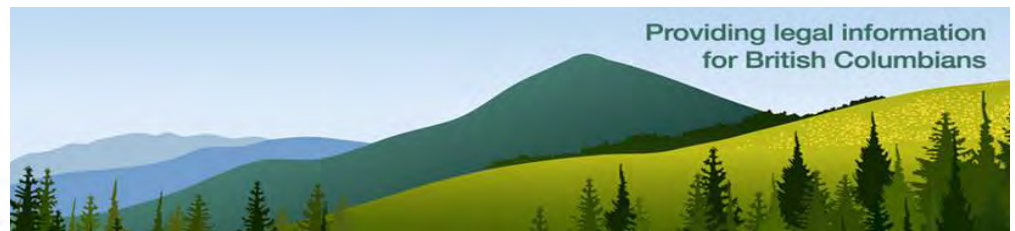




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## KAMLOOPS REGIONAL CONFERENCE

**COAST Kamloops Hotel & Conference Centre**  
**1250 Rogers Way**  
**Kamloops, BC V1S 1N5**

### AGENDA – Thursday February 21

Time	Session	Speaker	Facilitator
8:00 - 9:00	<i>Registration &amp; Breakfast</i>		
9:00 – 9:15	<b>Opening ceremony &amp; welcome</b>		Baljinder Gill
9:15 – 10:45	<b>Overview of family law</b>	➤ Jeanine L. Ball - Family Lawyer	Baljinder Gill
10:45 – 11:00	<i>Coffee break</i>		
11:00 - 12:00	<b>Family law and protection orders</b>	➤ Jeanine L. Ball - Family Lawyer	Baljinder Gill
12:00 - 1:00	<i>Lunch</i>		
1:00 – 1:30	<b>Overview of Gladue reports</b>	➤ Ana Trottier - Gladue writer	Baljinder Gill
1:30 – 3:00	<b>Focus group about priority legal information needs for Indigenous communities</b>	➤ Kinwa Bluesky - Consultant	Patricia Lim
3:00 – 3:30	<i>Networking Coffee</i>		



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## KAMLOOPS REGIONAL CONFERENCE

**COAST Kamloops Hotel & Conference Centre**  
**1250 Rogers Way**  
**Kamloops, BC V1S 1N5**

### AGENDA – Friday February 22

Time	Session	Speaker	Facilitator
8:30 – 9:00	<i>Registration &amp; Breakfast</i>		
9:00 – 10:30	<b>Wills and estates off and on reserve</b>	➤ Kelly P. Melnyk - Lawyer	Baljinder Gill
10:30 – 10:45	<i>Coffee Break</i>		
10:45 – 12:15	<b>- Working with LSS intake - LSS publications and other legal resources - Update on Parents Legal Centre</b>	➤ Deneen Garrett - LSS ➤ Patricia Lim - LSS ➤ Katrina Harry - Managing Lawyer, PLC Vancouver	Baljinder Gill
12:15 – 1:00	<i>Lunch</i>		
1:00 – 2:30pm	<b>Child, Family and Community Service Act</b>	➤ Katrina Harry - Managing Lawyer, PLC Vancouver	Baljinder Gill
2:30 – 4:00 pm	<i>To be confirmed</i>	<i>To be confirmed</i>	

# Family Law – The Legal Framework The Family Law Act

Jeanine Ball  
Lawyer

Paul & Company, Kamloops

# Introduction

- ▶ This lecture provides an overview of the Family Law Act in BC today

# A brief word on the Constitution -which government has jurisdiction and which court do we start with?

## ▶ Marriage and Divorce

- ▶ Federal Power. This means Divorce can only be granted in Supreme Court

## ▶ Property

- ▶ Provincial Power. The Family Law Act sets out that Property Division may only be dealt with in Supreme Court

## ▶ Related Issues

- ▶ Parenting Issues, Child Support, and Spousal Support can all either be dealt with together as part of a Divorce proceeding in Supreme Court ,but can also be dealt with in Provincial Court. Family Law Act orders for these issues can be granted in either court

# FLA Part 1 – Interpretation and Definitions

- ▶ Some key definitions include the definition of a “spouse”, and the definition of “family violence”
- 3 (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.
- ▶ Family Violence will be addressed specifically in the next session. It is a broad definition and means more than physical violence

# Part 2 – Resolution of Family Law Disputes

- There are a number of avenues to avoid court! Why avoid it?

These options include:

Mediation

Arbitration

Parenting Coordinators

Case Conferences

# Part 3 - Parentage

- ▶ Deals with scenarios of biological and non-biological parents



# Part 4 – Care of and Time with Children

- ▶ Best Interests of the Child
- ▶ Guardianship
- ▶ Parenting Responsibilities & Parenting time
- ▶ Contact Time
- ▶ Relocation

# Best Interests as defined in the FLA

- ▶ To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- ▶ (a) the child's health and emotional well-being;
- ▶ (b) the child's views, unless it would be inappropriate to consider them;
- ▶ (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- ▶ (d) the history of the child's care;
- ▶ (e) the child's need for stability, given the child's age and stage of development;
- ▶ (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- ▶ (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- ▶ (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- ▶ (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- ▶ (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

# Guardianship

- ▶ **39** (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.
- ▶ (2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.
- ▶ (3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:
  - ▶ (a) section 30 [*parentage if other arrangement*] applies and the person is a parent under that section;
  - ▶ (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
  - ▶ (c) the parent regularly cares for the child.
- ▶ (4) If a child's guardian and a person who is not the child's guardian marry or enter into a marriage-like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship.
- ▶ **Parenting arrangements**
- ▶ **40** (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

# Parenting Responsibilities and Parenting time

- ▶ For the purposes of this Part, parental responsibilities with respect to a child are as follows:
- ▶ (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- ▶ (b) making decisions respecting where the child will reside;
- ▶ (c) making decisions respecting with whom the child will live and associate;
- ▶ (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- ▶ (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- ▶ (f) subject to section 17 of the [\*Infants Act\*](#), giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- ▶ (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- ▶ (h) giving, refusing or withdrawing consent for the child, if consent is required;
- ▶ (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- ▶ (j) requesting and receiving from third parties health, education or other information respecting the child;
- ▶ (k) subject to any applicable provincial legislation,
- ▶ (i) starting, defending, compromising or settling any proceeding relating to the child, and
- ▶ (ii) identifying, advancing and protecting the child's legal and financial interests;
- ▶ (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- ▶ **Parenting time**
- ▶ **42** (1) For the purposes of this Part, parenting time is the time that a child is with a guardian, as allocated under an agreement or order.

# Contact Time

- ▶ What is it and who can seek it?

# Relocation

- ▶ Written Notice is required
- ▶ Difference between equal and unequal parenting and relocation

# Part 5 - Division of Property

- ▶ What is “Family Property”?
- ▶ What is “Excluded Property”?

A grey area of the law *V.J.F. v. S.K.W.*, 2016 BCCA 186

- ▶ What changed with the 2013 FLA?

# Part 6 – Pension Division

Sets out the specific requirements for dividing different types of pension plan



# Part 7 – Child and Spousal Support

- ▶ What Guidelines apply?
- ▶ What information is required?
- ▶ What happens if the payor doesn't pay?

## LEADING CASE ON ARREARS

- ▶ D.B.S. v. S.R.G, [2006] 2 SCR 231, 2006 SCC 37

# Part 8 – Children's Property

- ▶ Who can hold property in trust for a child?

# Part 9 – Protection from Family Violence

- ▶ New emphasis on Family Violence...WHY?

# Parts 10 - 14 - Court Processes, Appeals, Transition, and Regulations

- ▶ Issues of jurisdiction
- ▶ How to deal with matters that started before the current FLA
- ▶ Which court hears an Appeal?

# A word on the UN Convention on the Rights of the Child

- ▶ Came into force in Canada on September 2, 1990
- ▶ Which country is the only country that is still not a party to this Convention?

# How children's voices are heard in family law disputes

- ▶ Hear the Child Reports

*D.A.F. v. R.D.F.*, [2017 BCSC 873](#) at paras 34-35

- ▶ Views of the Child Reports

- ▶ Judicial Interviews

# FAMILY VIOLENCE AND THE BC FLA

Jeanine Ball

Lawyer

Paul & Company, Kamloops

# Abuse and violence in intimate relationships - Introduction

- History in BC
- New provisions in 2013 FLA to address Family Violence specifically



# R v Lavallee, [1990] 1 SCR 852

- An example of how courts have viewed this issue in the past

# Family Violence is a gender issue

- Family violence is a gender issue

# Statistics

- Over half of women in BC have experienced physical or sexual violence since the age of 16...that's more than one million women in our province

# What is family violence?

## (FLA definition, Part 1, section 1)

Also see the definition of “at-risk family member” in s.182

- **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;

# Duties of family dispute resolution professionals (s. 8 of the *FLA*)

- **8** (1)A family dispute resolution professional consulted by a party to a family law dispute must assess, in accordance with the regulations, whether family violence may be present, and if it appears to the family dispute resolution professional that family violence is present, the extent to which the family violence may adversely affect
  - (a)the safety of the party or a family member of that party, and
  - (b)the ability of the party to negotiate a fair agreement.
- (2)Having regard to the assessment made under subsection (1), a family dispute resolution professional consulted by a party to a family law dispute must
  - (a)discuss with the party the advisability of using various types of family dispute resolution to resolve the matter, and
  - (b)inform the party of the facilities and other resources, known to the family dispute resolution professional, that may be available to assist in resolving the dispute.
- (3)A family dispute resolution professional consulted by a party to a family law dispute must advise the party that agreements and orders respecting the following matters must be made in the best interests of the child only:
  - (a)guardianship;
  - (b)parenting arrangements;
  - (c)contact with a child.

# Duties of all

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

Duty to report need for protection

14 (1) A person who has reason to believe that a child needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

(2) Subsection (1) applies even if the information on which the belief is based

(a) is privileged, except as a result of a solicitor-client relationship, or

(b) is confidential and its disclosure is prohibited under another Act.

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.

(5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.

(6) A person who commits an offence under this section is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

(7) The limitation period governing the commencement of a proceeding under the Offence Act does not apply to a proceeding relating to an offence under this section



# Family Violence & Best Interests

## Best interests of child

**37** (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

(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;

# Family Violence and Best Interests

(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

(3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

(4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.



# Legal Responses

- There are **3** types of **protection orders**:
  - **peace bonds** and no contact orders (s. 810, *Criminal Code*)
  - **protection orders** (Part 10, FLA)
  - **conduct orders** (s. 183, FLA): their purpose is to manage behaviours that get in the way of resolution, rather than to protect from violence. Can be very useful tools.

# Legal Responses – Peace Bonds and No Contact Orders

- Section 810 order aka Peace Bond
- No contact orders

# Legal Responses – Conduct Orders

- Part 10 of the *Family Law Act* provides for judicial remedies for situations in which a person's conduct in the litigation is contributing to the ongoing conflict.

# Legal Responses -Protection Orders

- Section 183 of the **Family Law Act** sets out a scheme for court orders for the protection of persons.

# Protection vs Conduct Orders

- What's the difference?

# Enforcement of protection orders

# Enforcement - Practical Issues



# FLA, s. 90: Temporary orders respecting family property

- What are these?

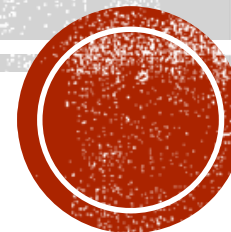


# Tort Actions in relation to spousal violence

- Spouses can pursue tort claims as part of their relief.

# WILLS AND ESTATES

Kelly P. Melnyk, Lawyer  
Paul & Company



# OVERVIEW — TOPICS TO BE COVERED

- Testate versus Intestate
- Grants of Probate or Administration
- Indian Act
- Question and Answer
  - And maybe a pitch for Powers of Attorney, time permitting



# TESTATE

- Testate: Why Do I Need a Will?
- Testate: What Makes a Will Valid?
- Testate: Beneficiaries and Joint Tenancy
- Testate: Common Issues



# TESTATE: WHY DO I NEED A WILL?

- Provides guidance for your survivors as to your final wishes:
  - Who do you trust to carry out your last wishes – the Executor;
  - Who do you want to gift to – the Beneficiaries;
  - How are you giving out the gifts – instructions to the Executor;
    - Don't forget about the residue!
  - Who should take care of your children – the Guardian;
  - Giving authority to pay out final debts, funeral and testamentary expenses – the Executor;
  - Are there any other concerns that the Executor is meant to deal with on behalf of your estate?
    - Is there a business?



# TESTATE: WHAT MAKES A WILL VALID?

- Two main components:

1. The Will-Maker must have been in a position to sign the Will:

- Were they old enough?
- Did they have testamentary capacity?
- Was the Will signed under the influence of another?

2. A Will must conform to the statutory requirements of the *Wills, Estates and Succession Act*, SBC 2009, c 13 (“WESA”);

Section 4 of *WESA*



# TESTATE: WHAT MAKES A WILL VALID?

- If a Will is found to be invalid due to a deficiency in the requirements, the Court has discretion to “cure” the deficiency – Section 58 of *WESA*;
- If a Will is found to contain an error that changes the intention of the Will-Maker, the Will may be rectified to carry out the true intentions of the Will-Maker – Section 59 of *WESA*;
- The strength of the Will as a legal document only comes into effect upon the death of the Will-Maker.



# TESTATE: WHAT MAKES A WILL VALID?

- Age Requirement – A person as young as 16 years of age can sign a Will - Section 36(1) of *WESA*
  - If a person is a member of the Armed Forces, on active duty and under 16 years of age, they are permitted to execute a Will – Section 38 of *WESA*;
- Testamentary Capacity – The Will-Maker is mentally capable of making a Will – Section 36(1) of *WESA* and the *Banks v Goodfellow* test:
  - Does the person know what they have/the contents of their estate?
  - Does the person know who they have an obligation to provide for:
    - Legal and Moral Obligations – Children and/or Spouse?
  - Does the person understand how they are going to gift their estate?
  - Does the person understand and appreciate the effect and implications of signing the Will?
    - Are there delusions, illnesses, or people influencing the decisions?





# TESTATE: WHAT MAKES A WILL VALID?

- At the stage of assessing testamentary capacity, we must always ask:
  - “Is this person truly expressing their final wishes or this what someone else wants them to do?”
  - Testamentary Autonomy is KEY!
- **UNDUE INFLUENCE** is very real and more common than we would like to think:
  - Section 52 of *WESA*, two elements to establish:
    - (a) being in a position where the potential for dependence or domination of the will-maker was present, and
    - (b) using that position to unduly influence the will-maker to make the will or the provision of it that is challenged,



# TESTATE: WHAT MAKES A WILL VALID?

- Any Questions so far?



# TESTATE: WHAT MAKES A WILL VALID?

- The Statutory Requirements under Section 37(1) of *WESA* :
  - Must be in writing;
  - Must be signed at the end by the Will-Maker (or at least acknowledged the signature is theirs) witnessed by two individuals over 19 years of age at the same time; and
  - Must be signed by the two witnesses in the presence of the Will-Maker.
- Signing at the “end”, the attestation clause – Section 39 of *WESA*;
- *While not a statutory requirement, dating the Will ensures that the executor and the Registry can confirm if this is the Last Will and Testament.*



# TESTATE: BENEFICIARIES AND JOINT TENANCY

- Beneficiaries – RRSPs, RIFs, TFSAs, Life Insurance Policies
  - These types of programs allow a designated beneficiary
  - They are not subject to Probate so fall outside of the Estate
  - They go directly to the designated beneficiary
- Joint Tenancy – Real Property, Bank Accounts, some personal property
  - This places the Will-Maker on title, or as the account holder, with someone else “jointly”
  - Right of Survivorship applies so not subject to Probate and falls outside of the Estate
  - They are deemed to have transferred to the survivor upon the death of the Will-Maker



# TESTATE: SOME COMMON ISSUES

- The Witness Who Gets a Gift – Section 43 of *WESA*
  - *Could be valid BUT only on successful application to the Court*
- Disinheriting the Child or Spouse– Section 60 of *WESA*
  - *Becoming more common with blended families*
- A Change Made Within the Will – Section 45 of *WESA*
  - Did the Will-Maker and witnesses sign in the margin or somewhere opposite the change?
- The Non-Existent Holograph Will – Section 38(2) of *WESA*
  - Only a member of the Armed Forces on active duty can have a Will without witnesses in BC
    - **HOWEVER**, see *Indian Act*



# TESTATE

- Any Questions so far?



# INTESTATE

- Intestate: *WESA* Clarity
- Intestate: Who Stands to Benefit?
- **As A Note:**
  - A child who is adopted by a deceased is considered a child of the deceased. When a child is adopted, the adoptive parents are the parents and are considered to have a legal and moral obligation to their child. The flipside is that the biological parents would not inherit from a deceased child under the intestacy hierarchy. Nor would an adopted child stand to inherit from their biological parents.
  - **UNLESS** there is a Will providing such a gift with the intention to gift to the bio child/parent.



# INTESTATE: *WESA* CLARITY

- Under Part 3 of *WESA*, a greater amount of clarity was brought about for the process of estate administration when a person passes away without a Will.
- Allows for those left behind to understand what they are entitled to.
  - For example, the family residence for a surviving spouse who was not on title – Part 3, Division 2 of *WESA*
- Expressed intention without a formal Will may be recognized under Section 58, giving the Courts the discretion to recognize the “testamentary intention” of a would-be will-maker.
- Greater clarity with respect to inheritances of property on Nisga’a and Treaty First Nations lands – Sections 13 – 18.3.
- Age requirements





# INTESTATE: *WESA* CLARITY

- Some fun language:
  - Escheat – Section 23(2)(f)
    - The deceased has no surviving beneficiaries or heirs, their estate escheats to the Crown:
      - This means that either the provincial Crown or the federal Crown becomes the beneficiary, depending upon the asset
        - **Fun Fact:** The federal Crown has jurisdiction over banking, therefore they get the bank accounts
  - Per Stirpes – Section 24
    - By branch/stem, meaning that the gift is split between the descendants, or their survivors, equally.
      - For Example, to my siblings per stirpes – If one of the siblings pre-deceases, his/her survivors receive that siblings gift equally.
  - Per Capita
    - By head, meaning the gift is to the descendants equally but if one passes, their share does not pass down to their survivors.



# INTESTATE: WHO STANDS TO BENEFIT?

## PART 3, DIVISION 1 OF *WESA*

Spouse?

- Spouse to receive entire estate

Spouse and  
Children?

- Spouse receives first \$300,000 if all related
- Blended family? Spouse receives first \$150,000
- Then  $\frac{1}{2}$  of remainder to Spouse and other  $\frac{1}{2}$  to Children, per stirpes

Just  
Children?

- The Children receive the entire estate



# INTESTATE: WHO STANDS TO BENEFIT?

## PART 3, DIVISION 1 OF *WESA*

No Children  
or Spouse

- Deceased's surviving parents
- If only one parent surviving, they receive entire estate

No Parent

- Estate is then distributed equally amongst the descendants of the parents, or one parent's descendants, per stirpes.
- Meaning: to the siblings of the deceased.

No Siblings

- If there is a grandparent alive, to the grandparent.
- If no surviving grandparent, are there descendants of the grandparent? Yes, then:
  - Aunt or Uncle who is alive



# INTESTATE: WHO STANDS TO BENEFIT?

- What if there is uncertainty over who passed away first?
- Section 5 of *WESA*: General presumption is that they are assessed as if they had both survived each other.
  - Anything held jointly is dealt with as though it had been held as tenants-in-common.
- Section 10 of *WESA* provides a five day survival rule, meaning that if one person does not survive the other, they are deemed to have passed first.



# INTESTATE

- Any Questions so far?



# GRANTS OF PROBATE OR ADMINISTRATION

- Grant of probate:
  - You have the Will and are named the Executor or Alternate Executor
  - Application made in BC Supreme Court, the Will is validated and you are named as Executor and receive the
    - Grant of Probate
- Grants of Administration:
  - You have the Will but are not the Executor or Alternate Executor
    - Application is made in BC Supreme Court, the Will is validated, and you are named as Administrator and receive the
      - Grant of Administration with Will Annexed
  - There is no Will so no named Executor
    - Application made in BC Supreme Court and, if granted, you are named as Administrator and receive the
    - Grant of Administration without Will Annexed



# THE *INDIAN ACT*, RSC 1985, C I-5

- First, is the person registered, or could they be registered, in accordance with Section 2 and /or 6 of the *Indian Act*?
- Second, is the person considered to be on-reserve or off-reserve?
- Section 45(2) of the *Indian Act*:
  - “The 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.”
- Section 45(3) of the *Indian Act*:
  - “No will executed by an Indian is of any legal force or effect as a disposition of property until the Minister has approved the will or a court has granted probate thereof pursuant to this Act.”



# THE *INDIAN ACT*, RSC 1985, C I-5

- Section 46 grants discretion to the Minister to declare a Will void, for example a lack of testamentary capacity, duress or undue influence, or even if the terms were thought to be against public interest.
- Passed Intestate?
  - Section 48(1) – If net Estate deemed by Minister to be at or below \$75,000, or some other amount fixed by Order of Governor in Council, to the surviving spouse.
  - Section 48(2) – Over \$75,000? Then:
    - Spouse but no children? To spouse;
    - Spouse and one child? Half to spouse, half to child (per stirpes);
    - Spouse and more than one child? 1/3 to spouse, rest to children (per stirpes).
  - Section 48(3) – The Minister has the discretion to ensure that children are provided for despite there being a survivor





# THE *INDIAN ACT*, RSC 1985, C I-5

## ▪ Passed Intestate continued:

No Children  
or Spouse

- Deceased's surviving parents
- If only one parent surviving, they receive entire estate
- Section 48(5)

No Parent

- Estate is then distributed equally amongst brothers and sisters of the deceased or to the children of a deceased sibling.
- **NOTE** – If the gift is to the deceased's nieces/nephews, it is **per capita**.
- Section 48(6)

No Siblings

- Estate distributed then to next-of-kin – Section 48(7)



# THE *INDIAN ACT*, RSC 1985, C I-5

- Who is Next-Of-Kin?
- Section 48
  - “(8) Where an estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them, but in no case shall representation be admitted after brothers' and sisters' children, and any interest in land in a reserve shall vest in Her Majesty for the benefit of the band if the nearest of kin of the intestate is more remote than a brother or sister.
  - (9) For the purposes of this section, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative, and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.”
  - (10) Descendants and relatives of an intestate begotten before his death but born thereafter shall inherit as if they had been born in the lifetime of the intestate and had survived him.



# THE *INDIAN ACT*, RSC 1985, C I-5

- Reserve Land:
  - Section 50(1) does not allow for an individual to receive a gift of reserve land if that person is not entitled to reside on the reserve
  - Section 50(2): if a gift cannot pass to a person not entitled to reside on reserve, those lands are, in the discretion of the minister/superintendent, to be sold and the proceeds of the sale to the person.
  - Section 50(3): if the lands remain unsold, the land reverts to the band.



# WILLS AND ESTATES

- Any Questions?
- Power of Attorney?



# Working with LSS Intake



February, 2019

Deneen, Provincial Supervisor, Legal Aid Applications

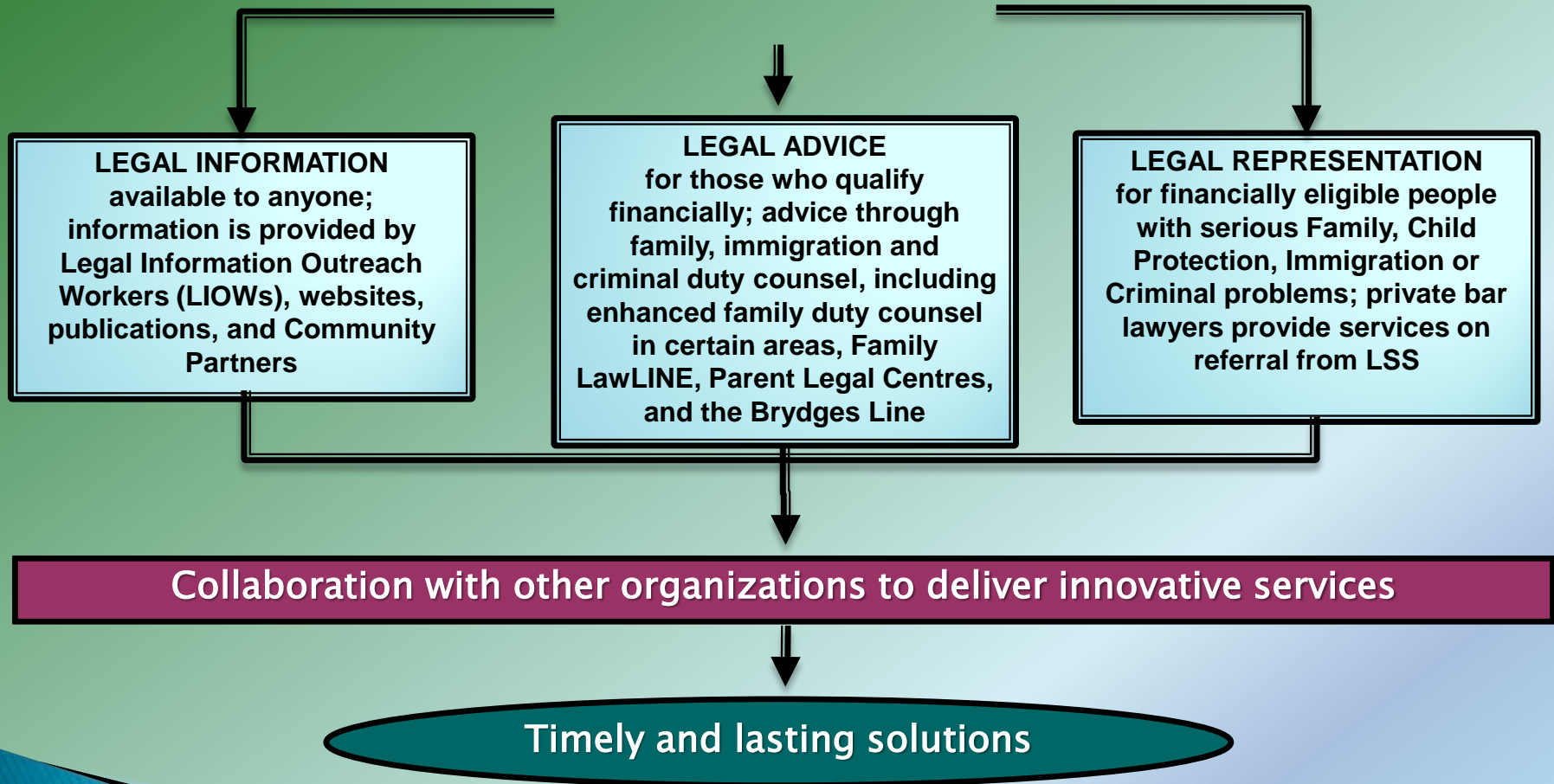


# Our Clients



# Services Overview

## Legal Aid



# Legal Information

## Legal Information Outreach Worker





# Community Partners

We have 25 Community partners providing services in 34 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

## Family LawLINE



# Duty Counsel

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

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





# 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](http://www.legalaid.bc.ca)*

# Legal Aid Offices

There are 35 communities in BC where someone can apply for legal aid in person, as well as get legal information.



# Who Qualifies for Legal Aid Representation?

A client qualifies for legal aid representation 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. And the issues need to be addressed immediately to ensure the safety of the children and/or the client.

We now also have **Limited Representation Contracts** that allow a client to deal with financial security issues such as property division, spousal support, and child support, if there are no other serious family issues.





## *CFCSA (Child Protection and Removal)*

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



# Parent Legal Centres and Expanded Duty Counsel

- We now have Parent Legal Centres (PLC's) in Vancouver, Surrey, Prince George, Campbell River, Smithers, and Duncan
- We are opening 3 new PLC's before the end of the 2018/2019 Fiscal Year in Kamloops, Victoria, and Williams Lake.



# Choice of Indigenous counsel for Indigenous clients with Family or CFCSA Cases (Pilot Project)

If an Indigenous client with a Family or CFCSA case requests Indigenous counsel and no local Indigenous counsel is available, LSS will try to find non-local Indigenous counsel who is available to accept the contract, and will pay this lawyer Travel costs.

*Reciprocal*s – Where the client lives in one province and their Family or CFCSA matter is in another province.





*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*

Table of net household income

Household Size	CFCSA Cases	All other cases
1	\$2,580	\$1,580
2	\$3,210	\$2,210
3	\$3,840	\$2,840
4	\$4,470	\$3,470
5	\$5,100	\$4,100
6	\$5,730	\$4,730
7 or more	\$6,360	\$5,360

Effective October 30, 2018

# Financial Eligibility

## *Personal Property/Assets (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

Effective April 1, 2018



# Financial Eligibility

## *LEGAL ADVICE GUIDELINES*

### Household Size Monthly Net Income

1 – 4	\$3,470
5	\$4,110
6	\$4,770
7 or more	\$5,390

▶ Effective April 1, 2018





# FINANCIAL DISCRETIONARY COVERAGE

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

- A file can be sent for a Discretionary Coverage Review if an applicant is over the financial eligibility guidelines on income by approximately \$100 – \$200 for Criminal, Immigration, and Appeal cases, or \$500 for Family cases, or on assets by \$500, and the matter is a serious and complex case and there is available budget.
- There is no Discretionary Coverage Reviews on CFCSA cases as they are already allowed an additional \$1,000 per month for income.



# 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  
425 – 510 Burrard Street  
Vancouver, BC V6C 3A8  
Fax: 604-682-0787

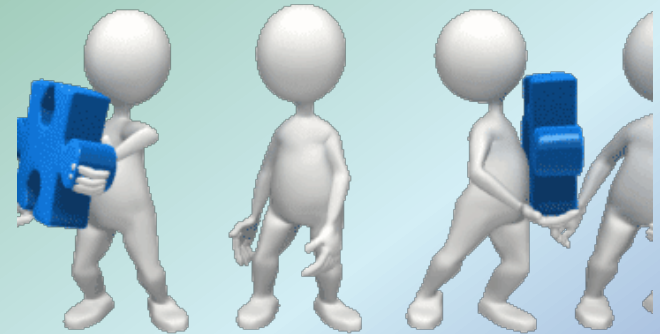
Email: [provincialsupervisors@lss.bc.ca](mailto:provincialsupervisors@lss.bc.ca)



# 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 staff with requested information



# **Presenter: Deneen**

Provincial Supervisor, Legal Aid Applications

Phone: 604-601-6217

Fax: 604-682-0787

E-Mail: [deneen.vancouver@lss.bc.ca](mailto:deneen.vancouver@lss.bc.ca)



# LEGAL INFORMATION PUBLICATIONS AND WEBSITES

KAMLOOPS LSS CONFERENCE  
PATRICIA LIM  
PUBLICATIONS DEVELOPMENT COORDINATOR



Legal  
Services  
Society

British Columbia  
[www.legalaid.bc.ca](http://www.legalaid.bc.ca)

# **PUBLIC LEGAL EDUCATION AND INFORMATION**

- Legal information publications
  - Overview
  - How to order
- Legal information websites
- How to get updates

# HOW CAN YOU HELP PEOPLE WITH LEGAL INFORMATION?

1. Recognize the **legal issue** and a **general understanding** of legal processes and definitions.
2. Help find ways to **stay out of court** and how to **resolve problems early**
3. Find **options for help**
  - help apply for legal aid
  - help access information, representation, and advice services
  - provide referrals to advocates and other intermediaries







**FREE**

**PUBLICATIONS** |



# 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.

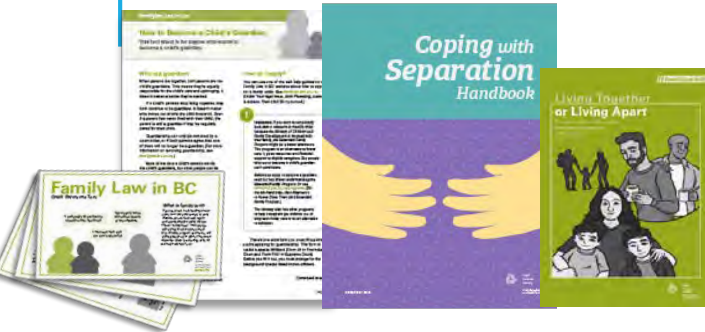
Some understanding helpful but not essential. Offers all basic information on a topic, meant for those who are reasonably comfortable reading and who may have a general sense of some legal concepts.

### 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.

[Legalaids.bc.ca/read](https://legalaids.bc.ca/read)

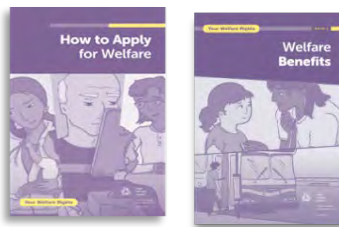
## Family law



## Child protection



## Welfare



## Abuse & Family violence



## Immigration & refugees



## Criminal law



# ABORIGINAL

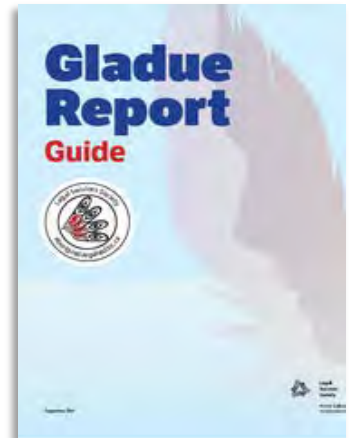
## Level 1



## Level 2



## Level 3



# LETTING PEOPLE KNOW ABOUT LEGAL HELP AND LEGAL AID



multilingual





# LETTING PEOPLE KNOW ABOUT PARENTS LEGAL CENTRE



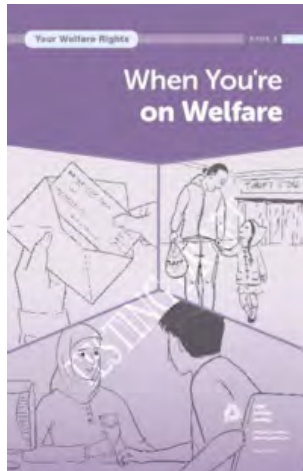
## *Locations opening 2018/2019*

- Campbell River
- Kamloops
- Smithers/Hazelton
- Duncan
- Williams Lake
- Victoria
- Prince George

# UPCOMING PUBLICATIONS



## Welfare



## Child protection



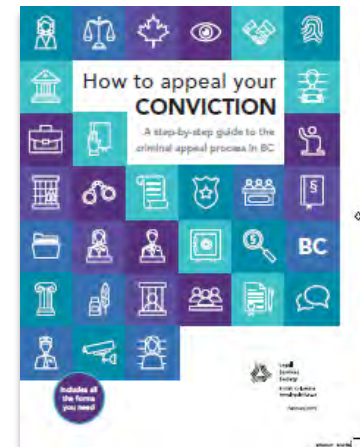
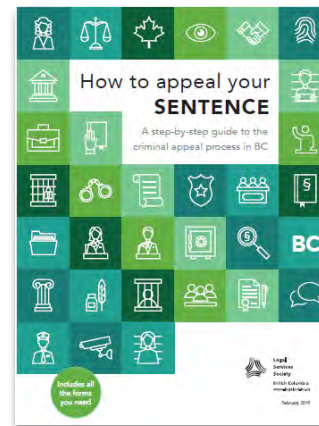
## Gladue



## Teachers Guide on Gladue Rights

Video will be available

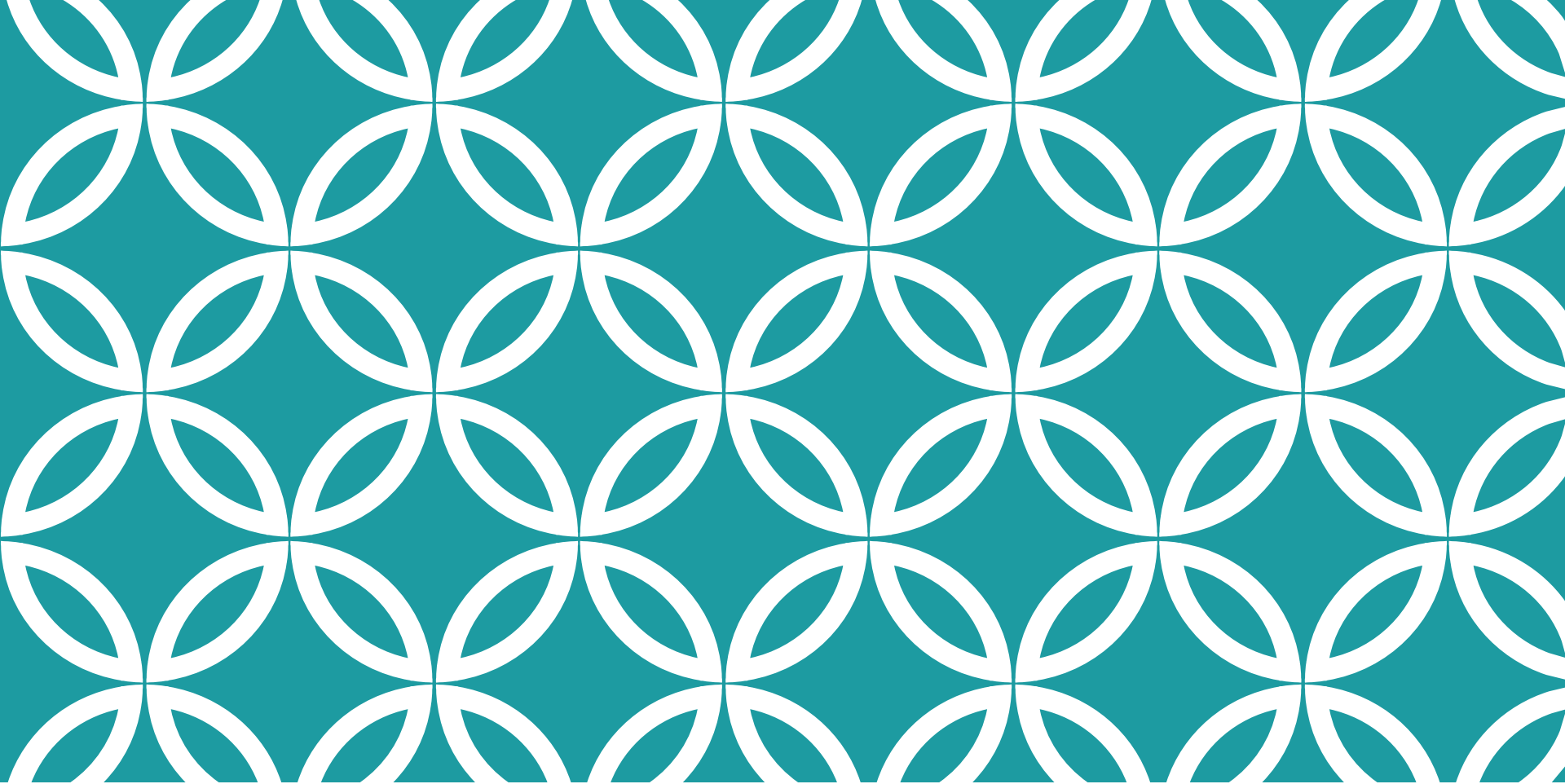
## Criminal law



# Other upcoming publications

- Mental Health Act legal rights resource
- Refugee Claim infographic
- Matrimonial property on reserve resource






**HOW TO ORDER  
PUBLICATIONS** | **for FREE**



# Ordering process




## Free publications



I want to find a publication by subject

▶ Aboriginal people	▶ Immigrants & refugees
▶ Abuse & family violence	▶ Legal help & lawyers
▶ Child protection/removal	▶ Legal system & courts
▶ Crimes & offences	▶ Promotional materials
▶ Debt	▶ Staying out of court
▶ Families & children	▶ Welfare & benefits
▶ Gays, lesbians, trans, & bisexuals	▶ Wills, estates, & life planning
▶ Housing & tenancy	▶ Women



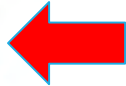
I want to find a publication by language

I want to find a publication by title

I want to get a publication

**To get a copy of a free LSS publication**

- Go to your [local legal aid location](#), or
- Place an [order with Crown Publications](#).



## Featured publications



### Gladue Submission Guide

Plain language guide for Aboriginal peoples, lawyers, and Native courtworkers about how to prepare an oral or written Gladue submission for a bail or...



### Is That Legal?

What the Law Says about Online Harassment and Abuse To help youth become safer online when they use social media. It describes four online situations...

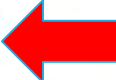


### Live Safe, End Abuse

Live Safe, End Abuse is for people leaving an abusive partner. The fact sheets and folder contain information on what abuse is, how people can plan fo...



## Publications Lists

- [Availability list](#)
  - [Readability list](#)
- 



## Publications updates

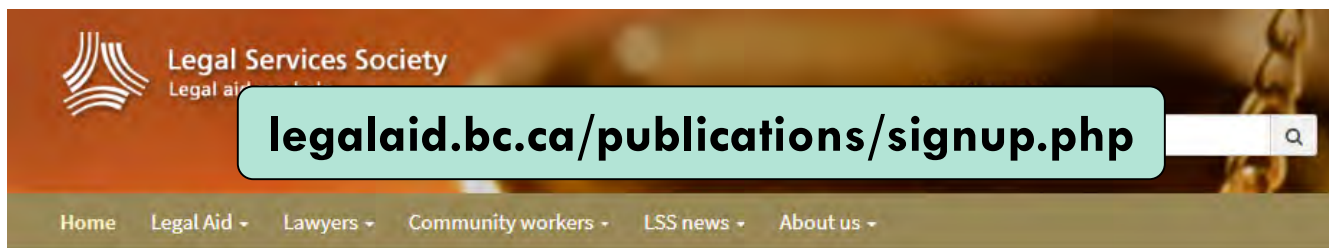
- [The Factum Blog](#)
  - [Twitter](#)
- 



Still can't find what you're looking for?

Can't find what you're looking for? [Clicklaw](#) has

# Ordering process



## Customer account signup

Complete the Application Form. Once we've processed your application, we'll email your *customer ID*.

### Organization Name

### Contact Person

### Title

### Street Address

### City

### Postal Code

### Phone

### Fax

### Email

Please take a minute to tell us about your organization. It will help us to understand your needs.

## Questions?

### About account applications or order quantities

Contact LSS at 604-601-6000 or [email](#).

### About customer ID or updating contact information

Contact LSS at 604-601-6000 or [email](#).

### About the delivery of your order

Contact Crown Publications at 1-800-663-6105 or [email](#). Include your customer ID (if you have one) and contact information.



## Online ordering

If you need help, you can watch our video on ordering publications.


- [Learn how to order](#)


**Email [distribution@lss.bc.ca](mailto:distribution@lss.bc.ca)**  
**Or call 604-601-6000**


# Crown Publications

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

Items: 0  
Total: \$0



Account | Customers |  |  

 [Other Organizations](#) | [Legal Services Society](#) | [Your Welfare Rights:...](#)

**Welfare Benefits**

**Your Welfare Rights: Welfare Benefits**

This plain language booklet gives basic information about:


- the types of monthly welfare benefits;
- benefits called supplements, including housing-related supplements, a wide range of health supplements, subsidies for families with children, and employment-related supplements;
- how to apply for a supplement if you qualify; and
- how to appeal a ministry decision.

It also includes where to get help if you have a problem getting monthly welfare benefits or a supplement.  
Welfare Benefits is the second publication in the series Your Welfare Rights. How to Apply for Welfare is the first booklet in this series.  
The series replaces the booklet Your Welfare Rights: A Guide to BC Employment and Assistance.

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

**Stock:** 19479  
**Price:** Free Each

**Publish Date:** March 1, 2018  
**Product No.:** 7550007021  
**Format:** Booklet  
**Additional Information:** [Click Here](#)  
**This item is found in:** [Legal Services Society](#), [Pensions](#), [Benefits > Welfare](#)

Quantity:   
 **Add to Basket**

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

*The L&L*

**G A M E**  
**S H O W**



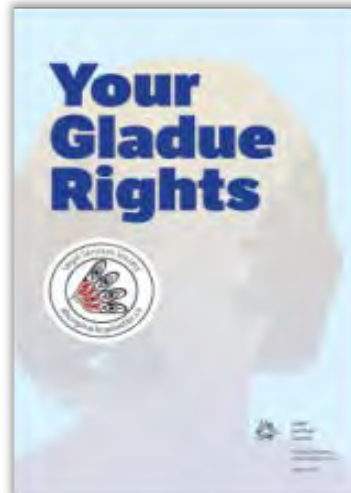
**Q1: WHICH BOOKLET OR BROCHURE HAD THE MOST ORDERS IN KELOWNA IN THE LAST 2 YEARS?**

**A. Is That Legal?**

**B. If You're Charged With a Crime**

**C. Your Gladue Rights**

**D. Parents' Rights, Kids' Rights**



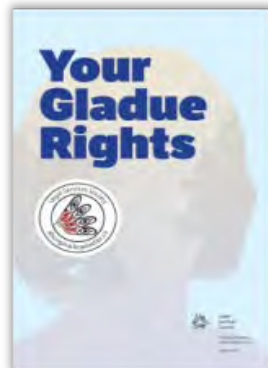
# PEOPLES' RIGHTS AT BAIL AND SENTENCING HEARINGS?

### A. Emily's Choice

## B. Your Gladue Rights

## C. Is That Legal?

## D. Speaking to the Judge Before You're Sentenced



# LEGAL INFORMATION WEBSITES

## UPDATES AND CHANGES ROLLING OUT APRIL 2019

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





# Family Law

in British Columbia



Your legal issue ▾

Your community ▾

Legal system ▾

Staying out of court ▾

Shortcuts ▾

## Coming up

- New, modernized design
- Improved search function
- Chatbot that will answer simple FAQ questions
- Scenarios illustrating a common legal problem.

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.

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





Your home on reserve

The laws have ch

home.

## Coming up

- More pictures, simpler navigation
- Videos about the Parents Legal Centre and intros to different legal topics
- Continued user testing and feedback



### 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.

[Learn more »](#)

### Find out more in a publication

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

[Learn more »](#)



2018-04-28

Community engagement  
**Residential Historical Abuse Program: Free Counselling Support**

Free counselling support for people abused in foster care and for



My problem. My solution.

Dialogue Tool

## Coming up

- **New pathway on Gladue submissions**
  - by April 2019
- **New pathways on criminal law issues**
  - rolling out after April 2019
- **Online Family Resolution Centre**
  - parenting agreements with a free professional mediator

[WWW.MYLAWBC.COM](http://WWW.MYLAWBC.COM)



# Action plan

## Your situation


Based on your answers

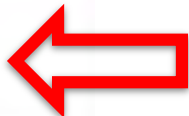
Click **Download your plan** to save or print a PDF of this information. This will let you keep a copy of all the important information you need to take your next steps. MyLawBC doesn't keep your confidential information. Your downloaded PDF is your only record.

Your plan is based on the following information:

- You and your spouse are married
- You don't have children
- You rent your home
- You and your spouse have taken on debt
- You think you can work together


[Read first >](#)


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



## Help us out

Navigating the legal system is hard; we're happy to make that process easier. Help us improve MyLawBC.

 [Donate](#)

 [Give us your feedback](#)

WWW.MYLAWBC.COM







My problem. My solution.

Dialogue Tool

# Dialogue Tool

Work together to make an agreement

**Select an option below.**

Make a plan. Review your situation. Work on your agreement.

## Get started

Is this your first time here? Before you create an account or log in, you can get started by answering some questions about your situation. MyLawBC can help you make a separation plan or let you know how the Dialogue Tool can help you.



### Make a separation plan

If you haven't already done so, find out

## Work on your agreement

Use the Dialogue Tool to make a fair and lasting separation agreement. Set out what's important for your children, money, home, and other property.



### Create an account

Not yet registered? Create an account first.

**WWW.MYLAWBC.COM**



# OTHER USEFUL RESOURCES (Legal Info and Referrals)

**Clicklaw**



[www.clicklaw.bc.ca](http://www.clicklaw.bc.ca)



[www.povnet.org](http://www.povnet.org)

**COURTHOUSE  
LIBRARIES | BC**

[www.courthouselibrary.ca](http://www.courthouselibrary.ca)



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[dialalaw.peopleslawschool.ca](http://dialalaw.peopleslawschool.ca)

1-800-565-5297

# PRACTICE SCENARIOS

“I’m the executor of my mother’s will, what do I have to do?”

## Online / Referrals

- Clicklaw Common Question: [I’m the executor of a will; what are my first steps?](#)
- Clicklaw Common Question: [Is a will different for people who live on reserve?](#)

## Print:

People’s Law School

- *Your Duties as an Executor*
- *A Death in Your Family*

# PRACTICE SCENARIOS

I want to separate from my spouse, what do I do?

## Online:

- Family Law Website > Your Legal Issue> Divorce & Separation
- JP Boyd on Family Law through Clicklaw Wikibooks
  - Chapter on [Separation & Divorce](#)
- MyLawBC > Make a Separation Plan

## Print:

- *Living Together or Living Apart*

## Referrals:

- Unbundled Services



# PRACTICE SCENARIOS

A client recently moved to Canada and her husband said he had sponsored her. Her husband has moved in with another woman. She is scared she is going to be deported and doesn't know how she is going to get money to live

## Online/Referrals

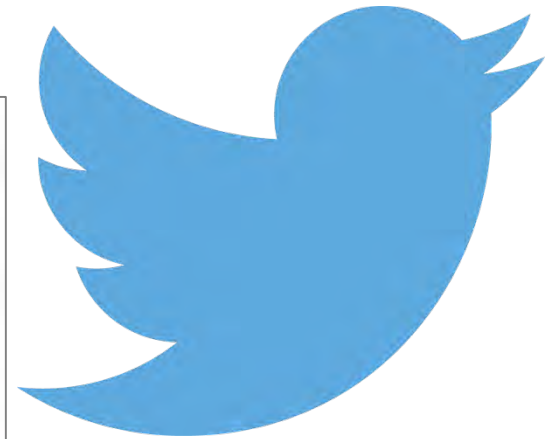
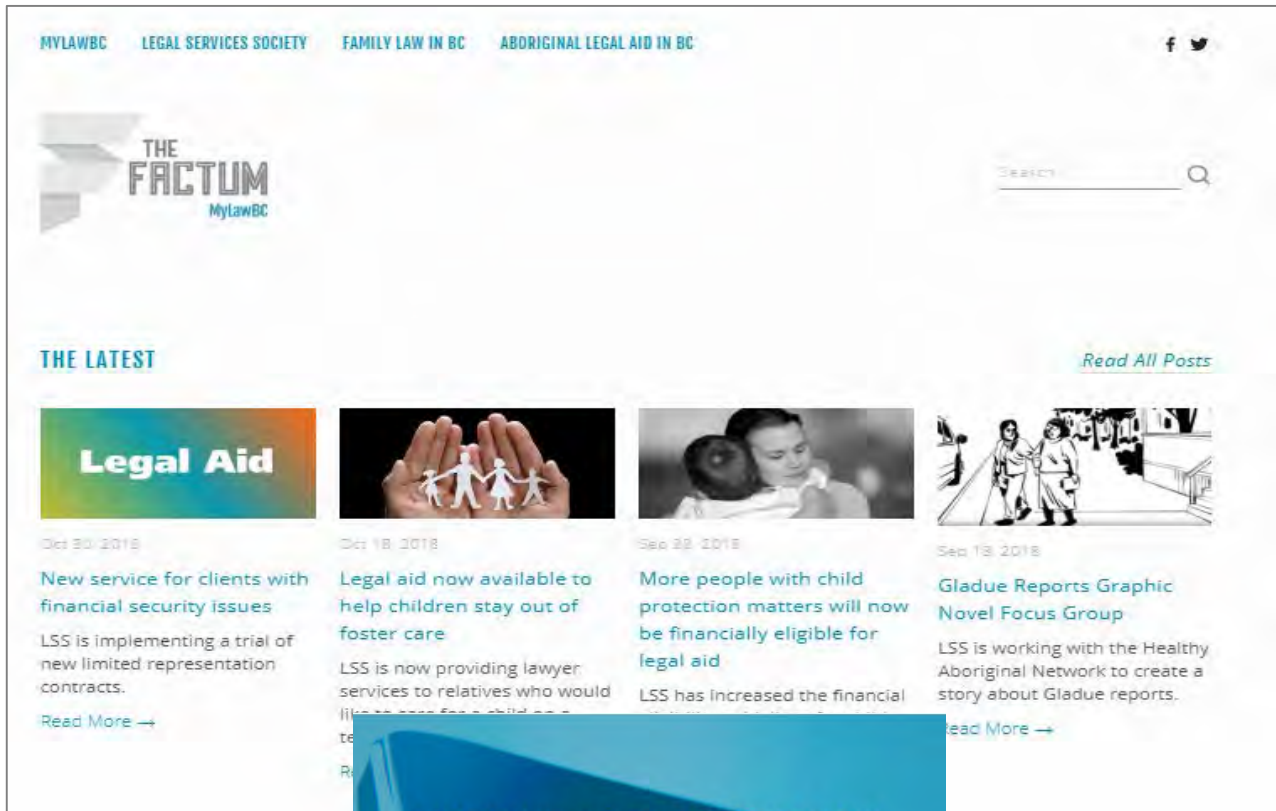
- Clicklaw: Common Questions: A friend was sponsored to come to Canada but the sponsor left her.

## Print/Online:

- LSS: *Sponsorship Breakdown*
- YWCA: *Mothers Without Legal Status in Canada – Information for Service Providers (online-only)*

# LSS ON SOCIAL MEDIA

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



@legalaidBC



# DO YOU WANT TO HELP DEVELOP OUR PUBLICATIONS AND WEBSITES?

- Aboriginal Legal Aid in BC website
- Feedback on publications and websites

**If you think you can help,**  
please put your name on one of the  
sign-up sheets circulating around the room.

# QUESTIONS ABOUT ORDERING OR PUBLICATIONS?

## IDEAS FOR NEW OR EXISTING PUBLICATIONS?

Contact me!  
Publications@lss.bc.ca  
604.601.6054



Legal  
Services  
Society

British Columbia  
[www.legalaid.bc.ca](http://www.legalaid.bc.ca)



# Parents Legal Centre

Presented February 22, 2019

For LSS Regional Conference

COAST Kamloops Hotel – 1250 Rogers Way, Kamloops



**Legal  
Services  
Society**

British Columbia  
[www.legalaid.bc.ca](http://www.legalaid.bc.ca)



# Agenda



## PLC Model Introduction

1. To develop an understanding of the basic PLC model and roles of PLC staff
2. To understand data collection and why it's important
3. To understand the difference between PLCs and tariff services
4. To explore common misconceptions about the PLC

# Facts and Figures:



- Indigenous people make up 6% of BC's population
- More than 60% of children in care are of Indigenous ancestry
- 41% of LSS's child protection clients self-identify as Indigenous (31 % of criminal law clients, 21% family law clients)
- 48% of PLC clients self-identify as Indigenous



# What are PLCs?



Goal is to assist with child protection matters early and collaboratively. The service provides representation and wrap-around support to parents, or people standing in the place of parents, who experience involvement with the Ministry of Child and Family Development or a delegated Aboriginal agency.

Operating in Vancouver since February 2015 with funding from the Ministry of the Attorney General. Original funding was for a group of 5 Justice Innovation and Transformation Initiatives (JITI), made possible with Ministry funding of \$2M/yr for 3 years.

# How is the PLC different?



## *Usual legal aid representation in child protection:*

- Lawyers in private practice contracted by LSS
- The child has been removed or MCFD/DAA is asking for a supervision order
- The court process is involved
- The lawyer is able to assist with collateral issues which are related but is not provided the assistance of an advocate

# Rationale for the PLC

To engage with parents and provide services and advocacy prior to and during their involvement with MCFD or DAA

To take a holistic approach assisting parents to address issues underlying child protection concerns while also addressing the legal matter

To provide support before a matter escalates, and attempt to achieve a solution that keeps a family together and addresses the child protection concerns



# What does the PLC offer?



*Parent supported  
early by a Team*

Represents the parent at mediations, Family Case Conferences, other collaborative meetings and uncontested hearings

The advocate helps parents connect with services

- e.g. housing; addictions recovery; counselling

If not yet a PLC client, lawyer can provide advice (like duty counsel)

Service is also provided off-site to women who are at risk of child being removed or has been removed, e.g., Fir Square, Sheway

# Vancouver PLC



*Parent supported  
early by a Team*

- The PLC model has a team of two lawyers, an advocate and administrative assistant able to provide support to parents
- Vancouver opened office with 1 lawyer, 1 advocate and 1 Administrative Assistant
- After being open 1 year, in March 2016, Vancouver added a second lawyer

# PLC Statistics

**Since opening the Vancouver office, we have opened 565 client files. Our referrals come from:**

- 20% Court
- Almost 30% MCFD or DAA
- 18% Hospital
- 9% Support Agency

## **Our clients:**

- 46% self-identify as Aboriginal
- 86% of all clients assessed were accepted
- Clients are from cities of Vancouver and Burnaby
- 42% have no removal when they became a client
- More than 1 in 5 clients participate in collaborative processes



# Why Collect Data?



- Ministry requirement
- Data was carefully selected by a Working Group
- Basis for program was to find early resolution to child protection matters, potentially keeping people of court
- To do so, the focus had to be on collaborative planning and decision-making



# Why Collect Data?



- The data collected formed part of the 3 evaluations completed at:
  - 3 months
  - 12 months
  - 24 months
- Given the positive results, the Ministry committed to further funding
- Opened an office in Surrey in January 2018
  - 2 Lawyers
  - 1 Advocate, 1 Aboriginal Community Legal Worker
  - 1 Administrative Assistant

# Evaluations

A 3<sup>rd</sup> party conducted the PLC evaluation, including interviews with:

- Clients
- Social workers, team leads
- Collaborative process stakeholders (mediators and facilitators)
- PLC staff

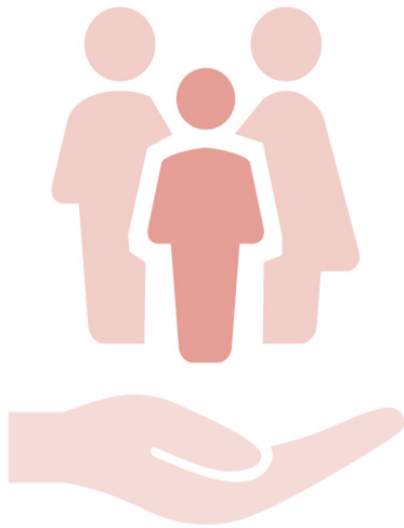


# PLC Charter

- increase early access to information and advice about rights and obligations for parents
- involved in CFCSA matters
- increase early referrals
- achieve earlier and more sustainable collaborative resolutions in child protection cases
- reach a collaborative resolution in more child protection cases
- facilitate more productive court appearances
- reduce the number of court appearances
- reduce the amount of court time required for list days
- decrease the number of trials in CFCSA cases
- provide services that are culturally appropriate to the community served



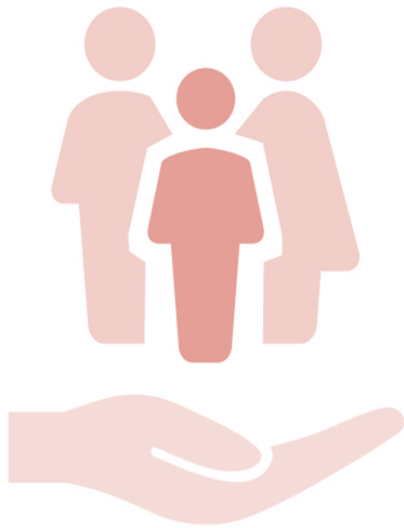
# Final Evaluation Findings - Summary



*"PLC model continues to work well to provide the expected services. Other stakeholders appear to have gained a good understanding of the model and are supportive of the PLC."*

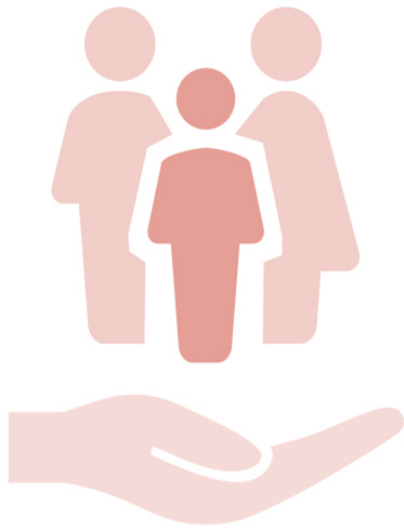
*Much of the success of the model is attributed to the types of positions that support it (lawyers, an advocate/paralegal, and an administrator), which, combined with the knowledge and experience of the staff members in these positions, allows for an effective and efficient distribution of responsibilities."*

# Final Evaluation Findings – Referrals from Stakeholders



*"Awareness of the PLC appears to continue to grow, with most stakeholders involved in the child protection process believed to be aware of the PLC, and many of them making referrals to the PLC. The PLC has just recently begun undertaking more outreach activities to further increase awareness amongst other organizations that might support or interact with families experiencing child protection issues."*

# Final Evaluation Findings – Referrals from Stakeholders and Outreach



*"Several external key informants also commented that it is helpful to have a specific location to refer parents to, and that it is more likely parents will follow up on the referral rather than just being told to talk to a lawyer."*

*In addition to the fact that clients were generally pleased with the location of the PLC within the courthouse and its accessibility to transit, "[t]he PLC's outreach to Fir Square and Sheway, as well as the staff members' flexibility to meet clients or attend meetings offsite further contributes to their accessibility. Clients find the PLC accessible and have a high comfort level in using the services."*

# Final Evaluation Findings – Client Comments

*They are friendly, straightforward and trustable.*

*They are not judgemental. I never felt judged by them and they tried to understand us and help us.*

*It is very comfortable and useful; the staff are reasonable and understanding.*

*The lawyer and staff were very informative and supportive. I never felt judged.*

*[The lawyer] was open about my rights and would call me out when I did things wrong.*

*If one lawyer was not available the other would be....both knew my case.*

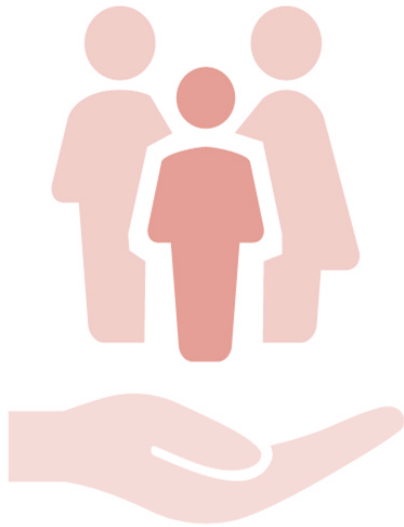
*They were thorough and friendly.*

*[The staff member] was always available to come to meetings and respond to my calls.*

*I needed someone to tell me about my rights. They were nice to me and made me feel comfortable. I did not feel nervous at all.*

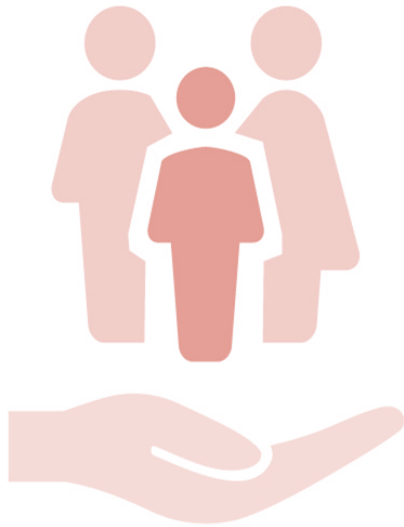


# Final Evaluation Findings – Cultural Competency



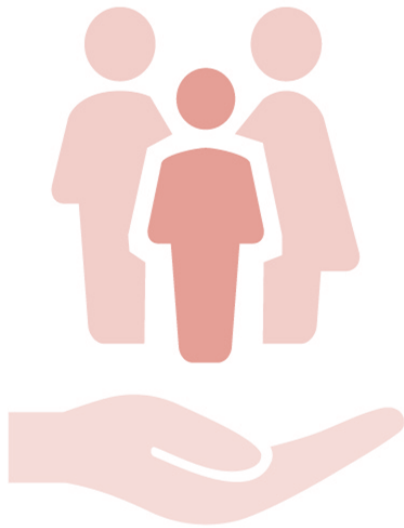
*"Internal key informants commented that all staff are aware of and keep in mind the impact of the residential school system on their Indigenous clients, and also that their staff complement are culturally diverse, which is believed to add to clients' comfort level. External key informants who could comment on culturally-appropriate services primarily made observations that having an Indigenous lawyer was helpful for building trust and comfort for Indigenous clients."*

# Final Evaluation Findings – Early Referrals



*"Most key informants believe that clients are accessing the PLC early enough in their child protection matter, although stakeholders have varying views on what is "early," with some saying that it should be as early as possible, such as when they first learn of their child protection matter, and others saying not until it is clear that there will be court involvement. Most clients interviewed believed that they had contacted the PLC early enough, although approximately half also said that it would have been helpful to receive their help earlier."*

# Final Evaluation Findings – Importance of Early Referrals



*Social worker commented, in summary:*

*- many parents do not understand the powers and duties provided to social workers through the CFCSA and may refuse to allow social workers to question their child in private. Parents may then be perceived as uncooperative and as “trying to hide” something, which can cause an escalation of the situation. Key informants observed that parents may be more willing to listen to the explanations and advice of their lawyer than from a social worker.*

*- if the matter does escalate to court involvement, the parent has already established a relationship with the PLC.*

## Key findings of evaluations:



### *Clients engaging with PLC team early*

Clients have a fuller understanding of their rights and obligations early:

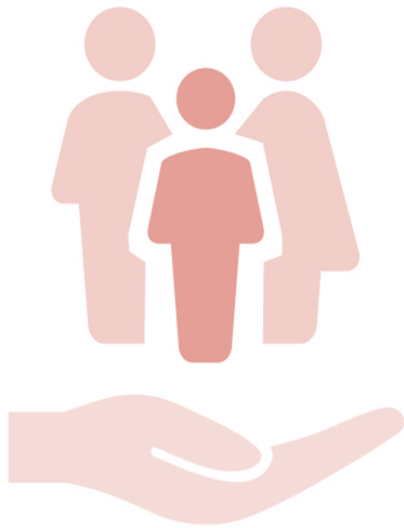
- Before problems escalate
- Views less likely to become entrenched
- Reduce risk of communication breakdown between parent and social worker

Clients have greater understanding MCFD or DAA expectations and what they can do to meet them

Engaging with clients in community means:

- early advice and support
- reducing anxiety and
- avoids separating children from families

# Final Evaluation Findings



*"The PLC does appear to be resulting in more parents with CFCSA matters taking part in collaborative processes and, in particular, FCPCs and informal collaborative meetings. A helpful feature of the PLC is the advocate/paralegal who can attend those meetings that do not require lawyers, providing support to parents and further facilitating the PLC's participation. Clients supported by the PLC at collaborative meetings found the support and advocacy helpful."*

## Key findings of evaluations:



*The PLC helps clients engage collaboratively to resolve child protection concerns*

- More parents engaged in collaborative processes
- PLC achieves positive results that move matters forward even though child protection issues are lengthy and difficult to achieve “resolution”

*The PLC enhances the ability for all service providers to work cooperatively and more effectively to support parents and families*

# Final Evaluation Findings – Advocate's Role

*Recognition of the role and value of the advocacy services provided by the PLC appears to have increased from the summative evaluation. There appears to be a greater understanding of and support for the advocating role of the advocate/paralegal position, and belief that this position further complements how the lawyers advocate for clients.*

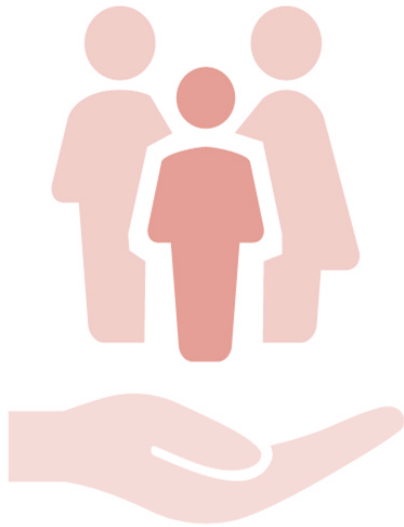
*About the Advocate:*

*"A lot of it was in a legal jargon that I did not understand. They explained what was being said and acted as my voice. We'd talk about it before the meetings and plan what we wanted to do beforehand."*

*"She was able to take notes on everything said, so the lawyer could understand what happened during the meetings."*



# Final Evaluation Findings – Collaborative Process



*Greater recognition of the PLC's contribution to these successes.*

*Although a client's CFCSA matter may not be completely "resolved" through such processes, they are perceived as valuable for achieving some type of positive result that moves the matter forward.*

*The PLC's approach to encouraging collaborative processes, as well as their willingness to cooperate and communicate with other stakeholders (social workers and director's counsel), is perceived as contributing to an overall more collaborative approach to the benefit of children and families.*

## Key findings of evaluations:



*PLC Clients have fewer and more effective court appearances*

- Immediate access of the PLC in court reduces adjournments required to find a lawyer
- PLC clients come to court with direction and there are fewer adjournments

# Myths and Facts



Incorrect information about PLC has circulated since the program started

Support from stakeholders since the beginning (Ministry counsel, social workers, mediators, collaborative practice facilitators)

LSS did 2 information sessions for parents counsel about the PLC

# Myths and Facts - Examples



- Clients are forced to agree with the social worker
- Can't force clients to agree to anything (treatment, counselling, court applications)
- There are mechanisms to oppose the social worker's court application
- PLC doesn't fight as hard as a tariff lawyer
- Always put the client's best interests forward and take client's instructions
- Professional ethics require lawyers to serve the cause of justice and be faithful to clients

# Myths and Facts - Examples



- “Collaborative practice” means agreeing with the Ministry
- No, it means coming together to give the client a platform to be heard and understood
- PLC has too many clients to provide highly quality services
- Team approach means client has easier access to any one of the PLC staff
- Clients consistently reported satisfaction with PLC services
- Capacity to expand

# How is the PLC different?



*Designed to be culturally sensitive and easily accessible to the clients served*

## *In the PLC:*

- The lawyers and the advocate work with and on behalf of parents to focus on early collaborative solutions
- Early intervention - often before the children are even taken into government care, or prior to birth of the child
- Advocate can:
  - help parents connect with services to address the underlying child protection concerns, e.g., housing; addictions recovery; counselling
  - speak with social workers on parents' behalf
  - accompany client to various meetings and appointments, including with social worker



## Model Walk Through – Role of Lawyer



- Has conduct of the file once the client has signed the retainer letter
  - Gives legal advice to client
  - At any time
- In community at clinics
- Represents clients
  - On court list days (for both accepted clients and Family Duty Counsel clients)
  - At collaborative processes
- Works with ACLW/Advocate to identify client's needs, develops plan to address the CP concerns
- Designs and carries out outreach in the community (MCFD, DAA, support agencies, hospitals, etc.)
- Instructs Administrative Assistant/ACLW/Advocate about file activity



## **Model Walk Through – Role of ACLW/ Advocate**



- Supports clients in CP issues
  - To help the client meet SW expectations
- To support client towards:
  - Physical/mental wellness (if identified as a CP concern)
  - Attending treatment or counselling (if identified as a CP concern)
  - Developing health relationships with children and others (e.g., access, discussing family support)
  - Committing to attending programs and services as needed
- Extra support to the client and Lawyer

## Model Walk Through – Role of Advocate with Clients



- How the ACLW/Advocate goals are met
  - attends meetings with client that lawyers not normally permitted to attend
  - Stays in regular touch with clients, e.g. check-ins, meeting in the community
  - Updates Lawyer about progress, setbacks, or developments
  - Maintains knowledge of the resources clients might benefit from
  - Develops good relationship with the resources to help client feel comfortable with the resource
  - Communicates with resources with client's written consent

## **Model Walk Through – Role of Advocate within the PLC**



- Assists lawyer to prepare for court
- Assists lawyer on day of court
- Carries out regular file review and follows up with clients accordingly
- Prepares and updates the monthly legal review document
- Works as a team with the Lawyer and Administrative Assistant to ensure calendaring, communications, and consistency

# Model Walk Through – Role of Administrative Assistant

- Calendarizes/bring forward system
- Gathers court documents
- Prepares and sends template communications (letters, emails, faxes) to clients, SWs, director's counsel
- Manages all incoming communications (letters, emails, faxes, disclosure documents, mail, phone calls, voicemails).
- Completes intake applications with clients
- Assists in preparation for court list day
- Filing



# Who becomes a PLC Client?



*CFCSA cases eligible for PLC assistance include those where:*

- the applicant falls within the LSS financial criteria for a representation contract, or is eligible for discretionary coverage from the PLC
- the applicant is the parent or guardian, or is standing in the place of the parent
- the case can be resolved without a trial

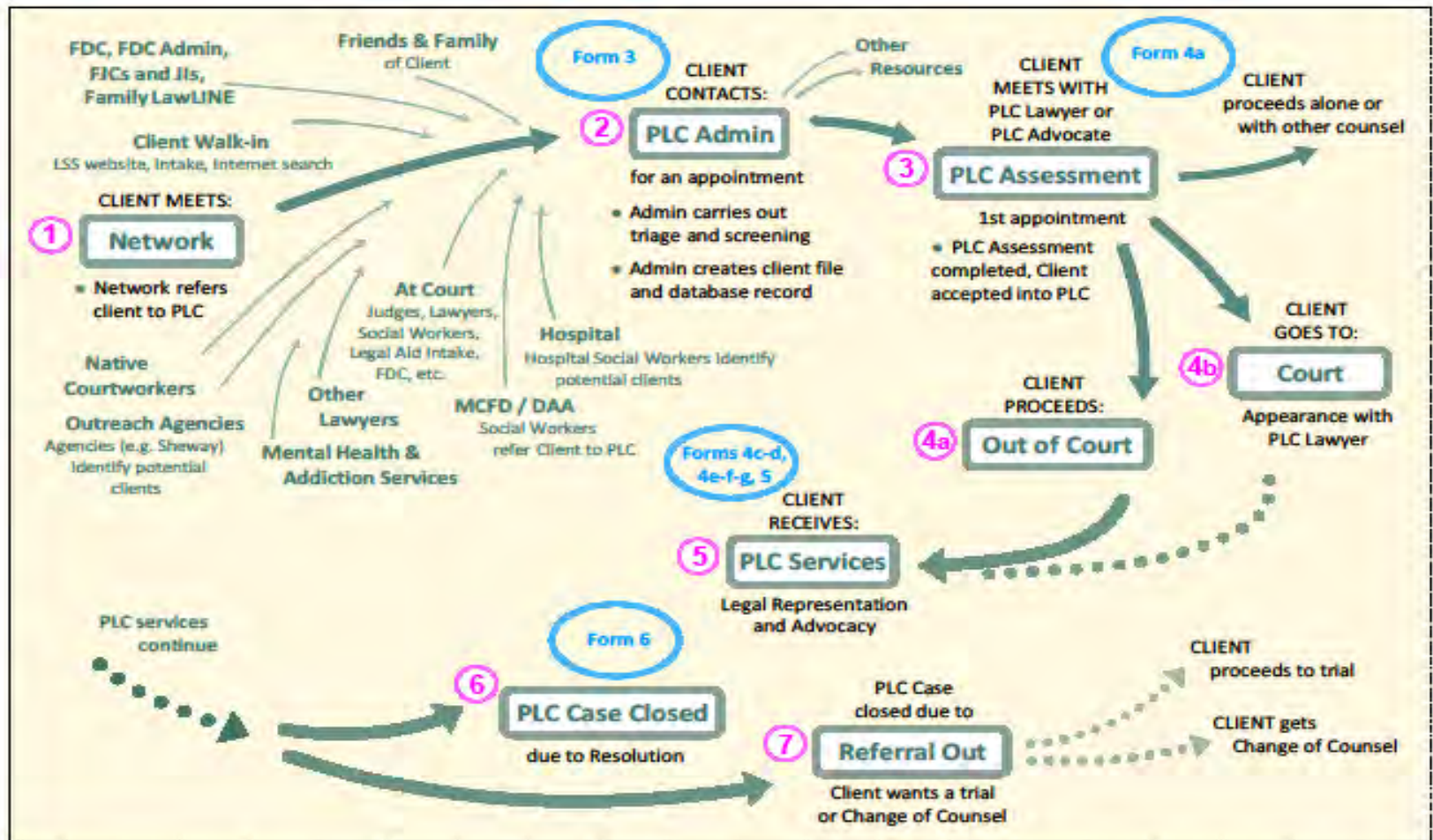
*Types of CFCSA cases that are not provided assistance by the PLC include those where:*

- a conflict of interest exists;
- a tariff lawyer is already assisting the client;
- the person is not the parent; or
- the case cannot be resolved without trial.





## PARENTS LEGAL CENTRE CLIENT FLOW PROCESS



# Questions?





# *The Child, Family, Community Service Act:* An Overview

Prepared for Continuing Legal Education Child Protection Conference 2018  
by Corinne Feenie

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

- Legislation under which the Director of Child, Family, and Community Services provides child protection/ support
- through MCFD and delegated Aboriginal agencies
- parents' right and responsibility to care for their child
- Director responsible to make sure child is safe and adequately cared for
- CFCSA gives legal options to remedy CP concerns

# Duty to Report—s.14

- Positive obligation on every person to promptly report protection concerns to the Ministry
- Even if information:
  - Is based on privileged relationship (except for solicitor-client),
  - Is confidential, or its disclosure is prohibited under another Act
- Failure can result in:
  - fine of up to \$10,000 or
  - 6 months imprisonment

# Protection is Needed When? – s.13

Child has been or is likely to be:

- Physically harmed by parent
- Sexually abused or exploited by a parent
- Someone else has or likely to physically harm or sexually abuse a child and parent unwilling or unable to protect child
- Child not receiving necessary health care or developmental treatment
- Parent not adequately supervising a child (or use of inadequate caregivers)
- Child is emotionally harmed by parent or living in domestic violence; emotional harm = child demonstrates severe anxiety, depression, withdrawal, self-harm or aggressive behaviour

# Making a Report

- Calling 1-800-663-9122, 24/7
- If immediate danger, phone police
- Reports best made at present, not after the fact
- Concerns should be as specific as possible

# After a Report is Made

- case-by-case assessment of each report
- least disruptive response necessary to keep child safe
- If no immediate harm, director may:
  - Offer family support services
  - Refer child or family to community agency
  - Conduct further investigation
  - Take no further action
- Director may visit home and see the child without court order
- If prevented from entering home/seeing child, Director can obtain court order under s.17 - can result in a warrant for arrest

# If Child Deemed in Need of Protection

Two kinds of removals:

- Child in immediate danger
- Unaddressed accumulation of concerns over time - encourage client to engage with SW, correct wrong information, work on options to removal



# Options to Removal

- Safety plans:
  - Require parental cooperation
  - Must be written and signed by parents
  - Can address services or conduct and may include temporary relocation of child or other family member
- SW must be convinced:
  - parents will abide by the Safety Plan, and
  - Plan will sufficiently protect the child

# Voluntary Care Agreements and Extended Family Plans

- s.6, VCA:
  - written agreement with parent when temporarily unable to care for a child
  - No initiation of court process
  - Time-limited (3 mos if child under 5 years; 6 mos if child is older)
  - Can be extended to 12-24 mos depending on child's age
- s.8, EFP
  - Child placed with family or friend
  - Financial compensation from Director (non income tested)
  - Time limits based on policy

# Non-Removal Supervision Order

- s.33.2(2) – court ordered safety plan
- Parent must demonstrate willingness to abide
- Ministry must show child is in need of protection
- Breach may result in removal of child so take care when advising client
- Every NRSO will include terms that SW can attend at and inspect home to meet privately at child any time and a must remove clause; ensure most terms don't result in mandatory removal

# Protective Intervention Order - s.28

- PIO can be explored if:
  - someone in home is putting child at risk
  - SW not convinced Safety Plan or NRSO will keep the person in question out of the home or out of contact with the child
  - Up to 6 mos in length and can be extended further 6 mos
- If breached, person arrested and prosecuted like breach of probation or peace bond
- Not used if history of non-compliance by person and non-offending parent
- Cannot be used if any planned contact between person and child

# Removals – s.30

- Occur when child in immediate danger or less intrusive options have proven insufficient to protect child
- Director can return at any time and withdraw from court (ss.33, 48)
- Can return under supervision - s.35(2)(b)
- Encourage parent to be proactive about CP concerns and/or explore family and friends to care for child
- assist client to understand the CP concerns and offer solutions; do not engage in power struggle
- If client struggles to express themselves, suggest someone else to help client communicate with SW
- Treat SW with respect; urge your client to do the same

# Presentation (Interim) Hearing

- Director must make all reasonable efforts to notify each parent of child's removal and, if practicable, provide notice in writing
- No minimum period for notice; lack of notice doesn't bar from court process
- Must attend court within 7 days of removal for Presentation
- Trials:
  - set several weeks away
  - Summary in nature (usually only SW and parent(s) testify)
  - Hearsay admissible
  - Director must prove *prima facie* case

# Period of Interim Order

- Maximum 45 days
- Use time to foster relationship between client and SW
- If relationship with SW is strained, have advocate or family/friend attend meetings with client
- Offer to attend meetings with your client – give notice
- s.101.1 allows parents to make complaints without adverse treatment
- Ensure SW makes referrals for client and client attends services
- Ensure client has maximum access to child that they are able to attend and that parent shows up for that access



# Protection Hearing

- 10 days written notice of protection hearing on parent including Application and Plan of Care for child
- parents counsel can request documents as a courtesy
- If child is Aboriginal, designate or representative of child's Band, treaty First Nation, or aboriginal community must be served
- If client not opposing order sought, request it be made by s. 60
- If client opposes order sought, Rule 2 Case Conference will be set (6-8 weeks in future; interim order remains in place)

# Rule 2 Case Conferences

- Prior to R2CC, request disclosure
- Gives greater understanding of Director's evidence if at hearing
- Opportunity to negotiate consensual resolution
- Prep your client - parental presentation is very important
- Orders can only be made by consent
- If no consent, then be prepared to set contested application (if 3-10 days in length, expect to wait 8-12 mos for hearing)
- Consider setting another follow-up R2C

# Waiting for a Hearing?

- Ensure client clear about CP concerns and how to address them
- Encourage client to remain in contact with SW, attend all access on time, and ensure visits are + (focussed on child, safe and appropriate)
- If access goes well, seek increased access, unsupervised access
- If client spends energy on arguing with or badmouthing SW or foster parent, it will not help their case

# Mediation

- Director will arrange if requested, unless some good reason not to
- roster of child protections mediators
- Can improve relationship between parent, family, social workers, service providers and legal counsel
- results in plans parents more likely to follow – empowers parents
- Can address placements, access, short and long-term planning, support services, relationships
- First Nations community involvement, including leadership and elders improves the outcome
- Decreases adversarial nature of the proceeding
- Can resolve contested matters in less time than hearings
- Written agreements important

# Protection and Subsequent Hearings

- CP hearings are civil; standard of proof is balance of probabilities
- Director leads case; **calls witnesses** (SWs, support workers, access supervisors, foster parents, teachers, police officers, doctors, psychological assessors, other family members)
- historical and current concerns, in BC and other jurisdictions
- files **documentary evidence** (Ministry file recordings or reports, medical reports, police report, access reports, support agency reports, urine drug screen reports, other relevant reports)
- Children rarely if ever called
- Each parent has opportunity to take stand and call own witnesses

# Protection Orders

- At conclusion of hearing, court ***determines if child is in need of protection*** and if protection finding is made, court makes order under s.41(1) in child's best interest:
- Immediate Continuing Custody Order – s.41(1)(d) – test: s.41(2)
- Temporary Custody Orders – s.41(1)(b) or 41(1)(c)
  - Length limited by age of the child, or youngest child in a sibling group and can be extended for a total period determined by the age of the child (or the youngest child in a sibling group); see s.45
- Supervision Orders – s.41(1)(a)
  - Maximum 6 mos; can be extended to a total of 12 mos (s.44(3.1))

# Variation or Cancellation

- s.57 – vary or cancel TCO's, SO's or access orders
- Test: circumstances have changed significantly since order made and in best interests of child to change or cancel order
- s.54 – cancel CCO - 2 stage process:
  - 1) **permission to apply** - affidavits  
Test: circumstances have changed significantly  
if permission granted, hearing will be set
  - 2) **hearing**  
Test: circumstances have changed significantly and in best interests of child to cancel order