



**Legal
Services
Society**

British Columbia
www.legalaid.bc.ca



WILLIAMS LAKE REGIONAL CONFERENCE

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

Ramada Hotel and Conference Centre
1118 Lakeview Crescent Williams Lake, BC V2G 1A3
Tuesday 14th, Wednesday 15th March, 2017

AGENDA – Tuesday 14th March, 2017

Time	Session	Speaker	Facilitator
8:00 – 9:00	<i>Registration & Breakfast</i>		
8:45 – 9:00	Opening Ceremony & Welcome	➤ Virginia Gilbert - Elder <i>Williams Lake Band</i>	Baljinder Gill
9:00 – 10:45	Overview of Family Law Act	➤ Deborah M. O’Leary <i>Family Law Lawyer</i>	Alex Peel
10:45 – 11:00	<i>Coffee Break</i>		
11:00 – 12:00	Domestic Violence and Protection Orders	➤ Deborah M. O’Leary <i>Family Law Lawyer</i>	Baljinder Gill
12:00 – 12:45	<i>Lunch</i>		
12:45 – 2:15	Overview of Child Protection Law	➤ Deborah M. O’Leary <i>Family Law Lawyer</i> ➤ Heidi Zetzsche <i>Lawyer</i>	Baljinder Gill
2:15 – 2:30	<i>Coffee Break</i>		
2:30 – 3:30	MYLAWBC	➤ Alex Peel <i>Legal Services Society</i>	Baljinder Gill
3:30 – 4:30	Gladue and Restorative Justice	➤ Deborah Pickering <i>Restorative Justice</i> ➤ Lynda Price <i>Gladue Report Writer and Lawyer</i>	Alex Peel



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AGENDA – Wednesday 15th March, 2017

Time	Session	Speaker	Facilitator
8:00 – 9:00	<i>Registration & Breakfast</i>		
9:00 – 10:30	Criminal law and Rights	➤ Raymond Phillips <i>Barrister and Solicitor</i>	Alex Peel
10:30 – 10:45	<i>Coffee Break</i>		
10:45 – 12:15	Working with LSS Intake Publications and other Resources	➤ Sherilyn Thompson <i>Legal Services Society</i> ➤ Alex Peel <i>Legal Services Society</i>	Baljinder Gill
12:15 – 01:30	Wills and Estates off and on Reserve	➤ Raymond Phillips <i>Barrister and solicitor</i>	Baljinder Gill
01:30 – 02:00	<i>Lunch</i>		

◆ Criminal Procedure Rights Upon Arrest

What if I am stopped by the police?

Police officers can stop you under three general circumstances:

- If they suspect that you have committed a crime
- If they see you committing a crime
- If you are driving

If the police do not arrest you or if they do not have grounds to detain you, they must let you be on your way

Police Stop While Driving

The police can stop cars at any time to determine if a driver has consumed alcohol or drugs, to see whether a car is mechanically fit, to check whether a driver has a valid licence, or to make sure a driver has insurance.

- ♦ The police may also stop your car if they suspect that you have committed a driving offence.
- ♦ The police are only allowed to search your car if they have reasonable and probable grounds to believe that there are illegal drugs or alcohol or evidence relating to the commission of a crime in the car.

When can the police search me?

In most cases, the police can only search you only if you have been placed under arrest or if you have consented to the search. However, there are exceptions. These include:

- If the police find you in a place where they are searching for drugs, and they have reason to believe that you have drugs.
- The police find you in a vehicle where people are transporting or drinking alcohol illegally, and they believe that you have alcohol.
- The police believe that you have an illegal weapon or one that was used to commit a crime, and suspect that it might be removed or destroyed in the time it would take to get a search warrant.

Police Entering Your Home

There are a number of circumstances in which the police are allowed to enter your home. These include:

- The police have a warrant to enter your home to arrest someone
- The police have a search warrant
- The police have permission from you or someone else in authority in your home
- There are urgent circumstances that require the police to enter your home

The police may also enter your home if they suspect that a crime has been committed in relation to property in your home

Police can enter your home in urgent circumstances

- ♦ The police can enter your home without your permission in the following urgent circumstances:
- A 911 call has been made from your home, and the police believe that entry is necessary to prevent death or serious injury.
- Where the police believe that someone in the home is in need of emergency services.
- To help someone who has reported a domestic assault to safely remove their belongings.
- To protect people from injury if the police suspect that there is a drug laboratory in the home.

Rights on Arrest

- ◆ At the time of arrest, an officer must typically inform the accused of the following and confirm that they understand:
 1. inform of reason for arrest
 2. Charter of Rights caution / Right to Silence
 3. right to speak to a lawyer
 4. access to legal aid
 5. secondary police cautions



Informed of Arrest

- ♦ Section 10(a) of the Charter entitles all people "the right on arrest or detention ... to be informed promptly of the reasons therefore". It is generally expected that the arresting officer, upon making the arrest, will inform the person of the reason for the arrest. However, where the reason is obvious and the person is well aware of the reason, it is not necessary.
- ♦ It is not necessary to always inform the accused of the circumstances of the offence. In a murder case it is not necessary to reveal the victim's identity.

The Script

- ♦ I am arresting you for [name of offence(s)]. You have the right to retain and instruct counsel without delay. You also have the right to free and immediate legal advice from duty counsel by making free telephone calls to [toll-free phone number(s)] during business hours and [toll-free phone number(s)] during non-business hours.
- ♦ Do you understand?
- ♦ Do you wish to call a lawyer?
- ♦ You also have the right to apply for legal assistance through the provincial legal aid program.

Do you understand?

Right to Silence

Upon arrest the peace officer should inform the accused of their right to silence and right against self-crimination protected under section 7 and section 11(c) of the Charter.

- ♦ **POLICE WARNING:**

I wish to give you the following warning: You need not say anything. You have nothing to hope from any promise or favor and nothing to fear from any threat whether or not you say anything. Anything you do or say may be used as evidence.

- ♦ **Do you understand?**

FIREARMS

- ◆ On April 5, 2012, Bill C-19, the *Ending the Long-gun Registry Act*, came into effect. The key changes:
 - Removal of the requirement to register non-restricted firearms
 - Destruction of the existing non-restricted firearms registration records
 - Allowing the transferor of a non-restricted firearm to obtain confirmation of a transferee's firearms acquisition licence prior to the transfer being finalized

It is important to note that the new law **does not change the requirement for all individuals to hold a licence in order to possess a firearm.**



Fire Arms Prohibition

- ♦ A sentencing judge, before making a probation order must consider whether to impose a weapons prohibition order under s. 109 or 110.
- ♦ Section 109 is a mandatory prohibition applied where an offense is indictable, violence was used, threatened or attempted or where violence was against an intimate partner, a child or is someone who resides with the person or intimate partner

Firearms Prohibitions

- ♦ **s.109 Mandatory Prohibition 10 years**
- ♦ Sexual Assault, aggravated sexual assault, sexual assault causing bodily harm
- ♦ criminal harassment
- ♦ using firearms in offense
- ♦ drug trafficking
- ♦ using an imitation weapon in offense
- ♦ Prohibited for life on subsequent offense

Firearms Prohibitions

- ◆ Section 110 Discretionary Prohibition
- ◆ Summary offenses involving violence or threats and where weapon used.
- ◆ prohibited for up to 10 yrs.

Firearms Prohibitions

- ◆ Discretionary Prohibitions - Exemption
- ◆ **Lifting of prohibition order for sustenance or employment**
- ◆ the person needs a firearm or restricted weapon to hunt or trap in order to sustain the person or the person's family, or
- ◆ a prohibition order against the person would constitute a virtual prohibition against employment

Firearms Prohibitions

- ◆ **Factors:**
- ◆ A competent authority may make an order under subsection (1) only after taking the following factors into account:
 - a) criminal record, if any, of the person;
 - b) the nature and circumstances of the offence,
 - c) the safety of the person and of other persons.



Working with LSS Intake



MARCH 2017

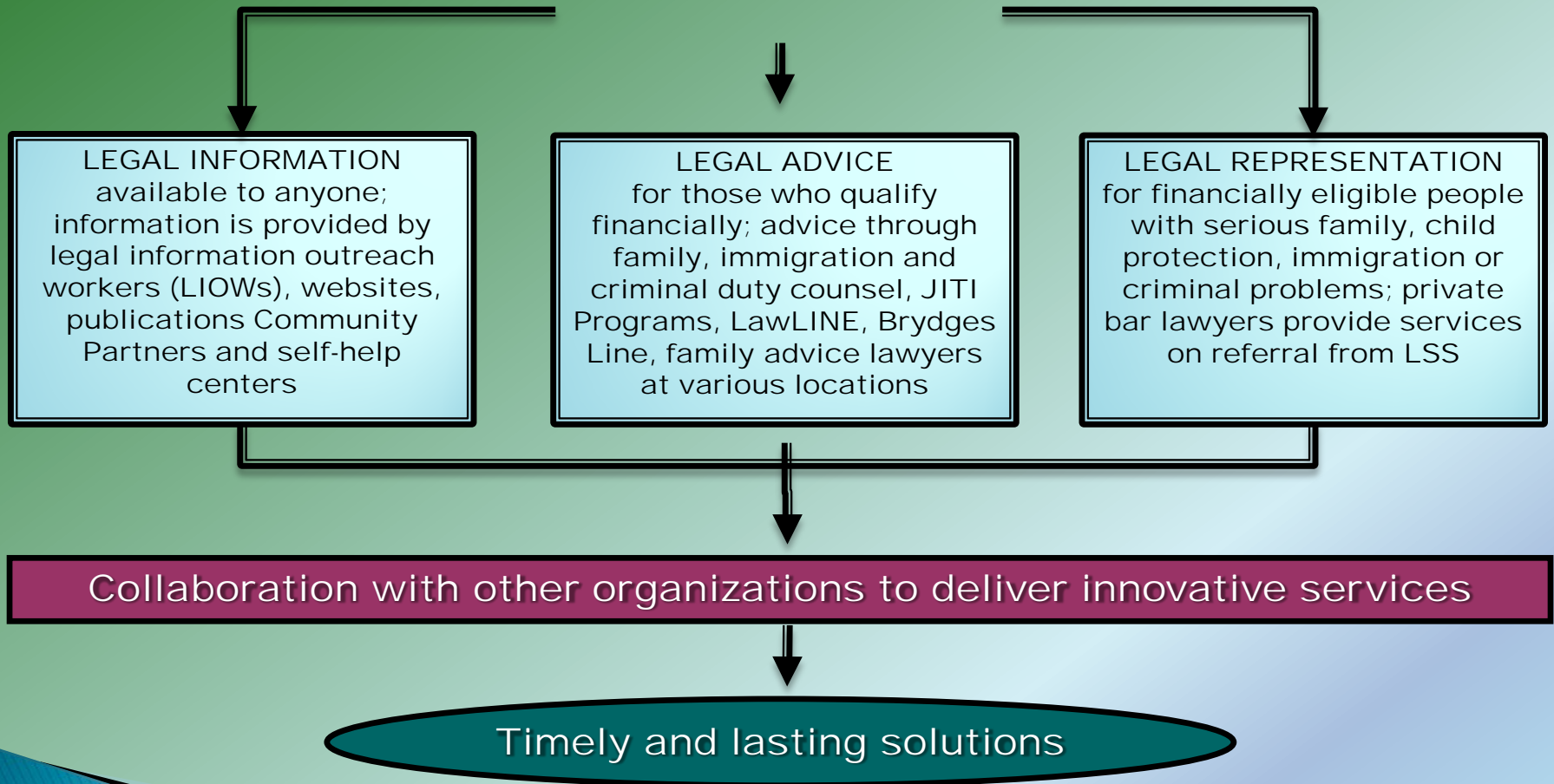
Sherilyn, Provincial Supervisor, Legal Aid Applications

Our Clients



Services Overview

Legal Aid



Legal Information

Legal Information Outreach Worker



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.





Canim Lake Community Partner

Canim Lake Band
Canim Lake Wellness Center

House #117 – Main Reserve
Canim Lake, BC
V0K 1J0

Phone: 250-397-2502

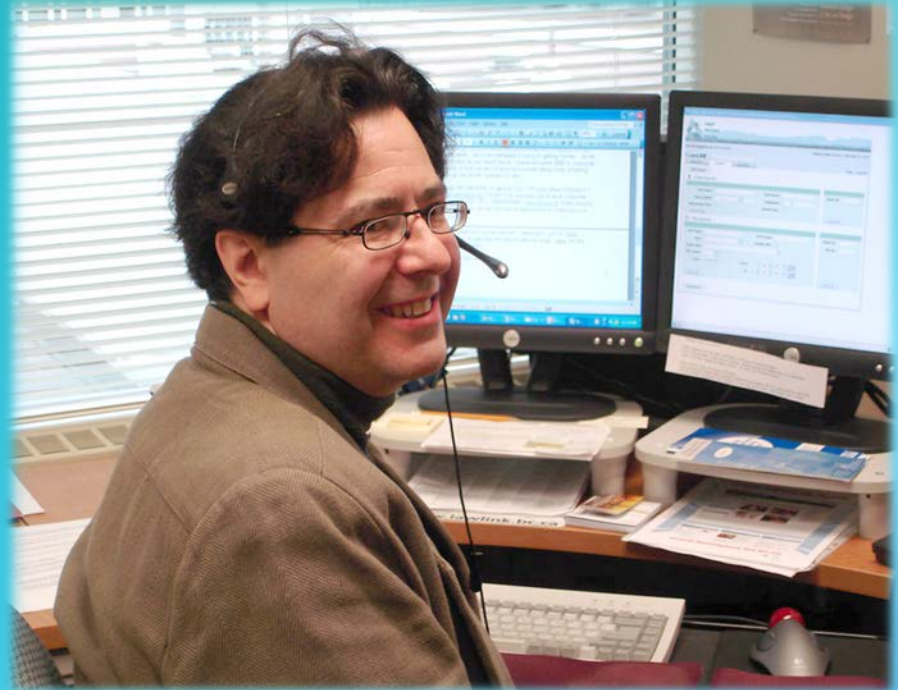
Fax: 250-397-2598



Legal Advice



Duty Counsel



Family LawLINE

Duty Counsel

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

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



Family LawLINE (Enhancement)

- Brief next-step telephone advice for people representing themselves
- Can set up phone appointments
- Help with preparation and review of legal documents, and coaching
- Up to 6 hours of help from the same lawyer for each current legal matter



Applying For Legal Aid

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

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



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

Legal Aid Offices

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



Williams Lake Legal Aid Offices

Alfred Kaiser,
Barrister & Solicitor
Williams Lake Courthouse

540 Borland Street
Williams Lake, BC
V2G 1R8

Phone: 250-267-9154
Fax: 250-398-6602

Hours:
Wed and Thu: 9am to 12:30 pm
and 1:30 pm to 3pm, or by
appointment arranged by the
intake worker.



Quesnel Legal Aid Offices

David Frappier, Barrister
& Solicitor

342 Kinchant Street
Quesnel, BC
V2J 2R4

Phone: 250-992-8387

Fax: 250-992-7661

Hours:

Tue and Thu: 8:30am to
12:30pm



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 risk or 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

Representation Income chart

Household Size

Monthly Net Income

1	\$1,520
2	\$2,120
3	\$2,730
4	\$3,340
5	\$3,490
6	\$4,550
7 or more	\$5,160

Am I
eligible?



Financial Eligibility

LEGAL ADVICE GUIDELINES

Household Size

Monthly Net Income

1 - 4

\$3,340

5

\$3,950

6

\$4,580

7 or more

\$5,180



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



FINANCIAL DISCRETIONARY COVERAGE

Legal Representation – Criminal,
Family, CFCSA, Immigration, and
Appeal Cases

- If an applicant is over the financial eligibility guidelines, by approximately \$100 – \$200 on income or \$500 on assets, and the matter is a serious and complex case, and there is available budget, it can be sent for discretionary coverage review



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:

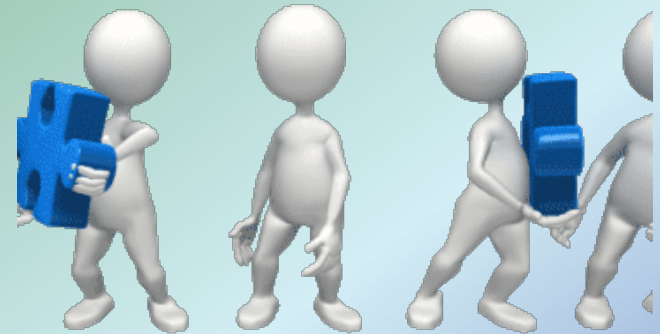
Provincial Supervisor
Vancouver Regional Centre
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787



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



Presenter: Sherilyn

Provincial Supervisor, Legal Aid Applications

Phone: 604-601-6093

Fax: 604-682-0787

E-Mail: sherilyn.vancouver@lss.bc.ca



Public Legal Education and Information (PLEI)



Legal
Services
Society

British Columbia
www.legalaid.bc.ca



Alex Peel, 604-601-6007
alex.peel@lss.bc.ca

Public legal education and information

- How can legal information help you help your clients?
- Free publications
- New and revised publications coming April 2017
- Websites
 - Also: Videos and social media



How can you help your clients?

- recognize **legal nature** of problems
- find ways to stay **out of court**
- know how to **resolve problems early** –
on their own or by seeking assistance
- find **options for help**
 - help apply for legal aid
 - help access information, representation, and advice services
 - provide referrals to advocates and other intermediaries



Credit: www.emsleys.co.uk



Providing legal information
for British Columbians

FREE

Publications



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.

www.mylawbc.com/pubs



Languages Other Than English (LOTE)

Four main LOTE

- Traditional Chinese
- Simplified Chinese
- Punjabi
- Spanish

Also...

- Farsi
- Tagalog
- French
- Kurdish
- Dari
- Pashto

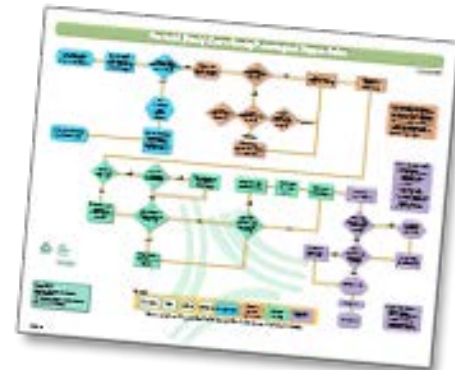
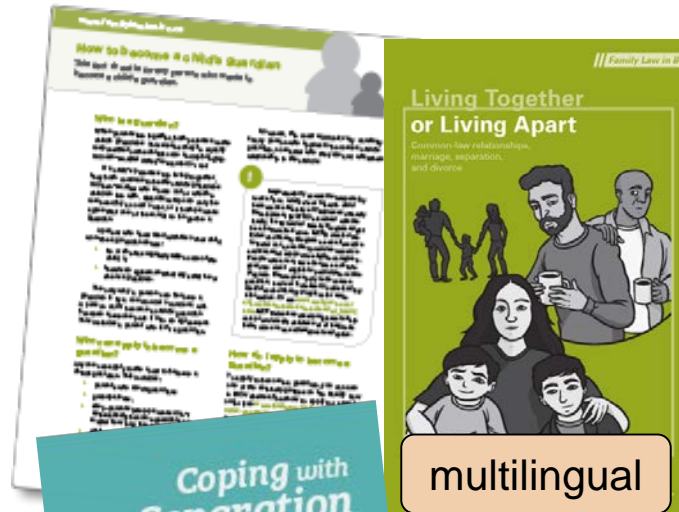


Family law

Level 2

Level 1

Level 3

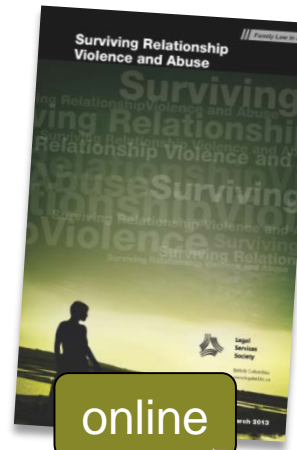


Family violence

Level 1



Level 2



online



multilingual



new



Child protection

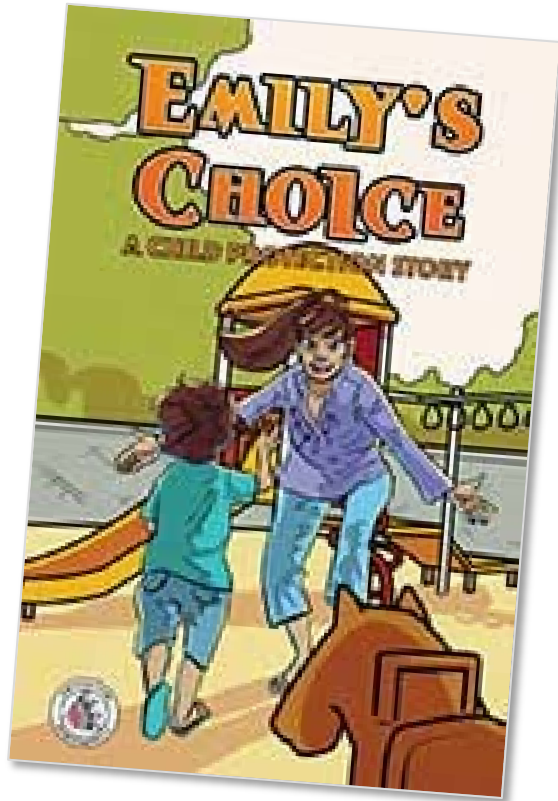
Level 1

Level 2


Level 3



Emily's choice **graphic novel**




Emily's Choice



Emily's Choice
A child protection story

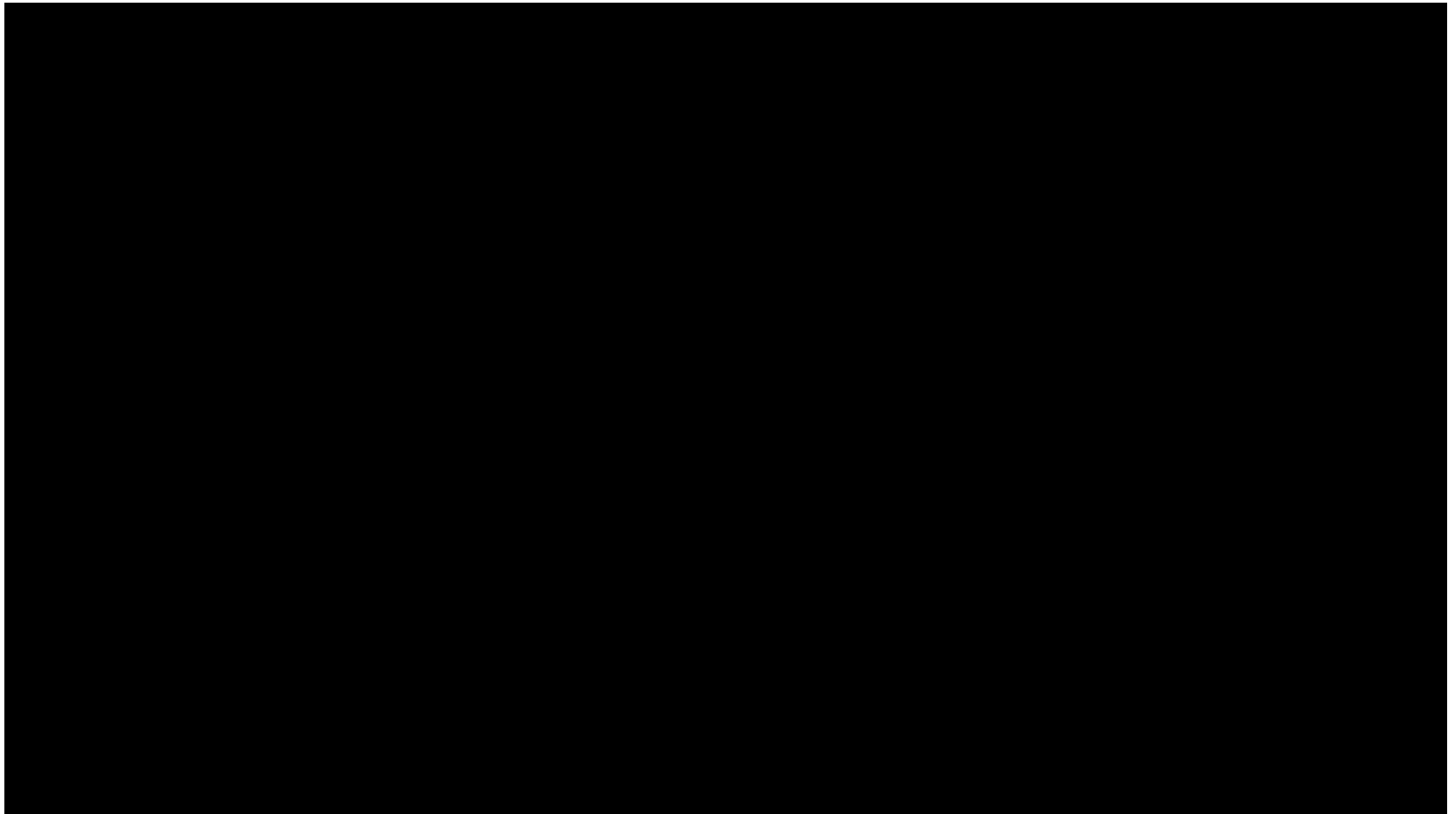
Emily is struggling with addiction and an unhealthy relationship. She loves her son, Greg, but can't always take care of him. When Greg goes into foster care, Emily is heartbroken. But by getting legal help and with the support of her family, she gets Greg back. *Emily's Choice* is Emily's story.



aboriginal.legalaid.bc.ca/pubs/EmilysChoice.php



Emily's Choice video preview



Criminal

Level 1



Level 2



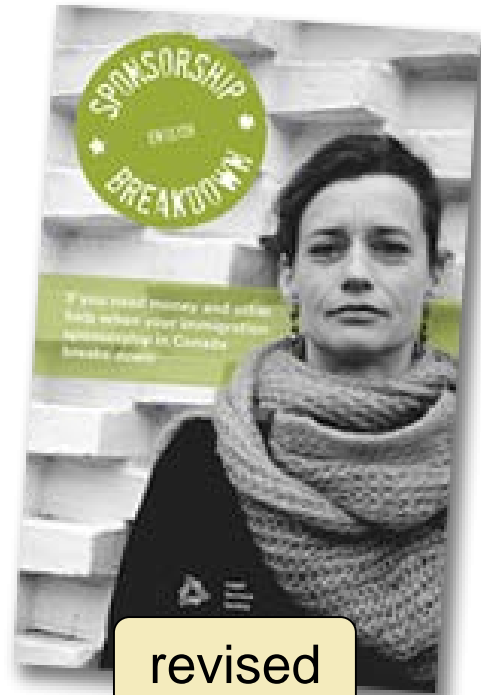
Immigration & refugees

Level 1

Level 2



more languages to come



revised

multilingual

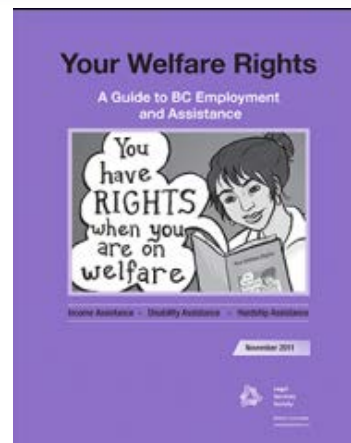
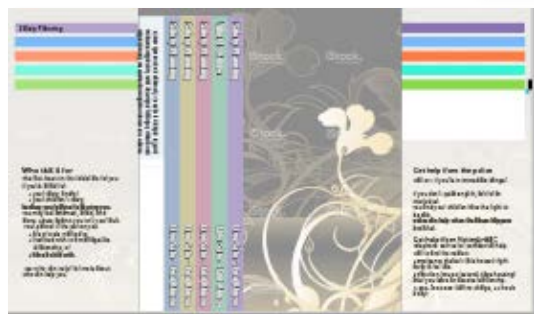
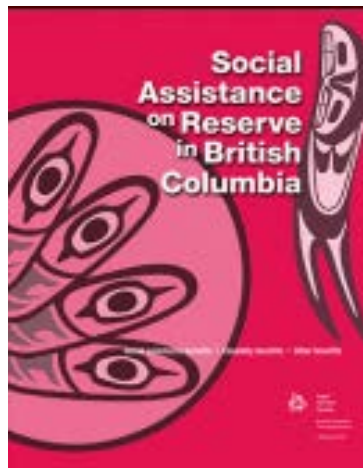




Upcoming Publications

Ready for order around April

Revised and new publications (covers to be finalized)



New publications about Gladue

(covers to be finalized)



1

Short form/oral
submission guide

2

Report writers'
guide (long-form)

3

Road maps to
Gladue options

4

Introduction to
Gladue

5

First Nations
Court



Your Gladue Rights



What's First Nations Court?

If you identify as Aboriginal, and plead guilty to a crime, you may be able to go to one of BC's First Nations Courts for sentencing. Aboriginal includes status and non-status Indians, First Nations, Métis, and Inuit.



First Nations Court uses restorative justice and traditional ways to reach balance and healing. You must accept you're responsible for your actions. Then the judge looks at:

- the harm you caused to victims,
- your background,
- your needs now, and
- how a healing plan can be made for you and your community.

Where are First Nations Courts?

First Nations Courts are in Duncan, Kamloops, New Westminster, and North Vancouver. (There may be more locations in the future.)

First Nations Court is usually held once a month at each location. For dates, see:

prosecutorswork.bccsa.ca/about-the-court/
search.bccsa.ca/search/bccsa-legal-aid/

For maps of all First Nations Courts in BC and more information about who can help you, see aboriginal.legalaid.bc.ca.

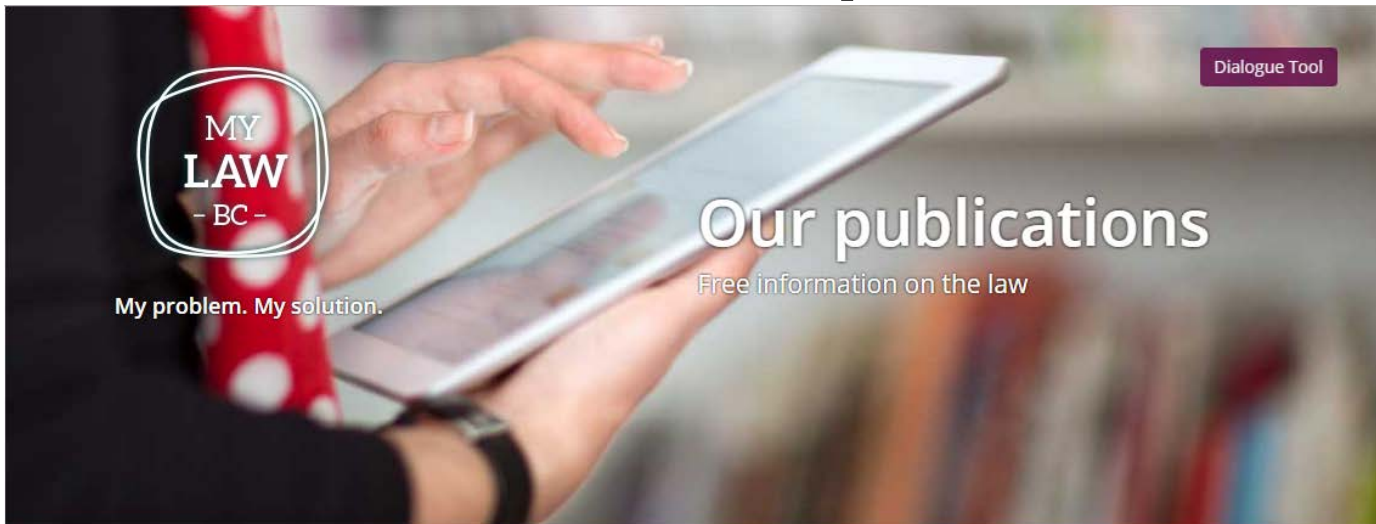
How do I get into First Nations Court?

You or your lawyer can call First Nations Court duty counsel to see if you can go to First Nations Court. They can tell you how to get your case transferred there. They can answer any questions you have about First Nations Court.

800-405-0275 (toll-free Vancouver)
604-683-6388 (Vancouver & BC call toll-free)

If your choice to have your matter heard in First Nations Court. Talk to your lawyer or a First Nations Court duty counsel about what's best for you.

How to order free publications



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Free information on the law


Dialogue Tool

Find by subject or title below.

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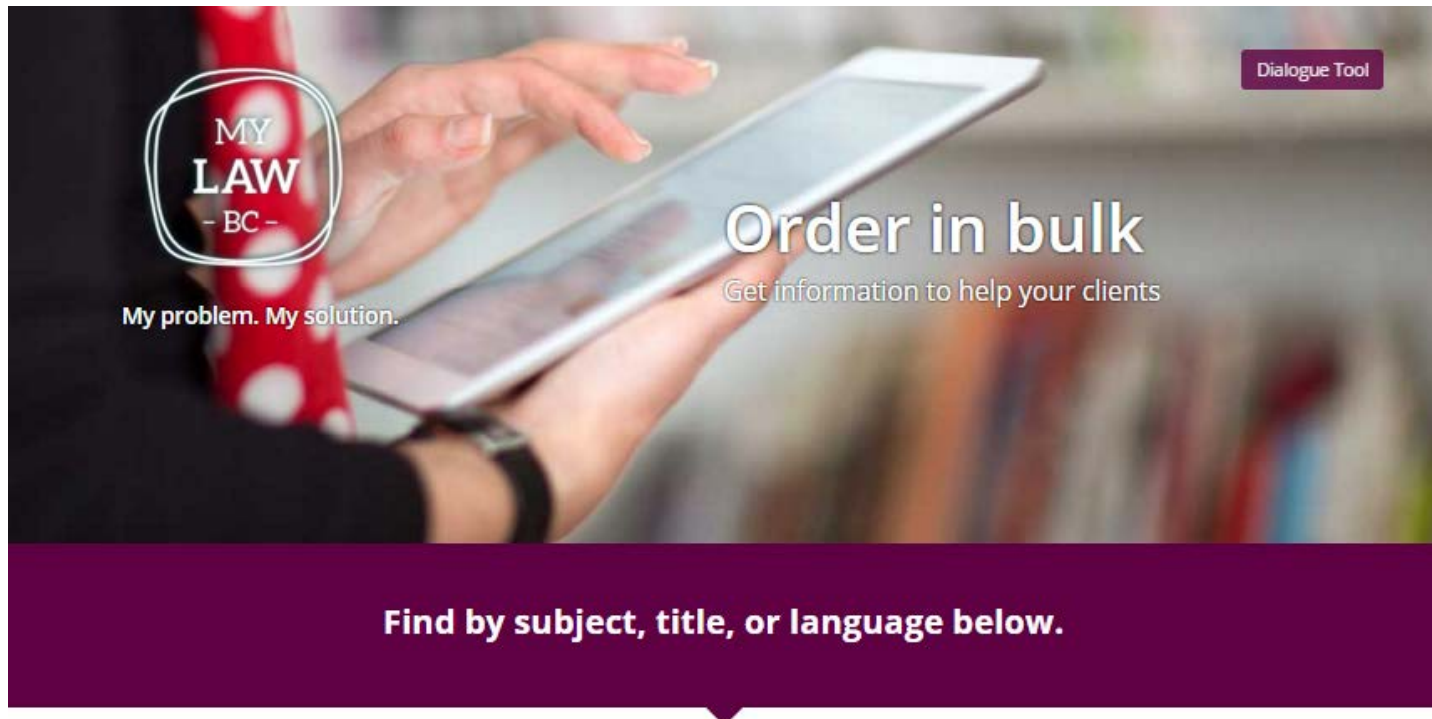
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Ordering process

Read or get free copies below.

For Your Protection

Peace Bonds and Family Law Protection Orders

Explains how and when people can apply for peace bonds and family law protection orders, and what the differences are between them. This publication is for women who need protection from violent partners or former partners, but the information applies to anyone in an abusive relationship. Updated to conform to the new BC Family Law Act (March 18, 2013).

Abuse & family violence, Families & children, Gays, lesbians, trans, & bisexuals, Legal system & courts, Women

Get PDF



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Chinese
(simplified)



Chinese
(traditional)



English



Punjabi



Ordering process

distribution@lss.bc.ca

	Customer Account Application Form <small>To order:</small> <ul style="list-style-type: none">• Fill in the form online, then e-mail it to Legal Services Society; or• Print out and fill in the form, then fax it to Legal Services Society
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Type of organization:	<input type="checkbox"/> Aboriginal <input type="checkbox"/> Community group <input type="checkbox"/> Government <input type="checkbox"/> Library <input type="checkbox"/> Legal organization <input type="checkbox"/> Medical <input type="checkbox"/> Police/RCMP <input type="checkbox"/> School/College <input type="checkbox"/> Victim services <input type="checkbox"/> Other		
Demographics: (Groups/individuals you serve)	<input type="checkbox"/> Aboriginal <input type="checkbox"/> Children and youth <input type="checkbox"/> Community workers/Advocates <input type="checkbox"/> Gay/Lesbian/Bisexual/Transgender <input type="checkbox"/> Immigrants/Refugees <input type="checkbox"/> Police/RCMP <input type="checkbox"/> Seniors/Elders <input type="checkbox"/> Victims <input type="checkbox"/> Women <input type="checkbox"/> Other		
Services: (Type of service offered)	<input type="checkbox"/> Advocacy services <input type="checkbox"/> Counselling/Support Group <input type="checkbox"/> Crisis line <input type="checkbox"/> ESL/Literacy training <input type="checkbox"/> Legal advice <input type="checkbox"/> Legal representation <input type="checkbox"/> Mediation and conflict resolution <input type="checkbox"/> Pro bono legal services <input type="checkbox"/> Restorative justice <input type="checkbox"/> Other		

Disclaimer

LSS collects and uses personal information solely to operate its business and provide legal aid in BC. LSS does not sell the personal information it collects and will not disclose an individual's personal information to a third party unless the disclosure is authorized under FOIPPA and/or in writing by the individual.



Crown Publications



CROWN PUBLICATIONS
Queen's Printer for British Columbia



Items: 0

Total: \$0

Login



Other Organizations > Legal Services Society > For Your Protection:...



For Your Protection: Peace Bonds and Family Law Protection Order (English)

Explains how and when people can apply for peace bonds and family law protection orders, and what the differences are between them. This publication is for women who need protection from violent partners or former partners, but the information applies to anyone in an abusive relationship. Updated to conform to the new BC Family Law Act (March 18, 2013).

Given the high demand for For Your Protection, Legal Services Society has adjusted some order quantities in order to enable a larger number of groups and people have timely access to the publication. If you have questions, please email distribution@lss.bc.ca. We appreciate your understanding.

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

Stock: 1639

Price: Free

Publish Date:

March 18, 2013

Product No.:

7550003732

Format:

Booklet

Additional Information:

[Click Here](#)

This item is found in:

[Legal Services Society, Abuse > Family Violence](#)

Quantity:



Add to Basket

www.crownpub.bc.ca



The LSS Game Show

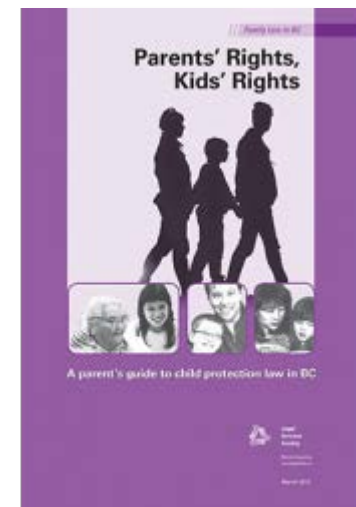
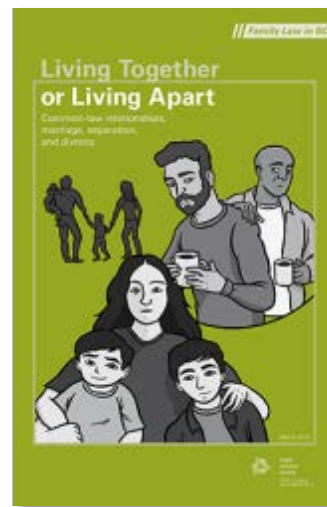
Q1: Which publication has had the most orders in Williams Lake?

A. Legal Aid Can Help You

B. Living Together or Living Apart

C. Live Safe End Abuse: Women Abused by Their Partner

D. Parents' Rights, Kids' Rights



Q2: How much does it cost to order publications from LSS?

A. Just the shipping cost!

B. Completely free!

C. Free shipping within British Columbia!

D. Buy one get one free!





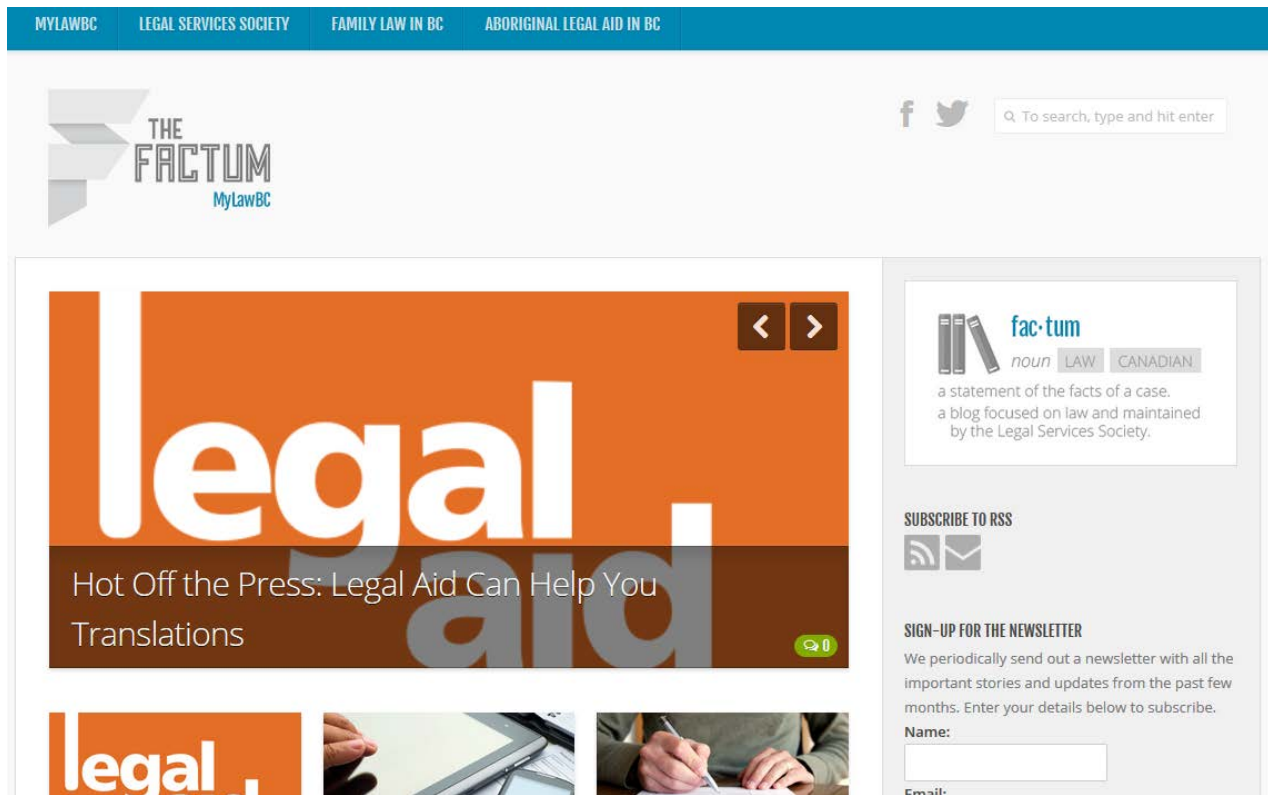
Providing legal information
for British Columbians

Social media & websites



LSS on social media

www.factum.mylawbc.com



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PLEI websites from LSS

1. Family Law Website

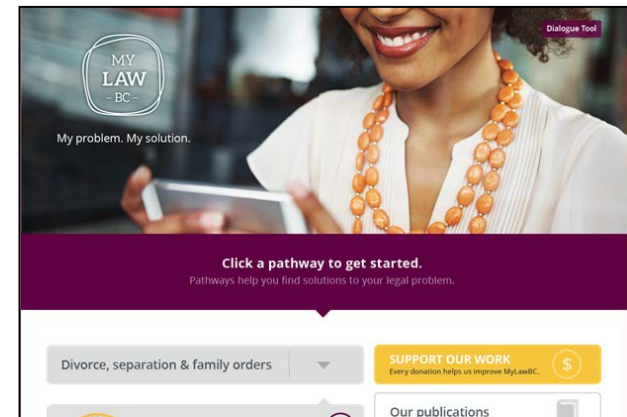
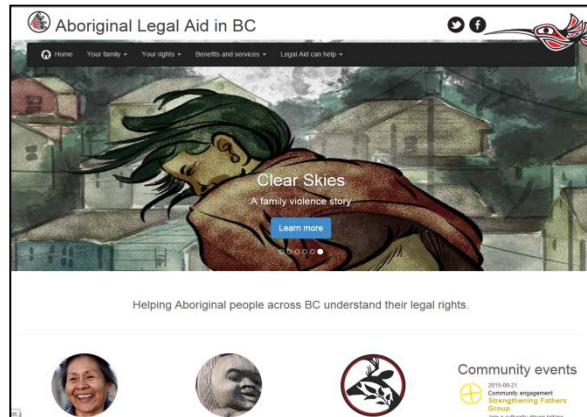
familylaw.lss.bc.ca

2. Aboriginal Legal Aid in BC

aboriginal.legalaid.bc.ca

3. MyLawBC

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Family Law

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Family Law Website

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Family Law

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British Columbia's [Legal Services Society](#) maintains this site. If you're having a family problem, you may qualify for a lawyer to advise you or take your case. Contact [Legal Aid](#) to find out.

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How to represent yourself in a family law trial Supreme Court | *Self-help resources*

Self-help resources
for each of the three stages

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2. Prepare for your trial
3. At your trial and after

Dealing with **family issues**
in Supreme Court?

Self-help resources







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Aboriginal Legal Aid in BC



 Home  Your family  Your rights  Benefits and services  Legal Aid can help 

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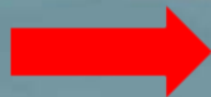
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Your home on reserve

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

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Helping Aboriginal people across BC understand their legal rights.



Is this site for you?

This website is for anyone who identifies themselves as **Aboriginal**.

[Learn more »](#)

Do you know about First Nations Court?

There are now four First Nations Courts in BC. You may be able to have your sentencing hearing in one.



Find out more in a publication

We have free publications. See if we have one that's right for you.



Community events



2016-04-14
Deadline

New Relationship Trust — Youth Grants

The New Relationship Trust has announced Youth Grants for BC First Nation youth groups and organizations.

[Read more »](#)

All of BC



2016-04-26

Community engagement Residential Historical Abuse Inquiry: Case



Your family's rights

The ministry and your kids

If a social worker from the [Ministry of Children and Family Development](#) or an [Aboriginal delegated agency](#) contacts you or visits your home, this means that they think your child might be at risk and are looking into it. This is part of the **child protection** process. (This is also called an **investigation**.) An **investigation** is when a social worker checks if your child is safe. It may result in the social worker **taking your child from your home**.

Your child is placed in foster care.

You, your family, and your community have rights. The law says the ministry should respect your child's family ties and **Aboriginal** identity.



What is child protection?

BC law says that if the ministry gets a report about your child, the ministry (or an [Aboriginal delegated agency](#)) must look into it. If the ministry believes your child is at risk, they must:

- go to court to get an [order that supervises your child's care](#), or
- if necessary, take your child from your home.

This process is called **child protection**.

Child protection and Aboriginal families

BC law also says that:

- Aboriginal cultural ties are very important to the well-being of Aboriginal children.

Find out more


Understanding Aboriginal Child Protection/Removal Matters



Explains what Aboriginal parents can do during a child protection investigation

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Thank you!

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WILLS & ESTATES

Raymond D. Phillips, QC



FORMALITIES

■ **IS THE WILL VALID? (Section 4 WESA)**

- The primary requirements relate to the “ability of a person” to make a will; a persons competency (testamentary); and the person’s age.
- Other requirements relate to the formalities for the preparation and execution of the Will.

Note: If a Will is invalid, the Deceased is deemed to have died intestate. If the formality that makes a Will valid is deficient, it may be cured by a court order so as to uphold the wishes of the Will-maker.

- A Will comes into effect only upon the death of the Will-Maker.

Age Requirement

- To make a valid Will, a person must be 16 years of age (s.36(1)WESA). An exception is when the Will-maker is a member of the military forces or on active services.

Testamentary Capacity

- Be of sound mind):
 - Understand the nature of the act (Will) and its effect;
 - Have a general idea of the extent of the property that he or she owns;
 - Understand and appreciate the nature of the document - division of property; and
 - Have no insane delusion that would influence his will in disposing of this property

Undue Influence (s.52 WESA)

- The Will-maker must make and execute his or her Will voluntarily, free from undue influence. Have to establish that the beneficiary was in a position in which the potential for dependence or domination was present. Once established, the beneficiary must prove that undue influence was not exercised at the time Will was executed.

Statutory Requirements

1. Must be in writing (s.37(1)(a) WESA). A voice recording or a movie is not valid.
2. Will must be signed. To be valid, a Will must be signed “at its end” by the Will-maker – “attestation”.
3. Dated. Although not required by WESA, a Will is always dated in order to ensure that the one being executed is the last Will chronologically.
4. Will-maker’s signature must be witnessed.

SIGNING THE WILL

- The signature of the Will-maker must be witnessed by at least two witnesses who are present with the Will-maker. Each witness must sign in the other's presence and in the presence of the Will-maker, who must see the witness sign.

Holograph Will (no witnesses)

- Not valid in BC unless Will-maker was a member of the military on active service. Note: other provinces recognize holograph Wills (ie: Saskatchewan – Also Indian Act).

Legal Effect of a Will

- The main function of a Will is to:
 - Appoint an executor;
 - Appoint a guardian if there are infant children;
 - Provide for payment of Will-maker's debts;
 - Distribute property per Will-makers instructions; and
 - Provide for care of Will-makers family and/or business.

Gifts to Witnesses (s.43 WESA)

- A gift made to a witness, the spouse of a witness, or a child of a witness is void unless the witness seeking to uphold the gift makes a successful application to the court to declare that such a gift is valid.

Changes or Alterations to Wills (s.45 WESA)

- An alteration to a Will is valid if the signature or initials of the Will-maker and of the witnesses to the alteration are affixed in the margin or in some other part of the Will opposite or near the alteration.

Contesting a Will (s.60)

- A spouse or a child may contest a Will and apply to the court to vary its terms if it can be shown that the Will-maker has not made adequate provision for the proper maintenance and support of the Will-makers spouse and children. Action has to be commenced within 180 days from the date the representation grant is issued in BC, by initiating a pleading or petition.

Wills Notice

- In order to enable the personal representative to locate the original Will after the Will-makers death, it is recommended that a Wills Notice be filed with the chief executive officer under the Vital Statistics Act (Wills Registry).

Benefit Plans

- The designation of a beneficiary is one way to ensure that a benefit passes directly to a designated person or a trustee for the designated beneficiary and does not form part of the participants estate and is not subject to the claims of the participants creditors.

INTESTATE - NO WILL

- **INTESTATE (Part 3 of WESA)**

The Wills, Estates and Succession Act came into force on March 31, 2014. The act provides greater certainty for individuals who put their last wishes into writing and simplifies the process for those responsible for distributing an estate (Pre WESA – Estate Administration Act and Wills Variation Act).

WESA Benefits

- Clarifies the process of inheritance when a person dies without leaving a will;
- Makes the process easier for a person to transfer the title of their spousal home when their spouse dies;
- Clearly outlines the sequence in which to look for heirs to a person's estate;
- Provides the courts with more latitude to ensure a deceased person's last wishes will be respected;
- Clarifies obligations relating to property inheritance in the context of Nisga'a and Treaty First Nation lands; and
- Lowers the minimum age at which a person can make a will from 19 to 16 years old.

Per Stirpes v. Per Capita

Per Stirpes. (Latin for “by branch or stem”) means that each branch of the deceased’s family receives an equal share of the estate, regardless of how many people are in that branch. (s.24 WESA)

Per Capita. (Latin for “by head”). Means that shares are distributed to individual beneficiaries by “head”, and if a beneficiary is no longer alive (and therefore not counted), there is no further share for that person and no distribution to descendants of that person.

Escheat

- When a person dies intestate and has no heirs entitled under Part 3 WESA, the deceased's estate will escheat to the Provincial Crown, except those personal or real assets (bank accounts) that fall under federal jurisdiction and escheat to the Federal Crown. (the Band if reserve land)

DISTRIBUTION ON INTESTATE

- If an intestate dies leaving...
- **A spouse but no surviving descendants:**
 - the entire estate goes to spouse

INTESTATE

- **A spouse and descendants:**
 - If all descendants are also descendants of spouse, then first \$300K goes to spouse.
 - If all descendants are not common (blended family) to intestate and spouse, then \$150K.
 - After spouse preferential share, then 1 / 2 of remainder to spouse - 1 / 2 to descendants per stirpes.

INTESTATE

- No surviving spouse but descendants, whether surviving or deceased.
- Entire estate distributed equally among the deceased's descendants per stirpes.

INTESTATE

- **No surviving spouse or descendants**
 - The estate must be distributed equally to the intestate's parents or the survivor of them.

INTESTATE

- No surviving spouse, descendants or parents.
- Estate must be distributed equally to descendants of the intestate's parents or either parent per stirpes.

INTESTATE

- No surviving spouse, descendants, parents or descendants of a parent but intestate survived by one or more grandparents or descendants of grandparents (uncles aunts)
- Estate divided equally for each surviving grandparent (or to descendants in equal shares per stirpes).

INTESTATE

- **Effect of Adoption**

- An adoption severs a blood relationship for succession purposes. Adopted children have no right to inherit from their birth parents and the birth parents have no right to inherit from their adopted out child, unless provided for under a Will.

SURVIVORSHIP RULES

- Where 2 people die in common disaster, difficult to establish the order in which they died.
- Pre-WESA - younger person presumed to survive the older - estate passes to younger (different family?).
- WESA - 5 day survivor rule - if a person fails to survive a deceased by 5 days, he or she deemed to have died before the deceased.

REPRESENTATION / ESTATE GRANTS

- 3 types of estate grants
 - Grants of probate;
 - Grants of administration with Will annexed;
 - Grants of administration without Will annexed.

REPRESENTATION/ ESTATE GRANTS

- **Grant of Probate**
 - Applied for if the deceased left a Will;
 - BC Supreme Court validates the Will and confirms the appointment of the executor.

REPRESENTATION /ESTATE GRANTS

- **Grant of Administration without Will annexed**
 - Applied for if the deceased did not leave a valid Will (intestate).

INDIAN ACT

- s.45 “Minister may accept as a will any written instrument signed by an Indian in which he indicates his wishes with respect to the disposition of his property on his death”

INDIAN ACT

- s.45(3) Probate. No will executed by an Indian is of any legal force or effect...until Minister has approved the will or a court has granted probate per IA.

INDIAN ACT

- s. 48 Intestate. surviving spouse share - \$75K;
- s. 48(3) “where children not provided for Minister may direct all or part of estate go to children;

INDIAN ACT

- s.50 Person not entitled to reside on reserve cannot receive reserve land via estate.
- s.50(2) Minister can sell land
- s.50(3) Unsold land reverts to band ownership

FHRMIR ACT

- Section 14.
- When a spouse or common-law partner dies, a survivor who does not hold an interest or right in or to the family home may occupy that home for a period of 180 days after the day on which the death occurs, whether or not the survivor is a First Nation member or an Indian.

FHRMIR ACT

- 21.(1) A court may, on application by a survivor whether or not that person is a First Nation member or an Indian, order that the survivor be granted exclusive occupation of the family home and reasonable access to that home, subject to any conditions and for the period that the court specifies.
- (3) In making an order under this section, the court must consider, among other things (b) terms of Will

FHRMIR ACT

- s. 23. For greater certainty, an order made under any of sections 16 to 18, 20 or 21 does not change who holds an interest or right in or to the family home nor does it prevent an executor of a will or an administrator of an estate from transferring such an interest or right to a named beneficiary under the will or to a beneficiary on intestacy, or a court from ordering the transfer of such an interest or right under section 31 or 36.

FHRMIR ACT

- 38(1) – Distribution of Estate: Subject to subsection (2), an executor of a will or an administrator of an estate must not proceed with the distribution of the estate until one of the following occurs:
 - (a) the survivor consents in writing to the proposed distribution;

FHRMIR ACT

- (b) the period of 10 months referred to in subsection 36(1) and any extended period the court may have granted under subsection 36(2) have expired and no application has been made under subsection 36(1) within those periods; or
- (c) an application made under subsection 36(1) is disposed of.