



**Legal
Services
Society**

British Columbia
www.legalaid.bc.ca



CRANBROOK REGIONAL CONFERENCE

**Prestige Rocky Mountain Resort
209 Van Horne St S, Cranbrook,
BC V1C 6R9**

AGENDA – Wednesday July 10

Time	Session	Speaker	Facilitator
8:30 - 9:00	<i>Registration & Breakfast</i>		
9:00 – 9:15	Opening ceremony & welcome		Baljinder Gill
9:15 – 10:30	Overview of Family Law Act	➤ Karen Tse – Family and Child Protection lawyer	John Simpson
10:30 – 10:45	<i>Coffee break</i>		
10:45 – 12:15	Overview of criminal law and gladue	➤ Carly Teillet – Gladue Lawyer, Legal Services Society ➤ Sally Paddock – Criminal Lawyer	Baljinder Gill
12:15 – 1:00	Indigenous services update	➤ Carly Teillet – Gladue Lawyer, Legal Services Society	Baljinder Gill
1:00 – 1:30	<i>Lunch</i>		
1:30 – 2:45	Domestic violence and protection orders	➤ Murielle Matthews – Family lawyer	Baljinder Gill
2:45 – 3:00	<i>Coffee break</i>		
3:00 – 4:30	Overview of child protection law	➤ Karen Tse – Family and Child Protection lawyer	John Simpson



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209 Van Horne St S, Cranbrook,
BC V1C 6R9**

AGENDA – Thursday July 11

Time	Session	Speaker	Facilitator
8:30 – 9:00	<i>Registration & Breakfast</i>		
9:00 – 10:30	Overview of Legal Aid intake services Publications and other legal resources	➤ Deneen Garrett – Provincial Supervisor, Legal Aid Applications, Intake and Referral Services, Legal Services Society ➤ Patricia Lim – Publications Development Coordinator, Legal Services Society	John Simpson
10:30 – 10:45	<i>Coffee Break</i>		
10:45 – 12:15	Wills and estates	➤ Graeme R. Nunn – Lawyer	Baljinder Gill
12:15 – 1:00	<i>Lunch</i>		
1:00 – 2:00	CRT Resolution	➤ Graeme R. Nunn – Lawyer	Baljinder Gill
2:30 – 4:00 pm	Community dialogue on Legal Aid: planning for the future	➤ Sherry Poirier – Senior Policy Analyst, Strategic Planning and Policy, Legal Services Society ➤ John Simpson – Manager, Community and Publishing Services, Legal Services Society	Baljinder Gill
4:00 – 4:10 pm	<i>Gift cards draw</i>		

An Overview of the Family Law Act

Presented by Karen Tse
Family Lawyer & Family Law Mediator
Rockies Law Corporation
Ferne, BC

Presentation Overview

- * Geared towards support workers assisting clients going through a separation
- * Core information about the Family Law Act
- * Help prepare clients on what to expect

Family Law Act

- * British Columbia Legislation
- * Governs
 - * Property Division
 - * Parenting Rights and Responsibilities
 - * Spousal Support
 - * Child Support
 - * Protection Against Family Violence
 - * How to Resolve Disputes

Information for Parents: Guardianship (s. 39)

- * Who is a guardian?
- * When parents live together → both guardians
 - * Equally responsible for care and upbringing
 - * Doesn't matter if they're married
 - * When parents stop living together → still guardians
- * A parent who's never lived with their children is a guardian if:
 - * they have taken care of the children regularly
 - * there's an agreement or court order that says they're a guardian, or
 - * the other parent dies and they're named as a guardian in the will

Becoming a Guardian (s. 51)

- * How do you become a guardian?
 - * Court may appoint a guardian
 - * Specific evidence is required: criminal record and Ministry record check with an affidavit

Parental Responsibilities (s. 41)

- * Guardians can exercise parental responsibilities
 - * Day to day decisions
 - * Where child lives
 - * Whom the child lives and associates with
 - * Education and extracurricular activities
 - * Cultural and religious upbringing
 - * Give medical consent
 - * Get information from professionals
 - * Apply for passport

Best Interests of the Child

- * Parents and judges can only consider what's best for the safety and well-being of the child when making decisions about parenting, guardianship, parenting time, and contact with the child

Best Interests of the Child (s. 37)

- * To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered:
 - * Health / Emotional well-being
 - * Child's views
 - * Strength of relationships
 - * History of care / level of cooperation
 - * Need for stability
 - * Ability of the guardians
 - * Family Violence

Parenting Time (FLA Part 4)

- * Best Interest of the Child
- * Parenting Time & Parenting Schedule
 - * Primary Residence vs. Shared Parenting Time
- * Custody? → term only used in Divorce Act, not FLA

Views of the Child Report (s. 211)

- * Court may appoint a person to assess
 - * needs of a child
 - * views of a child
 - * ability and willingness of parties to satisfy child's needs
- * Report typically conducted by a family justice counsellor or social worker

Contact Time for Step Parents, Grandparents and Others (s. 58-60)

- * Non-guardians can seek contact time with a child
- * No decision making power
- * Typically done through agreement
- * If not – can apply to court

Relocation (s. 65-71)

- * A change in the location of residence that could impact relationship with a guardian or another person with significant role
- * If there is a written agreement or Court Order, a parent must tell any other guardian or person with contact time when and where he or she plans to move
 - * Write it down and give it to the other 60 days prior (giving notice)
 - * Can ask the Court to excuse notice if:
 - * Family violence
 - * No ongoing relationship
- * Can't work something out? Other parent can object to the move by filing Court Application

Child Support & Federal Child Support Guidelines

- * Child support tables
 - * show the basic amount of child support based on total income
- * Typically received by the parent with primary residence
- * Stepparents don't have a duty to support UNLESS
 - * contributed to the child's support for at least one year and the proceeding for support was commenced within a year of the last contribution to the child's support

What are the amounts in the Federal Child Support Tables based on?

- * Guidelines ask “what would a parent with this income usually spend on his or her children?”
- * Help ensure that all families in similar circumstances (that is, living in the same province and with the same income and number of children) pay the same basic amount of child support
- * Intended to ensure that paying parents can still support themselves. The tables take into account the taxes payable and therefore gross income is used to apply them

Child Support

- * Total annual income is the amount of money a person earns from all sources, including employment, self-employment and investments in one year

*2017 Federal Child Support Amounts: Simplified Tables: British Columbia/Colombie
Montants fédéraux de pensions alimentaires pour enfants 2017 : Tables simplifiées*

Income Revenu (\$)	Monthly Award Paiement mensuel (\$)				Income Revenu (\$)	Monthly Award Paiement mensuel (\$)			
	No.of Children Nbre d'enfants					No.of Children Nbre d'enfants			
	1	2	3	4		1	2	3	4
34000	319	546	728	877	39500	371	628	833	1001
34100	320	548	730	879	39600	372	629	835	1003
34200	321	549	732	882	39700	373	631	837	1005

Shared Parenting & Support

- * Shared custody
 - * Guidelines use the term “shared custody.” Shared custody can apply if both parents have the child in their care for at least 40 percent of the time over the course of the year
 - * Higher income parent usually pays an offset amount of support to the lower income parent

Imputing Income

- * Court may attribute income to a parent if it finds the income amount claimed does not accurately represent actual or potential income
 - * Previous employment history
 - * Training and education

Special and Extraordinary Expenses

- * Special or extraordinary expenses
 - * Activities / health care / dental / childcare
 - * Expenses that the table amounts may not cover
- * Must be:
 - * necessary in relation to the child's best interests, and
 - * reasonable given the means of the parents and the child and the family's spending pattern before the separation
- * Can include day-care expenses, expenses for postsecondary education, or orthodontic expenses

Spousal Support

- * Spousal support
 - * Money paid by one spouse to the other after separation
 - * Paid under an agreement or court order
- * Eligibility
 - * married or in common-law relationship for 2 years+
 - * or you lived in a marriage-like relationship for less than two years and have a child with your ex-spouse

Spousal Support Advisory Guidelines

- * Guidelines used to figure out how much someone will receive and for how long (quantum and duration)
- * Guidelines suggest payments based on things like:
 - * How much you and your ex-spouse earn
 - * What you could earn
 - * How long you were married
 - * How many children you have
 - * Each of your roles in the relationship

Property Division (Part 5)

- * Generally
 - * Divide all family property and family debt equally between both spouses
 - * Includes anything obtained while together, but not before or after

Family Property

- * Family property
 - * Everything you or your spouse own on the date you separate, except excluded property
 - * Includes: the family home, other land, houses, condos, RRSPs, investments, bank accounts, insurance policies, pensions, CPP, businesses
 - * It doesn't matter if the name of only one spouse is on any of these

Excluded Property

- * What about property one of you owned before you got together?
- * Any property you owned before you and your spouse lived together is called excluded property
- * It's not family property, and you don't have to split the value of it equally if you separate
- * But if the property increases in value while you're living together, that increase is part of the family property
- * Increased value is divided equally between spouses

Other Excluded Property

- * Other types of excluded property are:
 - * Gifts
 - * Inheritances
 - * Certain kinds of injury or loss settlement (for example, for pain and suffering – as long as it is not lost income or loss to both spouses)

Family Debts (s. 86)

- * Family debt includes
 - * all debts either spouse took on during the relationship
- * Can be mortgages, loans from family members, bank lines of credit or overdrafts, credit cards, income tax, repair costs
- * Also includes debts taken on after separation if the money was used to take care of family property

Family Debts

- * Both spouses are equally responsible for family debt: whether they're married or living common law, and even if one spouse's name isn't on the debt

Creditors

- * Creditors can only collect payment from the person who took on (signed for) the debt
- * If a couple has joint debts, creditors might decide to collect payment from only one spouse
- * Courts can ask you to pay for some of the family debts

After Separation

- * Write to creditors to tell them about the separation
- * Can ask for time to pay / deferred payments
- * Cancel any secondary credit cards
- * Talk to bank about any joint accounts and ask how you can protect the money
- * Cut down the limits on any overdrafts and credit lines to what you owe, or ask if the account can be changed so that you need two signatures to withdraw money
- * If you need credit, ask the bank to open a line of credit in your name only
- * Change the beneficiary to someone else if your spouse is the beneficiary of your investments, RRSPs, insurance, and will

Unequal Division

- * Done if it would be “significantly unfair” to one spouse to divide it equally
- * Factors:
 - * How long relationship lasted
 - * Previous agreements
 - * How the family got into debt
 - * If debt is worth more than family property, each spouse’s ability to pay a share of that debt
 - * If one spouse did something to increase or lower the family debt or property value after separation

Dispute Resolution

- * Separation Agreements
- * Mediation
- * Arbitration
- * Parenting Coordinator
- * Family Justice Counsellor
- * Court
 - * Family / Judicial Case Conferences
 - * Hearings / Applications / Trials

Legal Services Society

Carly Teillet,
Gladue Lawyer (on contract),
Indigenous Services

July 10, 2019

Gladue Report Program



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The Crisis of Over-Incarceration



- Indigenous people spend more time in pre-trial detention
- Indigenous people are more likely to be accused of multiple offences
- Indigenous people are more likely not to have legal representation at court proceedings
- Indigenous people are twice as likely to be incarcerated

Defining Gladue Rights



Section 718.2(e) of the Criminal Code

In 1996, changes to the Criminal Code included a provision intended to address the issue of overrepresentation of Indigenous people in prisons. Section 718.2(e) directed sentencing judges to pay “particular attention to the circumstances of Aboriginal offenders.”

R. v. Gladue

The word Gladue comes from a Supreme Court of Canada decision in *R v. Gladue*. In this case, the court considered s. 718.2(e) of the Criminal code. The court called the overrepresentation of Indigenous people in prisons a “sad and pressing social problem” and recognized that this is a crisis in the Canadian criminal justice system. It also referred to the “tragic history of the treatment of Aboriginal peoples within the Canadian criminal justice system”—the justice system had failed Aboriginal peoples.

The rights that stem from the courts interpretation of section 718.2(e) of the Criminal code in this case are now known as “Gladue Rights”.

Gladue Rights Apply to *all* Aboriginal People



Gladue rights apply to *all* Aboriginal peoples:

- First Nations, including status Indians and non-status Indians;
- Inuit; and
- Metis.

You have Gladue rights if you live:

- on reserve,
- off reserve,
- in an Aboriginal community, or
- in a non-Aboriginal community.

You also have Gladue rights if:

- you are a youth, or two spirited or LGBTQ person,
- a non-Aboriginal family adopted you,
- you grew up in a foster home,
- you didn't know you were Aboriginal until recently, or
- you grew up away from your family, culture, and community.

Exercising Gladue Rights



The unique or systemic background factors and alternatives to incarceration can be presented to a court in three ways:

Oral submissions made by a lawyer, advocate or the individual themselves;

Gladue report; or

Presentence Report with a Gladue component

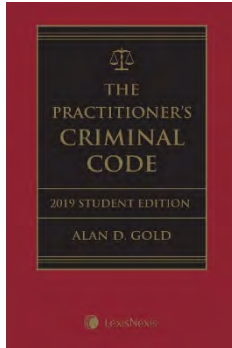
Gladue rights recognize that Aboriginal peoples have been subject to **systemic racism** (prejudice throughout Canadian society and its institutions) in the criminal justice system.

In *R. v. Gladue*, the Supreme Court of Canada clarified that section 718.2(e) requires judges to consider two aspects of the circumstances of Indigenous people involved in the criminal justice system:

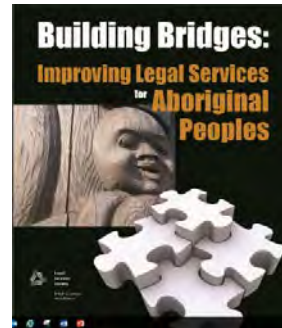
- a) the unique systemic or background factors that may have played a part in bringing the particular Aboriginal offender before the courts, and
- b) the types of sentencing procedures and sanctions (sentences, conditions, or punishments ordered by the court) that may be appropriate in the circumstances for the offender because of their particular Aboriginal heritage or connection.

Gladue Snapshot

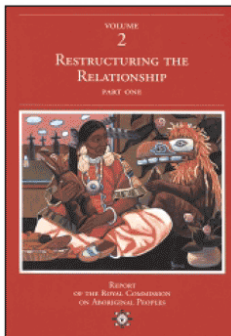
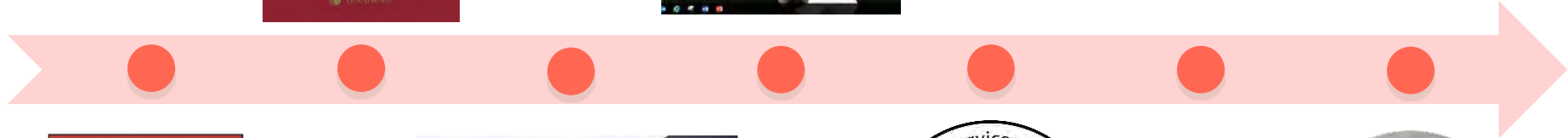
1996 s. 718.2(e)



2007



2012 *R v. Ipeelee*



1999 *R v. Gladue*



2011 LSS Pilot Gladue Report project

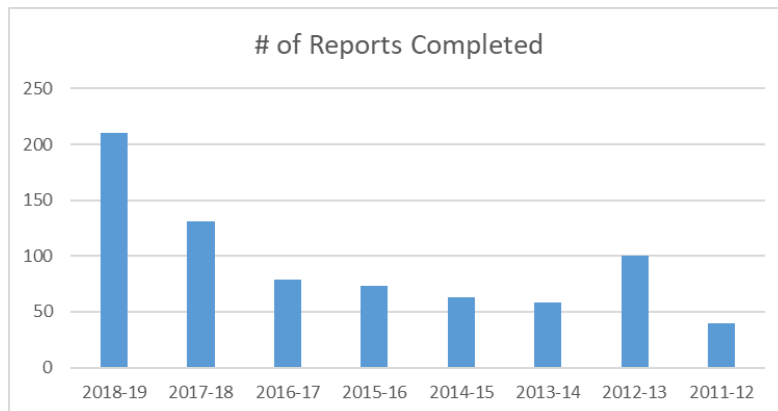


2019→

1996 Royal Commission on Aboriginal People

LSS Funded Gladue Reports

Fiscal Year	# of Reports Completed
2019-20	74 (to date)
2018-19	210
2017-18	131
2016-17	79
2015-16	73
2014-15	63
2013-14	58
2012-13	100
2011-12	40



Criteria for Approval

Bail and Sentencing Hearings

- does the client identify as Indigenous (First Nations, Inuit, Métis)?
- is the client a legal aid client?
- do we have a report writer available? and
- can the client wait eight to ten weeks for the report to be completed?

Appeals

- does the client identify as Indigenous (First Nations, Inuit, Métis)?
- is the client a legal aid client?
- has the appeal been approved?
- do we have a report writer available? and
- can the client wait eight weeks for the report to be completed?



LSS Gladue Writer Roster

Number of LSS Gladue Writers

2016: 14 writers

2017: 21 writers

2018: 26 writers

2019: 40 writers

Goal: 50 writers by March 31, 2020



Part 3: Roster Criteria and Expectations

In order to be considered to be on the *Gladue* report writer roster, writers must meet the following criteria:

- a) Successfully completed a *Gladue* report writing training course approved by LSS.
- b) Be Aboriginal or be closely connected to the Aboriginal community (e.g. an Aboriginal Justice Worker who does not identify as Aboriginal).
- c) Any other relevant factors that LSS deems appropriate, such as training provided by the Native Courtworkers Association, and Correctional Services Canada Aboriginal Liaison program.

At the discretion of LSS, these requirements may be waived or reduced where the applicant has other relevant experience.

Gladue report writers included on the roster must:

- a) Notify LSS (specifically, the Manager, Indigenous Services) of how they know the offender that they are writing the *Gladue* report about and members of that offender's community prior to starting the *Gladue* report writing process for the assigned *Gladue* report. Notification to LSS must occur unless expressly exempted.
- b) Keep informed about, and comply with LSS's procedures, policies and administrative requirements.
- c) Act honestly and in good faith in dealing with LSS.
- d) Respond promptly to all requests by LSS for information.
- e) Advise LSS promptly of any changes to his or her business address or contact details.
- f) Advise LSS if he or she wants to be removed from the *Gladue* report writer roster.
- g) Provide the services authorized at the times and places agreed to.
- h) Continue to provide the service to the client unless removed from the assignment.
- i) Attend all assignments on time and as scheduled, or provide reasonable notice to LSS if unable to do so.
- j) Notify LSS immediately if he or she ceases to provide the service to the client.

LSS Gladue Initiatives



Gladue Tariff Fee

- As of May 7, 2018 LSS began providing compensation for legal aid lawyers to prepare and make Gladue submissions for bail or sentencing hearings with or without a Gladue report

CLEBC Gladue Submissions Course

- LSS worked with CLEBC to host a Gladue Submissions Course for lawyers on November 15 and 16, 2018. This course will run again in the fall of 2020.

LSS Gladue Initiatives



Gladue Graphic Novel and Animatic

- LSS and Healthy Aboriginal Network are developing a Gladue graphic novel and animatic to raise awareness about Gladue rights and reports

Gladue Submissions Workshop

- LSS developed a workshop for advocates about Gladue Rights and how to prepare Gladue submissions, or help their clients and others to prepare them using the LSS Gladue Submissions Guide. 10 workshops are being delivered across BC this fiscal year.

LSS Gladue Publications



Questions?



Legal Services Society

Carly Teillet,
Gladue Lawyer (on contract),
Indigenous Services

July 10, 2019

Indigenous Services



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Legal Aid Services for Indigenous People



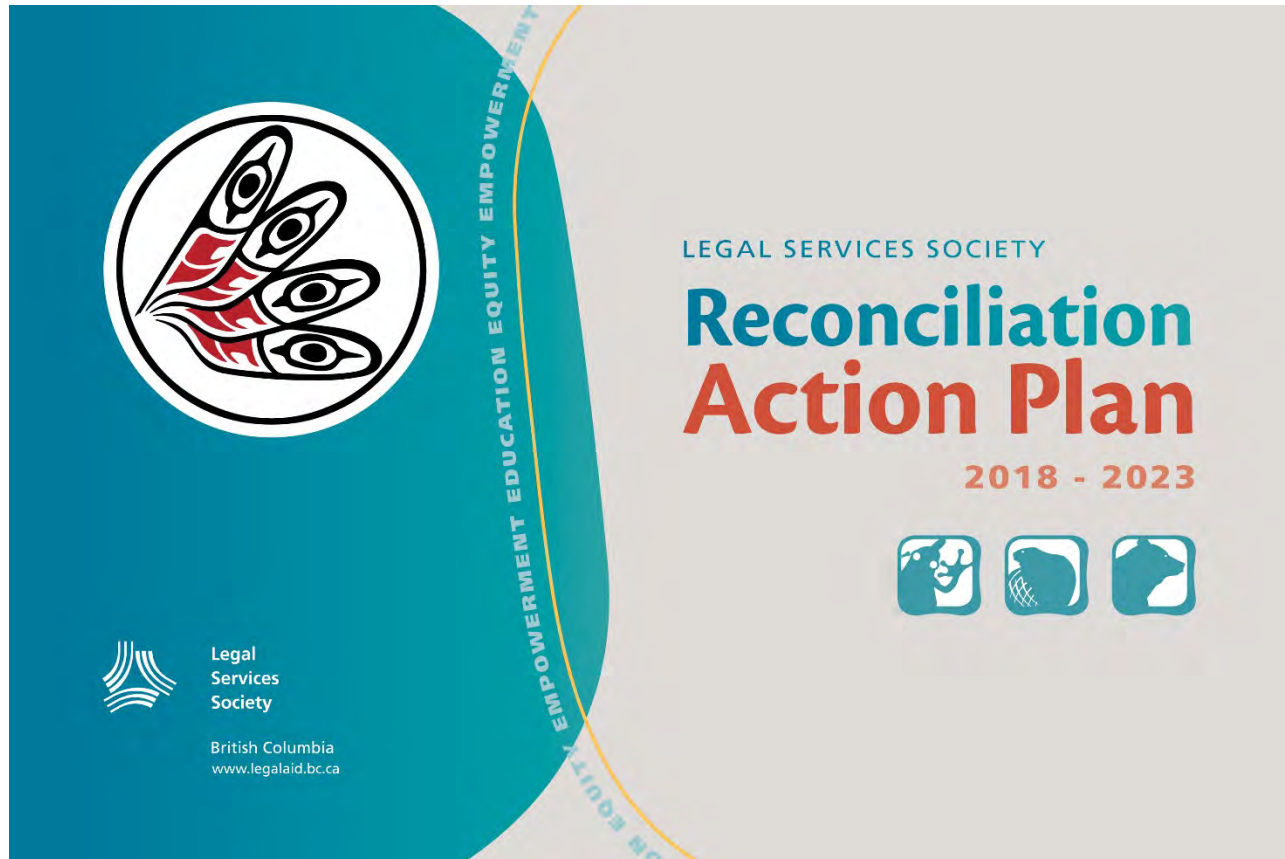
Indigenous Services Division



The division's work is focussed on ensuring that legal aid services better meet the needs of Indigenous people in BC and advancing Legal Services Society's (LSS) commitment to Reconciliation.

The IS division provides advice and representation services at our Terrace office and at the Parents Legal Centres (PLCs). IS also coordinates meaningful relationships and engagement between Indigenous communities and the society, provides strategic direction and expertise on Indigenous issues, funds and coordinates Gladue reports for legal aid clients, and supports the integration of Indigenous Services throughout LSS.

LSS' Reconciliation Action Plan



Indigenous Publications



Aboriginal Legal Aid Website

The screenshot shows the homepage of the Aboriginal Legal Aid in BC website. The header is teal with a dark teal navigation bar. The navigation bar includes links for 'Cover your tracks', 'Hide this site', 'CONTACT LEGAL AID', and contact numbers for Greater Vancouver (604-408-2172) and elsewhere in BC (1-866-577-2525). A search bar is also present. Below the navigation bar is a teal banner with the Aboriginal Legal Aid in BC logo and the text 'Legal Aid for Aboriginal people in BC'. A dark teal menu bar contains links for 'HOME', 'CHILD & FAMILY RIGHTS', 'COURTS & CRIMINAL CASES', 'LEGAL ISSUES ON RESERVE', 'LEGAL AID CAN HELP', 'RESOURCES', 'ISSUES & UPDATES', and 'ABOUT US'. The main content area features a large teal box with the text 'Are you Aboriginal? Do you have a legal issue? Learn your rights and what you can do.' and a search bar with the text 'What do you need help with?'. Below this is a link 'Is this site for you?'. The background of the main content area is a collage of wooden planks. At the bottom, there are two images: one of a smiling woman and child, and another of a person looking out over a body of water.

Cover your tracks | Hide this site | CONTACT LEGAL AID | 604-408-2172 (Greater Vancouver) | 1-866-577-2525 (elsewhere in BC) | Search

 **Aboriginal Legal Aid in BC** | Legal Aid for Aboriginal people in BC

HOME | CHILD & FAMILY RIGHTS | COURTS & CRIMINAL CASES | LEGAL ISSUES ON RESERVE | LEGAL AID CAN HELP | RESOURCES | ISSUES & UPDATES | ABOUT US

Are you Aboriginal? Do you have a legal issue?
Learn your rights and what you can do.

What do you need help with? 

[Is this site for you?](#)



Aboriginal Community Legal Worker



Anita Paige

Provides services in
Duncan & Nanaimo

Aboriginal community legal workers are Legal Services Society (LSS) staff who can:

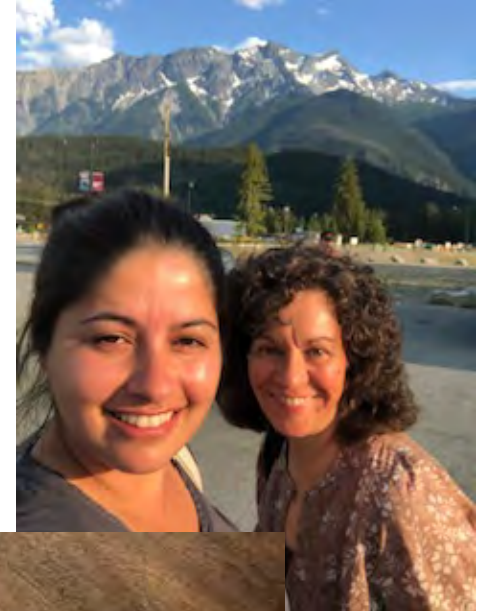
- give legal information and limited advice about:
 - family and child protection law,
 - Indian residential schools,
 - housing, and
 - wills and estates
- explain the legal process and other options such as mediation
- attend court with you
- help you prepare forms and letters
- participate in negotiations
- talk on your behalf to:
 - Ministry of Children and Family Development staff,
 - a legal aid lawyer,
 - duty counsel, or
 - your band
- give referrals to other services

Community Services



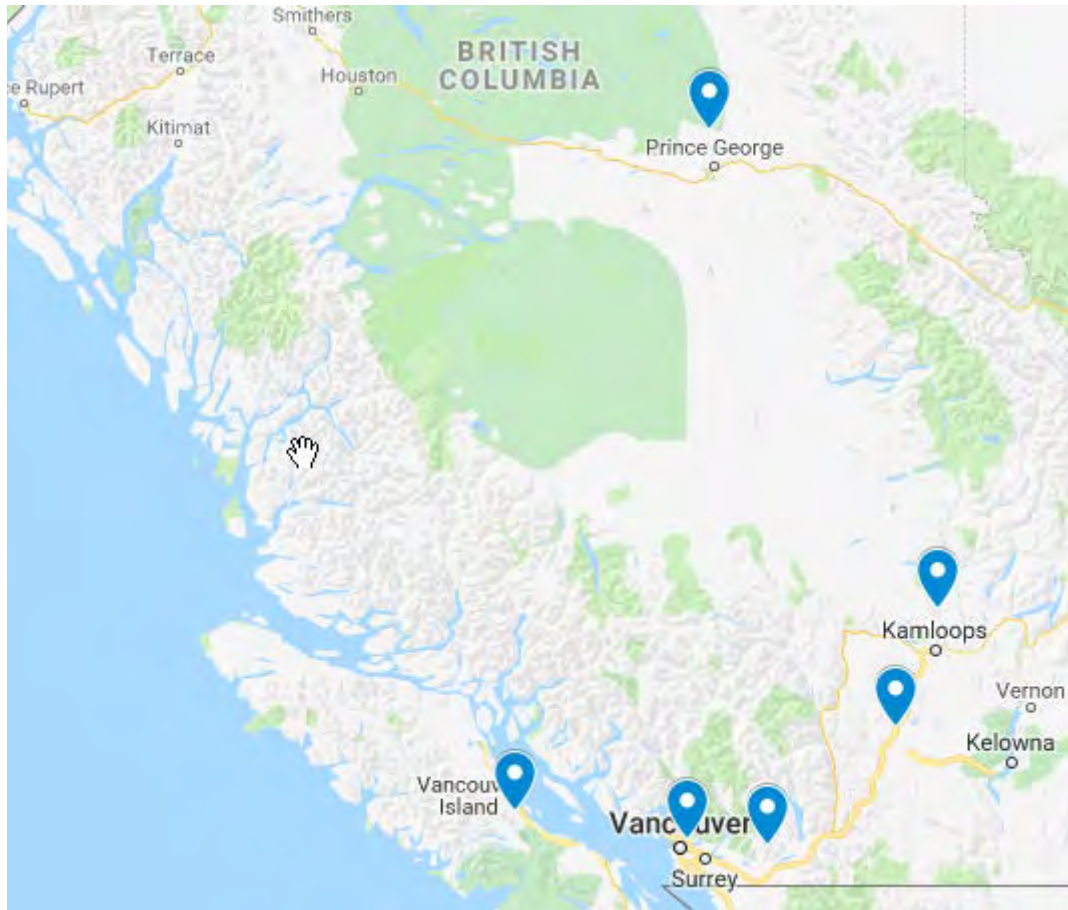
We provide training, and support for community workers, advocates and others who assist LSS clients and low-income people.

LSS also partners with organizations in rural, remote and Aboriginal communities to connect them to legal aid and other resources.



LSS's community, Aboriginal and information services, including our publications, are mostly funded by the Law Foundation and Notary Foundation.

First Nations/Indigenous Courts



*We support First Nations
Courts in 6 Locations*

- New Westminster
- Kamloops
- Duncan
- North Vancouver
- Merritt
- Prince George

*Duty Counsel
Elders*

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

Parents Legal Centres

Parents Legal Centres can help

The Parents Legal Centre (PLC) focuses on helping parents resolve their child protection matters early and collaboratively. It offers services at any stage of the child protection matter.

LEARN MORE >



<https://youtu.be/veP-2wY5orE>

What are PLCs?



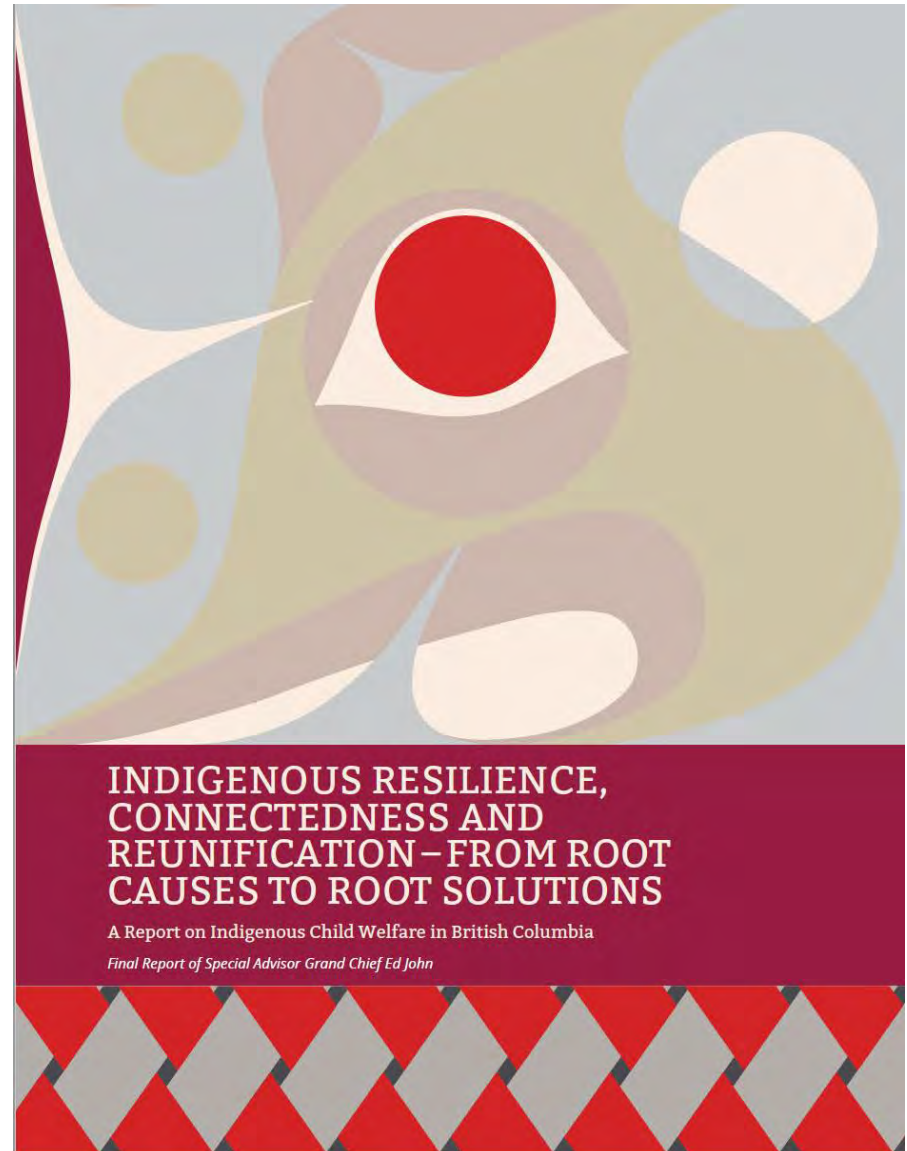
PLCs are **legal centres, which focus on helping parents resolve their child protection matters.**

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.

Grand Chief Ed John Report



"Understanding how the current justice system impacts on Indigenous peoples is important in order to address systemic roots of marginalization, denial of fundamental human rights, intolerance, indifference, racism, and discriminatory standards and practices impacting on Indigenous peoples"



Grand Chief on the Parents Legal Centre pilot:



“The PLC is a pilot project that takes a new approach to child protection by focusing on early intervention and the integration of non-legal social services to support parents.”

“The PLC’s holistic approach to working with families has translated into changing approaches in the way that MCFD and the justice system respond to child protection cases.”

“During my engagement, I heard strong support for expansion of the PLC pilot to better serve Indigenous communities across the province (Recommendation 16).”

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



Conditions of PLC model:



Client agrees to participate in consensual dispute resolution processes (no hearings or trials)



Client meet financial eligibility criteria



If the matter cannot be resolved through collaborative processes, the client will be referred to a private lawyer who can take the case to trial

Household income

Your **net monthly income** must be below the amount for your household size in the table below. The guidelines apply to standard cases, with increased guidelines for child protection cases and criminal early resolution cases.

! Only a legal intake assistant can determine if you're **financially eligible** for legal aid. The following information is **not** complete.

Net household monthly income table

Household size	Standard cases	CFCSA and Criminal Early Resolution cases
1	\$1,630	\$2,630
2	\$2,280	\$3,280
3	\$2,920	\$3,920
4	\$3,570	\$4,570
5	\$4,220	\$5,220
6	\$4,870	\$5,870
7 or more	\$5,520	\$6,520

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

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

Questions?



Family Violence and the Family Law Act

Key Features

- Focus on Family Violence is woven throughout the Family Law Act
- Requirement for Family Law Dispute Resolution Practitioners to complete Family Violence Screening Training
- Impact of Family Violence brought into the best interest of the child test for all determinations involving children
- Criminal enforcement of Protection Orders

Definition section 1

"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

Section 1 cont.

- (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;

Definition section 37

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;

Section 37 Cont

(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.

Definition section 38

38 For the purposes of section 37 (2) (g) and (h) [*best interests of child*], a court **must** consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

Section 38 Cont.

- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

Section 183

- (2) A court may make an order against a family member for the protection of another family member if the court determines that
 - (a) family violence is likely to occur, and
 - (b) the other family member is an at-risk family member.
- Note: Protection Orders can be stand alone orders

Section 183 Cont

Order may include:

- Restrictions on communication, including means
- Restrictions on attendance
- Restrictions on following
- Restrictions on firearms
- Removal from family residence
- Supervision of obtaining personal belongings
- Seizing firearms etc.
- Requirement to report to court
- Any other term of condition to protect

Section 184

Factors in making an order

- History of family violence
- Escalating/Repetitive behaviour
- Patterns of controlling behaviour
- Risk factors – substance abuse, employment/financial problems, mental health problems, access to weapons
- Family member's perception of safety
- Vulnerability circumstances – age, pregnancy, health or financial dependence
- Extent of any injuries

Other remedies

Conduct Orders – can require counselling, attending services, restrictions on communication

- Benefit of client enforcing
- Can help in situations where safety is a concern but a protection order may not be appropriate or likely

Protection Orders v. Peace Bonds

Protection Order

- Enforced criminally
- Client chooses to proceed
- Preventative

Peace Bond

- Enforced criminally
- Crown chooses to proceed
- Post-event

Attending Court

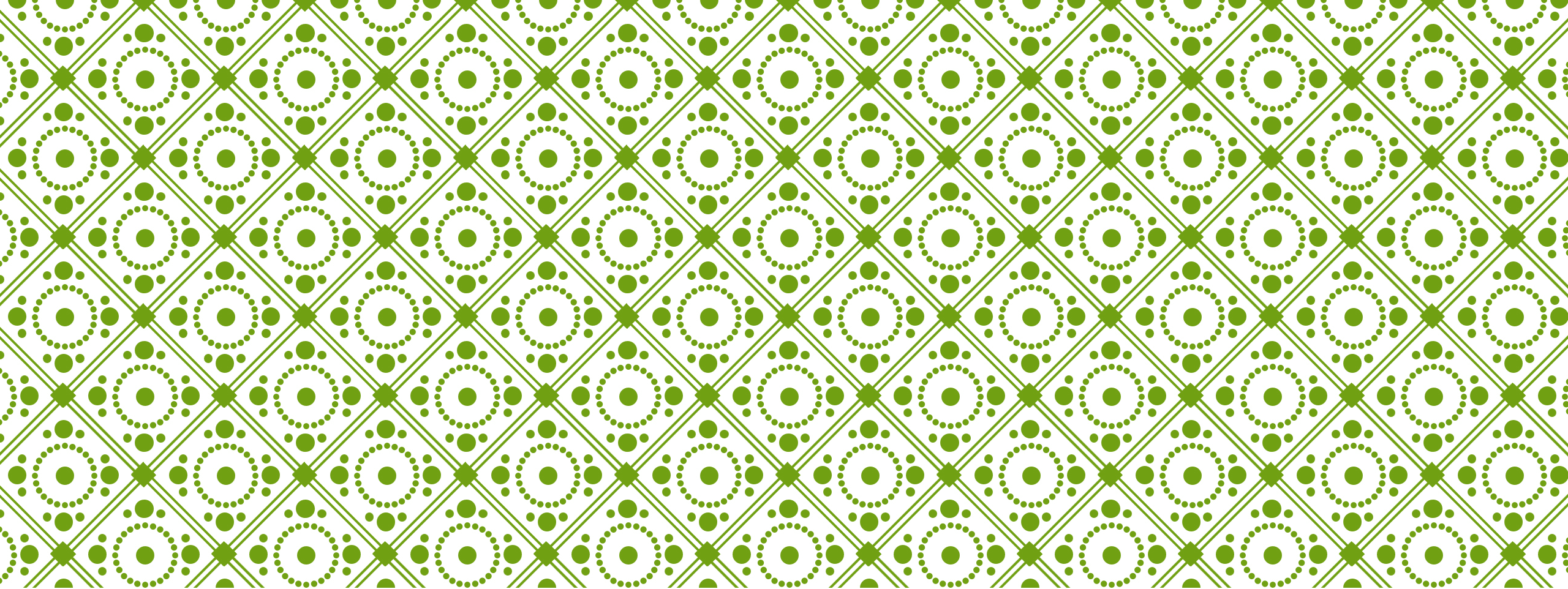
- Provincial vs. Supreme Court
- Application and procedure
- Drafting
- Service
- Protection Order Registry

Supporting Survivors

- Often court process is traumatizing experience for individuals
- Sometimes hard to get information for survivors re breaches and following probation
- Judges hearing matter may not have a family or criminal law background to fully understand the family's context

Practice Tips

- Screening Tools
- Concerns with any “without notice orders”
- Describe the behaviour that is of concern, don’t use labels
- Consider what terms you want in the order (even if registry is drafting)
- Consider if conduct and/or protection order is warranted
- Ensure clarity in terms of distances and types of communication
- Safety Planning



OVERVIEW OF CHILD PROTECTION LAW

Presented by **Karen Tse** of
Rockies Law Corporation
in Fernie, British Columbia

BC FAMILY AND PARENTING LEGISLATION

Child, Family and Community Service Act (CFCSA)

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

Family Law Act (FLA)

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

HIGHLIGHTS OF THIS PRESENTATION

This presentation will provide an overview of child protection law

There will also be Case Studies which explore things to consider when working with a client who is involved with the Ministry

- The case studies are based on actual situations I have encountered, but names and facts have been changed to protect client confidentiality

A REPORT IS MADE

Anyone who believes a child has been (or is likely to be) abused or neglected, must report it

- The Director cannot release the names of a person who reports child abuse

Who investigates

- Child protection workers (sometimes called social workers) investigate
- Sometimes people make false reports – the Director looks at all available information
- Some Aboriginal communities have Aboriginal delegated agencies

INVESTIGATION

Child protection worker

- Makes assessment by asking questions and gathering information
- Some cases close after short assessment if child does not need protection
- Referral to services
 - Home support, counselling, parenting classes
- May speak with the child alone and with people who knows the child
- Parents should explain their views and work with Ministry from early stage to protect the child and make the situation better

INVESTIGATION

- Child protection worker will decide:
 - If the child needs or does not need protection
 - If protection required, child may or may not be removed

CASE STUDY — DRINKING AND NEGLECT

Background

- The Ministry social workers have received reports that Janet has been out partying and leaving her young children alone at home. The Ministry believes the children are in need of protection
- Janet belongs to the Ktunaxa Nation. She lives in the same community as her sister, mother and several aunts and uncles
- Janet has passed out twice this month after binge drinking while caring for the children
- Janet's family is willing to help her and the kids

COLLABORATIVE DECISION MAKING

- The family has the right to be involved in decisions about the children's care
 - Parents and a child protection worker will negotiate to reach an agreement about what's best for the children
 - A neutral person (someone who is not involved in making decisions about the child's protection) guides participants through a process that lets each person share their story and be a part of the decision making

WHEN CAN FAMILIES USE COLLABORATIVE DECISION MAKING?

At almost any time in the child protection process

- Parents can negotiate with Ministry to make a plan or agreement about the children's care
- As soon as the Ministry raises concerns about the children's safety, parents can talk with the child protection worker to figure out what is best for the children
- Even if the case is already in court, parents can try to resolve the issues out of court – social workers and parents can come up with a Safety Plan which is a plan about how the children will be cared for during a child protection investigation

SAFETY PLAN

- Identifies key safety people who the children can contact
- Identifies people to assist the parents and monitor children's safety
- Identifies people who will help out if parents are ill or under stress
- Makes arrangements in situations (like celebrations) when the parents may use alcohol
- Makes arrangements about others who might visit the family
- Addresses how long the safety plan will be in place for

A COLLABORATIVE DECISION

By working with the child protection worker, parents may be able to resolve issues faster than going to court and in ways that best suit the family. Issues that can be dealt with using shared decision making might include:

- Where the children will live
- How to keep the children safe
- What services the family's needs
- Plans for the children to return home
- How the family and community will support parents and the children

A TYPE OF COLLABORATIVE DECISION MAKING: FAMILY GROUP CONFERENCES

- Child's parents, relatives, close friends, or other community members meet about how to keep the child safe. This works well if there are supportive extended family or community
- Questions to ask:
 - What are we worried about?
 - What is going well? How do we help the children grow up well?
 - What do we need to do?
 - Janet will be sober during visits. Janet is going to attend AA sessions
 - Janet will ensure that there is no drinking when she is caring for the kids
 - Janet's family will supervise some visits to begin with. They will also speak up if they notice Janet is not doing well. Social worker may drop in to check

FAMILY GROUP CONFERENCES

How to get started

- Once the Ministry decides that the child needs protection, the child protection worker can offer to refer the family to a family group conference coordinator. Parents can also ask the child protection worker for a referral as well.
- The coordinator is trained and works for the Ministry.

How does a family group conference work?

- Parents work with the family group conference coordinator to decide who will participate.
- The coordinator meets with the participants before the conference to prepare them for the meeting.

FAMILY GROUP CONFERENCES

At a family group conference

- Everyone will gather to talk about the reason for the meeting — the need for a family plan that deals with specific concerns about the child's safety
- A coordinator organizes the meeting and helps everyone stay focused
- Parents can get help to work through issues and learn about how the family can get support services
- Next, the invited community members and professionals will leave the room. The family will have private time to discuss a plan for the child's protection
- The family will develop a plan for child's safety and well-being
- A child protection worker will look the plan over to make sure it addresses child's safety concerns and speak with the family

TRADITIONAL DECISION MAKING

Traditional decision making

- Similar to a family group conference
- Includes the indigenous community the child belongs to
- Parents can invite Elders and other community members
- Allows the family to make decisions based on cultural traditions and values

AGREEMENTS USING COLLABORATIVE DECISION MAKING

Plan of Care

- Plan for how to meet the child's needs while the Ministry is involved with the family; for example, where the child will live while the case is in court

Access Agreement

- Agreement about when and where parents can visit with the child if the Ministry has removed the child from the home

TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE

Independent Legal Advice

- Speak with lawyer before and after the meeting
- Lawyer can also attend meetings with parents, explain their rights, or help parents negotiate with the Ministry
- Before parents sign a written agreement, they can request to have a lawyer look over it

TIPS ABOUT MAKING AGREEMENTS FOR CHILD'S CARE

Be a part of the decision making process

- Make the plan fit the needs of the parent and child. For example, if a parent has a drug or alcohol problem, the Ministry might ask that parent to go to drug counselling. Parents should ensure they select a counselling program that is workable
- If a parent agrees to place a child in the Ministry's care, parents should ensure that the child have visits with them as well as other important people
- Make the agreement for the shortest possible time
- Ask the Director to be clear about what services or programs will be provided to the parents and the extended family

TIPS FOR MAKING AGREEMENTS FOR CHILD'S CARE

Be realistic

- Understand what is agreed to
- Agree only to what the parent knows is helpful. Always put the child's best interests first
- Be clear about expectations
- If a parent cannot follow through with parts of the agreement, there could be serious consequences. Ask the Ministry what will happen if a parent cannot complete everything that is required, and include this in the written agreement

TIPS FOR MAKING AGREEMENTS FOR CHILD'S CARE

Check time limits

- Be sure the agreement gives the parents enough time to make the changes required
- Check that programs and counselors can meet the timelines in the agreement
- Request flexible time limits

Keep notes

- Keep notes of meetings with the social worker, advocate, and lawyer. Write down what people say they will do and what the parents agree to do
- Keep track of all important dates — such as meetings, court dates, and deadlines
- Parents should keep notes and papers sorted so that everything is in one place

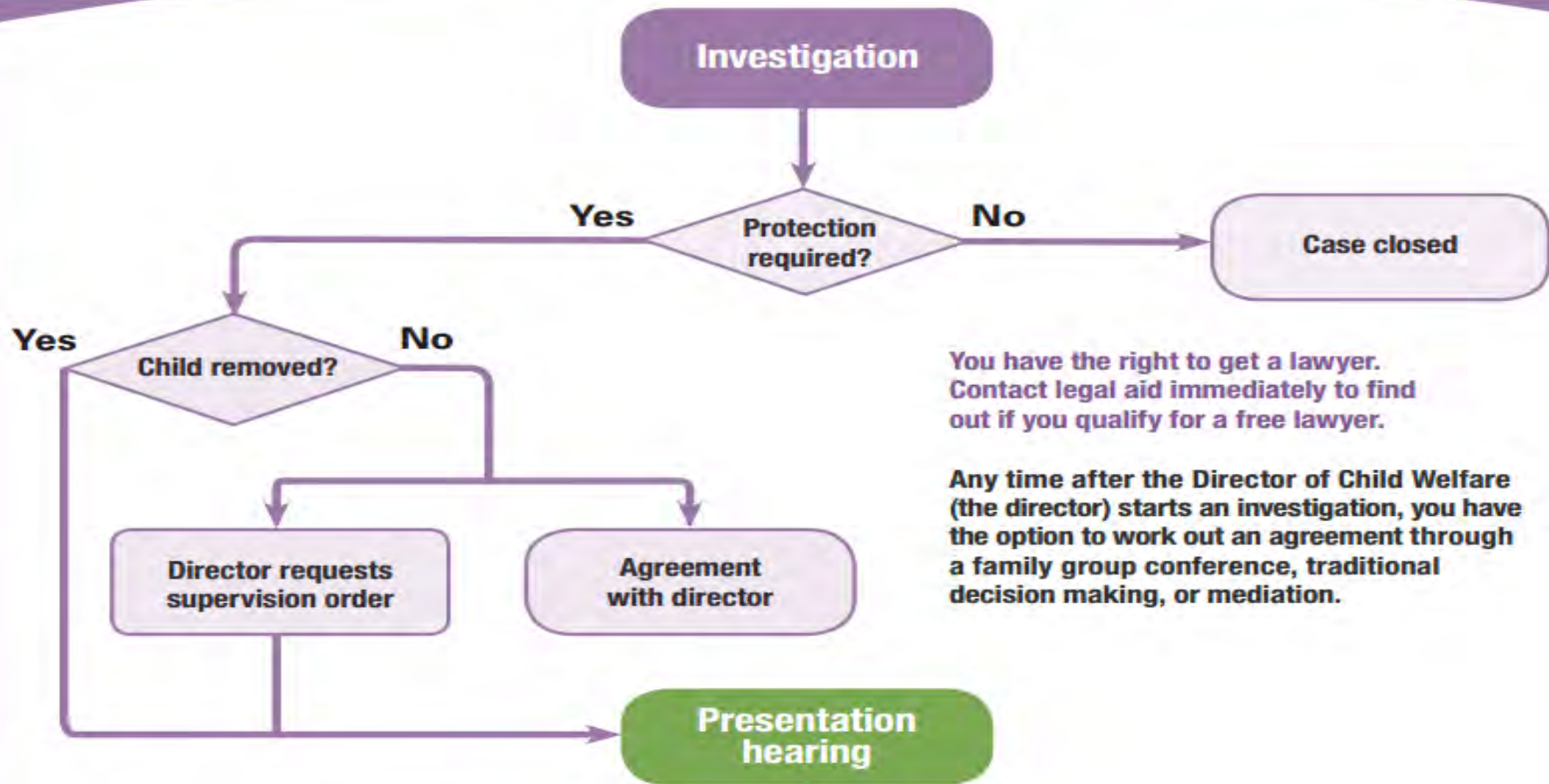
CASE STUDY — MINISTRY APPLYING FOR A PROTECTION ORDER

Background

- The police were dispatched to Tom's home
- When the police arrived, they see drug paraphernalia throughout the house
- Tom is passed out on the couch
- The house is a mess, and the children have soiled diapers and appear very unkempt
- The police have contacted the Ministry
- The Ministry has protection concerns around Tom's drug use and the children being neglected

The Child Protection Process in British Columbia

Family Law in BC



WHAT HAPPENS IN COURT

When a child has been removed from the home, or the child protection worker applies for a supervision order without removal, the next step is to go to court.

The court process usually has two stages:

- **Stage 1) Presentation stage**
- **Stage 2) Protection stage**

THE PRESENTATION STAGE

If the children were removal

- Director presents a report to the court within seven days. This starts the court process for the Presentation Hearing

Without removal

- If the child protection worker applies for a supervision order without removal, the Presentation Hearing will be held within 10 days after the application date and the parents receive a copy of the application

WHAT'S IN THE REPORT TO COURT?

The Report to Court should include this information:

- Why the Director decided to remove the child or ask for a supervision order
- What other steps the Director tried before taking that action
- The date, time, and place of the action
- Who was there at the time
- What terms the Director wants in a supervision order without removal
- How the Director plans to care for the child — called an Interim Plan of Care
 - Children who are 12 years and older have the right to have this plan explained to them, and to tell the Judge what they want. Under special circumstances, the Judge can also say that the child may have his or her own free lawyer

TIPS FOR PARENTS AT THE PRESENTATION HEARING

- Attend and be on time
- Can have lawyer present
- If the parent cannot be present, can request to participate by phone
- If child is Aboriginal, the Director must tell the child's community (such as the band) if the Director removes the child from a home, even if the child does not live on reserve. Someone from the community can then come to the Presentation Hearing

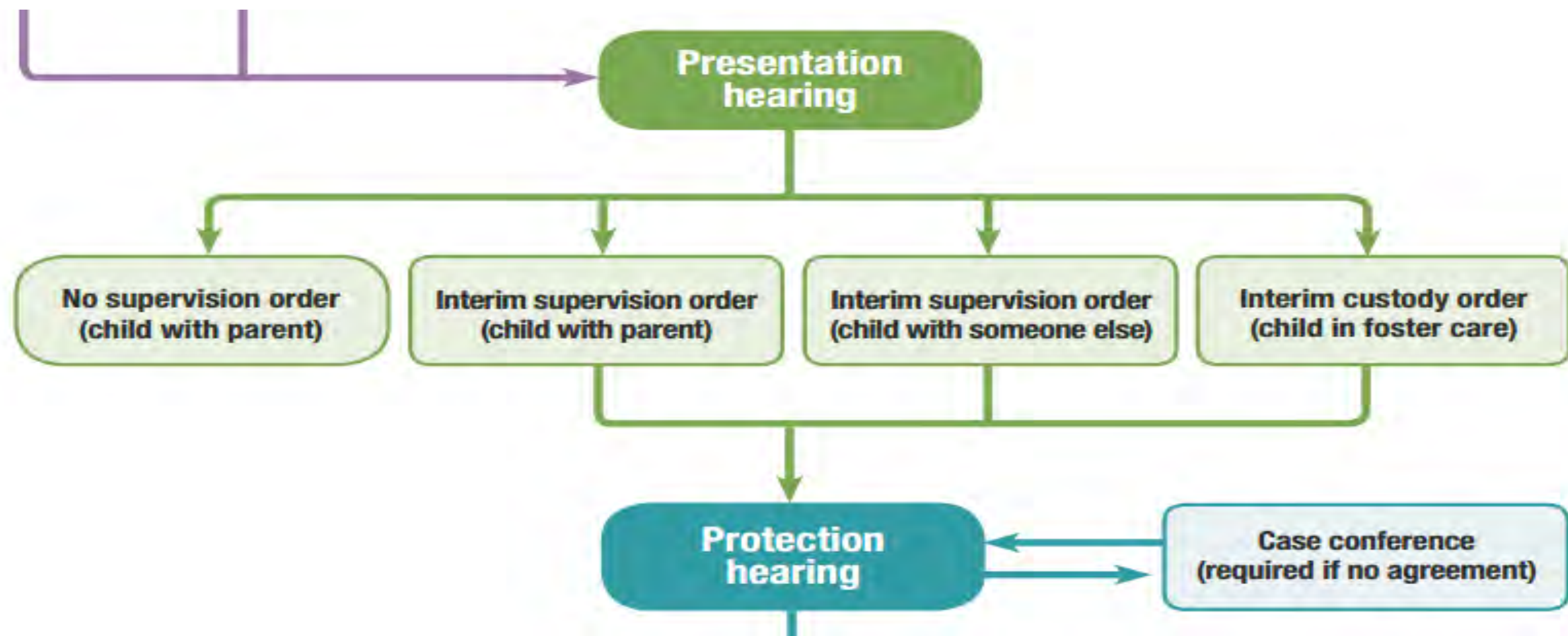
AT THE PRESENTATION HEARING

- Before or at the Presentation Hearing, the parents will receive a copy of the child protection worker's document called the Report to Court
- Judge will ask whether they agree with what the Director wants to do in the Report to Court.
 - If the parents agree, the Judge will make an order right away. That will be the end of the Presentation Hearing.
 - If the parents don't agree, the Judge will schedule another day for the Presentation Hearing to learn more about the case. It's usually two to six weeks later. These hearings usually take half a day, but they could take longer

JUDGE MAKES AN INTERIM ORDER

At the Presentation Hearing, the Judge may

- Make an Interim Order which says how child will be cared for
 - Order stays in place until Protection Hearing is complete, or another order is made
 - Each order will also have the date and time of the start of the Protection Hearing
 - The Protection Hearing must be scheduled within 45 days of when the Presentation Hearing ends



FOUR TYPES OF INTERIM ORDERS

No supervision order (child with parent)

- Parents demonstrated they are able to care for the child, and a Protection Hearing isn't needed. The Judge will return the child to live with the parents without supervision. This will end the court process
- This could happen if the parents have worked out an agreement with the Director, and/or if the parents have made changes that the child protection worker suggested

Interim supervision order (child with parent)

- Child will live with the parents, and the Director will supervise the care the parents give. This order will include conditions the parents must follow

Interim supervision order (child with someone else)

- Child will live with another person who is able to care for the child under the Director's supervision. This order will set out how the child will be cared for and may set out when and how the parents can visit

Interim custody order (child in foster care)

- Child will stay in the care of the Director (foster care). This order may set out when and how visits will occur

TIPS FOR PARENTS AFTER REMOVAL

- Attend court hearings
- Ask for access visits, which can also be by phone or video conference
- Ask the child protection worker to plan visits – if refused, make a request for access in court
- Try to see the child as often as possible – show that the parents care
- Be on time. Give notice for cancellations
- Director may request supervised access. Parents should plan which adult will supervise. If no agreement, may go to mediation

Ask for case information

- Can ask to see child protection worker's notes
- Can ask to see reports (e.g. Suspected child abuse and neglect (SCAN) report)

THE PROTECTION STAGE

The Judge will decide whether the child needs protection and who will care for the child in the future. The Judge makes this decision at the Protection Hearing

- The Protection Hearing must start no more than 45 days after the Presentation Hearing ends
 - The whole process can last up to several months. Or it can end on the same day that it starts, depending on the details of the case and when the courtroom is free
- At least 10 days before the Protection Hearing, the Director must provide an application that explains the order sought and a plan of care that says how the Director wants the child to be looked after

CASE CONFERENCE AT THE PROTECTION STAGE

- A case conference is a lot like mediation, except the Judge is in charge instead of a mediator
- It's a meeting between the parents, lawyers or advocates, the child protection worker, the Director's lawyer, and the Judge
- The Judge may ask the child to be there if the child is more than 12 years old, other family members, or people involved with taking care of the child
- When there is an Indigenous child, a representative of the Indigenous community may also be there

CASE CONFERENCE

- Parents should be prepared to speak for themselves at a case conference. Judges usually want to hear directly from the parents
 - Discuss what to say with a lawyer beforehand
 - The Director can't use what the parents say at the case conference against them in court (all discussions are on a 'without prejudice basis')
 - However, the Director can try to use what the parents say to find out more information to use at a hearing
- Supervision orders or custody orders can't be made at the case conference unless everyone agrees
 - If parents work out an agreement with the Director in the case conference, then the Judge can make a consent order and that ends the Protection Hearing

CASE CONFERENCE

Things to keep in mind

- If the parents and the Director cannot agree at the case conference, they will then set a date to complete the Protection Hearing and have a Judge decide what will happen
- How long it takes to finish the Protection Hearing will depend on the length of the trial and available court dates

WHAT A CONSENT ORDER MEANS

If the parents and the Ministry agree on a plan of care but disagree whether the child needs protection, they can make a written agreement

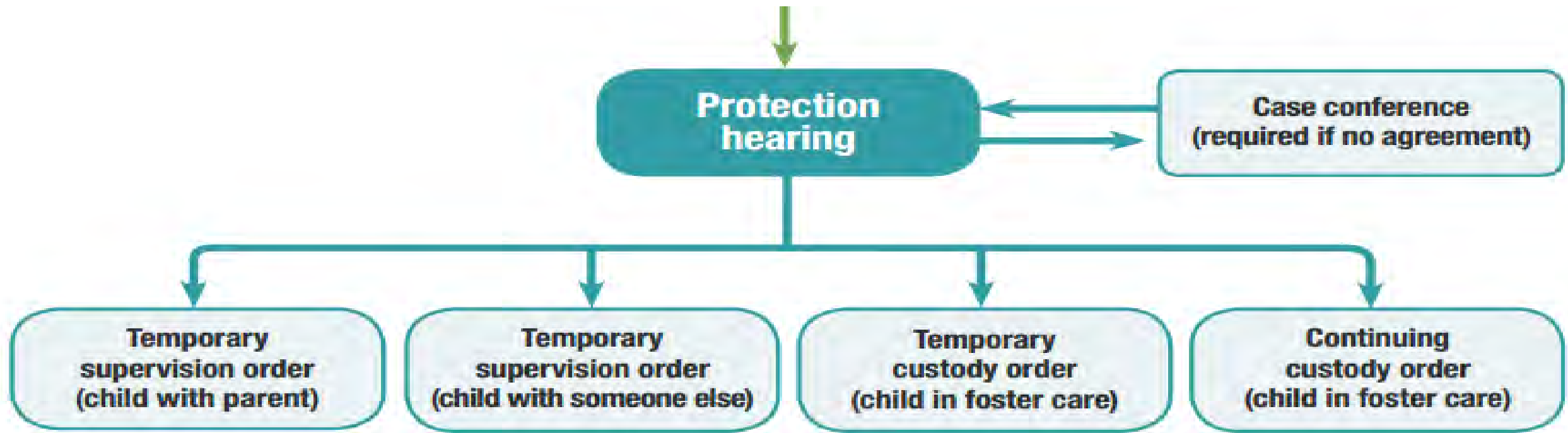
- The Judge may then make what's called a Consent Order and doesn't have to decide that the child needs protection
- In most cases, both parents have to agree before the Judge can make a Consent Order

IF NO CONSENT AT THE CASE CONFERENCE: PROTECTION HEARING

Protection Hearing

Before the Judge can decide whether to make the order the child protection worker applied for, the Judge must first decide whether the child needs protection

- If the parents agree that the child needs protection, the Judge can make that decision at the start of the Protection Hearing
- If the parents don't agree that the child needs protection, then a hearing, with evidence and witnesses, must be held before the Judge can make (or refuse to make) that decision



JUDGE MAKES A TEMPORARY ORDER

If the Judge decides the child needs protection, the Judge will make one of the following orders at a Protection Hearing and will decide how long the order will last:

- **Temporary supervision order (child with parent):** child will live with parents, and the Director will supervise the care the parents give
- **Temporary supervision order (child with someone else):** child will live with another person who can care for the child under the Director's supervision
- **Temporary custody order (child in foster care):** child will stay in the care of the Director (foster care).
- **Continuing custody order (child in foster care):** If there's a serious problem that can't be fixed within the time the court allows, the Judge might make this order. It means the child will stay in the care of the Director (foster care) without limits on how long this will last. The Judge makes this order in very rare cases.

The Judge will include terms and conditions in the supervision order and an order of access if the child will stay with another person.

CASE STUDY — MINISTRY APPLYING FOR PERMANENT TRANSFER

Background

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

HOW CAN AN FLA ORDER HELP VANESSA?

Goal

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

FLA Consent Order

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

MEDIATION IN CHILD PROTECTION CASES

What is mediation?

- Mediation is an option of collaborative (shared) decision making where someone with special training (a mediator) helps people solve problems
- Mediators are neutral & cannot provide legal advice
- Mediators work to help both sides listen to and understand each other and then together come up with a solution that feels fair. Mediators aren't Judges and they don't take sides. They won't tell any party what to do
- Under the CFCSA, parents, children and child protection workers or anyone directly involved in a child protection case can suggest mediation to help solve various problems. Both sides have to agree to try mediation for it to go ahead

MEDIATION

- Mediation can help parents deal with issues such as:
 - What do they want to have happen
 - What does the child protection worker want to have happen
 - What are they expected to do (or not do) to get the child back
 - What services can be provided for them and their child
 - How long will the child stay in care
 - Where will the child live temporarily
 - How and when can they or others have access to the child
 - What terms and conditions should be put in a supervision order
- What does mediation cost?
 - Free. The Ministry may also pay for some of the parents' costs so they can be at the mediation sessions, such as day care, meals, and transportation. Make sure the parents ask for that help

HOW DOES MEDIATION WORK?

The mediator's job is to help balance the power between the sides

- That is hard when one side is a large government Ministry, and the other is a single parent or child. Parents may have to remind the mediator about that and how it feels for them
- Speak up clearly if the parents think the mediator is taking sides or acting unfairly in any way
- Parents should state their needs, opinions, and suggestions clearly and honestly. It's the mediator's job to help them do that
- They can ask to have a private session with the mediator at any time during the mediation process if they have concerns
- Parents should only agree to what is fair and fits the family

HOW DOES MEDIATION WORK?

Things to Keep in Mind

- Be willing to hear and understand the child protection worker's concerns
- At any point, the parents have the right to talk to a lawyer before making a final decision
 - The parents may be able to have their lawyer come to the mediation (sometimes to wait in a separate space)
- Parents have the right to stop mediation if they find it's not working

CASE STUDY - FAMILY VIOLENCE & USING FLA TO RESOLVE MATTERS

Background

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

CLIENT GOALS

Goals

- Demonstrate to the Ministry that Amy is willing to protect the children
- Amy wants to ensure that the children are not removed from her
- Amy wants to obtain some legal advice, but she has a limited budget

LEGAL AID

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

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

DOESN'T QUALIFY FOR A FULL LEGAL AID FILE

Alternatives

- **Family LawLINE**

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

- **Duty Counsel**

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

- **Canadian Bar Association Lawyer Referral Service**

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

HOW CAN AN FLA APPLICATION HELP AMY?

Make the following applications under the FLA

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

TIPS FOR THE APPLICATION

Some helpful tips

- If the matter is urgent, the client can prepare, along with the Application, a [Notice of Motion and an Affidavit](#)
- A request can be made that the matter is urgent, and the usual 30 day waiting period should not apply

EVIDENCE FOR FLA FILE

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

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

Suggestions

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

OBTAINING MINISTRY DISCLOSURE FOR AN FLA FILE

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

The Disclosure Process

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

CASE STUDY — PARENT NEEDS REHAB

Background

- Wendy is a single mother with two children. She has struggled with depression for several years. Recently, she has been abusing prescription medication
- Recently, she came to the realization that she wants to change her life
- She really wants to go to rehab. The best program for her is a live-in treatment centre in Vancouver, and she needs someone to look after the children while she is gone for six weeks.

VOLUNTARY CARE AGREEMENT

Ministry might offer

- to place the child in foster care on a voluntary and temporary basis.
- In this case, parents sign a Voluntary Care Agreement with the Ministry.
 - A written agreement proposed when parents face a crisis that leaves parents temporarily unable to care for child at home.
- For example, sole parent who needs to enter the hospital or a treatment program.
- Worker makes sure situation meets the conditions for agreement and explores all other options first

VOLUNTARY CARE AGREEMENT

Contents of the Agreement

- Prepare plan for the earliest possible return and for any support the parents might need
- The initial term for least amount of time needed to recover from crisis.
 - Three months or less for children under five years old, and six months or less for older children.
- Agreement can be renewed for a limited number of months based on the age of the child involved.
- The Ministry's goal is to reunite children and families as soon as possible.
- If possible, parents contribute to the care of the child based on income

EXTENDED FAMILY PROGRAM

If a social worker takes the children from the home because the parent is temporarily unable to take care of them, that parent can ask the social worker to place them in the care of:

- a family member,
- a friend who has an important relationship with them, or
- someone who has a cultural or traditional connection to them

Instead of going into foster care the children will stay with someone they know

- The program's goal is to return the children to the parents when possible

EXTENDED FAMILY PROGRAM AGREEMENTS

An Extended Family Program Agreement:

- sets out the best way to meet the child's needs, and
- how long the child will stay with the caregiver.

Requires:

- social worker, caregiver and parent work as a team to come up with a plan for child's care. The plan will include the services and supports the child needs.

Parent must deal with the issues that led to them being unable to take care of the child. This is so that the Ministry can return the child when the agreement ends.

EXTENDED FAMILY PROGRAM AGREEMENTS

The social worker must screen the caregiver suggested

The social worker will:

- review the caregiver's CFCSA records;
- do a criminal record check;
- check personal references; and
- check their home.

THE LATEST: BILL 26

- If passed, the proposed bill will give Indigenous communities greater involvement in child-welfare decisions to help keep their children out of care, safe in their home communities and connected to their cultures
- The current law requires the ministry to notify an Indigenous child's community after the child is removed. If the bill passes, the ministry could choose to involve the community earlier on, before a child is removed from their family
- Where a child is removed, the proposed changes would allow the Ministry to step back if the community and the parents can come up with a plan "that the Director considers adequate to protect the child."



QUESTIONS?

Thank you for your attention during my presentation.

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

Working with LSS Intake

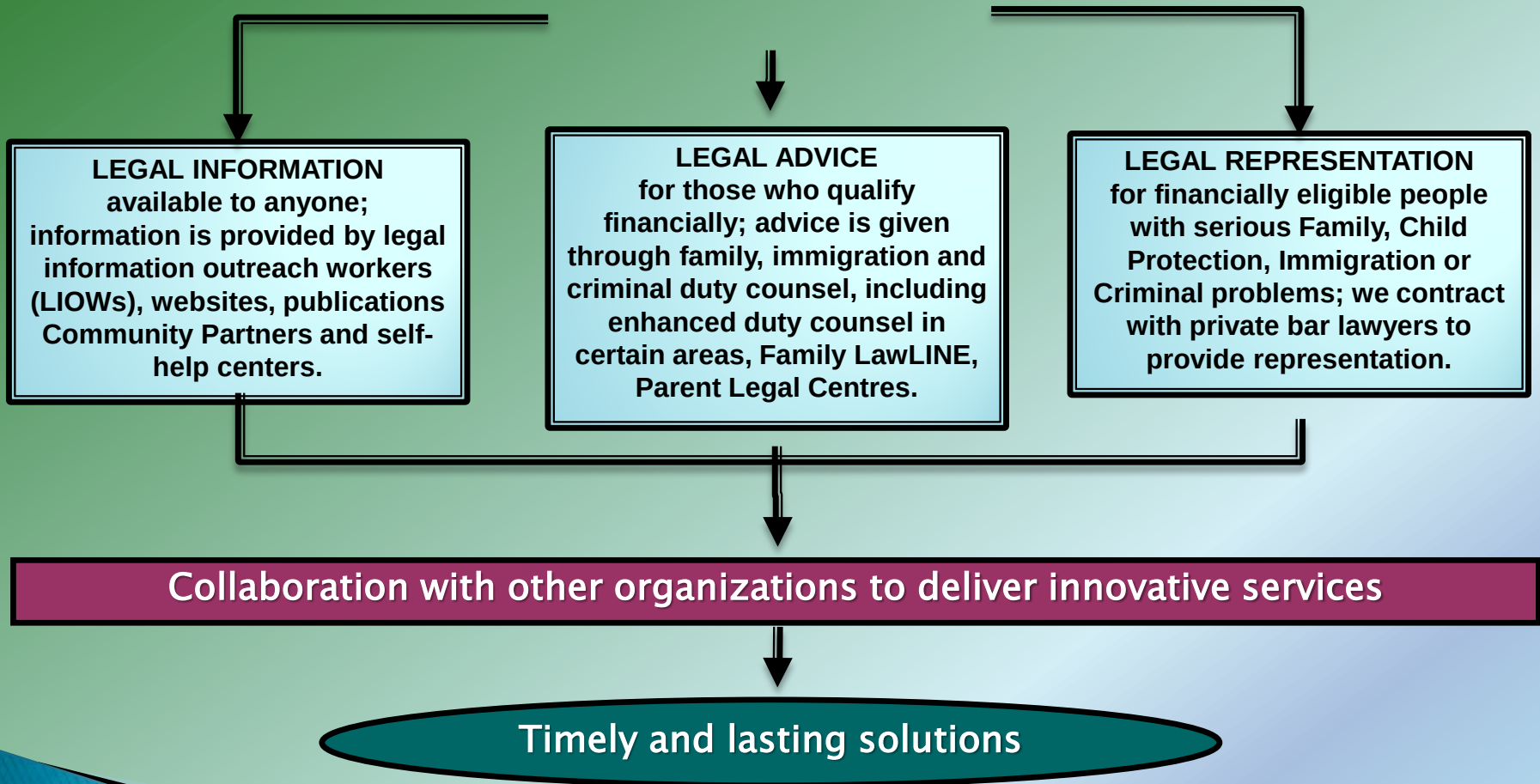


July 2019

Deneen, Provincial Supervisor, Legal Aid Applications

Services Overview

Legal Aid



Community Partners

We have 25 Community partners providing services in 33 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



Parent Legal Centres and Expanded Criminal Duty Counsel

- We now have Parent Legal Centres (PLC's) in Vancouver, Surrey, Prince George, Campbell River, Smithers/Hazelton, Duncan, Kamloops, Victoria, and Williams Lake.
- Expanded Criminal Duty Counsel (Out Of Custody – Port Coquitlam)



PLC Locations and Geographical Areas the PLC's Cover

- ▶ *PLC's cover cases in the city they are located in, as well as other geographical locations*

<u>PLC</u>	<u>Geographical Location</u>
▶ Campbell River	Campbell River, Port Hardy, Courtenay
▶ Duncan	Duncan
▶ Kamloops	Kamloops, Merritt, Clearwater
▶ Prince George	Prince George, Vanderhoof, Quesnel, Fort St. James
▶ Smithers/Hazelton	Smithers, Hazelton, Houston
▶ Surrey	Surrey
▶ Vancouver	Vancouver
▶ Victoria	Victoria, Colwood
▶ Williams Lake	Williams Lake

APPLYING FOR LEGAL AID

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

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



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

Legal Aid Offices

There are 33 communities in BC where someone can apply for legal aid in person and get legal information.



What Legal Problems Are Eligible For Coverage?

Criminal

- Where charges are serious and there is a likelihood of jail.
- CERC's – Where there is no likelihood of jail, but the client is within our standard financial guidelines or within \$1,000 of our standard financial guidelines. Or there is a likelihood of jail but the client is over our standard financial guidelines but within \$1,000 of those guidelines.
- Exceptions to the “likelihood of jail” rule.



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.



*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	Standard Cases	CFCSA and CERCs
1	\$1,630	\$2,630
2	\$2,280	\$3,280
3	\$2,920	\$3,920
4	\$3,570	\$4,570
5	\$4,220	\$5,220
6	\$4,870	\$5,870
7 or more	\$5,520	\$6,520

Effective May 15, 2019

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

Effective April 1, 2019



Financial Eligibility

LEGAL ADVICE GUIDELINES

Household Size Monthly Net Income

1 – 4	\$3,570
5	\$4,230
6	\$4,910
7 or more	\$5,550

▶ Effective April 1, 2019



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 (if a client has a Trial or Pre-Trial set and wouldn't qualify for a CERC), 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

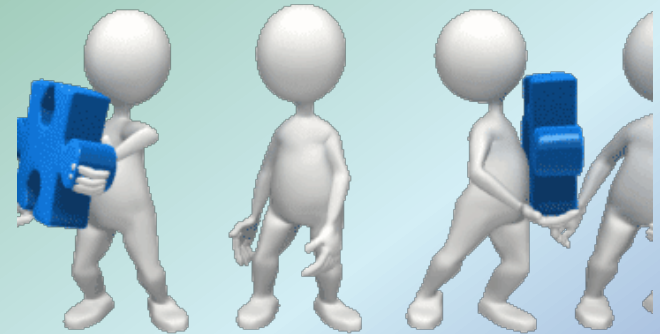
Email: provincialsupervisors@lss.bc.ca



Working Together

You can help your clients:

- Understand the intake process
- Prepare for the interview
- Organize documentation
- Make sure they follow up on the status of their file 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



Overview of LSS Coverage Guidelines

Criminal Coverage Guidelines

General policy

To qualify for legal representation, an applicant must:

- ❖ be financially eligible, except for specified exceptions, and
- ❖ have a Criminal law problem covered by the criminal coverage guidelines.

An applicant is covered for Standard coverage if he or she:

- ❖ faces a Criminal proceeding,
- ❖ is charged with a Criminal offence, and
- ❖ if convicted, faces a risk of jail (includes house arrest).

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal representation.

Additional grounds for coverage

Less serious summary offences may be covered for adult applicants in very limited circumstances.

An applicant who does not necessarily face a risk of jail may be covered for a Standard Contract if he or she:

- ❖ faces a loss of livelihood upon conviction,
- ❖ has a mental or physical disability, or
- ❖ faces immigration complications that may result in deportation.

Criminal Early Resolution Contracts (CERC's)

Criminal Early Resolution Contracts (CERC's) provide non-trial resolution services, including summary advice and assistance to clients not eligible for a Standard Representation Contract. Criminal Early Resolution Contracts can be issued to any lawyer who takes criminal law contracts.

An applicant may be covered if they:

- have a criminal charge proceeding in Provincial or Supreme Court, and
- meet the expanded eligibility guidelines for a Criminal Early Resolution Contract, which are over the Standard Criminal guidelines by \$1000 on monthly income.

Note: The applicant doesn't need to face a risk of jail upon conviction to be eligible for a Criminal Early Resolution Contract (CERC).

Overview of LSS Coverage Guidelines

A Criminal Early Resolution Contract:

- is a 90 day contract that focuses on resolution services but does not include going to trial,
- is eligible for travel authorization,
- is eligible for a change of counsel in limited circumstances. All change of counsel requests should be reviewed by a Provincial Supervisor.

An applicant **isn't** eligible for a Criminal Early Resolution Contract if:

- the applicant is a youth,
- the applicant is eligible for and has access to the Expanded Criminal Duty Counsel Program in Port Coquitlam Provincial Court (see **Expanded Criminal Duty Counsel - Port Coquitlam on Page 10**).
- the applicant is detained in custody after a bail hearing,
- the applicant has a trial date set,
- the applicant has an open Criminal Standard Representation Contract.

With a CERC contract, the lawyer will provide services to try to achieve early resolution of cases, such as:

- meeting with the client and reviewing particulars
- providing summary advice including procedural advice on self-represented trials
- determining if resolution should be pursued
- engaging with Crown to seek non-trial resolution
- appearing in court for disposition/resolution as appropriate
- if not suited for resolution, terminate service with direction to the client on next steps to self-represent.

Note: Criminal Early Resolution Contracts do not allow for representation at trials or preliminary hearings.

Aboriginal hunting and fishing rights

An applicant is covered for a Standard Contract if:

- ❖ they are Aboriginal, and
- ❖ the alleged offence:
 - occurred in a geographic area the applicant claims is his or her traditional territory, or
 - involves a traditional right; or
 - occurred outside the applicant's traditional territory, but involves the exercise of an existing Aboriginal right extended to the individual by:
 - a traditional Aboriginal law or custom,
 - a band bylaw, or
 - Aboriginal government legislation.
- ❖ The applicant does not have to face a risk of jail if convicted.

Overview of LSS Coverage Guidelines

NOTE: *If a client does not qualify financially for legal aid they may be able to go to court and make a “Rowbotham” application. Before a client can apply for a “Rowbotham” application the client must apply for legal aid. They must be refused by the legal aid intake worker, then they must ask, in writing, for that decision to be reviewed. If the review is also denied, the client will be sent a letter along with our booklet “If You Can’t Get Legal Aid for Your Criminal Trial”, which explains how to apply to the courts for a court appointed lawyer to assist them with their matter.*

Youths

Anyone under the age of 18 who is not a ward of the Ministry of Children and Family Development is covered for a Standard Contract for all Criminal Code and other charges under federal legislation (such as drug charges). They do not have to be financially eligible or meet LSS criminal coverage guidelines.

Youths under age 18 charged with Provincial offences, such as motor vehicle offences, offences under the Schools Act, etc., must be financially eligible and the case must meet criminal coverage guidelines.

Over age 18, facing Youth Criminal Justice Act charges

Applicants over the age of 18 who face Youth Criminal Justice Act charges are covered until the end of the case.

Exception

Youth who are temporary or permanent wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Family coverage

General policy

To qualify for legal aid representation, an applicant must:

- ❖ Be financially eligible, and
- ❖ have a Family law problem covered by the Family coverage guidelines:
 - need an initial, or a change to the current, guardianship or parenting arrangement order if there is a risk of harm or violence to the client or their child or children;
 - have guardianship/custody of a child/children who have been unlawfully held by the access parent/party;
 - have been permanently or repeatedly denied contact or parenting time with a child;
 - need a Family law protection order or other legal assistance to protect themselves or their children from harm or violence;

Overview of LSS Coverage Guidelines

- need an order to prevent the other parent from permanently relocating their child or children out of the Province. The threat must be real and imminent, and involve a permanent change of residence;
- be a respondent in a maintenance enforcement committal proceeding; or
- ❖ be eligible for coverage provided through the exception review process, or
- ❖ have a financial security issue and be eligible for limited representation.

Who is covered?

When the legal issue involves children, an applicant must be:

- ❖ a parent,
- ❖ a member of the children's immediate or extended family,
- ❖ a relative or individual who has lived with the children in a parental or custodial relationship, or
- ❖ a member of the community who has a cultural or traditional responsibility towards the children.

An applicant, with or without children, may be eligible for legal aid if their physical safety is at risk.

An applicant who's in jail may qualify for legal representation. Application would be sent for an exception review.

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal aid representation.

Exception

Youth who are temporary or permanent wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Limited Representation Contracts

A client may be eligible for a Limited Representation Contract when they don't meet Family coverage guidelines for a full representation (Family Standard) contract. They do not necessarily face a risk of harm or violence and have some ability to self-represent. These contracts are intended to provide clients with the assistance necessary to effectively negotiate a settlement or represent themselves.

A Limited Representation Contract:

- focuses on financial security issues such as:
 - o Child Support
 - o Spousal Support
 - o Division and/or preservation of family property
- offers 15 hours of general preparation time to prepare court applications, provide legal advice, mediation support, and/or legal research and analysis; prepare and review documents; negotiate settlements including separation agreements, but not appear in court except for case conferences (up to 3 hours, which is included in the 15 hours of general preparation time).

Overview of LSS Coverage Guidelines

- is not eligible for travel authorization (the lawyer must be local or willing to provide services remotely).
- is are not eligible for Extended Family Services.

CFCSA

General policy

To qualify for legal representation, an applicant must:

- ❖ be financially eligible; and
- ❖ have a CFCSA problem covered by the CFCSA coverage guidelines.

An applicant must be:

- ❖ a parent, or
- ❖ a party to the proceeding who is a:
 - member of the children's immediate family,
 - relative or individual who has lived with the children in a parent or custodial relationship, or
 - member of the community who has a cultural or traditional responsibility towards the children.

Where an applicant is financially eligible and his or her children have been removed or are at risk of being removed, coverage is provided.

Where the child isn't born yet and there is a risk of removal at birth, coverage is provided.

Where the CFCSA director has filed an application to obtain a Continuing Custody Order (CCO), coverage is provided.

Where the client is the applicant or respondent to an application to cancel a CCO, or an applicant wanting to obtain access to his or her children after a CCO, coverage is discretionary.

Where the CFCSA director has filed an application to permanently transfer custody of a child, who's in the temporary care or custody of a person other than the child's parent or MCFD, to a person other than the child's parent(s), coverage is provided.

Where the CFCSA director has filed an application to permanently transfer custody of a child who's in the continuing care (CCO) of MCFD to a person other than the child's parent(s), and the director's application puts the parental relationship with the child at risk, coverage is discretionary.

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal representation.

Note: An applicant who's in jail and who is a parent or a party to the proceeding qualifies for legal representation, whether or not they're served with notice of the CFCSA proceeding.

Overview of LSS Coverage Guidelines

Exception

Youth who are temporary or permanent wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Third party (non-parent) applicant who is not a party to the proceeding

An applicant may be covered if:

- they're:
 - the child's relative (such as sibling, grandparent, step-grandparent, aunt, uncle), or
 - a member of the child's community who has a cultural or traditional responsibility towards the child.

AND

- they want to become a non-custodial or custodial caregiver for a child who is at risk of removal, has been removed, or is in the care MCFD.

An applicant is not covered if:

- there is a final CFCSA order regarding the child (there can be ongoing court proceedings, but no Continuing Custody Order or Permanent Transfer of Custody Order under s.54.01 or 54.1), or
- they only want access to a child who's in the care of MCFD.

If an applicant satisfies the guidelines above, the application is sent for an exception review.

Third party (non-parent) applicant - Exception review guidelines

The decision to approve a representation contract for a third party applicant who is not a party to the proceeding is a discretionary decision made by the Manager, Family Law Services or their delegate.

Considerations include, but are not limited to, the following:

- the applicant is not currently the child's foster parent,
- the applicant has a reasonable likelihood of success in achieving the desired outcome,
- the outcome will benefit the child if successful,
- the child may be left at risk of removal if coverage is denied,
- the applicant has, or has the ability to have, a real and substantial connection to, or relationship with, the child,
- the applicant is able to provide stability for the child's care,
- the applicant can have a significant role in maintaining the child's connection to their cultural traditions, customs, language, and/or community,
- the applicant doesn't have other viable options, other than legal representation, to deal with the issue, and
- there's remaining LSS budget available to fund the case.

Overview of LSS Coverage Guidelines

Note: Clients making third party applications do not get sent to the Parents Legal Centres (PLC). See Parents Legal Centres. If approved, the Regional Centre/Local Agent Intake staff issue Contracts to LSS's Tariff Bar.

Independent legal advice for a child or third party

An applicant isn't covered for independent legal advice for a child, or a third party who may be receiving permanent custody of a child with the consent of the Director of the Ministry of Children and Family Development (MCFD). Instead, MCFD has contracted with LSS to provide an applicant with a lawyer's services. LSS has a province-wide roster of lawyers who provide independent legal advice to:

- **children over 12** who're
 - the subject of proposed consent orders, or
 - wards of MCFD, and
 - consenting to adoption, or
 - being permanently transferred to the custody of a person who isn't their parent.
- OR
- **third parties who may be receiving permanent custody of a child.**

The applicant must contact the child's social worker, who will arrange an appointment with a lawyer from the LSS roster and provide that lawyer with a billing form.

NOTE: *If a client does not qualify financially for legal aid they may be able to go to court and make a "JG" application. Before a client can apply for a "JG" application the client must apply for legal aid. They must be refused by the legal aid intake worker, then they must ask, in writing, for that decision to be reviewed. If the review is also denied, the client will be sent a letter along with our booklet "If You Can't Get Legal Aid for Your Child Protection Case", which explains how to apply to the courts for a court appointed lawyer to assist them with their matter.*

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.

Parents Legal Centres

A Parents Legal Centre (PLC) provides advice and limited representation services to parents facing child protection issues to support early, collaborative resolutions outside of contested hearings. LSS has 9 PLC's around the Province - in Campbell River, Duncan, Kamloops, Prince George, Smithers/Hazelton,

Overview of LSS Coverage Guidelines

Surrey, Vancouver (at the Provincial Courthouse at Robson Square), Victoria, and Williams Lake (temporarily being run out of the Kamloops PLC office).

If a client:

- ❖ is a parent, or a party to the proceeding with whom the child resides and who stands in place of the child's parent or guardian, and
- ❖ has a child protection matter that is in or would be heard in Provincial Court in one of the cities the PLCs are located in, and
- ❖ meets the financial eligibility guidelines for a CFCSA Representation Contract

Then the PLC will provide:

- ❖ information and advice on options for resolving child protection issues out-of-court
- ❖ legal advice and representation, where appropriate, at collaborative processes such as mediation and Family case planning conferences
- ❖ information and advice on court processes
- ❖ legal advice and representation at uncontested hearings
- ❖ referrals to other services, including online resources and other public agencies

All eligible applicants will be referred to the PLC instead of receiving a CFCSA representation contract under the *CFCSA Tariff*. If the issues cannot be resolved collaboratively and the applicant meets coverage and financial eligibility guidelines for a CFCSA representation contract, LSS may appoint a lawyer to complete the case.

Note: Clients making Third Party applications do not get sent to the Parents Legal Centres (PLC). If approved, the Regional Centre/Local Agent Intake staff issue Contracts to LSS's Tariff Bar.

Immigration Coverage Guidelines (Only the Vancouver Legal Aid office deals with immigration cases)

General policy

To qualify for legal aid representation, an applicant must:

- ❖ be financially eligible, and
- ❖ have an Immigration law problem covered by the LSS Immigration coverage guidelines.

An applicant is covered if he or she:

- ❖ is making a refugee claim in Canada, or
- ❖ faces an Immigration proceeding and it could result in deportation from Canada to a country where his or her life is in danger or if he or she has other compelling reasons for not returning to his or her country.

LSS screens Immigration cases for merit to determine whether the applicant has a reasonable chance of being successful in his or her case.

Overview of LSS Coverage Guidelines

Refugee claims

Contracts for refugee and protected persons claims made in Canada include:

- ❖ preparation of a Basis of Claim form, and
- ❖ preparation for and representation at refugee hearings before the Refugee Protection Division (RPD) of the Immigration and Refugee Board.

Other immigration cases

The following types of cases will be referred to the LSS Judicial Appeals Section at the Vancouver Regional Centre. The Judicial Appeals Section screens these cases for merit and issues contracts if they determine that the applicant has a reasonable chance of being successful in his or her case.

- ❖ an appeal of a refugee claim refusal to the Refugee Appeal Division
- ❖ admissibility hearings before the Immigration and Refugee Board Adjudication Division
- ❖ judicial Review applications to the Federal Court of Canada, and appeals to the Federal Court of Appeal or the Supreme Court of Canada to review an order of the Immigration and Refugee Board or an immigration officer
- ❖ applications to stay a removal from Canada made to the Federal Court of Canada
- ❖ applications to reopen or reinstate proceedings before the Immigration and Refugee Board
- ❖ permanent resident (landed immigrant) deportation appeals to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board
- ❖ Pre-Removal Risk Assessment (PPRA) submissions to Citizenship and Immigration Canada
- ❖ Humanitarian and Compassionate (H&C) submissions to Citizenship and Immigration Canada
- ❖ applications by people detained by immigration who cannot access duty counsel
- ❖ applications by spouses or partners with [conditional permanent residence](#) who are leaving the relationship before the end of the two-year conditional cohabitation period
- ❖ sponsorship appeals to the Immigration Appeal Division of the Immigration and Refugee Board where the applicant is in Canada and faces a risk of removal

Family LawLINE

The Family LawLINE is a telephone advice service that provides brief next-step help for people representing themselves, as well as provides options for resolving legal issues outside of court, and referrals to online resources and other agencies. Clients with a Family law issue can access this service through the Legal Services Society provincial call centre, engage with a lawyer over the telephone, and share documents by email or fax. Lawyers work from their own offices across the Province and engage with clients through a free remote access telephone system.

The Family LawLINE can also provide up to six hours of service per legal matter. Clients can make phone appointments so that one lawyer and client can work together throughout the contract.

The Family LawLINE will provide the following:

- ❖ Up to 6 hours of service for each current legal matter
- ❖ Appointments so that one lawyer and client can work together throughout the contract
- ❖ Interpreters if clients need services in languages other than English
- ❖ Information and advice on court processes, both Provincial and Supreme Court

Overview of LSS Coverage Guidelines

Criminal Coverage Guidelines

General policy

To qualify for legal representation, an applicant must:

- ❖ be financially eligible, except for specified exceptions, and
- ❖ have a Criminal law problem covered by the criminal coverage guidelines.

An applicant is covered for Standard coverage if he or she:

- ❖ faces a Criminal proceeding,
- ❖ is charged with a Criminal offence, and
- ❖ if convicted, faces a risk of jail (includes house arrest).

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal representation.

Additional grounds for coverage

Less serious summary offences may be covered for adult applicants in very limited circumstances.

An applicant who does not necessarily face a risk of jail may be covered for a Standard Contract if he or she:

- ❖ faces a loss of livelihood upon conviction,
- ❖ has a mental or physical disability, or
- ❖ faces immigration complications that may result in deportation.

Criminal Early Resolution Contracts (CERC's)

Criminal Early Resolution Contracts (CERC's) provide non-trial resolution services, including summary advice and assistance to clients not eligible for a Standard Representation Contract. Criminal Early Resolution Contracts can be issued to any lawyer who takes criminal law contracts.

An applicant may be covered if they:

- have a criminal charge proceeding in Provincial or Supreme Court, and
- meet the expanded eligibility guidelines for a Criminal Early Resolution Contract, which are over the Standard Criminal guidelines by \$1000 on monthly income.

Note: The applicant doesn't need to face a risk of jail upon conviction to be eligible for a Criminal Early Resolution Contract (CERC).

Overview of LSS Coverage Guidelines

A Criminal Early Resolution Contract:

- is a 90 day contract that focuses on resolution services but does not include going to trial,
- is eligible for travel authorization,
- is eligible for a change of counsel in limited circumstances. All change of counsel requests should be reviewed by a Provincial Supervisor.

An applicant **isn't** eligible for a Criminal Early Resolution Contract if:

- the applicant is a youth,
- the applicant is eligible for and has access to the Expanded Criminal Duty Counsel Program in Port Coquitlam Provincial Court (see **Expanded Criminal Duty Counsel - Port Coquitlam on Page 10**).
- the applicant is detained in custody after a bail hearing,
- the applicant has a trial date set,
- the applicant has an open Criminal Standard Representation Contract.

With a CERC contract, the lawyer will provide services to try to achieve early resolution of cases, such as:

- meeting with the client and reviewing particulars
- providing summary advice including procedural advice on self-represented trials
- determining if resolution should be pursued
- engaging with Crown to seek non-trial resolution
- appearing in court for disposition/resolution as appropriate
- if not suited for resolution, terminate service with direction to the client on next steps to self-represent.

Note: Criminal Early Resolution Contracts do not allow for representation at trials or preliminary hearings.

Aboriginal hunting and fishing rights

An applicant is covered for a Standard Contract if:

- ❖ they are Aboriginal, and
- ❖ the alleged offence:
 - occurred in a geographic area the applicant claims is his or her traditional territory, or
 - involves a traditional right; or
 - occurred outside the applicant's traditional territory, but involves the exercise of an existing Aboriginal right extended to the individual by:
 - a traditional Aboriginal law or custom,
 - a band bylaw, or
 - Aboriginal government legislation.
- ❖ The applicant does not have to face a risk of jail if convicted.

Overview of LSS Coverage Guidelines

NOTE: If a client does not qualify financially for legal aid they may be able to go to court and make a “Rowbotham” application. Before a client can apply for a “Rowbotham” application the client must apply for legal aid. They must be refused by the legal aid intake worker, then they must ask, in writing, for that decision to be reviewed. If the review is also denied, the client will be sent a letter along with our booklet “If You Can’t Get Legal Aid for Your Criminal Trial”, which explains how to apply to the courts for a court appointed lawyer to assist them with their matter.

Youths

Anyone under the age of 18 who is not a ward of the Ministry of Children and Family Development is covered for a Standard Contract for all Criminal Code and other charges under federal legislation (such as drug charges). They do not have to be financially eligible or meet LSS criminal coverage guidelines.

Youths under age 18 charged with Provincial offences, such as motor vehicle offences, offences under the Schools Act, etc., must be financially eligible and the case must meet criminal coverage guidelines.

Over age 18, facing Youth Criminal Justice Act charges

Applicants over the age of 18 who face Youth Criminal Justice Act charges are covered until the end of the case.

Exception

Youth who are temporary or permanent wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Family coverage

General policy

To qualify for legal aid representation, an applicant must:

- ❖ Be financially eligible, and
- ❖ have a Family law problem covered by the Family coverage guidelines:
 - need an initial, or a change to the current, guardianship or parenting arrangement order if there is a risk of harm or violence to the client or their child or children;
 - have guardianship/custody of a child/children who have been unlawfully held by the access parent/party;
 - have been permanently or repeatedly denied contact or parenting time with a child;
 - need a Family law protection order or other legal assistance to protect themselves or their children from harm or violence;

Overview of LSS Coverage Guidelines

- need an order to prevent the other parent from permanently relocating their child or children out of the Province. The threat must be real and imminent, and involve a permanent change of residence;
- be a respondent in a maintenance enforcement committal proceeding; or
- ❖ be eligible for coverage provided through the exception review process, or
- ❖ have a financial security issue and be eligible for limited representation.

Who is covered?

When the legal issue involves children, an applicant must be:

- ❖ a parent,
- ❖ a member of the children's immediate or extended family,
- ❖ a relative or individual who has lived with the children in a parental or custodial relationship, or
- ❖ a member of the community who has a cultural or traditional responsibility towards the children.

An applicant, with or without children, may be eligible for legal aid if their physical safety is at risk.

An applicant who's in jail may qualify for legal representation. Application would be sent for an exception review.

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal aid representation.

Exception

Youth who are temporary or permanent wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Limited Representation Contracts

A client may be eligible for a Limited Representation Contract when they don't meet Family coverage guidelines for a full representation (Family Standard) contract. They do not necessarily face a risk of harm or violence and have some ability to self-represent. These contracts are intended to provide clients with the assistance necessary to effectively negotiate a settlement or represent themselves.

A Limited Representation Contract:

- focuses on financial security issues such as:
 - o Child Support
 - o Spousal Support
 - o Division and/or preservation of family property
- offers 15 hours of general preparation time to prepare court applications, provide legal advice, mediation support, and/or legal research and analysis; prepare and review documents; negotiate settlements including separation agreements, but not appear in court except for case conferences (up to 3 hours, which is included in the 15 hours of general preparation time).

Overview of LSS Coverage Guidelines

- is not eligible for travel authorization (the lawyer must be local or willing to provide services remotely).
- is are not eligible for Extended Family Services.

CFCSA

General policy

To qualify for legal representation, an applicant must:

- ❖ be financially eligible; and
- ❖ have a CFCSA problem covered by the CFCSA coverage guidelines.

An applicant must be:

- ❖ a parent, or
- ❖ a party to the proceeding who is a:
 - member of the children's immediate family,
 - relative or individual who has lived with the children in a parent or custodial relationship, or
 - member of the community who has a cultural or traditional responsibility towards the children.

Where an applicant is financially eligible and his or her children have been removed or are at risk of being removed, coverage is provided.

Where the child isn't born yet and there is a risk of removal at birth, coverage is provided.

Where the CFCSA director has filed an application to obtain a Continuing Custody Order (CCO), coverage is provided.

Where the client is the applicant or respondent to an application to cancel a CCO, or an applicant wanting to obtain access to his or her children after a CCO, coverage is discretionary.

Where the CFCSA director has filed an application to permanently transfer custody of a child, who's in the temporary care or custody of a person other than the child's parent or MCFD, to a person other than the child's parent(s), coverage is provided.

Where the CFCSA director has filed an application to permanently transfer custody of a child who's in the continuing care (CCO) of MCFD to a person other than the child's parent(s), and the director's application puts the parental relationship with the child at risk, coverage is discretionary.

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal representation.

Note: An applicant who's in jail and who is a parent or a party to the proceeding qualifies for legal representation, whether or not they're served with notice of the CFCSA proceeding.

Overview of LSS Coverage Guidelines

Exception

Youth who are temporary or permanent wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Third party (non-parent) applicant who is not a party to the proceeding

An applicant may be covered if:

- they're:
 - the child's relative (such as sibling, grandparent, step-grandparent, aunt, uncle), or
 - a member of the child's community who has a cultural or traditional responsibility towards the child.

AND

- they want to become a non-custodial or custodial caregiver for a child who is at risk of removal, has been removed, or is in the care MCFD.

An applicant is not covered if:

- there is a final CFCSA order regarding the child (there can be ongoing court proceedings, but no Continuing Custody Order or Permanent Transfer of Custody Order under s.54.01 or 54.1), or
- they only want access to a child who's in the care of MCFD.

If an applicant satisfies the guidelines above, the application is sent for an exception review.

Third party (non-parent) applicant - Exception review guidelines

The decision to approve a representation contract for a third party applicant who is not a party to the proceeding is a discretionary decision made by the Manager, Family Law Services or their delegate.

Considerations include, but are not limited to, the following:

- the applicant is not currently the child's foster parent,
- the applicant has a reasonable likelihood of success in achieving the desired outcome,
- the outcome will benefit the child if successful,
- the child may be left at risk of removal if coverage is denied,
- the applicant has, or has the ability to have, a real and substantial connection to, or relationship with, the child,
- the applicant is able to provide stability for the child's care,
- the applicant can have a significant role in maintaining the child's connection to their cultural traditions, customs, language, and/or community,
- the applicant doesn't have other viable options, other than legal representation, to deal with the issue, and
- there's remaining LSS budget available to fund the case.

Overview of LSS Coverage Guidelines

Note: Clients making third party applications do not get sent to the Parents Legal Centres (PLC). See Parents Legal Centres. If approved, the Regional Centre/Local Agent Intake staff issue Contracts to LSS's Tariff Bar.

Independent legal advice for a child or third party

An applicant isn't covered for independent legal advice for a child, or a third party who may be receiving permanent custody of a child with the consent of the Director of the Ministry of Children and Family Development (MCFD). Instead, MCFD has contracted with LSS to provide an applicant with a lawyer's services. LSS has a province-wide roster of lawyers who provide independent legal advice to:

- **children over 12** who're
 - the subject of proposed consent orders, or
 - wards of MCFD, and
 - consenting to adoption, or
 - being permanently transferred to the custody of a person who isn't their parent.
- OR
- **third parties who may be receiving permanent custody of a child.**

The applicant must contact the child's social worker, who will arrange an appointment with a lawyer from the LSS roster and provide that lawyer with a billing form.

NOTE: *If a client does not qualify financially for legal aid they may be able to go to court and make a "JG" application. Before a client can apply for a "JG" application the client must apply for legal aid. They must be refused by the legal aid intake worker, then they must ask, in writing, for that decision to be reviewed. If the review is also denied, the client will be sent a letter along with our booklet "If You Can't Get Legal Aid for Your Child Protection Case", which explains how to apply to the courts for a court appointed lawyer to assist them with their matter.*

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.

Parents Legal Centres

A Parents Legal Centre (PLC) provides advice and limited representation services to parents facing child protection issues to support early, collaborative resolutions outside of contested hearings. LSS has 9 PLC's around the Province - in Campbell River, Duncan, Kamloops, Prince George, Smithers/Hazelton,

Overview of LSS Coverage Guidelines

Surrey, Vancouver (at the Provincial Courthouse at Robson Square), Victoria, and Williams Lake (temporarily being run out of the Kamloops PLC office).

If a client:

- ❖ is a parent, or a party to the proceeding with whom the child resides and who stands in place of the child's parent or guardian, and
- ❖ has a child protection matter that is in or would be heard in Provincial Court in one of the cities the PLCs are located in, and
- ❖ meets the financial eligibility guidelines for a CFCSA Representation Contract

Then the PLC will provide:

- ❖ information and advice on options for resolving child protection issues out-of-court
- ❖ legal advice and representation, where appropriate, at collaborative processes such as mediation and Family case planning conferences
- ❖ information and advice on court processes
- ❖ legal advice and representation at uncontested hearings
- ❖ referrals to other services, including online resources and other public agencies

All eligible applicants will be referred to the PLC instead of receiving a CFCSA representation contract under the *CFCSA Tariff*. If the issues cannot be resolved collaboratively and the applicant meets coverage and financial eligibility guidelines for a CFCSA representation contract, LSS may appoint a lawyer to complete the case.

Note: Clients making Third Party applications do not get sent to the Parents Legal Centres (PLC). If approved, the Regional Centre/Local Agent Intake staff issue Contracts to LSS's Tariff Bar.

Immigration Coverage Guidelines (Only the Vancouver Legal Aid office deals with immigration cases)

General policy

To qualify for legal aid representation, an applicant must:

- ❖ be financially eligible, and
- ❖ have an Immigration law problem covered by the LSS Immigration coverage guidelines.

An applicant is covered if he or she:

- ❖ is making a refugee claim in Canada, or
- ❖ faces an Immigration proceeding and it could result in deportation from Canada to a country where his or her life is in danger or if he or she has other compelling reasons for not returning to his or her country.

LSS screens Immigration cases for merit to determine whether the applicant has a reasonable chance of being successful in his or her case.

Overview of LSS Coverage Guidelines

Refugee claims

Contracts for refugee and protected persons claims made in Canada include:

- ❖ preparation of a Basis of Claim form, and
- ❖ preparation for and representation at refugee hearings before the Refugee Protection Division (RPD) of the Immigration and Refugee Board.

Other immigration cases

The following types of cases will be referred to the LSS Judicial Appeals Section at the Vancouver Regional Centre. The Judicial Appeals Section screens these cases for merit and issues contracts if they determine that the applicant has a reasonable chance of being successful in his or her case.

- ❖ an appeal of a refugee claim refusal to the Refugee Appeal Division
- ❖ admissibility hearings before the Immigration and Refugee Board Adjudication Division
- ❖ judicial Review applications to the Federal Court of Canada, and appeals to the Federal Court of Appeal or the Supreme Court of Canada to review an order of the Immigration and Refugee Board or an immigration officer
- ❖ applications to stay a removal from Canada made to the Federal Court of Canada
- ❖ applications to reopen or reinstate proceedings before the Immigration and Refugee Board
- ❖ permanent resident (landed immigrant) deportation appeals to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board
- ❖ Pre-Removal Risk Assessment (PPRA) submissions to Citizenship and Immigration Canada
- ❖ Humanitarian and Compassionate (H&C) submissions to Citizenship and Immigration Canada
- ❖ applications by people detained by immigration who cannot access duty counsel
- ❖ applications by spouses or partners with [conditional permanent residence](#) who are leaving the relationship before the end of the two-year conditional cohabitation period
- ❖ sponsorship appeals to the Immigration Appeal Division of the Immigration and Refugee Board where the applicant is in Canada and faces a risk of removal

Family LawLINE

The Family LawLINE is a telephone advice service that provides brief next-step help for people representing themselves, as well as provides options for resolving legal issues outside of court, and referrals to online resources and other agencies. Clients with a Family law issue can access this service through the Legal Services Society provincial call centre, engage with a lawyer over the telephone, and share documents by email or fax. Lawyers work from their own offices across the Province and engage with clients through a free remote access telephone system.

The Family LawLINE can also provide up to six hours of service per legal matter. Clients can make phone appointments so that one lawyer and client can work together throughout the contract.

The Family LawLINE will provide the following:

- ❖ Up to 6 hours of service for each current legal matter
- ❖ Appointments so that one lawyer and client can work together throughout the contract
- ❖ Interpreters if clients need services in languages other than English
- ❖ Information and advice on court processes, both Provincial and Supreme Court

Overview of LSS Coverage Guidelines

- ❖ Information and advice on options for resolving legal issues out-of-court
- ❖ Referrals to other services, including online resources and other public agencies
- ❖ Assistance with preparing documents for court or other legal processes
- ❖ Coaching to help people who are representing themselves through all stages of court and other collaborative processes
 - Coaching will help the client understand the law relevant to their particular case, make more effective court appearances, present evidence properly, prepare for negotiation and settlement, and use Public Legal Education and Information (PLEI) tools.

To qualify for the Family LawLINE service, a client must:

- ❖ Qualify financially
- ❖ Have an eligible family law issue
- ❖ Not have a lawyer already working for them

To access the Family LawLINE service:

- ❖ To find out if a client is eligible for this service, they must call the Legal Services Society provincial call centre at 604-408-2172 (for Greater Vancouver) or toll free 1-866-577-2525 Monday to Friday from 9:00 am to 3:00 pm (Wednesday to 2:30 pm).

Expanded Family Duty Counsel (Victoria)

Expanded Family Duty Counsel at the Victoria Justice Access Centre (JAC) is modelled on the Expanded Family Duty Counsel program in Vancouver.

Expanded Family Duty Counsel will provide up to six hours of service per legal matter, set appointments so that clients can work with the same lawyer throughout their legal matter, and introduce legal coaching to help clients represent themselves in court.

These services are in addition to regular Family Duty Counsel services (information and advice on Family law issues, court processes, and options for resolving legal issues outside of court; help with document preparation and preparation for court appearances; representation in court on brief uncontested issues; and referrals to online resources and other agencies).

Expanded Criminal Duty Counsel (Port Coquitlam)

Expanded Criminal Duty Counsel (ECDC) is located at the Provincial Court in Port Coquitlam. ECDC will provide out-of-custody duty counsel services, including summary advice and assistance, to accused people making initial appearances in Port Coquitlam. The Duty Counsel lawyer will retain conduct of select non-complex cases up to the trial fix date where the applicant meets the ECDC's coverage and financial eligibility guidelines.

Overview of LSS Coverage Guidelines

The Duty Counsel lawyer will provide continuing services to try to achieve early resolution of cases, such as:

- ❖ reviewing disclosure
- ❖ having discussions with Crown Counsel
- ❖ attending court if a guilty plea is required to resolve the case
- ❖ expanded criminal duty counsel will not conduct bail hearings

All eligible applicants with matters in Port Coquitlam will be referred to ECDC instead of receiving a criminal representation contract under the *Criminal Tariff*. If the case cannot be resolved before the trial fix date and the applicant meets coverage and financial eligibility guidelines for a Criminal Representation contract, LSS may appoint a lawyer to represent him or her at trial.

The ECDC in Port Coquitlam will replace regular out-of-custody duty counsel at that location. In-custody Duty counsel will continue to be done by lawyers on the Criminal Duty Counsel roster.

Note: The applicant doesn't need to face a risk of jail upon conviction to be eligible for ECDC.

Note: If the applicant is currently in jail and eligible for a representation contract, but they may be eligible for ECDC services if released, the applicant will be referred to In-custody Duty Counsel or his/her lawyer will be issued a "bail hearing only" contract.

Reciprocals

As of **September 4th 2018**, clients who wish to apply for legal aid Family/CFCSA services in another province may now apply to the corresponding province directly. This means that clients from other provinces may apply for our service directly and vice versa.

If a BC client is dealing with a matter in another province and they are unable to find contact information for that province they can contact the BC Legal Aid Call Centre at 1-866-577-2525 to get that information.

Each province will still have a Reciprocal Coordinator in case clients have trouble contacting the other provinces. Courtesy applications may be sent to the other provinces by the Reciprocal Coordinator in these cases. You may contact our Reciprocal Coordinator at reciprocity@lss.bc.ca to see if he can assist.

Discretionary coverage

Criminal cases

If an applicant is only marginally over the financial eligibility guidelines, by up to \$200 on income or \$500 on assets, and the matter is a serious and complex case that would likely result in a successful Rowbotham order, and there is available budget, the intake worker can send it for a discretionary coverage assessment. However, if the case would be covered by a CERC, then the intake worker would send a CERC to the client's lawyer. If, after reviewing the file with the client, the lawyer feels the client should have a Standard Contract and go to Trial even though they are marginally over the Standard Criminal financial guidelines, they will send in a Conversion Request to the Provincial

Overview of LSS Coverage Guidelines

Supervisors, who will then determine if a Discretionary Coverage Review is appropriate. If so, the file will be forwarded to the Criminal Law Team for review.

Family

If an applicant is only marginally over the financial eligibility guidelines, by up to \$500 on income or \$500 on assets, and the matter is serious, and there is available budget, the intake worker can send it for a discretionary coverage assessment.

Immigration, and Appeal cases

If an applicant is only marginally over the financial eligibility guidelines, by up to \$200 on income or \$500 on assets, and the matter is serious, and there is available budget, the intake worker can send it for a discretionary coverage assessment.

CFCSA and Parents Legal Centres

There is no discretionary coverage for CFCSA or Parents Legal Centre matters as the financial eligibility income guidelines for CFCSA and the Parents Legal Centres are \$1,000 over our regular financial eligibility guidelines. If a client is over the financial eligibility guidelines for CFCSA or the Parents Legal Centres, they are refused on the basis of financial eligibility and provided with a JG Application.

Exception review guidelines

Exception Review merit considerations for all cases:

The decision to approve a case on exception review is a discretionary decision made by a Provincial Supervisor, Legal Aid Applications, and is based on established guidelines, a merit test, and available budget.

Merit considerations include:

- ❖ the applicant's issue is significant;
- ❖ the outcome will benefit the applicant and/or his/her children if the case is successful;
- ❖ the applicant has a reasonable likelihood of success;
- ❖ a reasonable person of modest means would themselves pay to pursue the case;
- ❖ the applicant does not have other viable options, other than legal representation, to deal with the issue; and
- ❖ there is remaining LSS budget available to fund the case.

Family cases

An application dealing with a matter under the Family Law Act can be sent for an exception review if:

- ❖ the applicant has recently been denied extended family services (within the past year);
- ❖ the applicant has received prior contracts in relation to the same children or parties;
- ❖ the emergency services policy is unduly harsh in the particular circumstances of an applicant's case or the circumstances are unusual and complex;

Overview of LSS Coverage Guidelines

- ❖ the applicant has a mental or physical disability and is unable to represent him or herself (there must be a significant barrier that will create an injustice if the applicant is not represented);
- ❖ a significant injustice can only be avoided by appointing counsel;
- ❖ the applicant is so traumatized by past abuse that he/she is unable to represent him/herself;
- ❖ there is references in court documents to sexual, physical, emotional abuse; or
- ❖ the applicant is the subject of litigation harassment.

Criminal cases

If a policy is unduly harsh in the particular circumstances of an applicant's case or the circumstances are unusual and complex.

If an applicant has been charged with spousal assault (summary or indictable offence) where:

- ❖ there is no risk of jail if convicted; and
- ❖ he or she has a contract for a Family or CFCSA issue that might be negatively affected by the spousal assault charge.

Denial of Legal Aid

If a client is denied legal aid they can request a review of the decision. They must submit a written request within 30 days of the date of the decision. They should state why they disagree with the refusal and explain why they believe they should get legal aid. They also need to include any documents that might support their request for a review.

The request for review can be sent to:

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

CRANBROOK LSS CONFERENCE

Legal Information

publications & websites

PATRICIA LIM
PUBLICATIONS DEVELOPMENT COORDINATOR



Legal
Services
Society

British Columbia
www.legalaid.bc.ca



Outline

Helping people with legal information

Publications

- Overview
- How to order

Websites

Consultation with community workers

How can you help people with legal information?



Recognize the legal issue



Find ways to stay out of court and resolve problems early



Find options for help

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.

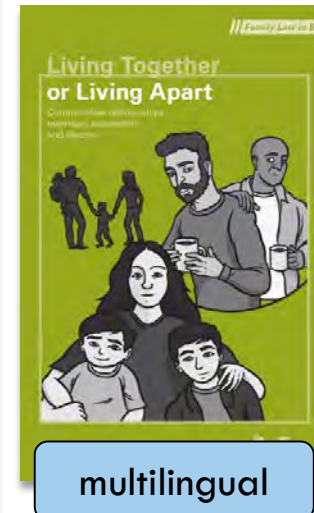
Basic familiarity assumed. Detailed material, written primarily as a reference for the advocate/intermediary audience, although accessible to members of the public with adequate literacy skills.

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

Family Law

Level 2

Level 1



Abuse & Family Violence

Level 1



Video
available



multilingual



Level 2



multilingual



multilingual



multilingual

Child Protection

Level 1

Level 2

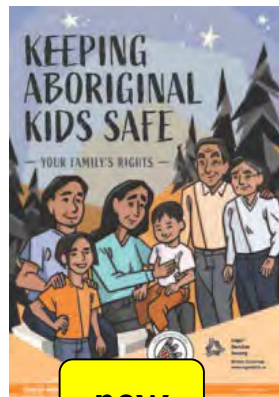
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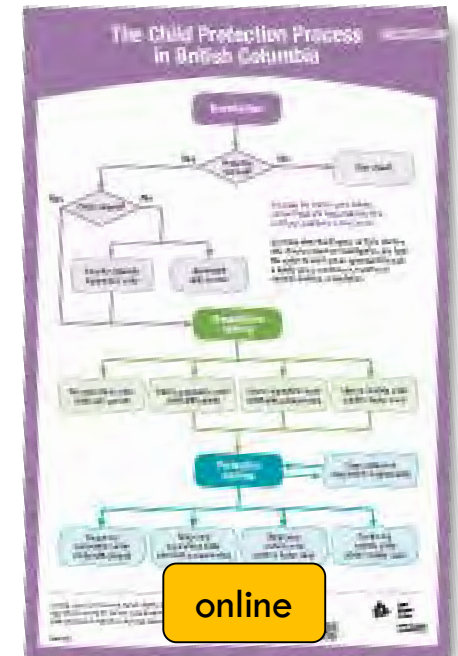
Video available



online



new



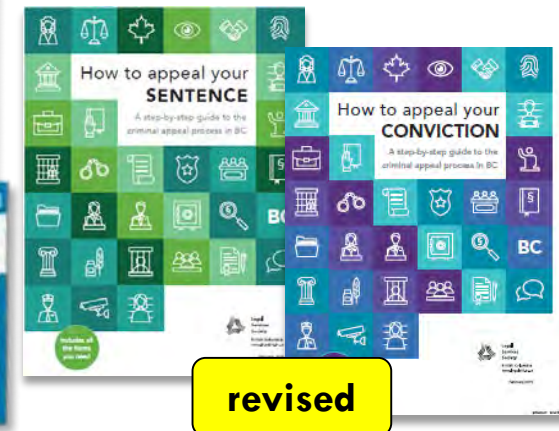
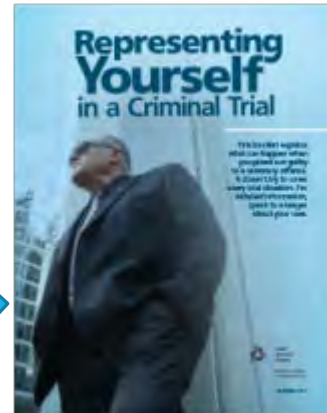
online



Criminal

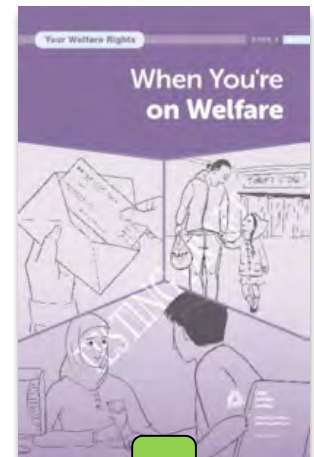
Level 2

Level 1



Welfare

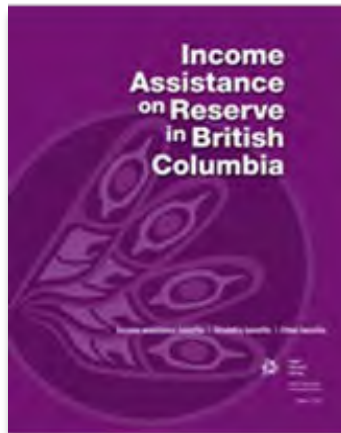
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new

Aboriginal and Reserve

Level 2



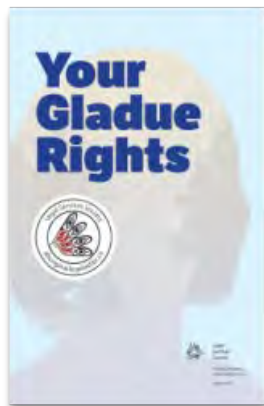
**Matrimonial
Real Property
Rights on
Reserve**

COMING UP



Gladue Rights

Level 1



Video
available

Level 2



Level 3

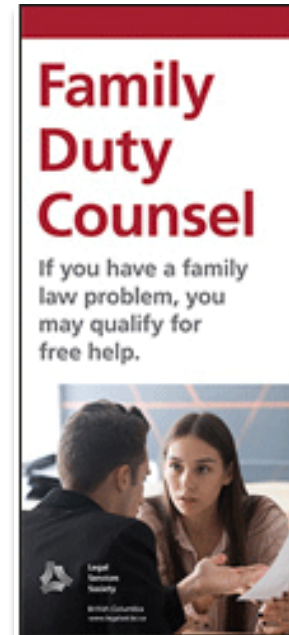


Teachers
Guide on
Gladue
Rights

COMING UP



Letting people know about legal aid and other legal help



multilingual

LETTING PEOPLE KNOW ABOUT PARENTS LEGAL CENTRE



Animated video
for the Parents Legal Centre



youtube.com/LegalAidBC

Locations in the following locations

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

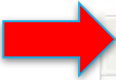
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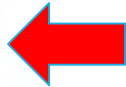
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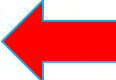


Live Safe, End Abuse

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...



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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
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The L&L

G A M E
S H O W

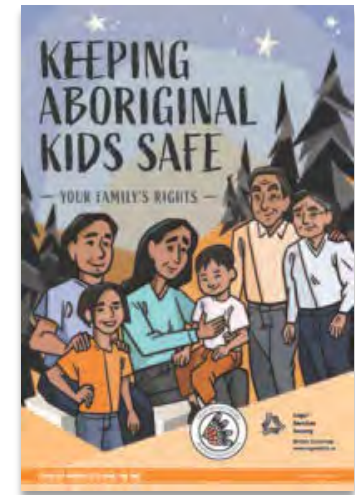
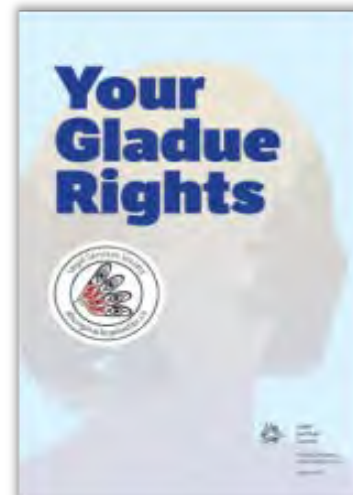
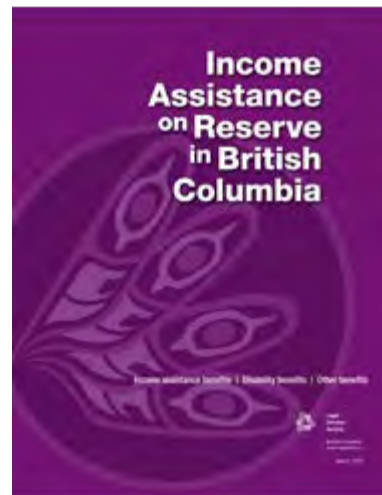
Q1: WHICH BOOKLET OR BROCHURE HAD THE MOST ORDERS IN CRANBROOK?

A. Separation Agreements

B. Income Assistance on Reserve

C. Your Gladue Rights

D. Keeping Aboriginal Kids Safe



Q2: WHICH PUBLICATION TALKS ABOUT SEXTING, CYBERSTALKING, AND ONLINE ABUSE?

A. Clear Skies

B. Live Safe End Abuse

C. Is That Legal?

D. For Your Protection



Q3: WHICH PUBLICATION DOES NOT HAVE AN ANIMATED VIDEO?

A. A Second Chance: A Gladue Rights Story

B. Emily's Choice: A Child Protection Story

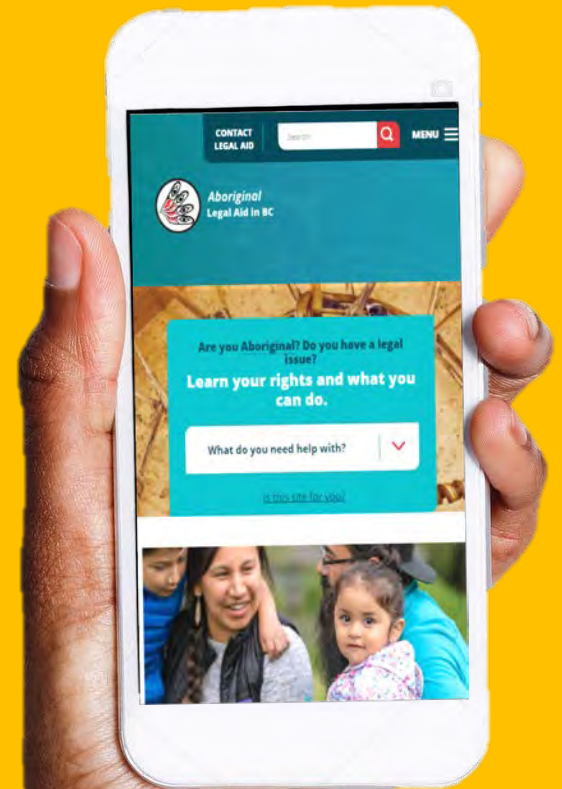
C. Leaving Abuse

D. Clear Skies: A Family Violence Story



LEGAL INFORMATION WEBSITES

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



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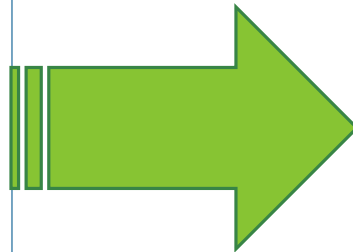
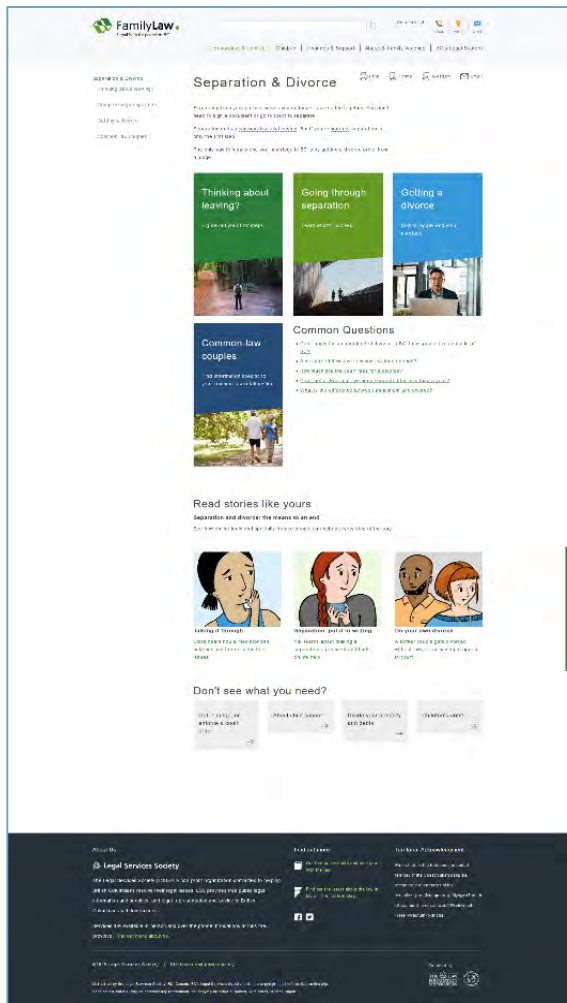
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Original

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- 0 Allow parents to request **free help from a mediator**
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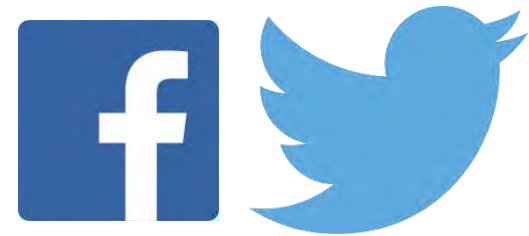
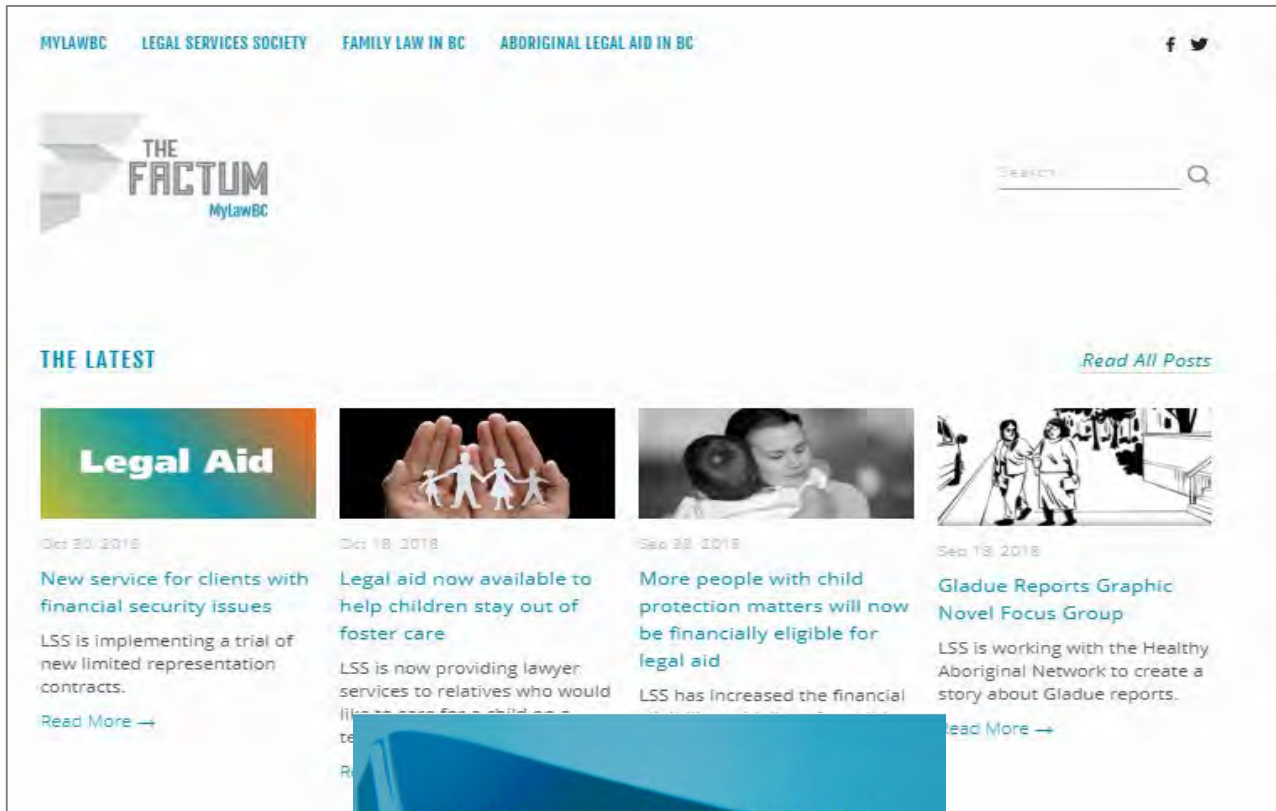
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Wills and Estates

GRAEME R. NUNN

ROCKIES LAW CORPORATION

SLIDE CREDIT: KELLY P. MELNYK

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?



CIVIL RESOLUTION TRIBUNAL OVERVIEW

ROCKIES LAW CORPORATION

GRAEME R. NUNN

OVERVIEW – CIVIL RESOLUTION TRIBUNAL (“CRT”)

1. What is the CRT?
2. CRT Jurisdiction
3. Strata Overview
4. Small Claims Overview
5. “New” Motor Vehicle Injury Overview

WHAT IS THE CRT? – OVERVIEW AND TIMELINES

1. The CRT is a tribunal unique in Canada. Graeme has been a member since December 2017
2. Empowering statute is the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25.
3. Almost completely done online
4. Strata Property Disputes in July 2016
5. Small Claims Disputes up to \$5,000.00 in June 2017
6. Motor Vehicle Injury Claims classified as “minor” as of April 2019

WHAT IS THE CRT? OVERVIEW (CONT.)

1. CRT consists of a Chair (Shannon Salter) and Vice Chairs of the various sections
2. CRT decisions are made by “Members” appointed by Lieutenant Governor in Council
3. Currently there are both part-time (27) and full-time (8) members
4. Parties must represent themselves unless they have leave from the CRT (section 20 of the CRT Act)
5. Generally lawyers do not participate unless they are ghost writing the arguments or in the event of applications relating to MVA accident claims (section 20.1 of the CRT Act)

WHAT IS THE CRT? – MANDATE

I. Section 2 of the CRT Act

- (2)The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that
 - (a)is accessible, speedy, economical, informal and flexible,
 - (b)applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
 - (c)uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and
 - (d)accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.

WHAT IS THE CRT? - THE CRT PROCESS

1. Claimants file a “Dispute Notice” which is served either by them or the CRT
2. Respondents file a response to the Dispute Notice
3. Claimants can respond to the response
4. Parties upload evidence and submissions to central server
5. CRT staff attempt to facilitate settlement discussions or mediate a resolution
6. If no settlement available it is assigned to an adjudicator (Member)
7. 95% + of adjudications are done in writing with no oral hearing
8. Orders can be registered in the Provincial Court/Supreme Court for enforcement
9. Successful party can get reasonable tribunal related expenses and filing fees (if applicable) as well as pre and post-judgment interest under the *Court Order Interest Act*. Legal costs are generally not included in this related to and MVA or extraordinary circumstances (CRT Rule 9.4(3))

WHAT IS THE CRT? - THE CRT PROCESS - TRIBUNAL RULES

1. CRT has process rules similar to the *Supreme Court Civil Rules*
2. <https://civilresolutionbc.ca/wp-content/uploads/2017/07/CRT-rules-effective-July-12-2017.pdf>
3. Rules are made by the CRT under authority from section 62 of the CRT Act
 - **Rules of practice and procedure for tribunal proceedings**
 - **62** (1) The tribunal may make rules respecting practice and procedure in tribunal proceedings to facilitate the resolution of disputes before it in accordance with its mandate.

WHAT IS THE CRT? – APPEAL PROCESS

- After a final decision is rendered, the aggrieved party can file a “Notice of Objection” within 28 days
- Strata Decisions – appeal is Judicial Review in the BCSC
- Motor Vehicle Decisions – appeal is Judicial Review in the BCSC
- Small Claims Decisions – trial de novo in Provincial Court
- Court will give significant deference to CRT decisions on JR – court will only intervene if the CRT’s decision can be shown to be unreasonable - *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164

CRT JURISDICTION

1. Strata Disputes
 2. Small Claims Disputes
 3. Motor Vehicle Disputes
-



CRT JURISDICTIONS – STRATA DISPUTES

- CRT is ABLE to resolve the following strata related disputes:
 - Non-payment of monthly strata fees or fines
 - Unfair actions by the strata corporation or by people owning more than half of the strata lots in a complex
 - Unfair, arbitrary or non-enforcement of strata bylaws, such as noise, pets, parking, rentals
 - A strata's failure to enforce its bylaws
 - Financial responsibility for repairs
 - Irregularities in meetings, voting, minutes or other governance issues
 - Interpretation of the legislation, regulations or bylaws
 - Issues about common property

CRT JURISDICTIONS – STRATA DISPUTES

- CRT is UNABLE to resolve the following strata related disputes:
 - Matters related to terminating or dissolving an interest in land or a strata lot.
 - Disputes brought by former owners of strata property.
 - Other matters that affect land, such as:
 - Ordering the sale of a strata lot
 - Builder's liens
 - Court orders respecting rebuilding damaged real property
 - Dealing with developers and phased strata plans
 - Determining each owner's percent share in the strata complex
 - Complex strata matters, such as:
 - Appointment of an administrator to run the strata corporation
 - Orders vesting authority in a liquidator
 - Applications to wind up a strata corporation
 - Remedies under section 33 of the Strata Property Act for an alleged conflict of interest by a strata council member
 - Appointment of voters when there is no person to vote in respect of a strata lot

CRT JURISDICTIONS – SMALL CLAIMS DISPUTES

- CRT is ABLE to resolve the following small claims disputes:
 - Matters less than \$5,000 including:
 - debt or damages
 - recovery of personal property
 - personal injury
 - specific performance of agreements involving personal property or services
 - Claimants are able to abandon the part of their claim over \$5,000 if they choose.

CRT JURISDICTIONS – SMALL CLAIMS DISPUTES

- CRT is UNABLE to resolve the following small claims disputes:
 - Matters over \$5,000
 - Enforcement of orders from other Tribunals
 - Matters involving the Charter of Rights and Freedoms
 - Matters with expired limitation periods
 - Claims against the government (provincial and federal only)
 - Matters involving slander or defamation
 - Matters that are being decided (or should be) in another forum or that are *res judicata*

CRT JURISDICTION – MOTOR VEHICLE INJURY DISPUTES

- CRT is ABLE to resolve the following three Motor Vehicle Injury disputes:
 - Disputes about accident benefits (Part 7)
 - Medical benefits
 - Disability and homemaker benefits
 - Income replacement benefits
 - Funeral and survivor benefits
 - Minor Injury Determinations (will be dealt with later on)
 - Disputes about damages and liability up to \$50,000

CRT JURISDICTION – MOTOR VEHICLE INJURY DISPUTES

- CRT is UNABLE to resolve the following three Motor Vehicle Injury disputes:
 - Claims for motor vehicle accident bodily injuries that happened before April 1, 2019 (unless they are less than \$5,000)
 - Claims for motor vehicle accident benefits that happened before April 1, 2019 (unless they are less than \$5,000)
 - Claims that are for greater than \$50,000

STRATA DISPUTES OVERVIEW

- 1. Applicable sections of the CRT Act
 - 1. Jurisdiction
 - 2. Orders Allowed
 - 2. Examples of Decisions
-



STRATA DISPUTES OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION

- **Claims within jurisdiction of tribunal for strata property claims**
- **121** (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction over a claim, in respect of the [Strata Property Act](#), concerning one or more of the following:
 - (a) the interpretation or application of the [Strata Property Act](#) or a regulation, bylaw or rule under that Act;
 - (b) the common property or common assets of a strata corporation;
 - (c) the use or enjoyment of a strata lot;
 - (d) money owing, including money owing as a fine, under the [Strata Property Act](#) or a regulation, bylaw or rule under that Act;
 - (e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
 - (f) a decision of a strata corporation, including the council, in relation to an owner or tenant;
 - (g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
- (2) For the purposes of this Act, the tribunal is to be considered to have specialized expertise in respect of claims within the jurisdiction of the tribunal under this Division.

STRATA DISPUTES OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION (CONT.)

- **Claims beyond jurisdiction of tribunal for strata property claims**

- **122** (1)The tribunal does not have jurisdiction in relation to a claim that may be dealt with, by the Supreme Court, under any of the following provisions of the [*Strata Property Act*](#):
 - (a)section 33 *[accountability]*;
 - (b)section 52 *[unanimous votes]*;
 - (c)section 58 *[court appointed voter]*;
 - (d)section 89 *[removal of claim of lien after purchase from owner developer]*;
 - (e)section 90 *[removal of liens and other charges]*;
 - (f)section 117 *[forced sale of owner's strata lot to collect money owing]*;
 - (g)section 160 *[court orders if strata corporation decides not to repair or replace damaged property]*;
 - (h)section 173 (2) *[court order when special levy resolution receives more than 1/2 but less than 3/4 of votes]*;
 - (i)section 174 *[appointment of administrator for strata corporation]*;
 - (j)section 208 *[orders respecting requests from leasehold landlords]*;
 - (k)section 209 *[leasehold landlord's remedies on leasehold tenant's default]*;

STRATA DISPUTES OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION (CONT.)

- Section 122 (cont.)
- (l) the following provisions of Part 13 *[Phased Strata Plans]*:
 - (i) section 226 (1) (c) and (d) *[release of security for common facilities]*;
 - (ii) section 232 *[amendment of declaration to extend time for election]*;
 - (iii) section 233 *[other amendments respecting Phased Strata Plan Declaration]*;
 - (iv) section 235 *[orders if owner developer elects not to proceed with next phase]*;
 - (v) section 236 *[order to compel completion of a phase]*;
 - (m) section 246 *[order for amendment of Schedule of Unit Entitlement]*;
- (n) the following provisions of Part 16 *[Cancellation of Strata Plan and Winding Up of Strata Corporation]*:
 - (i) section 272 *[vote to cancel strata plan]*;
 - (ii) section 273.1 *[confirmation by court of winding-up resolution — without liquidator]*;
 - (iii) section 278.1 *[confirmation by court of winding-up resolution — with liquidator]*;
 - (iv) section 279 *[order vesting authority in liquidator]*;
 - (v) section 284 *[application for court order to wind up strata corporation]*.

STRATA DISPUTES OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – ORDERS ALLOWED

- **Orders available in strata property claims**
- **123** (1) In resolving a strata property claim, the tribunal may make one or more of the following orders:
 - (a) an order requiring a party to do something;
 - (b) an order requiring a party to refrain from doing something;
 - (c) an order requiring a party to pay money.
- (2) In resolving a strata property claim described in section 121 (1) (e) to (g), the tribunal may make an order directed at the strata corporation, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.
- (3) Despite subsections (1) and (2), the tribunal may not make the following orders:
 - (a) an order requiring the sale or other disposition of a strata lot;
 - (b) an order in a class of orders prescribed by regulation.

EXAMPLE STRATA DECISIONS

- *Mackay v. Persinger et al*, 2018 BCCRT 627
 - Dispute relating to water leakage between strata lots
- *Lo v. The Owners, Strata Plan VR 2100*, 2018 BCCRT 366
 - Dispute relating to the process of the assignment of contingency funds to various repairs
- *The Owners, Strata Plan BCS 983 v. Wilcock et al*, 2018 BCCRT 518
 - Dispute relating to compliance and interpretation of strata pet bylaws and enforcement of outstanding fines

EXAMPLE STRATA DECISIONS (CONT.)

- *The Owners, Strata Plan KAS 2660 v. Brooks*, 2018 BCCRT 162
 - Dispute relating to the enforcement of strata ban on nuisance, chemical use on common property and feeding of wildlife as well as enforcement of outstanding strata fines
- *NCAH BC Holdings Ltd. v. The Owners, Strata Plan EPS 1231*, 2018 BCCRT 137
 - Dispute relating to usage of strata property for short term rentals against bylaws as well as interpretation of contractual issues relating to pre-authorized debit form and outstanding fines
- *Cartier v. Huskins et al.*, 2019 BCCRT 95
 - Dispute relating to “duplex problem” strata regarding use of common property, assignment of LCP and enforcement of standard bylaws
- Several more being published

SMALL CLAIMS DISPUTES OVERVIEW

- 1. Applicable sections of the CRT Act
 - 1. Jurisdiction
 - 2. Orders Allowed
 - 2. Examples of Decisions
-



SMALL CLAIMS DISPUTES OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION

- **Claims within jurisdiction of tribunal for tribunal small claims**
- **118** (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction to resolve a claim for relief in the nature of one or more of the following, if the amount of the claim is less than or equal to an amount, in respect of the [Small Claims Act](#), prescribed by regulation as the maximum tribunal small claim amount:
 - (a) debt or damages;
 - (b) recovery of personal property;
 - (c) specific performance of an agreement relating to personal property or services;
 - (d) relief from opposing claims to personal property.
- (2) An initiating party may adjust the initiating party's claim to fit within the maximum tribunal small claim amount prescribed under subsection (1).
- (3) The maximum tribunal small claim amount prescribed under subsection (1) may not exceed the amount prescribed by the Lieutenant Governor in Council under section 3 [*claims the Provincial Court may hear*] of the [Small Claims Act](#).

SMALL CLAIMS DISPUTES OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION (CONT.)

- **Claims beyond jurisdiction of tribunal for tribunal small claims**
- **119** The tribunal does not have jurisdiction under this Division in a claim
 - (a) for libel, slander or malicious prosecution, or
 - (b) despite section 9 [*government as party*], for or against the government.

SMALL CLAIMS OVERVIEW – APPLICABLE SECTIONS OF THE CRT ACT – ORDERS ALLOWED

- Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

EXAMPLE SMALL CLAIMS DECISIONS

- *Rite Flow Plumbing Inc. v. Kodelja* 2018 BCCRT 810
 - Dispute relating to contractual debt enforcement for the installation of a water pipeline
- *Lennox v. 0714576 B.C. Ltd. dba Ashley Furniture Homestore*, 2019 BCCRT 93
 - Dispute relating return and refund of a consumer goods
- *Super Save Disposal Inc. v. K.M.I. Holdings Ltd.*, 2018 BCCRT 285
 - Dispute relating to enforcement and termination of waste disposal contract

MOTOR VEHICLE INJURY DISPUTES OVERVIEW

1. Jurisdiction
 2. Minor Injuries
 3. Procedures
-



MOTOR VEHICLE INJURY DISPUTES – OVERVIEW

- CRT has exclusive jurisdiction over motor vehicle injury and accident benefit claims under \$50,000 occurring after April 1, 2019
- The CRT also has jurisdiction over the determination of “minor injuries” which is a broad definition (discussed further later)
- There is a cap on non-pecuniary damages for “minor injuries” in the amount of \$5,500 (Section 103 of the Insurance (Vehicle) Act and Section 5 of the Minor Injury Regulation)

MOTOR VEHICLE INJURY DISPUTES – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION

- **Definitions for Division — accident claims**
- **132** In this Division:
- **"accident"**,
 - (a) except in respect of the benefits referred to in section 133 (1) (a), has the same meaning as in section 101 [definitions and interpretation] of the *Insurance (Vehicle) Act*, or
 - (b) in respect of the benefits referred to in section 133 (1) (a) of this Act, has the same meaning as in section 1.1 [definitions] of the *Insurance (Vehicle) Act*;
- **"benefits"** has the same meaning as in section 1.1 of the *Insurance (Vehicle) Act*;
- **"minor injury"** has the same meaning as in section 101 of the *Insurance (Vehicle) Act*;

MOTOR VEHICLE INJURY DISPUTES – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION

- **Claims within jurisdiction of tribunal for accident claims**
- **133** (1) Except as otherwise provided in section 113 [*restricted authority of tribunal*] or in this Division, the tribunal has jurisdiction in a dispute, in respect of an accident, over a claim concerning one or more of the following:
 - (a) the determination of entitlement to benefits paid or payable under the *Insurance (Vehicle) Act*;
 - (b) the determination of whether an injury is a minor injury for the purposes of the *Insurance (Vehicle) Act*;
 - (c) liability and damages, if the amount, including loss or damage to property related to the accident but excluding interest and any expenses referred to under section 49 [*order for payment of expenses*], is less than or equal to the tribunal limit amount.

MOTOR VEHICLE INJURY DISPUTES – APPLICABLE SECTIONS OF THE CRT ACT – JURISDICTION

- **Claims beyond jurisdiction of tribunal for accident claims**
- **134** (1)The tribunal does not have jurisdiction in relation to a claim that may be dealt with, by a court, under any of the following provisions of the *Insurance (Vehicle) Act*:
 - (a)section 18 (2) *[financial responsibility in other provinces]*;
 - (b)section 42.1 *[offence]*;
 - (c)section 68 *[relief from forfeiture]*;
 - (d)section 77 (2), (8) and (9) *[rights of insurer]*;
 - (e)section 78 *[payment of insurance money into court]*;
 - (f)section 79 *[defence if more than one contract]*.
- (2)The tribunal does not have jurisdiction in relation to the following:
 - (a)a claim relating to liability and damages claimed under the *Family Compensation Act* in respect of a death;
 - (b)a claim to which the *Arbitration Act* applies;
 - (c)a claim under this Division in respect of an accident that occurred before April 1, 2019.

MOTOR VEHICLE INJURY DISPUTES – “MINOR INJURIES”

- Definition of “Minor Injury” is section 101 of the Insurance (Vehicle) Act and is very broad. CRT has presumptive jurisdiction to make minor injury determinations.
- **"minor injury"** means a physical or mental injury, whether or not chronic, that
- (a) subject to subsection (2), does not result in a serious impairment or a permanent serious disfigurement of the claimant, and
- (b) is one of the following:
 - (i) an abrasion, a contusion, a laceration, a sprain or a strain;
 - (ii) a pain syndrome;
 - (iii) a psychological or psychiatric condition;
 - (iv) a prescribed injury or an injury in a prescribed type or class of injury;
- Additional definitions and prescribed injuries are in the Minor Injury Regulation

MOTOR VEHICLE INJURY DISPUTES – “MINOR INJURIES” (CONT.)

- Minor Injury Regulation definition
- an abrasion, a contusion, a laceration, a sprain or a strain [IVA, 101(1)];
- a pain syndrome [IVA, 101(1)];
- a psychological or psychiatric condition [IVA, 101(1)];
- a concussion that does not result in an incapacity [MIR, s. 2];
- a TMJ disorder [MIR, s. 2];
- a WAD injury (with no demonstrable and clinically relevant neurological symptoms or fracture/dislocation of the spine) [MIR, s. 2].
- The burden of proof is on the party alleging an injury is not a “minor injury” (MIR s.4)

MOTOR VEHICLE INJURY DISPUTES – PROCEDURES

- CRT has jurisdiction over all claims up to \$50,000 – all claims up to this amount must be brought in the CRT
- All claims for over \$50,000 can be brought in the BCSC if both parties agree to jurisdiction and/or “minor injury” determination
- If award is less than \$50,000 in BCSC is less than CRT \$50,000 then costs are limited by section 135(4) of the of the CRT Act (\$5000 including costs of own expert reports)
- If the parties cannot agree CRT has jurisdiction to make “minor injury” determination using an expedited method much of which is regulated by the Accident Claims Regulation (“ACR”):
 - the number of medical experts a party will be able to obtain without leave of the CRT is limited to one, and three total if the CRT approves [ACR, s. 4];
 - the CRT may appoint an expert on its own initiative or at the request of a party [ACR, s. 3]; and
 - the amount recoverable for a report or other evidence prepared by an expert is \$2,000. The total limit for all recoverable fees, expenses, and charges, including cost of experts preparing a report (but not the cost of an expert appointed by the CRT itself) is \$5,000 [ACR, s. 5].

MOTOR VEHICLE INJURY DISPUTES – PROCEDURES (CONT.)

- After a determination with respect to “minor injury” has been made the parties can continue the action in BCSC if the recovery will be above the CRT cap (subject to the costs limitations if less)
- With respect to benefit claims:
 - Part 7 (no fault) benefits increased from \$150,000 to \$300,000 retroactive to Jan 1, 2018
 - Amounts recoverable for health care treatments has been limited by regulation
 - Additional benefit categories are deductible from the tort claim from first party insurer
 - Court is also not permitted to take likelihood of the recovery of those benefits into consideration for future care costs awards
- Area is new and will be evolving – will be interesting to see how it ends up with the concurrent jurisdiction

QUESTIONS OR COMMENTS?

