



SMITHERS CONFERENCE:

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

Prestige Hudson Bay Lodge 3251 Highway 16, Smithers BC V0J 2N0 Wednesday, March 16, 2016 and Thursday, March 17, 2016

AGENDA – Wednesday, March 16, 2016

Time	Session	Speaker	Facilitator
8:30-9:00	Registration & Breakfast		
8:45 – 9:00	Opening Ceremony & Welcome	Calvin Hyzims	Baljinder Gill
9:00–10:45	Overview of Family Law Act	Megan Olson – Family Lawyer	Baljinder Gill
10:45-11:00	Break		
11:00–12:30	Overview of Child Protection Law and Child Protection Mediation	Wade Macgregor – Lawyer	Baljinder Gill
12:30–1:30	Lunch		
1:30–3:00	Update on New Matrimonial Act	Megan Olson – Family Lawyer	Baljinder Gill
3:00 – 3:15	Break		
3:15 – 4:15	Gladue and Restorative Justice	Sherry McKinnon – Justice Program Coordinator	Baljinder Gill



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Time	Session	Speaker	Facilitator
8:30-9:00	Breakfast		
9:00–10:30	Working with LSS Intake and other Legal Resources	 LSS Intake – Michelle Angus My Law BC – Patricia Lim PLEI - Patricia Lim Clear Skies - Patricia Lim 	Baljinder Gill
10:30–10:45	Break		
10:45–12:15	Wills and Estates Off and On Reserve	John Laurence Perry - Lawyer	Baljinder Gill
12:15–1:00	Lunch		
1:00 -2:00	Collaborative Family Law & Mediation	Erin Crocker - Family Lawyer	Baljinder Gill

Family Law Act: an Overview

Megan Olson Legal Services Society Conference March 16, 2016

The Family Law Act

- Came into effect March 18, 2013
- British Columbia Act
- Parallel to the *Divorce Act*, but subject to the *Divorce Act* where both apply
- Applies to:
 - Both Married and Unmarried spouses
 - All Parents
 - Extended Family Members

Overview

- Parenting: Care and Time with Children
- Child and Spousal Support
- Protection from Family Violence
- Property Division
- Other areas of note

PARENTING

>>> Care and Time with Children

Best Interests of the Child

- The Court MUST consider the best interests of the child ONLY
- An agreement or order is in a child's best interests if it protects the child's physical, psychological, and emotional safety, security, and well-being.
- Section 37 of the Family Law Act outlines how the court can determine the best interests of a child.

Section 37 factors:

- the child's health and emotional well-being;
- the child's views, unless it's inappropriate to consider them;
- the love and affection between the child and other important people in the child's life;
- the child's need for stability at his or her age and stage of development;
- the history of the child's care;
- the ability of parents or others who want guardianship, parenting time, or contact to look after the child;
- the effect of any family violence on the child's safety, security, and well-being; and
- whether arrangements that require the child's guardians to cooperate with each other are appropriate.

Guardianship

- Replaced concept of "Custody"
- A child's guardian may be a parent or someone else.
 - "Parent" is the child's biological father and birth mother
 - Can also make agreements determining parentage of a yet to be conceived child (example surrogate mother, donor of genetic material etc)
- A parent may or may not be a guardian.
- A child could have more than two guardians.
- Only a Guardian can have parenting time or exercise parental responsibilities (s. 40)

Parents are generally Guardians:

Section 39

- While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.
- Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.
- (3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:
 - (a) section 30 applies and the person is a parent under that section;
 - (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
 - (c) the parent regularly cares for the child.

Who can become a Guardian?

- They are a parent (s. 39 or s. 50)
- Under the Adoption Act or Child, Family and Community Service Act (s. 50)
- ▶ In a will (s. 53)
- They are a temporary (s. 43) or standby guardian (s. 54)
- On Application to the Court and the court appoints them guardian (s. 51)

Appointment of Guardian

- Must complete a Guardianship Affidavit (Form 34) to be appointed a guardian by court order.
- Affidavit includes:
 - A criminal records check
 - A protection order registry check; and
 - A Ministry of Children and Family Development check.
- Until this is done, court may grant a temporary order, but only for up to 90 days.
- Note: this is in the court RULES, not the act

Orders from before FLA

What if there is an Order in place from before 2013 when the FLA came into place?

- If you had custody or guardianship, you are a guardian now.
- If you only had access, you are not a guardian.
- "Sole Custody" = sole guardianship
- "Sole Custody, Joint Guardianship" = both guardians

Parental Responsibilities

- Guardians have parental responsibilities for the children in their care, which is the duty to make decisions about the children in the best interests of the children.
- Initially, guardians share all parental responsibilities (s. 40)
- They can be allocated differently, by agreement or by court order (ss. 44, 45)
- A person can be a guardian with few, or even no parental responsibilities.
 - The Court often prefers this to taking away guardianship altogether

Parental Responsibilities (s. 41)

- The responsibilities include as follows:
 - daily decisions about the child;
 - daily care and supervision of the child;
 - decisions about where the child will live,
 - decisions about who the child will associate with;
 - who can apply for passports;
 - getting information from others about the child (for example, about health and education); and
 - making decisions about the child's education, religious upbringing, extracurricular activities, healthcare, and other important issues.
- The terms of how parental responsibilities will be handled can be **vague** or they can be very **specific**. Specific terms usually define the distribution of parental responsibilities using a set of clauses.

Parenting Time & Contact

- Replaced terminology of "access"
- Spending time with a child is:
 - "Parenting Time" if you are a "guardian" (s. 42)
 - "Contact Time" if you are not (such as a grandparent or other family member) (s. 58)
- Parenting time could be allocated as:
 - time equally shared between the guardians,
 - the child lives only with one guardian, or
 - anything in between.
- All guardians must agree or court makes an order for a person to have contact time (s. 58)

Restrictions on Visits

- **Conditions** on parenting time or contact:
 - Not use drugs or alcohol while with the child and for 24 hours before
 - Not allow anyone under the influence of drugs or alcohol be around the child
 - Not take the child out of the home community
 - Not have the child stay overnight
 - Must remain in public during the visit or at a specific location
- Supervised time: The person with parenting time or contact can visit the child only when someone else is with them (s. 45, 59).
- Transfer of child: the child is brought to the visit by a third party or in a specific manner (such as a meeting up spot)
- Prevent Removal: The person with parenting time or contact must not remove the child from a specific area.

Enforcement of Parenting Time & Contact

- Both parenting time and contact can be enforced by fines, penalties, or make-up time (s. 61)
- Remedies for failure to exercise parenting time or contact: reimbursements of costs (daycare or time off work), fines, penalties etc. (s. 63)

Parenting Arrangements – Examples

- Each parent has all of the parental responsibilities and they share parenting time in a co-parenting arrangement.
- Each parent has responsibility for different types of decisions. For example, one parent deals with the child's extra-curricular activities and the other deals with school.
- One parent has most of the parenting time and parental responsibility, and the other parent has limited parenting time and parental responsibilities.
- Both parents share responsibility for all major parenting decisions for two children, but one parent has most of the parenting time and day-to-day care of one child and the other has most of the parenting time and dayto-day care of the other child.

Relocation - Moving with Child:

If there is a written agreement or order for parenting arrangements

- Guardian seeking to relocate, with or without the child, must give written notice to all other guardians and persons with contact, at least 60 days before the move (s. 66)
- *Relocation" means a move that is likely to have a "significant impact" on a child's relationship with a guardian or another person with a "significant role" to the child's life (s. 65)
- Only a Guardian can apply to prevent the relocation. If the Guardian does not apply within 30 days, the child may be relocated. (s. 68)

Relocation

- If the guardians do NOT have "substantially equal" parenting time with the child, the moving guardian must show:
 - Reasonable arrangements have been proposed to preserve child's relationships
 - Move is proposed in good faith
 Move is then presumed to be in child's best interests.
- If the guardians DO have "substantially equal" parenting time, the moving guardian must show:
 - Reasonable arrangements have been proposed to preserve child's relationships,
 - Move is proposed in good faith
 - The move is in the child's best interests

Relocation

- ▶ To assess "Good Faith", the court will look at:
 - The guardian's reasons for moving
 - Whether the move is likely to enhance the quality of life of the child and the guardian
 - Whether the guardian gave the required notice
 - Whether there are any restrictions on relocation in an order or agreement (s. 69)
- If relocation is allowed, the Court may make orders to preserve the previous arrangements for parenting time (s. 70)

Relocation: no parenting arrangements in writing

If there are no parenting arrangements in writing but the other parent is part of the child's routine, the person proposing the change must get an agreement or court order before moving (s. 46, 48)

Views of the Child

- Court may order a report under s. 211 to assess one or more of
 - The needs of the child
 - The views of the child
 - The capacity of a party to meet the needs of the child
- Non-evaluative views of the child reports are available under s. 202 (court may determine how to receive evidence of child) or s. 37 (court must hear views of the child unless inappropriate)

Support

Child Support

- Each of a child's parents and guardians have a duty to support the child.
- Amount is determined by "Child Support Guidelines"
 - Guidelines are specific to BC
 - based on how much the payor earns and how many children the payor must support
- Calculations:
 - www.mysupportcalculator.ca
 - www.justice.gc.ca/eng/fl-df/child-enfant/look-rech.asp

Exceptions to Basic Child Support

- Child support continues:
 - As long as the child is under 19.
 - If the child is 19 or over, but can't take care of themselves because of of illness, disability, or another reason.
 - If the child is 19 or over, in school and still depend on their parent(s) for room, board, and the "necessaries of life."
- Payor may pay less than the Guidelines amount if:
 - The child lives with them 40% of the time or more
 - They can show undue hardship
 - unusual or excessive amount of debt,
 - support payments to children of another family
 - · they support a disabled or ill person, and
 - having to spend a lot of money to visit the child
 - They earn more than \$150,000 per year

Special or Extraordinary Expenses

- Expenses that go above and beyond what is covered by the child support itself.
- The amount that must be contributed is based on the proportionate incomes of the parents.
- Generally considered special or extraordinary expenses:
 - Child care expenses
 - Medical and dental insurance premiums
 - Health-related expenses
 - Expenses for post-secondary education
 - Tutoring
 - Private school
 - Payments into a scholarship fund
 - Activities

Non-Parent Guardians and Step Parents (s. 147)

- Child support obligation of a non-parent guardian is secondary to obligation of parent.
- Obligation of Step Parent is secondary to both
- Amount of child support from step parent is determined:
 - After considering other parents and guardians contributions
 - Considering difference of standard of living
 - Length of time child lived with step parent
- Step Parent must have contributed to the support of the child for at least one year while with spouse
- Time limitation on step parent child support is one year after they last contributed to the support of the child.

Spousal Support

- A spouse may be obliged to support another spouse after relationship ends.
- Spousal support is intended to:
 - recognize any financial advantages or disadvantages a spouse may face because of the relationship or the separation;
 - make sure neither spouse faces economic hardship as a result of the breakup;
 - make both spouses share the financial burden if there were consequences to caring for the children during the relationship; and
 - if possible, help each spouse become financially independent within a reasonable amount of time.

Who is entitled to Spousal Support?

Section 3 of Family Law Act

- (1) A person is a spouse for the purposes of this Act if the person
 - (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- (2) A spouse includes a former spouse.
- (3) A relationship between spouses begins on the earlier of the following:
 - (a) the date on which they began to live together in a marriage-like relationship;
 - (b) the date of their marriage.
- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

Factors for Spousal Support

- Consider IF they should get spousal support, how much and for how long.
- Depends on the following:
 - If the spouse asking for spousal support worked outside the home during the marriage or relationship
 - How long the spouses lived together
 - If the spouse asking for spousal support is able to support themselves
 - If they are or were at home with the children
 - Whether the spouse asking for spousal support earns a lot less than their spouse
 - If the spouse being asked to pay is able to pay

Spousal Support

- Amount is usually determined by "Spousal Support Advisory Guidelines"
 - 'Guidelines' not law and not mentioned specifically in FLA, though taken into consideration by the courts.
 - takes into account the income of both spouses, how long they were married, and whether they have children
- Must start application for spousal support within two years of:
 - Divorce order if legally married
 - Date of separation if living in a marriage-like arrangement

Spousal Support

- Often for a limited period of time, possibly just a few years.
 - Longer relationships can lead to longer periods of support.
 - Expectation for people to support themselves as soon as reasonably possible.
- Agreement or Order can have review date in place or after a certain event has occurred.

Protection from Family Violence

"Family Violence"

- Family dispute resolution professionals must assess for family violence and assess the extent to which it affects the client's safety and ability to negotiate. (s. 8)
 - Ongoing obligation
 - Focus on ability to participate and assessing appropriate procedures rather than safety planning.
- Family violence is defined broadly.

"family violence" includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

- 1 "family member", with respect to a person, means
 - (a) the person's spouse or former spouse,
 - (b) a person with whom the person is living, or has lived, in a marriage-like relationship,
 - (c) a parent or guardian of the person's child,
 - (d) a person who lives with, and is related to,
 - (i) the person, or
 - (ii) a person referred to in any of paragraphs (a) to (c), or
 - (e) the person's child,

and includes a child who is living with, or whose parent or guardian is, a person referred to in any of paragraphs (a) to (e);

Family Violence and Children

- Remember, under s. 37(2), in assessing the best interests of a child the court must consider:
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- To assess these impacts, the court must consider additional factors set out in s. 38

- **38** For the purposes of section 37 (2) (g) and (h) *[best interests of child]*, a court must consider all of the following:
- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter

"Protection Orders"

- Protection orders are intended to protect a family member from family violence committed by another family member
- Court must determine that:
 - Family violence is likely to occur, and
 - The other family member is an at-risk family member.
- Court considers history of behaviour, as well as the nature of it when making determination (s. 183)

Contents of a Protection Order

- A protection order can tell the person named in the order:
 - not to contact the at-risk family member, their children, or other family members who may be at risk of abuse;
 - to stay away from their home, work, school, or other places where they, their children, or other family members spend time;
 - not to follow the at-risk family member, their children, or other family members;
 - not to have a weapon; and/or
 - that the police can go with the at-risk family member to their home while they get personal belongings, or make the person named in the order leave the family home.

Enforcement of Protection Orders

- Protection orders are enforced by the police under the Criminal Code
 - not enforceable under the FLA or the Offence Act
- Important for protected family member to carry a copy of the Order with them at all times
- Also carry a certified copy of the Affidavit of Service with them at all times (need to show proof that the Protection Order was served)

Protection Orders

- A protection order ends after one year unless the judge puts another date in the order.
- A protection order made in BC usually applies only in BC (not the rest of Canada).

Property Division

Property Division

- Applies to married and unmarried spouses who have lived together for at least two years.
- Family Property is presumed to be equally divided on separation.
- Family debt is to be equally shared.

What is Family Property?

- "Family property" (s. 84) includes all property acquired during the relationship, including:
 - the family home
 - RRSPs
 - investments
 - bank accounts
 - insurance policies
 - pensions
 - an interest in a business
- It doesn't matter whose name the property is in.
- It also includes the **increase in value** during the relationship of any excluded property

Family Property

- "excluded property" (s. 85) includes
 - property owned before the relationship
 - property acquired by gift or inheritance
 - personal injury settlement for general damages
- "family debt" (s. 86) includes
 - all debt incurred during the relationship and
 - debt incurred after separation, if it was incurred for the purpose of maintaining family property

Unequal Division of Property

- Only if it would be "significantly unfair" to divide it equally (s. 95)
- Court's will consider:
 - how long relationship lasted;
 - if they made any agreements other than written agreements that were signed and witnessed;
 - how much each contributed to the other spouse's career or career potential;
 - how the family got into debt;
 - if the family debt is worth more than the family property,
 - each spouse's ability to pay a share of that debt; and
 - if one spouse did something to raise or lower the family debt or property value after the separation.

Time Limits

- Must start application for division of property or debts within two years of:
 - Divorce order if legally married
 - Date of separation if living in a marriage-like arrangement

Other Areas of Note

Promoting Settlement

- One of the purposes of the Act is "to encourage parties to a family law dispute to resolve the dispute through agreements and appropriate family dispute resolution before making and application to a court." (s. 4)
- General duty to disclose, even without court action or demand (s. 5)
- Court can order family dispute resolution (mediation; parenting coordination) (s. 224)

Conduct Orders

- The court can grant conduct orders for the following purposes (s. 222):
 - To facilitate settlement
 - To manage behaviours that might frustrate resolution of a family dispute
 - To prevent misuse of the court's process
 - To facilitate interim arrangements pending final resolution of the family dispute

Conduct Orders

- Conduct Orders that could be ordered for:
 - Case Management (s. 223)
 - Dispute resolution, counselling and programs (s. 224)
 - Restricting communication (s. 225)
 - Residence issues (orders to get belongings, who pays for upkeep of residence etc) (s. 226)
 - Catch all section (s. 227)

Enforcement of Court Orders

- General enforcement provisions (s. 230) include:
 - Fines
 - Penalties
 - Costs thrown away
 - Require party to give security
 - In extraordinary circumstances, jail time
- There are also specific orders possible to enforce:
 - Financial disclosure (ss 212 and 213)
 - Parenting time or contact (s. 61)
 - Failure to exercise parenting time of contact (s. 63)
 - Conduct orders (s. 228)

Some helpful resources:

Family Law in BC: www.familylaw.lss.bc.ca/

JP Boyd Family Blog: http://wiki.clicklaw.bc.ca/index.ph p/JP_Boyd_on_Family_Law

Questions?



WRAPPING OUR WAYS **AROUND THEM**



Aboriginal Communities and the CFCSA Guidebook 🔘



Invitation to a Transformative Approach





Colonial Past disconnected Aboriginal Communities and Laws from Aboriginal Children and Families

- Denial of Title and Laws
- Indian Act denies status to Indian women and their children (generations of cultural and geographic dislocation and loss)
- 3) Residential Schools
- 4) Child Welfare system

Intergenerational harm carried forward





Contested Legal Ground

- Federal vs. Provincial jurisdiction
- s. 88
- Indian Act [Aboriginal peoples did not consent to the application of provincial child welfare laws]
- Inequitable funding



Contested Legal Ground

Aboriginal Laws and Legal Orders for the care of children

- Connolly v. Woolrich
- Casimel v. ICBC
- Section 35

Recognition of Aboriginal Laws – on paper Difficulty – aboriginal rights, CFCSA statutory process





Few cases where aboriginal groups have sought to establish a s. 35 right

Not successful:

- (1) insufficient evidence;
- (2) the lateness of aboriginal community involvement; or,
- (3) where courts have suggested that the concerns of communities are political rather than directed toward the interests of the child.

Does not mean that a right does not exist





Today = Children and Parents Face the Child Welfare system radically isolated

Currently in BC about 54% of all children in care are aboriginal (regionally in some areas those numbers are higher); numbers constantly increasing

Proposed solution = to reconnect and re-involve aboriginal communities using existing tools under CFCSA





Child Welfare is not working for Aboriginal children

 children and families are isolated from Aboriginal culture, laws and ways of making decisions about, and taking action to ensure, that children are protected





The long-term outcomes of children raised in care continue to be very poor, including

- the risk of low education attainment
- higher risks of:
 - o street involvement
 - o drug use, and
 - o contact with the criminal justice system
- more likely to age out of care

Aboriginal children have inherited the legacy of colonial history and jurisdictional wrangling





Ground we are standing on

 Aboriginal peoples need to know, and work with, the systems that impact children and families today





1913 Hell's Gate slide – Early Stuart Run





CFCSA contains provisions to involve aboriginal communities

Amended approximately 1996 – rarely used





CFCSA Provisions Protecting Aboriginal Identity and Heritage

s. 2 Guiding Principles – decisions made about a child should consider

- the child's views; kinship ties and attachment to extended family
- cultural identity of aboriginal children

s. 3 Service delivery principles

- aboriginal people should be involved in the planning and delivery of services
- services sensitive to cultural, racial and religious heritage

s. 4 Best interests of child

- must include a consideration of the child's views, and cultural, racial, linguistic and religious heritage
- importance of preserving an aboriginal child's cultural identity

Presentation and protection hearings:

Directors must show how they plan to preserve a child's aboriginal identity





 Children in care have the right to receive guidance and encouragement to maintain their cultural heritage (s.70)

Placement Preferences (s.71)

Priority placement for an Aboriginal child:

- (a) with the child's extended family or within the child's aboriginal cultural community;
- (b) with another aboriginal family, if the child cannot be safely placed within their extended family or community





CFCSA Regulation (s. 8) a child's plan of care:

- Involvement of the child's aboriginal community in the development of the plan of care and their views;
- a description of how the Director proposes to meet the child's need for continuity of the child's cultural heritage, religion, language, and social and recreational activities;
- steps taken to preserve an aboriginal child's cultural identity.





Remedial approach to interpreting provisions requires

- Choose option to best preserve child's Aboriginal identity
- Indian Child Welfare Act (USA) example of remedial legislation



International Law being used increasingly in area of Lands and Resources

Presume that domestic law (such as CFCSA) complies with International Law absent clear intent otherwise

"child's right to be heard" read into domestic law

What could recognition of UNDRIP/UNCRC mean for aboriginal children in CFCSA matters?





United Nations Declaration on the Rights of Indigenous Peoples

Article 7

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group

Article 8

Indigenous Peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. States shall provide effective mechanisms for prevention of, and redress for:

Any form of forced assimilation or integration...





Who is an Aboriginal Community?

- Bands / First Nations
- Treaty Nations
- Certain communities have negotiated separate agreements
- Aboriginal Organizations such as Friendship Centres or Metis organizations may be identified by parents





Delegated Agency involvement does not lessen the obligation to actively involve Aboriginal communities





Who is an Aboriginal Child?

Parent or Child Registered, or Entitled to be Registered, Under the Indian Act

 Not automatic; does not exclude other aboriginal identities; child can be a member of more than one aboriginal community

Modern treaty or self-government agreements

As identified in their own laws

Splatsin Aboriginal Children and Families

Own laws and traditions (need for parents/children to do this with increasing numbers of non-status children)





What events or actions would you anticipate might be required to protect a child's Aboriginal Identity, Culture and Heritage?

(Including what should be included in a child's plan of care)





Activities that have been proposed to protect Aboriginal Identity, Culture and Heritage include:

- attendance at powwows or activities at a friendship centre
- Internet searches
- age-appropriate reading materials;
- aboriginal artwork
- attendance at aboriginal day care
- providing the child with aboriginal foods
- Stating a child is too young to require a cultural plan





Stages of the Child Protection Process

Report, Assessment, Investigation

(Perhaps) Voluntary Agreements

Presentation Hearing

Protection Hearing

Post-Continuing Custody Order Applications





Report and Investigation

- An aboriginal parent or child could request that their aboriginal community become involved at this stage
- Temporary Solutions, often => Permanent



Aboriginal Communities could help to:

- a) assess any child protection concerns in a culturally sensitive way;
- b) identify culturally appropriate interventions, programs and services;
- c) provide supports to the child and the child's family to keep the child in the home or within the family or community.





POTENTIAL TYPES OF VOLUNTARY AGREEMENTS

[can be made with or without a protection concern having been investigated]

- Support Services Agreements
- Voluntary Care Agreements
- Special Needs Agreements
- Extended Family Program (Formerly Kith and Kin Agreements)
- Agreements with Youth or Young Adults





Voluntary Agreements

- Aboriginal communities are not usually involved when an aboriginal parent or child enters a voluntary agreement with the Director.
- Involvement of the aboriginal community at this stage could be helpful in avoiding potential escalations or problems.





Temporary orders or arrangements often become permanent.

Aboriginal communities should become involved as early as possible in decision making about other child members.

The longer an aboriginal community remains uninvolved = less likely involvement will transform the outcome.





Temporary Custody Orders (time limits)

- 12 months if the child or youngest child under 5
- 18 months if the child or youngest child 5 or over, but under 12 years of age on the date of that order
- 24 months, if the child or the youngest child was
 12 years or over on the date of that order
- Can be extended if court considers in best interest of child





Notice Provisions

If an Aboriginal Community Appears they are entitled to Party Status: To be involved in court proceedings, to make arguments, disclosure of information (must be requested), to call witnesses, to make applications





 In practice: Not in use, few aboriginal communities become involved

- Appearance vs. attending court
- Comprehensive scheme which is under utilized





- Notice
- Appearance / Non-appearance





Tools within the CFCSA to help Aboriginal communities become involved

- Transferring Registries
- Participation by teleconference
- Informal process (oral applications for example)



Disclosure and Confidentiality

- ss. 64 and 79
- Disclosure can allow the Aboriginal community to participate effectively in planning for the safety of Aboriginal children
- May be necessary to keep children safe





Presentation Stage (Presentation Hearing)

There is <u>some</u> evidence that a child is in need of protection?

Consent, contest, or adjourn hearing

Access to Child (could include for parents, family members, others culturally important to the child)





Protection Stage (hearing)

Does the child need protection?





Determining whether a child is in need of protection

 Culturally appropriate considerations: Biases about Aboriginal Peoples' or Parenting | Biases Aboriginal Peoples must address





- Questioning whether a child is "truly aboriginal"
- Applying a "frozen in time" concept of what is aboriginal culture – families found to be "not traditional enough"



- Belief in a Conflict Between the Interests of Aboriginal Children and Communities OR that the interest of the community is "political"
- Aboriginal Distrust of the Child Welfare Process
- Belief bonding more important than culture (culture abates over time) [Racine v. Woods]
- Weight of past history
- "Disabling" aboriginal care





Biases that Aboriginal Communities must Address to Protect Children

- Not asking whether a child protection concern may be valid
- Shame not knowing how to address some issues, so ignoring them
- Fear of creating divisions within the community
- TIME not getting involved sooner, giving the family a chance to "work it out"





Determining whether a child is in need of protection

Avoid "parent-shopping":

"[T]he issue is not whether the children might be better off, or happier, or obtain a better upbringing in the care of other 'parents' than with their natural parents. If that were the criterion for a protection order, not many children would remain with their natural parents."





Defining the risks that a child faces with regard to cultural factors, requires asking:

- how removing a child from their cultural connections may endanger them over the long term; and
- 2) how cultural factors may insulate a child against identified risks.





 Defining best interests of aboriginal children to incorporate aboriginal culture

 Ensuring Both Attachments and Cultural Continuity over a lifetime





Judicial Notice

Long-term impact on children of actions to address immediate protection concerns:

- risk of low education attainment
- higher risks of street involvement and drug use,
- more likely to age out of system (no permanent adoption or other solution)
- higher contact with the criminal justice system





Isolation, not permanency and bonding is the norm for aboriginal children in care





Plan of Care

Director must provide plans of care MUST show:

- involvement of aboriginal community in developing the plan or their views of it;
- description of how the Director will meet the child's need for continuity of their cultural heritage, language, and social and recreational activities; and
- steps taken to preserve an aboriginal child's cultural identity.





How to protect Aboriginal Identity, Culture or Heritage? Ask Aboriginal Communities

Aboriginal identity is

- not interchangeable
- a sense of belonging with cultural, social and historical roots,
- reflects membership and affiliations with a particular historic cultural and linguistic group and territory





Culture is about participation, belonging to a particular people

A child's aboriginal identity and heritage can be protected by actively involving the child's aboriginal community.





Proposing an Aboriginal Cultural Preservation Plan

1) Cultural factors (including identifying specific steps that could be taken, or resources available);

2) Cultural supports or programs to assist the family;

 Less disruptive means than removal to keep families together (including culturally-based and appropriate resources within the community);





Proposing an Aboriginal Cultural Preservation Plan Cont'd

- 4) Other family or community members that could take care of the children on a temporary basis while the child protection matter was addressed;
- 5) Other family or community members that could take care of the children on a permanently to keep children within their community, or nation the parent(s) if unable to address the child protection concern;





Proposing an Aboriginal Cultural Preservation Plan Cont'd

- 7) Family or community members that play an important role in the child's life (such as elders or extended family members), and a proposal for how to maintain those relationships;
- 8) Opportunities for a child to participate in cultural activities that maintain or may establish their connection to the land and culture, such as language classes, fishing, drying fish, picking berries, community dinners or sporting events, lahal or other activities;





Proposing an Aboriginal Cultural Preservation Plan Cont'd

- Elders, cultural or spiritual supports from within the nation who can work with the family within a traditional wellness model;
- 10) Problems with any supervision terms that the Director suggests and offer alternatives. [For example, requiring parenting courses where none are available locally sets a parent up to fail proposing alternatives that are culturally appropriate, including traditional parenting classes or elders counseling or mentoring];





Proposing an Aboriginal Cultural Preservation Plan Cont'd

11) Barriers to the aboriginal community attending the proceedings (e.g. resources, personnel, travel) and how these challenges can be overcome (e.g. video-or tele-conferencing, cost coverage for ADR processes). Proposals to move the hearing (usually – registry nearest to where child comes into care)





Protection Hearings

Aboriginal communities could:

- make interventions aimed at ensuring that families remain together;
- identify supports to help heal problems that have led to the child protection concern; or



where the parents are unable to safely parent, identify options that can keep a child safely within their extended family, aboriginal community or nation.

 Identify options that allow for a longer-term permanency outside of a CCO or adoption.
 For example, if an aboriginal-specific process is operating and keeping a child protected and within their family/community or nation then that is a form of permanency which does not need to be reflected in a CCO or other order.





Exploring options that would allow for permanency without severing the aboriginal cultural connections that a child will need to sustain them through their lifetime – traditional adoptions (open); co-parenting arrangements; generous access





OPTIONS FOR ABORIGINAL COMMUNITIES AND FAMILIES TO EXPLORE PERMANENCY OPTIONS WHERE THERE IS A (LIKELY) FINDING OF PROTECTION:

- Prior to a CCO transfer custody to another person (s.54.01)
- After a CCO transfer custody to another person (s. 54.1)





Alternative and Traditional Dispute Resolution Options





ShchEma-mee.tkt





Opikinawasowin





Healing Courts (CFCSA Courts)

• S. 104 Tribunals

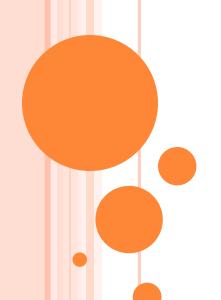




Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA Guidebook [

http://www.nntc.ca/docs/aboriginalcommunitiesandthecfcsaguidebook.pdf

THE FAMILY HOME ON RESERVES AND MATRIMONIAL INTERESTS OR RIGHTS ACT



Megan Olson Legal Services Society Conference March 16, 2016

OVERVIEW OF NEW ACT

- Changed who can stay in the family home on reserve if couple breaks up or a partner dies.
- Laws may apply if:
 - Person lives on a **First Nation** reserve,
 - At least one of couple is a member of the First Nation or a **status Indian**, <u>and</u>
 - they've been living with girlfriend or boyfriend for at least a year (you're **common law** partners), <u>or</u>
 - they're **married** (spouses).
- The new law applies even if only one of the couple is a status Indian or a First Nation member.

PRIOR TO THE ACT

- When a relationship broke up or a spouse died, the other spouse may not have been able to stay in the family home on reserve if they weren't a First Nation member.
- This often meant that when their relationship ended, women and their children would leave the family home.
- Impact on family ties, social supports, and cultural connections.
- Indigenous laws regarding matrimonial property were not recognized.
- Provincial laws regarding matrimonial property did not apply on reserve.
 - Intersection of Federal legislation and the *Indian Act*

WHAT IS THE ACT?

- Federal legislation
- Came into force on December 16, 2014
- Under the Act, First Nations can:
 - 1. Pass their own matrimonial property law; OR
 - 2. Provisional rules will apply

PURPOSE AND APPLICATION (S. 4)

• "The purpose of this Act is to provide for the enactment of First Nation laws and the establishment of provisional rules and procedures that apply during a conjugal relationship, when that relationship breaks down or on the death of a spouse or commonlaw partner, respecting the use, occupation and possession of family homes on First Nation reserves and the **division of the value** of any interests or rights held by spouses or common-law partners in or to structures and lands on those reserves."

THE ACT APPLIES

- In the event of a relationship breakdown or death of one of the partners in a marriage or common law relationship,
- Where at least ONE of the spouses is a status Indian or member of a First Nation,
- To the **matrimonial home**, and **other real property interests** on reserve, acquired during the course of (or in contemplation of) their relationship.
- The Act is **not retroactive**
 - Does not impact situations where the relationship breakdown or death occurred before the Act.

EXCEPTIONS TO THE ACT

- First Nations who enact their own laws under section 7-11 of this Act will not fall under the rest of the Act
 - List on Indigenous and Northern Affairs Canada website: https://www.aadnc-aandc.gc.ca/eng/1408981855429/1408981949311
 - Currently in BC only *Tk'emlups te Secwe'pemc* First Nations
- First Nations has a land code in place under the *First Nations Land Management Act* (section 12(2))
 - List of First Nations with their own land codes on the Indigenous and Northern Affairs Canada website:

 https://www.aadnc-aandc.gc.ca/eng/1402584983606/1402585060047

FURTHER EXCEPTIONS

- Others who are under the *First Nations Land Management Act*, but don't yet have their own land code.
 - These nations will have until **June 19, 2016**, to develop their own matrimonial real property laws.
- Self-governing First Nations (section 12(3)). Currently these First Nations are excluded from the Act:
 - Nisga'a,
 - Tsawwassen,
 - Maa-nulth,
 - Yale, and
 - Tla'amin;
- Note that at least ONE of the spouses or common-law partners must be a First Nation member or an Indian in order for the Act to apply

"ENACTMENT OF FIRST NATION LAWS"

Sections 7-11 of the Act

PROCESS TO ENACT FIRST NATION'S OWN MATRIMONIAL PROPERTY LAWS

Council must:

- notify the Attorney General (section 7(3));
- take reasonable steps in accordance with the First Nation's practices to locate voters, both on and off reserve, and inform them of their right to vote, the means of exercising that right to vote and the content of the proposed laws (section 8(3));
- publish a notice of the date, time and place of the vote (section 8(4));

25% of members must participate in the vote,
 and majority of those who vote must approve

- Once laws are approved, the council must:
 - notify the Minister in writing of the result of the vote (section 10); and
 - send a copy of the approved laws to the Minister, the organization designated by the Minister, if any, and the Attorney General of any province in which a reserve of the First Nation is situated.
 - Note: there is no need for Federal approval, through they are subject to Charter scrutiny

PROVISIONAL FEDERAL RULES

DURING THE RELATIONSHIP

Family Home – During Relationship

- Each spouse or common-law partner has an equal right to live in the family home during the relationship. (s. 13)
 - It does NOT matter whether they are a First Nation member or an Indian.
 - "Common-law partner", under this Act will mean a person who is cohabiting with an individual in a conjugal relationship, having so cohabited for a period of at least one year.
 - "Spouse" refers to either of two persons who have entered into marriage.

DISPOSE OR ENCUMBER FAMILY HOME

- Spouse or common-law partner must obtain both the **free** and **informed** consent of their spouse or common-law partner **in writing** to dispose or encumber the family home. (s. 15)
- A spouse that wishes to dispose of or encumber the family home has the burden of proving they obtained the required consent as set out above.
- If not properly obtained, Court may set aside the transaction
 - May not be set aside if third party acquired it for value and acted in good faith.

EMERGENCY PROTECTION ORDERS

EMERGENCY PROTECTION ORDER (S. 16-19)

- Allows for Court to order the **exclusive occupation of the family home to either spouse**, whether or not they are a member of the First Nation
 - For a period up to 90 days
 - Orders can be varied, revoked, or extended beyond the 90 days.
- Can be made without the spouse knowing or making submissions (ex parte)
- The application for an emergency protection order can be made by:
 - a spouse or common-law partner; or
 - by a peace officer with or without the consent of the spouse or common-law partner's consent.

- Judge must be satisfied that family violence
 has occurred and there is a serious or urgent
 situation that requires an immediate response
 to protect a person or property.
 - Definition of Family Violence s. 16(9) Court MUST consider
- The spouse or common-law partner may make the application even if that person has been forced to leave the family home as a result of violence.

FOR AN EPO, A JUDGE MUST CONSIDER:

- The history and nature of family violence
- Whether there is immediate danger to the person at risk or risk of harm, or risk of harm of property
- Best interests of any child of either spouse or common-law partner (including maintaining a connection with the First Nation)
- The interests of any elders or people with disabilities within the home
- The fact that someone else holds an interest or right in or to the family home
- The length of time the spouses or common-law partners have lived on the reserve
- Any other exceptional circumstances

EMERGENCY PROTECTION ORDERS

- Initial application can be made before a "Designate Judge"
 - Justice of the Peace, Provincial Court or Supreme Court Judge
 - To reflect access issues in remote communities
- However, a Judge from Supreme Court must review within 3 days, and can confirm, re-hear, or revoke the order
- The Court decides confidentiality issues and whether the information on which the order was granted will be made public.

EMERGENCY PROTECTION ORDER CAN:

- 1) Grant the applicant exclusive occupation and access to the home
- Require spouse and others specified to vacate at a time the judge orders, and prohibiting reentry
- 3) Give instructions for a Peace Officer to remove a person and keep the person away from the home
- 4) Set up a "no-go zone" around the house to keep the person away from the house
- 5) To allow a Peace Officer to accompany and supervise the removal of personal belongings
- 6) Any other necessary provisions to protect the family at risk

- Upon receiving notice of the order, person is bound by it
- A **peace officer must serve** a copy of the order on the persons referred to in the order, or by a substituted manner (as prescribed by the regulations), and must advise the applicant as soon as that has been done.
- An application can be made to vary or revoke within **21 days after notice** was received (though the court can allow further time), or at any time if there has been a **material change in circumstances**.
- The court must notify the parties or any persons specified in the order of the court's decision and any consequent procedures.
 - Ensures the principles of fundamental justice and procedural fairness are met.

EXCLUSIVE OCCUPATION ORDERS

EXCLUSIVE OCCUPATION ORDER (S. 20)

- A court may grant an order for exclusive occupation of the family home and reasonable access to that home for a period that the court specifies.
- Violence does not necessarily have to be factor
- Upon the death of a spouse or breakdown of the relationship, or to remove disruptive person (s)

JUDGE'S CONSIDERATIONS FOR EOO

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

EOO MAY REQUIRE:

- the spouse or common-law partner (whether a First Nation member or Indian or not) **must leave** the family home immediately or by a certain time, and **prohibit them from re-entering** the home;
- the spouse or common-law partner must **preserve the condition of the home** until they vacate it;
- An applicant make payment to the other spouse or common-law partner towards the cost of other accommodation; and
- A provision either spouse or common-law partner to pay for all or part of the **repair and maintenance** of the family home and other liabilities arising in respect of the home, or to make payments to the other spouse or common-law partner for those purposes.

VARY OR REVOKE (S. 20(6))

- The exclusive occupation order can be varied or revoked by:
 - anyone specified in the order, or
 - by anyone who holds an interest in or a right to the family home if there has been a material change in circumstances
- Other Party must be given notice of the Application

UPON THE DEATH OF SPOUSE OR CL PARTNER: OCCUPANCY

IMMEDIATE CONCERNS UPON DEATH

- When a spouse or common-law partner dies, survivor has automatic right to stay in the family home for 180 days after the death (s. 14)
 - Survivor was defined in the Indian Act as a "surviving spouse or common-law partner".
 - It does not matter whether they are a First Nations member or an Indian.

DEATH OF SPOUSE OR CL PARTNER

- A surviving spouse or common-law partner may apply for an exclusive occupation order and reasonable access to the home for any period the court specifies (s. 21).
- An interim order may be made before the application is determined.
- The court must consider many factors (see section 21(3) for full list)

An exclusive occupation order after death may include provisions such as:

- A survivor must preserve the condition of the family home;
- A specified person must leave the home, and are prohibited from re-entering; and
- An executor of a will/administrator of the estate or the holder of an interest or right in or to the home pay for all or part of the repair of the home or other liabilities.

- While an EOO does not transfer title, it does transfer rights that are very close to title: the rights to occupy homes on reserve.
 - Could potentially be for a lifetime
- If EOO upon death of a spouse, it does NOT change who holds an interest or right in the home or prevent an Executor/Administrator from transferring this interest

NOTICE TO FIRST NATION

NOTICE TO FIRST NATIONS COUNCIL

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

WHEN NO NOTICE IS REQUIRED

- When there is an Emergency Protection Order or there is a Confidentiality Order
 - Section 19: The Court will weigh the balance between making the information public and the need to protect affected parties, especially children.
- The successful applicant must send a copy of the Court Order to the First Nation Council

DIVISION OF PROPERTY UPON RELATIONSHIP BREAKDOWN OR DEATH

DIVISION OF VALUE ON RELATIONSHIP BREAKDOWN

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

- A spouse or common-law partner must apply within 3 years after separation to divide the value of the matrimonial rights or interests.
- Court may determine the amount payable by one spouse/common-law partner to the other by:
 - lump sum;
 - instalments; or
 - the transfer of an interest or right.
- The court can extend the period to bring an application beyond the 3 years.

- Courts may make changes, if it is considered unconscionable, given:
 - 1) needs of caring for children
 - 2) the debts or liabilities of each spouse
 - 3) a significant change in value of the interests
 - 4) other pertinent factors
- On application, the order can be revoked or varied, only if there are changes in circumstances AND the other party must be given notice

DIVISION OF VALUE – DEATH OF SPOUSE

- There is a difference between what First Nation members and Non-members are entitled to upon the death of spouse or CL partner.
- A survivor must apply within 10 months for any entitlement; however, the survivor can apply to extend the 10 months.

DIVISION OF VALUE – DEATH OF SPOUSE

- Surviving First Nation member spouse is entitled, on application, to:
 - 1/2 of the value of the interest of the deceased in the family home, plus
 - 1/2 of the value of the interest of the deceased in the land on which the family home is situated, plus
 - Amount = 1/2 of the value of interest of the deceased of other on-reserve structures and lands
- Surviving **non-First Nation member spouse** is entitled, on application, to:
 - 1/2 of the value of the interest of the deceased in the family home, plus
 - Amount = 1/2 of the value of interest of the deceased of other on-reserve structures (NOT land), plus
 - The greater of: 1/2 appreciation, or, the difference between survivor payments minus debts

- On application by the survivor, the Court may vary the amount owed if it is considered unconscionable
 - ... given the needs of caring for children, and
 - ... if the spouses had previously resolved the consequences of a breakdown

SUMMARY

- Spouses/common-law partners have equal entitlement to occupy the family home until they cease the be spouses or common-law partners.
- Spouses must give their consent before the disposition or encumbrance of the family home.
- An emergency protection order can exclude a spouse/common-law partner from the family home on an urgent basis (where there is family violence) for up to 90 days.

- An exclusive occupation order provides short to long term occupancy of the family home (where one spouse is excluded).
- Each spouse is entitled to an equal division of the value of the matrimonial home and any other matrimonial rights or interests.
- In some circumstances, the courts may transfer matrimonial interests or rights between member spouses or common-law partners together with, or instead of, financial compensation.

- When a spouse or common-law partner dies, the surviving spouse or common-law partner may remain in the home for up to 180 days after their spouse or common-law partner's death.
- The courts can enforce a free and informed written agreement between spouses or common-law partners.

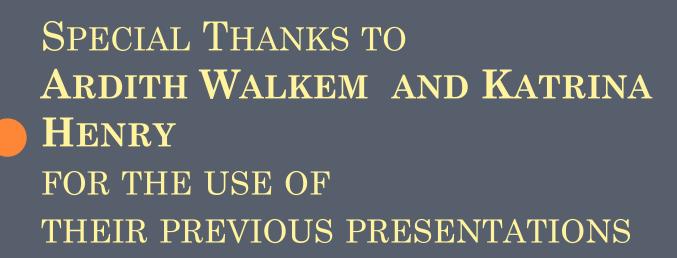
SOME CONSIDERATIONS

ISSUES OR AREAS OF CONCERN

- Access to Justice?
 - The Act moves more decisions to the court process.
 - Without legal representation, and without access to courts, peoples' rights may be seriously impacted or denied.
 - Forms require parties to say that they give their "full and informed consent".
 - Decisions may be made with one party being selfrepresented or not appearing at all.
- Also issues for First Nations responding to Orders and providing submissions to Court of the cultural, social and legal context
- No additional funding

- In Provisional Rules, there is no recognition of Indigenous laws or ways of resolving problems
- No options to explore alternative dispute resolution that might result in greater community involvement and solutions with a greater chance of holding over time
- Complexity of housing situations on reserve
 - Consideration of others that may live in home (multiple generations)
 - Available housing if someone is removed from their home

• For templates, training, fact sheets, and more visit the website for the Centre of Excellence for Matrimonial Real Property at www.coemrp.ca



Working with LSS Intake



Our Clients







Services Overview

Legal Aid

LEGAL INFORMATION
available to anyone;
information is provided by legal
information outreach workers
(LIOWs), websites, publications
Community Partners and selfhelp centers

LEGAL ADVICE
for those who qualify
financially; advice through
family, immigration and criminal
duty counsel, JITI Programs,
LawLINE, Brydges Line, family
advice lawyers at various
locations

LEGAL REPRESENTATION for financially eligible people with serious family, child protection, immigration or criminal problems; private bar lawyers provide services on referral from LSS

Collaboration with other organizations to deliver innovative services

Timely and lasting solutions

Legal Information

Legal Information Outreach Worker





Public Legal Education

- >Information session for general public
- Legal information session for staff and volunteers

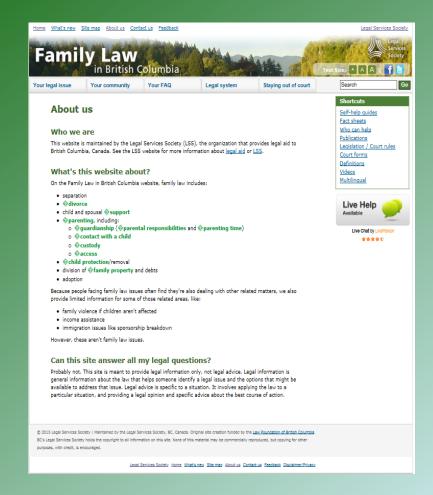
> Training for Advocates, Community and

Settlement Workers

> The Factum



LSS Self-Help Websites





www.familylaw.lss.bc.ca

www.legalaid.bc.ca

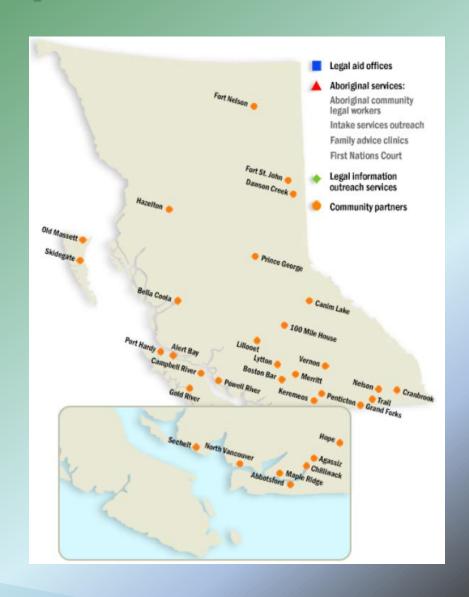
LSS Self-Help Publications



Community Partners

Community partners are available in 27 communities around the province. Clients can:

- get free legal information;
- > call Legal Aid;
- find nearest Legal Aid office;
- > get legal help online; and
- connect with people who can help.



Legal Advice



Duty Counsel

Family LawLINE

Duty Counsel

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

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

Justice Innovation Projects

- Expanded Criminal Duty Counsel (Out Of Custody –Port Coquitlam)
- Expanded Family Duty Counsel (Victoria)
- > Expanded Family Law Line
- >Parent Legal Centre (Vancouver)
- > Family Mediation

Expanded Criminal Duty Counsel (Out Of Custody - Port Coquitlam)

The Expanded Criminal Duty Counsel is a new pilot program offered by the Legal Services Society in Port Coquitlam. They hope to achieve early resolution of files and contribute to court efficiency. Under the pilot program, Criminal Duty Counsel will retain conduct of select uncomplicated files and provide services to a broader range of clients. The Expanded CDC program will deal with matters other than those that qualify for a Tariff Lawyer.

Expanded Family Duty Counsel (Victoria)

LSS is expanding this program to provide greater continuity of advice as well as new services such as legal coaching to support people who are representing themselves. It is located at the Justice Access Centre in Victoria. Clients will be able to set appointments so that they can work with the same lawyer throughout the service. The lawyers can also now provide up to 6 hours of service for each current legal matter.

Family LawLINE (Enhancement)

The Family LawLINE is a telephone advice service that provides brief next-step help for people representing themselves. We are expanding this service to include preparation and review of legal documents, and coaching of the client in self-representation. Clients will now be able to set up appointments so they can work with the same lawyer throughout. They can now provide up to 6 hours of service with the same lawyer for each current legal matter.

PARENTS LEGAL CENTRE (PLC)

This service is for eligible parents who will be appearing in Vancouver's Robson Street Court. They will assist eligible clients with early, collaborative resolution of child protection issues. They will focus on trying to resolve cases consensually out of court, and identify alternative methods before they escalate to court. A lawyer and an advocate will be assisting clients. The lawyer will provide advice and representation at an early stage, including at mediation and case conferences. The advocate will support parents in resolving underlying issues that led to the protection concern, and liaise with community supports and resources.

FAMILY MEDIATION PROGRAM

This is a program that is being offered by LSS and Mediate BC. The program is to assist eligible clients who would not qualify for a referral to a legal aid lawyer. The program is designed to assist clients achieve an early resolution of family disputes that include property division, debt and support issues when they are in conjunction with other family matters. LSS will issue a referral to Mediate BC for 6 hours of paid family mediation services.

APPLYING FOR LEGAL AID

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

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



Come into one of our Legal Aid offices, their contact information is available on our website www.legalaid.bc.ca

Legal Aid Offices

There are 34 communities in BC where someone can apply for legal aid and get legal information.



Who Qualifies for Legal Aid?

A client qualifies for legal aid when:

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



What Legal Problems Are Eligible For Coverage?

Criminal – Where charges are serious and there is a

likelihood of jail



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



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



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

process as well.



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



Financial Eligibility

Income chart (All case types)



Household Size

1

2

3

4

5

6

7 or more

Monthly Net Income

\$1,500

\$2,100

\$2,700

\$3,290

\$3,890

\$4,490

\$5,090

Financial Eligibility LEGAL ADVICE GUIDELINES



Household Size

1 - 4

5

6

7 or more

Monthly Net Income

\$3,300

\$3,900

\$4,520

\$5,110

Financial Eligibility

Personal Property (All case types)

Ηοι	ıseh	old	Size
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3

4

5

6 or more

Exemption

\$2,000

\$4,000

\$4,500

\$5,000

\$5,500

\$6,000

Requesting A Review of A Denial

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

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

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

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



Working together

You can help your clients:

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



Alternatives to Court: Collaborative Family Law & Meditation

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Why not court?

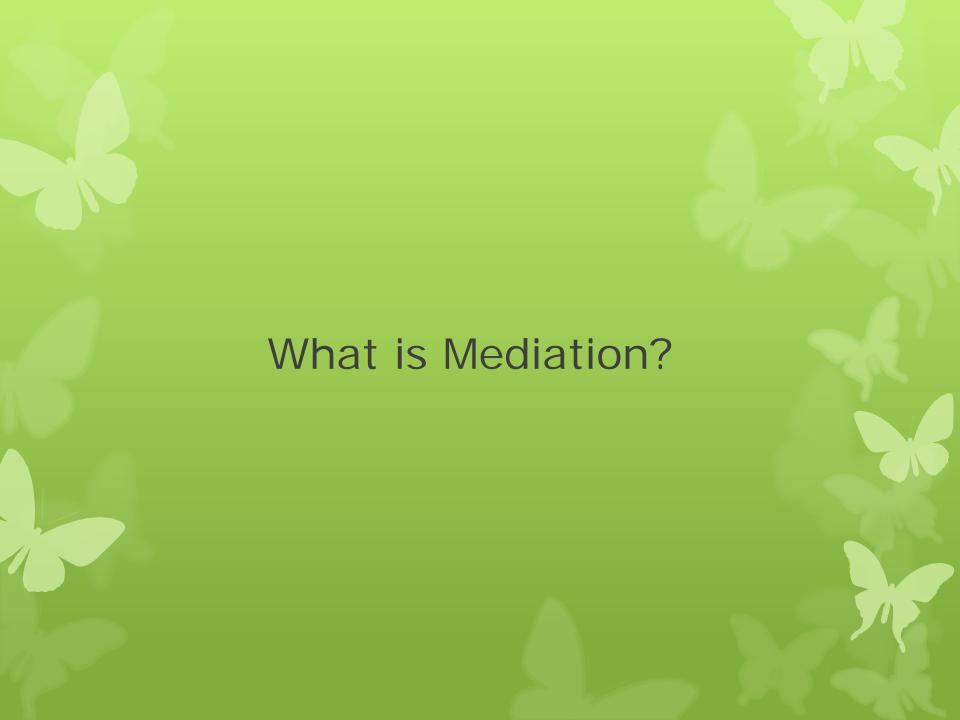
The purpose of the Family Court process is to resolve issues if people are unable to resolve them on their own.

Cons

- Time Consuming
- Expensive
- uncertainty
- Loss of Control
- Winning and Control Primary Driving Forces
- Judges Have No Special Knowledge

"how can two parents who love their child allow a total stranger to make crucial decisions about their child's living arrangements, health, education, extracurricular activities, vacation time, and degree of contact with each parent?"

- Justice Brownstone in Tug of War: A Judge's Verdict on Separation, Custody Battles, and The Bitter Realities of Family Court
- It is not necessary to have a judge decide the case if the parties can resolve it with the help of other professionals.



It's Not....



Mediation Definition:

"[A] process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement. The family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreements."

- Model Family Mediation Standards

Benefits of Mediation

- Saves time and money
- Allows for win-win situation
- Allows for creativity in solutions
- Allows for healing
- Gives the client the opportunity to be heard
- Client learns how to handle conflict
- Less harmful to the family unit
- Allows for continued relationship

When to Use Mediation

Several Factors to Consider:

- Is this case safe to refer?
- Continued relationship of parties?
- Will court be stressful for client?
- Does client have limited funds?
- Is time or location important to client?
- Is the case high-conflict?
- Is there a power imbalance among the parties?
- Would your client benefit from the privacy of mediation?



The Mediation Process

- Pre-mediation
- Mediation
 - Stage 1: Creating Structure & Trust
 - Stage 2: Fact Finding & Isolation of Issues
 - Stage 3: Creation of Options & Alternatives
 - Stage 4: Negotiation & Decision Making
 - Stage 5: Clarification & Writing A Plan
 - Stage 6: Legal Review & Processing
 - Stage 7: Implementation, Review & Revision

Collaborative Family Law

- Slightly more formal than mediation
- Both parties represented by counsel
- Everyone (lawyer included) signs an agreement not to go to court
- Negotiation process involves 4-way meetings which both spouses and their respective lawyers attend
- Everyone agrees to an informal exchange of <u>all</u> relevant information.
- lawyers work together to ensure the agreement is fair and legal.
- Divorce coaches, financial experts and child experts may be jointly retained to assist
- All experts are neutral and exempt from court process



- O Collaborative Family Law recognizes that divorce involves more than just legal issues.
- Financial professionals help with tax and cash-flow issues.
- Mental health experts keep the process productive and the clients healthy.



Collaborative family law v. mediation

Collaborative

- No threat of court
- Independent legal advice
- More expensive
- Support if power imbalance
- Lawyers disqualified from litigation

Mediation

- Threat of court
- No legal advice
- O Cheaper
- Limited support if power imbalance
- More flexibility



- Most divorcing couples are kind, decent and intelligent people who want to maintain their self-respect and dignity.
- They would like to feel that they have treated their spouse fairly, done what was best for their children, and amicably resolved their differences.
- Most clients are used to controlling their lives and do not like having others tell them what to do, especially if it does not make sense to them.
- Clients often find that they share more interests than they had realized.
- The average collaborative divorce is completed in 17 <u>WEEKS</u> (mediation less); the average litigated divorce takes 17 <u>MONTHS</u>.
- Collaborative Law and Mediation is 90% cheaper than litigation
- Collaborative Lawyer & Mediators want to change the face of divorce in this world to one where everyone wins – the clients, the professionals, the children, and society.

