

CHILD PROTECTION LAW

LSS Campbell River Community Workshop 2014

Outline

- Angelina & Brad: Red Flags
- *Child, Family and Community Services Act (CFCSA)*
- When do children need protection?
- How are children protected?
- Aboriginal Issues in Child Protection

Angelina & Brad

Red Flags

- ❑ Angelina's addiction to prescription drugs
- ❑ Brad's use of drugs and alcohol
- ❑ Domestic violence in the presence of children
- ❑ Police have been at residence many times
- ❑ Shiloh (4) found unattended
- ❑ History of children being removed from the parents' care
- ❑ Residence is infested and has mould that effects the health of Shiloh

Child, Family and Community Services Act (CFCSA)

Purpose

- To ensure the safety and well-being of children

Director

- There is a provincial director of Child, Family and Community Service (the “Director”)
- Director delegates protection workers
- Social workers - Ministry of Children and Family Development

Guiding Principles in Child Protection

Guiding Principles in Child Protection

- ❑ children are entitled to be protected from abuse, neglect and harm or threat of harm
- ❑ family is the preferred environment for the care and upbringing of children
- ❑ responsibility for the protection of children rests primarily with parents
- ❑ services should be provided to parents to provide a safe and nurturing environment
- ❑ the child's views should be taken into account
- ❑ kinship ties are to be preserved if possible
- ❑ cultural identity of an aboriginal child should be preserved
- ❑ decisions relating to children should be made and implemented in a timely manner

Decisions in Child Protection Made in Childrens Best Interests

Best Interests

- ❑ child's safety
- ❑ child's physical and emotional needs and level of development
- ❑ importance of continuity
- ❑ quality of relationship the child has with a parent or other person and the effect of maintaining that relationship
- ❑ child's cultural, racial, linguistic and religious heritage
- ❑ the child's views
- ❑ the effect on the child if there is a delay in making a decision
- ❑ If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests

CFCSA & Aboriginal Issues

Guiding Principles

- An aboriginal child is
 - ▣ a child who has a biological parent of aboriginal ancestry and considers himself or herself to be aboriginal
- Guiding principles
 - ▣ Family is the preferred environment
 - ▣ Kinship ties should be preserved if possible
 - ▣ The cultural identity of aboriginal children should be preserved
- Service delivery principles
 - ▣ Aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children

CFCSA & Aboriginal Issues

Guiding Principles (con't)

- Best Interests of the Child
 - ▣ The child's cultural, racial, linguistic and religious heritage
 - ▣ If the child is an aboriginal child, the importance of preserving the child's cultural identity must be considered in determining the child's best interests

CFCSA & Aboriginal Issues

Service Delivery Principles

- services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving services
- the community should be involved, wherever possible and appropriate, in the planning and delivery of services, including preventive and support services to families and children

When Does a Child Need Protection?

Has the child been, or is likely to be:

- physically harmed
- sexually abused or exploited by a parent
- sexually abused or exploited by another person and the parent is unwilling or unable to protect the child
- *Physically harmed because of neglect by the parent*

Is the child:

- *emotionally harmed by the parent's conduct*
- deprived of necessary health care
- seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment
- absent from the home in circumstances that endanger their safety or well-being
- in the care of another by agreement and the parent is unable or unwilling to resume care

When Does a Child Need Protection?

Is the Child's Parent:

- *Unable or unwilling to care for the child & has not made adequate provision for the child's care*
- Dead and adequate provision has not been made for the child's care

Has the Child:

- been abandoned and adequate provision has not been made for the child's care

Duty to Report

If a person believes a child is in need of protection they must promptly report the matter to a social worker at MCFD

- A person who does not report a child who they believe is in need of protection commits an offence
- A person who knowingly reports false information that a child needs protection commits an offence

Report About Angelina

*Angelina
Arrested*

- ❑ MCFD received a report about concerns for children who had been in the care of a family friend for two days
- ❑ Mother was to pick up the children yesterday (Friday) after her shift at work
- ❑ Caller heard that the Mother was in jail
- ❑ The family friend is planning to leave town this afternoon and can no longer care for the children
- ❑ There is a 14 year old son, but his whereabouts are unknown
- ❑ The children spent a night in foster care 9 months ago
- ❑ The youngest child looks unwell
- ❑ The father has been arrested recently for assaulting the mother and has a no-contact order

Investigation of a Child Protection Report

Assess

Respond

- Assess
 - A director must assess information in a child protection report
- After the Assessment the director may:
 - offer support services & agreements
 - refer family and child to community agencies
 - conduct an assessment of the family about
 - the child's safety
 - necessity to provide available services to the family
 - investigate the child's need for protection

Investigation of a Child Protection Report

Report the Results

- The Director reports the result of the assessment or investigation to:
 - ▣ parent
 - ▣ reporter
 - ▣ other person or agency if the director determines this is necessary to ensure the child's safety or well-being

Searching a Home

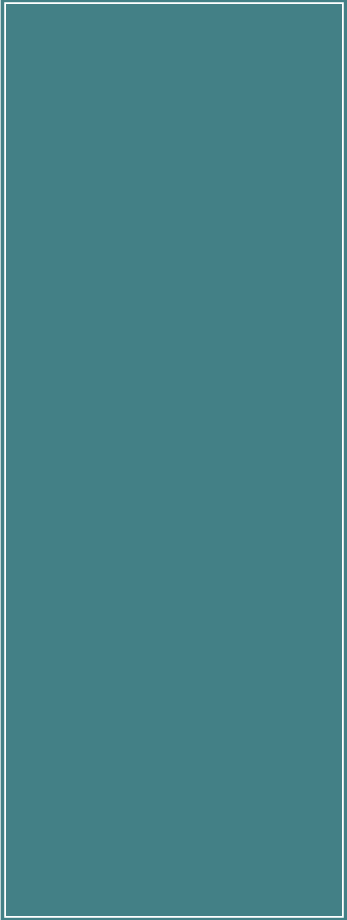
With Consent

- ❑ the director can search a home for a child if the resident or the parent consents
- ❑ the extent of the search is subject to consent
- ❑ anything in plain view can be noted

Without Consent

- ❑ the director can forcibly enter an residence if there are reasonable grounds to believe a child is in the premises and needs protection
- ❑ the director has been denied access to the child or no one available to provide access, and
- ❑ there are no less disruptive measures available to protect that child

Removing the Children

- 
- A social worker responded to the child protection report
 - A review of the Director's involvement with the family showed 10 previous child protection reports
 - Of those 10 reports the children were found in need of protection twice prior
 - Agreements and services were adequate to protect the children previously
 - The mother could identify no other people available immediately to care for the children
 - The children were removed from the Mother
 - Mother was charged with theft under \$5,000
 - First appearance in court is on Monday & Mother is expected to be released
 - Children are placed with foster parents

Alternatives to Removing the Children

Non-Court Processes

- Services
- Agreements: parents, youth, others
- Safety Plans

Court Processes

- Protective Intervention Order
- Supervision Orders

When is a court order necessary?

When is a court order necessary to protect a child?

- If the Director has reasonable grounds to believe that:
 - ▣ the child needs protection, and a supervision order is adequate to protect the children
 - ▣ the child needs protection and the children's health or safety is in immediate danger, or no other less disruptive measure is adequate to protect the child

Angelina & Brad

Grounds for the need for protection

- Child has been, or is likely to be, physically harmed because of neglect by the child's parent
- The child's parent is unable to care for the child and has not made adequate provision for the child's care
- The child has been abandoned and adequate provision has not been made for the child's care

Presentation Hearing: Timing & Notice

When?

- No later than 7 days after the day a child is removed from a parent, the Director must attend provincial court for a presentation hearing

Who?

- Director must, if practicable, inform each parent, child over 12, the applicable aboriginal organization (if child removed)

What?

- It is a summary hearing – facts are resolved in favour of the Director

CFCSA & Aboriginal Issues

Notice Provisions

- notice to the designated aboriginal representative is required for:
 - ▣ a presentation hearing (if the notice is practicable)
 - ▣ a protection hearing
 - ▣ an opportunity for the Band Representatives to consult with the social workers and vice versa

Angelina & Brad

*Informing the
Parents*

*Angelina, Brad
& Billy Bob*

- Social worker notifies the parents by providing a copy of the court documents
 - ▣ Angelina, Brad and Billy Bob
- This is a good time to advise the parents to seek legal advice
- Duty counsel: Tuesdays 09 – 12 at the courthouse – sign-up sheet

Legal Aid Office

*Apply for
Legal Aid at
the Office*

*Apply for
Legal Aid by
Phone*

- 1261 Ironwood Street
 - ▣ Wed, Fri: 9am to 3pm (office)
 - ▣ Closed: 11am to 1pm (office)
 - Phone: 250-287-9521
 - Fax: 250-287-9529
- 1-866-577-2525

Presentation Hearing: Orders

Interim Orders for 45 days

- *“the child shall remain in the interim custody of the Director pending the commencement of a protection hearing within 45 days”*

- *Other orders the court can make:*
 - *Child can be returned to a parent entitled to custody*
 - *Child remain with a parent under supervision of the Director*
 - *Child to be placed in the custody of a person other than a parent*

Protection Hearing: Timing and Notice

When?

- Within 45 days after the presentation hearing

Who?

- *At least 10 days* notice to child over 12, each parent, the designated representative of the Indian Band the child is registered with or entitled to be registered with
 - ▣ *Angelina, Brad, Billy Bob*

Protection Hearing Orders

*Temporary
Custody of
Director*

*Permanent
Custody*

*Supervision
Order*

*Temporary
Custody with
Other*

- *“The child shall remain in the temporary custody of the Director for a period of 3 months”*
- *“The child shall be placed in the continuing custody of the Director”*
- *“The child shall remain in the care of Angelina Smith, under the supervision of the Director for a period of 6 months, and according to the following terms & conditions.....”*
- *“The child shall be placed in the temporary custody of (Paternal Grandparents) for a period of 3 months, and under the supervision of the Director ...”*

Consent or No Consent

If Consent

- if Angelina, Brad Billy Bob consent to the plan for the children at the protection hearing then the order is made
 - ▣ the children remain in the care of the Director
 - ▣ the parents would work with the social worker on mitigating the risks they pose to the children
- the Director is the guardian of the children and makes all decisions about their care – but involves the parents as much as safely possible usually

If No Consent

- The children remain in care, and a Court Case Conference is set *not* a trial

Cooperative Planning: Court Case Conferences, Family Conferences & Mediation

Out-of-Court Solutions

- Court Case Conferences
- Family conferences
- Mediation

These are ways to plan collaboratively for the children that keeps the matter out of the courtroom.

Can use all of these tools together to come to a collaborative solution, the best interests of the children.

Court Case Conferences

Courthouse with a Judge

- Are ordered by the court at the Protection Hearing (mandatory if no consent)
- May be ordered if requested at any other time
- A judge is present with the parties
- a judge's permission is required for non-parties to be present
- Only consent orders may be made

CFCSA & Aboriginal Issues

Court Case Conferences

- case conferences
 - although a band representative may not be a “party” to the action, a band representative is always welcome at a case conference
 - where a family or child is disassociated from their band it can be an opportunity to re-connect
 - Band representative can assist the parent
 - other Band members may also participate, with a judge’s permission

Family Conferences

Purpose

- the family develops a plan of care for the child to protect the child

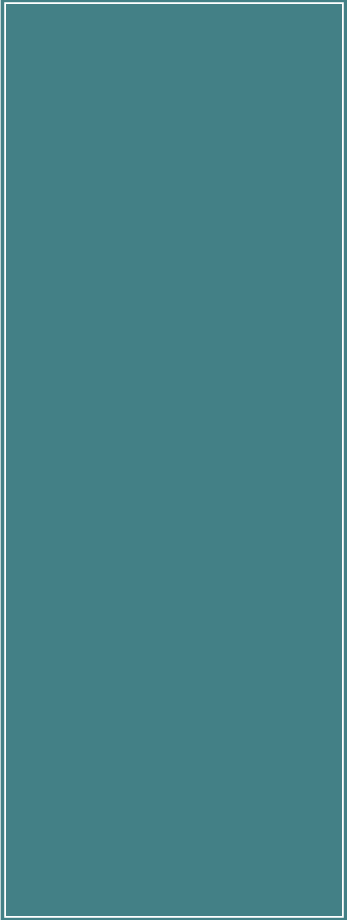
Director's Consent

- the plan of care developed by the family must include the director's consent

Plans for the Child May Include

- child can reside with a family member or other person
- a parent can reside outside the home
- must take into account the views of a child over 12 & over
- not a good tool if a child needs immediate protection

Mediation

- 
- Usually used when the parties are unable to resolve an issue relating to the children
 - A court proceeding can be adjourned for the purpose of mediation
 - The Director may file an agreement with the court if reached in mediation or a family conference

Child in Care: How Long?

Time Limits

- depends on the age of the children
- determined by the age of the youngest child in the family
 - ▣ 1-4 years: 12 months
 - ▣ 5-11 years: 18 months
 - ▣ 12 years & over: 24 months
- time limits can be extended by a court order
- supervision orders: a total of 12 months

Returning Children to Parents Entitled to Custody

- To return a child to a parent
 - ▣ Parent & parent who is assessed as safe
 - ▣ Parent must be a guardian of the child
 - ▣ Parent may have a court order stipulating “primary residence” of the child
 - ▣ Parent may have all “parenting time”
 - ▣ Must be in best interests of the child
 - ▣ Child over 12 should agree
- Billy Bob – Pax
- Angelina – Pax, Maddox & Shiloh
- Brad – Pax, Maddox & Shiloh

CFCSA: Protective Intervention Orders

*Protects the
the Children*

*....and the
caregiver
sometimes*

- out-of-care protection order
 - ▣ can apply for a protection order keeping an unsafe person away from the children
- in-care protection orders
 - ▣ can apply for a protection order keeping an unsafe person away from the children & a caregiver
- the new *Family Law Act*
 - ▣ rigorous opportunity for protection orders
 - ▣ Angelina may have to use the *FLA* to protect herself

The new Family Law Act: What's changed?

Ending Violence Association of British Columbia /
Legal Service Society Conference
27 November 2013

John-Paul Boyd
Canadian Research Institute for Law and the Family

Out with the old, in with the new

The legislation the Family Law Act replaced

Legislation

- Family Relations Act first in force in 1972
 - Care of children; child, spousal and parental support
 - Judicial separation
 - Nothing on family property
- FRA repealed almost all of the previous provincial legislation on family law matters
 - Divorce and Matrimonial Causes Act
 - Equal Guardianship of Infants Act
 - Parents' Maintenance Act
 - Wives' and Children's Maintenance Act

Legislation

- Overhauled FRA in force in 1978
 - Covered same territory as 1972 act
 - Provisions added for the division of property between married spouses, property protection orders
- Family Law Act passed on 23 November 2011
 - Given royal assent on 24 November 2011
 - Parental support provisions repealed immediately
 - Fully in force on 18 March 2013, along with amendments to Supreme Court Family Rules, Provincial Court Family Rules
- Amendments to FLA seem likely, though not for awhile

Dispute resolution

A new attitude toward out of court resolution processes

The Family Relations Act

s. 30: A court may, *on application*, *appoint* a guardian, or *remove* from office a guardian ...

s. 35: A court may, *on application*, *order* that one or more persons may exercise custody over a child or have access to the child ...

s. 66: In *proceedings* under this Part ... or *on application*, the Supreme Court may *determine* any matter respecting the ownership, right of possession or division of property under this Part, ... and may make *orders* that are necessary, reasonable or ancillary to give effect to the determination ...

s. 91: A person may *apply* for an *order* [for support] under this Part on his or her own behalf ...

The Family Law Act

s. 39: An *agreement* or *order* ... may provide that parent is not a guardian

s. 40: Parental responsibilities may be allocated under an *agreement* or *order*

s. 44: Two or more of a child's guardians may make an *agreement* respecting ... parental responsibilities

s. 45: *On application* by a guardian, a court may make an *order* respecting ... parental responsibilities

s. 58: A child's guardian and a person who is not a child's guardian may make an *agreement* respecting contact

s. 59: *On application*, a court may make an *order* respecting contact with a child

The Family Law Act

4 The purposes of this Part are as follows:

- (a) to ensure that parties to a family law dispute are informed of the various methods available to resolve the dispute;
- (b) to encourage parties to a family law dispute to resolve the dispute through agreements and appropriate family dispute resolution before making an application to a court;
- (c) to encourage parents and guardians to
 - (i) resolve conflict other than through court intervention, and
 - (ii) create parenting arrangements and arrangements respecting contact with a child that is in the best interests of the child

The Family Law Act

- People dealing with a family law dispute are required to make full disclosure, whether in court or not (s.5)
- People may make agreements that resolve all or part of a family law dispute (s. 6)
- “Family dispute resolution professionals” must advise of various ways of resolving family law disputes (s. 8)

The Family Law Act

- Court may require people to attend “family dispute resolution” (ss. 61, 63, 224)
- Property may be distributed on interim basis to fund family dispute resolution (s. 89)
- Running of time period within which applications for spousal support and property division is suspended while engaged in family dispute resolution (s. 198)
- Court may order party to pay costs of family dispute resolution (ss. 61, 63, 213, 214, 221, 224, 228, 230)

The Family Law Act

- 1 "family dispute resolution" means a process used by parties to a family law dispute to attempt to resolve one or more of the disputed issues outside court, and includes
 - (a) assistance from a family justice counsellor under Division 2 *[Family Justice Counsellors]* of Part 2,
 - (b) the services of a parenting coordinator under Division 3 *[Parenting Coordinators]* of Part 2,
 - (c) mediation, arbitration, collaborative family law and other processes, and
 - (d) prescribed processes;

Things to remember

People involved in a family law dispute are required to make **full disclosure** whether they are in court or not.

People can make **agreements** resolving all or part of a family law dispute.

Agreements have the same importance as **orders** and can be enforced like **orders**.

The court can make an order requiring the parties to attempt **family dispute resolution**.

The court can make an order about how the **fees** for **family dispute resolution** will be paid.

Determining parentage

Parentage though natural and assisted reproduction

The Family Relations Act

- Court could determine paternity if a male person denied responsibility to pay child support on the basis that he was not the father of the child
- Certain presumptions allowed the court to conclude the male was the father based on the nature and timing of his relationship with the mother
- Court could order paternity test, usually DNA test with accuracy in excess of 99.9%
- Parentage in cases of assisted reproduction dealt with through court under Adoption Act and Vital Statistics Act

The Family Law Act

s. 26: Child's parents are birth mother and biological father; presumptions of paternity continue to apply

s. 33: Court may order paternity test

s. 24: Donor of eggs, sperm or embryo is not automatically a parent because of the donation

s. 30: With agreement executed before conception, can agree that a donor *will be* a parent

s. 29: With agreement executed before conception, can agree that a surrogate mother *will not be* a parent

Things to remember

A child's parents are the child's biological father and the birth mother.

Claims disputing paternity are handled the same way under the FLA as under the FRA.

A surrogate mother is presumed to be a parent. A donor of reproductive materials is not presumed to be a parent. People can make agreements to the contrary.

People can make agreements determining the parentage of a yet to be conceived child, which may include the intended parents, the donors of genetic material and a surrogate mother.

The care of children

Guardianship, parenting arrangements and contact

The Family Relations Act

- Key concepts in addressing the care of children
 - Custody, guardianship, access
 - Child's best interests were "paramount" concern
 - Custody and guardianship defaulted to parent with care of child after separation, though different arrangements could be made
- Custody and access shared with federal Divorce Act
- Meaning of custody and guardianship often confused
- Guardianship usually treated as synonymous with custody even though it has the larger, more comprehensive meaning

The Family Relations Act

- Unwritten presumption in favour of joint custody and joint guardianship
 - Language of custody and access created highly adversarial win/lose mentality
 - Joint custody did not mean equal parenting time
- Often burden lay on parent opposing joint custody and joint guardianship to say why custody and guardianship shouldn't be shared
- Solution in high conflict cases was often to be creative and clear in assigning parenting rights

The Family Relations Act

- Court could direct an “investigation into a family matter”, usually completed by family justice counsellor, registered clinical counsellor or psychologist
 - Commonly called “custody and access reports” or “s. 15 reports”
- Court could order evaluative and non-evaluative views of the child reports through s. 15 (court may direct investigation) or s. 24 (court may consider the child’s views in assessing the child’s best interests)

The Family Law Act

- Largely new language; entirely new concepts
- What matters now is not who is a parent but who is the guardian of a child
- Guardians have:
 - Parental responsibilities
 - Parenting time with the child
 - Responsibility for day-to-day decision-making
- People who are not guardians may have contact with a child but have no other rights

The Family Law Act

- When making a decision about a child, the parties and the court must consider *only* the best interests of the child
- Under s. 37, must consider “all of a child’s needs and circumstances” including
 - Child’s health, wellbeing, relationships with other people
 - Child’s views, unless inappropriate
 - History of child’s care and child’s need for stability
 - Capacity of a person to exercise parental responsibilities
 - Family violence and its impacts

The Family Law Act

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

The Family Law Act

39 (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

(2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.

(3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:

(a) section 30 [*parentage if other arrangement*] applies and the person is a parent under that section;

(b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;

(c) the parent regularly cares for the child.

The Family Law Act

s. 40: Only guardians have parental responsibilities and parenting time

s. 41: Parental responsibilities are decisions about how a child will be care for and raised

s. 42: Parenting time is a guardian's time with a child and includes having day-to-day care and control of the child and responsibility for day-to-day decisions

s.1: Parenting arrangements are the arrangements in an order or agreement for parental responsibilities and parenting time

The Family Law Act

s. 50: Only parents can be made guardians by agreement

s. 51: The court may appoint a person or remove a person as the guardian of a child; applicant must complete specific affidavit and records checks

s. 208: The Nisga'a government is entitled to notice of guardianship applications involving Nisga'a child

s. 209: The governments of treaty first nations, at present the Tsawwassen and Maa-nulth, also entitled to notice of applications involving treaty first nations children

The Family Law Act

s. 55: A guardian may appoint a person as standby guardian in the event of terminal illness or loss of capacity

s. 53: A guardian may appoint a person as guardian in the event of death

s. 43: A guardian may temporarily delegate a defined range of parental responsibilities to someone else while the guardian is unable to exercise those responsibilities

- None of these forms of guardianship appointment require court oversight

The Family Law Act

s. 58: A child's guardians may agree that a person, including a parent, have contact with the child; all of the child's guardians with parental responsibility for determining contact must agree

s. 59: A person, including a parent, may apply for an order for contact with a child

Things to remember

Custody and access are *not* carried forward in the FLA.

Only guardians have parental responsibilities and parenting time with a child.

A child's guardian may be a parent or someone else.

A parent may or may not be a guardian.

A child may have more than two guardians; a child may have more than two parents.

Someone who is not a guardian may only have contact with a child.

Mobility issues

A new statutory test to determine relocation applications

The Family Relations Act

- No provisions to address parent's wish to move; treated as variation application
- Court generally assessed claims applying case law developed under Divorce Act, primarily *Gordon v Goertz*
- Extremely difficult to predict outcomes because of inconsistent case law
 - Parent with primary residence allowed to move 55 to 60% of the time
 - Statistics say nothing about outcome of a particular claim

The Family Law Act

- A guardian who wishes to relocate, with or without the child, must give written notice to all other guardians and all persons with contact at least 60 days before the move (s. 66)
- “Relocation” means a move that is likely to have a “significant impact” on child’s relationship with a guardian or another person with a “significant role” in the child’s life (s. 65)
- A guardian who objects to the proposed move must file an application to prevent move within 30 days; persons with contact not entitled to apply (s. 68)

The Family Law Act

- If guardians *do not have* “substantially equal” parenting time with the child, moving guardian must (s. 69)
 - Show that reasonable arrangements have been proposed to preserve the child’s relationships
 - Show that the move is proposed in good faith
 - Move then presumed to be in child’s best interests
- Other guardian can rebut presumption by that move is *not* in best interests of the child (s. 69)

The Family Law Act

- If guardians *have* “substantially equal” parenting time with the child, moving guardian must (s. 69)
 - Show that reasonable arrangements have been proposed to preserve the child’s relationships
 - Show that the move is proposed in good faith
 - Show that the move is in child’s best interests
- Other guardian can defend on basis that move is *not* in best interests of the child (s. 69)

The Family Law Act

- In assessing the moving guardian's good faith, the court can look at (s. 69)
 - The guardian's reasons for moving
 - Whether the move is likely to enhance the quality of life of the child and the guardian
 - Whether the guardian gave the required notice
 - Whether there are any restrictions on relocation in an order or agreement
- If relocation allowed, court may make orders to maintain other guardian's parenting time (s. 70)

Things to remember

Guardian seeking to relocate, with or without child, must give written notice to all other guardians and persons with contact.

Only guardian can apply to prevent the relocation. If guardian does not apply, child may be relocated.

One of two tests will apply to determine application depending on whether guardians have substantially equal parenting time with child or not.

If relocation is allowed, court may make orders to preserve the previous arrangements for parenting time.

Child, spousal and parental support

Only a few changes, but they're big ones

The Family Relations Act

- Parents are obliged to support their children
 - Amount determined by Child Support Guidelines
 - Guidelines adopted for BC
- A spouse may be obliged to support another spouse
 - Amount usually determined by Spousal Support Advisory Guidelines
 - Advisory Guidelines not referenced in legislation
- An adult child may be obliged to support a parent
 - Amount determined according to need and ability to pay

The Family Relations Act

- “Parent” included guardians and stepparents who had contributed to the support of the child
- A “child” was someone under 19 or older if “unable to withdraw” from the care of the child’s parents
- A “spouse” was someone who was married or had lived with another person in a marriage-like relationship for at least two years

The Family Law Act

- Parental support not carried forward in FLA
- Repeal of that part of FRA immediate upon FLA receiving royal assent in November 2011
- Last case on parental support in BC heard in August 2012; claim was dismissed, with costs to the adult children

The Family Law Act

- 3 A person is a spouse for the purposes of this Act if the person
- (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [*Property Division*] and 6 [*Pension Division*], has a child with the other person.
- (2) A spouse includes a former spouse.

The Family Law Act

- Test to determine entitlement to spousal support copied from Divorce Act
- Advisory Guidelines not mentioned, but will still be used
- Agreements and orders for spousal support may be reviewable, and may specify method of review
- Agreements on spousal support that were fairly negotiated are harder to set aside

The Family Law Act

- Each of a child's parents and guardians, except for guardians who are financial or litigation guardians only, have a duty to support the child
- Minor children who become spouses or voluntarily withdraw can cease to be entitled
- Child support obligation of non-parent guardian is secondary to obligation of parent
- Obligation of stepparent is secondary to both

The Family Law Act

- Support can be paid as a lump sum, directly or in trust
- Court can require that payor maintain life insurance policy
- Court may order that support be binding on the payor's estate
- Recipient can apply for an order that support continue after payor's death as debt of payor's estate
- Payor's personal representative can defend new applications or apply to vary old orders

Things to remember

Minors who withdraw or become spouses can be disentitled from child support.

Child support obligations of stepparents are secondary to those of parents and non-parent guardians.

People who have had a child and lived together for less than two years may be entitled to spousal support.

Support obligations can be binding on the payors' estates and be payable after death.

Payors can be required to maintain life insurance.

Dividing property and debt

An entirely new approach that also applies to unmarried spouses

The Family Relations Act

- Married spouses were entitled to a half share of family assets
- “Family assets” were *any* property ordinarily used for a family purpose, regardless of when or how acquired
- A spouse could get more than half of the family assets if an equal division would be unfair; became relatively easy to get unequal division
- No provisions for unmarried couples, property divided under principles of unjust enrichment and trust law
- No provisions for division of debt

The Family Law Act

s. 81: Each spouse entitled to half of family property and liable for half of family debt

s. 85: Some property is excluded from pool of divisible family property, including property brought into relationship as well as inheritances and gifts, court awards, insurance payouts

s. 84: Family property is all property acquired during relationship plus increase in value of excluded property during relationship

s. 86: Family debt is all debt incurred during relationship

s. 1: Spouse includes people living together for at least 2 years

The Family Law Act

s. 95: Court can order unequal division of family property and family debt if an equal division would be “significantly unfair”

s. 96: Can divide excluded property if family property or family debt outside BC can't be divided or if it would be significantly unfair not to divide, considering length of relationship and non-owner's contribution to excluded property

s. 94: Court cannot make an order dividing property if there is an agreement, until the agreement is set aside

The Family Law Act

- Agreements on property and debt that were fairly negotiated are harder to set aside
- More difficult to get unequal division than under FRA
- Unclear when excluded property that drops in value during the relationship will be valued
- Unclear how excluded property that drops in value and recovers during the relationship will be shared
- May or may not provide more certainty than FRA

Things to remember

Family property is presumed to be equally divided.

Property acquired after separation with family property is also divisible family property.

Family debt is presumed to be equally shared.

Property brought into relationship, inheritances and gifts are presumed to be excluded from sharing, but owner must share in any growth in value during relationship.

Applies to married and unmarried spouses who have lived together for at least two years.

Enforcing orders and agreements

Fun new tools that also apply in the provincial court

The Family Relations Act

- Agreements about the care of children, child support and spousal support could be filed in either court and be enforced like court orders
- Order and filed agreements for support enforced primarily through FMEP although other remedies were and remain available
- Access enforced through contempt applications in supreme court or in both courts by police enforcement
- Arrangements for property and protection orders enforced in supreme court through contempt, police occasionally enforced protection orders

The Family Relations Act

- The FRA made breaches of certain orders an offence; breaches could be enforced under the Offence Act by private prosecution but rarely were
- FRA offences included:
 - Interference with custody of or access to a child
 - Breach of an order restraining harassment of a party and a child in the care of that party
 - Breach of an order preventing interference with a child
 - Breach of an exclusive occupancy order
 - Breach of an order restricting contact between the parties

The Family Law Act

- Agreements on parenting arrangements, contact, child support and spousal support can be filed in court and be enforced as if they were orders (ss. 44, 58, 148, 163)
- If parenting time or contact is wrongfully withheld, court may make orders (s. 61)
 - That parties attend family dispute resolution or take counselling
 - For make-up time
 - For reimbursement of expenses or posting of security
 - For supervision of transfer of child

The Family Law Act

- Failure to exercise parenting time or contact can also be grounds to seek enforcement (s. 63)
- Orders from outside BC that are similar to orders for guardianship, parenting arrangements or contact can be filed in court and enforced like a local order (s. 75)
- Orders and agreements for support can be enforced under FLA or by FMEP (ss. 148, 163)
- Orders for support can be registered with LTSA or against property to secure payment (s. 170)

The Family Law Act

- Arrears of support can only be cancelled if it would be grossly unfair not to do so (s. 174)
- When a party is abusing, misusing or frustrating the court process, the party can be restrained from taking further steps in the case for a period of time or until the party has complied with an order (s. 221)
- The court may adjourn a case until a party has complied with an order (s. 223)

The Family Law Act

- Where no specific provisions are made for the enforcement of an order, the court may (s. 230)
 - Require a party to post security
 - Require a party to pay expenses incurred as a result of his or her conduct
 - Require a party to pay up to \$5,000 as a fine or to another party
- This is the FLA's general enforcement mechanism, to be used when no other enforcement mechanism is provided

The Family Law Act

- Where a party refuses to comply with an order and the court concludes that no other order will secure the party's compliance, the court may (s. 231)
 - Imprison the party for up to 30 days
 - Where parenting time or contact has been wrongfully withheld, order the police to apprehend the child
 - Where a person with contact has refused to return the child to a guardian, order the police to apprehend the child
- This is the FLA's extraordinary enforcement mechanism, to be used as a last resort

The Family Law Act

- Protection orders *cannot* be enforced under the FLA, including by way of its general and extraordinary enforcement provisions (s. 188)
- A police officer may enforce a protection order by proceeding under s. 127 of the Criminal Code
- The Offence Act is not applicable to orders made under the FLA (ss. 232)

Things to remember

Agreements on parenting arrangements and support can be filed in court and enforced like orders.

Parenting time and contact have specific enforcement mechanisms, which include make-up time, counselling and referral to family dispute resolution.

The court may suspend a case until a party complies with an order.

There is a general enforcement mechanism that applies when no specific enforcement mechanism is provided. Under the extraordinary enforcement mechanism, the court can imprison a party for up to 30 days.

Family violence

An expanded definition and new powers to protect

The Family Relations Act

- Family violence not specifically addressed, however would be taken into account in assessing the best interests of the child
- Where custody was an issue, court could make orders
 - Restraining harassment of the child or a party
 - Prohibiting interference with the child, including no-entry and no-contact orders
 - Giving sole custody to a party
- Court could also restrict contact between spouses, including by no-entry orders

The Family Law Act

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,

The Family Law Act

(d) psychological or emotional abuse of a family member, including

(i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,

(iii) stalking or following of the family member, and

(iv) intentional damage to property, and

(e) in the case of a child, direct or indirect exposure to family violence;

The case law to date

- Manner in which party conducted litigation and her behaviour after trial found to be “family violence” on basis of harassment, threats, restricting financial autonomy and damaging property

M.W.B. v A.R.B., 2013 BCSC 885

- Failure to pay child support in right amount at right time found to be “family violence” on basis of psychological and emotional harm

J.C.P. v J.B., 2013 BCPC 297

The Family Law Act

1 "family member", with respect to a person, means

(a) the person's spouse or former spouse,

(b) a person with whom the person is living, or has lived, in a marriage-like relationship,

(c) a parent or guardian of the person's child,

(d) a person who lives with, and is related to,

(i) the person, or

(ii) a person referred to in any of paragraphs (a) to (c), or

(e) the person's child,

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

The Family Law Act

- Under s. 8, family dispute resolution professionals must assess for the presence of family violence and
 - Assess its impact on the safety of the client or a family member
 - Assess the extent to which it impairs the client's ability to negotiate
 - Discuss the advisability of different types of dispute resolution in light of the assessment
 - Advise of the resources that may be available to resolve the dispute

The Family Law Act

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

The Family Law Act

- FRA's personal restraining orders replaced with "protection orders" in the FLA
- Protection orders are intended to protect a family member from family violence committed by another family member
- The at-risk family member can apply under s. 183, or another person can apply on her behalf; the court must consider the factors set out in s. 184 in deciding whether to make the order

The Family Law Act

- If a protection order conflicts with another order made under the FLA, the FLA order is suspended to the extent of the inconsistency
 - Applies to out-of-province orders that are similar to protection orders
 - Applies to no-contact and no-communication orders under the Criminal Code
- Protection orders are *not* enforceable under the FLA or the Offence Act, they may only be enforced by the police under the Criminal Code

Things to remember

Family violence is defined broadly.

Family dispute resolution professionals must assess for **family violence** and assess the extent to which it affects the client's **safety** and **ability to negotiate**.

Family violence is a factor the court must consider in assessing the **best interests of the children**; court must also consider the extra factors set out in s. 38.

Protection orders replace restraining orders under the FLA and are available to protect **family members**.
Protection orders are **enforced** under the **Criminal Code**.

The new Family Law Act: What's changed?

Ending Violence Association of British Columbia /
Legal Service Society Conference
27 November 2013

John-Paul Boyd
Canadian Research Institute for Law and the Family



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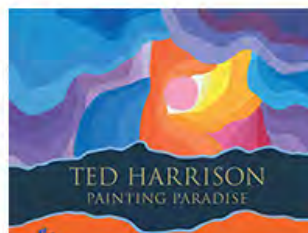
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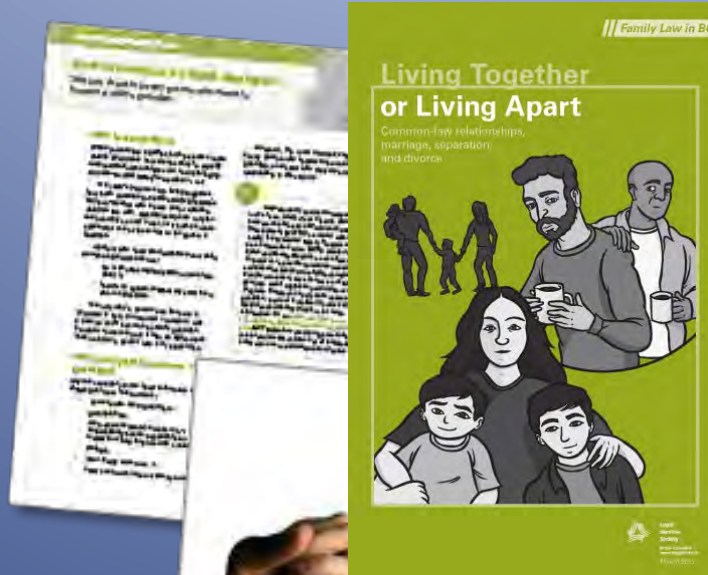
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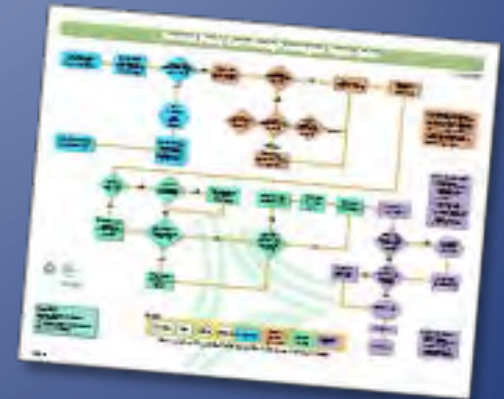
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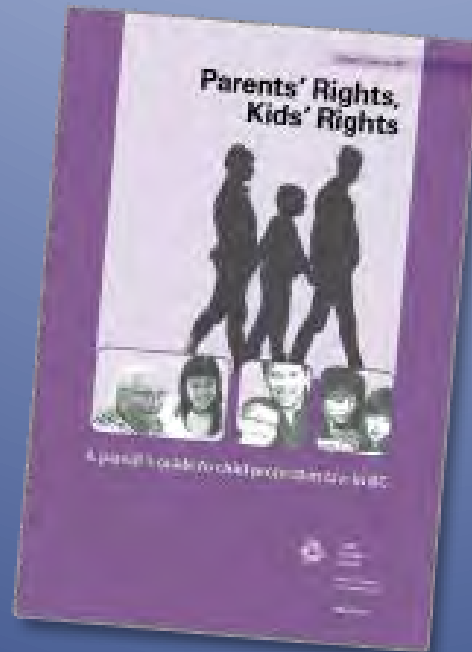


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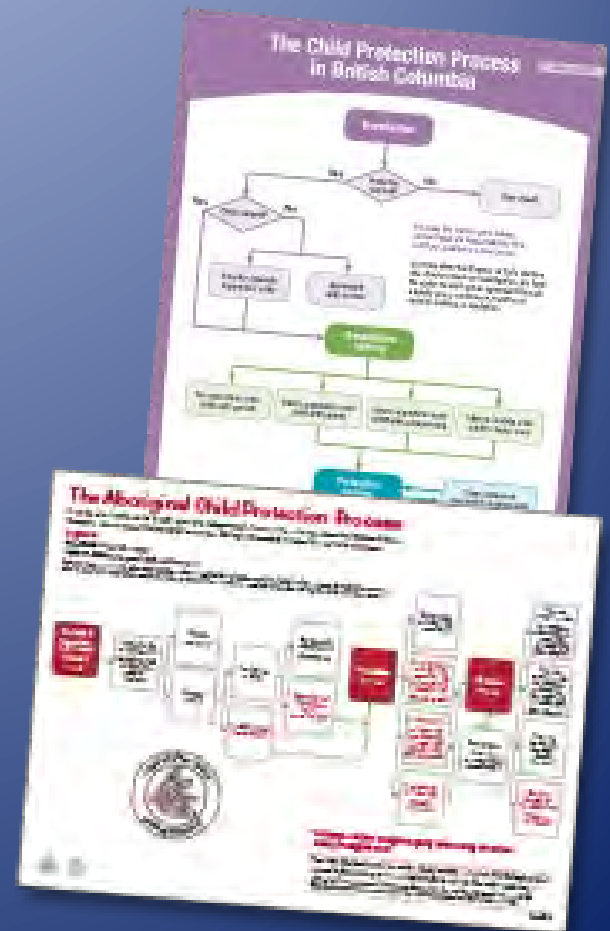
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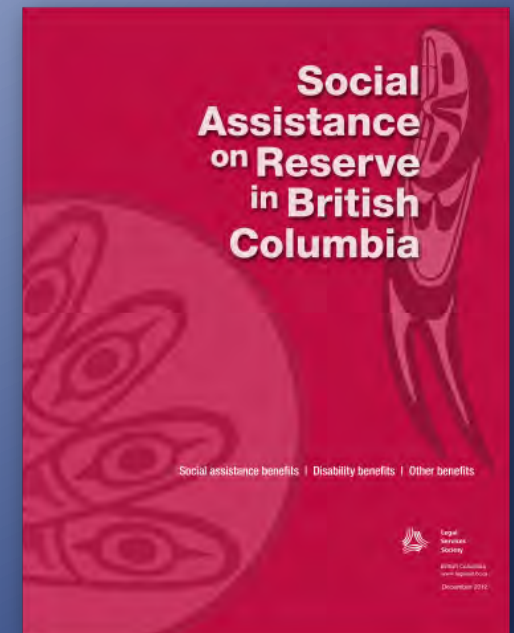
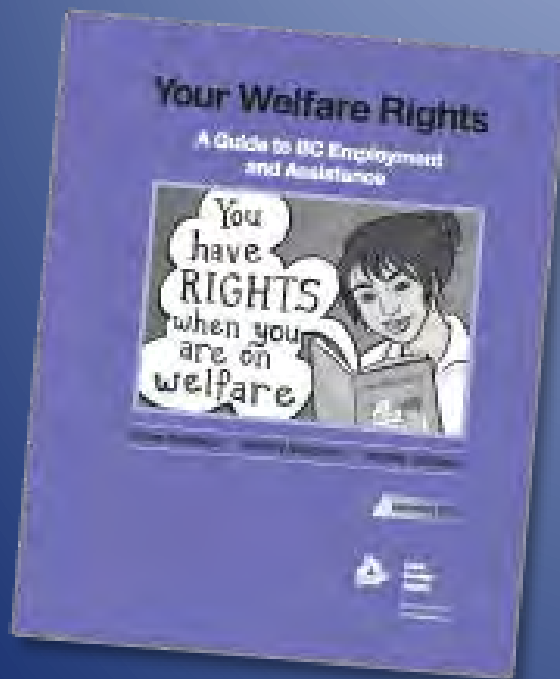
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There's an interesting anomaly when you look at how young people use the Internet. They use it for everything: to shop, socialize, waste time, find jobs, and pretty much anything else you can think of. What they don't seem to use it for is to help them to solve their legal issues.

Catrina Denvir from the University College of London set out to [look at this anomaly](#), and has released her initial findings. It's fascinating, especially since we spend so much of our time and energy making legal information available online. To talk about this though, we're going to have to pull the current back a bit and share some of our experiences making legal information websites.



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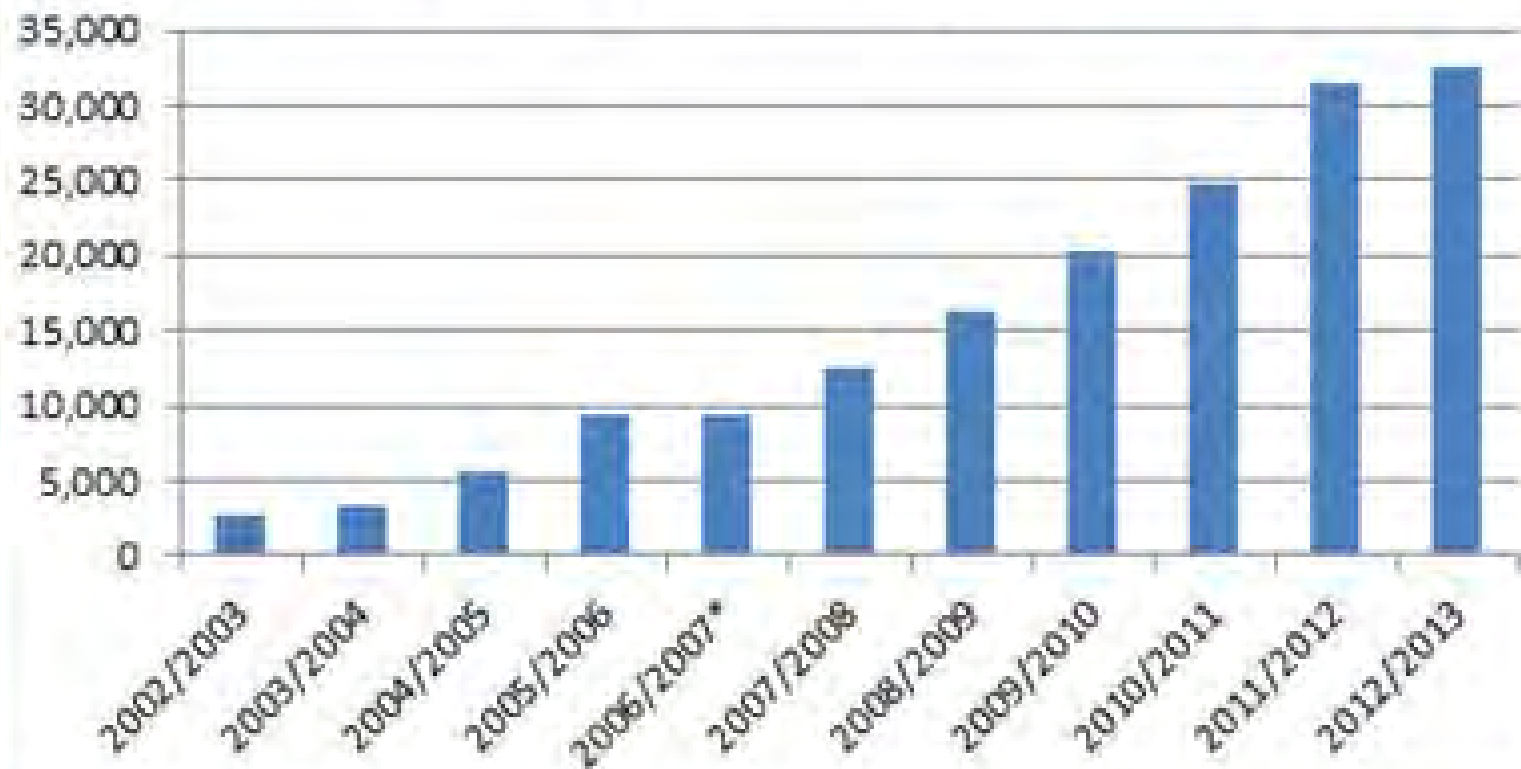
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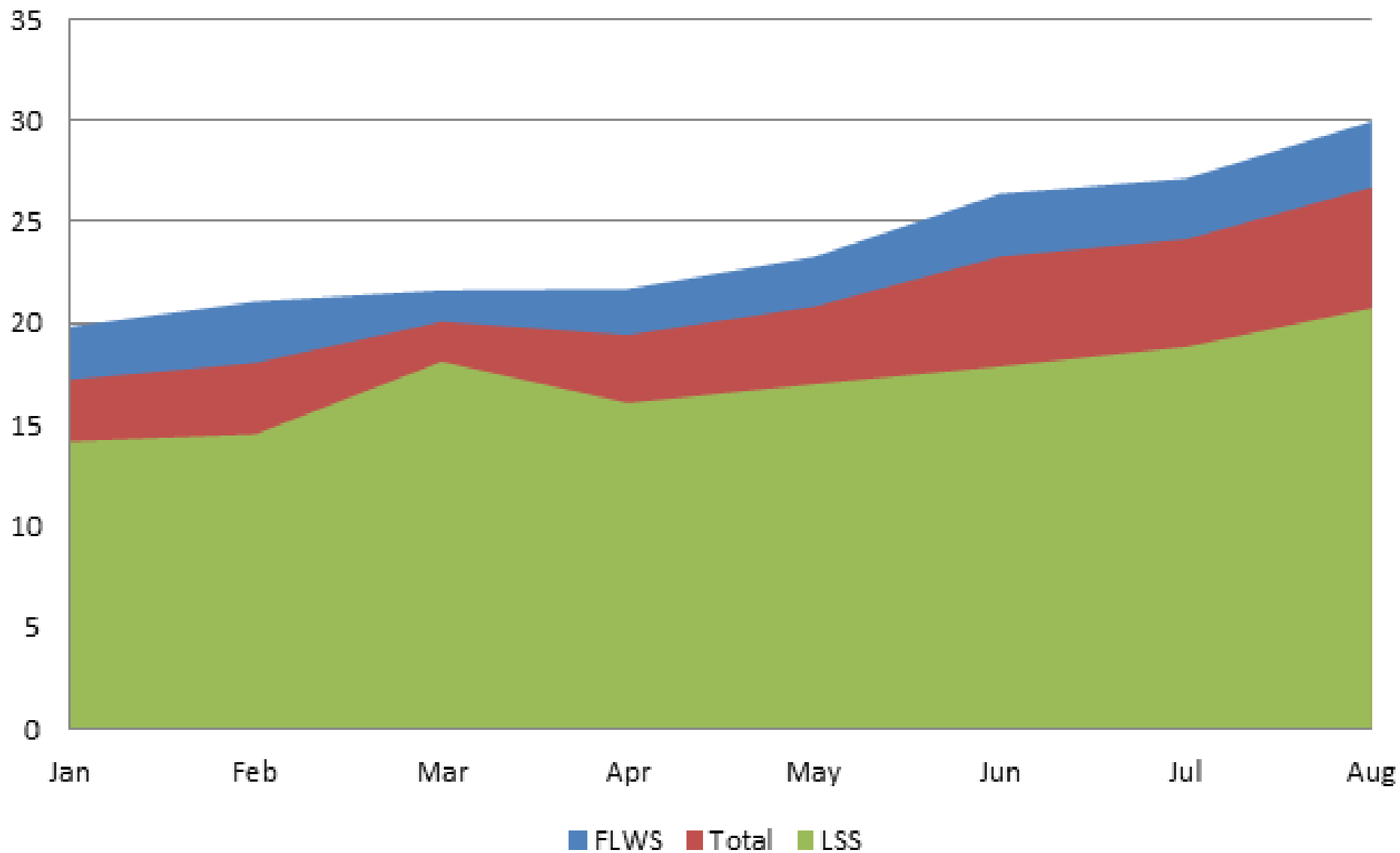
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Thank You

Alex Peel

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Working with LSS Intake



September 2013

Sherilyn
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Who qualifies?

A client qualifies for legal aid when:

1. The legal problem is covered by LSS; and
2. The client meets LSS financial guidelines



What legal problems are eligible for coverage?

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



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



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



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.



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



Financial Eligibility

Income chart(All case types)



Household Size

Monthly Net Income

1

\$1,480

2

\$2,070

3

\$2,670

4

\$3,260

5

\$3,850

6

\$4,405

7 or more

\$5,040

Financial Eligibility

Personal Property (All case types)



Household Size

1

2

3

4

5

6 or more

Exemption

\$2,000

\$4,000

\$4,500

\$5,000

\$5,500

\$6,000

Requesting a review of a refusal

A client can request a review of a refusal

- This must be in writing
- The client should state why they disagree with the refusal 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 being refused legal aid to:

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



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Legal Services Society www.legalaid.bc.ca

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



Presenter:

Sherilyn

Provincial Supervisor, Legal Aid Applications

Phone: 604-601-6093

Fax: 604-682-0787

Email: intake@lss.bc.ca

