *EA Regulation*. The money was no longer available to Mr. Took (unable to receive retroactive payments if he decided to put his funds in his LIRA into LIF), therefore the period of ineligibility as per 31(2)(b) is one calendar month for each \$2 000 of the value of the forgone income.
  - The exact amount of LIF payments were unknown as they are set annually by the Federal Office of the Superintendent of Financial Institutions. However, estimated by branch manager to have been approximately \$150.00. Mr. Took received income assistance for 19 months when he was eligible for approximately a \$150 payments from LIF.  $19 \times 150 = \$2850$ , working out to a maximum of one month ineligibility.



- However, Mr. Took was unaware of the LIF option, and not informed until IO advised of this option 2 years later, therefore submitted it was unreasonable to hold Mr. Took accountable for failure to pursue income when its accessibility was unknown

Outcome of reconsideration – the overpayment was removed from Mr. Took's file.

**Challenges and lessons learned from the case**

- Working with unfamiliar provincial legislation (*PSBA*)
- Changes to the *PBSA* around the same time (Sept 2015) creating some exceptions to withdraw money from locked in RRSPs and other pension instruments in limited situations, including for reasons of financial hardship – changes could have impact on outcome of similar case in the future



302 – 895 Fort Street, Lekwungen Territories, Victoria, BC, Canada V8W 1H7  
Tel: (250) 361-3521 Fax: (250) 361-3541 Web: www.tapsbc.ca

## **Request for Reconsideration: Mr. Took**

**Issue:** The Ministry's decision to apply an overpayment of \$16, 470 to Mr. Took's file.

### **Relevant Legislation:**

#### ***Employment and Assistance Act***

##### **Consequences of not accepting or disposing of property**

**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:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;

(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.

#### ***Employment and Assistance Regulation***

##### **Definitions**

**1** (1) In this regulation:

"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;

##### **Asset limits**

**11** (2) A family unit is not eligible for income assistance if any of the following apply:

(a) subject to paragraph (c), a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$2 000;

##### **Effect of failing to pursue or accept income or assets or of disposing of assets**

**31** (1) For the purposes of section 14 (3) (a) [*consequences of not accepting or disposing of property*] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

(a) if the income, assets or other means of support are still available, until the failure is remedied, and

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Province of British Columbia,  
The Provincial Employees Community Services Fund,  
and other generous donors.

(b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,

- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

### **Relevant Policies and Procedures:**

#### ***Policies:***

#### **'Types of Assets' – December 1, 2015**

Non-Redeemable (locked-in) RRSPs and Registered Retirement Income Funds (RRIFs) Only  
RRSPs and RRIFs that are locked-in pursuant to the Pension Benefits Standards Act are considered unavailable assets and do not impact eligibility.

The Pension Benefits Standards Act provides regulatory authority for locked-in pension plans and provides authority for transfers from those pension plans to locked-in RRSPs and RRIFs. Locked-in pension plans are employer-sponsored Registered Pension Plans (RPPs). When employment ceases, the locked-in funds must be used to provide a retirement income and may not be paid out as a cash lump sum (subject to limited exceptions permitted by the governing legislation, such as financial hardship). RPPs and locked-in RRSPs and RRIFs containing pension funds transferred from RPPs are not considered assets for eligibility purposes and clients are not required to unlock them.

Clients should provide the ministry confirmation from the financial institution where their RRSP or RRIF is held that their RRSP or RRIF is locked-in pursuant to the Pension Benefits Standards Act.

Once an RRSP or RRIF is no longer locked-in pursuant to the Pension Benefits Standards Act, it is considered an asset and may impact eligibility for assistance.

#### **'Reasons for Sanctions' – August 1, 2015**

Table: Income or Asset Related Sanction

Types of Sanctions	Consequence	Period of Time
If income, assets or other means of support	The minister may impose <ul style="list-style-type: none"> <li>ineligibility for singles or couples</li> </ul>	One calendar month for each \$2,000 of the value of the foregone income, asset or other means of support [See Period of Time]

are no longer available	<i>without dependent children</i> <ul style="list-style-type: none"><li>• \$100 per month rate reduction for one parent families</li><li>• \$200 per month rate reduction for two-parent families</li></ul>	
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**Period of Time**

One calendar month for each \$2,000 of the value of the foregone income, asset, or other means of support. For example:

- sanctions are not applied to amounts under \$2,000
- \$2,000 to \$3,999 has a one calendar month sanction
- \$4,000 to \$5,999 has a two month sanction

***Procedures:***

**'For All Other Sanctions' – October 9, 2008**

***Applying Sanctions***

Sanctions are applied from the date non-compliance is determined and continue until the sanction time has elapsed.

Example: If a client reapplies for assistance one week after they are determined ineligible under Section 13, they continue to be ineligible until the one month sanction period has elapsed. However, if the client reapplied for assistance three months after they were determined ineligible, then the sanction for Section 13 would not apply as the one month sanction period had already elapsed.

**Background Information:**

1. Mr. Took worked for the [REDACTED] from during the late 1980s and early 1990s. During his employment he accrued an employer-sponsored, registered pension with the [REDACTED].
2. Mr. Took received three Termination Selection Statements for his pension from [REDACTED]: June 2000 (commutable value valid until November 2000); October 2006 (commutable value valid until March 2007); and March 2008 (commutable value valid until September 2007).
3. In their calculations of Mr. Took's 2000 and 2006 Termination Selection Statements, the [REDACTED] determined that the value of his pension was under the amount that would require him to lock-in a portion of his pension under the *Pensions Benefits Standard Act (PBSA)* upon termination of his plan. As such, the 2000 and 2006 Termination Selection Statements gave the payout option of fully refunding his pension accrued for all pensionable hours.

4. In March 2008 Mr. Took signed his 2006 Termination Selection Statement, directing his pension be transferred directly to a Retired Registered Savings Plan with [REDACTED]. However, the commuted values of his 2006 Termination Selection Statement had only been valid until March 2006. Therefore, another Termination Selection Statement was generated for Mr. Took by [REDACTED].
5. In the recalculation of the commutable values, the [REDACTED] determined that the value of Mr. Took's pension required a portion to be locked-in under the *PBSA* upon payout. As seen in the attached 2008 Termination Selection Statement, Mr. Took was given two options; 1) a deferred lifetime pension for all pensionable service in the amount of \$243.97 payable monthly from age 55 to 65, then \$189.73 payable monthly from age 65 or 2) a locked-in payment of the portion of the commuted value of his monthly pension for all pensionable service that is within the *Income Tax Act* limit in the amount of \$29,475.32 plus a cash payment of \$17,139.61 (amount in excess as per the *Income Tax Act*).
6. Mr. Took terminated his pension with [REDACTED] on March 15, 2008 and selected the second option available to him. He received a cash payout of \$17,139.61 (net payment of \$12,773.35 after tax deductions) – the maximum payout available to him. As per the 2008 Termination Selection Statement, the remaining \$29,475.32 of his pension was locked-in under the *PBSA* and therefore not accessible to Mr. Took. The payment was transferred directly to a Locked-In Retirement Account (LIRA) held with [REDACTED].
7. In her attached email dated July 12, 2016, Mrs. [REDACTED] Branch Manager, further elaborates on the requirement to lock-in a portion of Mr. Took's pension, stating "at no time was Mr. Took able to collapse the entire [pension] plan to take as cash from the point of set up in 2008. As the pension instruction states, the money had to be moved into a locked in RSP, and once there the account could not be closed as a way to access the balance" (para. 1). She further states that there was no provision for withdrawal of the locked-in funds, even in the event of financial hardship, until changes were made to the *PBSA* in late 2015.
8. On December 16, 2008 Mr. Took submitted his first application for income assistance. The Ministry intake process requires the submission of detailed financial information for all accounts held by the applicant, including pensions and Retirement Savings Plans (RSPs). During his intake, Mr. Took complied with the requirement to submit information about his LIRA. He was determined to be eligible for income assistance and received one month of benefits for January 2009. Mr. Took did not receive income assistance for any other month in 2009, and his Ministry file was closed in May, 2009.
9. Mr. Took submitted a new application for income assistance in the fall of 2010, and received assistance for November and December 2009. His file was closed in June 2011 after not collecting assistance for several months. He also received income assistance from December 2011 to February 2012; February to March 2013; October 2013 to May 2014; October 2014 to April 2015; and December 2015 to March 2016. For each period he received assistance Mr. Took was required to submit a new application for assistance, and complied with the requirement to submit information about his personal finances, including his LIRA.
10. Mr. Took turned 55 on June 27, 2013 and as of July 1, 2013, he had the option of transferring funds held in his LIRA to a Life Income Fund (LIF) with [REDACTED]. By transferring his funds to a LIF, Mr. Took would have begun receiving modest monthly

payments from his pension. The maximum monthly amount available from LIFs changes annually and is set out by the Federal Office of the Superintendent of Financial Institutions. As per an email from Mrs. [REDACTED] (Branch Manager) on June 9, 2016 he would have been eligible for less than \$150 per month.

11. In her email dated July 12, 2016 Mrs. [REDACTED] (Branch Manager) also confirms that although Mr. Took would have been able to access monthly income by transitioning his LIRA to a LIF, the LIF itself is also a locked-in account, and therefore aside from the maximum monthly payments from the account, the funds in the LIF would have remained locked-in.
12. In June 2016 Mr. Took received notice that the Ministry calculated an overpayment in the amount of \$16,470 to his file. In the letter and accompanying overpayment chart dated June 7, 2016 the Ministry states that the potential overpayment is believed to have occurred because of assets in excess of the allowable limit in a LIRA with [REDACTED] in the amount of \$29,475.32 as per a statement provided by Mr. Took to the Ministry two years before dated May 1, 2014.
13. Mr. Took requested a reconsideration of the Ministry's decision. In the request for reconsideration form, the Ministry provides the following reasons for the overpayment 1) as per a Termination Selection Statement from June 2000, Mr. Took could have withdrawn a portion of his pension before transferring it to a locked-in RRSP in March 2008 (the reconsideration notes the commuted values of the 2000 Termination Selection) and 2) Mr. Took was eligible for a reduced monthly pension benefit when he turned 55 on June 27, 2013, and therefore the Ministry determine he was ineligible for all income assistance he received following this date.

#### **Legal Considerations:**

##### **Applicable time period**

14. The Ministry failed to appropriately apply s. 14 (1) of the *Employment and Assistance Act* (the "Act") by failing to consider the relevant limitation period set out in the statute when calculating Mr. Took's overpayment.
15. S. 14(1) states that the Minister can only take action with respect to the legislated consequences for not accepting or pursuing income or assets "within 2 years before the date of application for income assistance". Given that Mr. Took's initial application for income assistance was December 16, 2008, any income or assets not pursued by Mr. Took prior to December 16, 2006 are irrelevant for the purposes of determining his eligibility. It is therefore submitted that the Ministry does not have the legislated authority to calculate an overpayment on his file based on an asset he did not pursue in 2000 – 8 years before he applied for income assistance.
16. It is recognized that the commuted values calculated in Mr. Took's 2006 Termination Selection Statement were valid until March 2007. This is within the two year limitation period of Mr. Took's first income assistance application on December 16, 2008. However, the asset is the [REDACTED] Pension Plan and the value of this asset is determined by the PBSA. It was a consequence of the PBSA that a portion had to be locked in at the time he terminated his [REDACTED] asset. In addition, Mr. Took only received one income assistance cheque – for the

month of January 2009 – within this 2 year limitation period. His Ministry file was subsequently closed in May 2009.

17. Mr. Took did not submit another application for income assistance until the fall of 2010. At the time of this application, his decisions related to the termination of his employee-sponsored pension were no longer relevant. He had terminated his [REDACTED] pension over two years prior, making the choice to take a cash payout of \$17,139.61 (net payment of \$12,773.35 after tax deductions) and transfer the remainder of his pension to a LIRA with [REDACTED] as required.
18. It is therefore submitted that, Mr. Took's decisions concerning the termination of his pension held with [REDACTED] have no impact on his past or current eligibility for income assistance.

#### **Locked-in asset**

19. Ministry policy entitled "Types of Assets (December 1, 2015)" states that RRSPs and RRIFs locked-in pursuant to the PBSA do not impact a client's eligibility as they are unavailable to the client and therefore not considered assets. The policy goes on to explain that locked-in funds are accrued through employer-sponsors Registered Pension Plans, and upon termination of employment "must be used to provide a retirement income and may not be paid out as a cash lump sum (subject to limited exceptions permitted by the governing legislation, such as financial hardship)". The policy lists RRSPs and Registered Retirement Income Funds (RRIFs) as example vehicles that may contain locked-in funds. The policy also states that clients are not required to unlock such accounts for the purposes of their eligibility.
20. Both the 2008 [REDACTED] Termination Selection Statement and the email from Mrs. [REDACTED] dated July 12, 2016 make clear that the \$29,475.32 transferred in 2008 to Mr. Took's LIRA was locked-in pursuant to the PBSA, and therefore, not considered an assets for the purposes of determining Mr. Took's eligibility.
21. Furthermore, although Mrs. [REDACTED] (branch manager) explains that from July 1, 2013 forward Mr. Took could have transferred his pension funds held in his LIRA to a LIF, and by doing so would have received modest monthly income from the account, she states that a LIF is a "locked in account that pays an income stream similar to a RIF, but the funds in the [account] would have been locked in, just like the LIRA".
22. Given that Mr. Took's pension funds are currently locked-in in his LIRA; have been locked in since 2008; and would have been locked in even if he transferred the funds to a LIF, it is submitted that his pension funds are exempt for the purposes of determining his eligibility for income assistance as per the above Ministry policy.
23. It is therefore submitted that it is unreasonable for the Ministry to calculate an overpayment to Mr. Took's file due to assets in excess under s. 11 of the *Employment and Assistance Regulation* (the "Regulation") as the locked-in pension funds are not considered assets.

#### **Consequences for failing to pursue income or assets under s. 14 of the Act**

24. S. 14(1) of the Act requires individuals to accept or pursue income that would enable then applicant to be completely or partly independent of income assistance. The consequence of a failure to pursue income is set out in s. 14 (3). As per s. 14(3), if there is a failure to pursue

income, the minister may (a) reduce the amount of 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.

25. Mr. Took is not currently in receipt of income assistance; therefore s. 14(3)(a) does not apply. S. 14(3)(b) may apply, in which case, the prescribed period is set out in s. 31(2) of the *Regulation*. S. 31(2)(a) of the *Regulation* is not applicable because the monthly pension amount he might have received from a LIF since 2013 is not available to him. Mr. Took cannot retroactively claim what he would have received had he put his pension funds into a LIF. S. 31(2)(b) of the *Regulation* may apply, in which case the prescribed period of ineligibility is one calendar month for each \$2,000 of the foregone income.
26. It is difficult to calculate the exact amount of income not pursued as the maximum monthly amount available from LIFs changes annually and is set out by the Federal Office of the Superintendent of Financial Institutions. However, in consideration of the fact that if he would have put his entire pension into the LIRA he would only have been eligible to receive \$243.97 per month after age 55. The value would be less in light of the fact that he withdrew \$17,139.61 from the pension plan in 2008. In addition, Mrs. [REDACTED] (Branch Manager) states that the payments would have approximately \$150 (see attached June 9 email). Mr. Took received income assistance for 19 months when he was eligible for approximately a \$150 payments from a LIF. Therefore, \$150 by 19 months works out to maximum 1 month of ineligibility.

#### **Conclusion:**

27. Mr. Took did pursue the asset in the form of his [REDACTED] Pension Plan before applying for income assistance and it was a consequence of the *PBSA* that he was required to lock in a portion. He did not collapse his pension in 2000 but this is not relevant to his income assistance eligibility as it is not within the 2 year time period of his income assistance application. The 2006 Termination Selection Statement was within 2 years of Mr. Took's 2008 income assistance application. However, Mr. Took did pursue the asset approximately 10 months prior to his application and did so according to the requirements of the *PBSA*.
28. At the time of his December 2008 application for income assistance, his pension had been transferred into a LIRA and he was not able to access these funds. Therefore, this was not an asset that could impact his eligibility during the initial application or any of his subsequent applications. The information on his LIRA was submitted to the Ministry each time he submitted an income assistance application and it was determined he was eligible for income assistance. Accordingly, it is Mr. Took's submission that there was no period while he was receiving income assistance that he had assets in excess.
29. As stated above, from July 1, 2013, Mr. Took was eligible to transfer his funds held in a LIRA to a LIF and access a small pension fund. It is a relevant fact that Mr. Took may have been eligible for the pension income but he never received it. In fact, he was not aware he could access funds through his LIRA until his conversation Ministry in December 2015. In a letter to Mr. Took on June 7, 2016 the Ministry states that "due to an error by the ministry" Mr. Took received income assistance he was not eligible for. In addition, he received no notice from his bank that he was now eligible to transfer his funds to a LIF. It would be unreasonable to hold Mr. Took accountable for failure to pursue income when its accessibility was unknown to both the Ministry and Mr. Took until late 2015.



30. In the alternative, if the Ministry takes the position that this was a failure to pursue income, the consequence is one month for each \$2000 of foregone income. As outline at paragraph 26, this would result in a maximum of 1 month of ineligibility.
31. In consideration of the facts and law outlined above, Mr. Took submits that he never had assets in excess while receiving income assistance and there was no overpayment to his file. As outlined above, if there was a failure to pursue income, the consequence for this failure is a period of ineligibility for one month for each \$2000.00 of the forgone income during the period he received assistance.

Sincerely,

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*Together Against Poverty Society*

## WELFARE AND OUTSTANDING WARRANTS

### DETAILED FACT SHEET

As of June 1<sup>st</sup>, 2010, there are new rules in B.C. about welfare eligibility for people with outstanding arrest warrants.<sup>1</sup>

Under these rules, people with certain outstanding warrants may be cut off, or ineligible for, welfare until they take steps to deal with the outstanding warrant.

These rules are complicated, and there are some exceptions to them. It is important that you read this whole fact sheet so that you know all of the information that might apply to you.

**TIP** → The new rules about warrants apply to eligibility for income assistance, disability assistance, hardship assistance, benefits for Persons with Persistent Multiple Barriers to employment (PPMB), and other supplements from the Ministry of Housing and Social Development ("the Ministry"). In this fact sheet, we use the word "*welfare*" to refer to all these kinds of benefits.

### 1. What kinds of warrants affect eligibility for welfare?

The new rules say that, unless a person fits in one of the exceptions to the rules (explained below in question 11), a person is not eligible for welfare in BC if there is an outstanding warrant for that person issued under either:

- (a) the *Immigration and Refugee Protection Act* ("IRPA"); **or**
- (b) any other enactment of Canada **in relation to an indictable offence**.

*\*Note:* In this fact sheet we use "*relevant warrant*" to refer to an outstanding arrest warrant under IRPA or in relation to an indictable offence under another federal law.

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<sup>1</sup> Resources:

- *Employment and Assistance Act*, section 15.2; *Employment and Assistance Regulation*, ss. 77.4, 77.5, and s. 81(f)-(g); *Employment and Assistance for Persons with Disabilities Act*, section 14.2.; and *Employment and Assistance for Persons with Disabilities Regulation*, ss. 70.3, 70.4, and 73(1)(f)-(g). All of this legislation is online at <http://www.mhr.gov.bc.ca/ministry/leg.htm>.
- The Ministry's Online Resource contains the Ministry's policy on warrants and welfare: [http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/warrants/](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/warrants/)
- For more general information on welfare, the Legal Services Society's booklet *Your Welfare Rights*, at <http://www.lss.bc.ca/assets/pubs/yourWelfareRights.pdf>.

### a) Relevant warrants under the Immigration and Refugee Protection Act

Having **any** outstanding warrant under IRPA may make a person ineligible for welfare. Warrants under IRPA can be issued for two basic reasons:

A warrant *may* be issued if a person fails to attend an immigration examination or other hearing (such an admissibility hearing) or fails to report as required to Citizenship and Immigration Canada, or

If a person is charged with one of the offences set out in sections 117-128 of *IRPA*, and fails to attend court as required in relation to those charges.

### b) Relevant warrants under other federal laws

Most warrants are issued under the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act*.<sup>2</sup> Such warrants only affect welfare eligibility if they are “in relation to an indictable offence.” What does that mean?

Warrants can be issued in relation to three kinds of alleged offences:

- a) indictable offences – these are charges for very serious offences which can only be prosecuted by the most formal, “indictable” process.
- b) hybrid offences – the majority of offences are hybrid offences. When an offence is hybrid, the prosecution can choose whether to prosecute the charges by indictment, or by the summary conviction procedure.
- c) summary conviction offences – these are charges for less serious offences which can only be prosecuted by the least formal, “summary conviction” process.

The new welfare rules say that you are ineligible for welfare if you have an outstanding warrant in relation to a hybrid offence OR an indictable offence. Warrants relating to summary conviction offences do not affect your eligibility for welfare.

## 2. How do I know if I have an outstanding warrant for a hybrid or indictable offence?

There is no simple list of which offences fall into which category. If you know what specific charge a warrant relates to, you can check the *Criminal Code of Canada*<sup>3</sup> and the *Controlled Drugs and Substances Act*<sup>4</sup> to see if it is indictable, hybrid, or summary.

<sup>2</sup> Warrants issued for indictable or hybrid offences under any federal statute, not just the *Criminal Code* or *Controlled Drugs and Substances Act*, will also affect welfare eligibility.

<sup>3</sup> Online at: <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>.

<sup>4</sup> Online at: <http://www.canlii.org/en/ca/laws/stat/sc-1996-c-19/latest/sc-1996-c-19.html>.

Many people are not sure exactly what they are charged with. If you have a copy of your "information" from criminal court, it will state what your charges are for.

### **3. I think a relevant warrant was issued for me a while ago. How do I know if it still exists?**

Not everyone who has had a relevant warrant issued against them in the past necessarily *still* has a warrant. Sometimes charges are stayed and, when that happens, warrants are cancelled. A warrant can be cancelled without you knowing about it. As a result, you can't assume that you *still* have an active warrant.

Unless you are sure a relevant warrant is still outstanding, it may be most accurate, when asked, to tell the Ministry that you don't know if you have a relevant outstanding warrant. For more information about this, see question 7 below.

### **4. How does the Ministry ask if I have a relevant warrant?**

The Ministry has said publicly that it is relying on people to voluntarily disclose whether they have relevant warrants. This is not fully accurate as the Ministry will also be checking to confirm whether people have warrants, as described below.

**If you apply for welfare after June 1<sup>st</sup>:** starting June 1, 2010 the application forms for welfare require you to state whether or not you have a relevant warrant. The actual question asked is:

*"Is there an outstanding warrant for your arrest issued under the Immigration and Refugee Protection Act (Canada) or any other enactment of Canada in relation to an offence for which a person may be prosecuted by indictment?"*

**TIP** → The application forms ask you to answer "yes" or "no" to this question. If you are not sure whether you have an outstanding relevant warrant, you can tell the Ministry worker your answer is "I don't know."

**If you are already receiving welfare before June 1<sup>st</sup>,** the Ministry has said it will ask you about relevant warrants in three situations:

- (1) Self-reporting: The monthly report stub is changing in June 2010. This is the report that most people must complete and hand back to the Ministry to get welfare benefits the next month. Starting with welfare cheques for July that are issued on June 23<sup>rd</sup>, the monthly report will ask you to declare whether you have a relevant warrant. The monthly report must be given back to the Ministry by July 5<sup>th</sup>. This

means that the welfare cheque for August is the earliest cheque that self-reporting under the new rules can affect.

**TIP → Self-reporting if you receive disability assistance (PWD)**

If you receive disability assistance (PWD) and think you *may* have a relevant warrant, you should complete the monthly report that comes with your benefits for July, and answer the question about warrants (you can answer "I don't know" if you have any doubt - see question 7). Then give the report to the Ministry by July 5th.

If you know that you do not have a relevant warrant, you do not need to complete the monthly report unless you have *other* changes to report to the Ministry. People who receive disability assistance must only fill out the monthly report when there is a change in circumstances that may affect their eligibility for benefits. Not having a relevant warrant doesn't affect your eligibility for welfare, so you don't need to report that. But you should answer the warrants question and return the monthly report if you think you *may* have a relevant warrant.

- (2) Random audits: the Ministry says it will do random checks on people who currently receive welfare benefits. If you are checked, the Ministry will ask you to sign an Employment and Assistance review form or Employment and Assistance for Persons with Disabilities review form, authorizing the Ministry to check whether you have relevant warrants. The Ministry may ask you to sign this review form at your annual review, or earlier.
- (3) Third party reporting: if a member of the public gives the Ministry a tip that you may have a relevant warrant, the Ministry will check into this. The Ministry will ask you to sign an Employment and Assistance review form or Employment and Assistance for Persons with Disabilities review form, authorizing the Ministry to check whether you have relevant warrants.

## **5. Do I have to consent to a warrant check by the Ministry?**

Yes. If, when asked, you do not consent to the Ministry conducting checks to see if you have relevant warrants, you will not be eligible for welfare.

**If you apply for welfare after June 1, 2010**, as part of the application process, you will be asked to provide the Ministry with written consent to check with the RCMP and the Ministry of Public Safety and Solicitor General to confirm whether you have any relevant warrants.

If you are already receiving welfare, at your annual review the Ministry will require you to sign a review form giving written consent for the Ministry to check with the RCMP and the Ministry of Public Safety and Solicitor General to confirm whether you have any relevant warrants. The Ministry may also ask you to provide this written consent if your cheque is flagged because of a random check, a tip the Ministry has received, or because of information you included on your monthly report stub.

## **6. How will the Ministry check for warrants?**

If you consent to the Ministry conducting a check for relevant warrants, the Ministry will ask the office of the B.C. Ministry of Public Safety and Solicitor General to check for relevant warrants in a computer information system called the Canadian Police Information Centre (CPIC).

If CPIC shows that you have an outstanding relevant warrant, staff at the Solicitor General's office will call the jurisdiction that issued the warrant to double check that the information in CPIC is correct. This step is taken because information in CPIC is not always reliable. For example, CPIC may show that someone has an outstanding warrant against them when in fact the person cleared the warrant last year. The police or others may sometimes forget to update information in CPIC. Similarly, CPIC may not include records of some indictable warrants that have been issued and are still in effect. If a person's indictable warrant is not recorded in CPIC, the Ministry will consider that that person does not have a relevant warrant (and is therefore eligible for welfare).

Once their check is done, the Solicitor General's office will tell the Ministry whether they found a relevant warrant for you and, if so, where and when the warrant was issued. The Ministry says that it will not get any other information about the alleged offence, or about you, from the Solicitor General's office.

## **7. What if I think I might have a relevant warrant, but I'm not 100% sure?**

Many people think they may have a warrant or warrants from the past, but are not 100% sure if any of the warrants are still in force. Other people may think they have a criminal warrant, but may not be 100% sure whether the warrant is for an indictable or hybrid offence (that is, a warrant that affects welfare eligibility) or for a summary offence (a warrant that does not affect welfare eligibility).



**TIP** → If you are in either of these situations, we recommend that, when you are asked, you **tell the Ministry that that you do not know if you have a relevant warrant**. You can give this answer on your monthly report form if you already receive welfare, or on the Ministry's application form if you are applying for welfare. You can say "I don't know" even though the application form and monthly report do not list this answer as an option. Instead of ticking a box to answer "yes" or "no," you can write "I don't know" on the form or monthly report.

If you tell the Ministry that you don't know if you have a relevant warrant, the Ministry will probably require you to sign a consent form authorizing a warrants check (if you have not already signed one). Then the Ministry will ask the Solicitor General's office to run a CPIC check for outstanding relevant warrants.

If you are cut off welfare because an outstanding warrant turns up in that check, you can appeal that decision by making a Request for Reconsideration (see question 8 below). You can also request complete information about the warrant to help you understand your options.

## **8. What if the Ministry says I have a relevant warrant but I don't agree?**

**TIP** → If the Ministry refuses you welfare or cuts you off welfare saying that you have a relevant warrant, and you don't agree that you have a relevant warrant, you can **appeal that decision**. **Get legal help with your welfare appeal**. If you need help with a reconsideration request or an appeal, we suggest you contact an advocate. To find an advocate in your area, use the Povnet "Find an Advocate" function at <http://www.povnet.org/find-an-advocate/bc>.

To appeal a Ministry decision, first request a "reconsideration" by the Ministry. If your reconsideration is not successful, you can file another appeal to the Employment and Assistance Appeal Tribunal (the "Tribunal"). During the appeal process, you are entitled to copies of all of the information that the Ministry used to make its decision, and this should include more information about the alleged relevant warrant.

If you were getting welfare and it was stopped because the Ministry says you have a relevant warrant, you should be able to get an "appeal supplement" while you are appealing. This means the Ministry would give you benefits while you are appealing; if you lose your appeal you will have to pay them back.

In your appeal, you could try and show that the warrant the Ministry says you have in fact no longer exists. Or, you could try to show that an existing warrant is in relation to a summary conviction offence (for example, if the prosecutor had already chosen to prosecute a hybrid offence by summary conviction). **You should seek legal help with any welfare appeal.**<sup>5</sup>

## 9. What are my options if I have a relevant warrant?

Here are **four** options for dealing with a warrant that disqualifies you from getting income assistance:

- (1) You can ignore the warrant, but you will be ineligible for welfare unless you fall into one of the exceptions in question 11 below. If you get welfare after June 1, 2010 despite having a relevant warrant, and the Ministry discovers this, you will likely be cut off welfare and you **MAY** be required to repay any welfare benefits you received while you were ineligible. You could also face criminal charges in relation to obtaining welfare benefits by fraud. If you are convicted of fraud in relation to welfare benefits under the Criminal Code, you will have a lifetime ban on receiving welfare in BC, unless your physical health is in imminent danger.
- (2) If you have a relevant warrant in another province, you can "waive in" your charges to B.C. so that you can attend court here to clear the warrant and deal with the charges. However, you can only waive charges into BC if you intend to plead guilty to them. **You should get legal advice from a criminal law lawyer before deciding to waive in any charges.** You may also need legal help to complete the waiving-in process.<sup>6</sup>

The Ministry says that if someone decides to waive in charges to BC, the Ministry will consider a relevant warrant resolved if the person gives the Ministry a copy of the one of the following court documents in relation to the charge:

- Request for waiver
- Undertaking
- Promise to appear
- Recognizance
- Appearance notice

If you apply to waive in charges to BC, the first document you should get is the Request for Waiver form. Give the Ministry copies of any of these documents as

<sup>5</sup> If you need help with a reconsideration request or an appeal to the Tribunal, we suggest you contact an advocate. To find an advocate in your area, use the Povnet "Find an Advocate" function at <http://www.povnet.org/find-an-advocate/bc>.

<sup>6</sup> If you need advice about waiving in a warrant, please contact Pivot Legal Society at 604-255-9700 or [www.pivotlegal.org](http://www.pivotlegal.org).



soon as you get them, to show you are taking steps to deal with an outstanding warrant.

- (3) You can try to negotiate with the prosecutor (also called Crown Counsel) in the place where the warrant was issued, to see if they will agree to “stay” (that is, agree to drop) the underlying charges.

This is more likely to happen in certain situations, for example: if the charges are old; witnesses are no longer alive or are not available; or there are other reasons why it is no longer in the public interest for your charges to go to trial. If Crown Counsel agrees to stay the charges, they should also cancel any warrants that were issued in relation to those charges. **You will probably need legal help to successfully negotiate with Crown Counsel about this.**<sup>7</sup>

- (4) You can go back to the place where the warrant was issued, so that you can report to Court there and have the warrant cleared.

If you choose to do this, the Ministry will provide a supplement to cover your basic transportation and living costs to get there. If the rest of your family unit chooses to go back to the other jurisdiction with you, then the Ministry can pay their basic transportation and living costs to get there, too. This supplement is **repayable**; it is like a loan from the Ministry that you will have to pay back later. While the Ministry should pay for you to travel back to the place where the warrant exists, **the Ministry will not pay for you or your family to return to BC once you have cleared the warrant.**

## **10. Will a relevant warrant affect my family’s eligibility too?**

No. If an adult in a family unit has a relevant warrant, the rest of the people in their family unit will remain eligible for welfare.

## **11. Are there any exceptions to the new rules?**

Yes. People under 18, pregnant women, and people “in the end stage of a terminal illness” can still get welfare even if they have an outstanding, relevant warrant.<sup>8</sup>

A person with a relevant warrant can still get two kinds of financial supplements where the Ministry considers that “undue hardship” will otherwise occur. See question 12 below.

<sup>7</sup> If you need advice about dealing with a relevant warrant, please contact Pivot Legal Society at 604-255-9700 or [www.pivotlegal.org](http://www.pivotlegal.org).

<sup>8</sup> See *Employment and Assistance Regulation* section 38.1; *Employment and Assistance for Persons with Disabilities Regulation* section Reg 34.1

## **12. Can I get *any* financial help if I'm ineligible for welfare due to a warrant?**

You can apply for two types of financial help if you are ineligible for welfare due to a warrant.

- 1. You can apply for a repayable monthly supplement, if you can show that without financial help you will experience undue hardship.**

This supplement can normally be paid for only 3 months in a row, unless the Minister authorizes payment for up to 3 additional months. You have to reapply for this supplement each month and show undue hardship each time.<sup>9</sup>

The maximum amount of this supplement is the difference between the amount of welfare your family unit would have received that month if you had no warrant, and the amount of welfare your family unit actually received.

- 2. You can apply for a repayable transportation supplement if your warrant was issued in a place (i.e. jurisdiction) other than where you live, and you want to return to that jurisdiction to deal with your warrant.**

To be eligible for this supplement, you need to satisfy the Ministry that:

- you have no resources available to cover the cost of travelling to the jurisdiction that issued your warrant; and
- you will use the supplement money to travel to that jurisdiction to deal with the warrant.

The amount of this supplement is limited to the cost of "the least expensive appropriate" mode of transportation to the issuing jurisdiction, plus "the least expensive appropriate" cost of accommodation and meals required for you (or you and the other members of your family unit) to travel there. It does **not** cover the costs of your stay in the issuing jurisdiction, or the costs of returning home to B.C.

If the Ministry denies your application for either of these supplements, you can request a reconsideration of its decision. However, you cannot get an "appeal supplement" while your request for reconsideration is being decided. If the Ministry's reconsideration decision denies your application for the supplement, the welfare laws say you cannot appeal the reconsideration decision to the Employment and Assistance Appeal Tribunal.

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<sup>9</sup> The purpose of this supplement is to prevent undue hardship while you are dealing with a warrant. For ways of dealing with your warrant, see options 2, 3, and 4 under question 9, "*What are my options if I have a relevant warrant?*" Technically, however, you do not actually have to deal with your warrant in order to qualify for this repayable monthly supplement.

### 13. What legal help is available from CLAS?

The Community Legal Assistance Society (CLAS) may be able to help you if you have been denied welfare due to a warrant **and** you have already made a request for reconsideration and you have lost your appeal to the Employment and Assistance Appeal Tribunal.<sup>10</sup> CLAS may help in the following situations:

#### Situation #1

- You have a relevant warrant in another jurisdiction and you have been cut off or refused welfare;
- You choose not to waive the relevant warrant into BC because you do not want to plead guilty; **and**
- You will experience hardship if required to travel to the other jurisdiction to deal with the warrant (e.g. leaving family behind, or uprooting family in order to travel; mental health problems exacerbated by travel; etc.).

#### Situation #2

- The Ministry says that you have a warrant and has cut you off or refused welfare, but you think that the Ministry's information is incorrect (e.g. there has been an identification error, the warrant has already been resolved, or the warrant is in relation to a summary conviction offence, etc.).

If you are in one of these situations, please contact CLAS as soon as possible at **604-685-3425** or **1-888-685-6222**, and ask to speak to the intake assistant.

Before calling CLAS, **please get a copy of your reconsideration decision and, if you have it, your Tribunal decision** and any other documents that might help us to understand your case.

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<sup>10</sup> **Note to advocates and community workers:** If you are assisting a client in situation #1 or #2 with a reconsideration or appeal and you would like input on your submissions, CLAS may be able to provide you with assistance related to what arguments and evidence to submit.

## Canada Pension Plan Disability

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Ashely Silcock  
Disability Alliance BC  
[ashely@disabilityalliancebc.org](mailto:ashely@disabilityalliancebc.org)  
(604) 872 - 1278

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## The Burden of Proof

When applying for CPP Disability or appealing a denial of the applicant is the one who has to prove that they meet the definitions of CPP disability.

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## Qualifying for CPP Disability

To qualify for CPP Disability a person must:

- Be under 65 years of age
- Have made the required amounts of contributions.
- Have a disability that is both "severe and prolonged" as defined by the CPP Legislation.

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## CPP's definition of disability

What does "severe" and "prolonged" actually mean?

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## Severe

The CPP legislation defines "severe" as any condition(s) that would make "a person incapable of regularly pursuing any substantially gainful occupation"

Severe is about not being to work at any job. That includes not only full time but also, part time, seasonal, or retraining for a different type of work.

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Occasionally you will run into a person who is collecting CPP-D benefits who are still working.

It is not common but CPP do have some situations where a person may be working:

- Sheltered Employment
- Benevolent Employment
- Not substantially gainful employment

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## Sheltered Employment

Sheltered employment is not considered an "occupation for the purposes of CPP-D. Sheltered employment involves simple tasks performed in a closely supervised environment where performance goals are defined by the employee's capabilities.

The work is therapeutic and often offered in coordination with other public, psychiatric, and mental health programs.

8

## 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 expected of other employees.

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## Prolonged

Prolonged is defined as "such severe disability is likely to be long continued and of indefinite duration or likely to result in death."

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## What is substantially gainful?

68.1 For the purposes of subparagraph 42(2)(a)(i) of the Act, "substantially gainful", in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension could receive.

In 2017 that is \$15, 489.72.

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## Calculating MQP

and other issues related to contributions

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### Not every person qualifies for CPP-D benefits

If you (or your client) are unsure if (or when) contributions were paid into the plan you may want to get a statement of contribution by:

Ph: 1-800-277-9914 (English)

Ph: 1-800-277-9915 (French)

Or online with a My Service Canada account.

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### For clients who have become disabled after January 1<sup>st</sup> 1998

If they have worked for less than 25 years their MQP is:

Four out of six years.

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### For clients who have worked for more than 25 years

Instead of having the MQP be four out of six when someone has a long enough history the MQP is calculated based on a three out of six year range.

If their MQP is in the past your client needs to be able to prove that they were so disabled they lacked the capacity to do any sort of work.

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## Child Rearing Drop-Out Provision

The years where a parent has had little or no earnings because they were caring for a child under the age of seven can be excluded from calculating the MQP.

Applicants still need to have four out of six years of contributions (or 3 out of 6 if they qualify).

26

## Credit Splitting

- When HRSDC learns that a person is applying for CPP benefits and they are divorced or separated they will mail off an application for a credit split.
- Credit splitting allows the lower income earner to claim part of their ex-partner's CPP contributions for the time they were living together.
- Unlike the Child Rearing Drop Out the Credit Split can give a person enough contributions that they may be able to qualify for CPP even if they have never worked.

27

## Early Retirement

You cannot collect two CPP benefits during the same time. A person on Early Retirement is able to switch from that to Disability benefits only if their application form is received within 15 months of their Early Retirement starting.

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## Terminal Illness Application for a Disability Benefit.

Under the Canada Pension Plan

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If you are working with someone who has been told their condition is terminal and death is imminent they do not have to do the full CPP Disability application.

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A CPP Disability application includes:

- General Information Guide
- Application – asks for basic personal information about the person applying
- Questionnaire for Disability Benefits – asks the applicant to provide information on their education, work history, and medical information
- The Authorization to Disclose allowing CPP to get information from the doctor who completed the CPP Medical Report
- An Authorization to Disclose allowing CPP to gather information from a wide ranges of sources.
- Medical Report to be done by the doctor
- Child Rearing Drop Out Provision

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## Reconsideration

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If ESDC turn down an application they will give 90 days for the now appellant to submit in writing that they would like Service Canada to reconsider the decision the medical adjudicator made denying CPP Disability benefits.

The person who reviews the reconsideration will not be the same person as the one who denied the application.

23

You can get a Consent to Communicate Information to an Authorized person at

<https://catalogue.servicecanada.gc.ca/content/EForms/en/Detail.html?Form=ISP1618B>

24

**Info Source** Personal Information Request Form

Privacy Act

You can get a copy of the *Info Source: Personal Information Request* form by calling ESDC at 1-800-277-9914

Or online at <https://www.tbs-sct.gc.ca/tbsf-fsct/350-58-eng.asp>

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## The file will include:

- The completed CPP Disability application
- The doctor's medical report
- The disability summary sheet which will give you Service Canada's reasoning for why they denied the claim.
- Any other documentation that Service Canada may have collected such as clinic notes and specialist reports.

26

## Reconsideration process

During a Reconsideration new information can be submitted if it will help the case. This can include letters from doctors addressing some of the reasons why the applicant was denied.

ESDC may also gather additional information or they may ask the applicant to see a doctor. They will pay for medical letters and reports but only if they are requesting them.

Typically it can take several months before a person will get a decision on their reconsideration.

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## Appeals to the Social Security Tribunal

General Division

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If your client has had their CPP Reconsideration denied their next step is to appeal to the General Division of the Social Security Tribunal.

Again people are given 90 days. If you are working with someone and they have exceeded their 90 days they can still apply but it will be at the Tribunal's discretion if they will accept and process the late appeal.

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You can find Notice of Appeal and the Authorization to Disclose forms on <http://www1.canada.ca/en/sst/>

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## Once I have an appeal file

Reconsideration and appeals to the General Division of the Social Security Tribunal

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## Things that I do when a CPP-D file arrives

1. I confirm the clients MQP.
2. Rule out if the client is possibly eligible for any special provisions they haven't applied for already.
3. Construct a time line
  - Date | Who | Where information is located in the file?
4. Collect information in support of the appeal

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## Gathering additional information in support of an appeal

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### Your client

Of course the person who is applying (or appealing) for CPP Disability benefits is going to give a great deal of the information into the file.

If at all possible I encourage clients to symptom track either digitally or in a notebook.

People in your client's life will be able to give insights into things they have noticed that may feel normal or be overlooked.

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### Approaches I have used with doctors:

- Writing the doctor – giving them the reasons CPP D was denied – and ask them for a letter of support.

- Writing the doctor – giving them the reasons CPP D was denied – giving them a list of specific written answer questions (with sample answers) that the doctor can transfer over by hand.

- Writing the doctor – giving them a list of yes / no questions for the doctor to check.

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### Provincial Government (including MSDPR benefits)

I typically ask the Ministry of Social Development and Poverty Reduction to send me copies of:

- medical employability reports submitted.
- PPMB applications and appeal documents
- any PWD applications and appeal documents
- any diet allowance requests and appeals
- copies of any health supplement submitted request and appeals

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[illegible][illegible]

**Provincial Government (Including MSDPR)**  
Submit a Request for Access to personal information  
with a signed and a consent to disclosure to:  
Freedom of Information Request  
PO Box 9569 Stn Prov Govt  
Victoria, BC V8W 9K1

Fax: (250) 387-9843  
Email: [FOI.Requests@gov.bc.ca](mailto:FOI.Requests@gov.bc.ca)



### Other possible sources of information:

- hospital records
- pharmacare records
- ICBC reports / files
- WCB reports / files
- private insurance reports / files
- clinic notes
- counsellors / therapists
- allied health professionals
- previous employers
- colleagues
- family
- friends
- community members

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### Case Law

The tribunal hearings are recorded and in some cases they are published by the Social Security Tribunal.

CanLii will allow you to search for decisions and filter the results for specific keywords.

Annotated Canada Pension Plan

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### Budgeting your time

How I budget my time as an example for how you can budget your time

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If I am going to help someone at application the first thing I need them to do is get a statement of contributions to the Canada Pension Plan. Before I book the appointment I need to know if they have valid contributions. Once I know that I need to know why they are trying to apply for CPP Disability benefits because that can influence the amount of time I invest into the file.

A simple application for someone who is only applying to meet MSDPR requirements or for someone who have a very clear case make only need 1-2 hours of work.

A more complex application that has to address:

- Post MQP earnings
- Failed work trial
- Not having tried a different type of work
- Current employment
- Conflicting medical reports
- Unclear prognosis
- Etc

Will require more time and attention. You could spend all day working on a complex application <sup>43</sup>

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### Reconsideration

The initial appointment including file opening and information gathering can take from 1 hour to a full days worth of work. By the end of the first appointment you will hopefully have an idea of how much time to budget.

During the appointment I help the client draft a written letter requesting reconsideration that addresses the reasons why the application was denied.

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If you complete and submit the infoSource form it typically takes about of a month for the Reconsideration file to arrive.

Once it has arrived I will usually make my time line. This allows me to weed out reports that have been duplicated, along side the strengths and the weaknesses of the material in the file.

Creating the time line takes me anywhere from a couple of hours to a days with larger more complex cases. For clients where there is a great deal of supporting documentation

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The length of time these appeals take can really vary dramatically. Most of my clients have a decision back within 3-8 months but occasionally a reconsideration goes longer. I usually aim to follow up with phone calls at the 5 and 7 month point especially if I haven't had any recent updates from my client..

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#### **Social Security Tribunal**

The initial appointment including file opening and information gathering can take from 1 hour to a full days worth of work. Typically I schedule 3-6 hours depending on the complexity.

We either update or draft answers to Questions I Need Answering. We may or may not submit additional medical reports.

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You will get a confirmation of the Notice of Appeal. That will give you a 365 day dead line. After that point the Tribunal Member may not accept submissions or additional reports. I have reminders one month, one week, and one day before.

I schedule a number of follow up times typically every quarter. If I haven't heard from my client or back from family members, past employers, friends and their doctors I want to follow up for an update.

My calendar now goes over a year in advance.

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## Case Law

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## Resources

• Service Canada – Canada Pension Plan  
Address: Service Canada Po Box 1177 Station CSC Victoria BC V8W 2V2  
Phone: 1-800-277-9914  
Website: <https://www.canada.ca/en/services/benefits/public/pensions/cpp.html>

CPP-D application package: <https://catalogue.servicecanada.gc.ca/content/EFForms/en/Detail.html?Form=SP1151>

Terminal Illness Application for a Disability Benefit under the Canada Pension Plan:  
<https://catalogue.servicecanada.gc.ca/content/EFForms/en/Detail.html?Form=SP2530>

- Consent to Communicate to an Authorized Person: <https://catalogue.servicecanada.gc.ca/content/EFForms/en/Detail.html?Form=SP1609CPP>
- InfoSource requesting CPP-D file: <http://www.sss-st.gc.ca/ftb-ftct/350-57-nl-eng.pdf>
- Decisions by Benefit and Subject: <http://www1.canada.ca/en/ssi/rdi/rdi-eng.html>

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## Resources:

• Social Security Tribunal  
Address: PO Box 9812 Station T Ottawa Ontario K1G 6S3  
Phone: 1-877-227-8577  
Fax: 1-855-814-4117  
E-mail: [info.sst-tss@canada.ca](mailto:info.sst-tss@canada.ca)  
Social Security Tribunal website: <http://www1.canada.ca/en/ssi>  
Social Security Tribunal – Canada Pension Plan website: [www1.canada.ca/en/ssi/cpp/cpp.html](http://www1.canada.ca/en/ssi/cpp/cpp.html)  
Social Security Tribunal – CPP – General Division website:  
<http://www1.canada.ca/en/ssi/cpp/cppprocess.html>  
Social Security Tribunal – CPP – General Division – Decisions:  
<http://www1.canada.ca/en/ssi/cpp/cppgeneraldecision.html>  
Social Security Tribunal – CPP – Appeals Division website:  
<http://www1.canada.ca/en/ssi/adcpp/adcppprocess.html>  
Social Security Tribunal Decisions: <http://www1.canada.ca/en/ssi/adcpp/adcppdecisions.html>

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## Other sources of information

### MSDPR

Ministry of Social Development and Poverty Reduction – Request for Information : [http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/initiatives-plans-strategies/open-government/open-information/access\\_request\\_form\\_general.pdf](http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/initiatives-plans-strategies/open-government/open-information/access_request_form_general.pdf)

Consent to Disclose Information: <http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/policies-for-government/bc-employment-assistance-policy-procedure-manual/forms/pdfs/hr3189.pdf>

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## Other sources of information

### • PAB Decisions

Pensions Appeals Board Decisions on the SST website:  
<http://www1.canada.ca/en/sst/pab/index.html>

Service Canada's Listing of Decisions organized by benefit and subject:  
<http://www1.canada.ca/en/sst/rdl/refcpp.html>

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### • CanLII

Website: <https://www.canlii.org/en/ca/sst/>

Hospital Records – your regional health authority will have a form requesting copies of all reports, tests and / or records that the hospital may have.

Pharmacare – people can approach their pharmacist to initiate a request for prescription records.

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## Resources

- **Disability Alliance BC – Advocacy Access**

Phone: (604) 872 1278 or 1-800-1278

Website: [www.disabilityalliancebc.org](http://www.disabilityalliancebc.org)

- **POVNET**

Has a CPP list. Also PovnetU at times offers a course on Canada Pension Plan Disability Benefits.

Website: <http://www.povnet.org/>

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Donna Nobel has had three children and has been their primary caregiver since birth.

- David T. Nobel born January 21 2005
- Matt S. Nobel born March 2 2006
- Peter C. Nobel born February 1, 2010

Filter item

[illegible]

Year	Contributions – CPP	Contributions QPP	Refunds – CPP	Refunds – QPP	UPE	Earnings indicator	David	Matt	Peter	MQP count
1990										
1991										
1992										
1993	17.13		7.36		860					
1994	64.53				5879					
1995	443.00				19807					
1996	804.79				32249					
1997	661.54				25401					
1998	734.06				25437					
1999	1, 075.25				32817	S				
2000	1, 329.95				37600	M				

2001	1, 496.40				38,300	M				1
2002	666.30				17671					2
2003	1, 188.00				27509					3
2004	997.46				23247					4
2005	75.49			71.31	5024		Born			5
2006	159.95			75.49	6731		1	Born		
2007	279.02				6731		2	1		
2008				91.85	0	B/Y	3	2		
2009	57.61			64.17	4665		4	3		
2010					0		5	4	Born	
2011	3911.51				43536	S	6	5	1	
2012	184.92			33.69	7234		7	6	2	
2013				50.28	0	B/Y	8	7	3	
2014	0				0		9	8	4	
2015	0				0		10	9	5	
2016	0				0		11	10	6	
2017							12	11	7	
2018							13	12	MQP	6

The Child Rearing Drop Out Provision advanced Donna's MQP much further into the future. In this case their MQP is December 31, 2018.



Nobel has had three children and has been their primary caregiver since birth.

Since submitting the application for CPP Disability benefits Donna and partner have had a fourth child:

- Wilfred Watt Nobel born July 23, 2017

Year	Contributions – CPP	Refunds – CPP	UPE	David	Matt	Peter	Fred	MQP count
1990								
1991								
1992								
1993	17.13	7.36	860					
1994	64.53		5879					
1995	443.00		19807					
1996	804.79		32249					
1997	661.54		25401					
1998	734.06		25437					
1999	1, 075.25		32817					
2000	1, 329.95		37600					
2001	1, 496.40		38,300					1
2002	666.30		17671					2
2003	1, 188.00		27509					3
2004	997.46		23247					4
2005	75.49		5024	Born				5
2006	159.95		6731		Born			
2007	279.02		6731					
2008			0					
2009	57.61		4665					
2010			0			Born		
2011	3911.51		43536					
2012	184.92		7234					
2013			0					
2014	0		0					
2015	0		0					
2016	0		0					
2017							Born	
2018							1	
2019							2	
2020							3	
2021							4	
2022							5	
2023							6	
2024							7	
2025							MQP	6

Donna Nobel and Lance Bennet are married from 1992 to 2007.

Year	Donna's UPE (before credit split)	Lance's UPE (before credit split)
1990	10,000	20,000
1991	10,000	20,000
1992	10,000	20,000
1993	10,000	20,000
1994	10,000	20,000
1995	10,000	20,000
1996	10,000	20,000
1997	10,000	20,000
1998	10,000	20,000
1999	10,000	20,000
2000	10,000	20,000
2001	10,000	20,000
2002	10,000	20,000
2003	10,000	20,000
2004	10,000	20,000
2005	10,000	20,000
2006	10,000	20,000
2007	10,000	20,000
2008	10,000	20,000
2009	10,000	20,000
2010	10,000	20,000
2011	10,000	20,000
2012	10,000	20,000
2013	10,000	20,000
2014	10,000	20,000
2015	10,000	20,000
2016	10,000	20,000
2017	10,000	20,000
2018		

Year	Lance's UPE (before credit split)	Lance's UPE (after credit split)	Donna UPE (before credit split)	Donna UPE (before credit split)
1990	10, 000		20, 000	
1991	10, 000		20, 000	

You will notice that the credit split is in the best interests of a lower income partner.

In this case Lance would not want to submit a credit split application.

1992	10, 000	15, 000	20, 000	15, 000
1993	10, 000	15, 000	20, 000	15, 000
1994	10, 000	15, 000	20, 000	15, 000
1995	10, 000	15, 000	20, 000	15, 000
1996	10, 000	15, 000	20, 000	15, 000
1997	10, 000	15, 000	20, 000	15, 000
1998	10, 000	15, 000	20, 000	15, 000
1999	10, 000	15, 000	20, 000	15, 000
2000	10, 000	15, 000	20, 000	15, 000
2001	10, 000	15, 000	20, 000	15, 000
2002	10, 000	15, 000	20, 000	15, 000
2003	10, 000	15, 000	20, 000	15, 000
2004	10, 000	15, 000	20, 000	15, 000
2005	10, 000	15, 000	20, 000	15, 000
2006	10, 000	15, 000	20, 000	15, 000
2007	10, 000	15, 000	20, 000	15, 000

As soon as Service Canada see that an applicant is divorced or separated they will a credit split. Even if it will have a negative impact on their credits.

It is possible for someone to use the credit split to give them CPP contributions that can be used to apply for CPP Disability benefits even if that person has never worked.

2008	10, 000		20, 000	
2009	10, 000		20, 000	
2010	10, 000		20, 000	
2011	10, 000		20, 000	
2012	10, 000		20, 000	
2013	10, 000		20, 000	
2014	10, 000		20, 000	
2015	10, 000		20, 000	
2016	10, 000		20, 000	
2017	10, 000		20, 000	
2018				

### Case Study FourA

Donna Nobel and Lance Bennet are married from 1992 to 2007.

Year	Donna's UPE (before credit split)	Lance's UPE (before credit split)
1990	10,000	20,000
1991	10,000	20,000
1992	10,000	20,000
1993	10,000	20,000
1994	10,000	20,000
1995	10,000	20,000
1996	10,000	20,000
1997	10,000	20,000
1998	10,000	20,000
1999	10,000	20,000
2000	10,000	20,000
2001	10,000	20,000
2002	10,000	20,000
2003	10,000	20,000
2004	10,000	20,000
2005	10,000	20,000
2006	10,000	20,000
2007	10,000	20,000
2008	10,000	20,000
2009	10,000	20,000
2010	10,000	20,000
2011	10,000	20,000
2012	10,000	20,000
2013	10,000	20,000
2014	10,000	20,000
2015	10,000	20,000
2016	10,000	20,000
2017	10,000	20,000
2018		

Year	Donna's UPE (before credit split)	Donnas UPE (after credit split)	Lance's UPE (before credit split)	Lance's UPE (before credit split)
1990	10,000		20,000	
1991	10,000		20,000	

1992	10,000	15,000	20,000	15,000
1993	10,000	15,000	20,000	15,000
1994	10,000	15,000	20,000	15,000
1995	10,000	15,000	20,000	15,000
1996	10,000	15,000	20,000	15,000
1997	10,000	15,000	20,000	15,000
1998	10,000	15,000	20,000	15,000
1999	10,000	15,000	20,000	15,000
2000	10,000	15,000	20,000	15,000
2001	10,000	15,000	20,000	15,000
2002	10,000	15,000	20,000	15,000
2003	10,000	15,000	20,000	15,000
2004	10,000	15,000	20,000	15,000
2005	10,000	15,000	20,000	15,000
2006	10,000	15,000	20,000	15,000
2007	10,000	15,000	20,000	15,000

2008	10,000		20,000	
2009	10,000		20,000	
2010	10,000		20,000	
2011	10,000		20,000	
2012	10,000		20,000	
2013	10,000		20,000	
2014	10,000		20,000	
2015	10,000		20,000	
2016	10,000		20,000	
2017	10,000		20,000	
2018				

#### Case Study FourB

Year	Donna's UPE (before credit split)	Donnas UPE (after credit split)	Lance's UPE (before credit split)	Lance's UPE (after credit split)
1990	20,000		0	
1991	20,000		0	
1992	20,000	10,000	0	10,000
1993	20,000	10,000	0	10,000
1994	20,000	10,000	0	10,000
1995	20,000	10,000	0	10,000
1996	20,000	10,000	0	10,000
1997	20,000	10,000	0	10,000
1998	20,000	10,000	0	10,000
1999	20,000	10,000	0	10,000
2000	20,000	10,000	0	10,000
2001	20,000	10,000	0	10,000
2002	20,000	10,000	0	10,000
2003	20,000	10,000	0	10,000
2004	20,000	10,000	0	10,000
2005	20,000	10,000	0	10,000
2006	20,000	10,000	0	10,000
2007	20,000	10,000	0	10,000
2008	20,000		0	
2009	20,000			
2010	20,000			
2011	20,000			
2012	20,000			
2013	20,000			
2014	20,000			
2015	20,000			
2016	20,000			
2017	20,000			
2018				

If a person is divorced and they have access to the credit split it can give them enough contributions to have a MQP even if they have never worked.

In this example Lance's MQP would end up December 31, 2009.

People can waive their right to CPP D contributions.

It is only in the best interests of the lower income earner and once an application goes in there is no way to reverse or stop the process.

### Case Study FiveA:

Donna applied for and took CPP ER benefits in 2015. First Donna has to show that their disability started before ER. Then that they were so severe they fit CPP's definition of disability. Also there is a 15 month deadline to submit a CPP Disability application.

Showing 1 to 22

22 entries

Show 25 entries

Filter item

Year	Contributions – CPP	UPE	MQP Count
1990			
1991			
1992			
1993	17.13	860	
1994	64.53	5879	
1995	443.00	19807	
1996	804.79	32249	
1997	661.54	25401	
1998	734.06	25437	
1999	1, 075.25	32817	
2000	1, 329.95	37600	
2001	1, 496.40	38,300	
2002	666.30	17671	
2003	1, 188.00	27509	
2004	997.46	23247	
2005	75.49	5024	
2006	159.95	6731	
2007	279.02	6731	
2008		0	
2009	57.61	4665	
2010		0	
2011	3911.51	43536	
2012	184.92	7234	
2013		0	
2014	0	0	
2015	18, 000	0	
2016	22, 000	0	

It has been more than 15 months since ER started. If Donna were to apply for CPP Disability benefits today it would be denied.

**MQP 3 out of 6 years.**

Donna Nobel is single person with no children. Donna stopped working in 2013 after having had a stroke. After the stroke Donna reports being unable to go back to work.

Year	Contributions – CPP	Contributions QPP	Refunds – CPP	Refunds – QPP	UPE	Earnings indicator
1984	xx.xx				xxxx	
1985	xx.xx				xxxx	
1986	xx.xx				xxxx	
1987	xx.xx				xxxx	
1988	xx.xx				xxxx	
1989	xx.xx				xxxx	
1990	xx.xx				xxxx	
1991	xx.xx				xxxx	
1992	xx.xx				xxxx	
1993	17.13		7.36		860	
1994	64.53				5879	
1995	443.00				19807	
1996	804.79				32249	
1997	661.54				25401	
1998	734.06				25437	
1999	1, 075.25				32817	S
2000	1, 329.95				37600	M
2001	1, 496.40				38,300	M
2002	666.30				17671	
2003	1, 188.00				27509	
2004	997.46				23247	
2005	75.49			71.31	5024	
2006	159.95			75.49	6731	
2007	279.02				6731	
2008				91.85	0	B/Y
2009	57.61			64.17	4665	
2010					0	
2011	3911.51				43536	S
2012	184.92			33.69	7234	
2013				50.28	0	B/Y
2014	0				0	
2015	0				0	
2016	0				0	

Note: xx is in the place of valid contributions.



Donna Nobel is single person with no children. Donna stopped working in 2013 after having had a stroke. After the stroke Donna reports being unable to go back to work.

Year	Contributions – CPP	Contributions QPP	Refunds – CPP	Refunds – QPP	UPE	Earnings indicator	MQP Count
1984	xx.xx				xxxx		
1985	xx.xx				xxxx		
1986	xx.xx				xxxx		
1987	xx.xx				xxxx		
1988	xx.xx				xxxx		
1989	xx.xx				xxxx		
1990	xx.xx				xxxx		
1991	xx.xx				xxxx		
1992	xx.xx				xxxx		
1993	17.13		7.36		860		
1994	64.53				5879		
1995	443.00				19807		
1996	804.79				32249		
1997	661.54				25401		
1998	734.06				25437		
1999	1,075.25				32817	S	
2000	1,329.95				37600	M	
2001	1,496.40				38,300	M	
2002	666.30				17671		
2003	1,188.00				27509		
2004	997.46				23247		
2005	75.49			71.31	5024		
2006	159.95			75.49	6731		
2007	279.02				6731		
2008				91.85	0	B/Y	
2009	57.61			64.17	4665		43
2010					0		30
2011	3911.51				43536	S	22
2012	184.92			33.69	7234		11
2013				50.28	0	B/Y	5
2014	0				0		6
2015	0				0		
2016	0				0		

Donna's MQP in this case becomes December 31, 2014

**MQP 4 out of 6 years.**

Donna Nobel is single person with no children. Donna stopped working in 2013 after having had a stroke. After the stroke Donna reports being unable to go back to work.

Showing 1 to 22

22 entries

Show 25 entries

Filter item

Year	Contributions – CPP	Contributions QPP	Refunds – CPP	Refunds – QPP	UPE	Earnings indicator	MQP Count
1990							
1991							
1992							
1993	17.13		7.36		860		
1994	64.53				5879		
1995	443.00				19807		
1996	804.79				32249		
1997	661.54				25401		
1998	734.06				25437		
1999	1, 075.25				32817	S	
2000	1, 329.95				37600	M	
2001	1, 496.40				38,300	M	
2002	666.30				17671		
2003	1, 188.00				27509		
2004	997.46				23247		
2005	75.49			71.31	5024		
2006	159.95			75.49	6731		
2007	279.02				6731		
2008				91.85	0	B/Y	
2009	57.61			64.17	4665		
2010					0		
2011	3911.51				43536	S	
2012	184.92			33.69	7234		
2013				50.28	0	B/Y	
2014	0				0		
2015	0				0		
2016	0				0		

22

22 entries

Show 25 entries

Filter item

Year	Contributions – CPP	Contributions QPP	Refunds – CPP	Refunds – QPP	UPE	Earnings indicator	MQP Count
1990							
1991							
1992							
1993	17.13		7.36		860		
1994	64.53				5879		
1995	443.00				19807		
1996	804.79				32249		
1997	661.54				25401		
1998	734.06				25437		
1999	1, 075.25				32817	S	
2000	1, 329.95				37600	M	
2001	1, 496.40				38,300	M	
2002	666.30				17671		
2003	1, 188.00				27509		
2004	997.46				23247		
2005	75.49			71.31	5024		
2006	159.95			75.49	6731		
2007	279.02				6731		6
2008				91.85	0	B/Y	5
2009	57.61			64.17	4665		4
2010					0		3
2011	3911.51				43536	S	2
2012	184.92			33.69	7234		1
2013				50.28	0	B/Y	
2014	0				0		
2015	0				0		
2016	0				0		

Based on the scenario Donn's MQP is going to be December 31, 2012. This is the date by which she would have to show she was disabled by.

## **6. Other**

- **Consultation on Your Welfare Rights (Day 1)**
  - Front pocket of binder or folders
- **Technology and Privacy Issues (Day 1)**
  - Materials provided in session
- **Helping Clients get ID (Day 2)**
  - Powerpoint
  - Birth Certificate Applications for Dummies
  - ID for people with Permanent Residents
  - Helpful Resources for Obtaining ID
- **Having your Say on a New Human Rights Commission (Day 2) (see Tab 4 NEW Resources and Services)**
- **Client Encounters with Police in Indigenous Communities: A Consultation (Day 3) (see Tab 3)**
- **Overview of Key Issues Affecting Seniors (Day 3)**

## Helping Clients get ID



**The Kettle Society**  
Strength through mental health

Aubrey Feary,  
Mental Health Advocate & Outreach Worker



Amber Prince, Lawyer, Legal Advocacy Program



**Carnegie Outreach Program**

Mary Ellen Glover, Tenant Relocation Officer

## Carnegie Outreach Program

Processes for Obtaining:

- Birth Certificates (by province)
- Non Photo Services Cards
- Photo Services Cards and BCID

## Birth Certificates By Province

- ▶ British Columbia: Straight forward, Letter of support if missing information
- ▶ Alberta: Designated Agent Status, Commissioner for Taking Affidavits
- ▶ Ontario: Declaration Form, Letter of support about why ID is needed
- ▶ Quebec: Letter of Support about why ID is needed
- ▶ Saskatchewan: Authorization Form to apply on behalf of someone
- ▶ Manitoba: Letter of support about why ID is needed
- ▶ Other Provinces: Straight forward for the time being

## Letter of Support

- ▶ Explain reasons why client does not know missing information:
  - ▶ Client has been homeless for the last 2 years, and is no longer in contact with his family or anyone else to obtain missing information.
- ▶ Explain why client needs ID:
  - ▶ Client requires ID to remain eligible for social assistance payments here in BC by the Ministry of Social Development and Poverty Reduction here in British Columbia in order to remain eligible for social assistance payments..
- ▶ Include Agency Mandate:
  - ▶ The Carnegie Outreach Program's mandate is to assist individuals that are homeless, marginalized, and low-income. Many are facing multiple barriers to housing and employment.
- ▶ Include contact information at your agency, and a Consent to Disclose information signed by client
  - ▶ Should you have any questions in regards to [Client Name] he can be reached through the Carnegie Outreach program at 604-968-1825.

# Alberta Birth Certificates

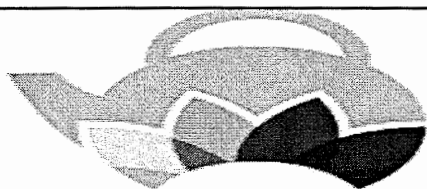
- ▶ When applying to Alberta, you must go through Registry Connect (Authorized Agent for the Province of Alberta not Vital Stats)
- ▶ “Designated Agent for One Year Exception Status” : apply to Service Alberta
- ▶ Commissioner for Taking Affidavits in the Province of British Columbia
  - ▶ Eligible if employment/volunteer activities involve providing the services of a Commissioner for Taking Affidavits (i.e., outreach workers, Tenant Support Workers)

## Ontario Declaration

Declaration form		Date: _____																		
I am eligible to receive a qualification for the first proposed Technical Credit for that award.																				
<input type="checkbox"/> I have not had a family member in my household <input type="checkbox"/> I do not have a partner <input type="checkbox"/> I do not have any of the aforementioned cases <input type="checkbox"/> I have been in contact with the police / court <input type="checkbox"/> I have been referred to a mental health professional or a psychiatric hospital																				
I have not been involved in any of the following activities:																				
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## Non-Photo Services Card, Photo Identification

- ▶ Birth Certificates (or proof of Status in Canada) must be included with for Non-Photo Services Card applications (Health/Care Card)
- ▶ If client gets birth certificate, and they have a Bank Card with their name on it, you can skip this step!
- ▶ If we order ID for clients, we do not release until we have attended ICBC with client and had their picture taken at ICBC for Photo ID and ID will be mailed to us.



**The Kettle Society**  
Strength through mental health



1725 Venables St.

Ph: 604-251-6354

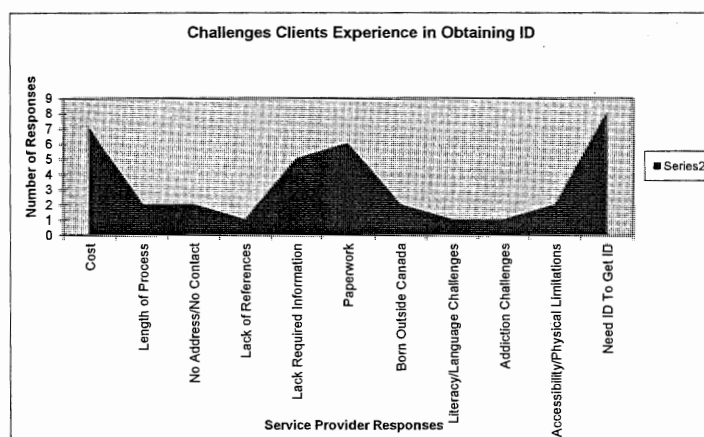
Advocacy: 604-263-0669



## Why do we need ID Banks?

- ▶ Not restricted to but we deal largely with homeless and marginalized individuals who do not have ID
- ▶ People who are homeless need a place to store ID
- ▶ Not having ID creates further barriers to accessibility of services
- ▶ Not having ID can also contribute to homelessness

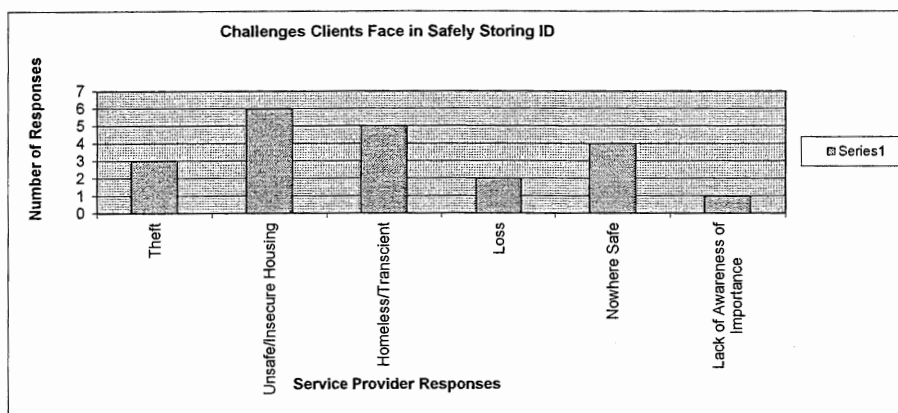
## 2014 Needs Assessment: Highlights



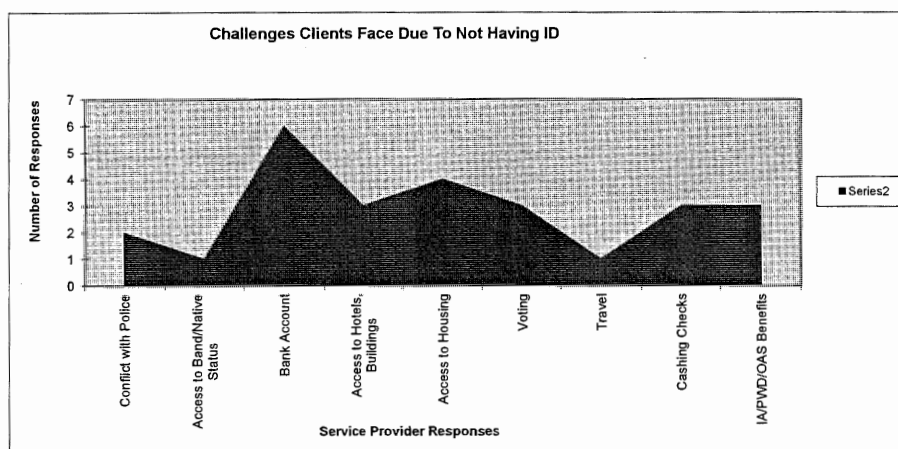
"Why do I need ID to get ID? If I had ID, I wouldn't need ID"  
- Mos Def



## 2014 Needs Assessment: Highlights



## 2014 Needs Assessment: Highlights



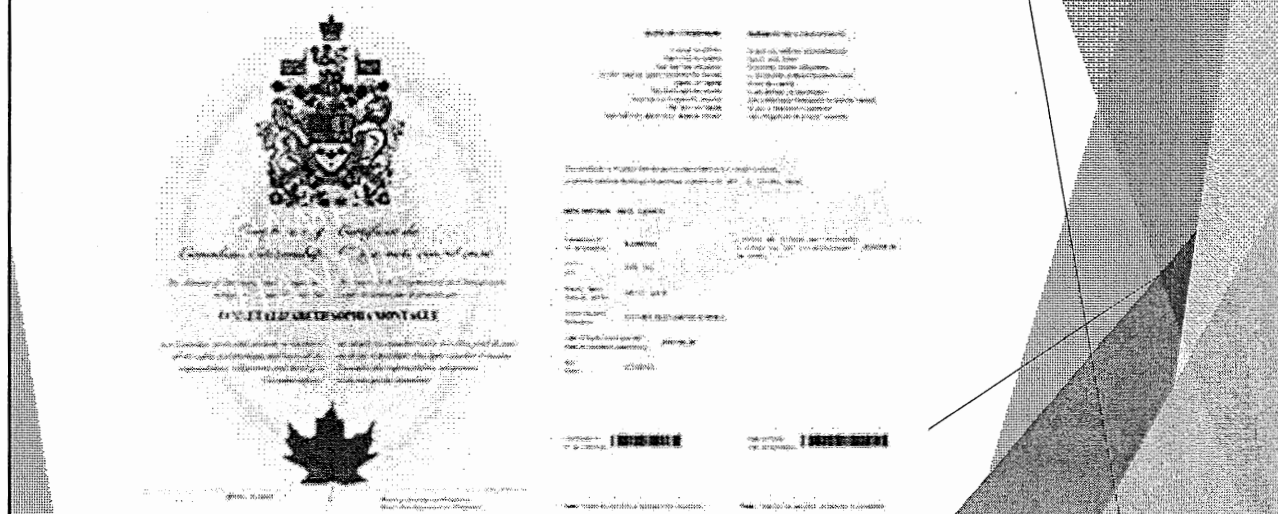
## The Kettle Society's ID Bank

- ▶ We provide services to individuals living
  - ▶ Outside of the DTES
  - ▶ Those in the DTES who either have an existing relationship with us or don't want to or can't go to Carnegie.
- ▶ Client's do not have to live with a mental health condition to access our ID bank
  - ▶ We assess eligibility for free services using the same measure of low income for the working poor that the city of Vancouver uses to determine eligibility for leisure access cards

## Low-income-cut-off for 2016 tax year (Statistics Canada)

Family Size	Net Family Income
▶ 1 person	▶ \$24,949
▶ 2 people	▶ \$31,061
▶ 3 people	▶ \$38,185
▶ 4 people	▶ \$46,362
▶ 5 people	▶ \$52,583
▶ 6 people	▶ \$59,304
▶ 7 people or more	▶ \$66,027

## Replacing Canadian Citizenship Certificates



### 1.) Start by looking at the document checklist

- ▶ <http://www.cic.gc.ca/english/information/applications/certif.asp>
- ▶ What if my client doesn't have the ID application requests ( 2 pieces of personal ID such as passport, drivers license or health care card - **one of which must have a photo on it**)?

**Additional documents you can include:**  
**(DO NOT SEND ORIGINALS - They wont be returned to you)**

- ▶ Previous Canadian Citizenship certificate
- ▶ Tenancy agreements
- ▶ Notice of transit/parking ticket with name and address on document
- ▶ Letters from healthcare workers (i.e., social worker) confirming client's identity
- ▶ Letters from mental health workers or housing workers confirming clients identity
- ▶ NOA is best (but other CRA doc showing SIN could be used)
- ▶ Credit card, bank card, healthcare card, SIN card/SIN confirmation - showing clients name
- ▶ Food bank card with photo ID
- ▶ BC Ferries Card with photo ID
- ▶ Photos from MSDPR sworn as true document

**2.) Complete the application with the client:**

- ▶ If it's your first time completing an application follow along with the instruction guide that can be found here:
- ▶ <http://www.cic.gc.ca/english/pdf/kits/citizen/CI T0001E-2.pdf>
  - ▶ For any sections that do not apply to your client write "N/A"
  - ▶ For any sections that your client cannot provide information for, write "Unknown"
    - ▶ i.e., many people do not parents or grandparents marriage date

3.) Get your client to sign IRCC consent forms:

- ▶ “Use of a representative form” (IMM 5476)
- ▶ Takes 10 business days to process
- ▶ Call for updates on application
- ▶ <http://www.cic.gc.ca/english/pdf/kits/forms/IMM5476E.pdf>

4.) Ask client to have two photos taken



- ▶ Two identical citizenship photos (color or black & white)
- ▶ Name of photographer or studio, the studio address and the date the photos were taken on the back of the photos
- ▶ Print the name of the person on the back of the photos.
- ▶ **Taken within the last six months.**
- ▶ If you wear a head covering for religious reasons, make sure your full facial features are not obscured.



## 5.) Pay the application fees:

- ▶ \$75.00 - non-refundable once processing has commenced -despite final outcome
  - ▶ Pay fees online:
    - ▶ You'll have to create an account with IRCC
    - ▶ Need email and debit or credit card.
  - ▶ Print two copies of the receipt (one for application & one for your records)!!

Write a letter to include with application that explains your client's situation:

- ▶ Who you are, what you do etc.
- ▶ Why they need citizenship certificate. Is it urgent?
- ▶ Why they don't have required documents
- ▶ Have they been homeless? How long?
- ▶ Are they on income assistance?
- ▶ Explain why some info is missing in the application

## Really Important!!!

- ▶ If your client gives consent, use your agency's address as return address
- ▶ Be sure to copy everything that you send to the IRCC!!
- ▶ If your client's application is returned as "Incomplete" due to missing information the IRCC does not keep records of applications sent.

## Replacing Permanent Resident Cards





## 1. Start by looking at the document checklist

- ▶ <http://www.cic.gc.ca/english/information/applications/prcard.asp>
- ▶ What if my client does not have the ID the Application requests?
- ▶ They need ONE of the following:
  - ▶ **Valid** Passport or travel document OR
  - ▶ Passport or travel document person had when they became a PR (including page stamped when they arrived in Canada and became a PR) OR
  - ▶ Certificate of identity or travel document issued by the Minister of IRCC or a foreign country.

## Additional documents you can include: (DO NOT SEND ORIGINALS - They won't be returned to you)

- ▶ Previous Permanent Resident Card
- ▶ Tenancy agreements
- ▶ Notice of transit/parking ticket with name and address on document
- ▶ Letters from healthcare workers (i.e., social worker) confirming client's identity
- ▶ Letters from mental health workers or housing workers confirming clients identity
- ▶ NOA is best (but other CRA doc showing SIN could be used)
- ▶ Credit card, bank card, healthcare card, SIN card/SIN confirmation - showing clients name
- ▶ Food bank card with photo ID
- ▶ BC Ferries Card with photo ID
- ▶ Photos from MSDPR sworn as true document
- ▶ Any identity document issued outside Canada before client came to Canada

## Statutory Declaration signed by your client

### STATUTORY DECLARATION

I, Mariana Romero, of 204-1122 Knight Street, Vancouver, BC, V6P-1C7 I SOLEMNLY  
DECLARE THAT:

1. I have personal knowledge of the facts set out below except where indicated to be on  
information and belief and so indicated. I verily believe them to be true.
2. In December 2001 I entered Canada as a landed immigrant and received Permanent  
Resident Status on February 22, 2006. Attached hereto and marked as EXHIBIT "A" is a  
photocopy of my previous permanent resident card dated March 2011, social insurance  
number card, and a Non-Photo Services Card from the Province of British Columbia.
3. In 2011 my wallet was stolen and all of my identification with it.
4. I am the individual known as Mariana Romero, born August 26, 1977 in Leticia,  
Columbia and I hold Permanent Resident status in Canada.
5. To further document my identity, I have included a tenancy agreement from my housing  
provider, attached hereto and marked as EXHIBIT "B."

I make this solemn declaration conscientiously believing it to be true, and knowing that this is of  
the same force and effect as if made under oath.

SOLEMNLY DECLARED BEFORE  
ME at Vancouver, British Columbia,  
09 June, 2017

*[Signature]*  
A Commissioner for taking  
affidavits and oaths  
for British Columbia



*[Signature]*  
Mariana Romero

## Letter from person who knew your client when she or he lived in their country of origin. (Can be a family member)

### ► Letter should indicate:

- Name
- Birthplace
- Current address
- How long they have known your client
- When they moved to Canada
- Person confirms date client moved to Canada
- Person confirms client's current address
- Signature & date

## 2. Complete the application with the client:

- ▶ If it's your first time completing an application follow along with the instruction guide that can be found here:
- ▶ <http://www.cic.gc.ca/english/information/applications/prcard.asp>
- ▶ For any sections that do not apply to your client write "N/A"
- ▶ For any sections that your client cannot provide information for, write "Unknown"
  - ▶ i.e., full address of place they lived at 5 years ago

## 3.) Get your client to sign IRCC consent forms:

- ▶ "Use of a representative form" (IMM 5476)
- ▶ "Authority to release personal info to a designated individual" (IMM 5475)
- ▶ <http://www.cic.gc.ca/english/information/applications/prcard.asp>
- ▶ Takes 10 business days to process
- ▶ Call for updates on application

#### 4. Ask client to have two photos taken

[illegible]

## 5. Pay the application fees:

- ▶ \$50.00 - non-refundable once processing has commenced -despite final outcome
- ▶ Pay fees online:
  - ▶ You'll have to create an account with IRCC
  - ▶ Need email, printer and debit or credit card.
  - ▶ Print two copies of the receipt (one for application & one for your records)!!

## Become a Commissioner for Taking Affidavits!!!

- ▶ It's relatively easy!
  - ▶ You need:
    - ▶ Canadian citizenship OR Permanent resident status
    - ▶ No criminal record
    - ▶ \$50.00
- ▶ Application can be found here:
  - ▶ [http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/for-legal-professionals/commissioners/application\\_form.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/for-legal-professionals/commissioners/application_form.pdf)
- ▶ What you can do:
  - ▶ Swear statutory declarations
    - ▶ Certify photocopies
    - ▶ Certain provinces require a commissioner for taking affidavits to swear birth certificate applications where the applicant doesn't have photo ID

# Birth Certificate Applications for Dummies

*Before you start filling out any application form, make sure you are doing the official government version. There are companies that disguise themselves as official versions and cost extra. Use this link to get to the official versions:*

[http://www.servicecanada.gc.ca/eng/subjects/cards/birth\\_certificate.shtml](http://www.servicecanada.gc.ca/eng/subjects/cards/birth_certificate.shtml)

If you are assisting with the Birth Certificates from any province, make sure it is sent to your agency's office.

## Alberta

- 1) Make sure you have the most updated version of the **Registry Connect** application form
- 2) For the purpose of the application, YOU (Agency Staff) are the applicant
- 3) Put client's info in "**Birth**" section, if client does not know important info like parents' names, write a brief cover letter explaining the circumstances why info is unknown (no contact with parents, deceased, adopted, etc....) otherwise they might send it back asking for the info
- 4) Fill out the form titled "**Applicant's Consent to Designated Agent**". On this form the client is listed as the applicant; outreach worker is the designated agent; normally a designated agent would need to know the applicant for at least one year but the Carnegie Outreach Program has an exemption for that<sup>1</sup>. Client signs the bottom part.
- 5) Fill out the "**Statutory Declaration for Proof of Identity**" form. The outreach worker provides their contact info, with your agency's address as the address. I usually use my driver's license and my agency badge as the proof of ID. You will need to have this part signed by someone is designated a Commissioner for Taking Affidavits in British Columbia<sup>2</sup>. You CANNOT have the same person be the designated agent AND commissioner of oaths.
- 6) Print a Proof of Employment Letter (saved on One Drive under Birth Certificates), that you are staff of the Carnegie Outreach Program

---

<sup>1</sup> Designated Agent Status in Alberta is obtained by applying directly to Service Alberta, Vital Statistics Agency, [www.alberta.ca](http://www.alberta.ca). Explain that you need to apply for what is called "Designated Agent with a One Year Exception Status". You will have to provide written information about your organization's mandate.

<sup>2</sup> Appointments may be granted to eligible persons whose employment/volunteer activities involve providing the services of a Commissioner for Taking Affidavits (i.e., outreach workers, legal advocates, etc.) [http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/for-legal-professionals/commissioners/application\\_form.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/for-legal-professionals/commissioners/application_form.pdf)

- 7) Include copy of the One-year Exception Status for your agency
- 8) Include a copy of the Commissioner for Taking Affidavits in the Province of BC Status
- 9) Provide a photo copy of the ID that you listed in the statutory declaration (in most cases, this will be your agency's representative who applied on behalf of the client).

## British Columbia

1. Fill out application, and have CLIENT SIGN in the TWO (2) different signature boxes. Once requesting it to be sent to Carnegie Outreach (near top of page), and once near the bottom of the application.
2. If they do not know the names of parents, or other vital info, write a letter explaining why this information is not known and why it cannot be obtained at present.

## Ontario

**Disclaimer:** If you have a BSW or are a teacher, and have known the applicant for over two years, you can complete it normally, otherwise these are the steps needed

1. Client is the applicant in this case, Agency staff member will act as the guarantor in "The Guarantor" section. If you are not on the list of accepted guarantors, write a letter of support.
2. Letter explaining why we are acting as a Guarantor. The letter must explain your agency's mandate, the type of individuals that we help, an explanation of why the client needs our help and does not have a guarantor (\*even if they do have a doctor, we usually say this either way, as follow-up to get the forms signed, and returned by doctor can be arduous).
3. Fill out a copy of **The Declaration Form**, which indicates why they are unable to get a guarantor, and also provides information about other family members.
4. Include a Consent to Disclose information to your agency for the client, so that the Vital Statistics will speak to you if there are any issues with the application.

## Quebec

1. In this application, you will need to be the applicant. Put your information in the Section 1 box, using Carnegie Centre as the mailing address.
2. Put the client's info in section 2 box.
3. You (outreach worker) sign the box in section 4.
4. Fill out the rest of the form as usual
5. Write a letter that accompanies the application that explains the situation, similar to that of the Ontario application. In this letter make sure to write that you are simply helping out for the birth certificate application and do not want your information used for anything else, or given to any other agencies.  
Address letter to:  
Directeur de l'état civil  
2535, boulevard Laurier  
Quebec (Quebec), G1V 5C6
6. Get client to sign a paper that gives their consent for you to apply on their behalf, on that same form sign a portion that says you are applying on their behalf. Print, Sign, and Date both parts.
7. You will need to include a photocopy of A) Photo ID, B) Proof of Address. In theory, you can't use same photo ID for both, however, it hasn't been sent back recently. If it is sent back for more ID, use your driver's license for photo ID, and a bank statement/hydro bill (must show your address) for the Proof of Address.
8. Include a Consent to Disclose information to your agency for the client.

## Saskatchewan

1. Fill out the EHealth Saskatchewan Birth Certificate Application.
2. For Lines 36-50, the Agency Worker fills out their information, and uses the Agency mailing address
3. Include copies of your photo Id, and Agency badge (if you have)
4. Include the payment page

**All the other provinces are still straight forward for the time being!**





*Certificate of      Certificat de  
Canadian Citizenship      Citoyenneté canadienne*

*The Minister of Citizenship and Immigration  
hereby certifies and declares that*

*Le ministre de la Citoyenneté et de l'Immigration  
certifie et déclare par la présente que*

*is a Canadian citizen and, as such, is entitled to  
all the rights and privileges and bears all the  
responsibilities, obligations and duties of a  
Canadian subject.*

*est citoyen/ne canadien/ne et, à ce titre, jouit de tous  
les droits et privilèges d'un sujet canadien et assume  
l'ensemble des responsabilités, obligations  
et devoirs qui lui incombent.*



2003/02/25

136261

*Effective / En vigueur*

*John McLean*

*Minister of Citizenship and Immigration  
Ministre de la Citoyenneté et de l'Immigration*



**The Kettle Society**  
Strength through mental health

Immigration Refugees and Citizenship Canada (IRCC)  
Case Processing Centre – Sydney – Proofs  
Box 1000  
Sydney, Nova Scotia  
B1P 7C1

**RE: John Smith**  
**DOB: December 23 1959**  
**SIN: 555-555-555**

June 28, 2017

To Whom it may concern,

My name is Aubrey Fearey and I am an advocate with the Kettle Society, a non-profit organization that supports individuals living with mental illness. I am writing on behalf of John Smith. I have been helping him prepare his application for replacement of his Canadian Citizenship certificate.

Mr. Smith lost all of his identification in 2003 when he separated from his partner. After that time, he was homeless for three years and since then has had a very difficult time obtaining any ID. Therefore, his supporting photo identification documents consist of photocopies of previous ID's provided to him by the British Columbia Ministry of Social Development and Social Innovation.

Enclosed in the package you will find: receipt of payment, his application, a use of a representative form, a letter confirming his identity from his program manager at MPA Society, a copy of his tenancy agreement, a bank statement, a notice of assessment from his most recent completed tax return, copies of his bank card and credit card, photocopies of his SIN card and previous drivers licence and two citizenship photos.

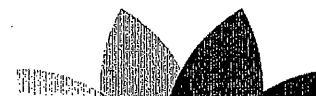
Please note that Mr. Smith has no knowledge of grandparent's information. He only met his grandfather from his father's side once when he was four years old and his grandmother died when Mr. Smith's father was ten years old. He has no knowledge of his grandparents from his mother's side of family.

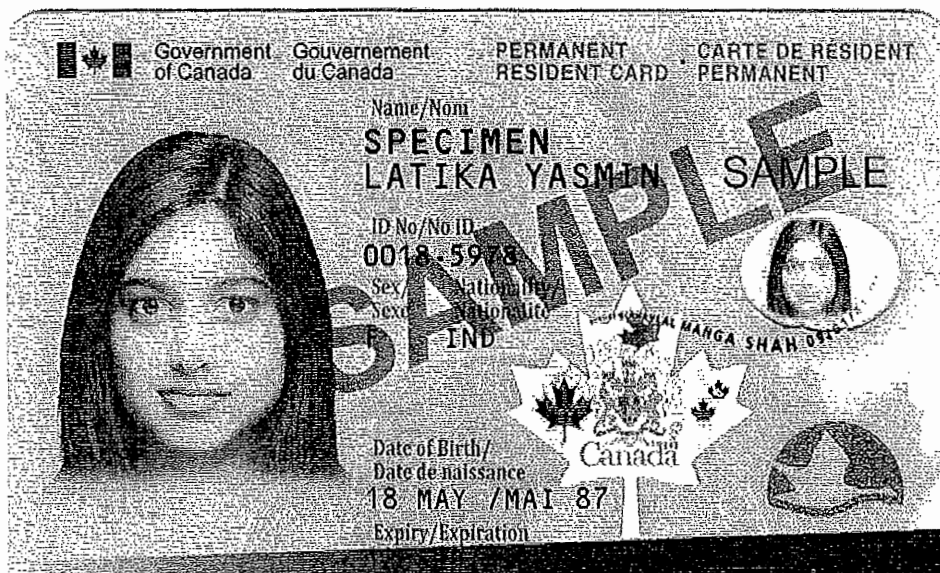
It is my hope that the combined identification Mr. Smith has provided will be sufficient for a successful application. Thank you for your attention to this matter.

I can be reached directly at 604-970-4454 or by fax 604-251-2834

Regards,

Aubrey Fearey  
Mental Health Advocate





Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

Canada



**The Kettle Society**  
Strength through mental health

**Case Processing Centre – PR Card**  
**P.O Box 10020**  
**Sydney, NS, B1P 7C1**

February 8, 2017

To whom it may concern,

My name is Aubrey Fearey and I am a mental health advocate with The Kettle society, a non-profit agency that supports those living with mental illness. I am writing on behalf of John Smith and have been helping him prepare his application for a new Permanent Resident card. Mr. Smith is in urgent need of a replacement Permanent Resident card so that he can obtain a passport and travel to Columbia to visit his mother who is medically unwell and at risk of dying.

In 2010, Mr. Smith lost his wallet with all pieces of his identification inside. His only remaining form of identification is photocopies of ID provided to him from the British Columbia Ministry of Social Development and Social Innovation. I have included these with his application. In the past five years, Mr. Smith has experienced homelessness several times and has been in receipt of income assistance since February of 2012. In 2013 he began receiving disability benefits because he was unable to work due to his mental health conditions. As such, there is no work history to list on his application.

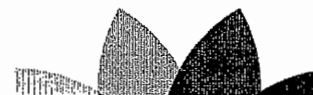
I have provided Mr. Smith with assistance to complete this application and he has listed his previous addresses to the best of his abilities. However, his memory is significantly impaired by his mental health condition. The Kettle Society can confirm that Mr. Smith has been a very regular user of our services since November of 2011, sometimes attending our Drop-In centre daily. He has also been living in housing which is provided by The Kettle Society since November of 2015.

On June 13, 2017 I received notification that Mr. Smith's application was sent back to him due to missing information. I have included a statutory declaration signed by Mr. Smith and a letter from his friend confirming his information along with the following information:

Application for a permanent resident card, official receipt of payment, use of representative form, a copy of his tenancy agreement with The Kettle Society, a copy of his previous permanent resident card, social insurance number, and BC medical services card, as well as permanent resident photographs.

It is my hope that the identification Mr. Smith has provided will be sufficient for a successful application. Thank you for your attention to this matter. I can be reached directly at 604-970-4454 or by fax 604-251-2834 should you have any questions or need clarification.

Regards,  
Aubrey Fearey





Ministry of  
Justice

Order in Council Administration Office

## APPLICATION for Appointment or Renewal as a Commissioner for Taking Affidavits



Office Use Only	
Appointment Number	<input type="text"/>
Effective Date	<input type="text"/>
Type Code	<input type="text"/>
Payment	<input type="text"/>

Appointments may be granted to eligible persons whose employment/volunteer activities involve providing the services of a Commissioner for Taking Affidavits.

The completion and filing of this application form does not imply that an appointment as a Commissioner for Taking Affidavits will be approved.

**Read instructions below before completing this application.**

### Instructions

1. Applicants must complete the application form in its entirety. Please type or print clearly. Incomplete, altered or illegible forms will not be processed.
2. After studying the Information and Instruction Guide for Commissioners for Taking Affidavits, applicants must complete the Examination for Commissioners for Taking Affidavits to the satisfaction of the Order in Council Administration Office.
3. A cheque or money order for \$50, made payable to the Minister of Finance, must accompany your application. (Do not send cash.) The exceptions to this requirement are listed in section 58 of the Evidence Act as follows: "...an officer or employee of the government of British Columbia or Canada, a municipality, a regional district or the trust council, a treaty first nation, the Nisga'a Nation or a Nisga'a Village or a veterans' organization or designated persons or classes of persons."
4. Applications may take up to eight weeks to process. Once approved, an appointment order will be mailed to you, which will show the effective and expiry dates of your appointment, as well as any restrictions that may be attached to your appointment.
5. Return completed application, examination and payment (if applicable) to:  
  
Order in Council Administration Office  
Ministry of Justice  
PO Box 9280 Stn Prov Govt  
Victoria, BC V8W 9J7  
Fax: 250 387-4349  
Phone: 250 387-5378

### Part 1 – Personal Information

Last Name	First Name	Middle Name	Date of Birth (DD/MM/YYYY)
Home Address (Apartment Number/Street Address)			
City	Province	Postal Code	Home/Cellular Telephone

Are you a Canadian citizen, landed immigrant or permanent resident? Yes ☐ No ☐

Have you ever been convicted of a criminal offence? Yes ☐ No ☐

A criminal record search may be required to process this application. In that event, applicants will be contacted prior to the search to obtain consent.

### Part 2 – Employment/Volunteer Information

Position	Employer/Volunteer Organization		
Business Address	Email Address		
City	Province	Postal Code	Business Telephone

### Part 3 – Purpose of Appointment

Provide a detailed description of why you require the appointment, stating duties involved, types of documents being commissioned and specific section(s) of the statute(s) pursuant to which your services will be provided. Your appointment will be restricted according to the information you provide. (Attach additional page if more space is required.)

### Part 4 – Certification

I hereby certify I have read and understand section 138 of the Criminal Code of Canada, which states:

“Everyone who

- (a) signs a writing that purports to be an affidavit or a statutory declaration and to have been sworn or declared before him when the writing was not so sworn or declared or when he knows that he has no authority to administer the oath or declaration,
- (b) uses or offers to use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or declared, as the case may be, by the applicant or declarant or before a person authorized in that behalf, or
- (c) signs as applicant or declarant a writing that purports to be an affidavit or statutory declaration and to have been sworn or declared by him, as the case may be, when the writing was not so sworn or declared

is guilty of an indictable offence and is liable to imprisonment for two years.”

I further hereby certify that all statements made in this application are true and complete to the best of my knowledge and belief. I understand that should an investigation disclose misrepresentation or falsification of a material fact, my application may be rejected or appointment revoked.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

### Part 5 – Employer/Volunteer Supervisor Verification

I hereby verify the information contained in this application and support the application.

\_\_\_\_\_  
Signature of Employer/Supervisor

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

If you are self-employed, provide the following information with respect to one person who is not your relative and who has known you for at least two years. They will be contacted to confirm your employment status.

Last Name	First Name	Middle Name	Relationship
Home Address (Apartment Number/Street Address)			Home/Cellular Telephone
City	Province	Postal Code	Number of years this person has known you:

Pursuant to section 26(c) of the Freedom of Information and Protection of Privacy Act, this information is being collected pursuant to section 56 of the Evidence Act for the purpose of determining the suitability of applicants for appointment as a Commissioner for Taking Affidavits. Questions about the collection of this information may be directed to: A d/Vd[ 5ag' U^3V... [ (fSf[a` A.X[WV? [ (efck aX-gel[WSF\$' " %%) 2 % \*2


### STATUTORY DECLARATION

I, Mariana Romero, of 204-1122 Knight Street, Vancouver, BC, V6P-3C7, I SOLEMNLY  
DECLARE THAT:

1. I have personal knowledge of the facts set out below except where indicated to be on information and belief and so indicated I verily believe them to be true.
2. In November 2003 I entered Canada as a landed immigrant and received Permanent Resident Status on March 24, 2007. Attached hereto and marked as EXHIBIT "A" is a photocopy of my previous permanent resident card dated February 2012, social insurance number card, and a Non-Photo Services Card from the Province of British Columbia.
3. In 2013 my wallet was stolen and all of my identification with it.
4. I am the individual known as Mariana Romero, born September 10, 1973 in Leticia, Columbia, I hold Permanent Resident status in Canada.
5. To further document my identity, I have included a tenancy agreement from my housing provider, attached hereto and marked as EXHIBIT "B."

I make this solemn declaration conscientiously believing it to be true, and knowing that this is of the same force and effect as if made under oath.

SOLEMNLY DECLARED BEFORE  
ME at Vancouver, British Columbia  
on June, 2017

  
A commissioner for taking affidavits  
for British Columbia



  
Mariana Romero