AGENDA

Legal Aid Bootcamp

Legal Service Society's free Conference for community workers of the Lower Mainland

May 3rd and 4th 2017

Executive Plaza Hotel Coquitlam (405 North Rd., Coquitlam BC V3K 3V9)

WEDNESDAY MAY 3rd 2017 – DAY 1

Times	Room	Workshop	Speaker
8:00 – 9:00	*Registration, welcome breakfast and materials pick-up*		
9:00 – 9:30	**Sherry MacLennan** - Opening Remarks - *Director Public Legal Information and Applications Legal Services Society* **Debra Sparrow** - Artist - Musqueam Indian Reserve		
9:30 – 11:00	Ballroom A/B/C	**LSS Updates on Legal Resources:** • **LSS Intake Services** • **LSS Projects Update** • **Indigenous Services** • **Community Engagement** • **MyLawBC and Publications Update**	Sherilyn Thompson – *Provincial Supervisor, Legal Aid Applications* Susanna Hughes – *Coordinator, Family Law Services* Rhaea Bailey – *Manager, Indigenous services* Alex Peel – *Community Engagement Coordinator* Patricia Lim – *Publications Development Coordinator*
11:00 – 11:15	*Coffee Break*		
11:15 – 12:45	Ballroom A/B/C	**Overview of Immigration Law**	Deanna Okun-Nachoff - *Lawyer*
12:45 – 1:45	*Lunch*		
1:45 – 3:00	Ballroom A/B/C	**Gang Violence & Criminal Law**	Paul Sandhu - *Deputy Regional Crown Counsel*
3:00 – 3:15	*Coffee Break*		
3:15 – 4:45	Ballroom C	**Child Protection and Legal Rights**	Matthew Anderson - *Lawyer*
	Ballroom A/B	**Live-in care giver Program**	Deanna Okun-Nachoff - *Lawyer*
	Birch	**Domestic Violence & Protection Orders**	Zara Suleman - *Lawyer* Salima Samnani - *Lawyer*
	Aspen	**Disability Benefits**	Sam Turcott – *BC Alliance – Director Advocacy Program*
	Spruce	**Residential Tenancy**	Amita Vulimiri – *Lawyer CLAS*

AGENDA

Legal Aid Bootcamp

Legal Service Society's free Conference for community workers of the Lower Mainland

May 3rd and 4th 2017

Executive Plaza Hotel Coquitlam (405 North Rd., Coquitlam BC V3K 3V9)

THURSDAY MAY 4th 2017 – DAY 2

Times	Room	Workshop	Speaker
8:30 – 9:00	Welcome Breakfast		
9:00 – 10:30	Ballroom A/B/C	**Overview of Family Law**	Todd Bell - *Lawyer*
10:30 – 10:45	*Coffee Break*		
10:45 – 12:15	Aspen	**Relocation & Mobility issues**	Assunta De Ciantis - *Lawyer*
	Birch	**Non-Status Women & Sponsorship breakdown**	Kamaljit Lehal - *Lawyer*
	Ballroom A/B	**Enforcement of Child Support**	Angela Accettura – *Director Legal Services - FMEP*
	Spruce	**Section 211 Reports**	Chandan Sabharwal - *Lawyer*
	Ballroom C	**Human Rights/Racism**	Aleem Bharmal - *Lawyer CLAS*
12:15 –1:15	*Lunch*		
1:15 – 2:45	Ballroom A/B/C	**Updates on Legal Resources (Other Agencies):** • **The Law Foundation** • **People's Law School** • **Clicklaw and Courthouse Libraries BC** • **Mediate BC** • **Access Pro Bono** • **Civil Resolution Tribunal**	Wayne Robertson – *Executive Director - The Law Foundation* Kathryn McCart – *Education & Referrals Coordinator - People's Law School* Shannon Macleod – *Law Matters Coordinator and Outreach Librarian - Court House Libraries, Clicklaw* Maria Silva – *Family Mediator - Mediate BC* Jimmy Yan - *Project and Information Officer - Access Pro Bono* Garth Cambrey – *Vice chair, Strata - Civil Resolution Tribunal*
2:45 – 3:00	*Coffee Break*		
3:00 – 4:30	Ballroom C	**Child protection, Family Law and Indigenous Kinship Care**	Jessie Caryl – *Lawyer-Advocate – Parent Support Services of BC*
	Ballroom A/B	**Welfare Law and issues**	Alison Ward – *Lawyer CLAS*
	Birch	**Refugees and Law**	Erica Olmstead - *Lawyer*
	Aspen	**Seniors' Issues**	Kevin Smith – *Lawyer – Seniors First BC*

PUBLIC LEGAL EDUCATION & INFORMATION

- 77,000 publications distributed
- 740,000 people used our Family Law Website (1.5 million times)
- 12,000 people used our Aboriginal Legal Aid site (16,000 times)
- 20,000 people used MyLawBC (29,000 times)
- 1,168 people like you came to our conferences & workshops
- 20,000 people got in person information services through our staff and community partners

Legal Services Society

Working with LSS Intake



MAY 2017

Sherilyn, Provincial Supervisor, Legal Aid Applications

Our Clients

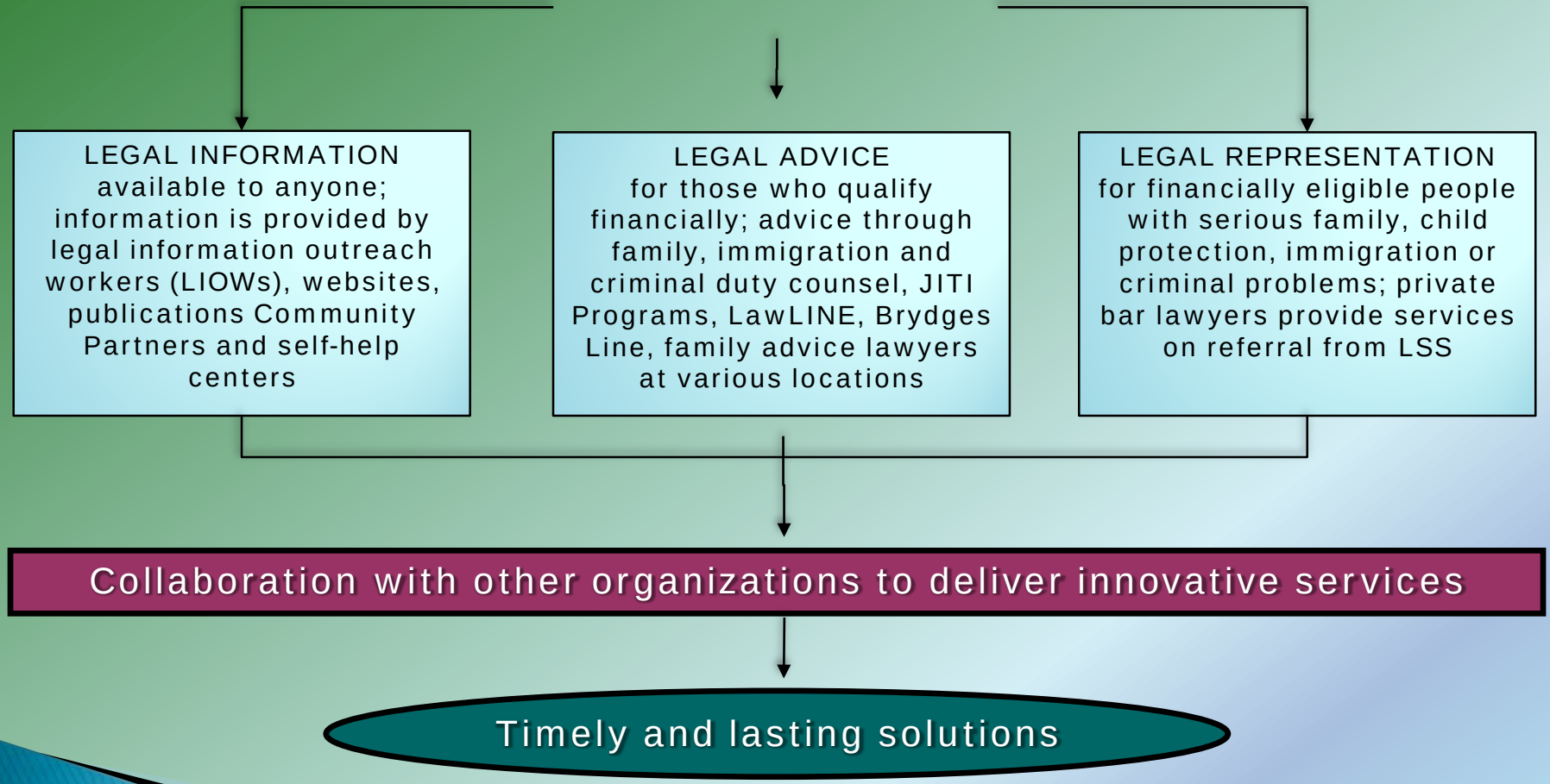






Services Overview

Legal Aid



Legal Information

Legal Information Outreach Worker





Legal Advice



Duty Counsel

Duty Counsel

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

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



Applying For Legal Aid

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

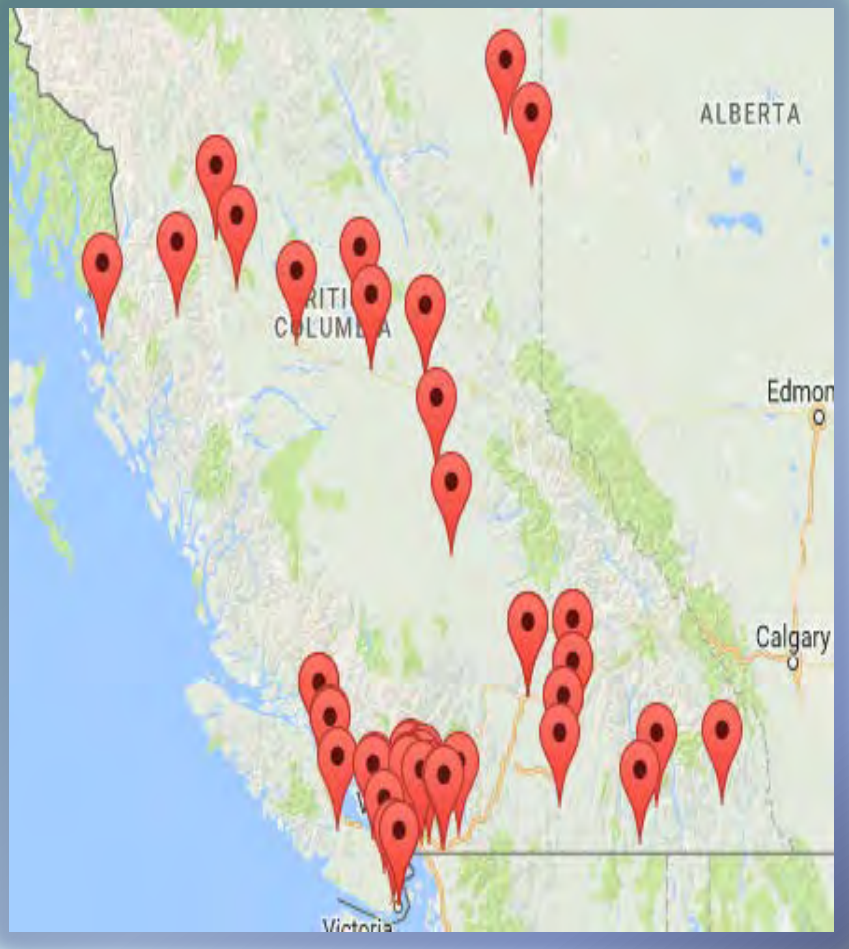
Come into one of our Legal Aid offices, their contact information is available on our website *www.legalaid.bc.ca*



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

Legal Aid Offices

There are 35 communities in BC where someone can apply for legal aid and get legal information.



Who Qualifies for Legal Aid?

A client qualifies for legal aid when:

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

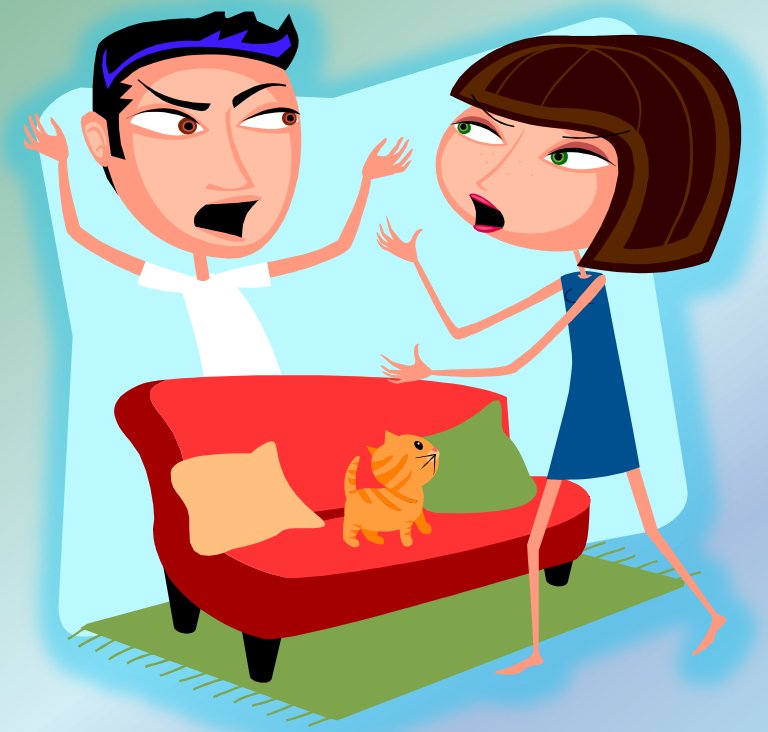


What Legal Problems Are Eligible For Coverage?

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



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



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



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



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



Financial Eligibility

Representation Income chart

Household Size	Monthly Net Income
1	$1,520
2	$2,120
3	$2,730
4	$3,340
5	$3,490
6	$4,550
7 or more	$5,160



Financial Eligibility

LEGAL ADVICE GUIDELINES

Household Size	Monthly Net Income
1 - 4	$3,340
5	$3,950
6	$4,580
7 or more	$5,180



Financial Eligibility

Personal Property (All case types)

Household Size	Exemption
1	$2,000
2	$4,000
3	$4,500
4	$5,000
5	$5,500
6 or more	$6,000



FINANCIAL DISCRETIONARY COVERAGE

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

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



Requesting A Review of A Denial

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

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

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

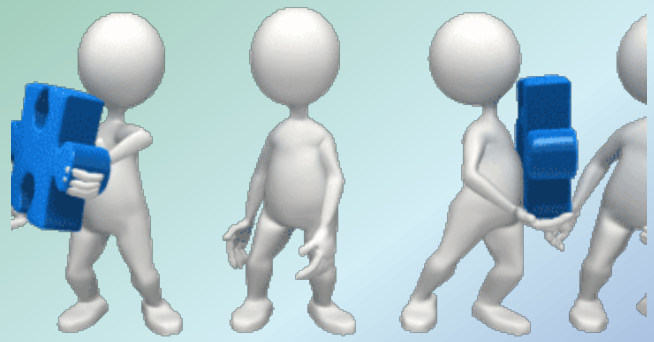
Provincial Supervisor
Vancouver Regional Centre
400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787



Working Together

You can help your clients:

- Understand the intake process
- Prepare for the interview
- Organize documentation



- Make sure they follow up and provide intake with requested information

Presenter: Sherilyn

Provincial Supervisor, Legal Aid Applications
Phone: 604-601-6093
Fax: 604-682-0787
E-Mail: sherilyn.vancouver@lss.bc.ca



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;
  - need an order to prevent the other parent from permanently relocating their child or children. 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.

Who is covered?

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

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

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

Exception

Youth under the age of 18 who are 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.

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 (including parents in a same-sex relationships), 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.

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

An applicant is not eligible for legal aid if he or she is in the care of the Ministry of Children and Family Development (MCFD). In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

Couples who are living together

If a case involves a couple who are living together we can issue a single contract for one lawyer. We will only issue a separate contract if there is a conflict between the two people that prevents one of the lawyers from representing both parties.

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. 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.

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 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 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.

Aboriginal hunting and fishing rights

An applicant is covered 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.

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. 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 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 under the age of 18 who are 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.

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.

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

Discretionary coverage

Criminal cases

If an applicant is only marginally over the financial eligibility guidelines, by approximately $100 – $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.

Family, CFCSA, immigration, and appeal cases

If an applicant is only marginally over the financial eligibility guidelines, by approximately $100 – $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.

JITI Pilots - Expanded Criminal Duty Counsel and Parents Legal Centre

If an applicant is over the financial eligibility guidelines, by approximately $1000 on monthly income or $1000 on assets, the file can be sent to the pilot lawyer. The pilot lawyer considers the nature of the charges or issues, the complexity, seriousness, and duration of the case, and the applicant's ability and financial capacity (e.g., ability to access disposable assets) to retain a lawyer privately or otherwise represent him or herself

Exception review guidelines

Exception review merit considerations

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

CFCSA cases

The decision to approve a case on exception review is a discretionary decision made by the 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 referral policy is unduly harsh in the particular circumstances of an applicant's case or the circumstances are unusual and complex;
- 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; or
- the applicant is so traumatized by past abuse that he/she is unable to represent him/herself; and
- there is remaining LSS budget available to fund the case.

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

Working with your legal aid lawyer

What you can expect your **Lawyer** to do



The guidelines below explain what to expect with your legal aid contract with the Legal Services Society (LSS). This will help you and your lawyer work together on your case.

- Set a date to meet with you to discuss your case.
- Explain to you:
  - Confidentiality
  - Your roles
  - The steps in the legal process
  - Your legal options
  - Your chances of getting what you want
  - Risks you may face
  - Limits of your legal aid contract
- Ask you for any information you have about your case.
- Ask you what results you want from your case, but let you know that they *can't* guarantee the outcome of your case.
- Give you legal advice about what to do. (Their legal opinion may be different than the options you want.)
- Answer your legal questions.
- Try to complete work on time and inform you if they expect a long delay.
- Try to return your calls and respond to emails or letters as soon as they can (perhaps not on the same day).
- Keep appointments with you. Or contact you to make another appointment if they can't keep or miss an appointment.
- Discuss all important decisions about the case with you.
- Keep you informed at each stage of your case.
- Make sure you get an interpreter if you need one for a meeting or hearing.
- Give you any documents or other information, if it's a realistic request.
- Let you know right away if they forgot to do something important or made a mistake.
- Explain to you whether or not you can appeal the result of your case (ask for a review), if you're unhappy with it.
- *Never* ask you for money.

Change of lawyer

If you think your lawyer hasn't met their responsibilities, discuss this with them. If you can't work out the problem, contact your local legal aid office to find out what you can do. LSS allows you to change your lawyer only in *limited* circumstances, if you still qualify for services.

If you apply to change your lawyer (called a **change of counsel** request), you must have a *good* reason (such as quality of service concerns). Your request must also be *fair* (based on realistic expectations). Changing your lawyer in the middle of your case can create problems.

If you do decide to change your lawyer, you must let them know in writing. Then they must transfer your file to the new lawyer as soon as possible.

March 2017



Working with your legal aid lawyer

What your lawyer expects **You** (their client) to do

The guidelines below explain what to expect with your legal aid contract with the Legal Services Society (LSS). This will help you and your lawyer work together on your case.

- Ask them how much time the contract gives them to work on your case and how you can help prepare your case. Their time on your case includes your emails, phone calls, and meetings; court preparation; and review and preparation of legal documents.
- Give them all the facts about your case and be honest.
- Give them some idea about what you want to have happen and when you expect it to get done.
- Take notes of your discussions at meetings and on phone calls. Write down any tasks you agree to do and when you expect to finish them.
- Tell them about any upcoming court dates, appointments, or other urgent issues.
- Give them any documents about your case they ask for and any new information you have; send it to them by email or in a letter, or tell their assistant.
- Answer all of their questions as soon as you can.
- Ask questions when you don't understand them.
- Talk only about your case and the facts important to your case.
- Be on time for every appointment or court appearance.
- Tell them what you decide at each stage of your case and give them clear instructions.
- Prepare for your meetings; decide what your most important legal issues are and get the documents you need.
- Make sure they have up-to-date contact information for you and let them know where they can leave messages.
- Discuss any disagreement you may have with them.

Complaints

If you're unhappy with any LSS service, you have the right to make a formal complaint. For more information, see **legalaid.bc.ca/about/complaints.php**.

In some situations, your lawyer can remove themselves from your legal aid contract if they have a good reason and their request is fair.

Legal Services Society

British Columbia
www.legalaid.bc.ca

Legal Information Outreach Workers (LIOW) – How we can help you

Legal Information Outreach Workers provide legal information, referrals, and legal resources to callers on the LIOW phone line and people visiting our office at Legal Services Society/Legal Aid 400 – 510 Burrard Street, Vancouver.

LIOWs offer free legal information and resource workshops for community groups and legal information tables at community events and conferences.

LIOWs attend community network meetings to learn about the different issues the communities are facing and to update participants on legal issues and resources.

LIOWs provide support and assistance to people who are attending Downtown Community Court, Vancouver and/or First Nations Court, New Westminster.

Please let us know if you would be interested in booking a presentation, an information table or connecting through outreach. We would be happy to answer any further questions. We look forward to hearing from you.

Respectfully,

Silvia, Frances and Cheryl

Legal Information Outreach Worker

LIOW direct line: (604) 601-6166

Email addresses provided below are for staff / community workers only

silvia.vancouver@lss.bc.ca

frances.vancouver@lss.bc.ca

cheryl.vancouver@lss.bc.ca

LSS PROJECTS: UPDATE



Legal Aid Bootcamp
Presentation By:

May 3 & 4, 2017
Susanna Hughes
Coordinator, Family Law Services
Legal Services Society

- *British Columbia government gave LSS funding of $2 million/year for 3 years*

- *5 Pilot Projects ran from April 1, 2014 to March 31, 2017*

- *Two independent evaluations of each pilot project provided information to government for consideration of continuation/expansion of these projects*

5 PILOT PROJECTS

1. *Expanded Criminal Duty Counsel – Port Coquitlam*
2. *Expanded Family Duty Counsel - Victoria*
3. *Family LawLINE – province-wide*
4. *Mediation Referral – province-wide*
5. *Parents Legal Centre – Vancouver*

Expanded Criminal Duty Counsel (EXP CDC)

Available in Port Coquitlam

- *Client must have a Port Coquitlam matter & contact CDC there*
- *Out of custody duty counsel*
- *Goal is to get clients connected with one lawyer early in their court process so they get an early resolution for less complex matters*

What has changed with EXP CDC?

- *Continued service from the same lawyer prior to fixing a trial date*
- *In addition to assistance on court remand days, clients can also make appointments to discuss and prepare for their case with the CDC lawyer on non-remand days*
- *Number of court appearances have been reduced by approximately 50% -- from 7.4 to 3.8 appearances/client from first appearance to resolution*
- *Length of time to reach resolution is being reduced from an average of 197 days to 56 days from date of first appearance*

Expanded Family Duty Counsel (EXP FDC)

Available at the Victoria Justice Access Centre

- *Clients receive up to 6 hours of service*
- *Operated by a team of two lead lawyers, two administrative assistants, plus a roster of family duty counsel lawyers*
- *Client files are maintained to allow for continuity of service*
- *Clients can book follow-up appointments with the same lawyer*
- *Provides legal coaching to help people who are self-representing*

Expanded Family Duty Counsel (EXP FDC) continued

- *Referrals to other services, including online resources and other public agencies*
- *Other services are co-housed in the Justice Access Centre which allows for coordination of referral services and additional support for clients*
- *Interpreters provided for office appointments if pre-arranged*
- *Phone 1-250-356-7035 to make an appointment (Monday to Friday from 8:30 a.m. to 4:00 p.m.)*

Expanded Family LawLINE

Available province-wide

- *Lawyers located around the province give information, advice, and assistance on family law and child protection matters*
- *Operated by a lead lawyer, two administrative assistants, and a roster of lawyers located around the province*
- *Hours of service for telephone advice are expanded*
  - *Mon, Tues, Thurs, Fri* — *9:00 am – 3:00 pm*
  - *Wed* — *9:00 am – 2:30 pm*
- *Additional hours for appointments*
- *Clients are referred to the service via LSS Intake, Family Justice Counsellors, community agencies, advocates and support workers*

Expanded Family LawLINE continued

- *Clients receive up to 6 hours of telephone advice*
- *Clients are encouraged to schedule a telephone appointment for up to 45 minutes per session*
- *Administrative assistant maintains digital client files and records, sets appointments, etc.*
- *Digital client files are maintained to allow for continuity of service by a roster of lawyers located throughout the province*
- *Lawyers advise and support clients who have court or non-court matters and are not able to access Family Duty Counsel lawyers in person*

Expanded Family LawLINE continued

- *Lawyers advise and support Family Justice mediation clients*
- *Referrals to other services, including online resources and other public agencies*
- *Legal coaching to help people who are self-representing*
- *Interpreters available if needed*
- *First-time Family LawLINE clients call 604-408-2172 or toll-free 1-866-577-2525*

Expanded Family LawLINE continued

- *Financial eligibility for Family LawLINE is the same as for other advice services such as Family Duty Counsel*

Do I qualify financially for legal advice?

To get **criminal** or **immigration** **legal advice** services, you don't have to be financially **eligible**.

Family advice services

Family legal advice services have a financial eligibility test

To be eligible for family advice services, your **net monthly household income** must be below the amount for your household size in the table below.

Household size* *(number of family members)*	**Net monthly income**** *(income after deductions)*
1 – 4	$3,400
5	$4,030
6	$4,670
7 or more	$5,280

*Family members include children and parent(s) or other adult(s) responsible for and living with the children.

Income is your **net income from all sources (excluding a **common-law** partner of two years or less) and child support payments.

Mediation Referrals

Available province-wide

- *To help families reach out of court agreements*
- *Mediators from Mediate BC provided up to 6 hours of mediation*
- *Distance mediation available if no mediator in client's community*
- *One party must be financially eligible, but did not have a legal issue that qualified client for representation by a legal aid family lawyer*
- *Very low client volumes did not justify continuation of this project past the pilot test*
- ***This project ended on March 31, 2017***

Parents Legal Centre (PLC)

Available in Vancouver (Robson Square)

- *Case has to be in catchment area of Robson Square (Vancouver) Provincial Court*
- *MCFD or DAA of Vancouver or Burnaby*
- *For parents (or person who regularly cares for a child i.e. in place of a parent), and there is:*
  - *removal;*
  - *threat of removal; or*
  - *pregnancy, and threat of removal on birth of child.*

HOW TO APPLY:
Contact LSS Intake in Vancouver or the Provincial Call Centre

Parents Legal Centre (PLC) continued

- *PLC has two full-time lawyers, an advocate and an administrative assistant*
- *Designed to be culturally sensitive and easily accessible to the clients served*
- *The lawyers and the advocate work with and on behalf of parents to focus on early collaborative solutions*
- *"Early?" = often before the children are even taken into government care, or prior to birth of the child*
- *Expanded financial eligibility criteria -- some PLC clients would have otherwise been without representation as they would not have qualified for a tariff contract*

Parents Legal Centre (PLC) continued

- *Grand Chief Ed John's report on Indigenous Child Welfare released November 21, 2016 recommended expansion of the PLC*
- *LSS has received additional funding from the BC government to expand the PLC to Surrey and to consider expansion to other possible locations based on the Grand Chief's recommendations*
- *Actively working on planning for the Surrey PLC – likely to open in late 2017 or early 2018*
- *Consulting with Grand Chief Ed John and others on possible locations for another PLC outside Metro Vancouver, which would serve both a central hub and smaller/more remote communities*

What have we learned so far from all 5 pilots?

- *Importance of integration with other services*
  - *Telephone, online resources*
  - *Mediation & advice*
  - *Community supports*
  - *Legal resources such as JACs and family law website*

- *Ease of accessibility for clients*
  - *Location and hours of in-person services*
  - *Telephone services available to clients located anywhere*
  - *Community outreach by all Pilots to increase awareness*

- *Continuity of counsel (or, at a minimum, file continuity) is key to better outcomes and client satisfaction in summary advice and limited representation services*

- *We are filling a gap – providing services that aren't otherwise available*

IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



Photo: M. Lynn McBride

May 2017

Legal Services Society
www.legalaid.bc.ca

ABORIGINAL PEOPLES



5% OF BC'S POPULATION

LEGACY OF COLONIALIST HISTORY



Photo: M. Lynn McBride

- RACIAL DISCRIMINATION IN GOVERNMENT POLICIES & PRACTICES
- INDIAN RESIDENTIAL SCHOOL GENERATIONAL IMPACT
- ABORIGINAL CHILD APPREHENSION
- ILLITERACY
- POVERTY
- FASD
- SEXUAL ABUSE

ABORIGINAL PEOPLE IN PRISONS

- 27% in Provincial Jails (in BC) *
- 23% in Federal Jails (in Canada) **



* *A Profile of B.C. Corrections, October 2013*

** *Correctional Service Canada 2015 Offender Population Profile*

ABORIGINAL CHILDREN



Over 50% of the children in care in BC are Aboriginal

Manager of Indigenous Services

for Legal Services Society



Photo: M. Lynn McBride

Mandate is to improve access to justice for Aboriginal peoples

“ABORIGINAL” defined inclusively

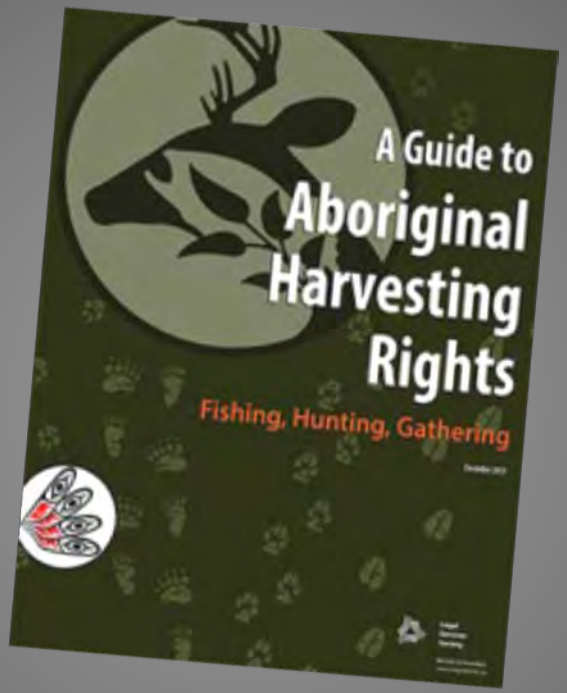


Photo: M. Lynn McBride

- FIRST NATIONS (INDIAN)
  - STATUS
  - NON-STATUS
  - ON & OFF RESERVE
- MÉTIS
- INUIT

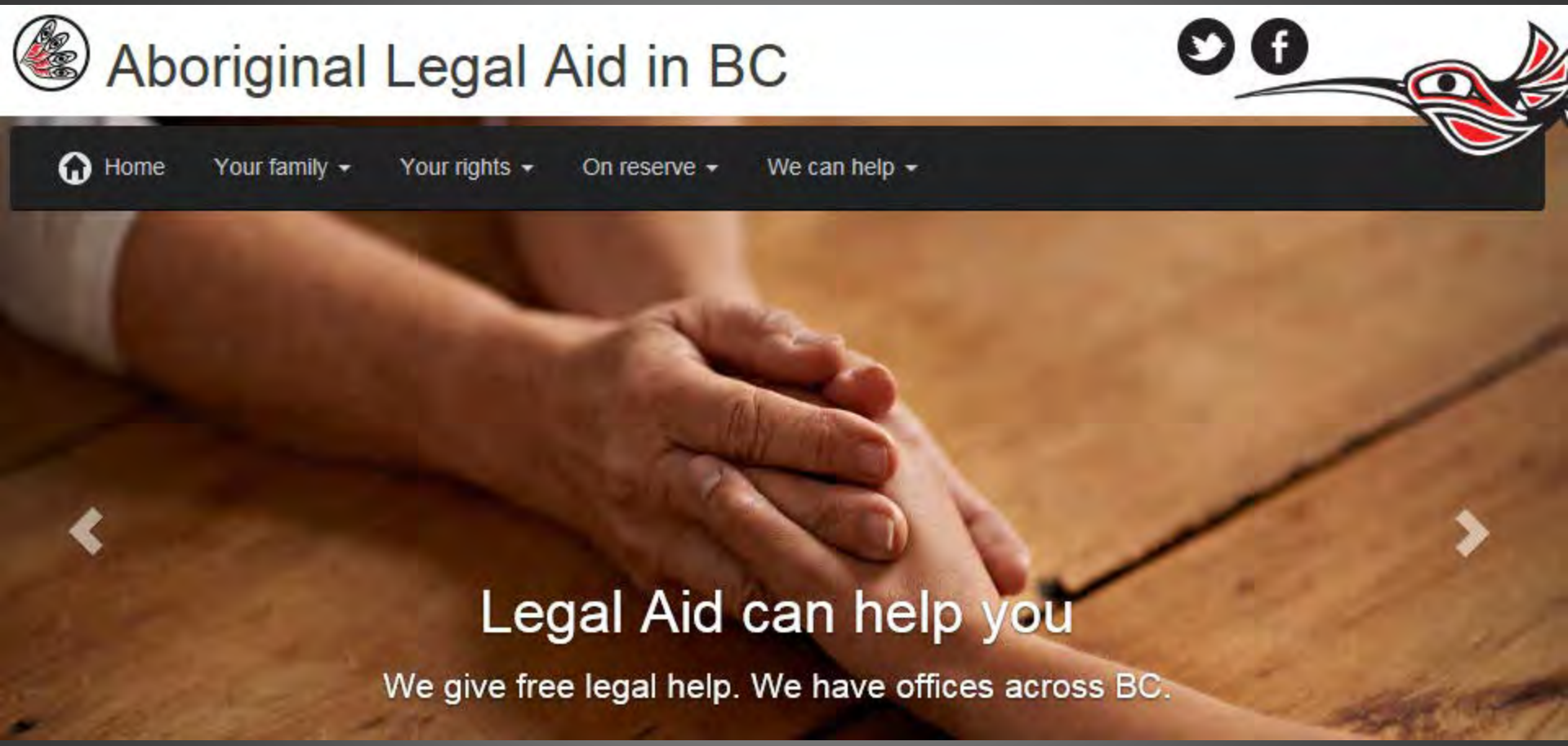
ABORIGINAL PUBLICATIONS







ABORIGINAL WEBSITE



ABORIGINAL LEGAL SERVICES

delivering unique services to Aboriginal peoples



Photo: M. Lynn McBride

Aboriginal Community Legal Worker

Donna Moon

Provides services in
Duncan & Nanaimo



North Island Community Partner



Photo: M. Lynn McBride

Providing services in Port Hardy and Alert Bay

First Nations Courts

We support First Nations Courts in 4 locations

- New Westminster
- Kamloops
- Duncan
- North Vancouver

Duty Counsel

Elders



Gladue Initiatives



Photo: M. Lynn McBride

Gladue Reports

Gladue Resources

GLADUE IN A NUTSHELL



Instructs judges at sentencing to recognize the over-representation of Aboriginal people in prison, to take notice of the unique circumstances of Aboriginal offenders, and to consider all available sanctions…

… other than imprisonment

Gladue reports



Photo: M. Lynn McBride

paint a picture of the defendant for the court

What are Gladue reports for?



Sentencing & Bail

Restorative Justice

Strategic Plan – moving forward



Reconciliation

Final Comment from the TRC

Together, Canadians must do more than just talk about reconciliation; we must learn how to practise reconciliation in our everyday lives — within ourselves and our families, and in our communities, governments, places of worship, schools, and workplaces. To do so constructively, Canadians must remain committed to the ongoing work of establishing and maintaining respectful relationships.

IMPROVING LEGAL SERVICES FOR ABORIGINAL PEOPLES



Rhaea Bailey

Manager of Indigenous Services

rhaea.bailey@lss.bc.ca | 604.601.6298

Legal Services Society

British Columbia
www.legalaid.bc.ca

Community Engagement Program: LSS Community Partners

May 2017


HELP
SUPPORT
ADVICE
ASSISTANCE
GUIDANCE

What do community partners do?

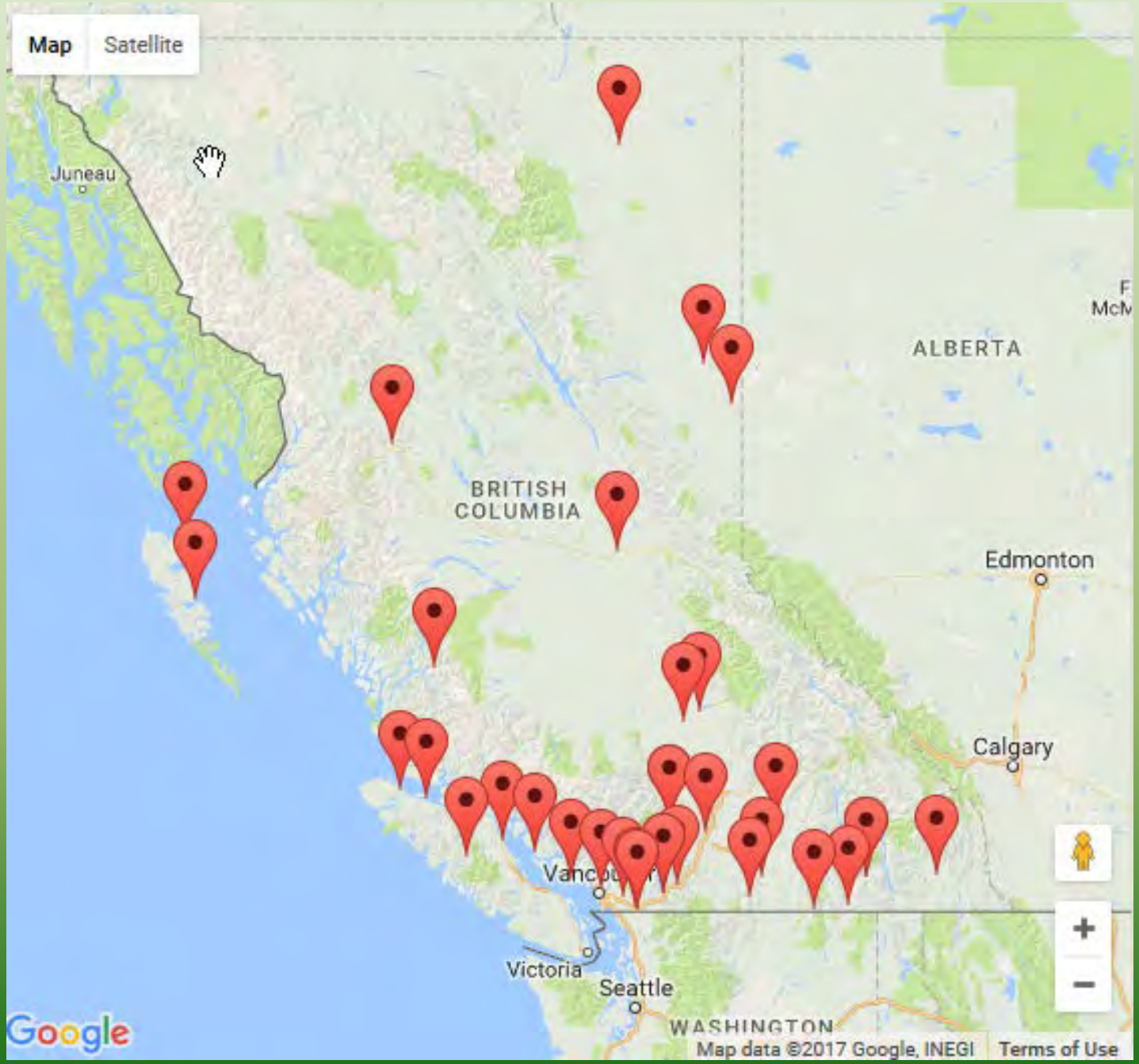
- act as a link between LSS and people who need to apply for Legal Aid / LSS services
- raise awareness about LSS and other services in their communities
- provide access to PLEI materials – both print and online PLEI materials, published by LSS and other PLEI providers
- provide legal information, *not* legal advice
- refer people to other places for help

How many…





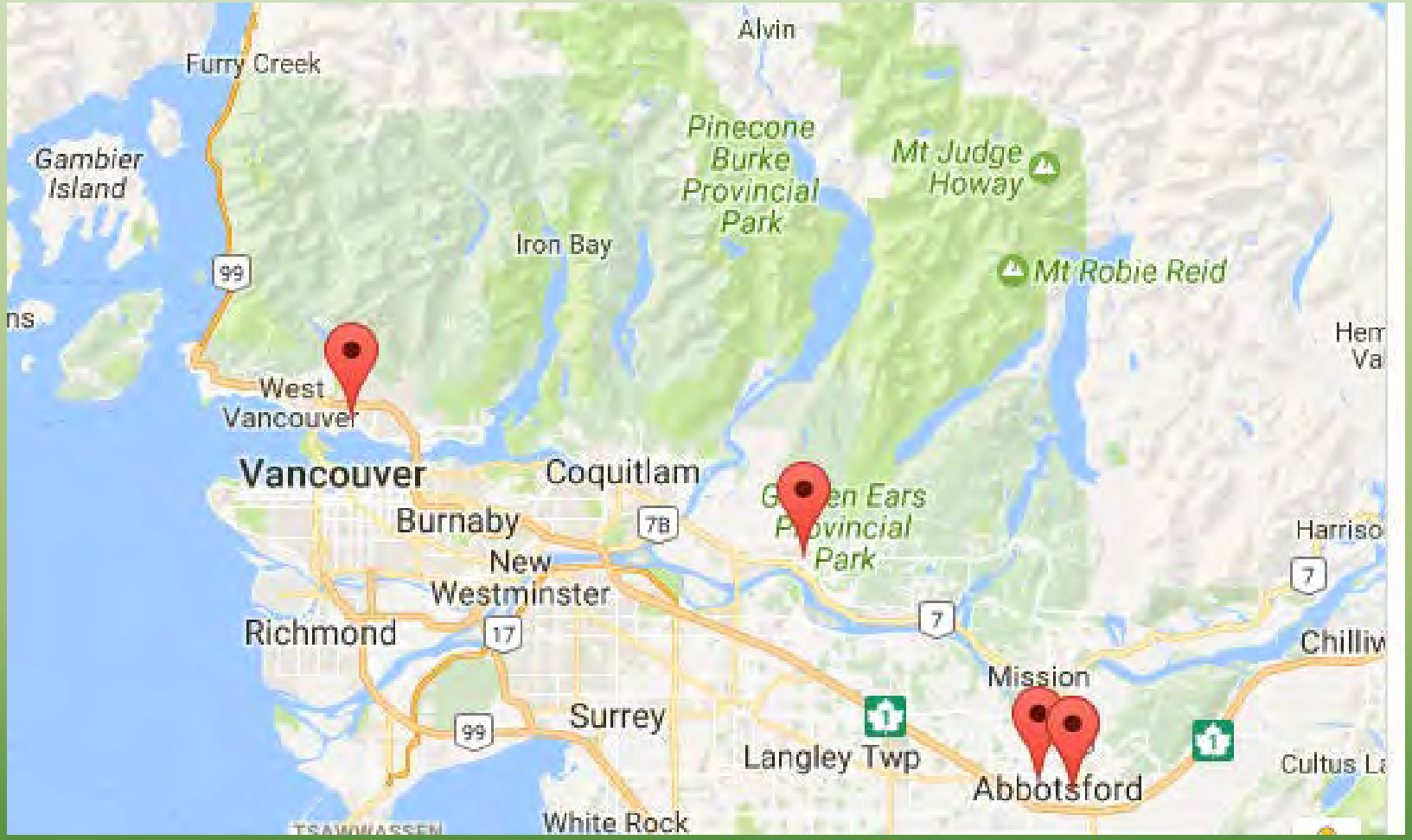
Community Partners?


Map
Satellite
Juneau
ALBERTA
BRITISH
COLUMBIA
Edmonton
Calgary
Victoria
Seattle
WASHINGTON
Google
Map data ©2017 Google, INEGI
Terms of Use

Community Partners' Locations

LSS in your community

100 Mile House	Keremeos
Abbotsford	Lillooet
Agassiz	Lytton
Alert Bay	**Maple Ridge**
Bella Coola	Merritt
Campbell River	Nelson
Canim Lake	**North Vancouver**
Castlegar	Old Massett
Chilliwack	Penticton
Cranbrook	Port Hardy
Dawson Creek	Powell River
Fort Nelson	Prince George
Fort St. John	Seabird Island
Gold River	Sechelt
Grand Forks	Skidegate
Hazelton	Trail
Hope	Vernon


Alvin
Furry Creek
Gambier Island
Pinecone Burke Provincial Park
Mt Judge Howay
Iron Bay
Mt Robie Reid
99
West Vancouver
Vancouver
Coquitlam
Burnaby
7B
New Westminster
Richmond
17
7
Mission
Surrey
99
Langley Twp
Abbotsford
White Rock

Abbotsford

Abbotsford Community Services

Community Legal Advocacy Centre

Phone: 604-859-7681 (ext. 207)

Abbotsford Community Services

Multicultural and Immigrant Integration Services

Phone: 604-859-7681 (ext. 307)

Maple Ridge/ Pitt Meadows

Maple Ridge/Pitt Meadows Community Services

11907 – 228th Street

Maple Ridge, BC V2X 8G8

Phone: 604-467-6911

North Vancouver

North Shore Community Resources Society

201 – 935 Marine Drive

North Vancouver, BC V7P 1S3

Phone: 604-982-3314

Thank You

Alex Peel
Acting Community Engagement Coordinator
alex.peel@lss.bc.ca | 604.601.6007

Legal
Services
Society

British Columbia
www.legalaid.bc.ca

May 2017

Legal Services Society
British Columbia
www.legalaid.bc.ca

Community Partners

Community partners are service providers located throughout BC who can help:

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

Community partners in the Lower Mainland

Abbotsford Community Services Community Legal Advocacy Centre

2420 Montrose Avenue
Abbotsford, BC V2S 3S9

Phone: 604-859-7681 (ex207)
Fax: 604-859-6334

Abbotsford Community Services Multicultural and Immigrant Integration Services

2420 Montrose Avenue
Abbotsford, BC V2S 3S9

Phone: 604-859-7681 (ex307)
Fax: 604-859-6334

Maple Ridge/Pitt Meadows Community Services

11907 – 228th Street
Maple Ridge, BC V2X 8G8

Phone: 604-467-6911
Fax: 604-463-2988

North Shore Community Resources Society

201 – 935 Marine Drive
(Capilano Mall)
North Vancouver, BC V7P 1S3

Phone: 604-982-3314

Alex Peel, Acting Community Engagement Coordinator
604.601.6007 | alex.peel@lss.bc.ca

Legal Services Society

British Columbia
www.legalaid.bc.ca



Legal Information Resources

Legal Aid Bootcamp

Patricia Lim, 604-601-6054
Patricia.Lim@lss.bc.ca

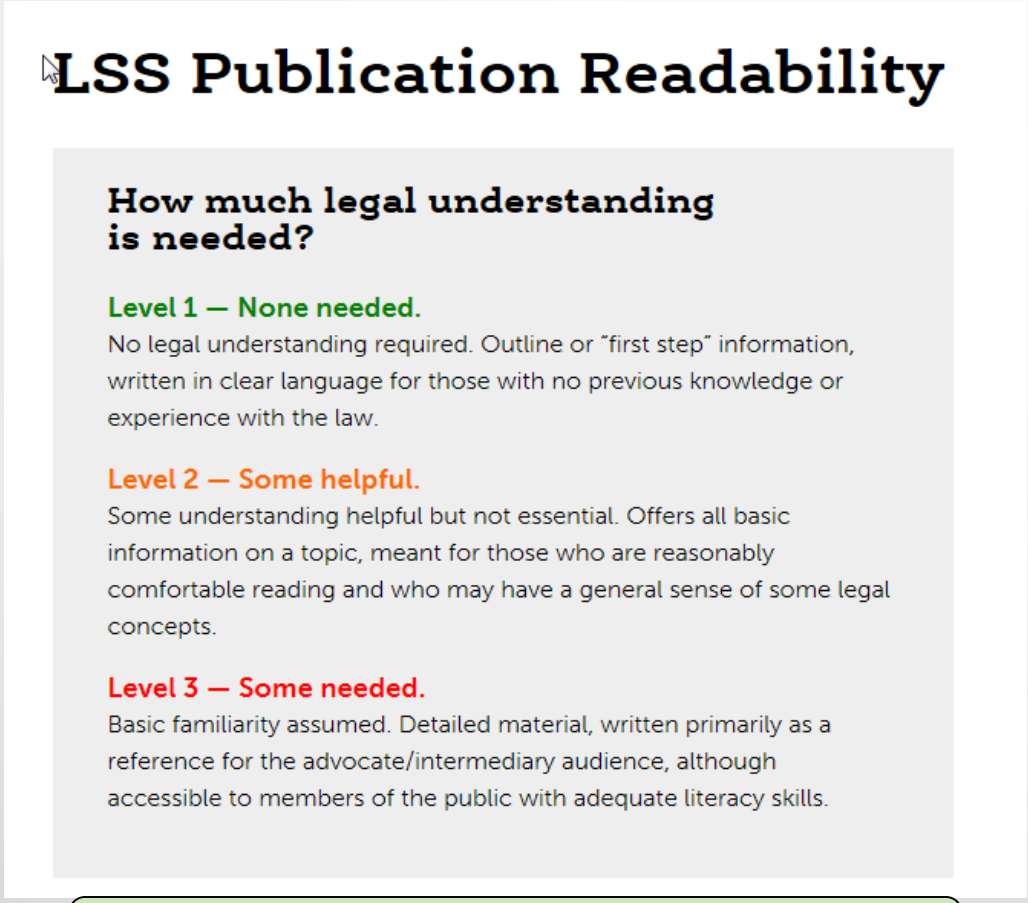
Public legal education and information

- Overview of publications
- Publication updates
- Websites and social media
- MyLawBC

FREE

Publications

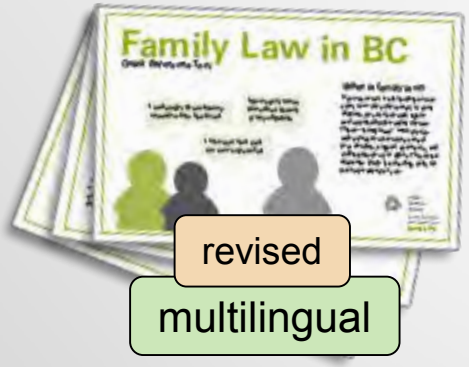
Audience & accessibility



www.mylawbc.com/pubs

Family law

Level 1

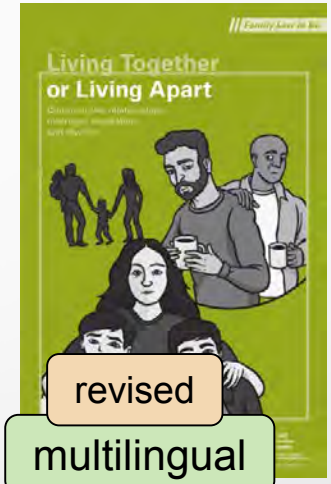


revised

multilingual

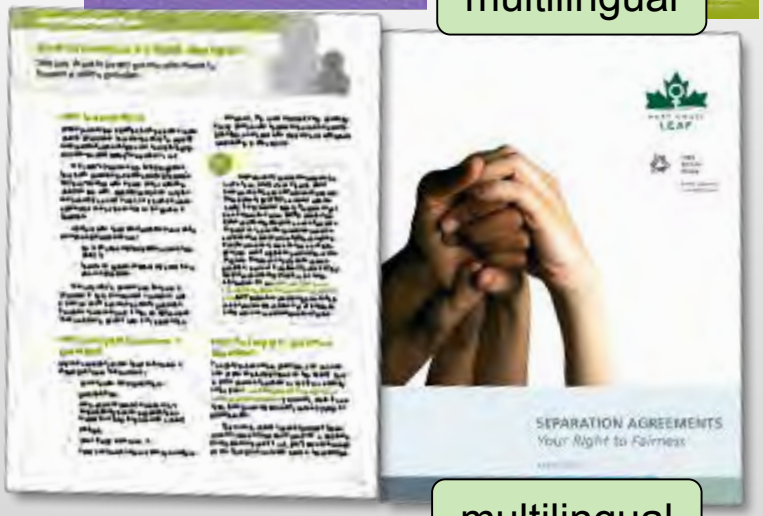
Level 2





revised

multilingual



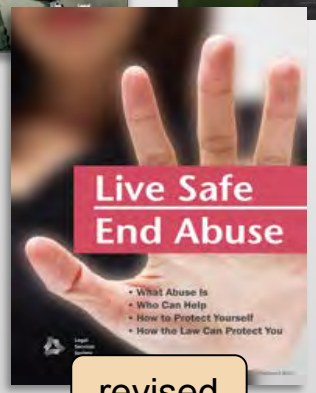
multilingual

Abuse & family violence

Level 1







revised

Level 2





multilingual



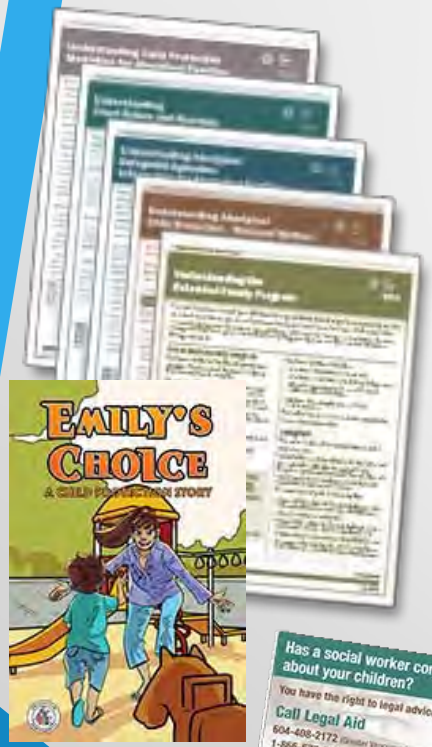
revised



new

Child protection

Level 1



revised

Level 2

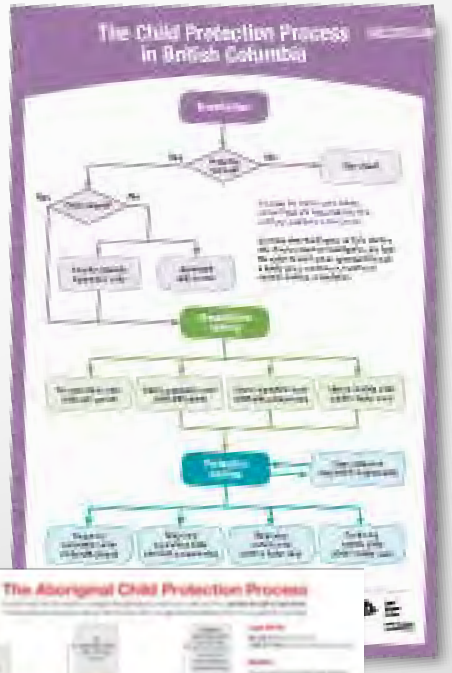




online



Level 3





revised

Criminal

Level 1



revised

Level 2



online

Immigration & refugees

Level 1



multilingual

Level 2

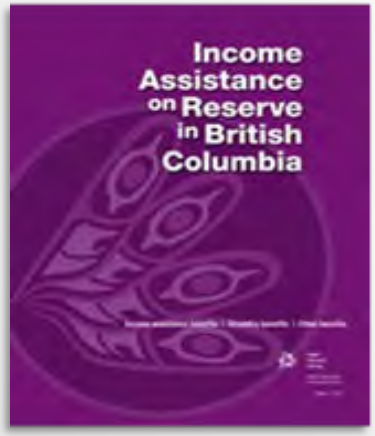


To be revised

multilingual

Welfare/income assistance

Level 2



revised



revised

Publication updates

New and upcoming publications about Gladue



Other upcoming publications



New publications

- Your Welfare Rights: Available Benefits (second in the series)

Revisions due to new legislation

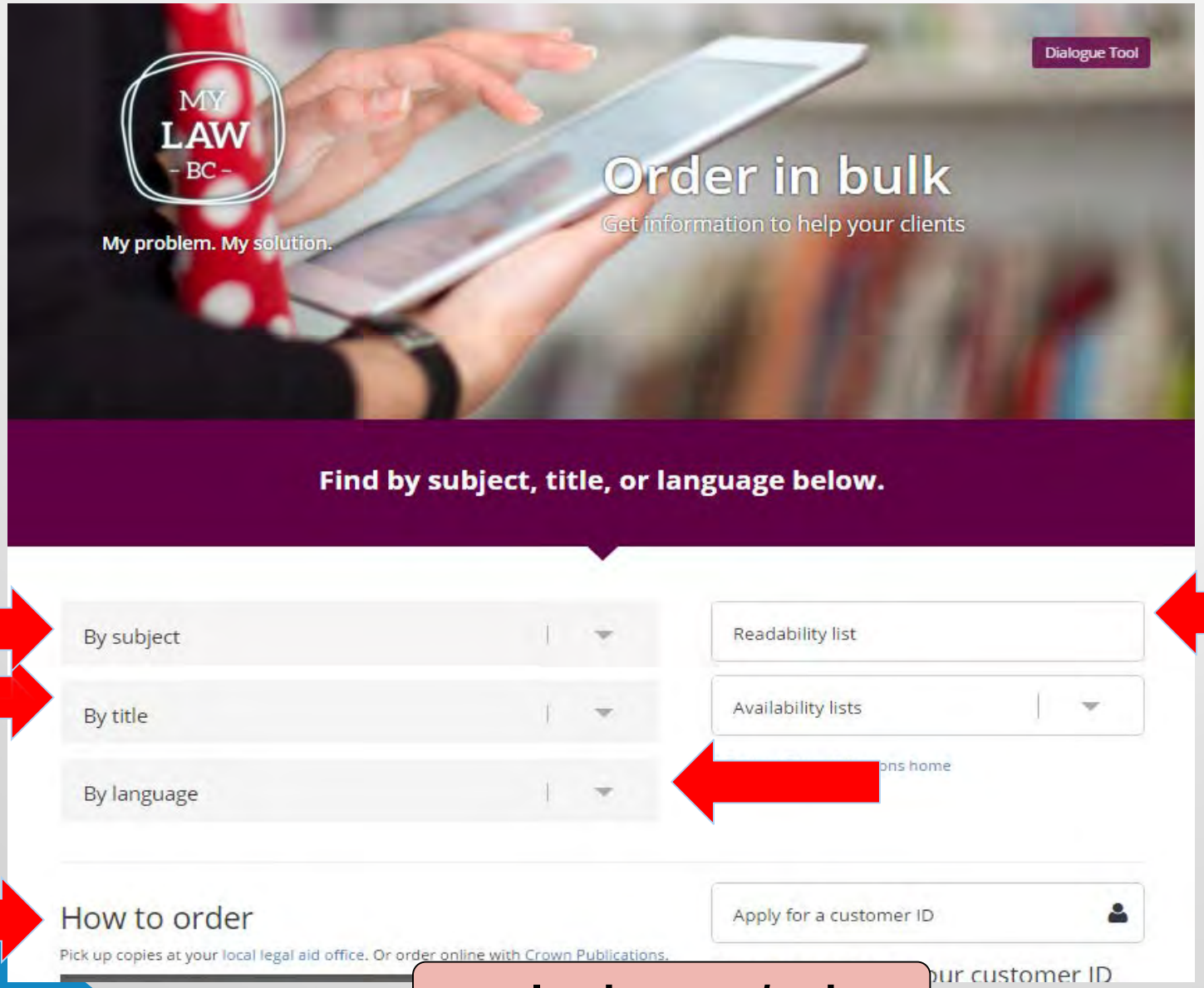
- Sponsorship Breakdown booklet

More languages

- Legal Aid poster
- Mothers Leaving Abusive Partners booklet
- Is that Legal booklet
- Live Safe End Abuse fact sheet folder

How to order FREE Publications

Ordering process



mylawbc.com/pubs

Crown Publications

CROWN PUBLICATIONS
Queen's Printer for British Columbia

Items: 0
Total: $0

Login Customer ID Postal Code

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



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

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

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

To view this publication online: Click Here

Stock: 1639
Price: Free

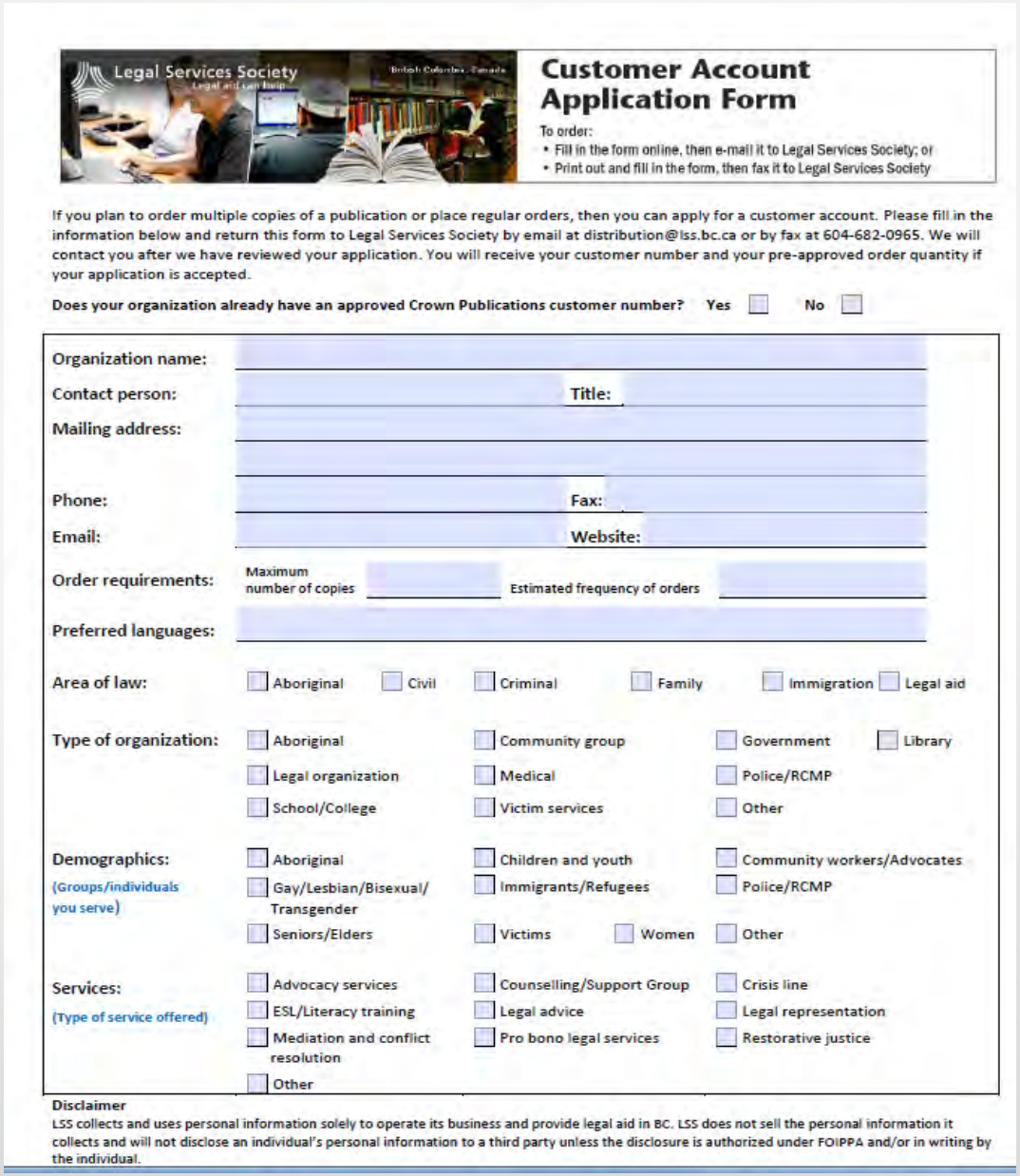
Publish Date: March 18, 2013
Product No.: 7550003732
Format: Booklet
Additional Information: Click Here
This item is found in: Legal Services Society, Abuse > Family Violence

Quantity:
Add to Basket

www.crownpub.bc.ca

Any questions about ordering?

distribution@lss.bc.ca
604-601-6000



Legal Services Society

Customer Account Application Form

To order:
- Fill in the form online, then e-mail it to Legal Services Society; or
- Print out and fill in the form, then fax it to Legal Services Society

If you plan to order multiple copies of a publication or place regular orders, then you can apply for a customer account. Please fill in the information below and return this form to Legal Services Society by email at distribution@lss.bc.ca or by fax at 604-682-0965. We will contact you after we have reviewed your application. You will receive your customer number and your pre-approved order quantity if your application is accepted.

Does your organization already have an approved Crown Publications customer number? Yes ☐ No ☐

Organization name:

Contact person: **Title:**

Mailing address:

Phone: **Fax:**

Email: **Website:**

Order requirements: Maximum number of copies _____ Estimated frequency of orders _____

Preferred languages:

Area of law: ☐ Aboriginal ☐ Civil ☐ Criminal ☐ Family ☐ Immigration ☐ Legal aid

Type of organization:
☐ Aboriginal ☐ Community group ☐ Government ☐ Library
☐ Legal organization ☐ Medical ☐ Police/RCMP
☐ School/College ☐ Victim services ☐ Other

Demographics: (Groups/individuals you serve)
☐ Aboriginal ☐ Children and youth ☐ Community workers/Advocates
☐ Gay/Lesbian/Bisexual/Transgender ☐ Immigrants/Refugees ☐ Police/RCMP
☐ Seniors/Elders ☐ Victims ☐ Women ☐ Other

Services: (Type of service offered)
☐ Advocacy services ☐ Counselling/Support Group ☐ Crisis line
☐ ESL/Literacy training ☐ Legal advice ☐ Legal representation
☐ Mediation and conflict resolution ☐ Pro bono legal services ☐ Restorative justice
☐ Other

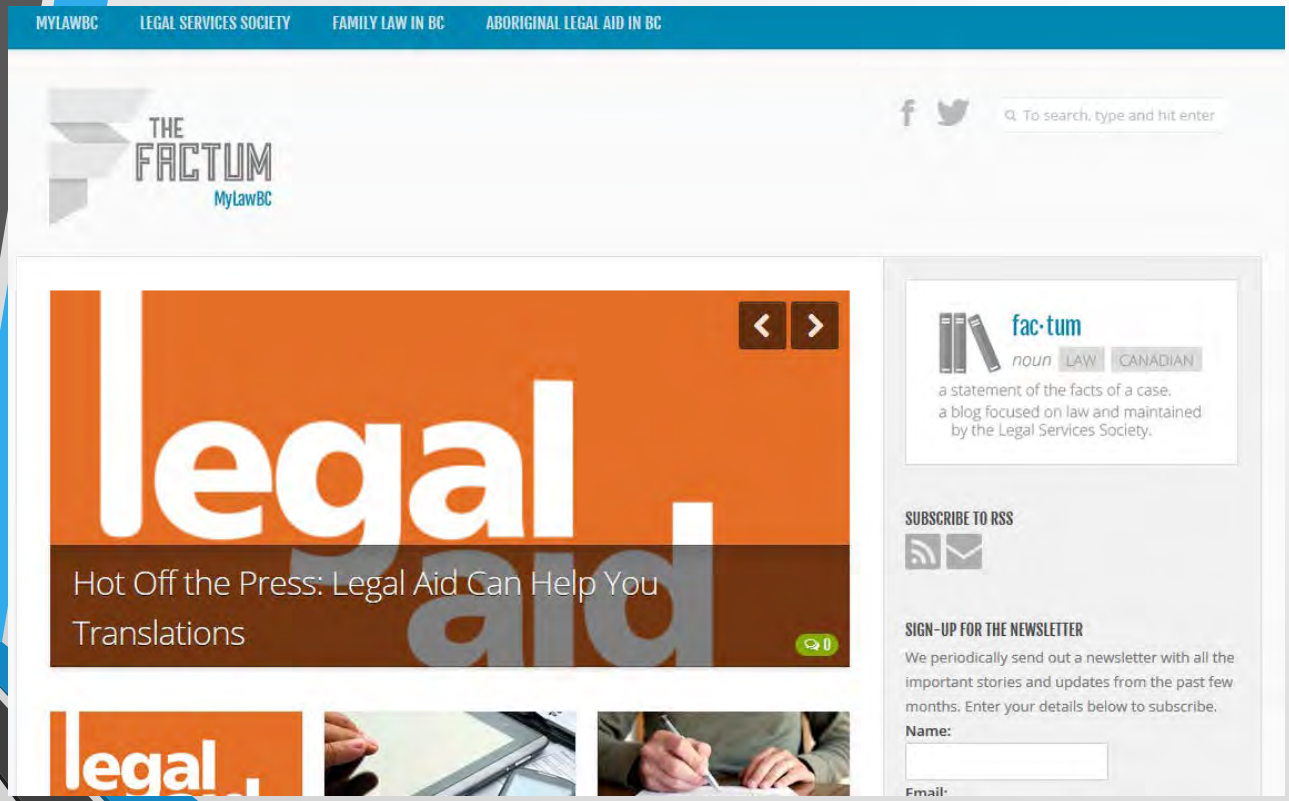
Disclaimer
LSS collects and uses personal information solely to operate its business and provide legal aid in BC. LSS does not sell the personal information it collects and will not disclose an individual's personal information to a third party unless the disclosure is authorized under FOIPPA and/or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



Social media & websites

LSS on social media

factum.mylawbc.com

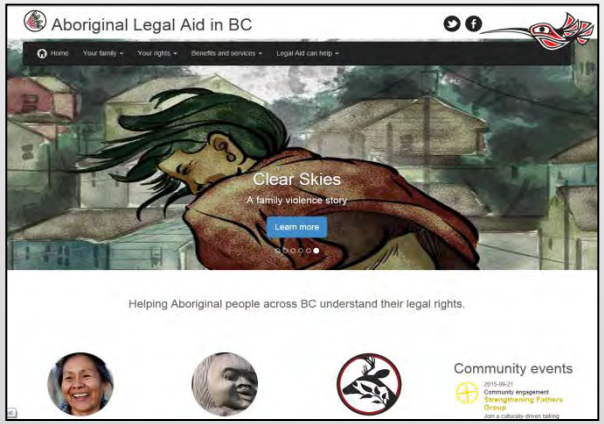


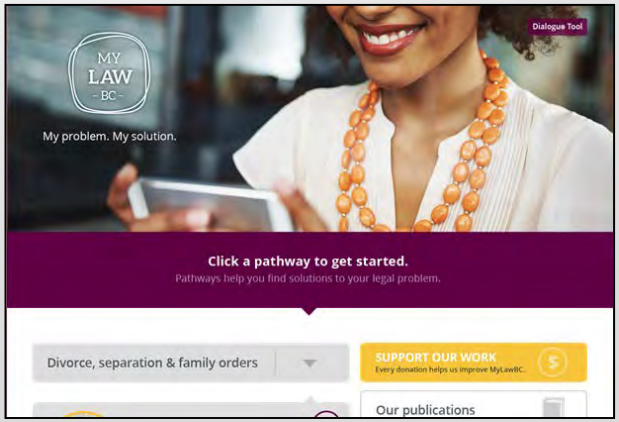
@legalaidBC

PLEI websites from LSS

1. Family Law Website
   familylaw.lss.bc.ca
2. Aboriginal Legal Aid in BC
   aboriginal.legalaid.bc.ca
3. MyLawBC
   mylawbc.com





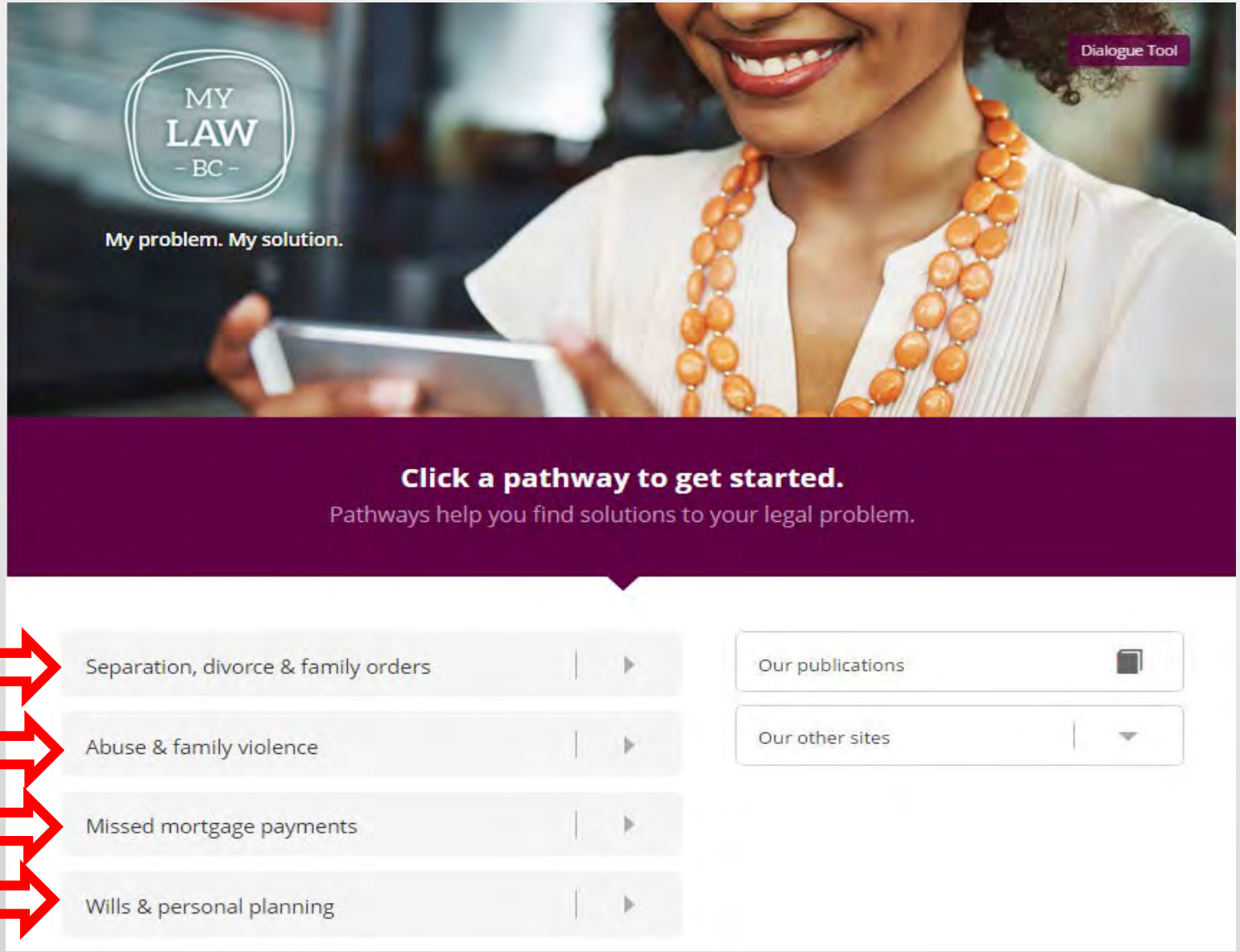




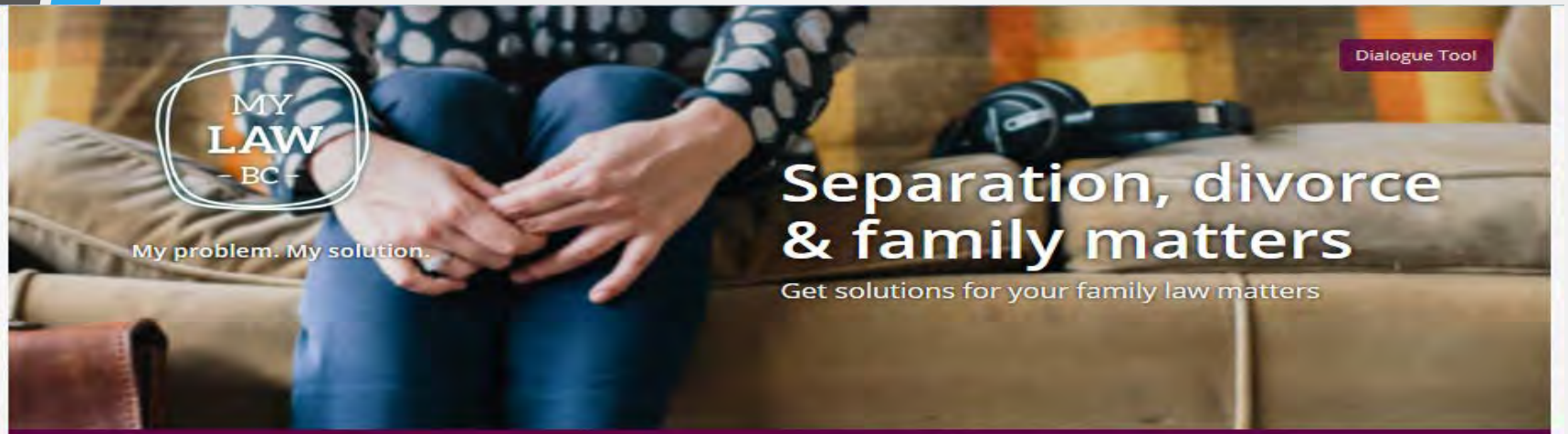
www.familylaw.lss.bc.ca



aboriginal.legalaid.bc.ca



WWW.MYLAWBC.COM



Click a pathway to get started.

Find a solution to your family law matters in 10 – 20 minutes.

Get help with the issues families face when they separate

No matter where you are in your separation process, MyLawBC can help. First, make a separation plan to find out what your options are for working through your family law matters.

Get family orders if you've tried to resolve your issues out of court and can't, or if you need to get **interim** or **consent orders**. (An interim order is a temporary order. A consent order is an order you ask the court to make based on the terms you and your spouse agree to.)

Or find out what to do if you've been served with court documents.

Before you begin

In some unhealthy relationships, one person has more power than the other. This can affect how well you and your partner communicate and cooperate as you separate. And it can show up as abusive behaviours. **Your and your family's safety may be at risk.**

If you're worried about a power imbalance, it's a good idea to go through our Abuse and family violence pathway first.



Make a separation plan

Figure out the best way for you and your partner to work through your family law matters.



Get family orders

Figure out which court to use. Get help with court orders.



I've been served with a court document

Find out what to do next.

WWW.MYLAWBC.COM

MY LAW - BC -



Click a pathway to get started.

Find out what your options are in 10 – 20 minutes.

Get help with foreclosure

Whether you've missed making a mortgage payment or you're worried about missing a payment, MyLawBC can help you. Find out about your options and where to go for financial and legal advice. Use our checklist and tips to get help with your particular situation.

If you decide to go to court, get an overview of foreclosure proceedings and follow the steps to prepare your case.

Some terms to know

In most situations, your **lender** doesn't want to **repossess** (take back) your home. (A lender can be a bank, credit union, insurance company, private



Find out if you can keep your home

See what your options are if you think you might miss a mortgage payment or you've already missed a payment.



Click a pathway to get started.

Get solutions for the future in 10 – 20 minutes.

Get help with making a will and planning for the future

If you want legal documents to say what you want to happen after you die or for when you can't act independently, MyLawBC can help you.

Make a simple will that reflects your wishes and fits your situation. You can fill it out and print it. If your situation is complicated, you'll still get basic information about what you need in your will and where to get help.

Learn about the documents that arrange for future decision making about financial, legal, and health and personal care matters. Find out which documents are best for you and how to get them.

MyLawBC can't provide a will in some situations. You may need help from a



Make a will

Create a simple will to fit your needs.



Plan for the future

Identify the documents you need for future decision making.



Click a pathway to get started.

Find help to address your issues in 25 minutes.

Get help with issues that may affect your safety

MyLawBC helps you think about your relationship with your intimate partner and consider your safety risks. It gives you an action plan to get the help you need to address your safety concerns, legal needs, and other issues specific to your situation.



Make a safety plan

Get the help and support you need to stay safer.

MY LAWBC Abuse & family violence



Answer questions about your situation.

Learn about the law as you go.

What is your current living situation?

- ○ My partner and I live in the same household with children
- ○ My partner and I live in the same household without any children
- ◉ My partner and I live in separate households and have children
- ○ My partner and I live in separate households without any children

‹ Previous question Continue ›

Talk with someone right now

VictimLINK

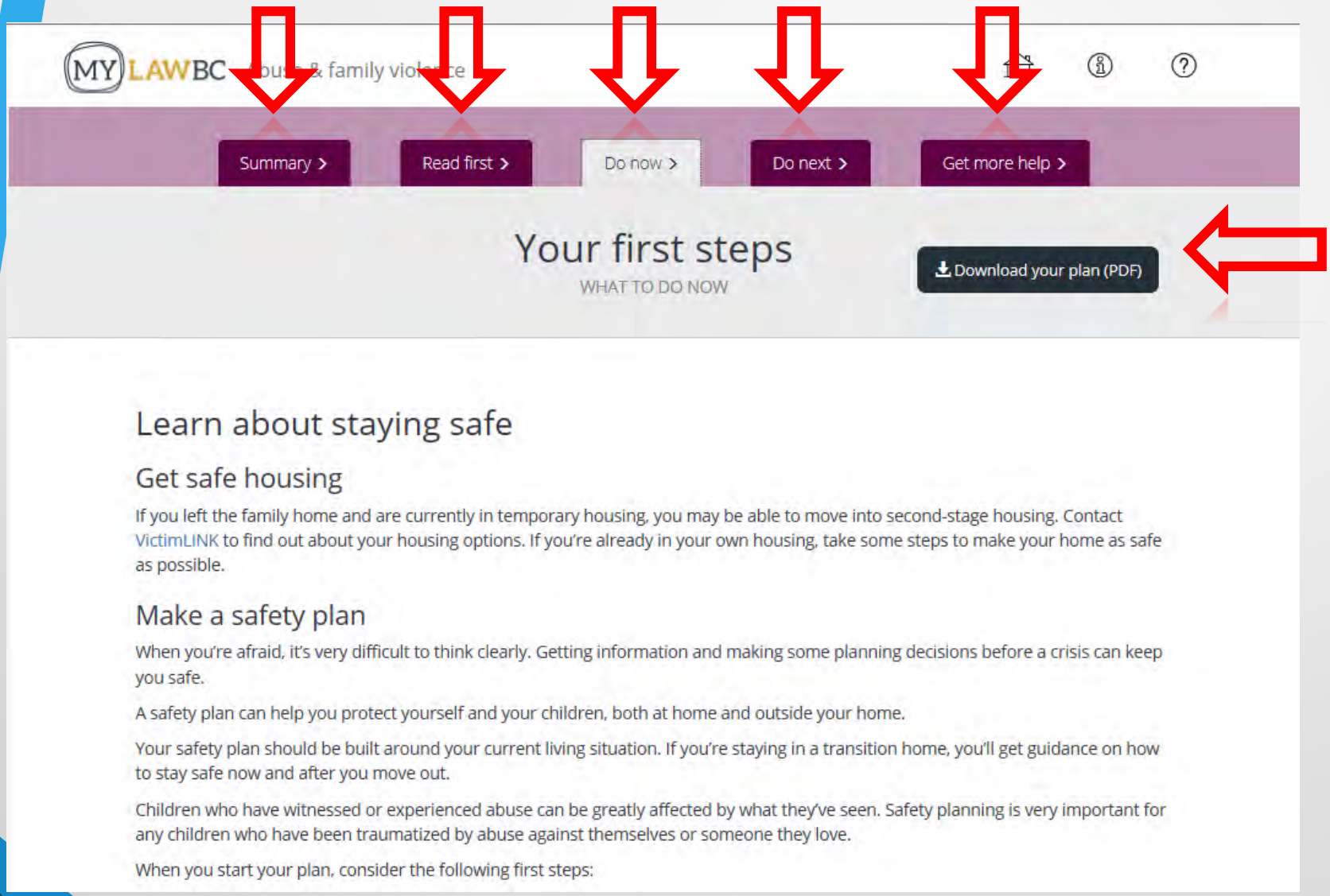
BC211

Your answers are anonymous

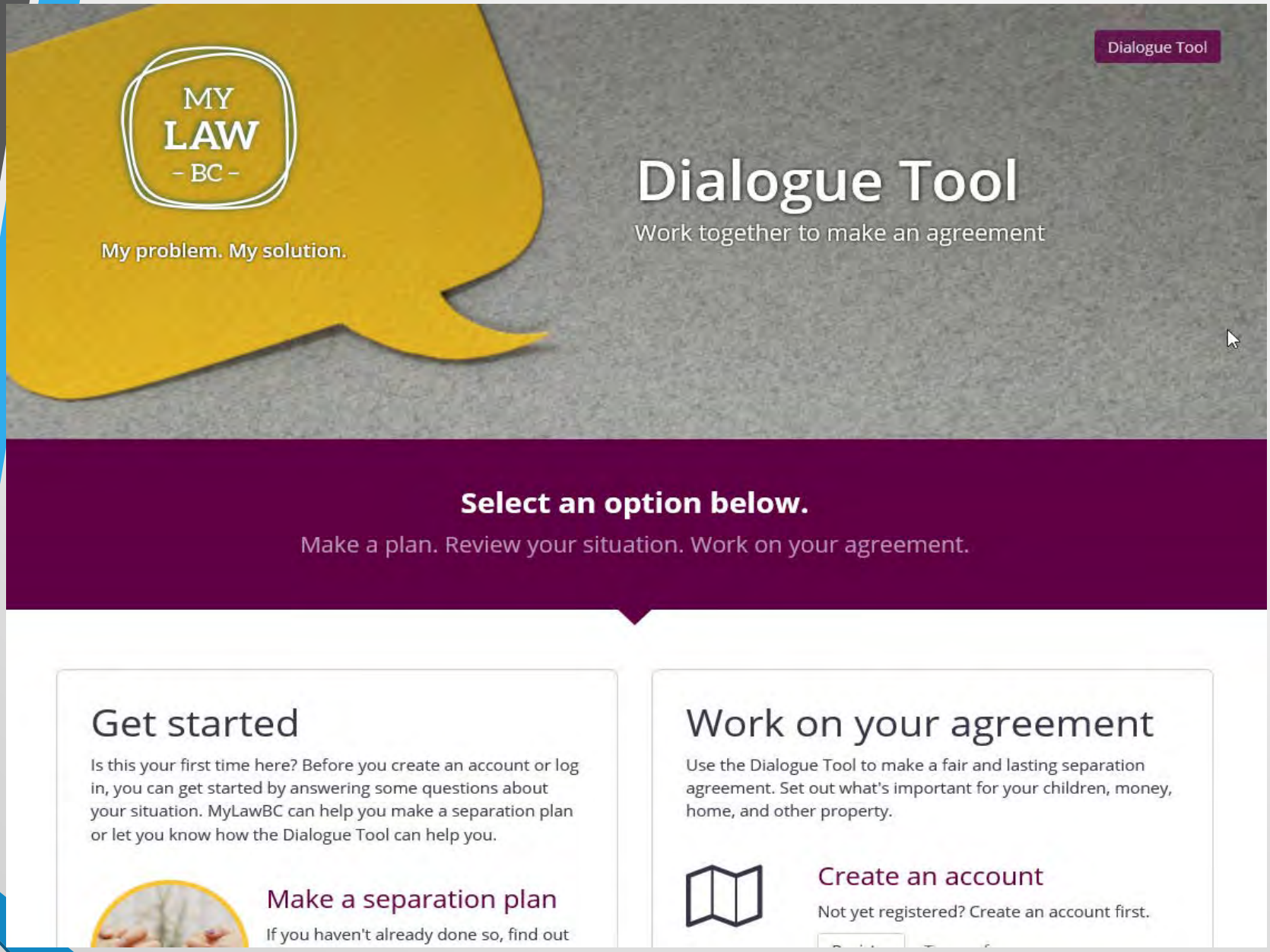
QUICK EXIT

WWW.MYLAWBC.COM

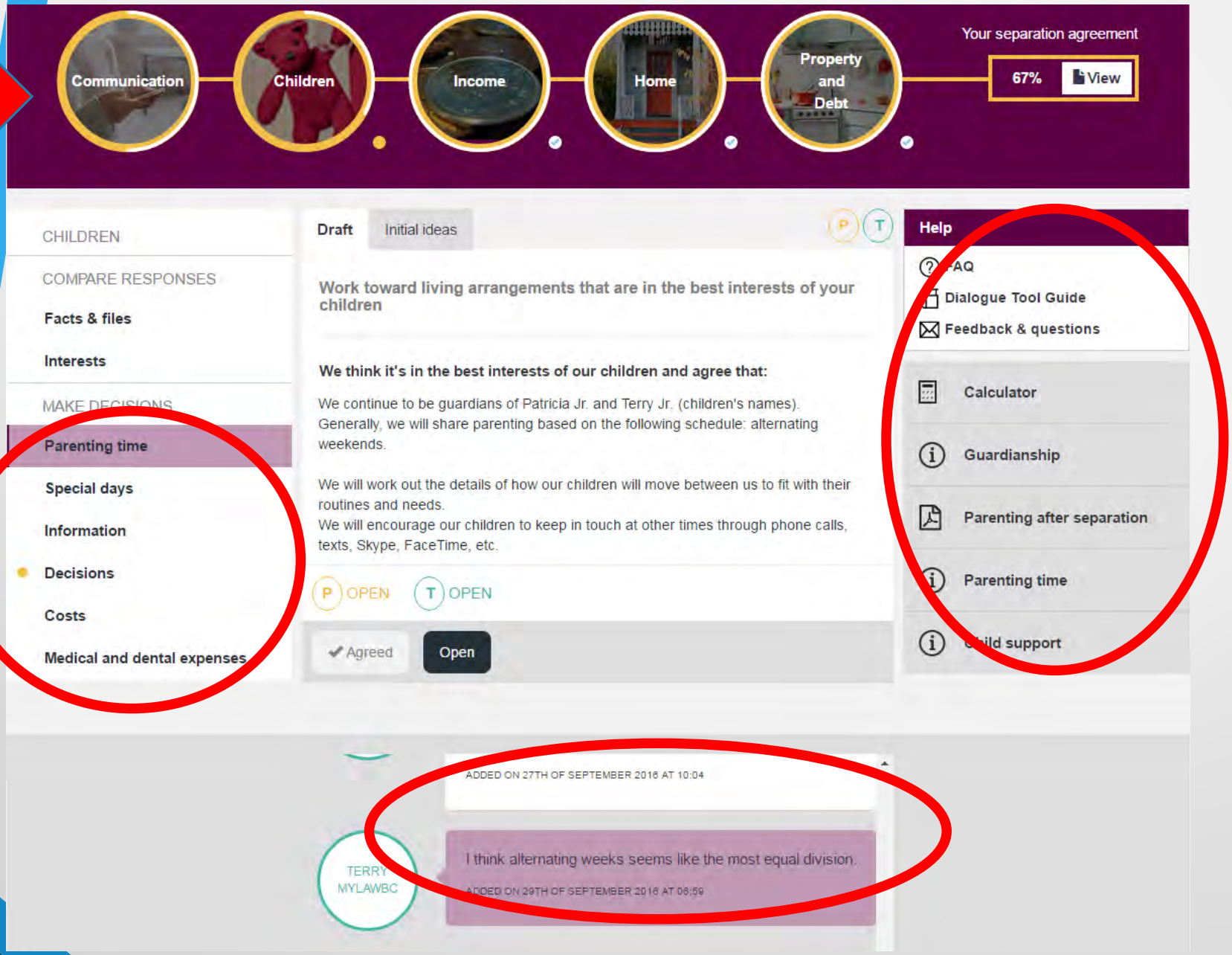
Action plan



WWW.MYLAWBC.COM



WWW.MYLAWBC.COM



WWW.MYLAWBC.COM

MY LAW - BC -


What's Next?

Thank you!

Patricia Lim
Acting Publications Development Coordinator
Patricia.Lim@lss.bc.ca | 604.601.6054

Legal Services Society
British Columbia
www.legalaid.bc.ca

Legal Services Society
www.legalaid.bc.ca

Legal Services Society
British Columbia
www.legalaid.bc.ca

Publications Checklist - use this handy list to make sure you have the most up-to-date LSS publications for your clients!

	New and updated publications	RECOMMENDED ACTION		Notes about status, subject, availability, and audience
		Existing copies	Order new copies	
Family law materials				
	Family Law in BC: Quick Reference Tool (English, Chinese [Simplified and Traditional], Punjabi, Spanish, French [online-only])	**Do not have to recycle,** continue to distribute	Go to crownpub.bc.ca today to order the April 2016 copies.	Bite-sized information for clients about family law in BC.
	How To Become A Child's Guardian (English)	Please recycle older copies.	Go to crownpub.bc.ca today to order the January 2015 copies.	Explains the basics of how to apply for guardianship - for the public.
	If You Can't Get Legal Aid For Your Child Protection Case (formerly How To Get A Court-Appointed Lawyer For Your Child Protection Case) (English)	Please recycle older copies.	Go to crownpub.bc.ca today to order the February 2015 copies.	Explains why you can ask for a court-appointed lawyer and how to apply when denied legal aid. The public may need assistance to use.
	Is that Legal? What the Law Says about Online Harassment and Abuse (English)	**New!**	Go to crownpub.bc.ca today to order copies.	Booklet that helps youth become safer online when they use social media. Intended for front line workers and the public.
	Live Safe – End Abuse fact sheet folders (English, Feb 2017 ed.) • Criminal Court Process • Keeping Your Children Safe • Getting Help from the Police or RCMP • If Your Sponsor Abuses You • Protection Orders • Safety Planning • Men Abused by Their Partners • What to Do About Money • Who Can Help? • Women Abused by Their Partners Translations available for March 2013 edition: - Available online only in French. - Selected fact sheets available in Simplified Chinese, Traditional Chinese, Farsi, Punjabi, Spanish	Please recycle older (English) copies.	Go to crownpub.bc.ca today to order the February 2017 copies.	Small amounts of specific family violence information in a folder format intended to be given directly to the public.
	Living Together, Living Apart: Common-Law Relationships, Marriage, Separation, and Divorce (English, Feb 2017 ed.) Translations available for March 2013 edition: - Chinese (Simplified & Traditional), French, Punjabi, Spanish	**Do not have to recycle,** continue to distribute	Go to crownpub.bc.ca today to order the January 2017 copies.	Explains the basics of family law in BC - intended for front-line workers and the public.
	Mothers Leaving Abusive Partners: Family Law Information (English) Formerly called *Leaving an Abusive Relationship*	Please recycle older copies.	Go to crownpub.bc.ca today to order August 2016 copies.	Explains the law with respect to family violence in BC. Intended for front-line workers. The public may need assistance to use.
	Separation Agreements: Your Right to Fairness (English, Chinese [Simplified and Traditional], Punjabi, Spanish, French)	**Do not have to recycle,** continue to distribute	Go to crownpub.bc.ca today to order copies.	Explains the law about what to do if you believe your agreement might be unfair. Intended for front-line workers and the public.

	New and updated publications	RECOMMENDED ACTION		Notes about status, subject, availability, and audience
		Existing copies	Order new copies	
Aboriginal materials				
	Aboriginal Child Protection Process Flow Chart poster (English)	Please recycle older copies.	Go to crownpub.bc.ca today to order the March 2017 copies.	Step-by-step overview of the Aboriginal child protection process and the rights of Aboriginal children and families.
	Aboriginal Child Protection wallet card (English)	**Do not have to recycle,** continue to distribute	Go to crownpub.bc.ca today to order the November 2016 copies.	Wallet card directs any Aboriginal parent visited by a social worker to call legal aid right away.
	Gladue Rights at Bail and Sentencing Infographic (English)	**New!**	Go to crownpub.bc.ca today to order copies.	Shows when Gladue rights apply for Aboriginal people during the criminal court process, and when to get a Gladue report or prepare an oral Gladue submission. Intended for use by front-line workers when helping the public.
	What's First Nations Court? (English)	**New!**	Go to crownpub.bc.ca today to order copies.	This fact sheet explains First Nations Court intended to be given directly to the public.
	Your Gladue Rights (English)	**New!**	Go to crownpub.bc.ca today to order copies.	Plain language booklet for the public that explains Aboriginal peoples' rights under the Criminal Code of Canada called Gladue rights.
Criminal law publications				
	If You're Charged With a Crime (English)	Please recycle older copies.	Go to crownpub.bc.ca today to order December 2016 copies.	Short brochure that outlines what happens when someone is charged with a criminal offence. Intended to be given directly to the public.
Immigrants & refugees				
	Need help with your refugee claim? (Eng/Dari, Eng/French, Eng/Kurdish, Eng/Pashto, Eng/Spanish)	**Do not have to recycle,** continue to distribute	Go to crownpub.bc.ca today to order December 2016 copies.	Use these info cards to let people know about the legal aid immigration phone line and other legal aid services for refugee claimants.
Pensions, benefits, and welfare				
	Income Assistance on Reserve (formerly *Social Assistance on Reserve*) (English)	Please recycle older copies.	Go to crownpub.bc.ca today to order March 2017 copies.	Booklet which explains income assistance on reserve. Intended for use by front-line workers when helping the public.
	Your Welfare Rights: How to Apply for Welfare (English)	Please recycle older copies.	Go to crownpub.bc.ca today to order March 2017 copies.	This plain language booklet for front-line workers and the public explains the application process to get welfare.
Promotional items to tell people about Legal Aid				
	Legal Aid Can Help You brochures (English, Chinese [Simplified & Traditional], Kurdish, Punjabi & Spanish)	Please recycle older copies.	Go to crownpub.bc.ca today to order the May 2016 copies.	Use these brochures to let people know about legal aid.
	Legal Aid multilingual poster (English/French/Spanish)	**Do not have to recycle,** continue to distribute	Order more copies when you run out as usual.	Use these posters to let people know about legal aid.

***Please place your order for all LSS publications that you need today from Crown Publications at crownpub.bc.ca using your customer account number.**

***Don't have a customer account number? No problem, we'll give you one! Just send an email to distribution@lss.bc.ca or call 604-601-6000 and ask for a customer account.**

***Questions or feedback? We always want to hear from you! Please email publications@lss.bc.ca.**



updated: April 27, 2017

Recent Changes to Canadian Law and Policy around Permanent Residency

Legal Aid Bootcamp

3 May 2017

Deanna L. Okun-Nachoff
101-440 Cambie Street
Vancouver BC V6B 2N5
deanna@mccrealaw.ca
Tel: 604.662.8200

McCREA
IMMIGRATION LAW

The Shift to "Express Entry"

- In January 2015, IRCC launched the "Express Entry" system - a triage mechanism to handle the vast majority of permanent residence applications submitted by foreign skilled workers seeking to immigrate to Canada.

- IRCC provided 3 key reasons for moving to an application management system:

  1) improved flexibility in selection and application management
  2) greater responsiveness to labour market and regional needs and
  3) faster application processing

Immigration before "Express Entry"

- Prior to the roll-out of Express Entry, skilled workers had four main avenues to apply for permanent residency:
  - Canadian Experience Class (CEC)
  - Federal Skilled Worker (FSW) Program
  - Federal Skilled Trades (FST) Class
  - Provincial Nominee Program (PNP)
- Applicants in the per-Express Entry era feel relatively assured of a positive outcome in their case, provided they met the eligibility rules applicable to the category in which they applied, and the admissibility rules imposed on all immigrants (e.g. criminal, misrepresentation, medical)

"Express Entry": how it work

- Skilled workers in the FSW, CEC and FSTC no longer have a right to apply for permanent residence; rather, only the top ranked candidates in the Express Entry pool will be invited to apply

- The ranking system used in Express Entry ascribes numeric value to factors including applicant age, level of education, level of English/French fluency, high skilled work experience in Canada and abroad, and arranged (high skilled) employment in Canada

- The department has standardized eligibility assessment wherever possible, and become increasingly aggressive about "completeness screening"; though on the bright side, processing of complete applications is reliably coming in at or under 6 months from date of submission

"Express Entry": the user perspective

- The Express Entry ranking system is driven by a limited number of qualitative factors that are not entirely (or easily) changed by applicants

- The system is notoriously difficult to navigate and has no "human face" -which impedes access to justice, particularly for those with limited means

- The ranking system can (and has been) changed with almost no notice, which means the entire system defies predictability for intended applicants, and runs without mandated parliamentary oversight or open public debate

- Starting even before the roll out of Express Entry, and continuing well beyond its introduction, changes were made to the policies surrounding temporary foreign workers that incentivize permanent migration. This raises the question: is Express Entry being promoted to those who really want more relaxed temporary migration, or those who actually wish to stay?

"Express Entry": looking at outcomes

2015	2016
~ 100,000 eligible profiles created	~ 83,000 eligible profiles created
~ 31,000 invitations issued	~ 34,000 invitations issued
~10,000 individuals processed	~ 33,000 individuals processed
80% of cases processed within 6 mos	
Top occupations: food service supervisors, cooks and IT people	
78% of those invited were already residing in Canada	

Changes to Family Class Immigration

- **Parents/Grandparents (PGPs):** Harper put sponsorship of PGPs on pause for 2 years in Nov 2011. A quota of 5k was imposed in 2014 and 2015 and stricter financial eligibility rules were imposed. Trudeau increased the quota to 10k in 2016, and in 2017 introduced a "lottery" component
- **Age of Dependents:** Harper reduced the maximum age at which a child is considered dependent (from 21 to 18). From May 2017, this reverts back to 18
- **Conditional PR for Sponsored Spouses:** Harper created a rule whereby spouses sponsored when their marriage/common-law relationship was less than 2 years old would be landed conditionally (unless there was a child of the relationship), and could lose that status if the relationship endured less than two years from landing. That policy was cancelled in April 2017
- **Streamlining of the Spousal Sponsorship Process:** Under the Harper government, processing of spousal sponsorship applications had come to routinely span two years or longer. Changes in the process that came down in December 2015 included a promise to process cases within 12 months.

Child Protection Intake

Amanda Rose

and Matt Anderson

Child Protection : A Quick Overview

- CFCSA – Child Family and Community Services Act

The CFCSA governs the relationship between Parents & the Ministry for Child and Family Services.

It sets out timelines, and principles that MCFD are required to follow, along with establishing the legal basis for the removal of Children.

Section 13 sets out what types of things that the child can be found in need of protection from; section 14 confers the duty to report.

Child protection Vs. Family law

- Child protection is a branch of family law, but there are two very different areas, governed by different laws.

- (1) Parent Vs. Parent – when parents are in a dispute over children the law that governs this is the Family Law Act (FLA)

- *(2)* Parent Vs. MCFD – when there is a dispute over children between the parents and government social workers. Governed by Child Family and Community Services Act (CFCSA)

The CFCSA Process – From investigation to removal

The “Process” begins when someone reports a parent to the Ministry – this could be a neighbor, police (while attending an incident), the Children’s school, friends or an angry spouse.

1. Investigation: Specialized social workers attend the home or school of a child to interview the parent or in some cases, the child or children. Their role is to assess for immediate safety concerns and gather information.

Note: It is at this stage that a lawyer’s assistance, if available, can be helpful. Parents who do not participate in an investigation can face a removal of the children, and on the same token, sometimes the Ministry can demand things that are inappropriate. Parents are able to have someone present while being interviewed, <u>including a lawyer or advocate.</u>

How do MCFD get involved?

Child Protection Report : minor or no basis for intervention	• Investigation: outcome: no action needed, file closed • Investigation: outcome: support needed, supports offered (voluntary).
Child Protection Report – report real, requires MCFD help	• Investigation: report true/substantiated: supports offered to family, depending on seriousness. • If Parent works with MCFD to resolve issues : file closed
Child Protection Report - Serious and immediate MCFD help needed	• Investigation: serious protection concerns found: Parent required to address immediately • If parent does not address, child may be removed if there is no other way to ensure their safety.

Presentation Stage

- Within 7 days of a removal, the Director's Delegate (Social Worker) is required to appear in court. Technically, the DD must establish that the child needs protection, and that less disruptive measures are not available. The DD provides a "report to court" setting out the concerns, and usually including every possible concern imaginable.
- In statute, this is referred to as a "presentation hearing" and the requirement is that this hearing take place within 7 days. In practice, the capacity of the courts becomes an issue, and a true hearing is scheduled.
- At this stage, all evidentiary issues are "resolved in favour of the Director." For this reason, consent to the "Interim Custody Order" is usually advised by lawyers, with some exceptions. Typically, if hearing is set it will occur in 2 – 3 months, generally the same length of time or longer than the duration of the order sought by the Director.

Commencement Stage

- At this stage the Director is seeking a Temporary Custody Order, usually for 3 months.
- The Act requires that a protection hearing be commenced within 45 days of Presentation, but in practice capacity is again an issue and a hearing is set down.
- Rule 2 requires a Family Case Conference.
- Parties may consent pursuant to s. 60 such that no protection finding is made.
- Protection hearings typically take 7 – 10 months to schedule.
- At this stage, the playing field is leveled in terms of the rules of evidence.
- The Director must establish that “the child is in need of protection.”

Continuing Custody Order

- If the child has been in care for 1 year (in the case of a child who is less than a year old) or 2 years (in all other cases) the Director must apply for a CCO. The effect of this order is that eh Director takes custody permanently, and wither adopts the child out or places permanently.
- These hearings can take more than a year to occur once scheduled, since the entire history will be called, particularly time-consuming where the parent was a child in care.

Voluntary Care Agreements

- Most “Low-Impact” formal result
- Often results in a child being placed with expended family
- The parent will still need an advocate, as the Act provides that the parent will agree to give up as much legal authority as is required to give effect to the agreement

How long do Ministry Proceedings take?

- This can vary: The Ministry is “supposed” to return when the Child protection concerns are addressed. This is not always a reality.
- There are timelines set out in the CFCSA – a child under one year old can only be in the Ministry’s care (foster care), for one year before they have to either return the Child, or apply for a continuing custody order (permanent placement to the Ministry, with the aim to adopt the Child out).
- For children over one at the time of removal, it’s a 2 year time limit.
- On average, when Children are apprehended, most are returned in the first year.

Grandparents and their role in CFCSA

- Grandparents are not usually “parties” – this is the parents only (or the Band)
- However grandparents are often used as placement option by the Ministry for short term safety plans, or even long term.
- Grandparents may sometimes retain their own counsel, and apply under the Family Law Act against their Children, seeking orders that they have some guardianship rights over the children.
- If there is an FLA action with the grandparents, and the FLA action and the CFSCA action is being heard together, they can be “parties”.

When is a person a party and how can they become a party?

- Usually parties are just the parents (and the Band in aboriginal cases).
- Other persons can apply to become a party.
- A child is a party if the child is 12 years old or more.
- Party confers special status on litgants such as the right to disclosure under s. 64 and the right to service of applications as well as the requirement to consent to the applications

What is VACFSS

- Vancouver Aboriginal Child and Family Services Society

- - non profit society, who act as the “aboriginal branch” of the Ministry. They have delegated status, which means they have the authority to remove and deal with Child protection in the same way as the Ministry.
- “aboriginal” focus on service delivery

How does someone apply for access after a CCO is in place or there is an adoption?

- A CCO is a permanent custody order to the Ministry. Access to a child when there is a CCO order is in place is governed by s. 56 of the CFCSA. It's a difficult application and certainly requires a lawyer.

- A parent can apply to set aside the CCO, but this is rare and difficult. Their lives must have changed significantly since the order was made, AND they have to prove it would be better for the Child than their current situation. Its an application that needs a lawyer.

- The Ministry sometimes enter into agreement for "open adoptions" where the parent has some ongoing access. However, this is NOT enforceable in Court.

- If the Child has not been adopted out, the Guardianship team (adoption team) of social workers may be willing to allow some access or an application may be made in Court.

Services to Support Parents

- 1. Advocates: Direct them to POVnet to find a local advocate. In some areas there are special advocates that work with just Child Protection cases.
- 2. If they are from a different country and have language barriers, finding a local agency that offers immigrant services will be invaluable.
- 3. Their lawyer – Each lawyer has 4 “collateral” hours under the tariff to assist with other non legal issues (and legal) that might help resolve their case. This could mean helping with housing issues, drug treatment, or finding them counselling services.

The importance of dealing with CFCSA clients quickly

- 1. More than any other area of law, access to legal advice can impact a parent facing Ministry action. Without it, they may take steps that lead to their Children being removed, or staying away longer than needed, which can permanently damage children and Families.
- 2. Any parent that is being threatened with “removal or apprehension” of their Children is in crisis. The situation generally will not go away, and without legal help, both the parents and their Children can be at immediate risk.

Family Violence, Protection Orders and the Family Law Act

May 2017

Zara Suleman and Salima Samnani

Family Violence and the Family Law Act

1. Overview of the Family Law Act – Family Violence

2. Protection Orders/Conduct Orders/Enforcement

3. Protection Orders – Practical Tips

4. Other Sections as they relate to Family Violence Issues

5. Questions, Comments, Discussion

Family Violence and the Family Law Act

New Duties for Dispute Resolution Professionals

- Dispute resolution professionals include family law lawyers, family law mediators, parenting coordinators, family justice counsellors and arbitrators.

- S.8 of the FLA imposes a positive duty on to lawyers/ dispute resolution professional the duty to:
    - Assess whether family violence may be present and
    - If present to assess the impact on the client's safety and ability to negotiate.

Family Violence and the Family Law Act

Definition of Family Violence

"family violence" includes:

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

Family Violence and the Family Law Act

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

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

Family Violence and the Family Law Act

Section 37 - Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
(a) the child's health and emotional well-being;
(b) the child's views, unless it would be inappropriate to consider them;
(c) the nature and strength of the relationships between the child and significant persons in the child's life;
(d) the history of the child's care;
(e) the child's need for stability, given the child's age and stage of development;
(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

Family Violence and the Family Law Act

Section 37 - Best interests of child (continued)

g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;

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

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

Family Violence and the Family Law Act

Section 37 - Best interests of child (continued)

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

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

Family Violence and the Family Law Act

Assessing Family Violence

38 For the purposes of section 37 (2) (g) (impact of family violence on child) and (h) (assessing actions of person responsible for family violence)*[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;

Family Violence and the Family Law Act

Assessing Family Violence (continued)

(e) whether the family violence was directed toward the child;

(f) whether the child was exposed to family violence that was not directed toward the child;

(g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;

(h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

(i) any other relevant matter.

PROTECTION ORDERS, CONDUCT ORDERS, AND ENFORCEMENT OF ORDERS*

*ORIGINAL SLIDES COURTESY OF KATHRYN J. FERRISS

PROTECTION ORDERS

Who Can Apply for a Protection Order?

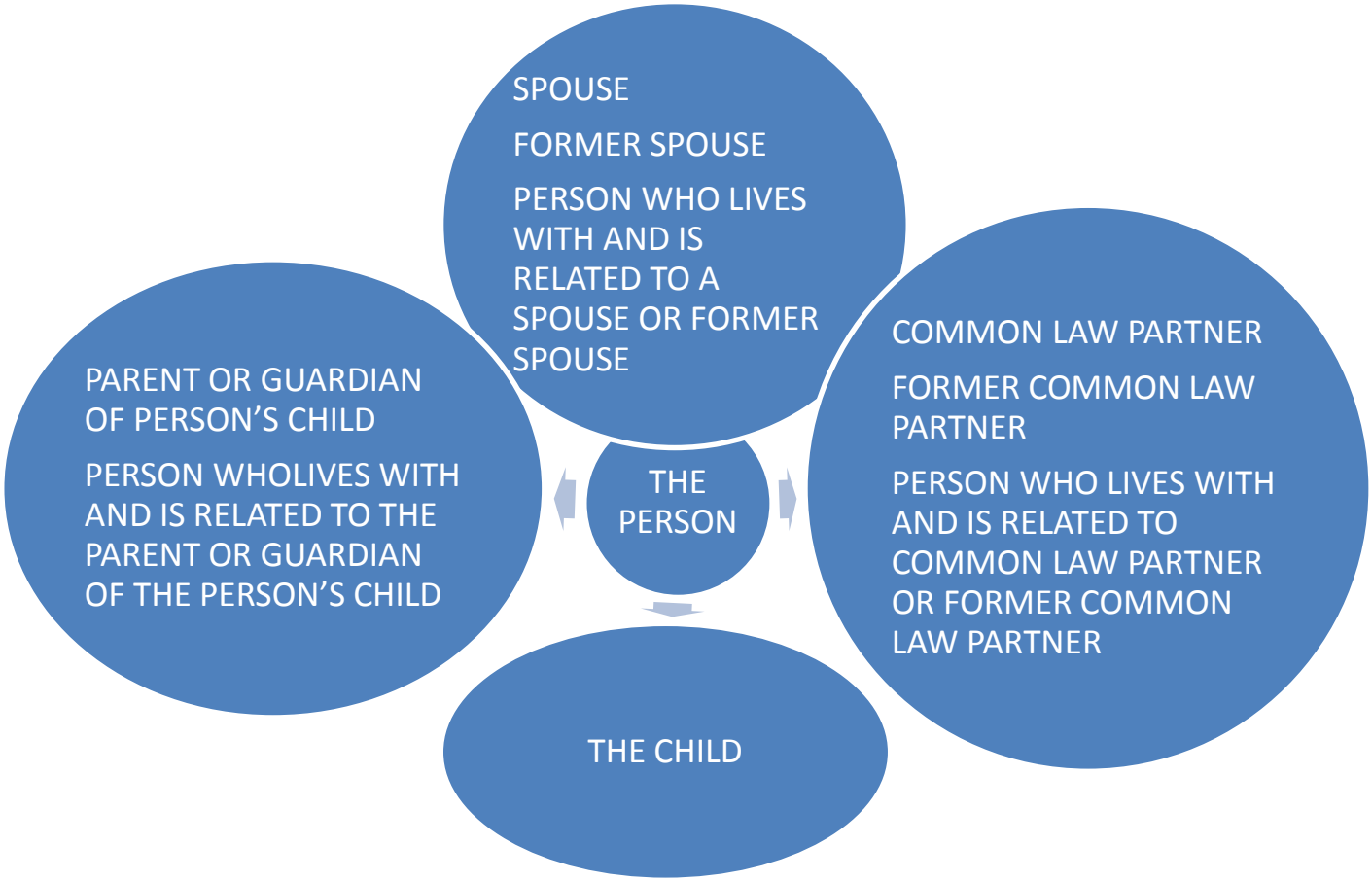
- A family member who is claiming to be an “at-risk family member”
- A person on behalf of the “at-risk family member”
- The court can make the order on its own initiative
- Application can be made without claiming other relief.

Definition of “At Risk Family Member”

“A person whose safety and security **is or is likely at risk from family violence** carried out by a family member.”

FLA, s. 182

Definition of “Family Member”



Possible Protection Order Terms

That the respondent:

- Not attend at a residence, property, business, school or place of employment of the at-risk family member (even if the respondent owns or has a right to possess the place);
- Not follow the at-risk family member;
- Not communicate or contact the at-risk family member or, if so, only in a certain way;
- Report to court or a person named by the court;

Other possible terms

- Any terms or conditions the court considers necessary to protect the at-risk family member or implement the order.
- Specify when the order will expire (the default period is one year)
- Restrict access to a residence for the purpose of protecting a family member occupying the residence (s. 193 of the *FLA)*

Other possible terms

"Pick Lists" for *Family Law Act* Orders

See: http://www.provincialcourt.bc.ca/Lawyers

Scroll down to:

"*Family Law Act* Orders Picklist in MS Word"

Factors to consider

- The at-risk family member's perception of the risk;
- Circumstances that may increase the at-risk family member's vulnerability (mental health, etc);
- Whether a child may be exposed to family violence if a protection order is **not** made;
- Whether an order should be made protecting the child if one is made respecting the child's parents.

CONDUCT ORDERS

Conduct Orders

Used for:

- Facilitating settlement
- Managing behaviours
- Preventing misuse of court process
- Facilitating interim arrangements

Conduct Orders Judges Can Make

- Dismiss or strike out party's claim.
- Adjourn a proceeding while parties attempt resolution of issues or a party complies with a conduct order.
- Seize him or herself.
- Prohibit a party from making an application for something a parenting coordinator has authority over, without leave of the court.

Conduct Orders Judges Can Make

- Require the parties to attend dispute resolution.
- Require the parties or the child to attend counselling.
- Allocate payment of counselling or dispute resolution costs between the parties.

Conduct Orders Judges Can Make

- Restrict communication between the parties.
- Require a party to make payments respecting rent, mortgage, utilities, taxes, insurance.
- Prohibit a party from terminating utilities.
- Require supervision of the removal of personal belongings.
- Require security.

ENFORCEMENT OF ORDERS

Enforcement of Protection Orders

- May **not** be enforced under the *FLA* or *Offence Act (s. 188)*
- Enforceable as an offence under the *Criminal Code*, s. 127.
- Protection Orders from another Canadian jurisdiction – enforceable under the *Enforcement of Canadian Judgments and Decrees Act.*
- “police officer” defined to include RCMP

Enforcement of Conduct Orders

Under s. 228, the court can order:

- Security be posted.
- Person report to court or to another person.
- That an adverse inference be drawn.
- Reimbursement for expenses as a result of the non-compliance.
- The person to pay up to $5,000 to the other party, the spouse or child.
- Fine the person up to $5,000.

PROTECTION ORDERS

Practical Tips for Advocates

Other Key Sections of the *Family Law Act*

Misuse of Court Process

Section 221

- provides court the ability to make an Order to restrict or prevent a party from making further court applications
- May be needed if party is experiencing litigation harassment
- Where there is no basis for taking spouse to court repeatedly the court can intervene

Denial of parenting time or contact

- **Section 61** - Sets out what is available to the court if they determine that an applicant has been wrongfully denied parenting time.

- **Section 62** – Sets out when denial of parenting time is <u>not wrongful</u> and this includes:

    I. Not wrongful if guardian reasonably believed the child might suffer family violence if the parenting time or contact with the child were exercised - Section 62 (1) (a)

When denial is <u>not</u> wrongful

62 (1) For the purposes of section 61 *[denial of parenting time or contact]*, a denial of parenting time or contact with a child is not wrongful in any of the following circumstances:

(a) the guardian reasonably believed the child might suffer family violence if the parenting time or contact with the child were exercised;

(b) the guardian reasonably believed the applicant was impaired by drugs or alcohol at the time the parenting time or contact with the child was to be exercised;

(c) the child was suffering from an illness when the parenting time or contact with the child was to be exercised and the guardian has a written statement, by a medical practitioner, indicating that it was not appropriate that the parenting time or contact with the child be exercised;

(d) in the 12-month period before the denial, the applicant failed repeatedly and without reasonable notice or excuse to exercise parenting time or contact with the child;

When denial is <u>not</u> wrongful (continued)

(e) the applicant

(i) informed the guardian, before the parenting time or contact with the child was to be exercised, that it was not going to be exercised, and

(ii) did not subsequently give reasonable notice to the guardian that the applicant intended to exercise the parenting time or contact with the child after all;

(f) other circumstances the court considers to be sufficient justification for the denial.

(2) If, on an application under section 61, the court finds that parenting time or contact with a child was denied, but was not wrongfully denied, the court may make an order specifying a period of time during which the applicant may exercise compensatory parenting time or contact with the child.

Orders to Prevent Removal Of Child

Section 64 lists protections if a child is to be removed from BC and provides security options.

Family Violence, Protection Orders and the Family Law Act

Questions/Comments
Thank you

zara@sulemanfamilylaw.com
and
salima@samnanilaw.ca

This Act is Current to April 26, 2017

This Act has "Not in Force" sections. *See* the Table of Legislative Changes.

FAMILY LAW ACT

[SBC 2011] CHAPTER 25

Part 9 — Protection from Family Violence

Definitions

182 In this Part and the regulations made under section 248 (1) (d) *[general regulation-making powers]*:

"at-risk family member" means a person whose safety and security is or is likely at risk from family violence carried out by a family member;

"firearm" has the same meaning as in the *Criminal Code*;

"residence" means a place where an at-risk family member normally or temporarily resides, including a place that was vacated because of family violence;

"weapon" has the same meaning as in the *Criminal Code*.

Orders respecting protection

183 (1) An order under this section

(a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and

(b) need not be made in conjunction with any other proceeding or claim for relief under this Act.

(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.

(3) An order under subsection (2) may include one or more of the following:

(a) a provision restraining the family member from

(i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,

(ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,

(iii) following the at-risk family member,

(iv) possessing a weapon, a firearm or a specified object, or

(v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;

(b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

(c) directions to a police officer to

(i) remove the family member from the residence immediately or within a specified period of time,

(ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or

(iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(e) any terms or conditions the court considers necessary to

(i) protect the safety and security of the at-risk family member, or

(ii) implement the order.

(4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.

(5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 *[Orders Respecting Conduct]* of Part 10, the orders must not be recorded in the same document.

Whether to make protection order

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

(a) any history of family violence by the family member against whom the order is to be made;

(b) whether any family violence is repetitive or escalating;

(c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;

(d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

(e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;

(f) the at-risk family member's perception of risks to his or her own safety and security;

(g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

(2) If family members are seeking orders under this Part against each other, the court must consider whether the order should be made against one person only, taking into account

(a) the history of, and potential for, family violence,

(b) the extent of any injuries or harm suffered, and

(c) the respective vulnerability of the applicants.

(3) For the purposes of subsection (2), the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made.

(4) The court may make an order under this Part regardless of whether any of the following circumstances exist:

(a) an order for the protection of the at-risk family member has been made previously against the family member against whom an order is to be made, whether or not the family member complied with the order;

(b) the family member against whom the order is to be made is temporarily absent from the residence;

(c) the at-risk family member is temporarily residing in an emergency shelter or other safe place;

(d) criminal charges have been or may be laid against the family member against whom the order is to be made;

(e) the at-risk family member has a history of returning to the residence and of living with the family member against whom the order is to be made after family violence has occurred;

(f) an order under section 225 *[orders restricting communications]* has been made, respecting the at-risk family member, against the family member against whom the order is to be made.

If child a family member

185 If a child is a family member, the court must consider, in addition to the factors set out in section 184 *[whether to make protection order]*,

(a) whether the child may be exposed to family violence if an order under this Part is not made, and

(b) whether an order under this Part should also be made respecting the child if an order under this Part is made respecting the child's parent or guardian.

Orders without notice

186 (1) An application for an order under this Part may be made without notice.

(2) If an order is made under this Part without notice, the court, on application by the party against whom the order is made, may

(a) set aside the order, or

(b) make an order under section 187 *[changing or terminating orders respecting protection]*.

Changing or terminating orders respecting protection

187 (1) On application by a party, a court may do one or more of the following respecting an order made under this Part:

(a) shorten the term of the order;

(b) extend the term of the order;

(c) otherwise change the order;

(d) terminate the order.

(2) An application under this section must be made before the expiry of the order that is the subject of the application.

(3) Nothing in subsection (2) of this section prohibits a person from making a subsequent application for an order under section 183 *[orders respecting protection]*.

Enforcing orders respecting protection

188 (1) An order made under this Part may not be enforced

(a) by means of any order that may be made under this Act, or

(b) under the *Offence Act*.

(2) A police officer having reasonable and probable grounds to believe that a person has contravened a term of an order made under this Part may

(a) take action to enforce the order, whether or not there is proof that the order has been served on the person, and

(b) if necessary for the purpose of paragraph (a), use reasonable force.

Conflict between orders

Supports for Adults with Disabilities: PWD, CPP-D, DTC, and RDSP Benefits

Updated April 26, 2017

disability alliance bc | we are all connected

Presentation Outline

- What is Advocacy Access?
- Monthly Income Supports
  - Persons with Disabilities Benefits (PWD)
  - Canada Pension Plan Disability Benefits (CPP-D)
- Promoting Financial Security
  - Disability Tax Credit (DTC)
  - Registered Disability Savings Plan (RDSP)

Advocacy Access at Disability Alliance BC

- **Advocacy Services**
  - PWD Applications, reconsiderations, and appeals
  - Other Ministry of Social Development and Social Innovation benefits
  - CPP-D Reconsiderations and Appeals
  - Back taxes (for people on PWD and PPMB)
  - Disability Tax Credit Applications (for people who are RDSP eligible)
- **Toll-free telephone line** (1-800-663-1278; 604-872-1278)
  - Request an appointment
  - Information and Referrals
- **Publications**
  - DABC Helpsheet Series
  - Pamphlets and Brochures

Persons with Disabilities (PWD) Designation and Benefits

What is PWD?

- Monthly income and access to some additional supplements to eligible people in BC
  - Maximum monthly benefits for a single person: $1033 (Shelter, Support, and Transportation)
- Administered by provincial Ministry of Social Development and Social Innovation (MSDSI)
- Must meet medical and financial requirements to get PWD
  - Medical eligibility for PWD is “sticky”. You can leave benefits for a time and keep PWD designation

Options for Accessing Services

- MySelfServe Online Portal
- Phone: 1-866-866-0800
- In-Person: Employment and Assistance Offices

Legislation and Policy

- Employment and Assistance for Persons with Disabilities Act
  - S. 1.1 – Definition of spouse
  - S. 2 – Medical eligibility requirements for PWD
  - S. 10 – Ministry authority to request information
  - S. 13 – Duty to pursue income/disposal of assets
  - S. 20 – Disability assistance exempt from garnishment
- Employment and Assistance for Persons with Disabilities Regulations
  - S. 1 – Definitions (“asset”, “earned income”, “gift”, “unearned income”, etc.)
  - S. 2 – Definition of “daily living activities”
  - S. 10 – Asset limits and exemptions
  - S. 12 – Disability trusts
  - S. 52 – Reconsideration and appeal supplement
  - S. 57 – Crisis supplement
  - Schedule A – Disability Assistance Rates
  - Schedule B – Income exemption rules
  - Schedule C – Health supplement eligibility rules
- BCEA Policy and Procedure Manual
  - MSDSI policy on a broad range of areas that impact income assistance and PWD recipients

PWD Benefits

Establishing Eligibility

PWD Application Process

- S**tage 1 – Screening for financial eligibility, residency, citizenship status, family status, etc.**
  - Self-serve assessment application and intake
- **Stage 2 – Medical eligibility**
  - PWD Designation application (28 pages)

    OR
  - Expedited application (2 pages)
- Stage 1 MUST precede stage 2

Medical Eligibility for PWD

- Medical criteria requires that applicants have
  - A severe physical or mental impairment expected to last at least two years
  - Significant restrictions performing daily living activities
  - Ongoing need for help from another person, assistive device, or assistance animal

- PWD Designation Application
  - Section 1 – Applicant
  - Section 2 – Medical Report
  - Section 3 – Assessor’s Report

Supporting Clients with PWD Applications (1/2)

- Section 1 (Applicant)
  - Emphasis on severity, restrictions to daily living, and assistance required
  - Multiple disabling conditions
  - “Bad day” perspective
  - Frequency and duration of symptoms
  - Use of plain language
  - Consistency of information across sections
  - Developing a narrative
  - Focus on the present

Supporting Clients with PWD Applications (2/2)

- Section 2 (Medical Report)
  - Finding a doctor
  - Specialist or General Practitioner
  - Patient communication with doctor
  - Advocate communication with doctor
- Section 3 (Assessor Report)
  - Doctor as assessor
  - Assistance vs. Restrictions

PWD Benefits

Income and Asset Considerations

Effect of Income on PWD Benefits (1/3)

- **Earned Income**: Subject to Annual Earnings Exemption (AEE)
- **Unearned Income**: Unearned income is generally deducted dollar for dollar unless a specific exemption exists
- **Not considered Income**: In some cases, money received is not considered income and therefore does not affect PWD benefits. See BCEA Policy and Procedure manual.

Effect of Income on PWD Benefits (2/3)

Earned Income and the Annualized Earnings Exemption

- Earned income includes money or value received
  - in exchange for work or the provision of a service
  - from providing room and board at a person's place of residence
  - from renting rooms that are common to and part of a person's place of residence
- PWD recipient family units may receive earned income during the year up until the point they have exceeded their AEE limit. Subsequent earned income is deducted dollar for dollar
- AEE Limits (prorated)
  - $9,600 for a single person
  - $12,000 for a two person family with one PWD
  - $19,200 for a two person family with two PWD's
- The AEE Limit is renewed every January and individuals who exceeded the AEE limit the previous year may be eligible to receive benefits once the AEE limit is renewed
- Most new applicants for PWD face a one month waiting period for the AEE

Effect of Income on PWD Benefits (3/3)

Exemptions from Unearned Income Include

- Gifts and inheritances (estate of a deceased person)
- Education and training allowances, grants, bursaries or scholarships, other than student financial assistance
- Child Support
- CPP Orphan's Benefits
- Payments from a disability trust (Must comply with MSDSI requirements)
- Money withdrawn from a Registered Disability Savings Plan or a Registered Education Savings Plan ("RDSP" and "RESP")
- Most income tax benefits including an income tax refund, GST credit, and child tax benefit
- Rent subsidies paid by the provincial government a representative agency

Effect of Assets on PWD Benefits (1/2)

Definition of an Asset

- Equity in any real or personal property that can be converted to cash
- A beneficial interest in real or personal property held in trust
- Cash assets

Effective December 1, 2015, the PWD allowable asset limit for a single person has been increased from $5,000 to $100,000

Family units whose non-exempt assets exceed the asset limit are ineligible for PWD benefits

Exempt assets (see next slide for examples) are not factored into the calculation of the asset limit

Effect of Assets on PWD Benefits (2/2)

<u>Exempt assets include</u>

- a family unit's place of residence
- assets held in a disability trust (must comply with MSDSI rules)
- funds in an RDSP and RESP
- clothing and necessary household equipment
- one motor vehicle generally used for day to day transportation needs
- an uncashed life insurance policy with a cash surrender value of $1500 or less

Other PWD Eligibility Considerations

Family Unit Composition

<u>The Family Unit Includes</u>

- The Individual with the PWD designation
- Their spouse
- Their dependent children (under 19 years of age, except those on PWD))

Parents of people on PWD are not part of the family unit

<u>Issues</u>

- PWD rates and eligibility are determined on the basis of the family unit, not on the individual
- Families with one income earner and one person with disabilities are often barred from applying for PWD
- Individuals on PWD who enter into a new relationship must be very aware, particularly if they move in with their partner, that a common law relationship may be deemed
- Individuals on PWD living with a roommate may need to take steps to offset the presumption that they are living in a common law relationship

Residency Considerations

- Only residents of BC are eligible for PWD benefits
- Recipients of PWD benefits who are absent from BC more than a total of 30 days in a year cease to be eligible for assistance
- Individuals deemed eligible for other provincial disability programs cannot transfer that eligibility to the BC PWD program and must reapply in BC
- Individuals moving to BC generally face a 6 month or greater wait to qualify for PWD benefits

Pursuing Income

- PWD recipients are not expected to look for work
- PWD recipients are expected (and sometimes requested) to pursue other available sources of income
  - CPP Benefits
  - WCB Benefits
  - EI Benefits
  - Private Insurance
  - Spousal Support
  - Sponsorship Support

Reporting Requirements

- PWD Recipients are asked to submit a monthly report form if they have income, assets, or other changes in circumstances which may impact eligibility
- PWD Recipients who do not have income or other changes in circumstances that need to be reported do not need to submit a monthly report
- Individuals who fail to report income, assets, or other changes in circumstances are vulnerable to overpayment collection and penalties if they fail to disclose changes in circumstances
- **Individuals who exceed the AEE limit in a year can continue reporting to MSDSI to get top-ups and return to benefits more easily**

PWD Eligibility Case Examples

Example 1

- Susan has the PWD designation and is currently receiving benefits. She owns and lives in her home in Vancouver. She is able to work part-time and earns $800 a month from her work. Her family provides her with an additional $500 of support each month. Susan's aunt leaves her $450,000 in her will. Susan reports the inheritance to MSDSI and requests a temporary exemption of the money. She places $200,000 in a non-discretionary trust and an additional $200,000 in an RDSP account. She deposits the remaining $50,000 into her savings account. Throughout, Susan remains eligible for and continues to receive PWD benefits

Example 2

- Jean and Peter are married with one child. They rent a one bedroom apartment in Vancouver for $900 a month and their combined liquid assets are $2,000. Jean earns $1600 per month from her work. Peter has developed a progressively worsening condition over the past two years which has prevented him from finding employment. Peter believes he would now meet the eligibility criteria for PWD benefits. However, he is told he is not eligible to apply because Jean's income is too high

PWD Supplements

PWD Health Supplements

(Additional Criteria May Apply)

- Medical Services Plan (MSP) Coverage
- Extended Medical Therapy
- Fair Pharmacare
- Diet Supplements
- Nutritional Supplements
- Dental Coverage
- Glasses (lenses and frames every 3 years)
- Eye exams (every two years)
- Certain medical supplies
- Certain medical equipment and devices
- Medical Transportation
- Alcohol and Drug Treatment Counselling

PWD General Supplements and Programs

(Additional Criteria May Apply)

- Bus Pass Program
- Single Parent Employment Initiative
- Moving Expenses (only in certain situations)
- Crisis Supplements
- Natal Allowance
- Guide Animal Supplement

Canada Pension Plan Disability Benefits

CPP-D Benefits

- As of 2015
  - Flat Rate Benefit $465
  - Maximum amount $1264
  - Average amount $902
  - Additional amount for dependent children under 18 $234
- When you get approved for CPP, you may receive a retroactive lump sum payment
- Unlike PWD, CPP income is taxable
- CPP-D benefits are generally deducted from PWD dollar for dollar

CPP-D Eligibility

- Under 65 (Accepting CPP Early Retirement at 60 can impact eligibility for CPP Disability
- CPP-D Contribution Requirements
  - Must have worked and contributed to CPP for a certain amount of time to be eligible for CPP-D
- Have a disability that is:
  - Severe: incapable of regularly pursuing any substantially gainful occupation
  - Prolonged: severe disability is likely to be long continued and of indefinite duration or is likely to result in death…

CPP-D Minimum Qualifying Period

- Must have made valid contributions to CPP in
  - 4 out of the last 6 years
  - 3 out of the last 6 years if you have contributed for over 25 years
- Earnings below $3500 in a year may not result in valid contributions
- Different rules apply if you became disabled before December 1, 2006
- Minimum Qualifying Period usually ends on December 31 of your last qualifying year

CPP Statement of Contributions

- If you want to get a sense of whether or not you have enough contributions to apply for CPP-D and when your MQP date would be, you can access your CPP Statement of Contributions
  - Online using the My Service Canada Account service
  - By mail
    - Contributor Client Services
Canada Pension Plan
Service Canada
PO Box 818 Station Main
Winnipeg MB R3C 2N4
  - By phone
    - 1-800-277-9914
- If you think there is an error on your statement of contributions, you may want to contact an advocate

CPP-D Applications

- An Application will consist of
  - **Application for CPP-D** asks for basic information about the applicant and any dependent children
  - **Questionnaire for Disability Benefits** asks for information about your disability as it pertains to CPP-D eligibility
  - **Authorization to Disclose Information/Consent for Medical Evaluation** allows ESDC to obtain medical, employment and educational information about you
  - **A Medical Report** to be completed by the doctor who is most familiar with your disability
  - **Child-rearing Dropout Provision** form should be completed by applicants who made low or zero contributions to CPP because they were caring for children under the age of seven

Disability Tax Credit and Registered Disability Savings Plan

Disability Tax Credit (DTC)

What is the DTC?

- The DTC is a non-refundable tax credit that reduces the amount of taxes you need to pay
  - It can also be transferred to an eligible family member or caregiver
- The qualifying factor to open an RDSP
- May help you to access:
  - Working Income Tax Benefit Disability Supplements
  - Child Disability Benefit

DTC Eligibility

- A qualified practitioner must certify that the applicant has a **severe** and **prolonged** impairment in mental or physical functions that is expected to last at least 12 months
- Severe Impairment:
  - Being **markedly restricted** in at least one basic activity of daily living (e.g. vision, speaking, feeding, hearing, walking, eliminating, dressing and mental functions necessary for everyday life) **or**;
  - A **cumulative** effect of **significant restrictions** in any **two** of the above, that exist together substantially all of the time (at least 90%) **or**;
  - You need **life-sustaining therapy** to support a vital function, and you need this therapy at least three times a week, for an average of **14 hours** a week
- Even though someone may have qualified for federal or provincial disability benefits, they may not qualify for the DTC

DTC Application Process

- Obtain the Disability Tax Credit Certificate (form T2201) from the Canada Revenue Agency (CRA)
- Take the form to a doctor or other qualified health professional to be completed (doctors are allowed to charge a fee for filling out the form)
- Consider taking a sample form that includes the information relevant to the application and your situation, it may make things easier for your doctor
- Mail the completed application to the Surrey Tax Centre
- If the details in the DTC application are vague, the federal government may ask the doctor to provide additional information, which could delay a decision
- CRA will send you a DTC eligibility decision letter; this could take a few months

Registered Disability Savings Plan (RDSP)

What is the RDSP?

- Long term savings plan (20-30 year term) available to help DTC eligible people save for their futures
- Individuals 49 years and under may qualify for up to $90,000 in government contributions through disability grants and bonds
- Must maintain DTC eligibility
- Money held in or withdrawn from the RDSP does not affect eligibility for PWD benefits

Who Qualifies for the RDSP?

- To be eligible, applicants must:
  - Be a Canadian resident
  - Have a Social Insurance Number
  - AND be approved for the DTC
- Age Criteria
  - Must open your RDSP by December 31 of the year you turn 59
  - Must open your RDSP by December 31 of the year you turn 49
  - to qualify for grants and bonds

Government Contributions

- Two forms of government contributions:
  - Grants ($3,500 per year up to $70,000)
    - Personal contributions required
  - Bonds ($1,000 per year up to $20,000)
    - Personal contributions not required

All grants and bonds must remain in RDSP for at least 10 years before they can be accessed. RDSP holders who withdraw funds too early will likely lose all or a portion of their accumulated grants and bonds.

Thank You!

Contact Disability Alliance BC

- Advocacy Access Phone
  - 604-872-1278
  - 1-800-663-1278
- General Email Inquiries
  - feedback@disabilityalliancebc.org
- Website
  - www.disabilityalliancebc.org
- Address
  - 204 – 456 West Broadway Avenue, Vancouver BC, V5Y-1R3

Residential Tenancy Law in British Columbia

Legal information on rights and responsibilities for tenants and landlords

Amita Vulimiri (Staff Lawyer)
Samrah Mian (Intake Coordinator)
Community Law Program

CLAS Community Legal Assistance Society

Community Law Program at Community Legal Assistance Society

- Assist low-income individuals with work-related legal issues, human rights, government benefits, housing, and mental health law
- Provide information and referrals, summary advice, assistance to self-represented clients and, as capacity allows, full representation
- Provide assistance to tenants who have received a notice to end tenancy and have lost the hearing at the residential tenancy branch

Overview

- The role of BC's tenancy legislation
- Familiarity with key provisions of legislation
- Relevant documents
- Urgent issues and providing clients with basic information

What is Residential Tenancy Law?

- Tenant and landlord rights and responsibilities
- Tenancy law in this province are different from tenancy laws in other provinces and countries
- Cannot avoid or contract out of the two residential tenancy legislations
  - Residential Tenancy Act (RTA)
  - Manufactured Home Park Tenancy Act (MHPTA)

Are you covered by residential tenancy law?

- Not everyone who rents their home is a ‘tenant’ under residential tenancy law
- You are not a ‘tenant’ if you

  - Share a kitchen or bathroom with the owner of the property (i.e. homestay)

  - Live in co-operative housing

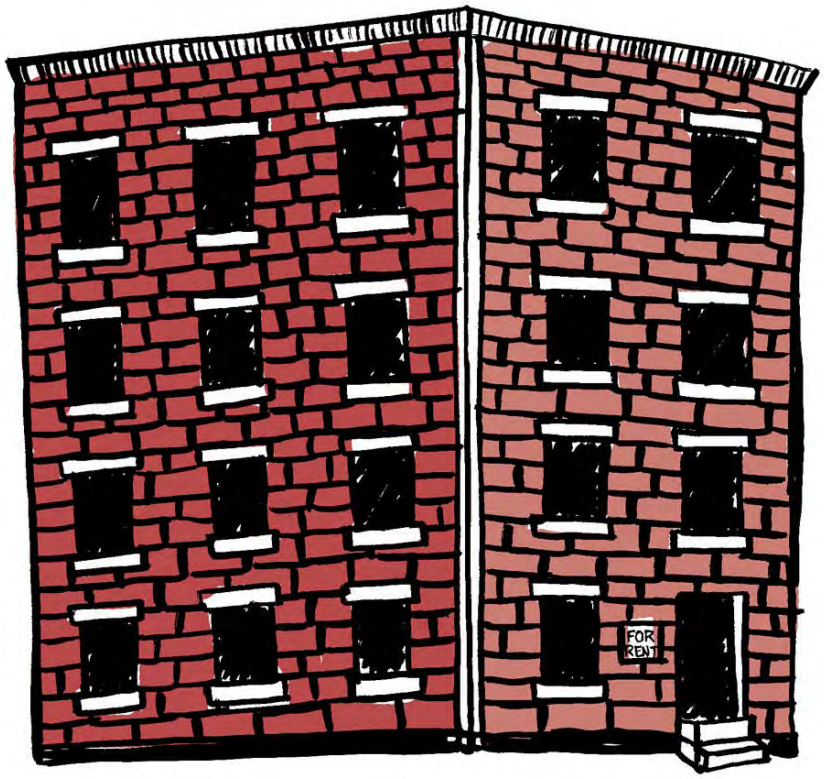
  - Live in student housing provided by your school

  - Live in an emergency shelter or transitional housing

- Manufactured home parks and mobile homes are covered under the MHPTA

Residential Tenancy Branch (RTB)

- Government department responsible for residential tenancy law
  - Phone Services
  - Website
  - Resources (forms, policy guidelines, videos, info sheets)
  - Dispute Resolution
- Service BC Centres



Dispute Resolution

- Tenant and landlord disputes (disagreements)
- Cannot go to court for most tenancy disputes = must use RTB dispute resolution
- Similar to court but usually done over phone
- Tenants can be represented by friends, relatives or advocates
- Decision is based on evidence (not allegations)
  - Monetary order worksheet, photographs, receipts, witnesses, letters, affidavits – use tenants.bc.ca
- $50 (may be waived for low-income clients)

Before a Tenancy

Tenancy Agreement

- A legal agreement (contract) between a tenant and landlord
- Landlord's contact information is important

BRITISH COLUMBIA

Residential Tenancy Agreement

Important Notes: **#RTB–1**

The Residential Tenancy Branch (RTB) is of the opinion that this Residential Tenancy Agreement accurately reflects the *Residential Tenancy Act* (RTA) and accompanying regulations. The RTB makes no representations or warranties regarding the use of this Agreement. A landlord and tenant may wish to obtain independent legal advice regarding whether this agreement satisfies their own personal or business needs. For the rental of a manufactured home and a manufactured home site under a single tenancy agreement, use this Agreement form. For the rental of a manufactured home site use the Manufactured Home Site Tenancy Agreement (form RTB-5).

The words **tenant** and **landlord** in this tenancy agreement have the same meaning as in the RTA, and the singular of these words includes the plural. In this tenancy agreement, the words **residential property** have the same meaning as in the RTA. **Residential property** means a building, a part of a building or related group of buildings, in which one mo more rental units or common areas are located; the parcel or parcels on which the building, related group of buildings or common areas are located; the rental unit and common areas and any other structure located on the parcel or parcels.

IF ADDITIONAL SPACE IS REQUIRED TO LIST ALL PARTIES, complete and attach Schedule of Parties (form RTB-26) *RTB-26 used & attached:* ☐

RESIDENTIAL TENANCY AGREEMENT between: *(use full, correct legal names)*

the LANDLORD(S): ***(if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)***

Tenancy Agreement

- Month-to-month or fixed-term?
- If fixed-term, is there a vacate clause?
- Illegal suite?

2. LENGTH OF TENANCY *(please fill in the dates and times in the spaces provided)*

This tenancy starts on: [ ] [ ] [ ]
day month year

Length of tenancy: *(please check a or b or c and provide additional information as needed)*
This tenancy is:

[X] a) **on a month-to-month basis**

[ ] b) **for a fixed length of time:** one year **ending on** 3 May 2018
length of time — day month year

At the end of this fixed length of time: (for option b, you must check either i or ii below)

[X] i) the landlord and tenant may agree to enter into a new tenancy agreement
- If the landlord and tenant do not enter into a new tenancy agreement, the tenancy continues on a month-to-month basis on the same terms unless the tenant gives legal written notice to end the tenancy.

[X] ii) the tenancy ends and **the tenant must move out of the residential unit**
- If you choose this option, both the landlord and tenant must initial in the boxes to the right →
The tenant **must move out on or before the last day of the tenancy.**

Landlord's Initials	*Tenant's Initials*
SM	AV

[ ] c) **other periodic tenancy as indicated below:**

[ ] weekly [ ] bi-weekly [ ] other:

Tenancy Agreement

- How much is rent?
- What is included in rent?
  - Electricity?
  - Appliances?
  - Parking?

3. RENT *(please fill in the information in the spaces provided)*

a) **Payment of Rent:**
The tenant will pay the rent of $ _____ each *(check one)* ☐ day ☐ week ☐ month to the landlord on the first day of the rental period which falls on the *(due date, e.g., 1st, 2nd, 3rd, ... 31st)* _____ day of each *(check one)* ☐ day ☐ week ☐ month subject to rent increases given in accordance with the RTA.

The tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** *(Check only those that are included and provide additional information, if needed.)*
The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

☐ Water ☐ Stove and Oven ☐ Window Coverings ☐ Storage

Tenancy Agreement

- Read carefully before signing the agreement
- Landlord must give tenant a signed copy within 21 days
- You still may be protected even if you have no written tenancy agreement

By signing this tenancy agreement, the landlord and the tenant are bound by its terms.

LANDLORD(S): *(if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)*

last name | first and middle name(s)

Signature: _____ **Date:** _____

last name | first and middle name(s)

Signature: _____ **Date:** _____

TENANT(S):

Roommates

Co-Tenants	Tenants in Common
Same tenancy agreement	Different tenancy agreements
Jointly responsible	Individually responsible

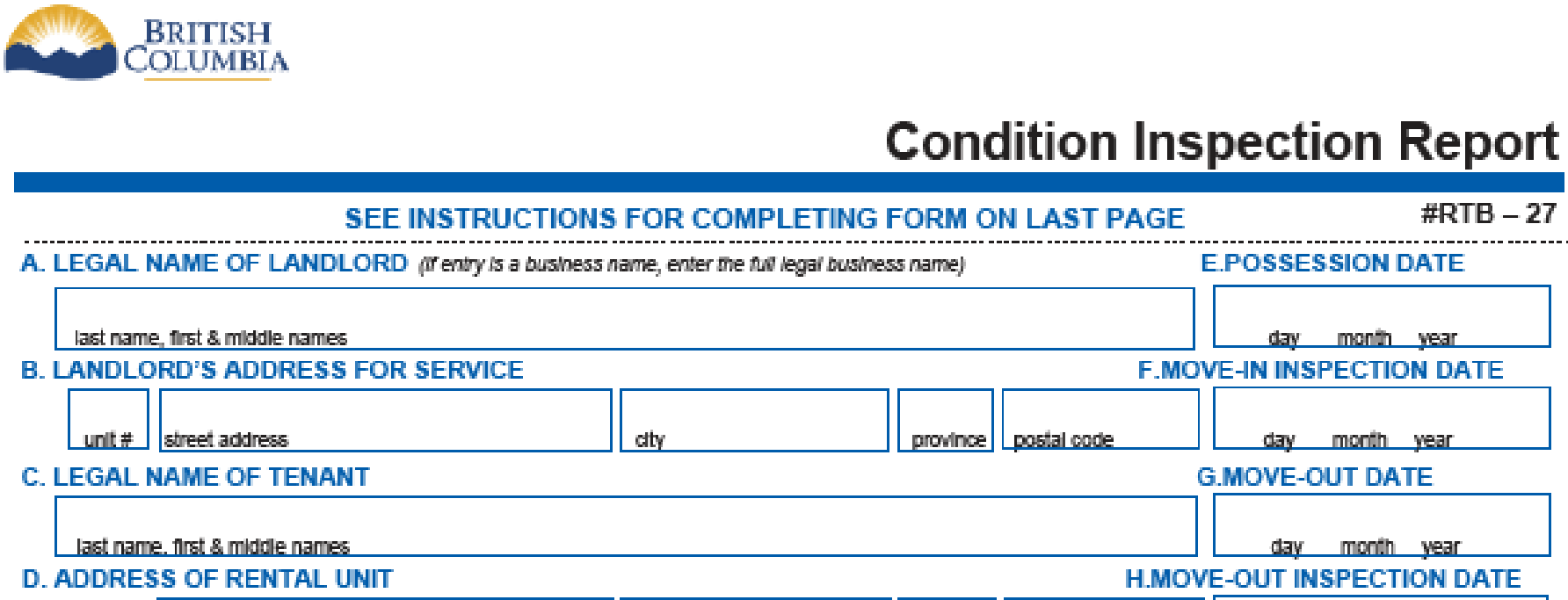
- Are you both a tenant and a landlord?
- Is your roommate a landlord?

Deposits and Fees

- Security Deposit: ½ month's rent.
- Pet Deposit: ½ month's rent.
- No application fees.
- No guest fees (but be reasonable)
- Interest calculator on RTB web site

Condition Inspection Report

- Tenant and landlord will do an inspection together
  1. Move in
  2. Move out



BRITISH COLUMBIA

Condition Inspection Report

SEE INSTRUCTIONS FOR COMPLETING FORM ON LAST PAGE

#RTB – 27

A. LEGAL NAME OF LANDLORD *(If entry is a business name, enter the full legal business name)*

last name, first & middle names

E.POSSESSION DATE

day month year

B. LANDLORD'S ADDRESS FOR SERVICE

unit # | street address | city | province | postal code

F.MOVE-IN INSPECTION DATE

day month year

C. LEGAL NAME OF TENANT

last name, first & middle names

G.MOVE-OUT DATE

day month year

D. ADDRESS OF RENTAL UNIT

H.MOVE-OUT INSPECTION DATE

During a Tenancy

Quiet Enjoyment

- Freedom from unreasonable disturbances
  - Smoke
  - Noise



Quiet Enjoyment



- Freedom from Illegal Landlord Entry
- 24 hours written notice:
  - Date
  - Time
  - Reasonable reason
  - Between 8am and 9pm

Quiet Enjoyment

- Landlord emergency entry
- Necessary to protect life or property
  - Flood
  - Fire
  - Water leak



Quiet Enjoyment



- Freedom from intimidation and harassment
- By landlord and other tenants

Repairs

- Landlord is generally responsible for making repairs to the tenant's rental unit



Repairs

- Tell your landlord immediately (in writing) when something needs to be repaired
  - TRAC Template Letter – Repairs
- If you delay and the problem gets worse, you could be held responsible
- Dangers of withholding rent
- If you break something, you may have to pay for it.

Emergency Repairs

- Emergency repairs are urgent and necessary for the health and safety of people or property
  - Damaged or blocked water or sewer pipes or plumbing fixtures
  - Major leaks in pipes and roofs
  - Primary heating system
  - Damaged or defective locks
  - Electrical systems

Essential Services

- Essential = necessary, indispensable or fundamental
- A landlord must not terminate a service or facility that is essential to the tenant's use of the rental unit. For example:
  - Heat
  - Hot water
  - Elevator in multi-storey apartment

Rent Increases

- Landlords can raise rent once every 12 months
- How much?
  - Check TRAC website or RTB website
  - 2016: 2.9%
- 3 months written notice on government form

Serving Documents

- There are rules that determine when documents are deemed received by another party:

Same day	Third day	Fifth Day
Served personally	Faxing it	Mailing it
	Attaching it to a door	
	Leaving it in a mail box or mail slot	

Ending a Tenancy

Ending a Tenancy





Ending a Tenancy

- Mutual Agreement to End Tenancy
- Assignment
- Sublet
- RTA Section 45(3) - “Material Term”

Mutual Agreement to End a Tenancy

#RTB – 8

FORM DIRECTIONS: If you are accessing this form from the B.C. Government Web site, it can be filled out at the computer workstation. It can also be printed and completed by hand. If completing sections by hand, please *print clearly, using dark ink*. If you are completing this form at a computer, simply type in your response where required. It's important to note that you ***cannot save*** the completed form to your computer, therefore, after you complete the form, make sure you review the form for accuracy and print the number of copies you require ***before*** you leave the document or shut down the program/computer.

THIS IS A MUTUAL AGREEMENT BETWEEN

LANDLORD:

Full name of Landlord or Landlord's Agent *(if entry is a business name, use 'last name' field box to enter the full legal business name)*

last name	first name	middle name(s)

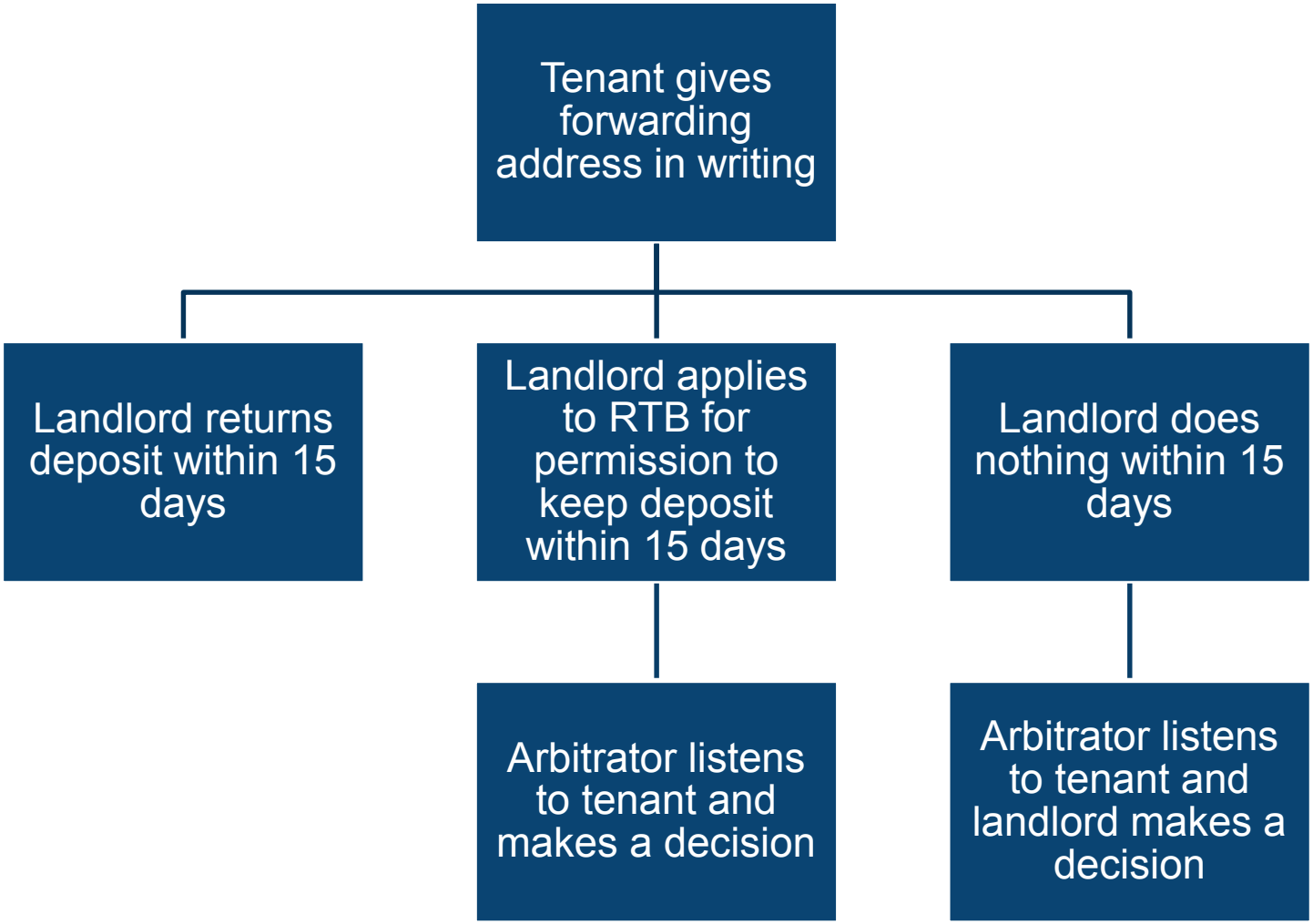
Ending a Fixed-Term Tenancy

- Fixed-term tenancies
  - If you move out early, you may owe your landlord money
    - Loss of rental income
    - Liquidated damages
- Landlord has duty to mitigate loss
  - Show the rental unit to prospective tenants, advertise at a reasonable rent etc
- Landlord can only end tenancy for cause or unpaid rent

Returning Deposits

- Tenant gives forwarding address in writing within one year of the end of the tenancy
- Landlord has 15 days to…
  - return deposit to tenant OR
  - ask RTB for permission to keep deposit
- If landlord does not do one of those two things, tenant can apply to the RTB for double the deposit

Returning Deposits



Eviction

- A landlord can give a tenant an eviction notice (also known as a Notice to End Tenancy) when they want the tenant to move out
- There are different types of evictions



Eviction

10 Day Notice for Non-Payment of Rent

1 Month Notice for Cause

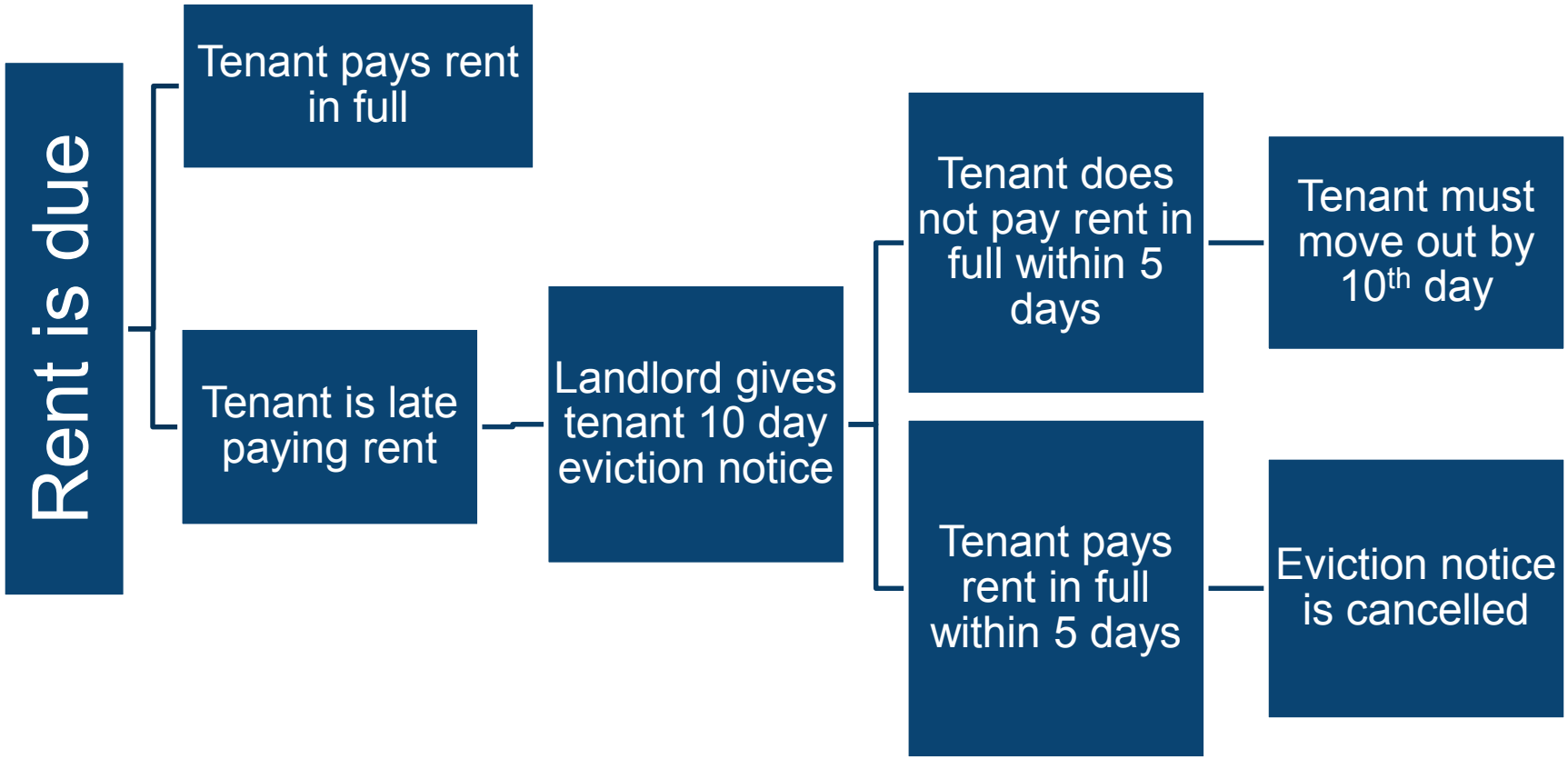
2 Months Notice of Landlord's Use of Property

10 Day Notice for Non-Payment of Rent

- You may get this eviction notice if you do not pay all of your rent on the day it is due
- If you are late paying your rent and your landlord gives you an eviction notice, you have 5 days to pay in order to cancel the eviction notice (you are not allowed to do this every month)
- If you do not pay within 5 days, you must move out by the 10th day



10 Day Notice for Non-Payment of Rent



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute

Introdu

Direct Request Proceeding

This ma nt to section 55(4) of the *Residential Tenancy Act* (the "*Act*"), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession based on unpaid rent and a monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 04, 2016, at 9:40 PM, the landlords' agent "BK" served the tenant "SM" with the Notice of Direct Request Proceeding by way of personal service via hand-delivery.

The landlords submitted a second signed Proof of Service of the Notice of Direct

One Month Notice for Cause

- Reasonable noise is okay
  - For example: children playing during the day
- You may get this notice if you are too noisy
- You may get this notice if you damage something and do not pay to fix it





2 Month Notice for Landlord Use of Property

- You may get this notice if your landlord or their close family decide to move into your place
  - "Close family" means the landlord's spouse or parents or children of the landlord or the landlord's spouse
- You may get this notice if your landlord wants to demolish (tear down) your rental unit





2 Month Notice for Landlord Use of Property

- You may get this notice if your landlord wants to do extensive renovations that require you to move out.



2 Month Notice for Landlord Use of Property

- If a tenant receives a Two Month Notice for Landlord Use of Property, they get compensated for one month of rent
  - For example, they can live there free for one month
- Usually, this means that the tenant will live in the rental unit for free during the second month of the two month unit

Disputing an Eviction Notice

- If a tenant does not think they deserve to be evicted, they can dispute the eviction notice at a dispute resolution hearing
- Parties need to make sure they submit all the evidence they want to rely on to the RTB and serve it on the opposing party

10 Day Notice

- 5 days to dispute

One Month Notice

- 10 days to dispute

Two Months Notice

- 15 days to dispute

- If you have evidence that you were not given a two month notice for landlord's use of property in "good faith" and moved out you can apply for compensation (2 months' rent)

Illegal Eviction

- Your landlord may try to illegally remove you from your rental unit
- In order to legally remove a tenant, a landlord must obtain:
  1. RTB Order of Possession
  2. Supreme Court Writ of Possession
  3. Services of a Court Bailiff

Dispute Resolution



Challenging a Dispute Resolution Hearing Decision

- RTB Review Consideration
  1. Circumstances beyond individual's control
  2. New and relevant evidence
  3. Fraud

  - Short timelines specified on form (2 days)
- Judicial Review

  - 60-day timeline

Forms

10 Day Notice to End Tenancy for Unpaid Rent or Utilities

BECAUSE:

You have failed to pay rent in the amount of $ _____ that was due on _____ (Day) _____ (Month) _____ (Year)

You have failed to pay utilities in the amount of $ _____ following written demand on _____ (Day) _____ (Month) _____ (Year)

Tenant: You may be EVICTED if you Do Not Respond to this Notice.
You have five (5) days to pay the rent or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

☐ This notice applies to a manufactured home site, *Manufactured Home Park Tenancy Act*, section 39
☐ This notice applies to a rental unit, *Residential Tenancy Act, section 46*

TO the TENANT(S) (full names are required)
If additional space is required to list all parties, use and attach "Schedule of Parties", form #RTB-26.

Last name _____ First and middle names _____

Last name _____ First and middle names _____

Tenant Address (address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)

Unit/site # _____ Street # and street name _____ City _____ Province _____ Postal Code _____

Daytime phone number _____ Other phone number _____ Fax number for document service _____

FROM the LANDLORD (full names are required)
If additional space is required to list all parties, use and attach "Schedule of Parties", form #RTB-26.

Last name or full legal business name _____ First and middle names _____

Landlord Address (address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)

Unit/site # _____ Street # and street name _____ City _____ Province _____ Postal Code _____

Daytime phone number _____ Other phone number _____ Fax number for document service _____

NOTICE: I am hereby giving you 10 days notice to move out of the rental unit or manufactured home site located at:

Unit/site # _____ Street # and street name _____ City _____ BC Province _____ Postal Code _____

By: _____ (Day) _____ (Month) _____ (Year) (date when tenant must move out or vacate the site)

Noticed served: In person ☐ On the door ☐ By registered mail ☐

Landlord's or Agent's signature _____

Print name _____ Date _____

This is page 1 of a 2-page Notice.
The landlord must sign page one of this notice and must give the tenant pages 1 & 2.

If within 5 days you do not pay the rent or utilities or make an application for dispute resolution, the landlord can apply for an order of possession through the direct request process.

The direct request process is completed without either party attending a hearing.
Instead:

- The landlord makes an application for an order of possession and submits:
  - A copy of the tenancy agreement
  - A copy of this notice
  - Proof that this notice was served
  - An application for Dispute Resolution.
- The landlord will receive a proceeding package which must be served on the tenant within three days.
- The landlord sends the proof of service of the package to the Residential Tenancy Branch.
- A Dispute Resolution Officer will review all documentation and will make a decision.
- The decision is final and binding on both parties.
- Fraud is the *only* reason that will be considered for a review of the decision.

The *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* Can be Served:

- Any day after the rent was due, for unpaid rent.
- 30 days after the tenant was given a written demand to pay the arrears, for unpaid utilities.

The Notice is Deemed Received by the Tenant:

- The day the landlord gives the notice to the tenant in person, or to an adult (19 years or older) who appears to live with the tenant, or
- Three (3) days after the landlord either; leaves the notice in the mailbox or in mail slot; posts it on the door or a noticeable place at the address where the tenant lives; or faxes it to a number provided by the tenant, or
- Five (5) days after the landlord sends the notice by registered mail to the address where the tenant lives.

Disputing the Notice:

- The tenant can make an application for dispute resolution within 5 (five) days of receiving the *10 day notice*.
- If the tenant disputes the notice a hearing will be held. Both parties will have an opportunity to participate.
- At the hearing, the landlord can ask for and receive an order of possession if the *10 day notice* is upheld by the dispute resolution officer.

Tenants may dispute the notice for specific reasons such as:

- They have proof the rent was paid.
- They have an order from a dispute resolution officer giving them permission to keep all or part of the rent.
- They held part or all of the rent with prior notice to the landlord, for the cost of emergency repairs.

Important Facts:

- The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer.
- The tenant who accepts the notice must move out by the date set out on page 1 of this notice or sooner.
- An error in this notice or an incorrect move-out date does not make it invalid.

For More Information:

- Visit RTB web site at www.rto.gov.bc.ca.
- Contact a RTB office.
- Refer to *A Guide for Landlords and Tenants in British Columbia* available on the RTB web site and offices.

This is page 2 of a 2-page Notice.
The landlord must sign page one of this notice and must give the tenant pages 1 & 2.

Residential Tenancy Branch Website: www.rto.gov.bc.ca
Ministry of Energy and Mines

RTB Burnaby: 400 – 5021 Kingsway
RTB Victoria: Suite 101 - 3350 Douglas Street
RTB Kelowna: 305 – 478 Bernard Avenue
Public Information Lines: 604-660-1020 250-387-1500
(Toll Free) 1-800-665-8779

RRTB-30 (2017/04)

BRITISH COLUMBIA

1 MONTH NOTICE TO END TENANCY FOR CAUSE

Residential Tenancy Act, s. 47 and *Manufactured Home Park Tenancy Act*, s. 40

1 MONTH NOTICE TO END TENANCY FOR END OF EMPLOYMENT

Residential Tenancy Act, s. 48 and *Manufactured Home Park Tenancy Act*, s. 41

Form #RTB – 33

TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE.

Landlord: place an "x" in the appropriate box:		Manufactured home site, *Manufactured Home Park Tenancy Act*
		Rental unit, *Residential Tenancy Act*

To the TENANT(S) (full names are required)

Last name	First and middle names

Last name — First and middle names

Service Address (address where documents will be given personally, left for, faxed, or mailed to the tenant for service)

Unit/Site #	Street # and street name	City	Province	Postal Code

Daytime phone number	Other phone number	Fax number for service of documents

From the LANDLORD (if the landlord is a business name, enter the full legal business name in the "last name" box)

Last name	First and middle names

Service Address (address where documents can be given personally, left for, faxed, or mailed to the landlord for service)

Unit/Site #	Street # and street name	City	Province	Postal Code

Daytime phone number	Other phone number	Fax number for service of documents

NOTICE TO END TENANCY

I, the landlord, am hereby giving you one month notice to move out of the rental unit or manufactured home site located at:

Unit/Site #	Street # and street name	City	Province	Postal Code
			BC	

by (date when tenant must move out of the rental unit or vacate the site)

date	month	year	Landlord's or Agent's signature	
			Print name	
			Date	

This is page 1 of a 2-page Notice. The landlord must sign this Notice and the tenant must receive page 1 and page 2.

Residential Tenancy Branch Office of Housing and Construction Standards Ministry of Energy and Mines
Public Information Lines: 1-800-665-8779 (toll free) 604-660-1020 250-387-1602
Website: www.rto.gov.bc.ca

#RTB – 33 (2011/03)

BRITISH COLUMBIA

REASONS FOR THIS 1 MONTH NOTICE TO END THE TENANCY (put an "x" in all the boxes that apply)

- ☐ Tenant is repeatedly late paying rent
- ☐ Tenant has allowed an unreasonable number of occupants in the unit/site
- ☐ Tenant or a person permitted on the property by the tenant has:
  - ☐ significantly interfered with or unreasonably disturbed another occupant or the landlord
  - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - ☐ put the landlord's property at significant risk
- ☐ Tenant has engaged in illegal activity that has, or is likely to:
  - ☐ damage the landlord's property
  - ☐ adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - ☐ jeopardize a lawful right or interest of another occupant or the landlord
- ☐ Tenant has caused extraordinary damage to the unit/site or property/park
- ☐ Tenant has not done required repairs of damage to the unit/site
- ☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- ☐ Tenant has assigned or sublet the rental unit/site without landlord's written consent
- ☐ Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park
- ☐ Rental unit/site must be vacated to comply with a government order
- ☐ Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order
- ☐ Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee
- ☐ Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

WHEN THE TENANT WILL BE ASSUMED TO HAVE RECEIVED THIS NOTICE

- The date when the landlord gives this Notice to the tenant in person, or
- The date when the landlord leaves this Notice with an adult (19 years or older) who apparently lives with the tenant, or
- 3 days after the landlord leaves this Notice in the mailbox or mail slot for the address where the tenant lives, or
- 3 days after the landlord faxes this Notice to a fax number provided by the tenant, or
- 3 days after the landlord attaches a copy of this Notice to the door or other noticeable place at the address where the tenant lives, or
- 5 days after the landlord mails this Notice (by registered or regular mail) to the tenant at the address where the tenant lives.

INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TENANCY

- You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

INFORMATION FOR LANDLORDS SERVING THIS NOTICE TO END TENANCY

- For repeated late rent payment, you can give this Notice any time after the third occurrence. However, if the occurrences were far apart, a Dispute Resolution Officer may decide that, in the circumstances, the tenant cannot be said to be "repeatedly late".
- Take steps to confirm that the tenant actually receives this Notice when it is assumed to be received. A Dispute Resolution Officer may set this Notice aside if the tenant can prove that he/she did not receive this Notice due to circumstances beyond his/her control
- If the tenant fails to move out of the rental unit or vacate the site, or if you believe the tenant does not intend to move out or vacate and the tenant's deadline to dispute this Notice has expired, you can apply for an Order of Possession.
- If the tenant applies to dispute this Notice, you can attend the tenant's hearing and verbally ask for an Order of Possession

INFORMATION FOR BOTH LANDLORDS AND TENANTS

- Keep copies of all Notices to End Tenancy and record each date and how the Notice was given or received.
- An error in this Notice or an incorrect move-out date on this Notice does not make it invalid. A Dispute Resolution Officer can order that the tenancy ends on a date other than the date specified in this Notice.
- It is against the law for a landlord to (1) physically evict a tenant without a Writ of Possession, or (2) change the locks without a Dispute Resolution Officer's order to do so, or (3) seize a tenant's personal property without a court order.
- More information is available online, www.rto.gov.bc.ca
  Or by telephoning: Lower Mainland 604-660-1020 Victoria 387-1602 Elsewhere in B.C. 1-800-665-8779

This is page 2 of a 2-page Notice. The landlord must sign this Notice and the tenant must receive page 1 and page 2.

Tenant's Application for Dispute Resolution

For RTB use only: File # _____

☐ This application is being made under the *Manufactured Home Park Tenancy Act*
☐ This application is being made under the *Residential Tenancy Act*

Tenant(s) (Applicant(s): The person asking for dispute resolution)
If additional space is required to list all parties, use and attach "Schedule of Parties", form #RTB-26.

Last name | First and middle names

Last name | First and middle names

Applicant Address (address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)

Unit/site # | Street # and street name | City | Province | Postal Code

Daytime phone number | Other phone number | Fax number for document service

☐ Yes, a Schedule of Parties (#RTB-26) is being used to add more Applicants to this application and it is attached.
☐ Yes, the **Mailing Address** is different from the Applicant Address, and it is attached.

Dispute Address (address of the rental unit or manufactured home site)

Unit/site # | Street # and street name | City | Province: BC | Postal Code

Landlord(s) (Respondent(s): The other party to the dispute)
If additional space is required to list all parties, use and attach "Schedule of Parties", form #RTB-26.

Last name or full legal business name | First and middle names

Last name (if more than one landlord, also use form #RTB-26) | First and middle names

Respondent Address (address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)

Unit/site # | Street # and street name | City | Province | Postal Code

Daytime phone number | Other phone number | Fax number for document service

☐ Yes, a Schedule of Parties (#RTB-26) is being used to add more Respondents to this application and it is attached.
☐ Yes, the **Mailing Address** is different from the Respondent Address, and it is attached.

TO FILE THIS APPLICATION:

1. On this page, fill in the information boxes.
2. On page 2, check the boxes that apply to your request, provide details and sign at the bottom.
3. Submit your application in-person at:
   - RTB Burnaby: 400 – 5021 Kingsway
   - RTB Victoria: Suite 101 - 3350 Douglas Street
   - RTB Kelowna: 305–478 Bernard Avenue
   - Any Service BC–Government Agents Office
- Applications may also be submitted online at www.rto.gov.bc.ca.
- Do not give a copy of your Application to the Respondent(s) until the Residential Tenancy Branch accepts it and you have paid the application fee or obtained a fee waiver.

RTB use only date stamp & initial

Nature of the Dispute

More time needed for application process
☐ Allow a tenant more time to make an application to cancel a *Notice to End Tenancy* ..... MT
Date the *Notice to End Tenancy* was received: _____

Dispute an additional rent increase
☐ Dispute an additional rent increase ..... DRI

Cancel a *Notice to End Tenancy* issued for the following reason:
☐ Tenant does not qualify for subsidized housing ..... CNQ
☐ Tenant's employment with landlord has ended ..... CNE
☐ Cause (state provision of the Act in the 'Details of the Dispute' box below) ..... CNC
☐ Landlord's intention to convert manufactured home park to another use ..... CNLC
☐ Landlord's use of rental property ..... CNL
☐ Unpaid rent or utilities ..... CNR

Monetary Order for the following reason:
☐ Cost of emergency repairs ..... MNR
☐ Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement ..... MNDC
☐ Return of all or part of pet damage deposit or security deposit ..... MNSD
The request for a Monetary Order is for the following amount: $
Provide a detailed calculation of the amount in the 'Details of the Dispute' box below.

Landlord's action sought
☐ Comply with the Act, regulation (state section in the 'Details of the Dispute' box below), or tenancy agreement (provide a copy) ..... OLC
☐ Make emergency repairs for health or safety reasons ..... ERP
☐ Make repairs to the unit, site or property ..... RP
☐ Provide services or facilities required by law (state Act and section in the 'Details of the Dispute' box below) ..... PSF
☐ Return the tenant's personal property ..... RPP
☐ Suspend or set conditions on the landlord's right to enter the rental unit ..... LRE

Tenant's action sought
☐ Obtain an Order of Possession of the rental unit or site ..... OPT
☐ Allow access to (or from) the unit or site for the tenant or the tenant's guests ..... AAT
☐ Authorize a tenant to change the locks to the rental unit ..... LAT
☐ Allow a tenant to assign or sublet because the landlord's permission has been unreasonably withheld ..... AS
☐ Allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided ..... RR

Other
☐ Recover filing fee from the landlord for the cost of this application ..... FF
☐ Serve documents or evidence in a different way than required by the Act ..... SS
☐ Other (provide details in the 'Details of the Dispute' box below) ..... O

Details of the Dispute

In two or three sentences, describe the issue. Include any dates, times, people or other information that says who, what, where and when the issue arose or the event occurred. When the dispute includes a request for a Monetary Order, include a detailed calculation. Attach a separate sheet if necessary. Any additional sheets must be signed.

Signature: _____ Date: _____

Print name: _____

The personal information recorded on this form is collected under the authority of s. 59 Residential Tenancy Act and s. 52 Manufactured Home Park Tenancy Act for the purpose of administering the Acts. The information may be disclosed to the public in accordance with the Freedom of Information and Protection of Privacy Act. Questions about the collection of this information may be directed to an Information Officer: Lower Mainland 604-660-1020 Victoria 250-387-1602 Elsewhere in B.C. 1-800-665-8779

BRITISH COLUMBIA
The Best Place on Earth

Residential
Tenancy Branch

Application to Waive Filing Fee

#RTB – 17

FORM DIRECTIONS: If you are accessing this form from the B.C. Government Web site, it can be filled out at the computer workstation. It can also be printed and completed by hand. If completing sections by hand, please *print clearly, using dark ink*. If you are completing this form at a computer, simply type in your response where required. It's important to note that you ***cannot save*** the completed form to your computer, therefore, after you complete the form, make sure you review the form for accuracy and print the number of copies you require ***before*** you leave the document or shut down the program/computer.

This Application to Waive Filing Fee accompanies my Application for:

☐ Dispute Resolution ☐ Review of Decision or Order of a Dispute Resolution Officer ☐ Substitute Service

APPLICANT:

last name | first name | middle name(s)

CURRENT ADDRESS:

suite or site number | street number | street name | city | province | postal code

( ) phone number

DISPUTE ADDRESS: (if different from current address)

suite or site number | street number | street name | city | province: B.C. | postal code

Number of people occupying the premises: Number of dependents:

The total gross monthly household income* is: $ A
*(*total gross monthly household income, before deductions, of all persons occupying the premises where the applicant resides)*

This month I have exceptional expenses of: *(e.g. unusual medical expenses)*

Description	*Amount*
	$
	$

Total of exceptional expenses $ 0.00 B

TOTAL: A ($) – B ($ 0.00) = $ 0.00

OFFICE USE ONLY – National Council of Welfare Low-Income Guideline $ _____

I understand that if I do not attend the hearing for any valid legal reason, and have not cancelled my application(s) at least two full days in advance of the hearing, I will no longer be eligible for a fee waiver relative to this dispute and future *Applications for Dispute Resolution*. **I declare that the information I have provided above is true. I am aware that it is against the law to make a false declaration.**

Applicant's Signature: _____

Date: _____

☐ Approved ☐ Not Approved

_____
Information Officer

File # _____
Cashier Transaction No. ____
Cashier's Initials _____

BRITISH COLUMBIA

August 31, 20[illegible]

RESPONDENT:

APPLICANT:

NOTICE OF A DISPUTE RESOLUTION HEARING

Concerning premises at:

File No.

A date has been set for a hearing to resolve the dispute described in the attached Application form. This hearing will be conducted by **TELEPHONE CONFERENCE CALL**. Please use one of the following phone numbers and passcode to attend to join the Telephone Conference Call.

DATE AND TIME OF HEARING:

(Pacific Time)

Phone Number
- **Vancouver area:** **(604) 899-1159**
- **All other locations:** **1 (888) 458-1598 (toll free call)**

Access Code:

INSTRUCTIONS:

1. At the scheduled start time, call one of the numbers available;
   Vancouver (604)899-1159 OR, for all other areas, 1(888) 458-1598.

   NOTE: Calling in prior to your scheduled start time may result in you not successfully entering your hearing.
   Press *0 to reach an operator if you encounter a problem joining the conference call or anytime during the call.

   Now, follow the prompts:
2. When asked, key in your access code: it is shown above.
3. When asked, say your FULL NAME, then press #.
4. You have now joined the conference call, and will hear music while others join the call.

GENERAL INFORMATION about your responsibility and the hearing

1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.
2. Residential Tenancy Branch Rules of Procedure apply to the proceedings: For details, contact the RTB or a Service BC Office or check online at <http://www.rto.gov.bc.ca/>.
3. You (or your agent) must participate in the hearing at the time and date assigned.
4. The hearing will continue without you if you or your representative is not in attendance.
5. A final and binding decision will be issued once the hearing is concluded.

RESIDENTIAL TENANCY BRANCH

Attachments: Originating Application
RTB Fact Sheets containing important information for you

Office of Housing and Construction Standards
Residential Tenancy Branch

Mailing Address:
PO Box 9298
Stn Prov Govt
Victoria BC V8W 9J8

Telephone: 604 660-1020
Toll Free: 1 800 666-8779
Facsimile: 604 660-2353

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No.

Date: March 05, 2012

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78., as amended

Between

, Landlord(s),

Applicant(s)

And

, Tenant(s),

Respondent(s)

Re: An application pursuant to sections 55, 67, 72 of the *Residential Tenancy Act* regarding a rental unit at:

ORDER

I AUTHORIZE AND COMMAND YOU, and All Occupants, and any guest or other person occupying the above noted rental unit, to deliver full and peaceable vacant possession and occupation of the rental unit to the Landlord not later than **two (2) days** after service of this Order upon you.

Dated: March 05, 2012

Residential Tenancy Branch

BRITISH COLUMBIA
The Best Place on Earth

Residential
Tenancy Branch

Application for Review Consideration

#RTB – 2

FORM DIRECTIONS: If you are accessing this form from the B.C. Government Web site, it can be filled out at a computer workstation. It can also be printed and completed by hand. If completing sections by hand, please *print clearly, using dark ink.* If you are completing this form at a computer, simply type in your response in the boxes. If you cannot complete all the sections at the computer right away, you can print off what you have completed, and fill in the remaining fields by hand. It's important to note that you ***cannot save*** the completed form to your computer, therefore, after you complete the form, make sure you review the form for accuracy and print the number of copies you require ***before*** you leave the document or shut down the program/computer.

The personal information recorded on this form is collected under the authority of s. 59 Residential Tenancy Act and s. 52 Manufactured Home Park Tenancy Act for the purpose of administering the Acts. The information may be disclosed to the public in accordance with the Freedom of Information and Protection of Privacy Act. Questions about the collection of this information may be directed to an Information Officer:
1-800-665-8779 (toll free) 604-660-1020 250-387-1602

RTB use only – date stamp & initial

DECISION or ORDER TO BE REVIEWED

Residential Tenancy Branch File No. *(see decision)*: ☐ Review of: ☐ Decision ☐ Order

REVIEW APPLICANT(S) *(person[s] asking for the review)* *(check one box)* ☐ **Tenant** ☐ **Landlord**

Full name(s) of Applicant(s): *(if entry for landlord is a business name, use the last name field box to enter the full legal business name)*

last name | first name | middle name(s)

last name | first name | middle name(s)

Address of Applicant(s) *(current address for service of documents)*:

suite or site number | street number | street name | city | province | postal code

( ) home phone | ( ) business phone | ( ) service fax

DEADLINE for THIS APPLICATION

You must submit your application:

- **within 2 days** of the date you receive the decision or order where the decision or order relates to an early end of tenancy, an order of possession for a landlord or tenant, unreasonable withholding of consent by a landlord regarding assignment and subletting or a landlord's notice to end a tenancy for non-payment of rent
- **within 5 days** of the date you receive the decision or order, where the decision or order relates to a notice to end tenancy for any other reason, repairs or maintenance, or services or facilities
- **within 15 days** of the date you receive the decision or order, where the decision or order relates to ***any*** other part of the Residential Tenancy Act or the Manufactured Home Park Tenancy Act.

	Date Issued	Date Received	How You Received It
Decision			
Order			

A. REQUEST FOR EXTENSION OF TIME TO APPLY FOR REVIEW

If you are filing this application beyond the time allowed by the RTA or the MHPTA you must complete this section. Time extensions may be granted only in exceptional circumstances, such as a natural disaster or a medical emergency.

☐ I am requesting an extension of time to make this application.

State why you were not able to apply for review within the required time frame and **LIST** and **ATTACH** evidence, such as a copy of your hospital admissions form.

B. GROUNDS for REVIEW

There are three reasons (grounds) in the RTA and MHPTA that allow a decision or order to be reviewed.

☐ I was not able to attend the hearing due to circumstances that could not be anticipated and were beyond my control (e.g., an earthquake or a medical emergency) ..... GO TO C1.

☐ I have new and relevant evidence that was not available at the time of the hearing ..... GO TO C2.

☐ I have evidence that the decision was obtained by fraud. ..... GO TO C3.

A review is not an opportunity to re-argue the case. These are the only reasons that a decision may be reviewed.

C. DETAILED INFORMATION ON REASONS FOR REQUESTING A REVIEW

Please provide additional information or arguments on a separate page if necessary.

☐ C1. UNABLE TO ATTEND

What happened that was beyond your control or that could not have been anticipated that prevented you from attending the original hearing?

What testimony or additional evidence would you have provided if you were at the hearing?

If you have no other grounds, go to D.
If you have further grounds for review, continue on page 3.

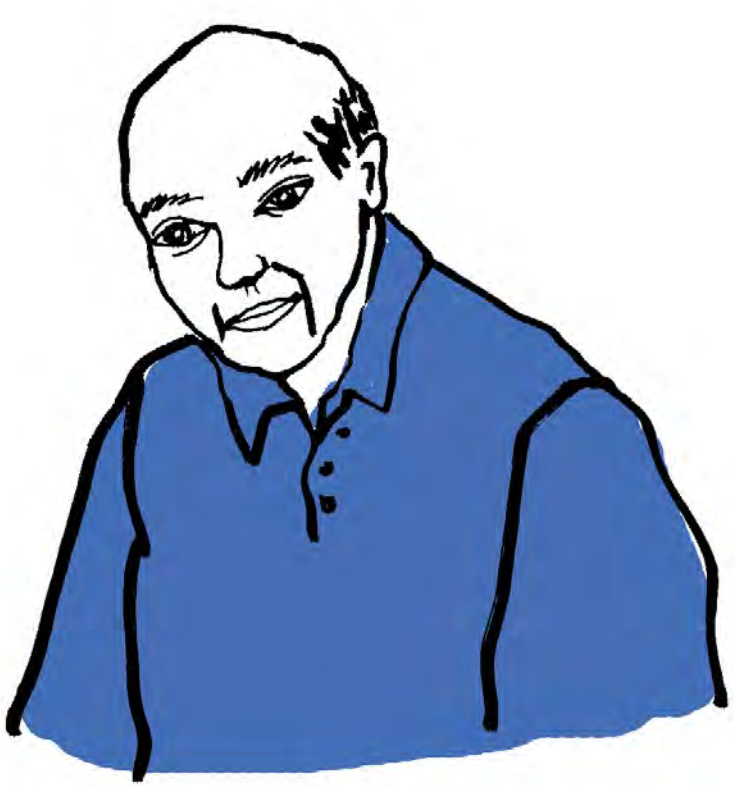
Summary

Key Tenant Responsibilities

- Pay rent in full and on time
- Keep the rental unit reasonably clean
- Notify the landlord of any repairs immediately
- Pay for any damage caused beyond normal “wear and tear” (everyday use)
- Don’t unreasonably disturb others
- Don’t do anything illegal and dangerous



Key Landlord Responsibilities



- Provide a copy of the tenancy agreement form
- Provide an opportunity to do both a move-in and move-out Condition Inspection Report
- Provide a receipt for rent paid in cash
- Return deposits on time
- Make repairs to ensure that the rental unit complies with health, housing and safety standards required by law
- Provide quiet enjoyment to tenants

Summary

- If you want to tell your landlord to stop breaking the law, ask them in writing
  - TRAC has template letters
  - Letters are better than emails and text messages
- Always remember to think about evidence
- Take photographs, get witnesses, keep receipts
- If you are unsure about something, ask for help!

Resources

Urgent Eviction and Judicial Reviews



- Refer clients to Community Legal Assistance Society (CLAS) where they have an RTB decision that they do not like, such as cases of urgent evictions
- We will consider case for judicial review and discuss options and process
- We only assess evictions
- jrbc.ca

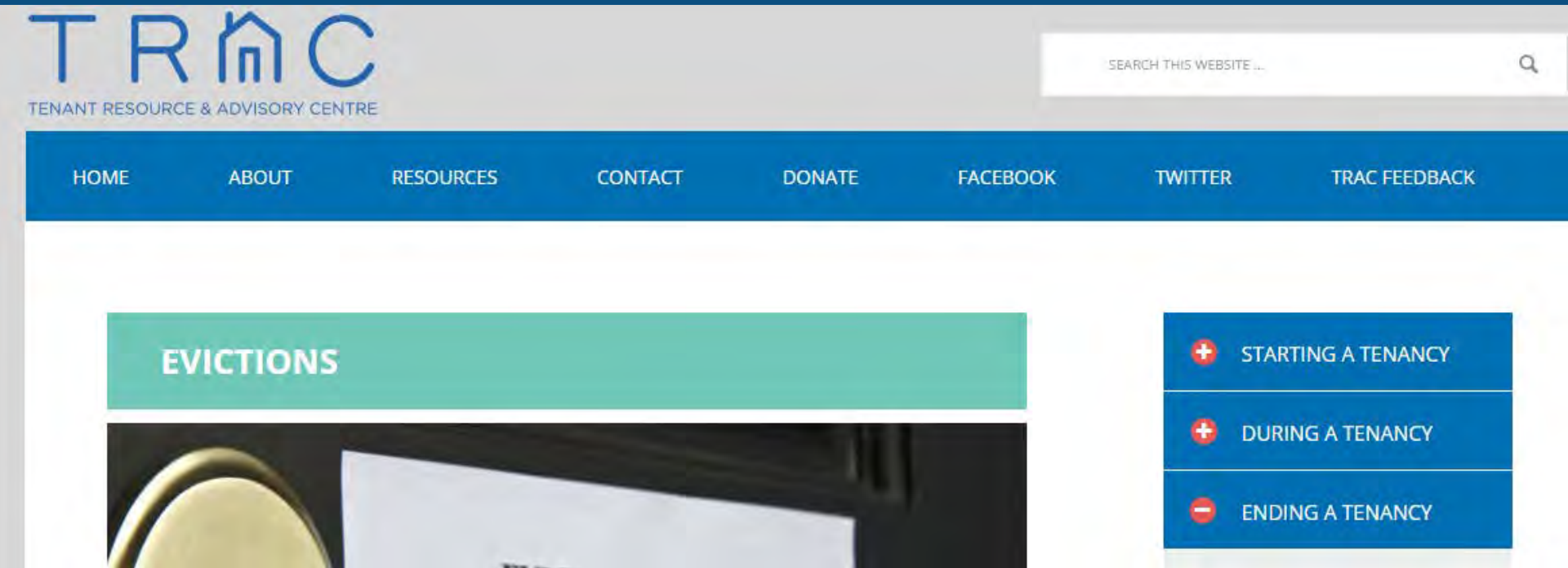
Tenant Resource & Advisory Centre (TRAC)



- TRAC provides free legal information for tenants living in British Columbia.
- Legal Education Workshops
  - In-person
  - Webinars
- Phone Service
  - Monday-Friday (8am-4pm)
- Website
  - www.tenants.bc.ca
- Twitter and Facebook

TRAC Resources

- Tenant Survival Guide
- Landlord Guide
- Tenant Info Pamphlet
- Template Letters
- Fact Sheets



Access Pro Bono

- Residential Tenancy Program

  Represent low-income individuals appearing before the Residential Tenancy Branch.

- Summary Legal Advice Clinics

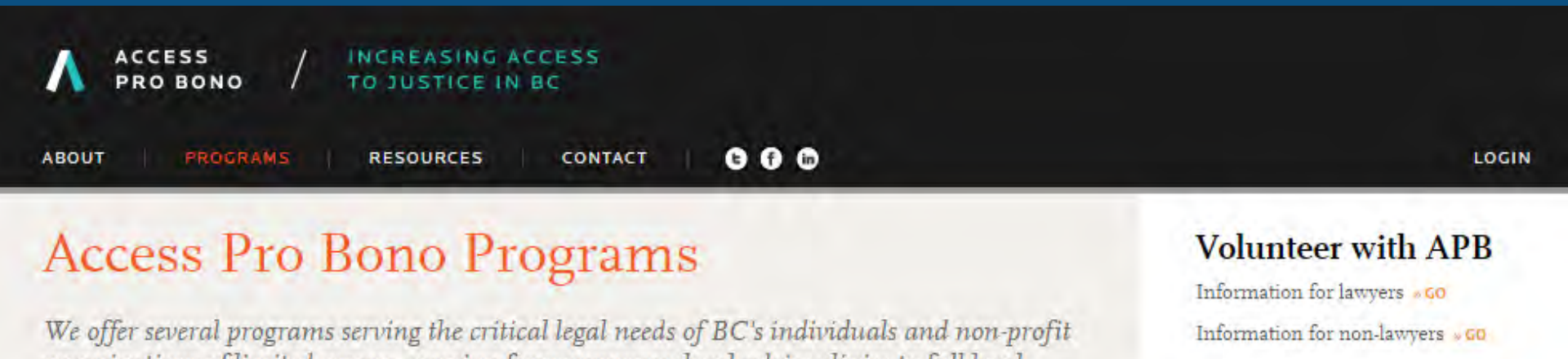
  Network of summary legal advice clinics throughout the province. Volunteer lawyers provide up to a half-hour of free legal advice to clients.

- Civil Chambers Program

  Legal assistance and representation services to low- and modest-income individuals engaged in civil (non-family) chambers litigation matters before the Supreme Court and the Court of Appeal in Vancouver.

- Roster Program

  Pro bono representation services for particular case types to qualifying individuals and non-profit organizations.



www.povnet.org

- Advocate Map
- News and Events
- PovNet Email Lists
  - PovNet hosts confidential email lists for front line workers, advocates, community, and settlement workers (lists include housing, welfare, & intercultural)
  - Email co-ordinator@povnet.org to sign up



www.clicklaw.bc.ca



Thank you

Questions?

CLAS Community Legal Assistance Society

Family Law Act, S.B.C. 2011 – Overview (2017)



Todd R. Bell
Partner: Schuman Daltrop Basran & Robin
Adjunct Prof.: Allard School of Law, UBC

Still Early Days….

- The *Family Law Act*, S.B.C. 2011 (the "FLA") came into force on March 18, 2013 and replacing the *Family Relations Act*, R.S.B.C. 1996 (the "FRA") and which had been in force for approximately 30 years.

- The FLA was proposed to answer shortcomings under the FRA, across almost all areas not under federal jurisdiction (child support, for example).

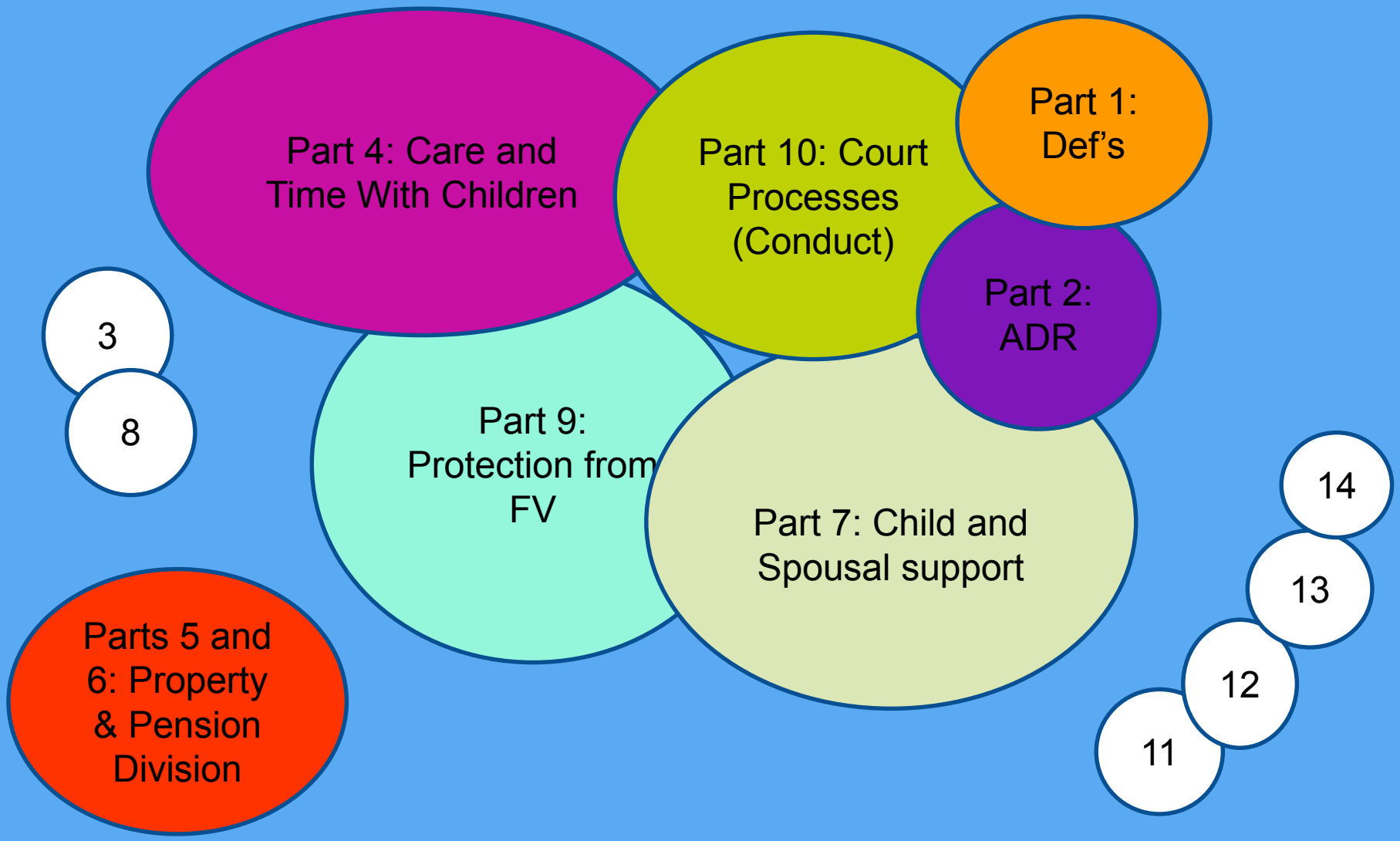
The Major Changes:

- Focus on Family Violence (“FV”)
- Laser-Focus on the Best Interests Test
- Alternate Dispute Resolution (“ADR”)
- Guardianship by Default
- Determination of Parentage
- Precision Tools for Conduct Management
- Property Division;

The Written Structure

Part 1: Interpretation	Part 8: Children's Property
Part 2: Resolution of Family Disputes	Part 9: Protection from FV
Part 3: Parentage	Part 10: Court Processes
Part 4: Care/Time with Children	Part 11: Search Officers
Part 5: Property Division	Part 12: Regulations
Part 6: Pension Division	Part 13: Transitional Provisions
Part 7: Child/Spousal Support	Part 14: Repeals / Boring Tech. Sections

The Real-Life Structure



Part 1: Def's. of Spouse and FV





Part 1: Interpretation (Spouse)

- Under the FRA, non-married spouses had no recourse to the property division regime under Part 5 of that statute.
- Common-law parties were relegated to using trust principles and the law of equity to resolve property disputes.
- Now, all persons who are married, or have lived in a marriage-like relationship for more than two years qualify (s. 3) under the FLA including for property division purposes (½ cheered in 2013; ½ wept).

Part 1: Family Violence

- Arguably, the biggest change under the FLA. Family Violence was defined in s. 1 of the FLA and the focus on FV is then woven throughout the statute, including property division.

"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,

FV, con'd

(c) **attempts** to physically or sexually abuse a family member,

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

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

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

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

(iv) intentional **damage to property**, and

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

Mandatory Consideration (s. 38)

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

(a) the nature and seriousness of the family violence;

(b) how recently the family violence occurred;

(c) the frequency of the family violence;

(d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

(e) whether the family violence was directed toward the child;

(f) whether the child was exposed to family violence that was not directed toward the child;

(g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;

(h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

(i) any other relevant matter.

The Case Law: Broadly Defining FV:

- The Court should take a "broad view of what constitutes family violence": *B.(M.W.) v. B.(A.R.)*, 2013 BCSC 885

- Demeaning remarks, blaming parent to a child qualify as family violence: *L.(D.N.) v. S.(C.N.)*, 2014 BCSC 1417

- Derogatory outbursts, demeaning comments qualify: *L.(D.N.) v. S.(C.N.)*, 2013 BCSC 809

The Case Law: Broadly Defining FV:

- Litigation abuse, failure to cooperate qualify, *B.(M.W.) v. B.(A.R.)*, 2013 BCSC 885

- Behaviour causing financial hardship and stress, threats to cause financial hardship qualify, *Hokhold v. Gerbrandt*, 2014 BCSC 1875

- Deliberate failure to pay child support intended to inflict emotional harm or control behaviour qualifies *P.(J.C.) v. B.(J.)*, 2013 BCPC 297

Part 2: Resolution of Family Disputes



Part 2: Resolution of Family Disputes

- Division 1: Resolution Out of Court Preferred:
  - S. 4 operates as a general nod of approval for out of court resolutions, S. 5 shifts the onus on disclosure (see: *Healey*, 2015 BCSC 2196) and Ss. 8 and 9 put positive obligations on counsel to promote out of court resolutions and processes.

- Division 2: Family Justice Counselors("FJC"):
  - Codifies the role of FJC's as a key resource in family law.

Part 2: Resolution of Family Disputes

- Division 3: Parenting Coordinators ("PC's)
  - Codifies the practice of using PC's
  - Essentially a parenting referee with arbitration powers;
  - Section 17 sets out what the PC can do (building consensus and making determinations);
  - Section 18 sets out the jurisdiction of PC's;
  - Section 19 leaves review powers to the Court.
  - Despite some reservations from the BCCA (*Fleetwood*), the Courts have been overwhelmingly positive about this development and cases where an appointment was not made (if contested) are rare and generally turn on cost.

Part 3 – Parentage

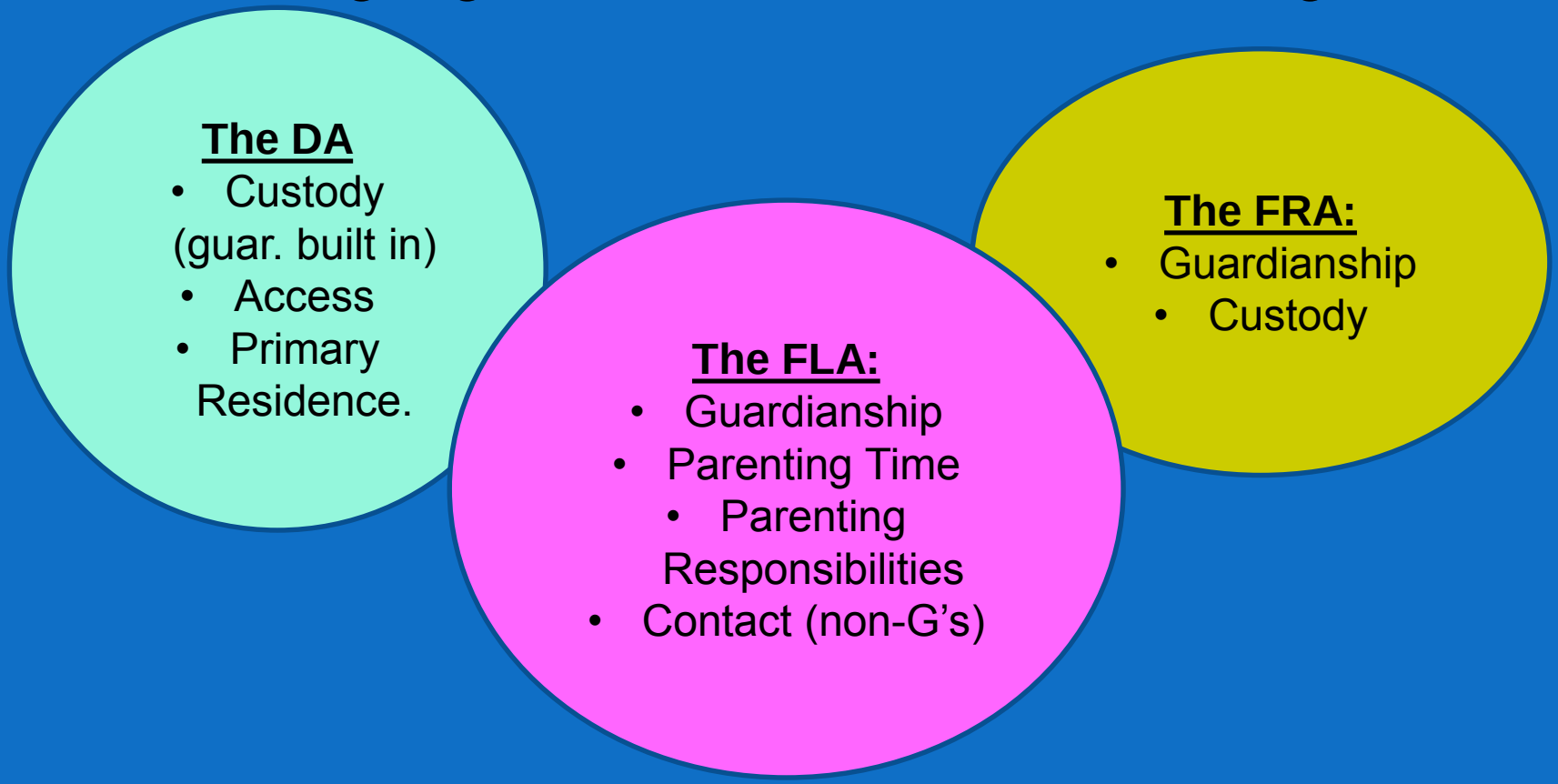


Part 3 – Parentage

- Essentially, Part 3 provides governance for determining parentage in IVF and surrogacy arrangements.
- Codified what had been an area of case law which developed out of necessity using the *parens patriae* and inherent jurisdictions of the Court.
- For a review of operation of the Part, see twin cases (no pun intended) rendered by Fitzpatrick, J: *Family Law Act (Re)*, 2016 BCSC 598 and *Family Law Act (Re)*, 2016 BCSC 22.

Part 4- Care and Time With Children

Between the *Divorce Act (*"DA"*)*, the FRA and the FLA, the language has become somewhat tangled:



Part 4: Available Remedies

- Guardianship orders if not already guardians by operation of the FLA;
- Orders for “Parenting Arrangements” (s. 40):
  - Parenting Time (s. 42);
  - Parenting Responsibilities (s. 41);
- Orders for “ Contact” (s. 59)
- Governance of Relocation (ss. 65 – 71)

Governing All of It:
The Test of All Tests: Best Interests

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:

(a) the child's health and emotional well-being;

(b) the child's views, unless it would be inappropriate to consider them;

(c) the nature and strength of the relationships between the child and significant persons in the child's life;

(d) the history of the child's care;

(e) the child's need for stability, given the child's age and stage of development;

* * *

Best Interests, con'd

(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;

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

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

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

Auto-Guardianship Under the FLA

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.

* * *

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

* * *

(c) the parent regularly cares for the child.

(4) If a child's guardian and a person who is not the child's guardian marry or enter into a marriage-like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship.

- **Note**: Under s. 51, a person can apply for guardianship.

Parenting Arrangements (s. 40)

- Sets out that parenting time and parenting responsibilities may be shared by guardians : 40(1);
- Each parent may exercise parenting responsibilities but must consult: 40(2)
- There is no presumption in favour of equal parenting time, equal parenting responsibilities, or that decisions must be made separately or together: 40(4)

Parenting Responsibilities: S. 41

- Refers to the suite of day-to-day jobs that parents take on in raising a child, including decisions about academics, medical, the child's associations, residence, extra-curricular activities, passports, giving/refusing/withdrawing consent, starting court actions on behalf of a child, etc.

Parenting Time (s. 42)

- Parenting time refers to, well, parenting time. The section is <u>literally</u> three lines long.



+



= Section 42 (*super* complex section)

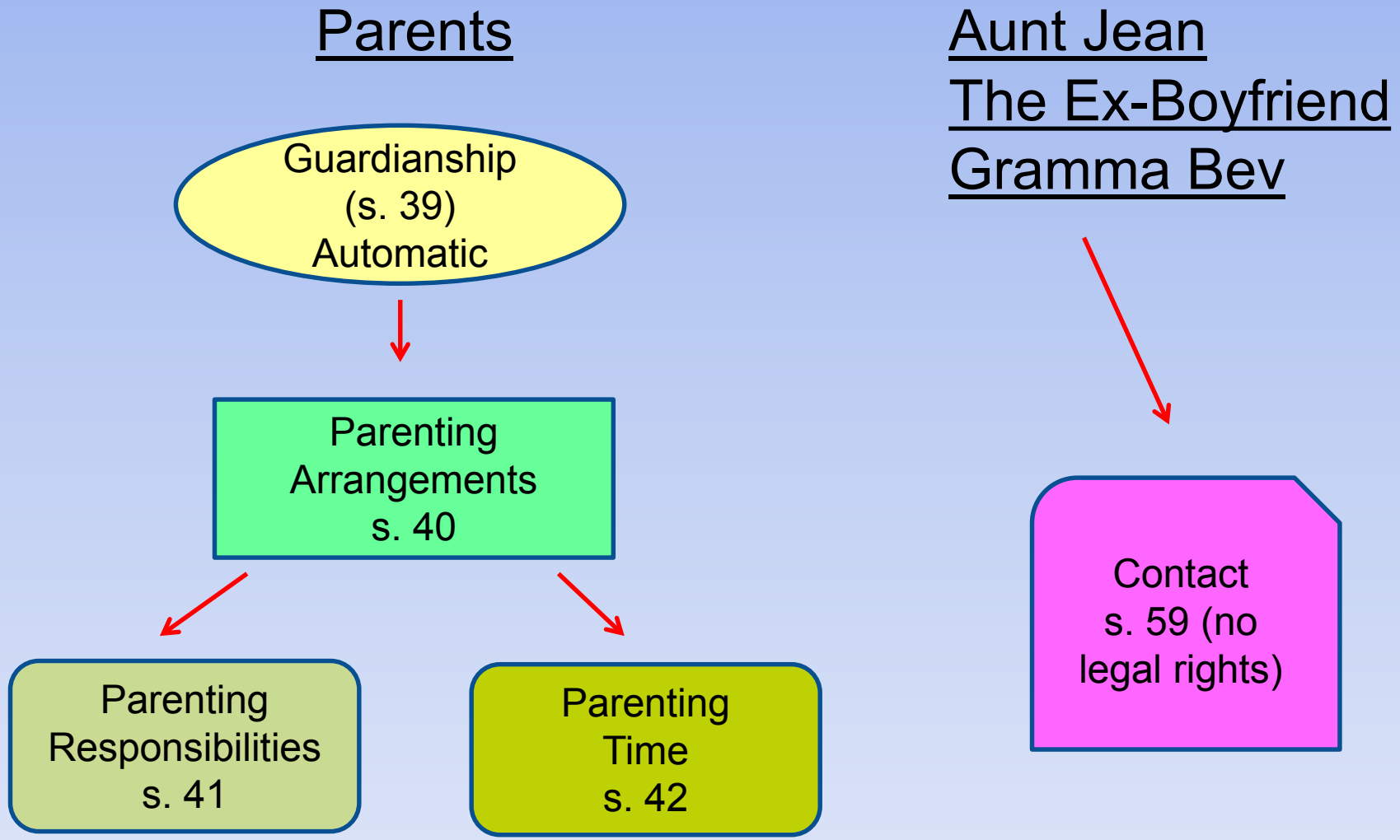
Contact (s. 59)

- Reserved for non-guardians only;
- Generally, would be the section under which a grandparent, aunt or other family member would seek an order for time with a child;
- Does not confer any right to make decisions about the child or exercise any parenting responsibilities;
- In theory, available to a parent who does not have guardianship, but begs the question as to why that person isn't applying for guardianship / PR / PT

Compliance (New Under the FLA)

- Under s. 61, if a parent denies the other parenting time, the Court can do multiple things including ordering ADR, make-up time, order a person to attend counselling, etc.
- Under s. 62, the denial is not found to be blameworthy if, for example, there was a reasonable basis to expect FV or the other parent was impaired.
- Under s. 63, if a person fails to take the parenting time to which they are entitled, the other parent can be awarded compensation for child care costs.

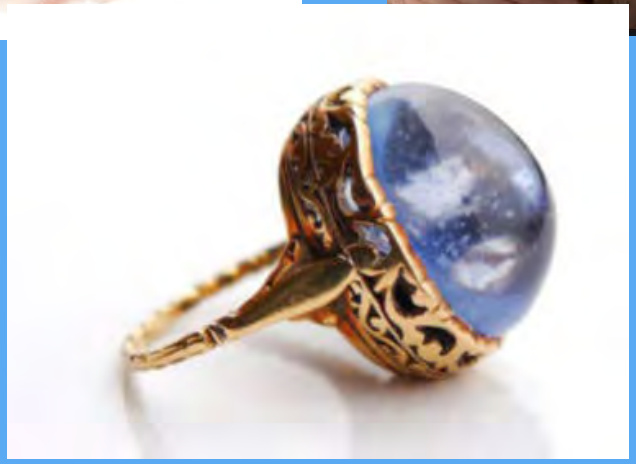
Summary


Parents
Guardianship (s. 39) Automatic
Parenting Arrangements s. 40
Parenting Responsibilities s. 41
Parenting Time s. 42
Aunt Jean
The Ex-Boyfriend
Gramma Bev
Contact s. 59 (no legal rights)

Property







Property Division: Part 5

- **Major** departure from the test under the FRA.
- Under the FRA, we had what was called a “community property regime”. The basic idea was that everything in sight, provided that it was “ordinarily used for a family purpose” (which included passive uses such as retirement planning) and that the claiming spouse had “contributed to” (including the provision of child care, thus enabling the breadwinner to earn income and acquire property), was open season.
- After that, the party that didn’t want to share was responsible for arguing why they ought to get a large percentage of the asset (reapportionment). The test was whether it would be “unfair” to not divide unequally.

The New Model: Exclusions

- Under the FLA, there are classes of excluded property, and which include the property brought into the relationship by one party, inheritances received during the marriage or marriage-like relationship, and gifts received from third parties.
- All else, including the increase in value of otherwise excluded property, is divisible.
- Contribution and use are largely irrelevant.
- Now, the person seeking an unequal division of family property (reapportionment) must demonstrate that it would be “significantly unfair” not to do so.

The Sections:

- S. 81: Parties have equal entitlement to “family property” on separation.
- S. 84: Defines family property (houses, shares, pensions, increase in value of excluded property, RRSP’s etc.).
- S. 85: Defines excluded property (pre-relationship property, inheritances, gifts from third parties).
- S. 95: Unequal division allowed in certain enumerated circumstances, but only if “significantly unfair” to divide equally.

Operation in the Real World

	Jane	Jill
DOM	$100K Equity in Her House	
	10 Years Paying Into Her Pension	$65K RRSP's
	Scooter (worth $5K)	$2,500 in Savings
DOS (10 years later)	$175K in Equity in House	
	Now, 20 Years Paying into Her Pension	$125K RRSP's
	Scooter (Now Vintage worth $10K)	$15,000 in Savings
They Share:	$75K Increase in the House	$60K Increase in the RRSP's
	The 10 Years of the Pension	$12,500 Increase in Savings
	The 5K Increase in the Scooter	

Property Protections

- S. 90: **Exclusive Occupancy** (tied into FV): gives the right of one person to stay in the family home to the exclusion of the other where it would be "impossible" for them to remain under the same roof. Often cited when the separation tension is affecting the children or FV is in play.
- S. 91: **Financial Restraining Order** against disposal or transfer of property. Preserves the property, especially in cases where there is an information imbalance between the parties.

Child and Spousal Support





Child Support

- Child support is comprised of two components: table support and the sharing of special/extraordinary expenses.
- Special expenses (s. 7 expenses) are generally academic, medical/dental or childcare costs (if needed to facilitate employment).
- Child support is available in British Columbia through the combined application the *Child Support Guidelines* (Federal) and either the FLA or the *Divorce Act*.
- The *Child Support Guidelines* are used to determine the appropriate incomes to be used to calculate support
- The FLA and DA are then used, once the amount of support is determined, to obtain agreements or orders for payment.

The Real World:

Step 1: Determine Income Under CSG, ss. 15 – 20



Step 2: Determine Monthly Amount Using the Tables



Step 3: Determine Special Expenses to be Shared

Seek Order Under FLA or DA

FLA OR DA

= Child Support

Step 1: Determining Income

- **Section 16**: Start with Line 150 (total income) from T1 general (personal tax return).
- **Section 17**: If the person's income fluctuates wildly, consider using a three-year average.
- **Section 18**: If the person keeps money in their personal corporation for no reason other than tax planning, pull that money out for support purposes.
- **Section 19**: Impute additional income if the person is aggressive with writing off expenses, is unemployed or underemployed (with no good reason), the payor is exempt from paying federal or prov. tax, etc.
- **NOTE**: Section 150 the FLA says you must use the CSG.

Step 2: The Tables

British Columbia / Colombie-Britanique

Federal Child Support Amounts: Simplified Tables
Montants fédéraux de pensions alimentaires pour enfants: Tables simplifiées

Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants				Income/ Revenu ($)	Monthly Award/ Paiement mensuel ($) — No. of Children/ Nbre d'enfants			
	1	2	3	4		1	2	3	4		1	2	3	4		1	2	3	4
10820	5	16	17	19	***16200***	119	263	283	304	***21600***	187	345	472	533	***27000***	239	420	571	694
10900	6	20	22	24	***16300***	120	266	287	308	***21700***	188	346	474	537	***27100***	240	421	573	696
11000	24	71	76	82	***16400***	122	269	291	312	***21800***	189	348	476	541	***27200***	241	422	574	698
11100	26	76	81	88	***16500***	124	272	294	315	***21900***	189	349	477	546	***27300***	242	424	576	700
11200	28	80	86	93	***16600***	126	275	298	319	***22000***	190	350	479	550	***27400***	243	425	577	702
11300	29	85	91	99	***16700***	128	278	302	323	***22100***	191	351	481	554	***27500***	244	426	579	704
11400	31	90	96	104	***16800***	129	280	305	327	***22200***	192	353	483	559	***27600***	245	427	580	706
11500	33	95	101	110	***16900***	131	283	309	331	***22300***	193	354	484	563	***27700***	246	428	582	708
11600	35	99	107	115	***17000***	133	286	313	335	***22400***	193	355	486	567	***27800***	247	430	583	710
11700	37	104	112	121	***17100***	135	287	317	339	***22500***	194	357	488	572	***27900***	248	431	585	712
11800	39	109	117	126	***17200***	137	288	320	343	***22600***	195	358	490	576	***28000***	249	432	586	714
11900	40	114	122	132	***17300***	139	289	324	347	***22700***	196	360	492	581	***28100***	250	434	588	716
12000	42	118	127	137	***17400***	140	290	327	351	***22800***	197	361	494	585	***28200***	251	435	589	718
12100	44	122	131	141	***17500***	142	290	331	354	***22900***	198	362	495	589	***28300***	252	437	591	720
12200	46	125	135	145	***17600***	144	291	335	358	***23000***	198	364	497	594	***28400***	253	438	592	722
12300	47	129	139	149	***17700***	146	292	338	362	***23100***	199	365	499	597	***28500***	254	440	594	724
12400	49	132	142	153	***17800***	148	293	342	366	***23200***	200	367	501	601	***28600***	255	441	595	726
12500	51	136	146	157	***17900***	150	294	346	370	***23300***	201	368	502	604	***28700***	256	443	597	728
12600	53	139	150	161	***18000***	152	295	349	374	***23400***	201	369	504	607	***28800***	257	445	598	730
12700	55	143	154	165	***18100***	153	296	353	378	***23500***	202	371	506	611	***28900***	258	446	600	732
12800	56	147	158	169	***18200***	155	298	357	383	***23600***	203	372	508	614	***29000***	259	448	602	734
12900	58	150	162	173	***18300***	156	299	362	387	***23700***	204	373	510	617	***29100***	260	450	604	736
13000	60	154	166	177	***18400***	158	300	366	392	***23800***	205	375	512	621	***29200***	261	451	605	738
13100	62	158	170	181	***18500***	159	302	370	396	***23900***	206	376	513	624	***29300***	262	453	607	740
13200	64	161	173	185	***18600***	161	303	374	401	***24000***	206	377	515	627	***29400***	263	454	609	742

Step 3: Determine Special Expenses

- Classics:
  - Daycare, preschool or after-school care which is needed to facilitate employment (not going out for lunch with your friends);
  - Medical, dental, ortho, optical, drugs, net of coverage;
  - Academic costs.
- These can be shared between the parties (are not covered by child support) either in proportion to the parties' incomes or some other fashion.
- Based on family resources.

Who Pays Who?

- If one parent has the children in their care **>60%** of the time, the other parent pays straight table support on their income regardless of the recipient's income and then they share special expenses in some fashion.
- If the parties share the children between **40/60 and 50/50** there is a set-off (CSG S. 9). Thus if parent A would pay $1,000 to the other, and parent B would in turn pay $500, the net payment from A to B is $500.
- There are several nuanced issues buried in this analysis, including tax ramifications. The client needs to dig deeper than this presentation can provide.

Make It Happen: S. 149 FLA

149 (1) Subject to subsection (3), on application by a person referred to in subsection (2), a court may make an order requiring a child's parent or guardian to pay child support to a designated person.

(2) An application may be made by

(a) a child's parent or guardian,

(b) the child or a person acting on behalf of the child, or

* * *

(3) An order under subsection (1) may only be made against a stepparent if

(a) the stepparent has a duty to provide for the child under section 147 (4) [duty to provide support for child], and

(b) the stepparent and the child's parent are separated.

(4) The making of an order against one person for the support of a child does not affect the liability of, or prevent the making of an order against, any other person responsible for the support of the child.

Spousal Support

- Spousal support is awarded to a spouse on the basis of one or more of three principled legal bases (per *Bracklow*, SCC)
  - Contractual (i.e. a marriage agreement or cohabitation agreement);
  - Non-compensatory (sheer need of the recipient with a payor with a corresponding ability to pay); and
  - Compensatory (*Bracklow*, *Moge*): to compensate a spouse for the roles played during the marriage and which has resulted in economic disadvantage on the breakdown of the relationship.

The FLA: ss. 160 - 165

- **S. 160**: There is a duty to provide support to an entiteld spouse.
- **S. 161**: The objectives of spousal support (next slide).
- **S. 162**: Determining quantum of spousal support (mostly impacted by length of relationship) .
- **S. 163 – 164**: Deals with agreements.
- **S. 165**: The section conferring the Court with authority to make spousal support orders.

Objectives

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

(a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;

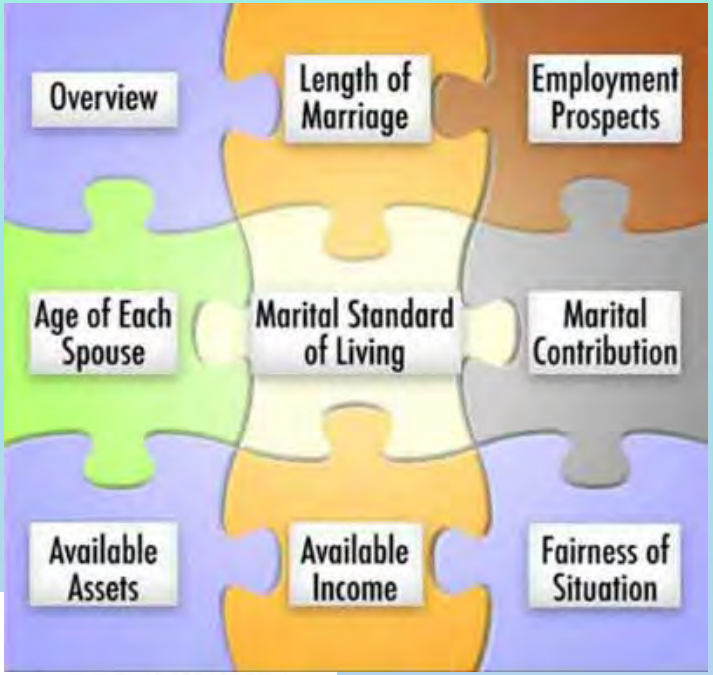
(b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;

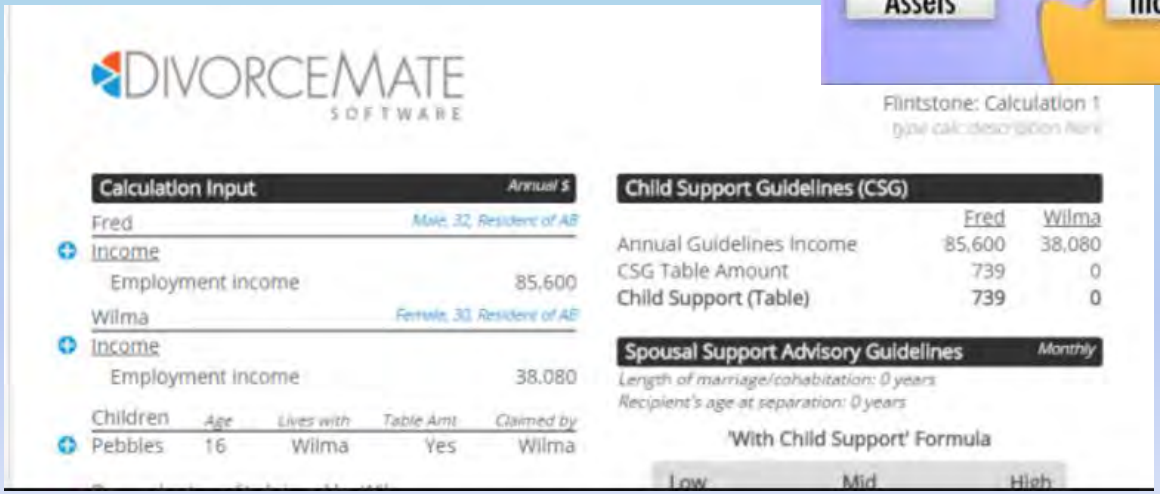
(c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;

(d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

SSAG's / DivorceMate







Part 9: Protection from FV

- Section 183 provides for “protection orders” and which can be sought either with or without notice.
- They are serious orders that are made where the Court concludes that family violence is likely to occur to an at-risk family member (including a child).
- Linked to the *Criminal Code of Canada* such that a breach of a family law protection order gives rise to the possibility of criminal prosecution. This is a significant, major step-up from the restraining tools available under the FRA and *Rules of Court*.

Part 10: Court Processes



Procedural – **Important**

198 (1) Subject to this Act, a proceeding under this Act may be started at any time.

(2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, **no later than 2 years after**,

(a) in the case of spouses who were married, the date

(i) a judgment granting a divorce of the spouses is made, or

(ii) an order is made declaring the marriage of the spouses to be a nullity, or

(b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.

* * *

(5) The running of the time limits set out in subsection (2) is suspended during any period in which persons are engaged in family dispute resolution with a family dispute resolution professional.

Procedural: Children's Rights

- **S. 201**: children over the age of 16 can start or defend their own court proceedings without the need for a litigation guardian.
- **S. 202**: the Court has wide discretion over the manner in which a child's evidence will be heard or received.
- **S. 203**: a child can be appointed their own lawyer by the Court, including where the conflict is so severe that no one has objectivity.

See: *K. (N.) v. H. (A.)*, 2016 BCSC 744

Reports / Views of the Child

- Under Section 211, the Court can order an enquiry into any aspect of a child's best interests, including their needs and the ability of their caregivers to meet those needs.
- This section can also be used for views of the child reports, allowing for the evidence of a child to be acquired without the need for the child's direct participation.

Disclosure

- Disclosure is the cancer of matrimonial litigation: Justice Fraser in *Cunha*.
- In reply to this, sections 212 and 213 provide the Court with the ability to award heavy costs and fines (up to $5,000) for parties who fail to meet their disclosure obligations.
- See: *G. (J.D.) v. V. (J.J.)*, 2013 BCSC 1274

Conduct Orders

- **S. 221**: Court can find abuse of process, lower standard that under the *Supreme Court Act*.
- **S. 222**: Court make a person do, or not do, pretty much anything. Surgical management of bad behaviors.
- **S. 223**: Court can manage court proceeding however necessary.
- **S. 224**: Court can order parties into ADR
- **S. 225**: Court can order restrictions on communications between parties.

Conduct Orders, Con'd

- **S. 226**: Court can order that a person maintain mortgage, rent or utilities payments.
- **S. 227**: Court can make a person do, or not do, just about anything (one more time, but this time with feeling).
- **S. 228**: If you breach a conduct order, the Court can award costs or fine you up to $5,000.
- **S. 230**: If you breach, the Court can do more things against you (again, feeling).
- **S. 231**: Jail.

Conduct Order Cases:

- Orders that parties do not drink or do drugs when parenting children:

  Stevenson v. Nivala, 2015 BCSC 892

- Orders that a party not harass the new romantic interest of the other:

  B. (J.R.) v. F. (J.H.), 2015 BCPC 70

- Addressing alienation behavior:

  G. (N.R.) v. G. (G.R.), 2015 BCSC 1062 (para. 288)

Thanks.

IMMIGRATION: Navigating a Complex System

KEEPING WOMEN SAFE

Kamaljit K. Lehal of Lehal Law Corporation
Presentation for Legal Aid Bootcamp May 4 2017

Leaving an Abusive Relationship

- Women who want to leave an abusive relationship must be prepared to embark through a complicated set of systems:
  - Criminal justice system
  - Victim services
  - Family court system
  - Ministry of Children and Families

Leaving an Abusive Relationship with Immigration Issues Involved

- Women who leave an abusive relationship and have immigration issues enter an even more complex system. A system that for the most part acts within its own silo.

- There are a number of scenarios that can arise in the immigration context that we need to be vigilant about in order to help women navigate the system while keeping them safe.

Some Common Scenarios Facing Women in the Immigration System

- Sponsorship Debt

*Conditional Permanent Residence ☺

- Out of Status Women

SPONSORSHIP DEBT

Sponsorship Debt

- Arises from the Sponsorship Undertaking
  - A contractual obligation to repay any monies paid, in the form of social assistance, to the sponsored person.
  - The collection “may” be held of “if the default is the result of abuse” but resumed once “circumstances have changed.”
- For spouses the undertaking is 3 years.
- For family class the undertaking is now 20 years

Sponsorship Debt

- Women choose to remain in the abusive relationship rather than incur a sponsorship debt.

- The abusive partner may deliberately incur the debt.

Sponsorship Debt

- How can we help women navigate this issue?
- See *A.G. v. Mavi 2011 2 SCR 504*
  - Advocate the positive statements in MAVI:
    - While the Undertaking creates a statutory debt the province does have the discretion, short of a write off, in how it collects the monies.
    - i.e. $20.00 a month on a large debt.
    - Emphasize that it is not in the public interest to collect from the abused women, in fact, it is re-victimization.

Conditional Permanent Resident

- Spouses or partners being sponsored to reside in Canada, who are in a relationship of 2 years or less and who have no children with their sponsor at the time of the sponsorship application will be subject to a conditional permanent residence status.
- The sponsored spouse must live together with the sponsor in a "**legitimate relationship**" from the day they receive conditional permanent residence. The condition ends after the two year period.

Conditional Permanent Residence

- This category arose out concerns with fraudulent marriages, commonly referred to as “passport marriages,” where a foreign national marries a Canadian sponsor and then leaves the Sponsor as soon as or shortly after they arrive in Canada.
- The previous government wanted to ensure that only those in genuine relationships were allowed in Canada.

Conditional Permanent Resident

- On October 28, 2016 the government announced that it is proposing to eliminate the current conditional permanent residence measure.
- The announcement stated:
  - “The proposal also supports the Governments’ commitment to gender equality and combating gender violence by addressing concerns that conditional permanent residence may result in vulnerable spouses staying in abusive relationships.”

Conditional Permanent Resident

- Effective April 18, 2017 the conditional permanent resident category has been repealed.

- The conditional permanent residence no longer applies to new and existing applicants for permanent residence under the spouse, common-law partner or conjugal partner category, to their accompanying dependent children and to applicants who are being sponsored by permanent residents who were subject to the condition.

- The condition also no longer applies to sponsored spouses and partners who have already received permanent residence with the condition, including their accompanying family members and any sponsored family members.

Conditional Permanent Residence

- What this means is that the condition does not apply for :
  - those people currently in process for being assessed under a spousal application;
  - those already here and who have not completed their two years;
  - those who have asked for an exemption and no decision has yet been made;
  - those who have been subject to a section A44 report but no removal order has been issued yet.

OUT OF STATUS WOMEN

Out of Status Women

- This includes women who may, initially, have had status when the entered in Canada and, subsequently, lost it OR they may have entered the Canada without status to begin with.
- If these women end up in a relationship with a Canadian while out of status they face the very real risk removal.
- What happens to these women when that relationship turns abusive, what are their options, how do we help them navigate through the system(s)?

Out of Status Women

- Focus groups in BC identified cases of out of status women who called the police to report abuse only to be referred to CBSA who then proceeded with their removals.

- The fact that these women had children and may have been dealing with custody issues did not prevent their removal.

- It has been the practice of CBSA in some regions to enter transition homes to look for out of status women in order to effect removals.

Out of Status Women

- Helping women, therefore, who are out of status is extremely complex and can have significant consequences for the women.

- As a result this is one category of women who are the most likely to stay in their abusive relationship.

Out of Status Women

- A common control tactic used by the spouse of the out of status woman is to claim he has a spousal application underway but delay completion of the paperwork, or if the paperwork is submitted to threaten withdrawing it if the spouse decides to leave or report the abuse.

- Withdrawal of a spousal sponsorship can occur any time up until a decision is made.

Out of Status Women

- Again, how do we help out of status women navigate through a system which is not viewing her through a safety lens?
- Really the only option is an H & C application.
  - Legal Aid did cover these applications but there are currently budget constraints.
  - Unfortunately, these applications can take a long time to complete, sometimes years to process.
  - During this time the woman has no status (unless she is able to apply for and receive a Temporary Resident Permit (“TRP) and limited access to benefits, especially, if there are no children.

Out of Status Women

- The evidence to support an H & C application can consist of:
  - Police incident reports;
  - Charges or convictions;
  - Reports from shelters for abused women;
  - Medical reports;
- Include affidavits if other evidence is lacking.

Out of Status Women

- Other factors considered in an H & C application are:
  - The hardship to the woman if she had to leave Canada;
  - The customs and culture of the woman's country of origin;
  - Whether she is pregnant or has children in Canada;
  - The degree of establishment in Canada.
- Be as comprehensive as you can in the H & C application.
- Refer to the broad definition of abuse that was referred to under the conditional permanent resident category.

Out of Status Women

- A helpful resources is OB 480 which was actually created to address the conditional permanent resident category.
- It provides quite a broad definition of abuse:
  - Physical abuse, including assault and forcible confinement.
  - Sexual abuse, including sexual contact without consent.
  - Psychological abuse, including threats and intimidation. Financial abuse, including fraud and extortion;
  - Neglect: the failure to provide the necessities of life, such as food, clothing, medical care or shelter and any other omission that results in a risk of serious harm.

ZERO TOLERENCE FOR LAW AGAINST BARBARIC CULTURUAL PRACTICES ACT

Zero Tolerance for Law Against **Barbaric** Cultural Practices Bill S-7 (August 2015)

- This law has was intended to ban people in polygamous from immigrating to Canada and criminally sanction those involved in forced marriages.

- The Shafia killings are referenced as the basis for the need for this law.

Zero Tolerance for **Barbaric** Cultural Practices Act

- The alleged mandate according to the previous government was to protect women and girls who seek to escape polygamous or forced marriages.
  - This law is intended to eliminate early and forced marriages from Canada's immigration system and the country as a whole.

Zero Tolerance for Barbaric Cultural Practices Act

- Parts of the proposed law were enacted:

- Part 1 amends the Immigration and Refugee Protection Act to specify that a permanent resident or foreign national is inadmissible on grounds of practising polygamy in Canada.

Zero Tolerance for Barbaric Cultural Practices Act

- Part 2 amends the Civil Marriage Act to provide for the legal requirements for a free and enlightened consent to marriage and for any previous marriage to be dissolved or declared null before a new marriage is contracted.
- It also amends the Civil Marriage Act to provide for the requirement of a minimum age of 16 years for marraige.

Zero Tolerance for Barbaric Cultural Practices Act

- Part 3 amends the Criminal Code to:
  - Clarify it is an offence for an officiant to knowingly solemnize a marriage in contravention of federal law;
  - Make it an offence to celebrate, aid or participate in a marriage rite or ceremony knowing that one of the persons being married is doing so against their will or is under the age of 16 years;
  - Make it an offence to remove a child from Canada to celebrate, aid or participate in the marriage ceremony knowing the child is doing so against their will or is under the age of 16.

Law Against Barbaric Cultural Practices

- What are the implications of this law?

- How would one help an abused woman navigate through this process?

RECENT PROJECTS

RECENT PROJECTS

- **Forced Marriage Project** funded by the Department of Justice completed in 2016.

- MOSAIC and EVA BC collaborated and a resource guide was created.

- Go to www.endforcedmarriages.ca for the project website.

RECENT PROJECTS

- **Building Supports Project** – Through the FREDA Centre for Research on Violence Against Women and Children.
- The project is examining the barriers to housing access for immigrant and refugee women leaving domestic violence. In collaboration with BC Non-Profit Housing Association (BCNPHA) and BC Society of Transition Houses (BCSTH).

SUMMARY

- Women in abusive relationships who are also involved with immigration issues have a complex system to navigate.

- If we understand the system and what they are likely to face we are in a better position to help them navigate it and keep them safe.

Maintenance Enforcement in BC



Presenter:
Angela M. Accettura
Director of Legal Services
FMEP of BC
Telephone: (604) 678-5732
Facsimile: (604) 678-5680
aaccettura@fmep.ag.gov.bc.ca

LSS - Legal Aid Bootcamp
May 3 and 4, 2017
Executive Plaza Hotel Coquitlam

Topics

- Overview of the Family Maintenance Enforcement Program (FMEP) and the Director of Maintenance Enforcement (MELS) – delegation of powers
- Interjurisdictional Support Orders (ISO)
- Types of FMEP enforcement
- FMEP enforcement and how to work with the Program
- Other matters to know when FMEP involved with enforcement
- Key cases in FMEP
- FMEP Contact Information
- Questions?



Overview of the FMEP of BC and the Director (MELS) –Delegation of powers

- The ***Family Maintenance Enforcement Act*** (the FMEA) was enacted in 1988. (is regarded as social purpose legislation)

- The legislation empowers the **Director of Maintenance Enforcement** (the Director) to monitor, collect payments under and enforce maintenance orders/agreements in British Columbia

- The Director delegates his authority to the **Family Maintenance Enforcement Program** (the FMEP), except his authority under sections 8.1, 8.2 or 8.3 of the FMEA to request and disclose searchable information.

Overview of the FMEP of BC and the Director (MELS) –Delegation of powers

- The Director's office is a government office and is separate from the FMEP.
- The Director operates out of the Maintenance Enforcement and Locate Services (MELS) offices of the Justice Branch, Ministry of the Attorney General of BC, located in downtown Vancouver
- The Director oversees the contract between the BC Government and the FMEP
- The Director is responsible for locate services (i.e. locates debtors and their assets), interjurisdictional case transmittal, client relations, policy and legislation, recalculation project and the FMEP contract administration
- The Director is the "designated authority" under the *Interjurisdictional Support Orders Act* (ISO) and the "central authority" for Hague Convention support order purposes

Overview of the FMEP of BC and the Director (MELS) –Delegation of powers

- The FMEP enrolls orders and agreements that have been filed with the Court for enforcement purposes
- Issues administrative enforcement and court enforcement
- Processes payments
- Responsible for the information technology (IT) structure to support all of above
- FMEP enforces orders/agreements – but does not establish or vary (modify) maintenance orders on behalf of creditors (see recalculation project responsibility of Director)
- Creditors must apply to the courts to establish maintenance orders or the parties may enter into agreements for the payment of support which can then be filed with the courts for enforcement purposes

Overview of the FMEP of BC and the Director (MELS) –delegation of powers

- FMEP offices are located in Victoria, Burnaby and Kamloops
- FMEP employs over 200 staff including:
  Call centre staff, enforcement officers, enforcement support staff, lawyers, payment clerks, managers, IT staff and administration
- Enforcement Officers are the case managers and are located in all three client offices. They have conduct of about 40,000 cases in total (approximately 657 caseload per enforcement officer)
- Enrollment packages can be downloaded from the FMEP website or can be mailed to applicants by the FMEP
- New FMEP Website: www.fmep.gov.bc.ca

Interjurisdictional Support Orders (ISO)

- Of the almost 40,000 files enrolled with the FMEP approx. 8200 of the cases is where one parent lives outside of the province
- About 800 of these cases are with the US (250 with Washington state)
- The FMEP Out of Province Unit is located in the Victoria FMEP office where orders involving an out of province party is enrolled for enforcement
- BC ISO legislation is similar to legislation in other provinces, but not the same (There are ongoing attempts to harmonize the legislation)
- BC ISO legislation provides for the establishment, modification and registration of orders made outside of the province (both in the rest of Canada and internationally)
- The Interjurisdictional Support Services Office (IJSS) performs the many duties and functions of the "designated authority" and is responsible for vetting the various ISO establishment or modification applications for completeness and transmittal to other jurisdictions by IJSS.
- ISO forms are available online: *www.isoforms.bc.ca*

Interjurisdictional Support Orders (ISO)

- The ISO Act deals with child and spousal support but does not deal with guardianship, parenting arrangements, contact, custody or access
- The ISO Act applies to support orders made in superior courts or provincial/territorial courts under provincial legislation (such as the *Family Law Act*), however the ISO Act does not apply to *Divorce Act (Canada)* orders
- See ISO *Regulations* for a list of reciprocating jurisdictions
- Until Canada joins the Hague Convention (US signed on in January 2017) business as usual
- Bilateral arrangements between the provinces and territories continue
- Each province in Canada continues to use its own forms
- Quebec has ISO legislation but not in effect therefore Civil Code of Quebec continues to apply with respect to establishment and variation of support orders.

Interjurisdictional Support Orders (ISO)

When considering where an order should be enforced always ask yourselves:

1. Where do the parties live?
2. Where were the orders made?
3. What statute lead to the orders?
4. Location of income/assets
5. Can effective enforcement be taken in your home province and/or elsewhere?

Types of FMEP enforcement

Administrative enforcement and other measures taken by FMEP include:

1. Notices of Attachment issued against wages, benefits, and other remuneration
2. Driver's License and Motor Vehicle Registration restrictions
3. Federal License Denials (Passports denials)
4. Reports to the Credit Bureau
5. Registration of support order against debtor's interest in land
6. Registration of lien in Personal Property Security Registry against debtor's interest in assets (motor vehicles, boats, manufactured homes, etc)

Types of FMEP enforcement

Court enforcement measures that FMEP can take:

1. Default Hearings (orders to pay)
2. Committal Hearings (seeking incarceration for defaulting on orders to pay)
3. Warrants of Execution
4. Restraining orders (to prevent disposing or wasting of property)
5. Applications to appoint receivers
6. Arrest of absconding debtor
7. In BC Supreme Court, contempt proceedings, injunctions, payment out of funds in court

FMEP enforcement and how to work with the Program

Applications to court to set aside enforcement and in particular:

- **Notices of attachment** – a debtor must establish "material error" or that the attachee is not indebted to the payor otherwise the application is unfounded

- Consider whether the debtor should really be making an application to vary the exemption instead of applying to set aside the Notice of Attachment (hardship test set out in FMEA Reg. 13.1(3)
- If the debtor has a viable hardship argument consider applying first directly to the FMEP to vary the exemption under the Notice of Attachment

- **Drivers License restriction**– applications to court to set aside – in the nature of a "judicial review" so the onus is on the debtor to establish the case he/she presented to FMEP, the response of the FMEP, and why the decision of the FMEP is not reasonable

- If the debtor can produce proof that the driver's license is required for a particular employer then the FMEP may agree to remove the restriction upon proof being provided by that employer

- 4.**Federal License Denial** (usually passports) – relief only available from the courts by way of judicial review, in the BC Supreme Court under JRPA. No jurisdiction in the provincial courts to hear the application

FMEP enforcement and how to work with the Program

- **Land Registrations** – court order registered against debtors interest in land secures not only the payment of arrears but also future maintenance payable under the order.
- If property is selling or being refinanced, Director can provide a release or postponement agreement, on terms (i.e. arrears to be paid in full, alternate security to be provided for future payments, etc). Will depend on the circumstances of the case
- Application can be made by a debtor to the courts to remove the registration but expect that the FMEP will ask the courts to replace its security position against the land with a full payment of all arrears and a possible lump sum to be paid in future security
- Please remember that when a debtor is selling his interest in land, or refinancing, requiring priority in charge by the new financial institution, by law (under the FMEA) a creditor must be given reasonable (two weeks) notice of Director's intention to sign a release or postponement agreement
- Accordingly debtors should have their notary or lawyer (conveyancer) handling the sale or refinancing on debtor's behalf contact FMEP well in advance of the completion date (two weeks minimum notice preferred)

Other matters to know when FMEP involved with enforcement

- There is a statutory requirement to give the FMEP notice of any Applications to vary orders/agreements in BC Supreme Court or Applications Respecting existing orders or agreements in Provincial Court, filed with the FMEP. This requirement applies to creditors as well as debtors
- Costs enforcement – the FMEP will enforce legal costs (fixed) if they were awarded in relation to preserving or securing maintenance
- The FMEP will not offset costs awarded to a debtor against maintenance due and owing to a creditor unless a court has ordered the offset
- Appeal of warrant of committal under FMEA– a stay application must be brought in the court that ordered the warrant of committal (usually provincial court)
- FOIPPA Requests: FMEP file information belongs to the Director and not to the creditor or the debtor, FOIPPA notwithstanding. Thus, a creditor or debtor cannot consent to the FMEP releasing the FMEP file information

Other matters to know when FMEP involved with enforcement

- Child and spousal support is now exempted from the *Limitation Act*
- Default fees – a penalty assessed against a debtor under the FMEA and is payable to the Director and not to the creditor, thus a creditor should not consent to their cancellation or reduction; upon application, the court may reduce/cancel
- Statutory Interest accruing due under the FMEA– is payable to the creditor and therefore can be agreed to be cancelled or reduced by the creditor

Other matters to know when FMEP involved with enforcement

- Recalculation of maintenance amounts – FMEP staff are not adjudicators (see recalculation services and Child Support Recalculation Project Kelowna – MELS)
- If an order provides for the recalculation of maintenance amounts the order should clearly state the child support amount is to be adjusted or recalculated. It is not sufficient, for FMEP purposes, for an order to only state the parties are to exchange financial information
- FMEP will only adjust based on above recalculation provisions in the order if the parties agree to the adjusted amount and confirm in writing with the FMEP
- FMEP now enrolling and enforcing orders where no set maintenance amount in the order however it is clear from the order the debtor is required to pay child support (under CSG) based on his or her guideline income (as set out in order)

Other matters to know when FMEP involved with enforcement

Enforcing Special or Extraordinary expenses:

- FMEP may enforce expenses related to child support where the order has an enforceable provision for the debtor to pay all or a defined share of the special or extraordinary expenses
- In order for the FMEP to enforce the provision must be able to be reasonably determined and calculated by the FMEP

How to word expenses for a child (see also FMEP website)

If the maintenance order or agreement is to include special or extraordinary expenses for a child, the expense amount needs to be separate from the child support amount and should clearly state the:

- type of expense
- name of the child to whom the expense relates
- the exact amount one parent is to pay the other parent for the expense
- the date payments are to start
- the frequency of payments (e.g. per month)

Other matters to know when FMEP involved with enforcement

- Death of creditor/debtor – FMEP may continue to enforce if circumstances warrant
- FMEP will not automatically stay enforcement of the order when a debtor brings an application to vary the order
- No jurisdiction in provincial courts for a general stay of FMEP enforcement
- FMEA is a complete code for providing the criteria on which specific enforcement measures may be set aside upon application to the courts

KEY CASES IN FMEP

Interpretation of FMEA (purposive construction and social purpose legislation)

- *Director of Maintenance Enforcement v. I.W.A Forest Industry Pension Fund (Trustees of),* (1991 37 R.F.L. (3d) 266 (BCCA)

Federal License Denial (Passports) – no right to appeal and judicial review

- *Ingram v. D.O.M.E*, 2005 BCSC 1145
- *Go v. Go*, (October 2, 2002) Vancouver D106304 (BCSC)

Cancellation of Statutory Interest

- *Armstrong v. Armstrong,* 2004 BCSC 1100
- *Castagne v. Castagne*, 2002 BCSC 1231

KEY CASES IN FMEP

Failing to file SOF

- *McCormick v. Nesbitt* (April 25, 2001, BCPC Surrey Registry No. 14555) – payor committed for 30 days for refusing to file SOF
- *G.A.C. v. I.C.,* 2006 BCPC 0380 – a party that repeatedly fails to comply with PC orders to attend in person before the court or to fail to obey a court order to deposit documents with the court may be cited for contempt in the face of the court.

Notices of Attachment – ss. 15, 16 of FMEA and s. 13.1 of Regs.

- *MacKechnie v. MacKechnie,* (30 July 1998) Vancouver D088999 (B.C.S.C.)

Driver's License Withhold

- *K.J.K. v. P.B.K.,* 2002 BCSC 1340

KEY CASES IN FMEP

Land registrations and securing future maintenance

- *Harvey v Gould*, (1959) 18 DLR (2d) 590,
- *Wiseman v Wiseman* [1987] B.C.D. Civ 1602-04, June 26, 1987 (BCSC),
- *B.D. v L.D.B.* 2003 BCCA 0189
- *Frigerio v Cameron* 2003 BCCA 680,
- *Kahila v Kahila*, BCSC, July 21, 1995
- *MacHale v MacHale*, 15 RFL 380 (BCSC)
- *Ecclestone v Ecclestone*, BCSC, March 12, 1997
- *Chan v Chan*, BCSC, April 16, 1999

FMEP Contact Information

- **Our Office Hours**
- Monday to Friday 8:30 am – 4:30 pm

- **Lower Mainland Client Office**
- Box 80449, Burnaby, BC V5H 3X9
- Phone:
- 604-678-5670
- Fax:
- 604-678-5679
- Toll-free:
- 1-800-663-9666

- **Victoria Client Office**
- Box 5100, Victoria, BC V8R 6N3
- Phone:
- 250-220-4040
- Fax:
- 250-220-4050
- Toll-free:
- 1-800-663-3455

- **Northern & Interior Client Office**
- Box 830, Kamloops, BC V2C 5N1
- Phone:
- 250-434-6020
- Fax:
- 250-434-6033
- Toll-free:
- 1-800-663-3933

Questions





What is a Section 211 Report?

A section 211 Report is a Report which takes its mandate from Section 211 of the *Family Law Act.*

Orders respecting reports

211 (1) A court may appoint a person to assess, for the purposes of a proceeding under Part 4 *[Care of and Time with Children]*, one or more of the following:

(a) the needs of a child in relation to a family law dispute;

(b) the views of a child in relation to a family law dispute;

(c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.

(2) A person appointed under subsection (1)

(a) must be a family justice counsellor, a social worker or another person approved by the court, and

(b) unless each party consents, must not have had any previous connection with the parties.

(3) An application under this section may be made without notice to any other person.

(4) A person who carries out an assessment under this section must

(a) prepare a report respecting the results of the assessment,

(b) unless the court orders otherwise, give a copy of the report to each party, and

(c) give a copy of the report to the court.

(5) The court may allocate among the parties, or require one party alone to pay, the fees relating to an assessment under this section.

Prior to the enactment of the FLA the mandate for the Reports was in Section 15 of the Family Relations Act, and as such the Reports were referred to as Section 15 Reports.

Purpose of a Section 211 Report

It is a low threshold to obtain these assessments as the case law states that the probative value of the evidence in a Section 211 Report is outweighed by the intrusion such reports requires into the lives of the parties and the children.

The Reports are procured to ascertain what is in the best interests of the children. Section 37 of the FLA will be considered by the author.

The Author will also assess whether or not Family Violence is a relevant issue.

The Court can decline to make Orders for the preparation of Section 211 Reports. For Example:

- The Report is not in the best interests of the children;
- The Report will be ineffective;
- Information that the report is likely to cover is available for other sources;
- Significant expert evidence or other assessments have already been amassed;
- Ordering the report would unnecessarily prolong the matter;
- The Court is optimistic that the parties can reach consensus on the matter in question and wishes to afford them enough time to try this approach

Author the Section 211 Report

- Can be Court appointed or can be agreed upon between parties.
- Must be neutral and independent.
- Should not have had any previous connection with the parties in order to protect the neutrality of the Report. However, note that a previous author of a Section 211 Report can provide a subsequent Report of a similar nature.
- Must understand that the purpose of the Report is to assist the Court in determining what is in the best interests of the children.
- The Author the Report can be compelled to Cross examination.

Procedural Requirements

- Are in Rule 13-1 of the Supreme Court Family Rules.
- Must be filed and served upon all parties at least 42 days before the trial date.
- If you wish to cross examine the author of the Report, the author must be served with a notice 28 days before the scheduled trial date.

What do you provide to the Section 211 Author?

A letter is sent to the Author retained him/her.

The letter will outline what issue(s) the recommendations of the Author are being sought for. For example:

-on going parenting time;

-the allocation of parental responsibilities;

-guardianship;

- is there parental alienation.

The Author should be provided with:

- Pleadings;
- Other expert reports;
- An agreed upon summary of facts and assumptions;
- And any other documents that may be necessary or relevant.

The Author may request certain documents from counsel.

Challenging a section 211 Report

Note that that the recommendations made by a Section 211 Author, if they are consistent with the facts established at trial and the law pertaining to those facts, then they will be given weight by the Court.

Where the facts, on the entirety of the evidence presented at trial, are inconsistent with the facts found by the Section 211 Author, the Court will prefer its own findings of fact.

The recommendations can also be challenged if the report is not of a sufficiently high standard.

In a recent case *Foetsch v. Begin*, 2015 BCSC 227 the Court did not rely on the report for the following reasons:

(1) It was based on a factual foundation that differed markedly from the facts as found by the trial judge;

(2) The assessor failed to assess the child's needs and the parties' respective abilities and willingness to satisfy those needs,

(3) The assessor did not engage in an analysis of how the child's best interests would be served,

(4) The assessor misapprehended the parties' evidence relating to allegations of parental alienation,

(5) The assessor ignored or failed to explain why he rejected concerns expressed regarding the child's well-being,

(6) The assessor simply accepted one of party's statements in the face of conflicting evidence put forward by the other party and collateral witnesses, and

(7) The assessor ignored evidence as to one of the party's financial vulnerability.

OVERVIEW OF PROTECTIONS AGAINST RACIAL DISCRIMINATION

ALEEM BHARMAL, EXECUTIVE DIRECTOR
COMMUNITY LEGAL ASSISTANCE SOCIETY
("CLAS")

www.clasbc.net

CLAS Community Legal Assistance Society
Advancing Dignity, Equality and Justice Since 1971

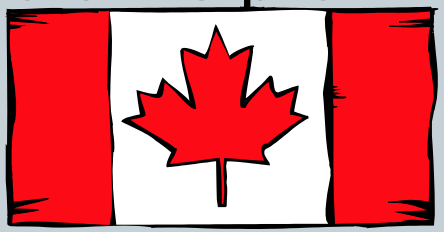
Overview Racial Discrimination

Racial Discrimination

- What is “race”?
- What is “racial discrimination / harassment”?
- What is “racial profiling”?
- What is “intersectional discrimination”?

Filing a Human Rights Complaint

- Federal vs provincial jurisdiction





  - Presume provincial jurisdiction unless:
    - Nature of operation falls within exclusive federal jurisdiction (aviation, military, banking, cross-border trucking / shipping, postal service, salaries of federal civil servants etc.)
  - If in doubt, file in both (but note different time limitations)
  - Canadian Human Rights Commission
    - www.chrc-ccdp.gc.ca
    - 1-888-214-1090

BC Human Rights Code

The BC Human Rights Code

- Areas of Protection
- Grounds of Discrimination
- General Test for Discrimination
- Time Limit
- Process
- Who Decides?
- Remedies

Areas of Protection

- Areas of protection (ss. 7-14 of the Code: publication, services, employment, tenancy, ppty purchase, unions)











Grounds of Discrimination

- Grounds of discrimination
  - Outlined in specific section of the Code for the area in question (i.e. ss. 7-14)
  - Common examples:
    - Race, place of origin, colour, ancestry, sex, sexual orientation, gender identity / expression, political belief, religion, marital status, family status, age, criminal conviction
  - Uncommon grounds:
    - Source of income (tenancy)
  - Exceptions
    - Age (insurance)
    - See Code sections for additional exceptions (special programs)

General Test for Discrimination

- What is discrimination?

When an individual, or a group of individuals, have been singled out and treated adversely or differently than others due to group characteristics such as race, colour, place of origin, religious belief, sexual orientation, gender identity or expression, as some examples then discrimination likely occurred.

- Test for discrimination (*Ontario Human Rights Commission* v. *Simpson Sears* – O'Malley)
    a) Member of a protected group
    b) Adverse treatment
    c) Nexus between a) and b) (one factor, not sole factor)

Time Limit

- 6 month time limit
  - Single incidents
  - Separate incidents
  - Repeated incidents of the same nature (continuing contraventions)



Process

Tribunal Process

- Early Settlement Meeting
- Response
- Disclosure
- Preliminary Application to Dismiss
- Hearing

Who Handles and Decides Complaints?



- Inquiry Officer
- Case Managers
- Tribunal Members
- Registrar

What Can the Tribunal Order ("Remedies")?

- Remedial jurisdiction – section 37 of the Code
- If complaint justified member may:
  - Declare conduct discriminatory
  - Take steps to remedy discriminatory practice
  - Adopt program to ameliorate conditions of disadvantaged
  - Make opportunity available
  - Compensate for wages, salary or expenses incurred
  - Compensate for injury to dignity
- Costs

Resources



- BC Human Rights Code, BCHRT Rules, BCHRT Guides and Information Sheets: www.bchrt.bc.ca
- BC Human Rights Clinic: www.bchrc.net

Legal Information and Referral Resources
Compiled by the Law Foundation of BC
May 2017

1. Legal Information Resources (online and print)

A. General Resources

B. Legal Research Resources

C. Specific Topics

- ***Civil law and the court system***
- ***Family law***
- ***Housing***
- ***Human rights***
- ***Income assistance***
- ***Representation agreements***

2. Referral Resources: Legal advice and information services

A. Help from a lawyer

- ***Legal representation***
- ***Legal advice and information***

B. Law Student Legal Clinics

C. Legal Advocacy Resources and Services

- ***Provincial service in a specialized area of law or to a specific clientele***
- ***Information about legal advocacy services in BC***
- ***List of advocates funded by the Law Foundation***

1. Legal Information Resources (online and print)

A. General

- **BC LawMatters**

A project of Courthouse Libraries BC that is funded by the Law Foundation to support legal research collections and services in BC public libraries, has a blog that is a very good source of information about new public legal education and information (PLEI) materials.

You can see updates from BC LawMatters at http://bclawmatters.blogspot.com/. You can also subscribe to the blog by email or through an RSS feed to get regular updates about PLEI materials and new legal information services.

- **Clicklaw**

A very useful resource for finding legal information at www.clicklaw.bc.ca. It provides links to legal information, education and self-help resources. It also has a HelpMap that lists resources in each community that people can use for help with legal issues.

- **Dial-A-Law**

A library of tapes that provide information about the law in BC. Some of these tapes are available in Chinese and Punjabi as well as English.

- Lower Mainland: 604-687-4680
- Elsewhere in BC: 1-800-565-5297 (call no charge)
- You can also read or listen to transcripts of the Dial-A-Law tapes on the Internet at www.dialalaw.org .

- **Legal Guide for British Columbians**

A new publication provides information about many different legal problems and resources in rural BC to help people dealing with these problems. The publication is currently available online at the link:
http://blog.clicklaw.bc.ca/wp-content/uploads/Legal_Help_for_British_Columbians_3rd_Edition.pdf

- **Legal Services Society ("LSS")**

LSS has numerous publications that are free. Publications are all on the LSS website at www.lss.bc.ca Click on "Publications" (left side of the screen) and then search for the publication title you want or look under an area of law.

They can be ordered through the Queens Printer. Instructions for how to do this are on the same page under "I want to get a publication"

- **People's Law School**

People's Law School has a variety of publications about legal issues as well as online resources. Information about their publications and how to order them is at
http://www.publiclegaled.bc.ca/category/resources/

B. Legal Research

- **BCLaws**

Up-to-date versions of BC laws and regulations are now available for FREE on the internet at http://www.bclaws.ca/. The Law Foundation funded the Law Society of BC to work with the Queen's Printer of BC to make this resource available.

- **CanLII**

Up-to-date versions of all provincial and federal legislation and regulations from across Canada are available on the CanLII website at http://www.canlii.org/en/index.php. CanLII also has case law and provides note ups of cases that have considered particular sections of legislation.

- **Courthouse Libraries BC**

Courthouse libraries throughout BC provide support on legal research questions. Librarians are can also be contacted by phone or online for help with legal research. http://www.bccls.bc.ca
The link to the research help page is http://www.courthouselibrary.ca/training.aspx

C. Specific Topics

Civil law and the court system

- **BC Supreme Court Self-Help Information Centre**

The BC Supreme Court Self-Help Information Centre is a drop-in service for anyone who has to go to Supreme Court but cannot afford a lawyer. This service is available only at the office: there is no phone consultation service. Several self-help resources for people going to Supreme Court on civil matters are available on the Centre's website.
274 – 800 Hornby Street
Vancouver, BC V6Z 2C5
Website: www.supremecourtselfhelp.bc.ca

- **Justice Education Society**

The Justice Education Society has many publications and websites designed to help the public understand and solve problems in the legal system. The link to the Society's website is www.lawcourtsed.ca Examples of websites produced by the Society that deal with specific areas of law are:

  - **Administrative Law Website www.adminlawbc.ca**
  - **Courts of BC Website** provides an overview of three levels of court in BC **www.courtsofbc.ca**
  - **Youth and Criminal Law Website** information for students about their legal rights and responsibilities **http://www.lawlessons.ca/teaching-units/youth-and-the-law**
  - **Small Claims Website www.smallclaimsbc.ca**

Family law

- **Legal Services Society Family Law Website**

The LSS Family Law Website provide information about family law and many online self-help forms for various family law issues.
www.familylaw.lss.bc.ca

Housing

- **TRAC Tenants Resource & Advisory Centre** has a telephone helpline for tenants who need information about housing issues. (604.255.0546 in Vancouver area. 1.800.665.1185 outside the Lower Mainland – free). They also have several publications on housing issues at www.tenants.bc.ca

Human Rights

Community Legal Assistance Society has lawyers who provide help with human rights issues. http://www.bchrc.net/

Income assistance (welfare)

- **Legal Services Society**

LSS has resources on income assistance on its publications page at http://www.lss.bc.ca/publications/subject.php?sub=17

- **Ministry of Social Development and Social Innovation**

The government sites has links to legislation, regulation, policy and government online tools that are useful for advocates and clients at www.gov.bc.ca/meia/online_resource

Representation agreements

- **Nidus Personal Planning Resource Centre**

The Centre provides information about these issues at http://www.nidus.ca/.

Referral Resources: Legal advice and information services

A. Help from a lawyer

Legal representation

- **BC Public Interest Advocacy Centre (BCPIAC)**

208 – 1090 West Pender Street
Vancouver, BC V6E 2N7
Telephone: 604-687-3063
Fax: 604-682-7896
http://bcpiac.com

Free legal advice and representation for clients with problems in specific areas of law, including utilities regulation, social justice law and poverty law.

- **Community Legal Assistance Society (CLAS)**

300 – 1140 West Pender Street
Vancouver, BC V6E 4G1
Telephone: 604-685-3425
Toll free: 1-888-685-6222
Fax: 604-685-7611
http://www.clasbc.net/

CLAS provides legal assistance to disadvantaged people throughout British Columbia and currently specializes in the areas of poverty, disability, workers' compensation, employment insurance, mental health, human rights and equality law. The work of CLAS includes: test case and Charter litigation; service case work and law reform; liaison and consultation with community groups; legal supervision of advocacy groups and law students; publication of legal materials designed to assist self-represented litigants; and legal training and support to lay advocates, community groups, law students, and lawyers doing pro-bono work.

- **Legal Services Society ("LSS")**

400 – 510 Burrard Street
Vancouver, BC V6C 3A8
Telephone: 604-408-2172
Toll free: 1-866-577-2525
Fax: 604-681-2719; 604-681-6942
http://www.lss.bc.ca

Recorded messages are in Cantonese, English, French, Mandarin, Punjabi, and Spanish. LSS provides legal representation on legal aid tariff matters. Duty counsel provide legal advice and assist with court appearances without charge regarding certain matters in family and criminal law cases at various courthouses throughout BC. LSS also produces publications and websites with legal information.

- **Access Pro Bono Society**

300 – 845 Cambie Street
Vancouver, BC V6B 4Z9
E-mail: help@accessprobono.ca
Client number: 604-878-7400 or 1-877-762-6664
http://www.accessprobono.ca/

Volunteer lawyers provide pro bono legal advice for 30 minutes at legal clinics throughout BC. There are also roster programs that provide legal representation in specific areas of law or in particular courts.

- **West Coast Environmental Law**

200 — 2006 West 10th Avenue
Vancouver, BC V6J 2B3
Telephone: 604-684-7378
Toll-free in BC: 1 800 330-WCEL
Fax: 604-684-1312
Email: admin@wcel.org
http://www.wcel.org/

West Coast Environmental Law seeks to provide legal solutions to environmental problems by reforming the law and by empowering citizens through legal information to participate in decisions about the environment. Its staff lawyers provide free information and advice to help citizens confronting environmental legal barriers and disputes. It also administers an environmental legal aid programme to assist citizens and groups with the legal costs associated with dispute resolution.

Legal advice and information

- **Lawyer Referral**

The Lawyer Referral Service can provide the name of a family law or immigration lawyer who can meet with clients for a half-hour appointment. The cost is $25 plus taxes for the half hour.
Lower Mainland: 604-687-3221
Elsewhere in BC: 1-800-663-1919 (free call)

B. Law Student Legal Clinics

- **Greater Vancouver Law Students' Legal Advice Program ("LSLAP")**

University of British Columbia
Faculty of Law, Room 158
1822 East Mall
Vancouver, BC V6T 1Z1
Telephone: 604-822-5791
Fax: 604-822-1661
http://lslap.bc.ca

LSLAP offers free legal advice and representation to persons who cannot afford it throughout the Greater Vancouver Regional District. Their clinicians are law students at the University of

British Columbia at all levels of study, and are assisted by accredited members of the bar who provide students with legal advice and guidance for each client.

- **The Law Centre**

1221 Broad Street
Victoria, BC V8W 2A4
Telephone: 250-385-1221
Fax: 250-385-1226

See http://www.thelawcentre.ca for information about the free legal clinics and legal representation by University of Victoria law students in Greater Victoria.

- **Peter A. Allard School of Law Indigenous Community Legal Clinic**

Suite 101 - 148 Alexander Street
Vancouver, BC V6Z 1B5
Telephone: (604) 684-7334
Toll Free: 1-888-684-7334
Fax: 604-684-7874

Law Students from UBC provide legal services to the Aboriginal community on issues such as Aboriginal rights, civil, criminal and family law, wills and estates, debt, human rights, residential schools, child protection, residential tenancy and status

C. Legal advocacy resources and services

Provincial service in a specialized area of law or to a specific clientele

- **BC Centre for Elder Advocacy and Support ("BCCEAS")**

Telephone: 604-437-1940
Fax: 604-437-1929
Toll Free: 1-866-437-1940
E-mail: bcceas@telus.net
http://bcceas.ca/

BCCEAS provides public legal education and advocacy assistance to seniors and their intermediaries, through its legal advocacy program and provides legal representation through the Elder Law Clinic.

- **BC Civil Liberties Association ("BCCLA")**

550 – 1188 West Georgia Street
Vancouver, BC V6E 4A2
Telephone: 604-630-9754
Fax: 604-687-3045
http://www.bccla.org

BC Civil Liberties Association provides pro bono legal advice and representation in specific cases concerning civil liberties and human rights.

- **Disability Alliance BC ("DABC")**

204-456 W. Broadway
Vancouver, BC V5Y 1R3
Telephone: 1-800-663-1278
Fax: 604-875-9227
http://www.disabilityalliancebc.org/

DABC provides advocacy services for people with disabilities and produces legal information materials on disability issues.

- **Family Justice Counsellors**

Family justice counsellors can provide information about the law and the court process and help people work on agreements. They work at Family Justice Centres across the province. Call Service BC and ask the operator to transfer to the nearest centre.

Victoria: 250-387-6121
Lower Mainland: 604-660-2421
Elsewhere in BC : 1-800-663-7867 (call no charge)

- **MOSAIC Legal Advocacy Project**

#2 - 1720 Grant Street
Vancouver, BC V5L 2Y7
Telephone: 604-254-9626
Fax: 604-254-3932
http://www.mosaicbc.com

MOSAIC provides free information, summary advice, referrals, and legal representation in welfare, tenancy, and employment matters. The organization is known for expertise in immigration law.

- **Pivot Legal Society**

678 East Hastings Street
Vancouver, BC V6A 1R1
Telephone: 604-255-9700
Fax: 604-255-1552
http://www.pivotlegal.org/

Pivot provides pro bono legal information, advice, and representation in criminal, housing, immigration, mental health, and child protection law.

- **TRAC Tenant Resource & Advisory Centre**

Telephone: 604-255-0546
Toll free: 1-800-665-1185
http://tenants.bc.ca/

TRAC is a Vancouver-based non-profit organization that offers legal information services via a province wide information hotline for tenants, publications on tenants' rights, organizes tenants and provides workshops to advocates and the public.

- **VictimLINK**

Toll free: 1-800-563-0808
http://www.victimsinfo.ca/

VictimLINK is a phone service that provides information and referral services to victims of crime, and immediate crisis support to victims of family and sexual violence. VictimLINK provides service in 130 languages, including 17 North American Aboriginal languages. VictimLINK is TTY accessible and provides interpretation services for all major languages. Call TTY at 604-875-0885. To call collect, call the TELUS Relay Service at 711.

- **Workers' Advisers Office ("WAO")**

Ministry of Labour
500 – 8100 Granville Avenue
Richmond, BC V6Y 3T6
Telephone: 604-713-0360
Toll free: 1-800-663-4261
Fax: 604-713-0311
http://www.labour.gov.bc.ca/wab

Free legal advice and representation in WCB matters, including appeals, throughout BC. WAO is a proactive, innovative and progressive organization demonstrating excellence in advice, education and representation to workers, their dependents and other stakeholders while fostering safe and healthy workplaces.

Information about legal advocacy services in BC

The following websites provide information about legal advocacy services in various parts of the province.

- **Law Foundation of BC**

The Law Foundation website lists all the projects funded by the Foundation to do legal advocacy and representation, legal education, legal research, law reform, or provide legal library services. www.lawfoundationbc.org.

- **PovNet**

Telephone: **604-876-8638**
Fax: **604-685-7611**
E-mail: **info@povnet.org**
http://www.povnet.org

PovNet is an online information service about poverty issues. The website has information about and links to groups that work on poverty issues. It has a helpful link for finding an advocate in various BC communities. Online discussion groups provide an opportunity for advocates to discuss issues with others working on similar topics.

Advocates funded by the Law Foundation of BC (May 2017)

Abbotsford Community Services Society
Ms. Gurcharan Dhillon
Mr. Sarbjit Gill
Ms. Ilena Candiani
2420 Montrose Avenue
Abbotsford, BC V2S 3S9
Tel: 1-604-859-7681
Fax: 1-604-859-6334
Email: Gurcharan.Dhillon@AbbotsfordCommunityServices.com
Email: legaladvocacy@abbotsfordcommunityservices.com
Email: Ilena.Candiani@AbbotsfordCommunityservices.com

Abbotsford Community Services Society
Ms. Kim Kirkpatrick
8937 School Street
Chilliwack, BC V2P 4L5
Tel: 604-702-2907
Fax: 604-792-4470
Email: kim.kirkpatrick@abbotsfordcommunityservices.com

Active Support Against Poverty
Ms. Jody Morrison
Ms. Darlene Fehr
1188 6th Ave.
Prince George, BC V2L 3M6
Tel: 250-563-6112
Fax: 250-563-1612
Email: jody@asaphs.com
Email: darlene@asaphs.com

Atira Women's Resource Society
Ms. Amber Prince
101 East Cordova Street
Vancouver, BC V6A 1K7
Tel: 604-331-1407 (ext. 105)
Fax: 604-688-1799
Email: legaladvocate@atira.bc.ca

Battered Women's Support Services
TBC
P O Box 21503
1424 Commercial Drive
Vancouver, BC V5L 5G2
Tel: 604-687-1868
Fax: 604-687-1864
Email: legaladvocacy@bwss.org

BC Centre for Elder Advocacy and Support
Ms. Nighat Afsar
370-1199 West Pender Street
Vancouver, BC V6E 2R1
Tel: 604-688-1927
Fax: 604-437-1929
Email: nafsar@bcceas.ca

Family Services of Greater Victoria Society
Ms. Pam Rudy
899 Fort Street
Victoria, BC V8W 1E6
Tel: 250-386-4331
Fax: 250-386-4301
Email: pam@fsgv.org

Chimo Community Services Society
Ms. Mamdavni Dhami
Mr. Luke Lin
120 - 7000 Minoru Blvd.
Richmond, BC V6Y 3Z5
Tel: 604-279-7077
Fax: 604-279-7075
Email: mdhami@chimoservices.com
Email: llin@chimoservices.com

Community Connections Society of Southeast BC
Ms. Noelle Goodfellow
32-13th Avenue
Cranbrook, BC V1C 2V3
Tel: (250) 426-4293
Direct: 1-877-298-2211
Fax: 250-426-2798
Email: ekadvocate@shaw.ca

Contact Women's Group Society
Mr. Matthew Granlund
PO Box 4094
Williams Lake, BC V2G 2V2
Tel: 250-392-4118
Fax: 250-392-4145
Email: advocacy@womenscontact.org

Disability Alliance BC
Mr. Sam Turcotte
Mr. Peter Beaudin
Ms. Ashley Silcock
#204 - 456 West Broadway
Vancouver, BC V5Y 1R3
Tel: 604-875-0188
Fax: 604-875-9227
Email: sam@disabilityalliancebc.org
Email: peter@disabilityalliancebc.org
Email: ashley@disabilityalliancebc.org

Dze L K'ant Friendship Centre Society
Ms. Angela Sketchley
1188 Main Street
Box 2920
Smithers, BC V0J 2N0
Tel: 250-847-5211
Fax: 250-847-5144
Email: angiesketchley@yahoo.com

First United Church Community Ministry Society
Ms. Didi Dufresne
Mr. Irfan Reayat
Ms. Danielle Sabelli
320 East Hastings Street
Vancouver, BC V6A 1P4)
Fax: 604-681-8928
Email: ddufresne@firstunited.ca
Email: dsabelli@firstunited.ca
Email: ireayat@firstunited.ca

Fort St. John Women's Resource Society
Ms. Sylvia Lane
10051 100th Avenue
Fort St. John, BC V1J 1Y7
Tel: 250-787-1121
Fax: 250-787-7333
Email: povertylaw@fsjwrs.ca

Haida Gwaii Legal Project Society
Ms. Bev Collinson
PO Box 160
Queen Charlotte, BC V0T 1S0
Tel: 250 559 9042
Direct: 250-559-4688
Fax: 250-559-8845
Email: hglegal@haidagwaii.net

Kamloops and District Elizabeth Fry Society
Mr. Erik Nelson
827 Seymour Street
Kamloops, BC V2C 2H6
Tel: 250-376-7878
Direct: 250-314-1900 ext. 202
Fax: 250-376-4689
Email: advocate@kamloopsefry.com

Kettle Friendship Society
Ms. Henriette Chabot
Mr. Scott Waters
1725 Venables Street
Vancouver, BC V5L 2H3
Tel: 604-253-7922
Direct: 604-251-4778
Fax: 604-251-2834
Email: hchabot@thekettle.ca
Email: swaters@thekettle.ca

Ki-Low-Na Friendship Society
Ms. Yolonda Beaudry
Ms.Debra Apperley
442 Leon Avenue
Kelowna, BC V1Y 6J3
Tel: 250-763-4905
Fax: 250-861-5514
Email: advocate@kfs.bc.ca

Maple Ridge/Pitt Meadows Community
Ms. Charlotte Kingsbury
Ms. Ashley Singh
11907 228th Street
Maple Ridge, BC V2X 8G8
Tel: 604-467-6911
Fax: 604-463-2988
Email: ckingsbury@comservice.bc.ca
Email: ashleys@comservice.bc.ca

MOSAIC
Ms. Miriam Dell'Orto
1720 Grant Street
Vancouver, BC V5L 2Y7
Tel: 604-254-9626
Fax: 604-629-0061
Email: mjurigova@mosaicbc.com

MPA - Motivation, Power & Achievement Society
Mr. Oscar Hall
Ms. Julie Elliot
c/o Vancouver Provincial Court
222 Main Street
Vancouver, BC V6A 2S8
Tel: 604-660-4292
Fax: 604-738-4132
Email: ohall@mpa-society.org
Email: jelliot@mpa-society.org

Multiple Sclerosis Society, BC & Yukon Division
Ms. Nyssa Lessingham
#1103 - 4720 Kingsway
Burnaby, BC V5H 4N2
Tel: 604-689-3144 ext. 7248
Fax: 604-689-0377
Email: nyssa.lessingham@mssociety.ca

Nanaimo Citizen Advocacy Association
Ms. Don McConnel
Ms. Harriet Manson
#114 - 285 Prideaux Street
Nanaimo, BC V9R 2N2
Tel: 250-753-2321
Fax: 250-753-2486
Email: ncaa1@shaw.ca
Email: ncaa5@shaw.ca

Nelson - The Advocacy Centre
Ms. Amy Taylor
521 Vernon Street
Nelson, BC V1L 4E9
Tel: 250-352-5777
Fax: 250-352-5723
Email: advocacycentre@nelsoncares.ca

Nicola Valley Community Justice Services Society
Ms. Andrée Harley
2-2025 Granite Avenue, Box 819
Merritt, BC V1K 1B8
Tel: 250-378-9632
Fax: 250-378-9796
Email: andreeh@uniserve.com

North Shore Community Resources Society
Ms. Michele Beda
Ms. Tannis Boxer
Capilano Mall
Suite 201 - 935 Marine Drive
North Vancouver, BC V7P 1S3
Tel: 604-985-7138
Direct: 604-982-3310
Fax: 604-985-0645
Email: michelle.beda@nscr.bc.ca
Email: tannis.boxer@nscr.bc.ca

Okanagan Advocacy and Resource Society
Tish Lakes
102 – 3301 24th Avenue
Vernon, BC V1T 9S8
Tel: 250 542-3555 ext. 209
Email: tishlakes@okadvocate.ca

Opportunities Career Services Society
Ms. Brenda Kobzey
#101 300 St. Ann's Street
Campbell River, BC V9W 4C6
Tel: 250-286-3436
Fax: 250-286-0400
Email: brenda.advocacyservices@shaw.ca

Penticton And Area Access Centre Society
Mr. David Desautels
#209-304 Martin Street
Penticton, BC V2A 5K4
Tel: 250-493-6822
Fax: 250-493-6827
Email: advocacy@pawc.ca

Port Alberni Friendship Center
Ms. Janice Gus
3555 - 4th Avenue
Port Alberni, BC V9Y 4H3
Tel: 250-723-8281
Fax: 250-723-1877
Email: jamos@pafriendshipcenter.com

Powell River Community Services Association
Ms. Joyce Percey
209 - 4801 Joyce Avenue
Powell River, BC V8A 3B7
Tel: 604-485-0950
Fax: 604-485-6168
Email: povertylaw@telus.net

Prince Rupert Unemployed Centre Society
Mr. Ulf Kristiansen
869 Fraser Street
Prince Rupert, BC V8J 1R1
Tel: 250-627-8776
Fax: 250-627-7951
Email: advocate.pruac@citywest.ca

Progressive Intercultural Community Services
Mr. Gurpreet Pabla
#205 - 12725 80th Avenue
Surrey, BC V3W 3A6
Tel: 604.596.7722 (ext. 150)
Fax: 604.596.7721
Email: gurpreet.pabla@pics.bc.ca

Quesnel Tillicum Society
Ms. Christine Dunlop
Ms. Terri Campbell
319 North Fraser Drive
Quesnel, BC V2J 1Y9
Tel: 250-992-8347
Direct: 604-992-6066
Fax: 250-992-5708
Email: chris.dunlop@qnfc.bc.ca
Email: terri.campbell@qnfc.bc.ca

SHARE Family and Community Services
Ms. Heather Stacey
200 - 25 King Edward Street
Coquitlam, BC V3K 4S8
Tel: 604-529-5117
Direct: 604-937-6982
Fax: 604-540-1024
Email: heather.stacey@sharesociety.ca

Social Health & Economic Development Society of Bella Coola
Ms. Anne Fletcher
PO Box 309
Bella Coola, BC V0T 1C0
Tel: 250-799-0044
Fax: 250-799-0044
Email: afletcher13@gmail.com

Sources Community Resources Society
TBC
102 - 13771 72A Avenue
Surrey, BC V3W 9C6
Phone: 604-547-0103
Email:

Sources Community Resources Society
Sources Women's Place
Ms. Ram Sidhu
Ms. Rupi Sahota
106-13771 72 A Ave
Surrey BC V3W 9C6
Phone: Alt: 778-565-3638
Email: rsidhu@sourcesbc.ca
Email: rsahota@sourcesbc.ca

South Peace Community Resources Society
Ms. Karen Mitton
PO Box 713
Dawson Creek, BC V1G 4H7
Tel: 250-782-9174 (ext. 236)
Fax: 250-782-4167
Email: legaladvocate@spcrs.ca

Tenant Resource and Advisory Centre Society
Ms. Emma Lazo
Mr. Andrew Sakamoto
Ms. Zuzana Modrovic
306-535 Thurlow Street
Vancouver, BC V6E 3L2
Tel: 604-255-3099
Direct: 250-418-3090
Fax: 604-255-0772
Email: zuzana@tenants.bc.ca
Email: emma@tenants.bc.ca
Email: andrew@tenants.bc.ca

Terrace and District Community Services Society
Ms. Michelle LaLonde
200 3219 Eby Street
Terrace, BC V8G 4R3
Tel: 250-635-3178
Email: michellelalonde@tdcss.ca

Together Against Poverty Society
Ms. Jen Mathews
Ms. Thea McDonagh
302 - 895 Fort Street
Victoria, BC V8W 1H7
Tel: 250-361-3521
Fax: 250-361-3541
Email: incomeadvocate@tapsbc.ca
Email: tadvocate@tapsbc.ca

Upper Skeena Counselling & Legal Assistance Society
Mr. David Dickinson
4305 Field Street
PO Box 130
Hazelton, BC V0J 1Y0
Tel: 250-842-5218
Fax: 250-842-5987
Email: david@usclas.com

Wachiay Friendship Centre
Ms. Karla Brunette
1625B McPhee Avenue
Courtney, BC V9N 5N4
Tel: 250-338-7793 ext. 229
Fax: 250-871-7709
Email: karla@wachiay.com

West Coast Domestic Workers' Association
Ms. Natalie Drolet, Executive Director
Ms. Adriana Smetzer
302-119 West Pender Street
Vancouver, BC V6B 1S5
Tel: 604.669.6452
Fax: 604-669-6456
Email: natalie@wcdwa.ca
Email: adriana@wcdwa.ca

People's Law School
Work out life's legal problems

People's Law School Update

Legal Aid Bootcamp | May 2017

Kathryn McCart, Education & Referrals Coordinator

Who we are

- A non-profit serving British Columbia
- We help people “work out life’s legal problems”
- We provide plain language information and education on the law
- We help people help themselves



2017: new focus, new brand, new website

- Increased focus on **everyday legal problems**
- New brand emphasizes **diversity, approachability, taking action**
- New website (coming in June 2017) highlights **practical steps** people can take and tools they can use

People's Law School

Work out life's legal problems

Publications updated in 2016/17

- *A Death in Your Family*
- *Essentials of Consumer Law*
- *Scams to Avoid*
- All feature expanded content, more tips and user stories, and a fresh new look
- All are available as wikibooks, EPUBs (for e-readers & tablets), and printed booklets for ordering



Bringing learning to communities in 2016/17

- New curriculum for our Justice Theatre program
- Justice Theatre community forums on restorative justice in communities across western Canada
- Classes on everyday legal problems hosted by community partners across BC - public libraries, seniors agencies, etc.

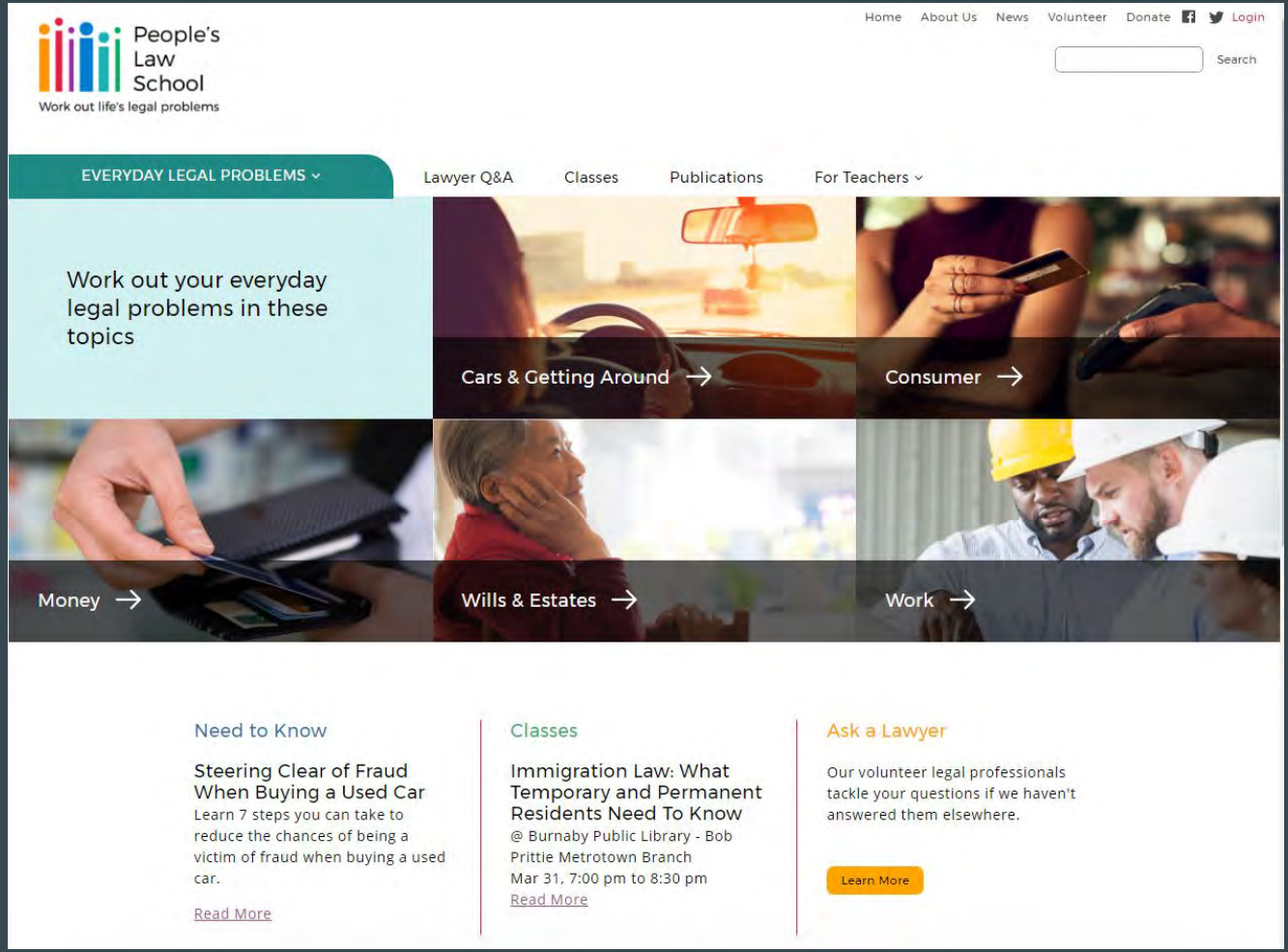




June 2017: New website

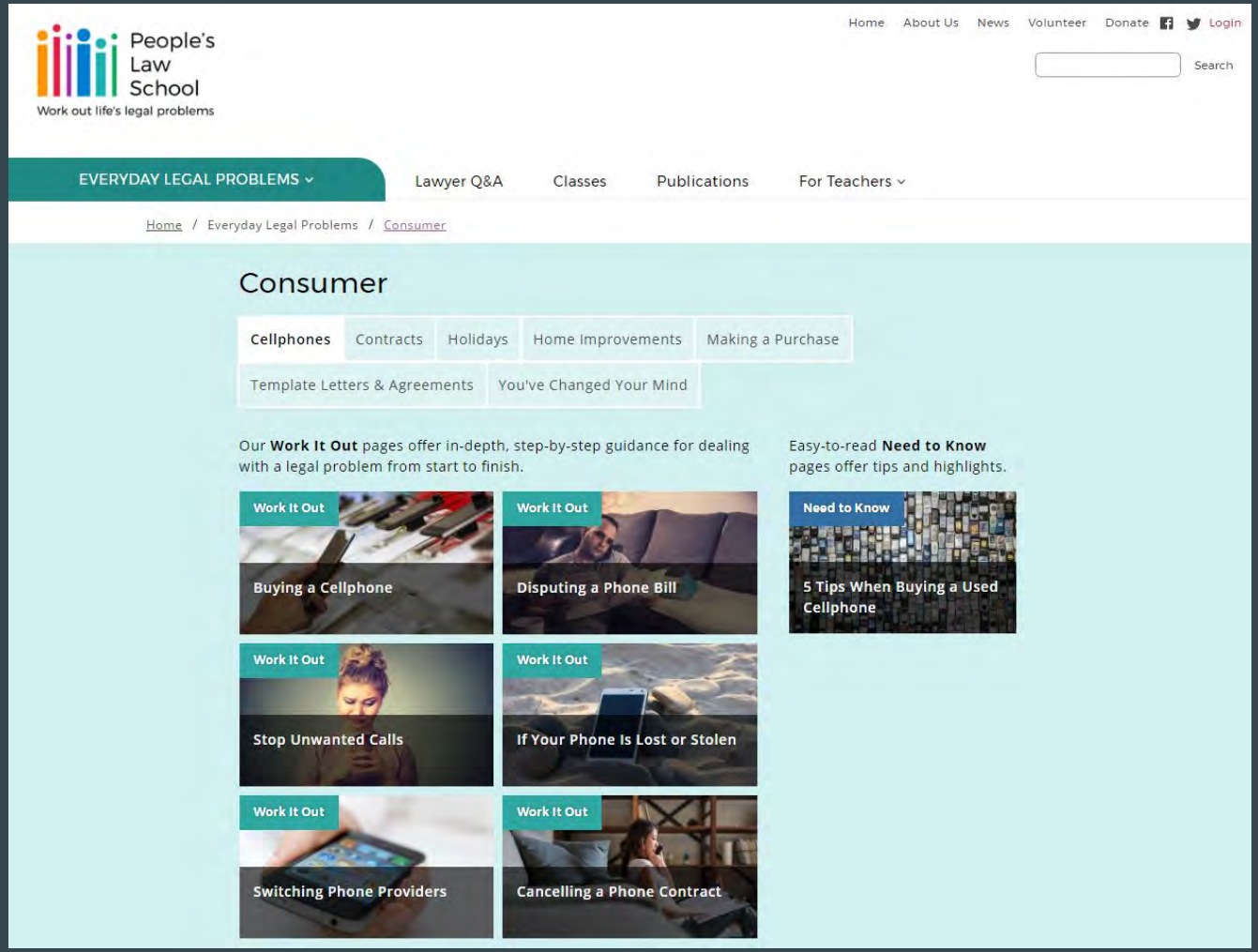
Highlights everyday legal problems

Focuses on “gap areas”: consumer, debt, accidents & injuries



Practical

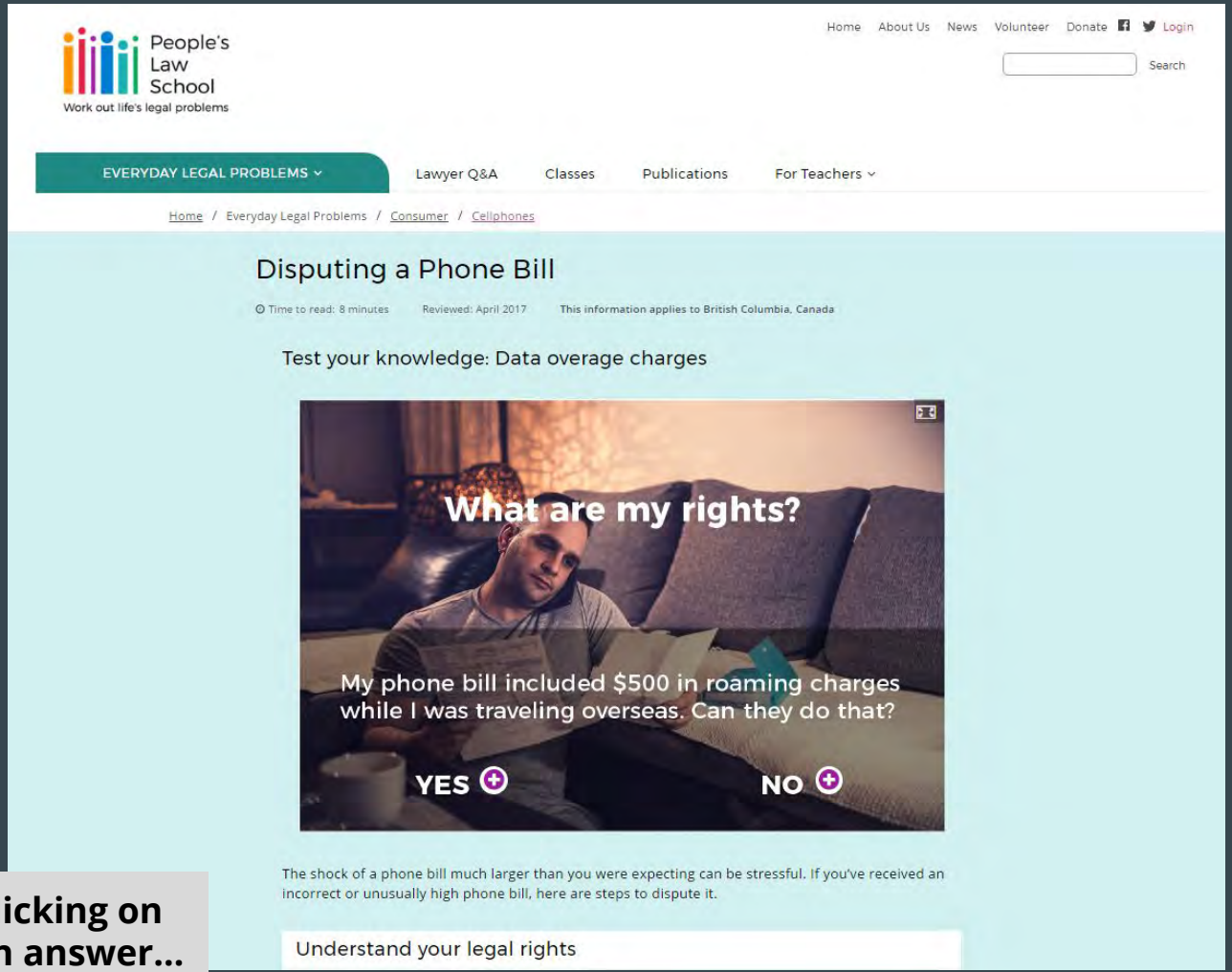
"Work It Out" content features step-by-step guidance, templates, and tips on everyday legal problems



Engaging

Interactivity engages users in learning

User stories make the content more approachable

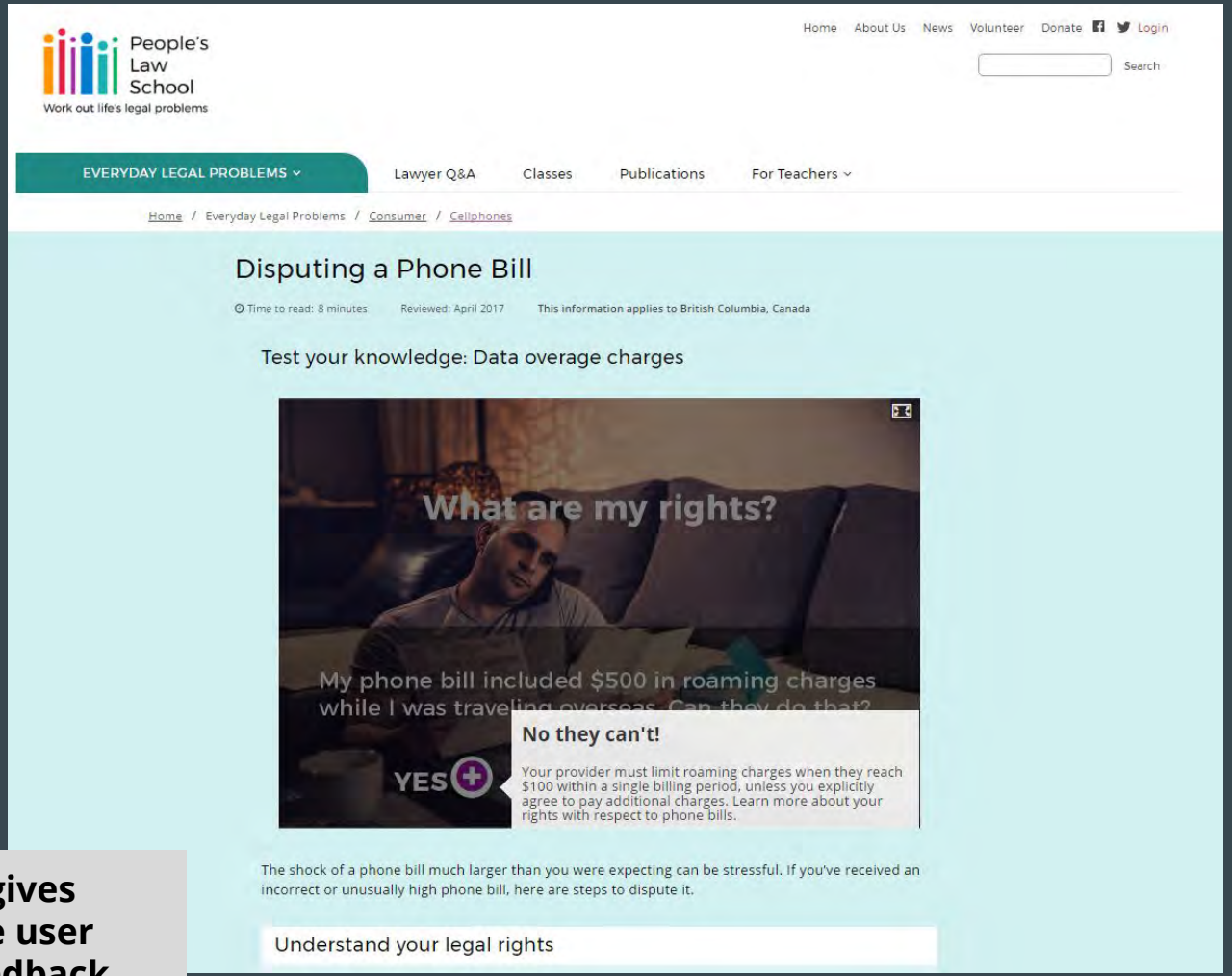


Clicking on an answer...

Engaging

Interactivity engages users in learning

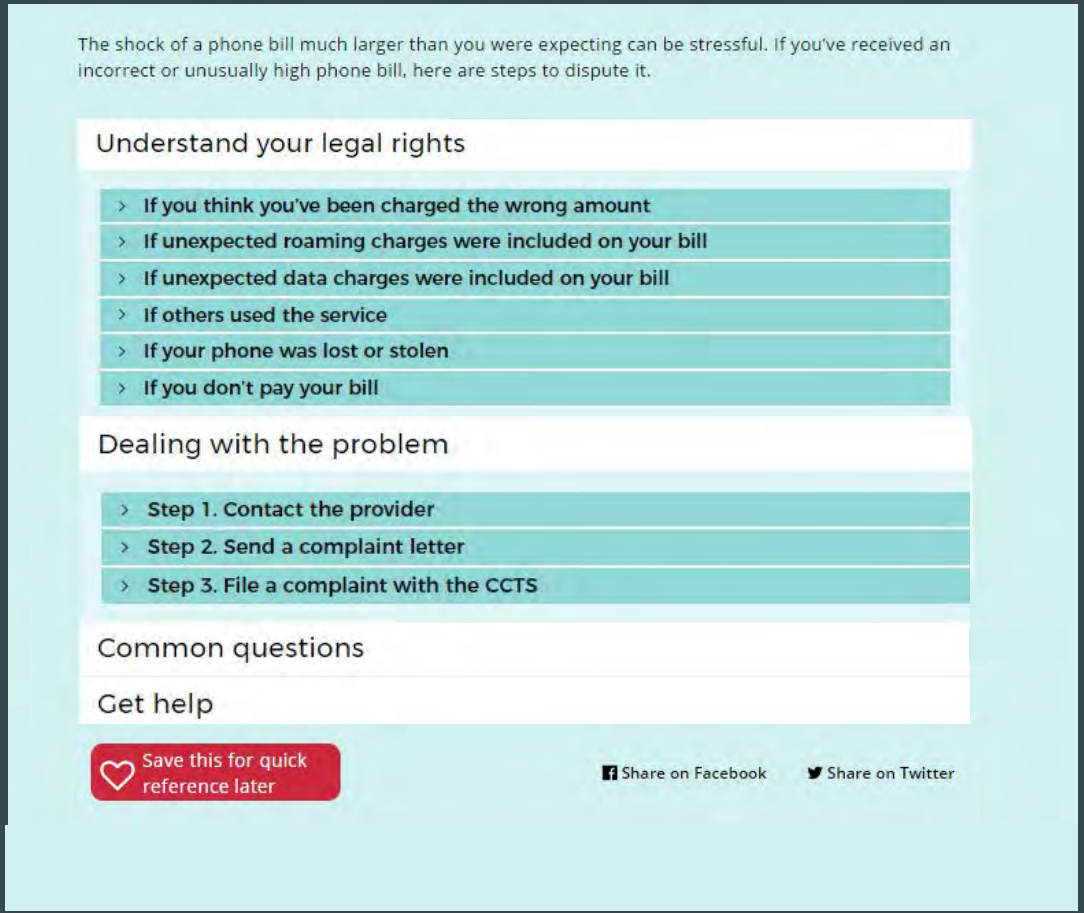
User stories make the content more approachable



... gives the user feedback

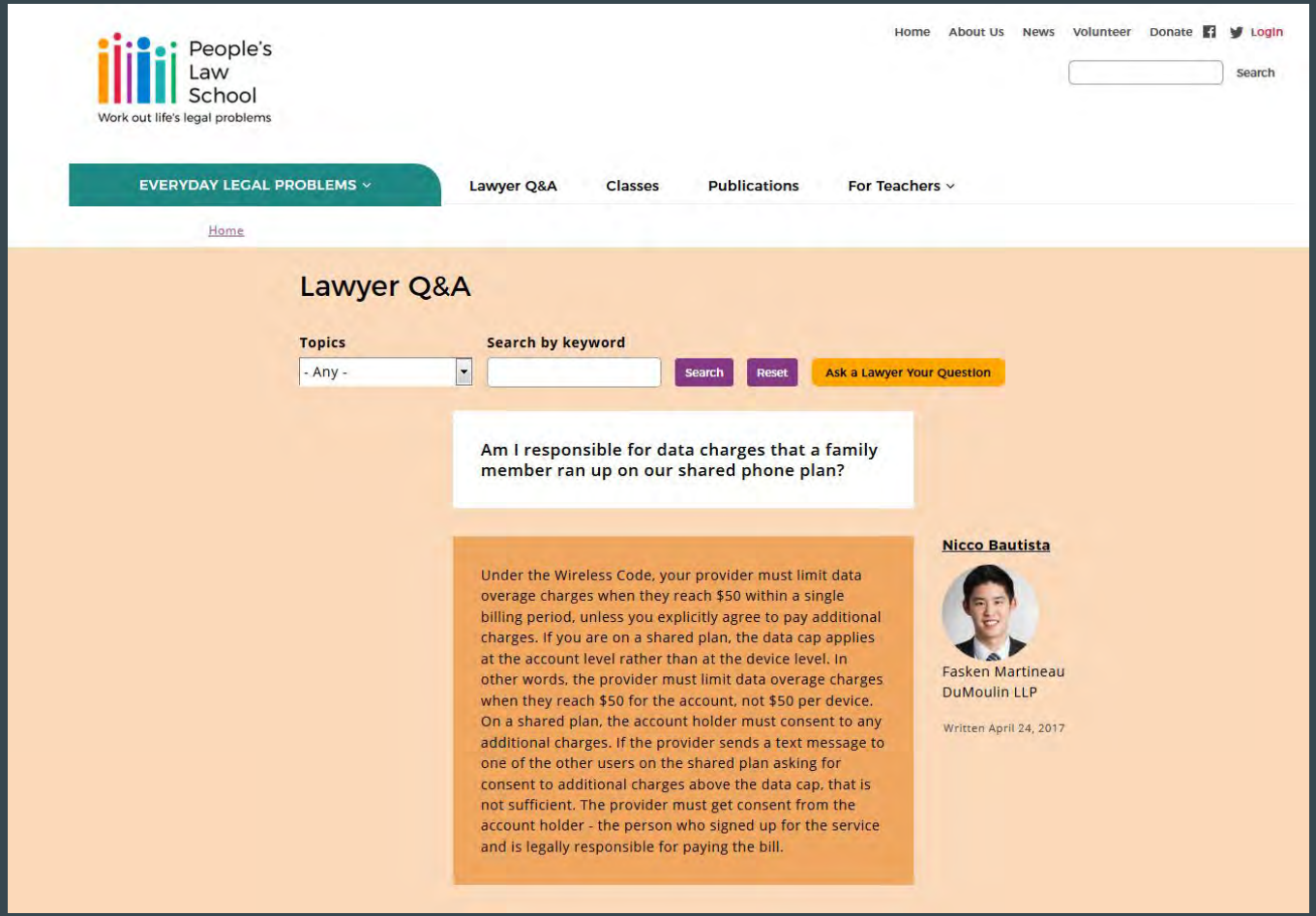
Understandable

Accordion-style presentation allows user to expand content (without overwhelming them)



Authoritative

Lawyer Q&A connects people with authoritative information - answers come are written by lawyers directly

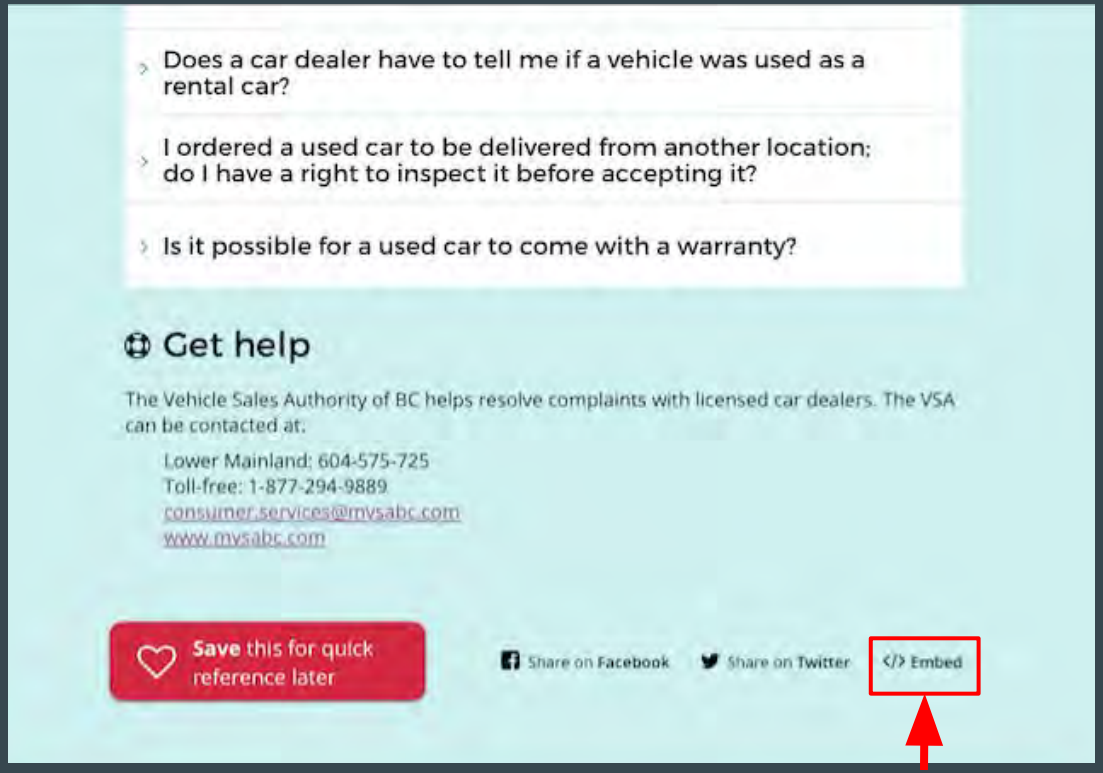


Embedded content

A next generation way to make content more findable - allow others to embed it on their own websites

People can find reliable information on websites that they use and trust

(Embedded content is coming in fall 2017)



New website coming June 2017 at
www.peopleslawschool.ca

People's Law School
Work out life's legal problems

Practical
Engaging
Understandable
Authoritative
Shareable

People's Law School
Work out life's legal problems

People's Law School Update

Legal Aid Bootcamp | May 2017

Kathryn McCart, Education & Referrals Coordinator

COURTHOUSE LIBRARIES | BC

Public Access to Legal Information

Clicklaw

Law 10 YEARS LawMatters
At your local public library

Clicklaw Wikibooks

Clicklaw

- A website that aggregates plain language legal information and services for British Columbians

Clicklaw Wikibooks

- Collaboratively developed, plain language legal publications that are published online in a familiar Wiki format

Law LawMatters
At your local public library

- Helps public libraries provide current legal information by providing assistance with developing legal collections

COURTHOUSE LIBRARIES | BC

- A library with 29 branches to help clients find and use legal information

Courthouse Libraries BC provides four (4) programs that help the public

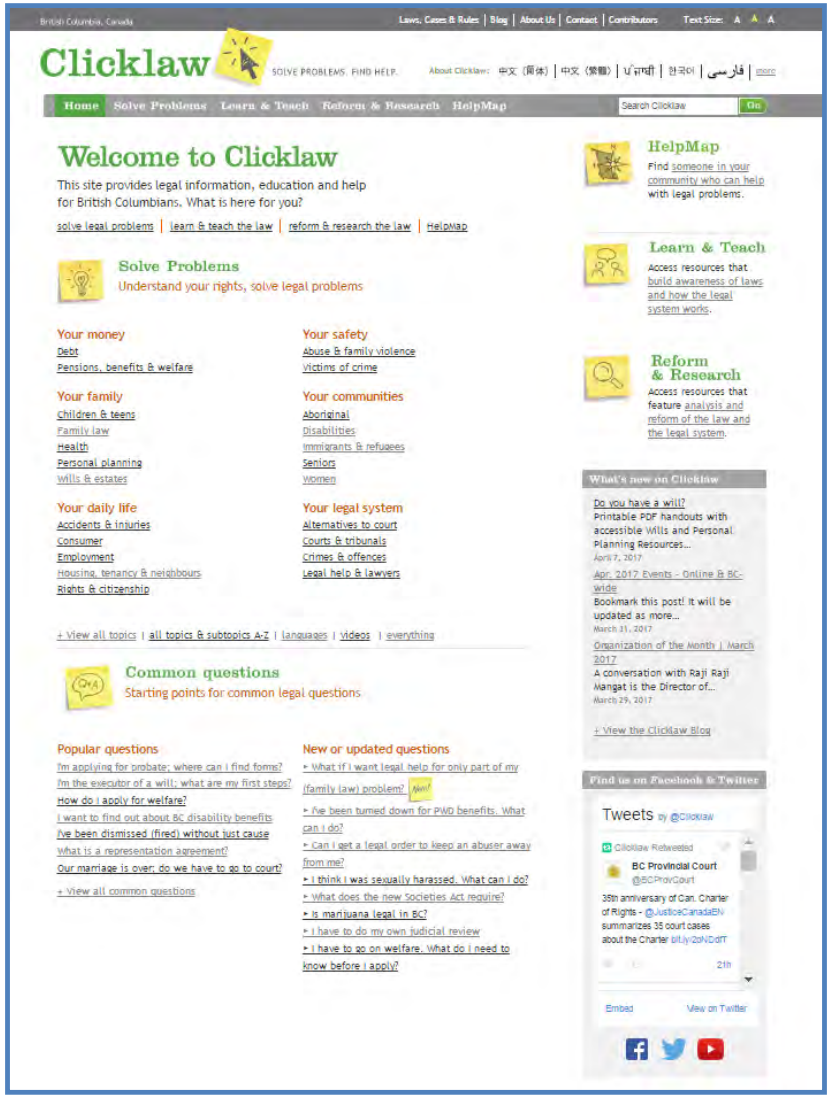
Clicklaw

An Introduction

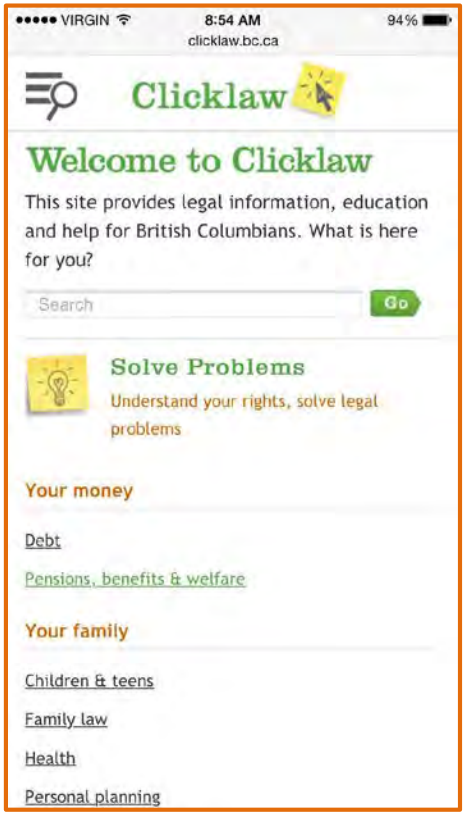


Clicklaw brings together information from 30+ organizations in BC

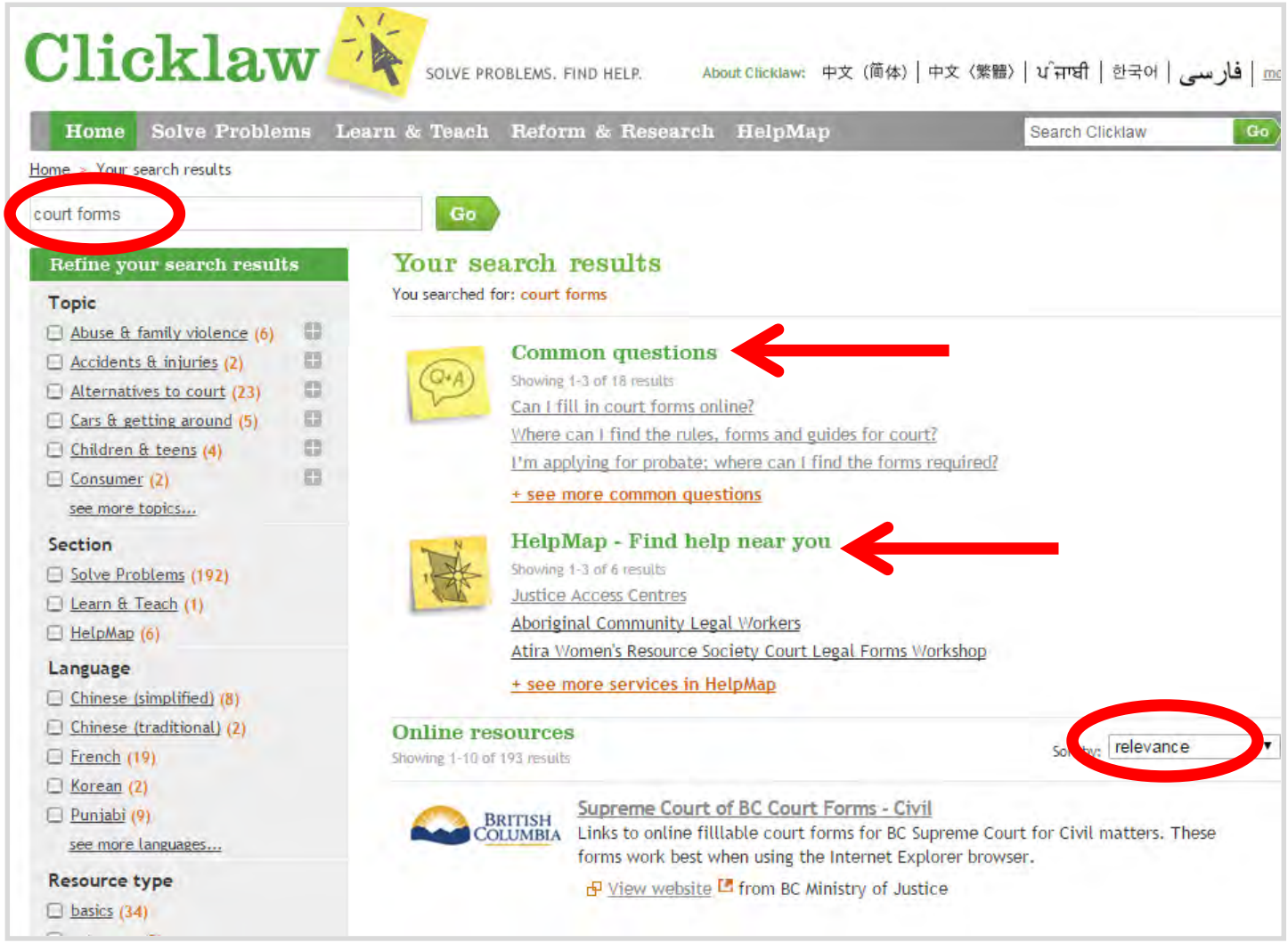
Desktop View



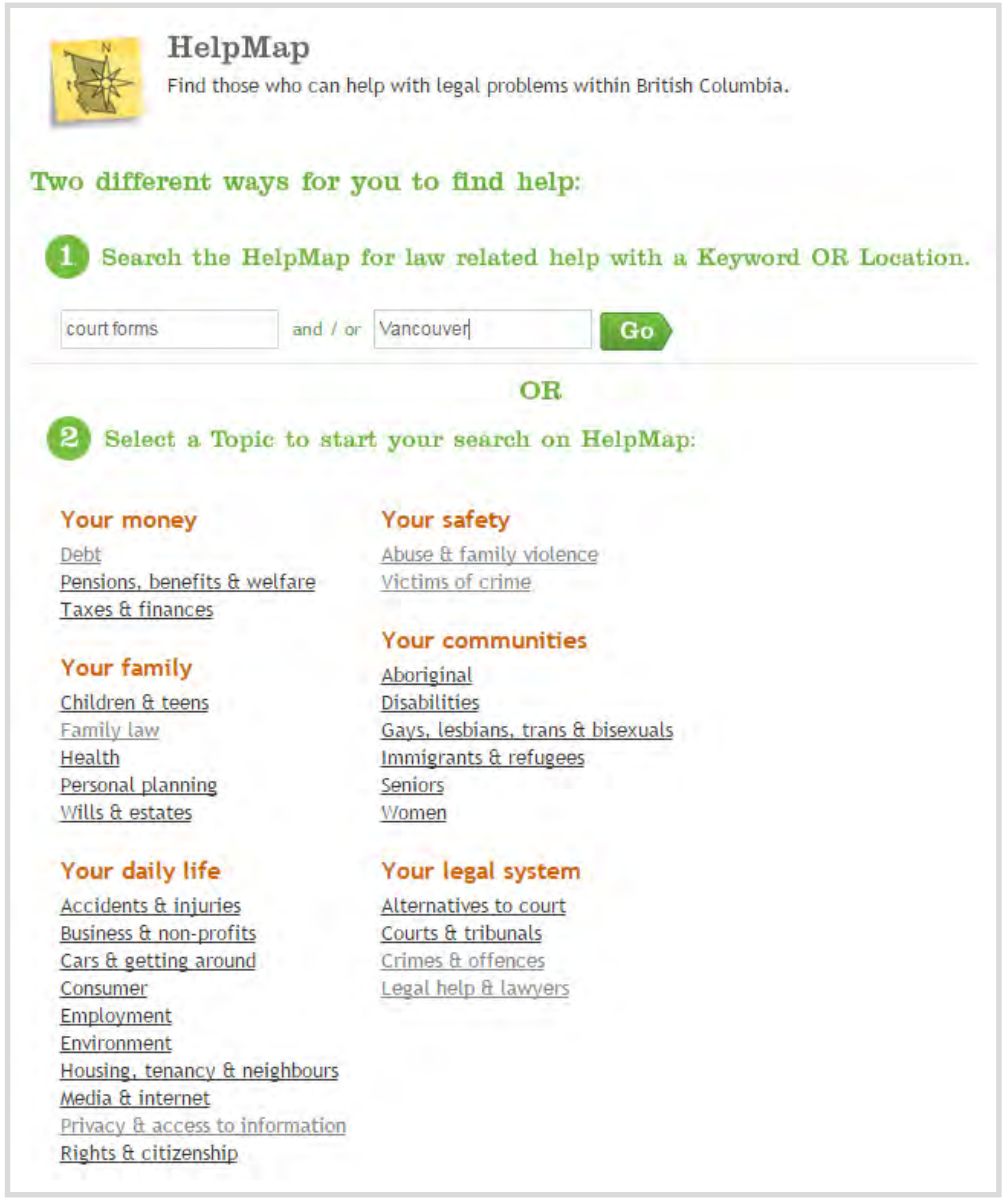
Mobile view



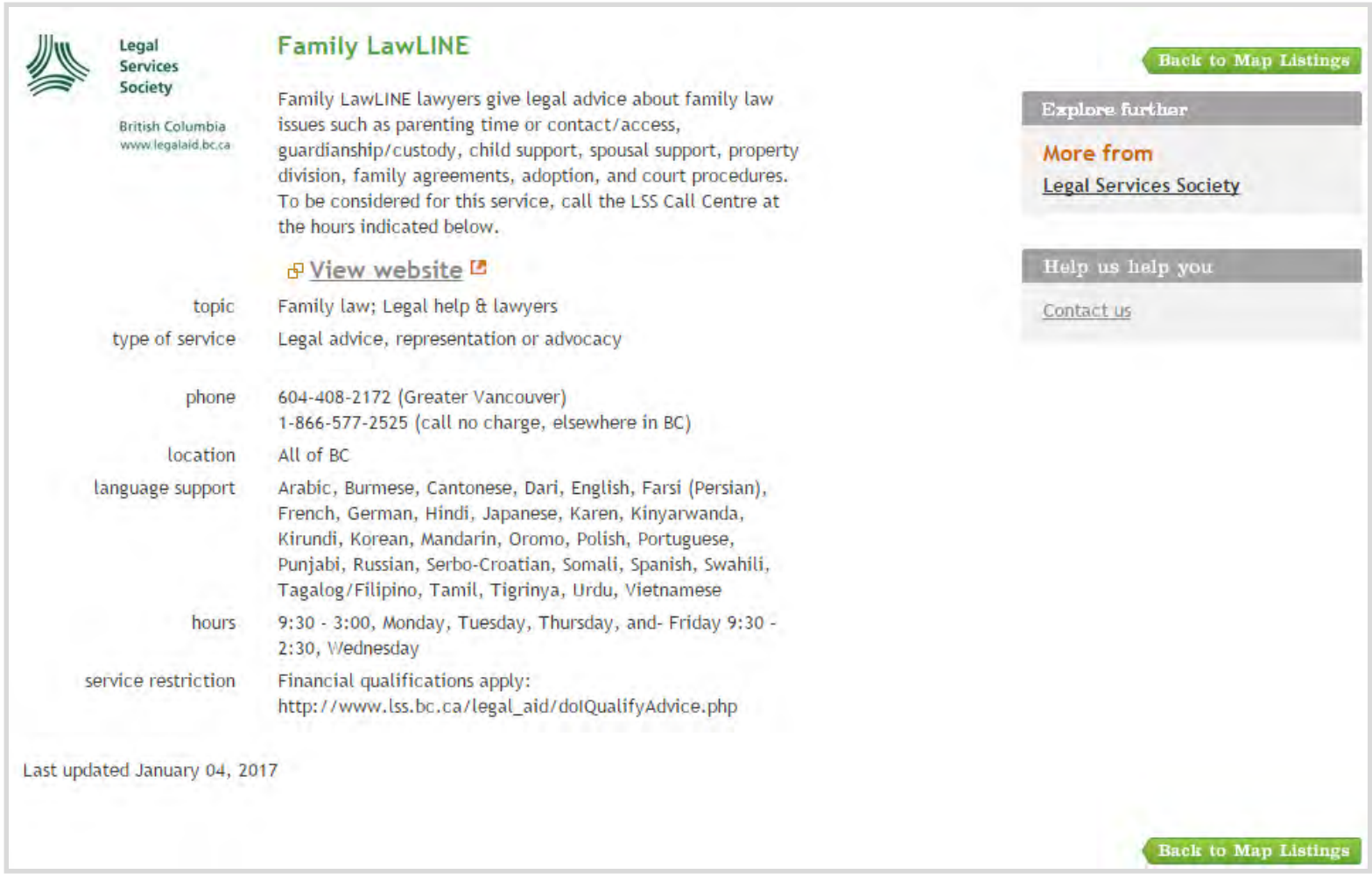
Browse on your desktop, tablet or mobile phone



Search results for “court forms”



clicklaw.bc.ca/helpmap: Search by topic and/or location



HelpMap listings include helplines, clinics, court form workshops, and more



Refine your search results



Languages

Legal resources and services in languages other than English

On Clicklaw, you can find legal resources in the Solve Problems section and services on the HelpMap in languages other than English.

Arabic	Resources in عربی	Services in عربی
Burmese	Resources in Burmese	Services in Burmese
Chinese	Resources in 中文（简体） and 中文（繁體）	Services in Cantonese and Mandarin
Dari	Resources in دری	Services in دری
Farsi (Persian)	Resources in فارسی	Services in فارسی
French	Resources in Français	Services in Français
German		Services in Deutsch
Hindi	Resources in हिन्दी	Services in हिन्दी
Japanese	Resources in 日本語	Services in 日本語
Karen	Resources in Karen	Services in Karen
Kinyarwanda	Resources in Kinyarwanda	Services in Kinyarwanda
Kirundi	Resources in Kirundi	Services in Kirundi
Korean	Resources in 한국어	Services in 한국어
Kurdish	Resources in کوردی	
Oromo	Resources in Oromo	Services in Oromo
Polish	Resources in język polski	Services in język polski
Portuguese	Resources in português	Services in português
Punjabi	Resources in ਪੰਜਾਬੀ	Services in ਪੰਜਾਬੀ
Russian	Resources in русский язык	Services in русский язык
Serbo-Croatian		Services in Serbo-Croatian
Somali	Resources in Soomaali	Services in Soomaali
Spanish	Resources in español	Services in español

Find resources & services in 28+ languages

Clicklaw Blog

HOME #LEGAL AUTHORS GUEST COLUMNS SUBSCRIBE

Stay informed with what's new—legal info, events and help in B.C.

Apr. 2017 Events – Online & BC-wide

MARCH 31, 2017 | AUDREY JUN

Bookmark this post! It will be updated as more events are announced. You can also get frequent updates via our Twitter. Have a suggestion? Email us.

- **Saturday, April 1** (2:00-5:00pm): West Coast LEAF presents **Why Your Vote Counts: Women's Equality and the BC Provincial Election** at SFU Woodwards, David Mowafaghian World Arts Centre at 149 West Hastings St, **Vancouver**



  A community-driven event about how we can achieve women's equality in BC. Join the Single Mothers' Alliance BC for an all-candidates debate and keynote speakers on women's rights in BC. Ahead of the May 9 provincial general election, learn about BC political party platforms on gender equality and discuss the issues that matter to you in community roundtables. The event will end with a networking reception for all attendees.

- **April 2-10** (Various Dates): Pacific Legal Education Outreach Society (PLEO) presents **Societies Act Transition Workshops**, in In **Kaslo, Nanaimo** and **Revelstoke**.

LAW FOR NON-PROFITS

  The BC Society Act, which provides the rules for governance and incorporation of non-profits, officially proclaimed important changes on November 28, 2016. There will be a two year transition period by which time all societies in BC will have to make the switch to the new Act. This workshop will provide the information on the bylaw and policy changes necessary for your organization to effectively make the transition when the new Act is proclaimed.

  Tickets are $50, or free for workshops in the Kootenays (Kaslo & Revelstoke) due to the funding and support of Columbia Basin Trust.

Clicklaw

Search ...

Stay Updated

Subscribe via email:

SUBSCRIBE

Recent Posts

Do you have a will?

Apr. 2017 Events – Online & BC-wide

Organization of the Month | March 2017

Twitter Town Hall this April 6th

Changes to Small Claims on June 1st

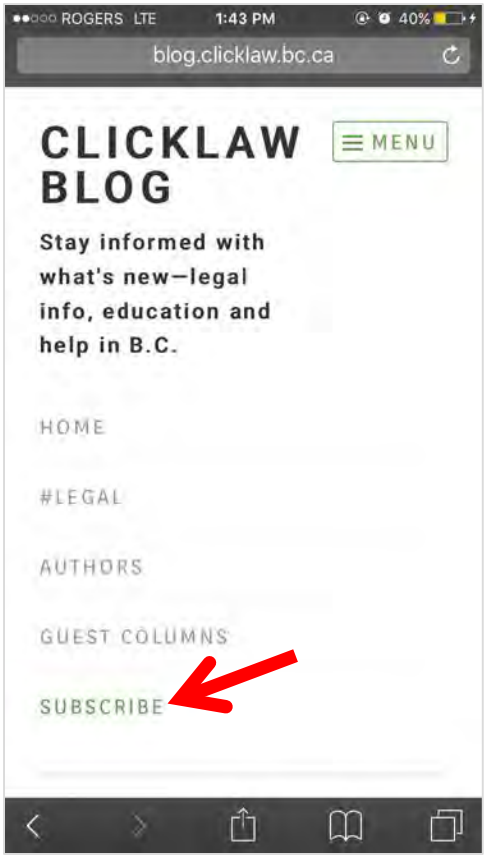
Recent Comments

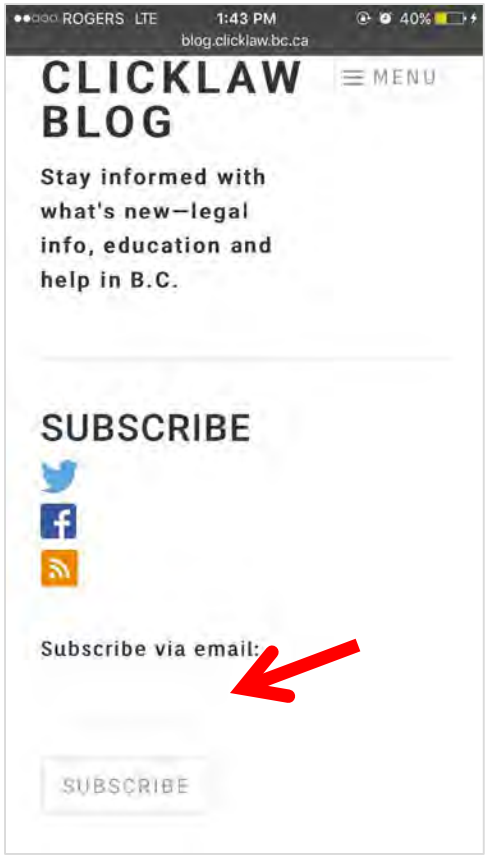
Laurie on Help for people with family law issues who have to represent themselves in BC Supreme Court

Sarah - Family Law on Help for people with family law issues who have to represent themselves in BC Supreme Court

Stay informed with what's new: blog.clicklaw.bc.ca



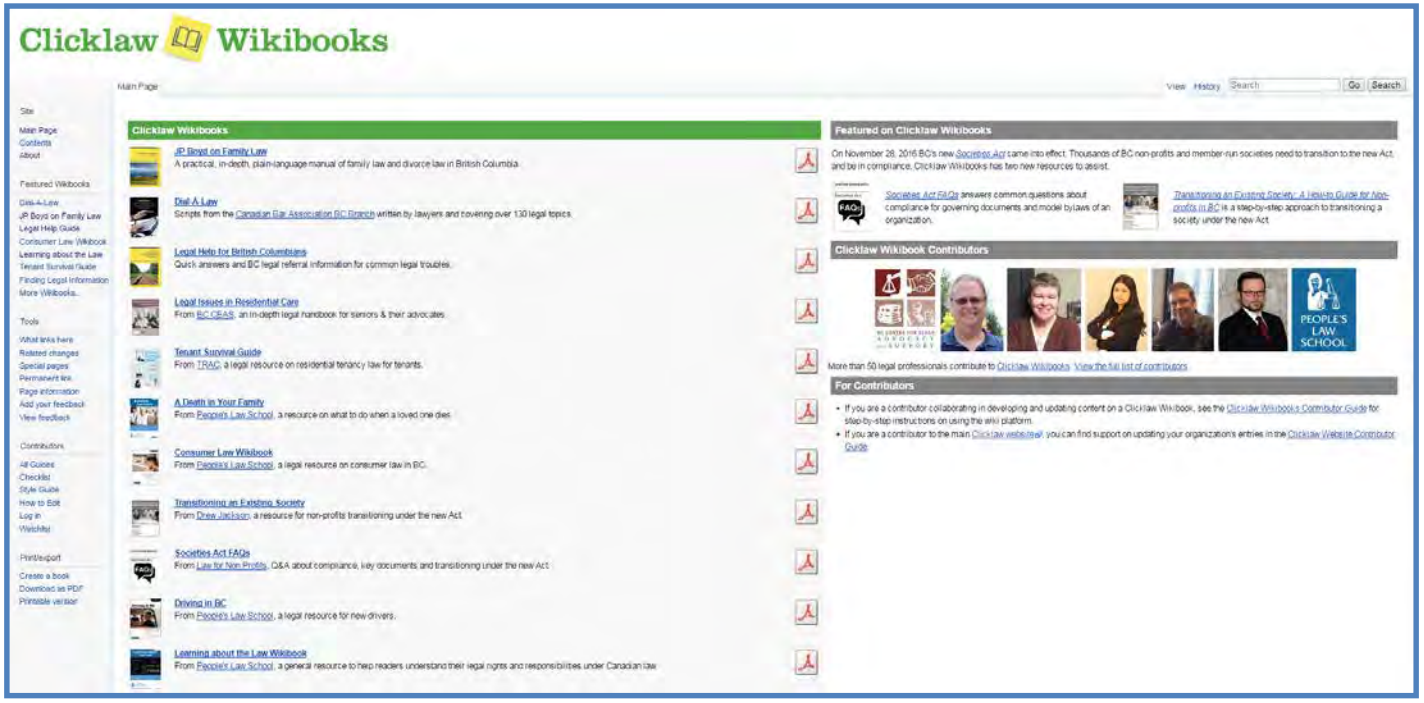




Subscribe at blog.clicklaw.bc.ca

Clicklaw Wikibooks

Desktop View



Mobile view



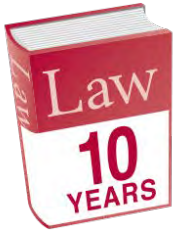
wiki.clicklaw.bc.ca is contributed to by 50+ BC lawyers & legal professionals

Clicklaw Wikibooks





wiki.clicklaw.bc.ca continually adds new titles



LawMatters

At your local public library

Connecting with your Local Library

LawMatters

At your local public library



works with **72** public libraries representing **250** locations across the province

www.bclawmatters.ca

LawMatters

At your local public library

Grants & Collection Support

We provide a guide of titles from trusted sources that are annually reviewed for currency and accuracy.

Skills Development

We offer training to public librarians to improve their confidence helping the public with legal information questions.

www.bclawmatters.ca

Public Libraries

- Why Connect with the Public Library?
  - Community Space
  - Access to Resources (Print & Online)
  - Information Professionals
  - Building Connections and Referrals

COURTHOUSE LIBRARIES | BC

Webinars & Training

Training & Partnerships

Rise Women's Legal Centre

PSS Parent Support Services Society of BC

West Coast LEAF

Legal Services Society British Columbia www.legalaid.bc.ca

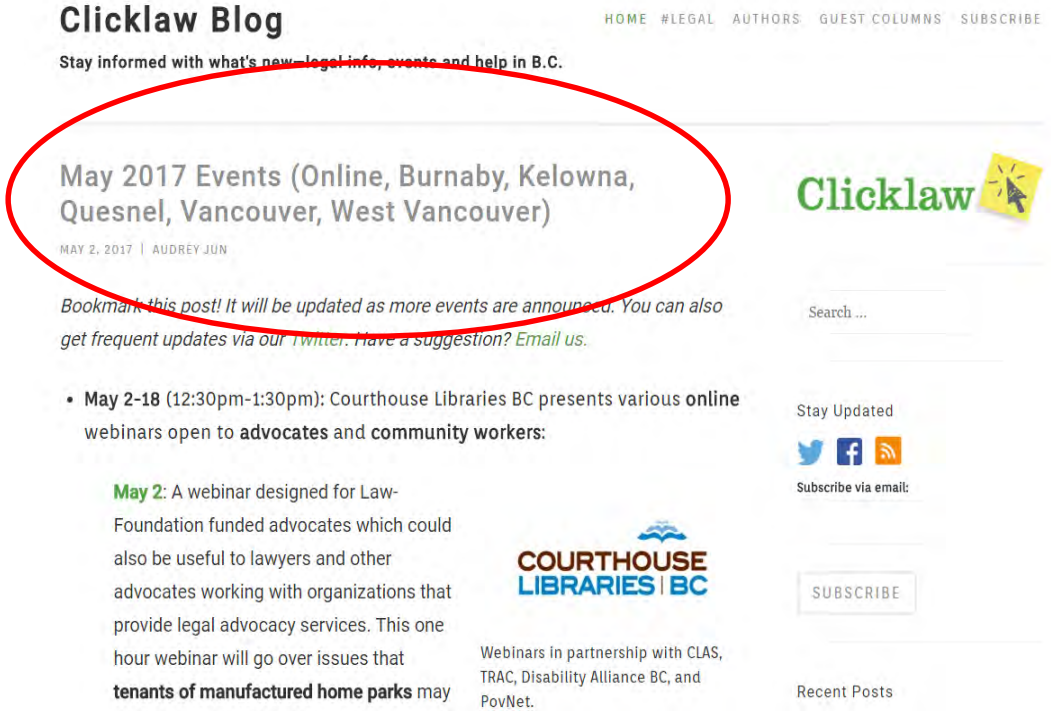
Law for Non-Profits

The Law Foundation of British Columbia

TRAC Tenant Resource & Advisory Centre

PovNet

BWSS Battered Women's Support Services



www.courthouselibrary.ca/training

Thank you to our funders:

THE LAW FOUNDATION OF BRITISH COLUMBIA

THE LAW SOCIETY OF BRITISH COLUMBIA

BRITISH COLUMBIA | Ministry of Justice

Clicklaw

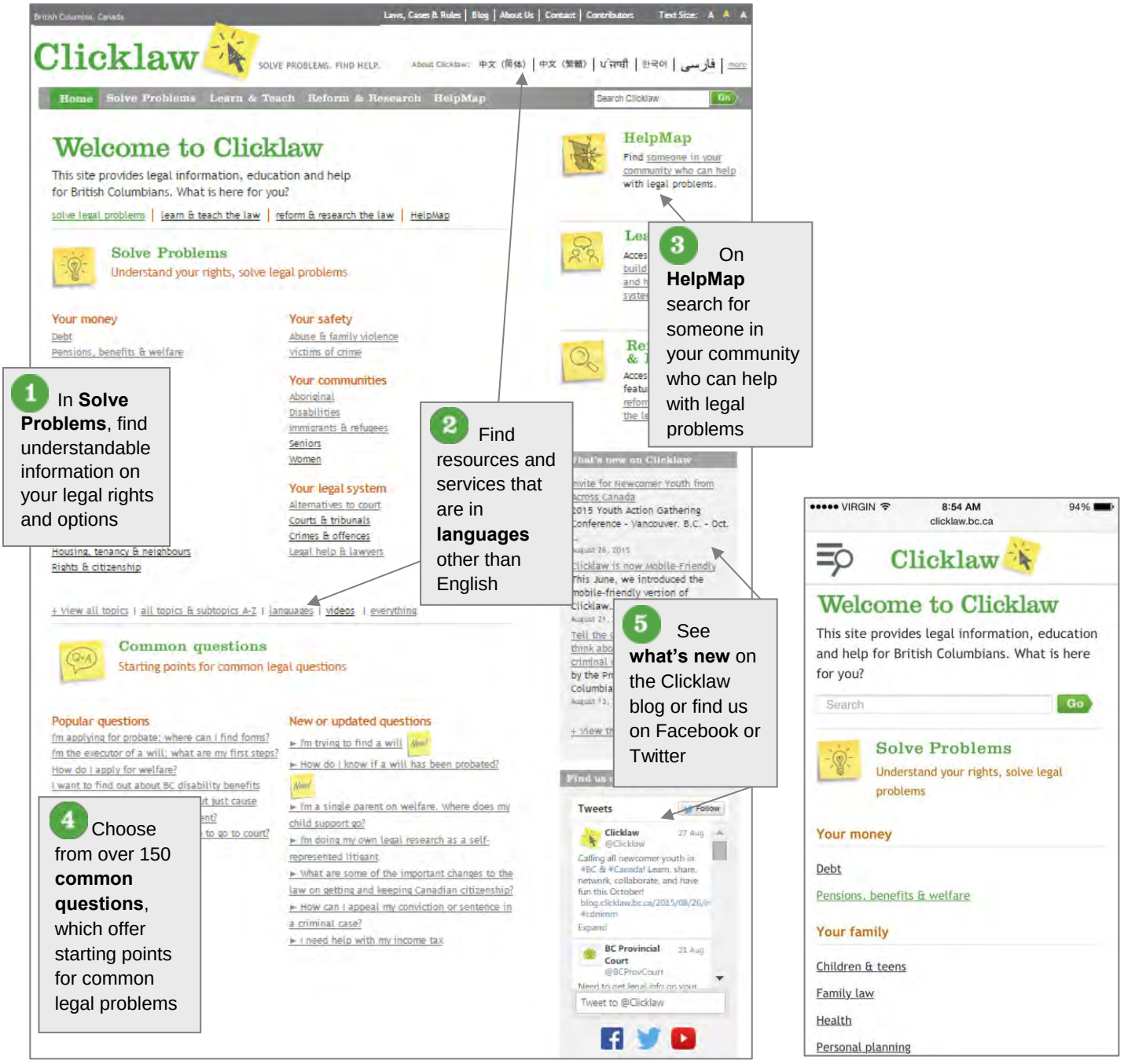
Have a legal issue or problem? Want to learn about your legal rights in BC?

Start at clicklaw.bc.ca for:

(1) a **searchable database** of legal education and information resources;

(2) a HelpMap to find different types of **legal help services** near you; and

(3) **Common Questions** that direct you to good starting resources.

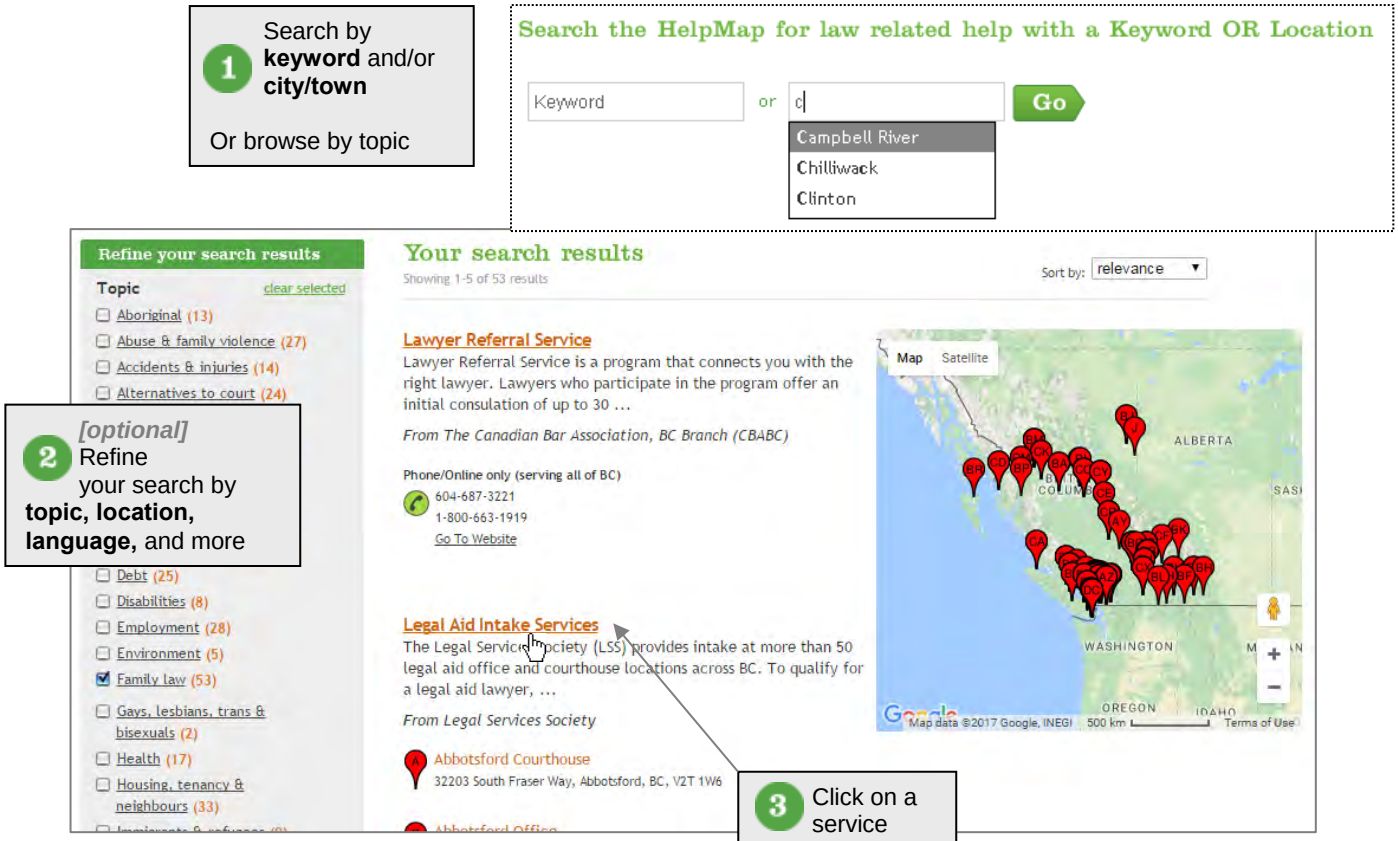


Find legal help.

Use the **Clicklaw HelpMap** to find people near you who can help. Includes **free and subsidized** services.

For example: legal advice clinics, court form clinics, Justice Access Centres, Family Justice Centres, information programs, counselling, government services.





Clicklaw Wikibooks: wiki.clicklaw.bc.ca →

A **wiki** of legal information for people in BC.

- Clicklaw Wikibooks can be read online, downloaded as a PDF or eBook, or ordered in print version.
- **Learn about your rights** as a renter, paying taxes in BC, writing a will, and much more.
- The Wikibooks are contributed to by over 50 lawyers and other legal professionals.



Clicklaw

Get Help in the Community

Get information.
clicklaw.bc.ca

Find plain language legal resources provided by trusted contributor organizations in BC – browse with ease on your mobile phone, tablet, or computer.

Find commonly asked questions on: family law, wills, employment, housing, seniors issues, and more.

Talk to someone.
clicklaw.bc.ca/helpmap

Find free, nominal-fee or sliding scale community help near you: filling out court forms (Search for: "court forms"), legal advice clinics, mediation programs, help lines, referral services, counselling, government services, etc.

Search by **area of law** and/or your **city/town**.
Updated monthly.

More information.
wiki.clicklaw.bc.ca

Plain language "Wikipedia-style" legal info in BC.

One popular Wikibook is **JP Boyd on Family Law**, a practical manual of BC family law. Includes a "How Do I?" section with help on common processes & procedures, and court forms with completed examples.

Need more help?
courthouselibrary.ca

Talk to a librarian at a Courthouse Library location near you, in-person, over the phone (1.800.665.2570) or by email.

They can help you get started in the right direction, with finding: information, guides for court forms, precedents, and more.

WHAT IS LAWMATTERS?

LawMatters works with public libraries to enhance public access to legal information in all communities throughout **British Columbia**

LawMatters helps support libraries through:

- **Grants**
- **Collection Guidance**
- **Skills Development**
- **Partnerships**

We aim to build community capacity through partnerships with libraries and other legal information organizations

A **Courthouse Libraries BC** program

Supported by the **Law Foundation of British Columbia**

Contact LawMatters
604.660.9204

www.bclawmatters.ca
bclawmatter.blogspot.com

Courthouse Libraries BC
librarian@courthouselibrary.ca

LawMatters
At your local public library

QUESTIONS ABOUT THE LAW?

Connect with your local library!

A broad range of current legal resources

Helpful library staff who can help you find legal information

Public access computers with free internet access

10 YEARS OF LAWMATTERS

LawMatters started as a 3 year project in 2007 – a decade later, we are pleased to continue to offer the LawMatters program!

Did you know?

- **BC was the first** jurisdiction in Canada to develop an ongoing program to help public libraries provide legal information to the public
- LawMatters works with other Courthouse Libraries programs **Clicklaw** and **Clicklaw Wikibooks**
- In the past 5 years alone, LawMatters has helped BC libraries add over **5000 legal titles** to their legal collections

LawMatters
At your local public library

COLLECTION DEVELOPMENT

LawMatters provides selection guidelines, a full list of recommended titles, weeding support, and more to public libraries!

LawMatters also distributes grants to public libraries to help purchase legal materials.

Digital meets Print:

Clicklaw Wikibooks

We provide libraries with free, bound, print copies of popular **Clicklaw Wikibooks**! These wikibooks are accessible online and, through the program, in print to public libraries!

We also train on legal information online!

Questions?

Contact LawMatters Program Coordinator:

Shannon McLeod
smcleod@courthouselibrary.ca

TRAINING & PROFESSIONAL DEVELOPMENT

LawMatters offers training sessions to public librarians to improve their confidence helping the public with legal information questions.

- In-Person Workshops
- Webinars
- Community Legal Information Meetings

We train on topics such as:

- Legal reference interview
- The difference between legal information & legal advice
- Finding legal information in print and online

Find us here:

@BCLawMatters

bclawmatter.blogspot.com

www.bclawmatters.ca

COURTHOUSE LIBRARIES | BC

How can we help you?

In Your Community
Where to Find Us

28 Locations across British Columbia

Campbell River	New Westminster	Rossland
Chilliwack	North Vancouver	Salmon Arm
Courtenay	Penticton	Smithers
Cranbrook	Port Alberni	Surrey
Duncan	Port Coquitlam	Terrace
Fort St. John	Powell River	Vancouver
Kamloops	Prince George	Vernon
Kelowna	Prince Rupert	Victoria
Nelson	Quesnel	Williams Lake

- Outreach programs and initiatives including *Clicklaw*, *Clicklaw Wikibooks*, and *LawMatters*

At the Library
Print and Electronic Resources

- Skilled Librarians
  - Can help you navigate legal information
- Secure WiFi for all guests
- Public Access Computers & Work Spaces
- Access to Digital Tools & Databases in the library
  - Quicklaw, WestlawNext and more!
- Printing and copying (Fees apply)

Get Prepared
Training & Information

- Free webinars: courthouselibrary.ca/training
  - Tune-in for a LIVE session
  - View recordings of our previous sessions
- Online guides to legislation and more

Connect with us:

- Contact us by phone or email
  - 604.660.2841 or 1.800.665.2570 (toll free)
  - librarian@courthouselibrary.ca

@theCLBC courthouselibrary.ca

April 2017

Mediate BC



Mediate BC

Is a not-for-profit organization that

leads

promotes

facilitates

mediation and other collaborative dispute resolution processes in BC.

MediateBC
Dispute Resolution & Design

Mediate BC

Committed to providing people with practical, accessible and affordable choices to:

- **Prevent**
- **Manage**
- **Resolve disputes**

MediateBC
Dispute Resolution & Design

Mediate BC provides …

- Training and development programs to develop capacity in dispute resolution services in BC
- Improved access to justice in BC by piloting new processes and reaching out to our communities
- Mediation information, services and programs for individuals, families and organizations

MediateBC
Dispute Resolution & Design

Mediate BC

Our combined service base includes:

- Civil and Family Mediator Rosters
- Child Protection Roster
- Retired Roster
- Med-Arb Roster
- Dispute resolution info and education for public
- Ongoing professional development and support for mediators
- Assistance to people and organizations who need help to create unique dispute prevention and resolution systems or processes

Why resolve disputes ourselves?

"Conflict is not about the surface issue, it's about what is unsaid, untreated and unheard."
Anonymous





Effectiveness

- 76% of family mediations resolve ALL issues*
- 17% resolve some things and help families move toward resolution *

* Survey of Mediate BC Mediators 2015

How much does family mediation cost?

- The average total mediator fee for a completed civil, family or workplace mediation is less than $2,500.*
- Average total legal fees for litigation with up to a two day trial is $18,706 (family).**

- *Survey of Mediate BC Mediators 2015
- **2015 Canadian Lawyer Legal Fees Survey

Mediate BC provides:

Free information and guidance

Mediation is not…

- Counseling / therapy
- Reconciliation
- A substitute for legal advice

- **It is strongly encouraged to obtain Independent Legal Advice at some time before agreement is reached**

Websites

- **Mediate BC** - www.mediatebc.com
- Clicklaw - www.clicklaw.bc.ca
- Justice Education Society - www.justiceeducation.ca
- Lawyer Referral Service - www.cbabc.org
- MyLawBC - www.mylawbc.com
- Families Change - www.familieschange.ca
- Law Society of BC - www.lawsociety.bc.ca
- Legal Services Society - www.lss.bc.ca
- Govt of BC - www2.gov.bc.ca
- Collaborative Roster Society - ww.bccollaborativerostersociety.com

Contact

Mediate BC

www.mediatebc.com

1-877-656-1300

604-684-1300

MediateBC
Dispute Resolution & Design

Pro Bono Clinic Model



ACCESS PRO BONO / INCREASING ACCESS TO JUSTICE IN BC

Agenda

- Access Pro Bono Society of BC
- Services + Clinic Process
- Clinic Model: Evidence-based Practice
  - Clinical Expertise
  - Client Expectation
  - Research

Access Pro Bono Society of BC

- **Mission:** *To promote access to justice in British Columbia by providing and fostering quality pro bono legal services for people and non-profit organizations of limited means.*

- All services are provided free of charge by our volunteer lawyers with facilities provided by social agencies committed to providing help to the needy.

Services

- 100+ Summary Advice Clinics
  - Telephone & Videophone (Skype) Clinics
  - Consumer Protection Clinic
  - Paralegal Clinic
  - Family Barristers Clinic
- Roster Programs
  - Barristers, Family, Wills & Estates Programs
  - Refugee Program
    - Islamophobia Legal Assistance Hotline
  - Solicitors' Program
- Civil Chambers Duty Counsel Program
- Wills Clinic
- Tribunal Programs
  - Residential Tenancy Program
  - Employment Standards Program
  - Mental Health Hotline



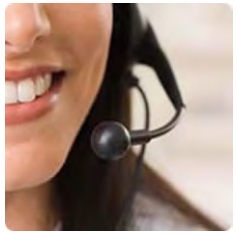
Summary Advice Clinics

- 604.878.7400 / help@accessprobono.ca
- Telephone & Videophone (Skype) Clinics
  - * Courthouse telephone clinic
- * Consumer Protection Clinic
  - Vancouver Justice Access Centre
  - Richmond through Canadian Chinese Consumer Association
- * Family Barristers Clinic
- Paralegal Clinic
  - The Paralegal Program is staffed by senior paralegals from several Vancouver law firms, and legal supervision is provided by APB volunteer lawyers. The Program operates on Wednesday evenings from 5:30pm to 7:30pm. Appointments are necessary and can be made by calling the Vancouver Justice Access Centre at 604-660-2084.

Clinic Process



Clients



Trained Client Call Volunteers

- Book appointments
- Provide legal info.

Client Hotline / Email



Lawyers

100+ Legal Advice Clinics throughout BC
w/ assistance from trained Clinic Assistants







Roster Programs

- Barristers, Family, Wills & Estates Programs
- Refugee Program
  - Islamophobia Legal Assistance Hotline at 604-343-3828
- Solicitors' Program
  - to charitable and non-profit community organizations of limited means.

Civil Chambers Duty Counsel Program

- civil (non-family) chambers litigation matters before the Supreme Court and the Court of Appeal in Vancouver.
- The Civil Chambers Program operates twice a week at 800 Smithe Street in Vancouver.
- Individuals (not organizations or companies) may call 604-603-5797 or email psamarakoone@accessprobono.ca to determine their eligibility and to book an appointment with a Chambers Lawyer.

Wills Clinic

- APB's weekly Wills Clinic is held each Wednesday from 11:30am to 1:30pm at the Justice Access Centre at the Vancouver Courthouse at 800 Hornby Street.

- Trained lawyers and articling students draft and execute simple Wills and Representation Agreements for low-income seniors (ages 55+) and people with terminal illnesses by appointment only. *Note: Asset test is applicable to Wills Clinic clients.

- To book a Wills Clinic appointment, please call 604-424-9600 or email willsclinic@accessprobono.ca. Please also read the following documents before attending your interview.

Tribunal Programs

- Residential Tenancy Program
  - to represent low- and modest-income individuals appearing before the Residential Tenancy Branch.
  - tenancylaw@accessprobono.ca
  - 604.482.3195 ext. 1500
- Employment Standards Program
  - esp@accessprobono.ca
  - 604.482.3195 ext. 1500
- Mental Health Hotline 604.482.3195 ext.1500

CLINIC MODEL

- Evidence-based Practice (EBP)



Future clinic model – Client Expectation

- Client Language Barrier

	2014
Above	11%
Equivalent	18%
Below	14%
English as First Language	56%

- Solution: Collaboration with translation programs from BC universities to help *pro bono* clients with severe linguistic barrier

Future clinic model – Client Expectation

- Barriers to A2J

	Clients ('14)	Fam ('16)
Legal Service	24%	37%
Legal Information	36%	26%
Health	19%	11%
Discriminatory Treatments	19%	11%
Governmental bureaucracy	17%	7%
Language Proficiency	16%	10%
Job Market	8%	1%
Mobility Limit	7%	11%

Future clinic model – Client Expectation

- How Clients Access Legal Information (2016-17 findings)

	Imm ('15)	Fam ('16)
Media	33%	63%
Public Services	60%	51%
Trusted People	50%	33%

The end

Jimmy Yan
Project & Information Officer
Access Pro Bono Society of BC
O. 604.482.3195 ext. 1507
E. jyan@accessprobono.ca
W. www.accessprobono.ca

Thank You!



Legal Services Society

J. Garth Cambrey, Vice Chair – Strata
Civil Resolution Tribunal
May 4, 2017

What is the CRT?

Civil Resolution Tribunal

Part of the justice system

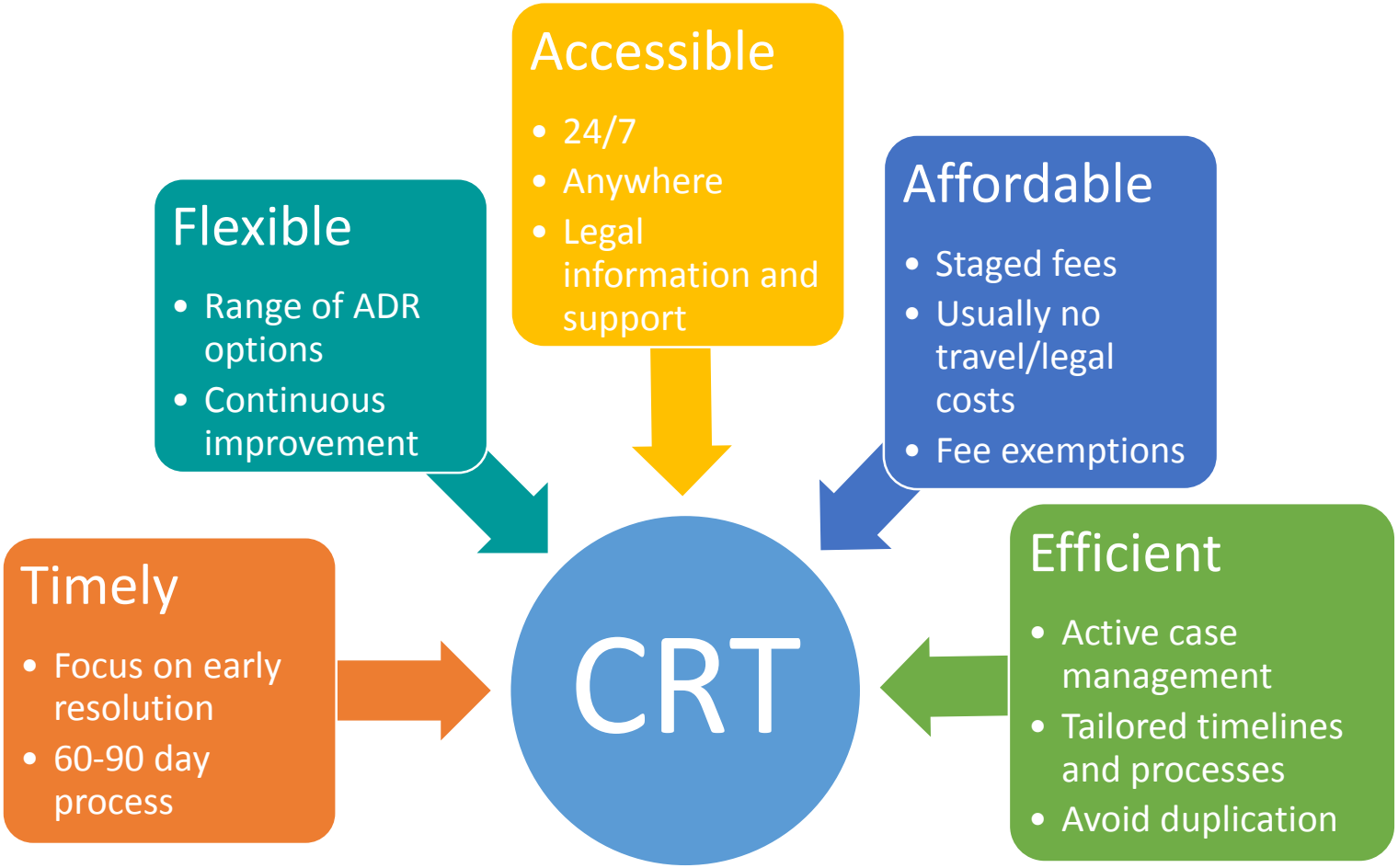
1st online tribunal in Canada





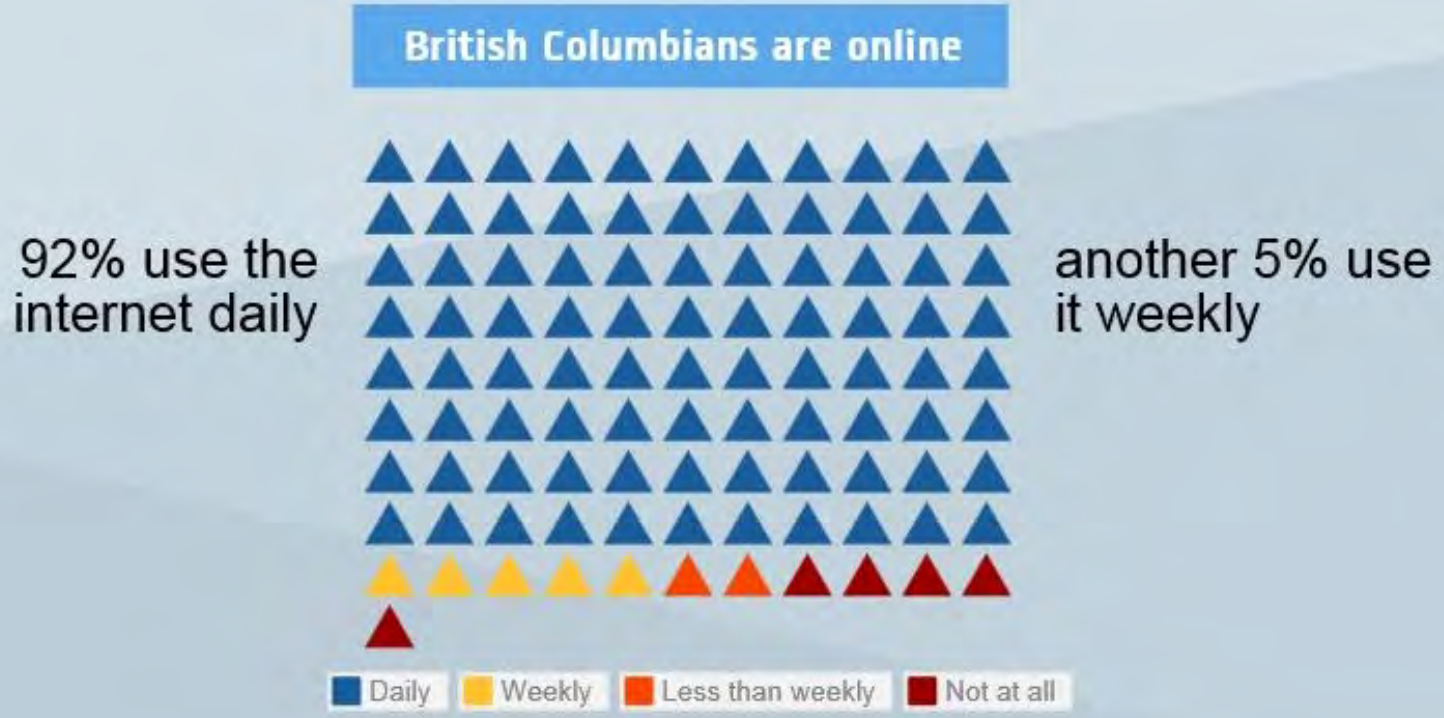
Bringing the justice system to the public

Guiding Principles



Online Civil Justice Services

Survey 2015



Civil Resolution Tribunal

Some benefits of using the CRT

- Low cost
- Faster decision than court proceeding
- Limitation period is paused when initiating notice is issued
- Possible resolution of some or all claims with input by the parties
- Decisions made by individuals with subject matter expertise
- No monetary limit for strata property disputes
- If Strata Corporation, no ¾ vote required to start CRT process

Strata Jurisdiction

Strata Property Claims involving:

- Collection of fees and fines
- unfair actions by the strata council or majority of owners
- interpreting and enforcing:
  - strata bylaws
  - legislation
  - regulations
- problems with general meetings and voting
- issues with repairs or common property

Potential remedies: CRT can order a strata corporation, owner or tenant to:

- Do something
- Stop doing something
- Pay money

Some matters that CRT can't decide: s. 3.6(2) of CRT Act

Small Claims Jurisdiction
(in force June 1, 2017)

Small claims disputes up to $5,000, including:

- debt or damages;
- recovery of personal property;
- personal injury; or
- specific performance of agreements involving personal property or services

Potential remedies:

- Order payment of money;
- Order return of personal property or relief from claim for personal property;
- Order specific performance of agreement;

The tribunal will not decide matters that affect interest in land

Representation

General rule that parties are self-represented

- Strata Corporation must act through its strata council
- Company Organization must act though a director, officer or employee

Representative

- Must seek permission from the CRT
- In the interest of justice and fairness
- Exceptions
  - Minors
  - Adults with impaired mental capacity
  - Parties with insurance coverage
- Request can be made at anytime in the process

Support person (helper)

- No permission of CRT needed. Can be anyone.

CRT Overview

Dispute volumes

Information, problem diagnosis, self-help

Solution Explorer



Party to party negotiation



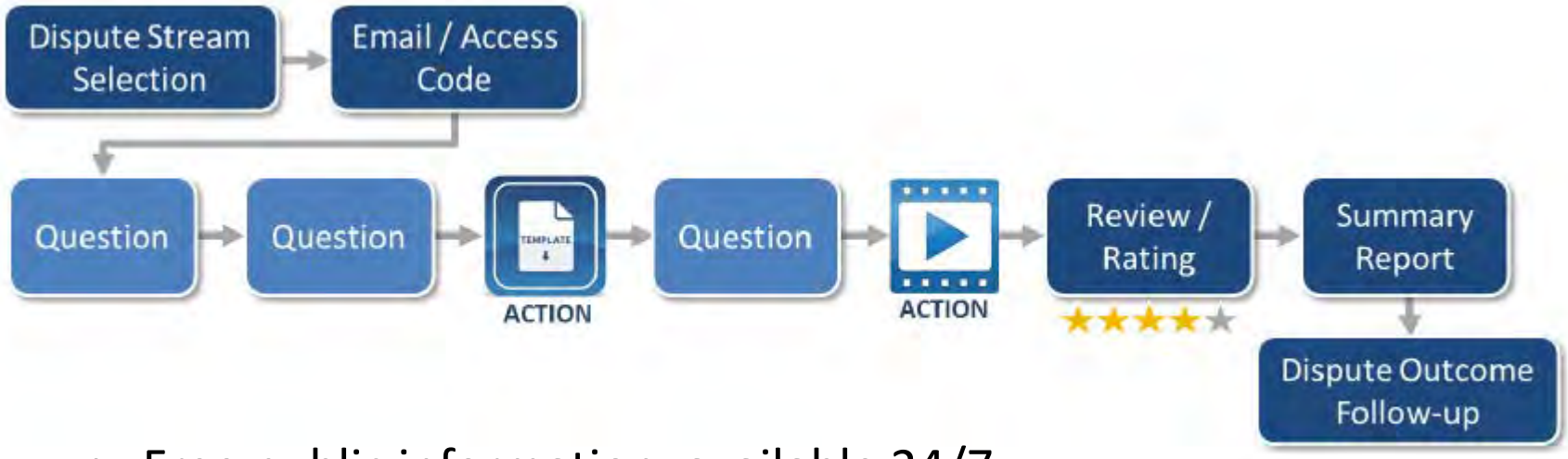
Case Management: facilitated ADR & hearing preparation



Adjudication



Solution Explorer



- Free public information, available 24/7
- Guided pathways
- Interactive question and answers
- Tools, templates, resources to assist with resolution and education
- Can exit and re-enter
- Resolution or preparation for CRT process

Civil Resolution Tribunal

Search

How the CRT works | About The CRT | What's New | Decisions | Contact Us

Getting Started

How the CRT works

Try the Solution Explorer for Small Claims *Beta*

RECENT POSTS

CRT Small Claims Rules Consultation

Posted on January 11, 2017

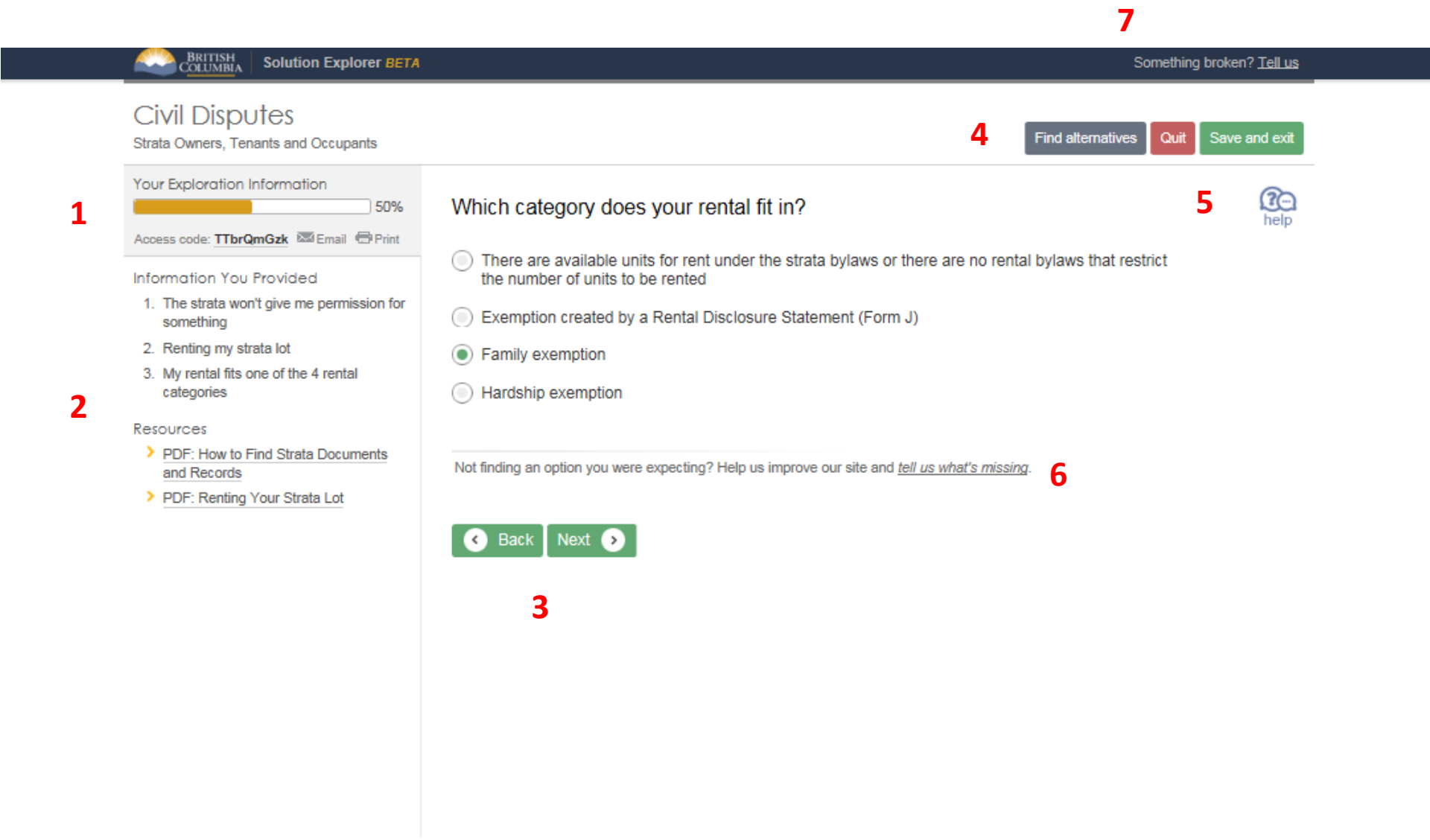
In the near future, the CRT will begin resolving low-value small claims disputes. This change will give British Columbians a modern and convenient way to access justice. To prepare for this change, we're drafting changes to the CRT Rules so ... Continue reading →

Watch a Small Claims Video



Print a CRT Poster




7
BRITISH COLUMBIA
Solution Explorer BETA
Something broken? Tell us
Civil Disputes
Strata Owners, Tenants and Occupants
4
Find alternatives
Quit
Save and exit
1
Your Exploration Information
50%
Access code: TTbrQmGzk
Email
Print
2
Information You Provided
1. The strata won't give me permission for something
2. Renting my strata lot
3. My rental fits one of the 4 rental categories
Resources
PDF: How to Find Strata Documents and Records
PDF: Renting Your Strata Lot
Which category does your rental fit in?
5
help
There are available units for rent under the strata bylaws or there are no rental bylaws that restrict the number of units to be rented
Exemption created by a Rental Disclosure Statement (Form J)
Family exemption
Hardship exemption
Not finding an option you were expecting? Help us improve our site and tell us what's missing.
6
Back
Next
3

Civil Disputes

Solutions for Strata Owners, Tenants and Occupants

Start a new exploration | Quit | Save and exit

Summary Report

Email | Print

Rate this report

Your Summary Report gives you information and tools that may help you resolve your problem. Remember that a limitation period may apply. It could run out if you wait too long to take action.

To return to this report:

Your access code is: **9aahv4Q69**

Access expires in 32 days on **April 23, 2016**

Issues

Your exploration found 1 issue(s). If you have more than one issue, you can use the tabs to switch between them.

Issue 1

Strata - not giving me permission - rent my strata lot - family exemption



Expert Summary

Based on what you told us, you are an owner in a strata. The strata didn't give you permission to rent your strata lot. But you believe your rental request qualifies as a family exemption.

You also told us you had a hearing with the strata about this issue, but they didn't give you a written decision after the hearing.

You have the option to contact the strata to ask for a written version of what was decided at the hearing.

Use the letter template **Request for a Decision from a Hearing** in the Resource section below. Deliver the letter to the strata using the proper methods as described in **Delivering a Letter or Notice to the Strata**.

Resource

- PDF: Before You Start Your Exploration

- INFO: Renting Your Strata Lot
- INFO: Family Rental Exemptions
- INFO: Having a Hearing with the Strata Council
- Letter: Request for a Hearing
- INFO: Delivering a Letter or Notice to the Strata

Additional External Resources

- Learn about Limitation Periods
- How to Find Strata Documents and Records
- Strata Property Act - Section 34.1 - Request for council hearing

Information You Provided

1. The strata won't give me permission for something
2. Renting my strata lot
3. My rental fits one of the 4 rental categories
4. Family exemption
5. Have a hearing with the strata council
6. I want to request a hearing

What's Next?

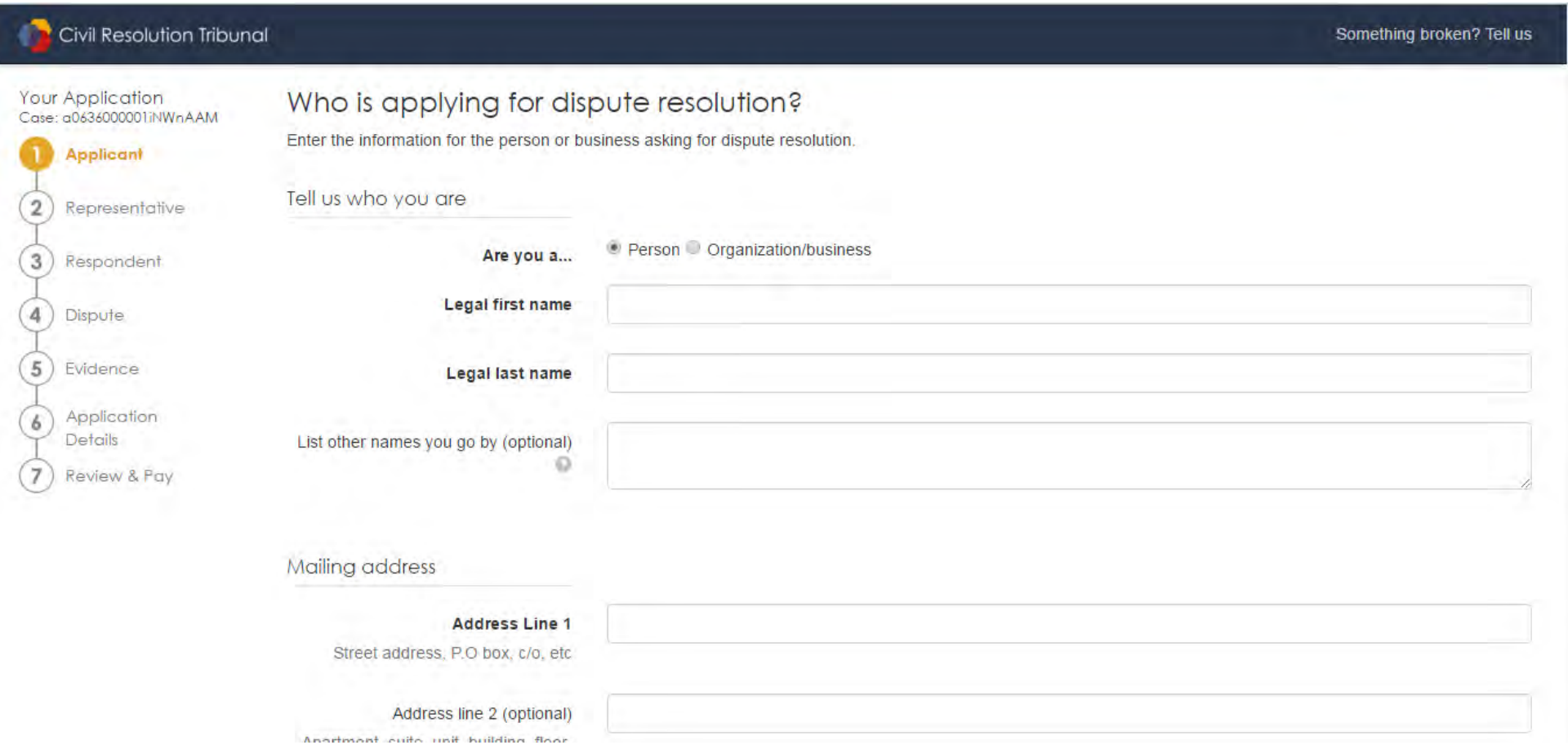
Start process

We hope the Solution Explorer has given you some useful information and tools to help you resolve your dispute.

- If you're unable to resolve your dispute with these tools, you may wish to seek legal advice about your next steps.
  - The CBA's Lawyer Referral Service may be able to put you in touch with a lawyer who will provide a 30-minute consultation for a nominal fee.
  - Access Pro Bono operates a clinic that offers free legal services to those who qualify.
- You may also make an application to the Civil Resolution Tribunal (CRT). It will allow you to resolve your dispute, where, when, and how you choose.

  Learn more about the CRT
- Click 'Start process' to start a claim with the CRT about the issues in your exploration.

Party Information



Party Information - Communication

Tribunal process communication

This is the main way we will communicate with you during the tribunal process. During the tribunal process you need to be available and checking for communications.

Email

Unable to use email?

How do you want to communicate with us?

- (•) Receive and send communication by email

Formal communications

For example: orders, requests, or decisions.

Where should we send formal communications?

- (•) Email
- ( ) Mail
- ( ) Fax

Additional applicant information

We're asking in case the tribunal can take steps to serve them better.

Do you have any of the following that may require a special accommodation?

- [ ] Difficulty reading and writing
- [ ] English speaking difficulty
- [ ] Visual impairment
- [ ] Hearing impairment
- [ ] Mental health issues
- [ ] Other:

Do you have a committee of estate, a representative appointed in a representation agreement, or an attorney appointed in an enduring power of attorney?

- (•) No
- ( ) Yes

Are you under 19 years old?

- (•) No
- ( ) Yes

Continue to next step › or + Add another applicant

Dispute Information

What is your dispute?

Not sure how to complete this? See some examples

What happened?

A one sentence summary of the claim

Description

Provide enough detail to let the respondent and tribunal know what your claim is about. You don't need to include every detail here. You'll be able to add more later.

Max 5000 characters

When did you become aware of the claim?

Enter the approximate month and year.

Max 1000 characters

What have you done so far to try to resolve this?

Max 1000 characters

Why is resolving this claim important to you? (optional)

Max 1000 characters

Your Application
Case: a0636000004SwX8AAK

- Strata
- Applicant
- Representative
- Respondent
- 5 Dispute
- 6 Evidence
- 7 Application Details
- 8 Review & Pay

6. I want to write a letter

view less

What happened?

A one sentence summary of the claim

Description

Provide enough detail to let the respondent and tribunal know what your claim is about. You don't need to include every detail here. You'll be able to add more later.

Max 5000 characters

When did you become aware of the issue?

Enter the approximate month and year.

Max 1000 characters

What have you done so far to try to resolve this?

Max 1000 characters

Why is resolving this claim important to you? (optional)

Remedies

What do you want?

List each outcome, remedy, or action you want. For example:

- I want Ms Lee to repay the money she borrowed from me
- I want the strata to enforce the noise bylaw
- I want John Smith to stop blocking my parking spot

Don't include things like filing fees, expenses and interest.

	List each outcome, remedy or action you're requesting	Is there a monetary amount?
1		○ No ◉ Yes $
2		◉ No ○ Yes
3		◉ No ○ Yes
4		◉ No ○ Yes
5		◉ No ○ Yes

Plus any filing fees, interest or expenses

Total **$0.00**

Accepting a Dispute

Application is screened

- Limitation period
- Jurisdiction
- Special handling
- Separate disputes with same parties will be linked

Dispute Notice is issued

- Applicant has 90 days to provide Dispute Notice to all respondents
- if no response, applicant can request a default order

Response

- Respondent has 14 days to respond
- Can include an additional claim (counterclaim)
- Can add a party to the dispute (third party)

Negotiation

- Connects parties to encourage negotiated settlement
  - Zero to nominal cost

- Low intervention
  - Tools & support provided
  - Avoid more time/money on dispute



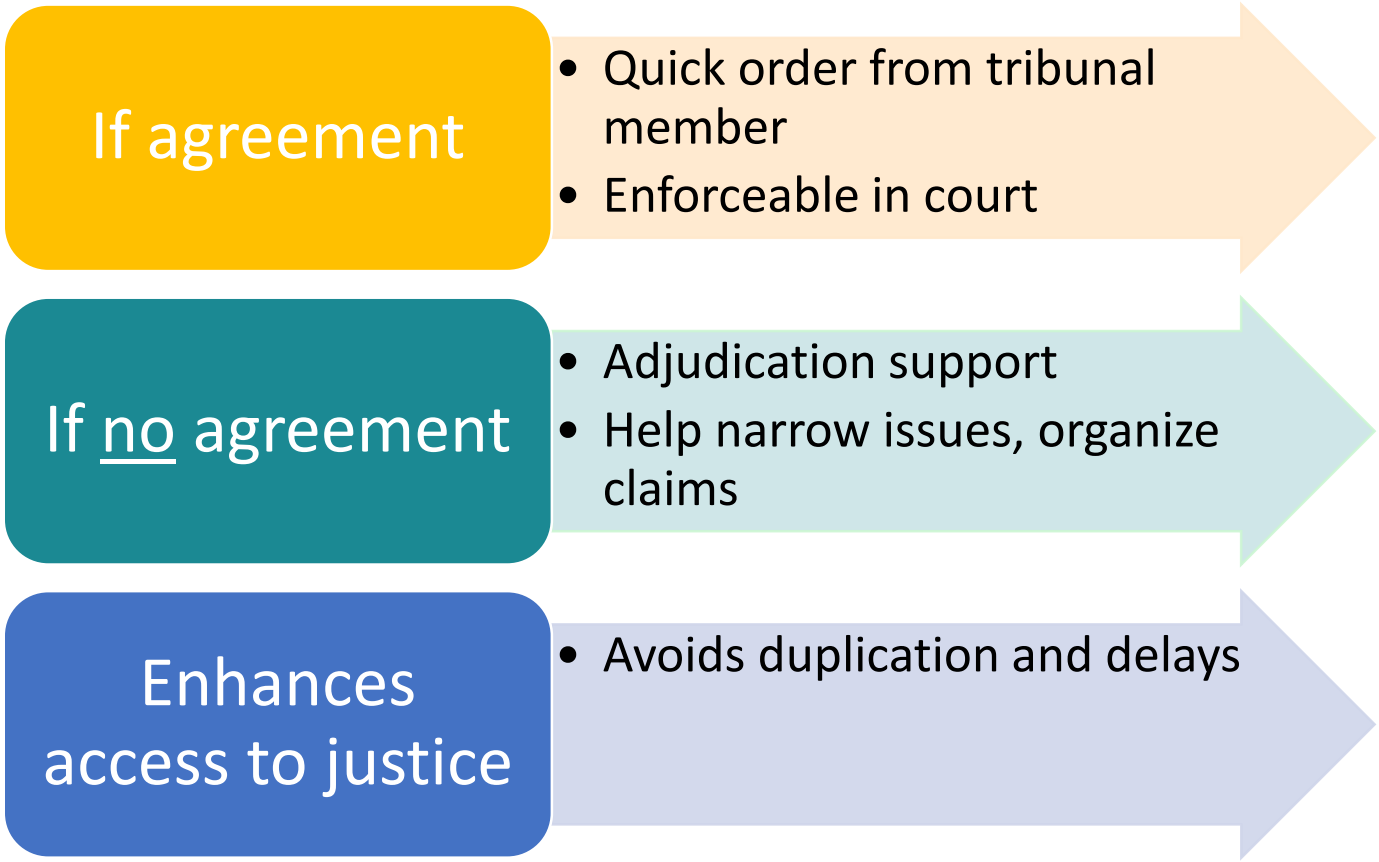
Facilitation

- Dispute resolution expert helps reach agreement

- Very flexible :
  - Asynchronous or synchronous
  - Resolve some or all of claims
  - Can decide dispute with consent (in certain circumstances)



Facilitation



Adjudication

In addition to Chair and Vice Chairs, mostly part-time tribunal members

- Lawyers with subject expertise
- Located throughout province

- Usually written hearings
  - Some telephone/video hearings
  - In person hearings rare
- Plain language written reasons
- Decisions enforceable as court orders
- Decisions
  - published on website
  - can be appealed



Appeal Method

Small Claims

- Appeal to Provincial Court
- Basically *trial de novo*
- Notice of Objection filed with CRT within 28 days

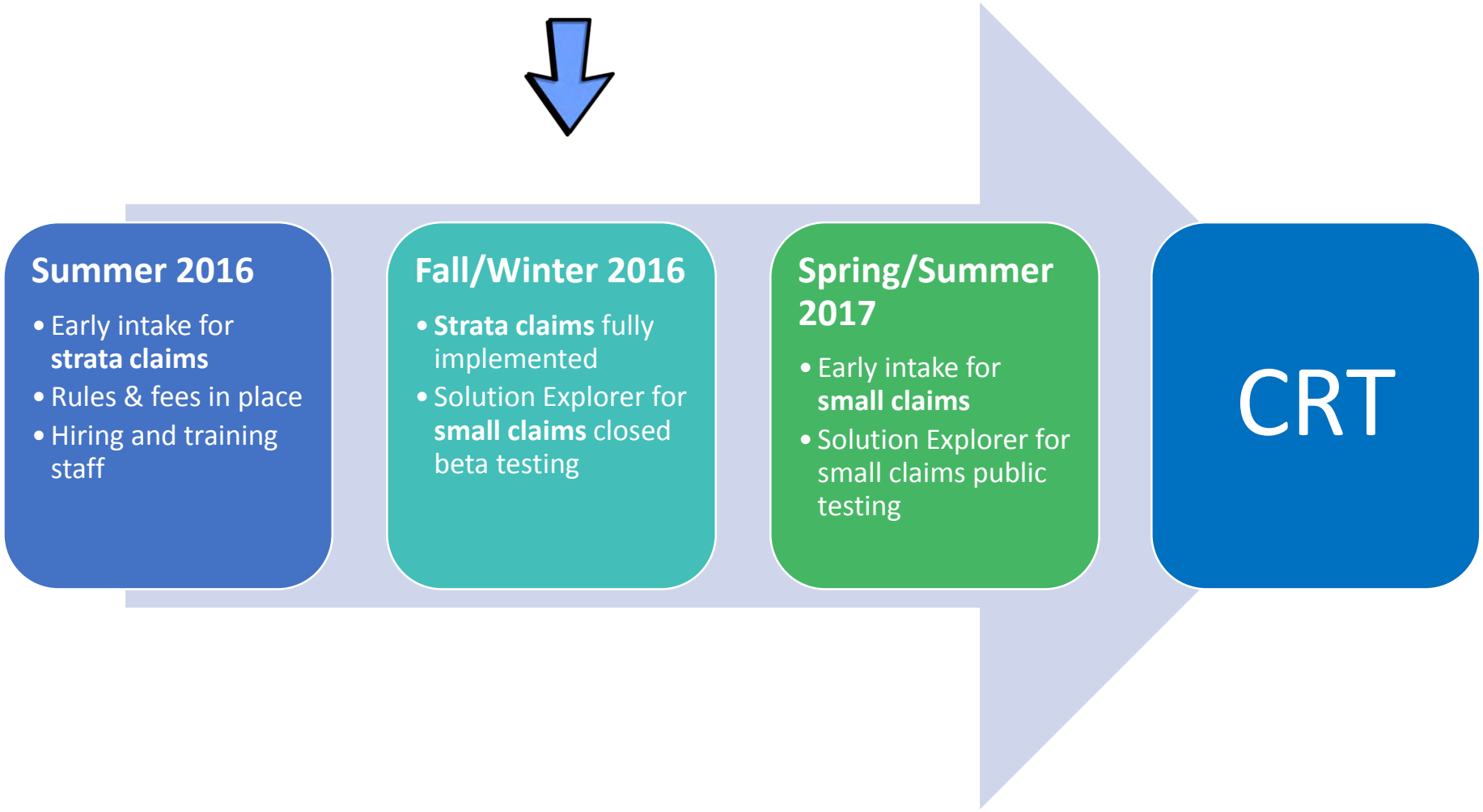
Strata

- Appeal to BC Supreme Court
- Leave required
- Question of law
- Within 28 days of decision

CRT Fees – Strata Claims

Action	Online	Paper
Application for dispute resolution	$125	$150
Response	$0	$25
Counterclaim/Third party claim	$125	$150
Request default decision	$25	$30
Consent Resolution Order	$25	$25
Request Tribunal Decision Process (hearing)	$100	$100
Request default decision be set aside	$50	$50

Where are we going?



What's Happened Since July 13, 2016?

Solution Explorer

- More than 6,500 explorations
- 30% users explore Strata Council issues
- 70% explore Owner, Tenant, Occupant issues

Applications for Dispute Resolution

- 311 applications:
- 279 Dispute Notices issued
- 37 awaiting Proof of Notice
- 14 awaiting response or more information
- 184 in Facilitation
- 49 resolved

Questions?

www.civilresolutionbc.ca

Email: Info@crtbc.ca

Legal Services Society

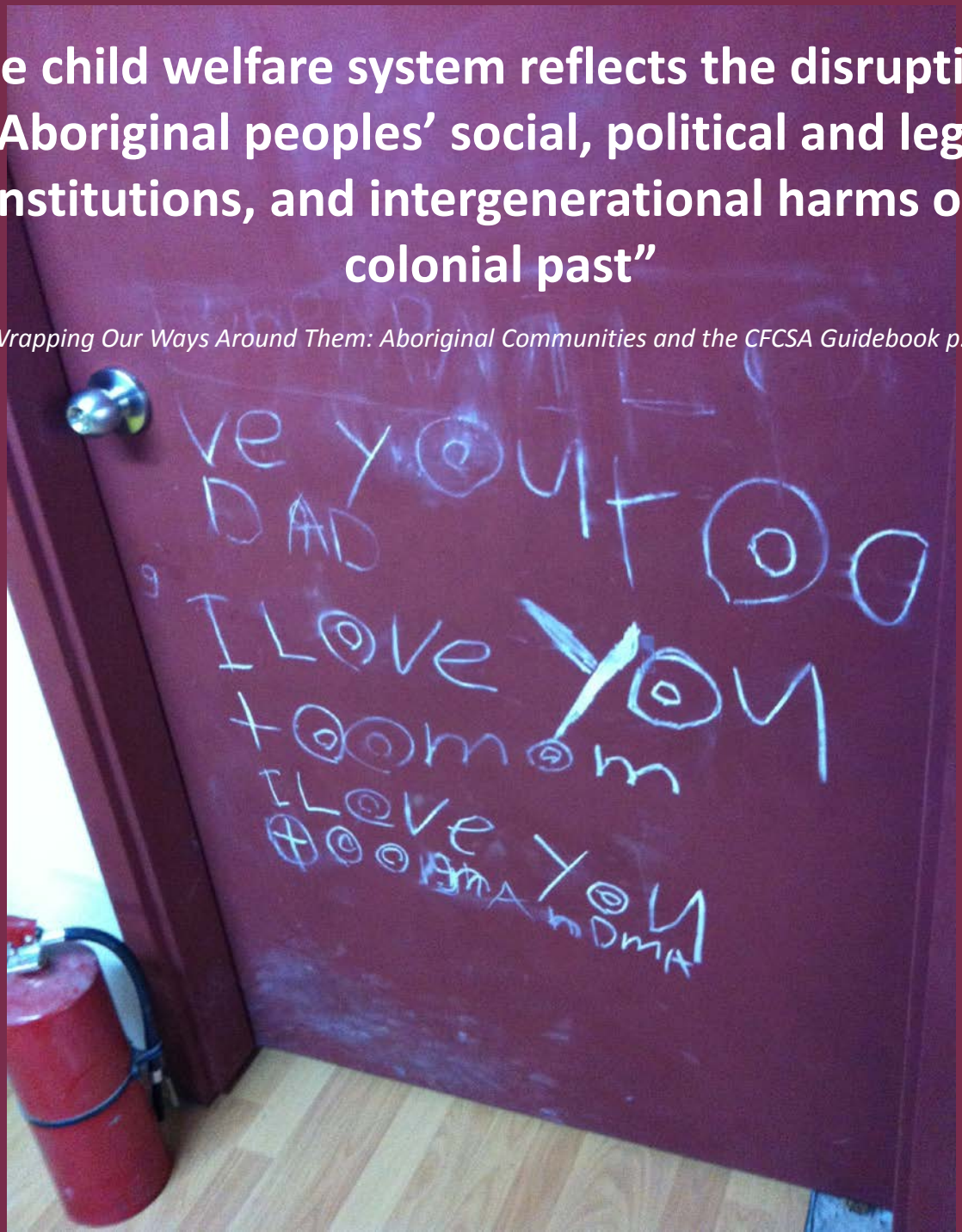
Parent Support Services Society of BC

Child Protection, Family Law, and Indigenous Kinship Care

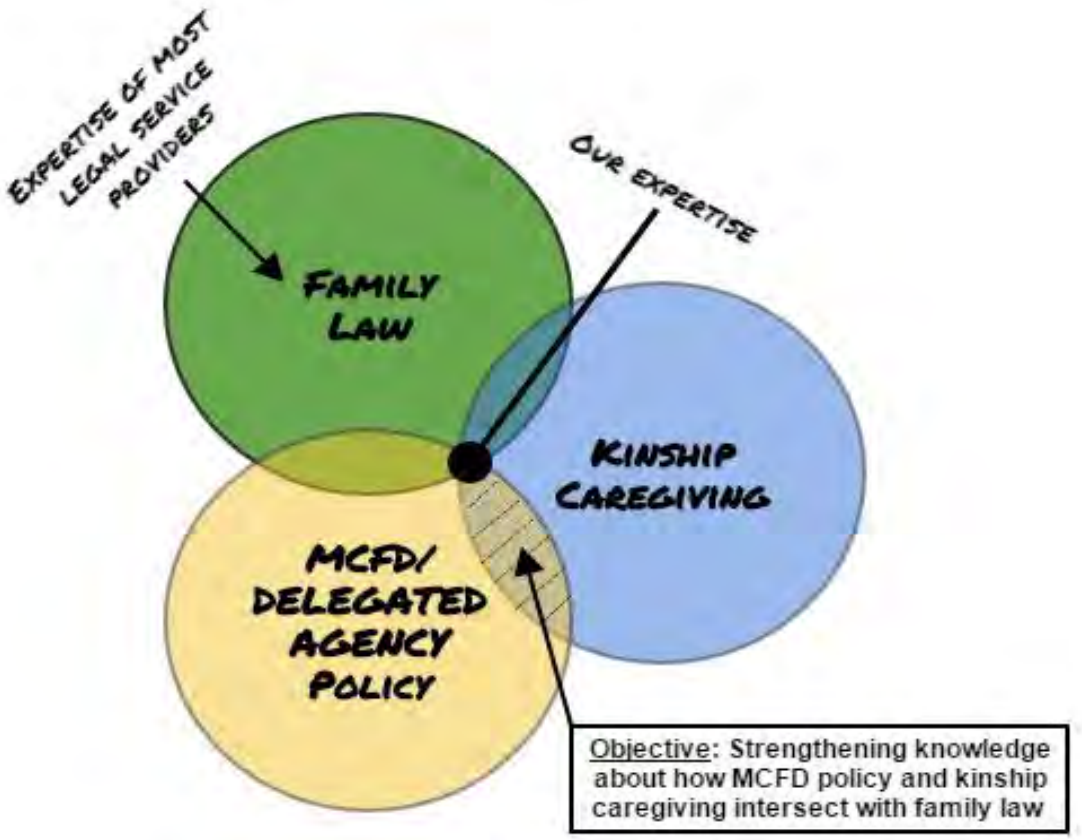
May 2017

“The child welfare system reflects the disruption of Aboriginal peoples’ social, political and legal institutions, and intergenerational harms of a colonial past”

Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA Guidebook p. 8-9.



PSS of BC work with Child Protection, Family Law, and Kinship Care



Parent Support Services Society of BC

Our Vision

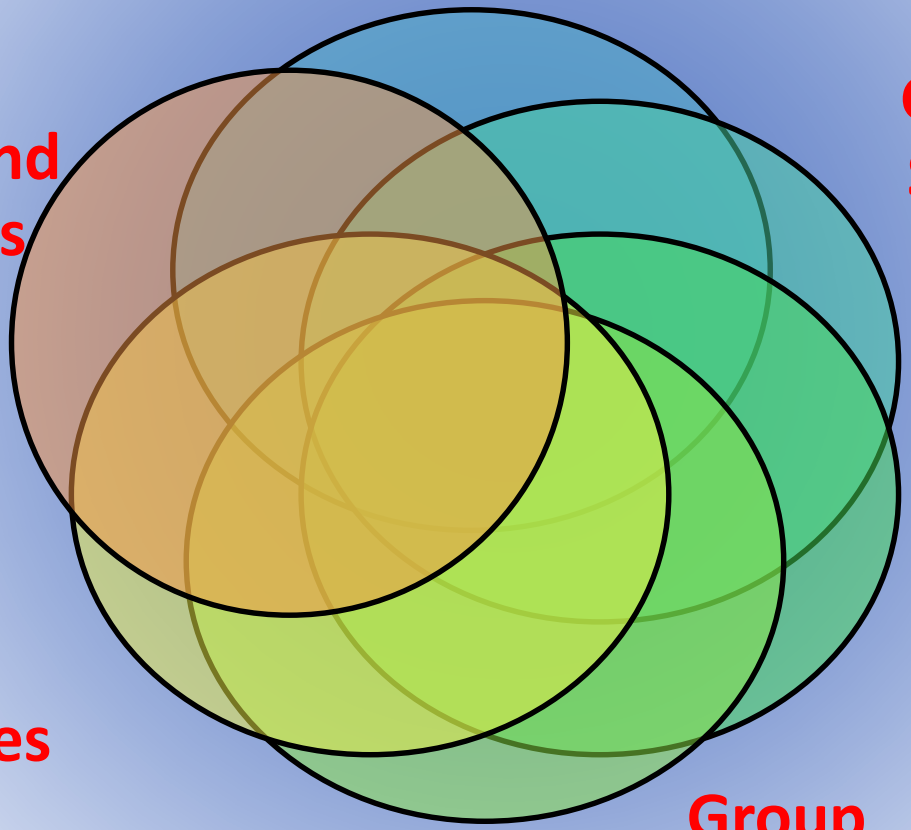
A world where all children and their families are nurtured, valued, and safe.

Our Mission Statement

To protect the safety and well being of children and promote the health of families by providing support, education, advocacy, research, and resources to those in a parenting role.

Parent Support Services Society of BC

PSS Programs and Services



Grandparents Raising Grandchildren Support Line

Help for grandparents and other relatives raising a family member's child



Provincewide
Mon, Tues, Thur, Fri
10:00 am—2:00 pm
604-558-4740
(Lower Mainland) or
1-855-474-9777
(toll-free across BC)
Email
grgline@parentsupportbc.ca

BRITISH COLUMBIA

PSS Parent Support Services Society *of* BC

Kinship Care



Kinship care is provided by individuals who care for a child in need because of a **family connection**, significant relationship to the child, (e.g. grandparent, aunt, close family friend) or a cultural connection.

This care is provided on a **full time basis** and can be temporary or permanent. Depending on the situation, it may require legal and financial responsibility for the child.

It can be a result of MCFD involvement.

2011 Census Canada data

Grandchildren living with grandparents with no parent present, BC

11,035 children

0–19 years: 6,960 children

0–24 years: 9,070 children



Child, Family and Community Service Act
Part 4 – Children in Care, s. 71

Out-of-home living arrangements

71 (1) When deciding where to place a child, the director must consider the child's best interests.

(2) The director must give priority to placing the child with a relative or, if that is not consistent with the child's best interests, placing the child as follows:

(a) in a location where the child can maintain contact with relatives and friends;

(b) in the same family unit as the child's brothers and sisters;

(c) in a location that will allow the child to continue in the same school.

(3) If the child is an aboriginal child, the director must give priority to placing the child as follows:

(a) with the child's extended family or within the child's aboriginal cultural community;

(b) with another aboriginal family, if the child cannot be safely placed under paragraph (a);

(c) in accordance with subsection (2), if the child cannot be safely placed under paragraph (a) or (b) of this subsection.

Ministry of Children and Family Development (MCFD)

<u>Two key kinship care supports:</u>

1. Extended Family Program—EFP (s. 8)
2. Permanent Kinship Care (s. 54.01)



Extended Family Program (EFP)

EFP provides services and financial support to help meet the child's needs:

- Circumstances temporarily prevent the parent(s) from caring for their child at home.
- Care provider is a relative or someone with significant relationship or cultural connection to the child.
- Family remains in contact with the social worker—meeting every 6 months and evaluating the plan. Agreements can be extended for up to 2 years.
- Permanency and legal options can be explored as part of long term planning

EFP Supports

- Provincial maintenance payments: $554.27/ages 0–11; $625/ages 12–19
- Basic medical (MSP)
- Extended Medical
- Dental/Optical
- Child Care Subsidy and Surcharge

- Families may be eligible for the federal Canada Child Benefit and Child Disability Benefit

EFP Eligibility Criteria

- Legal status of the child remains with the parent
- Parent requests the service from their local MCFD office
- Reunification is the primary objective

Child, Family and Community Service Act Part 2 Family Support Services & Agreements, s. 8

Agreements with child's kin and others

8 (1) A director may make a written agreement with a person who

(a) has established a relationship with a child or has a cultural or traditional responsibility toward a child, and

(b) is given care of the child by the child's parent.

(2) The agreement may provide for the director to contribute to the child's support while the child is in the person's care.

CFCSA Part 3 – Child Protection
Division 5.1 — Permanent Transfers of Custody
s. 54.01

Permanent transfer of custody before continuing custody order

54.01 (1) If a child is in the care or custody of a person other than the child's parent under

(a) an agreement made under section 8, or

(b) a temporary custody order made under section 41(1)(b), 42.2(4)(c), 49(7)(b) or subsection (9)(b) of this section,

a director may, before the agreement or order expires, apply to the court to permanently transfer custody of the child to that person…

Permanent Kinship Care

- The transferring of permanent guardianship of a child in kinship care when MCFD/DAA is involved and a parent(s) is unable to resume care of their child.
- When a child is unable to return to parental care at the end of an out of care Extended Family Program (EFP) agreement or an out of care court order.
- Permanent transfer of custody and guardianship is done only with the consents of the proposed guardian, the child (12 years of age or older), the parents (when an out of care EFP agreement is in place).
- Child(ren) must have been living with the proposed guardian for at least 6 consecutive months under an out of care EFP agreement or an out of care court order prior to application to the court (s. 54.01).

Permanent Kinship Care Supports

- Provincial maintenance payments: $803.81/ages 0–11; $909.95/ages 12–19
- Child Care Subsidy and Surcharge
- Not eligible for Federal Canada Child Benefit or Child Disability Benefit

Sections 54.01 & 54.1

- s. 54.01 – before a Continuing Custody Order (CCO)

- s. 54.1 – after a Continuing Custody Order (CCO)

Access to Federal Benefits

s. 54.01 & 54.1

- The guardian is *NOT* eligible to apply for federal benefits, such as the Canada Child Benefit or the Child Disability Benefit.

- The guardian *CANNOT* claim the child/youth as a dependent for the purpose of federal programs or benefits e.g. income tax

Social Work Practice

Children in Care Service Standards

CIC Standard 11: Assessments and Planning for a Child in Care

Standard Statement: *Within 6 months of the child coming into care, complete a full assessment and written plan of care with the involvement of the child, family and extended family, the Aboriginal community if the child is Aboriginal, the caregiver, and any significant person involved in the child's care or life (reviewed every 90 days)*

Intent: *is developed in collaboration with the child, family, extended family and cultural family*

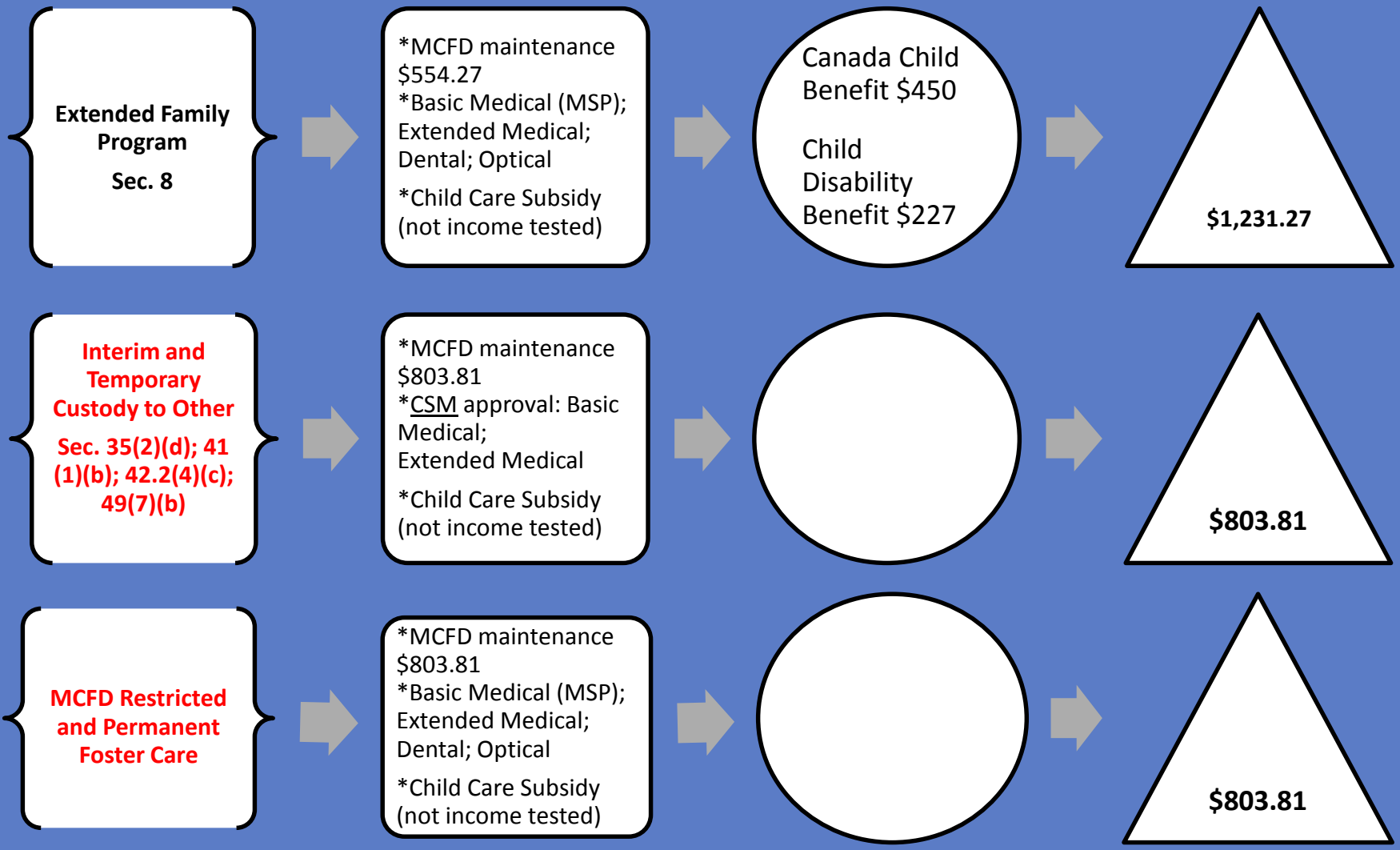
Policy: *when appropriate and consistent with the child's best interests, invite and support the participation of significant people in the child's life in developing a plan of care, including: the child's parents, family, extended family*

Administrative Procedures: *Give copies or parts of the plan to: the child; the caregiver; the parent; members of the family who are involved in the child's care, the representative from the Aboriginal organisation involved in the child's care or plan, and any other person who plays a role in the child's care*

Case Study – Grandma G

- Grandma G first called the Line in Jan 2013. She informed the advocate that she was a 71-year-old Indigenous grandmother raising her seven year old grandchild.
- She stated that the child's mother has addiction issues and that the child has FASD. She said that the child had been informally (in and out) of her care since birth and that she was receiving no services or benefits.
- The advocate informed Grandma G about the MCFD Extended Family Program and the Federal Child Tax benefit.
- In Sept. 2016 Grandma G called again. She said that she is receiving support through the EFP and the Federal Canada Child Benefit but has recently been asked by the social worker to agree to Permanent Kinship Care.
- Specifically, she called the advocate to express her concerns about losing her federal benefits: "*Why would I agree to less support and services now? What should I do?*"

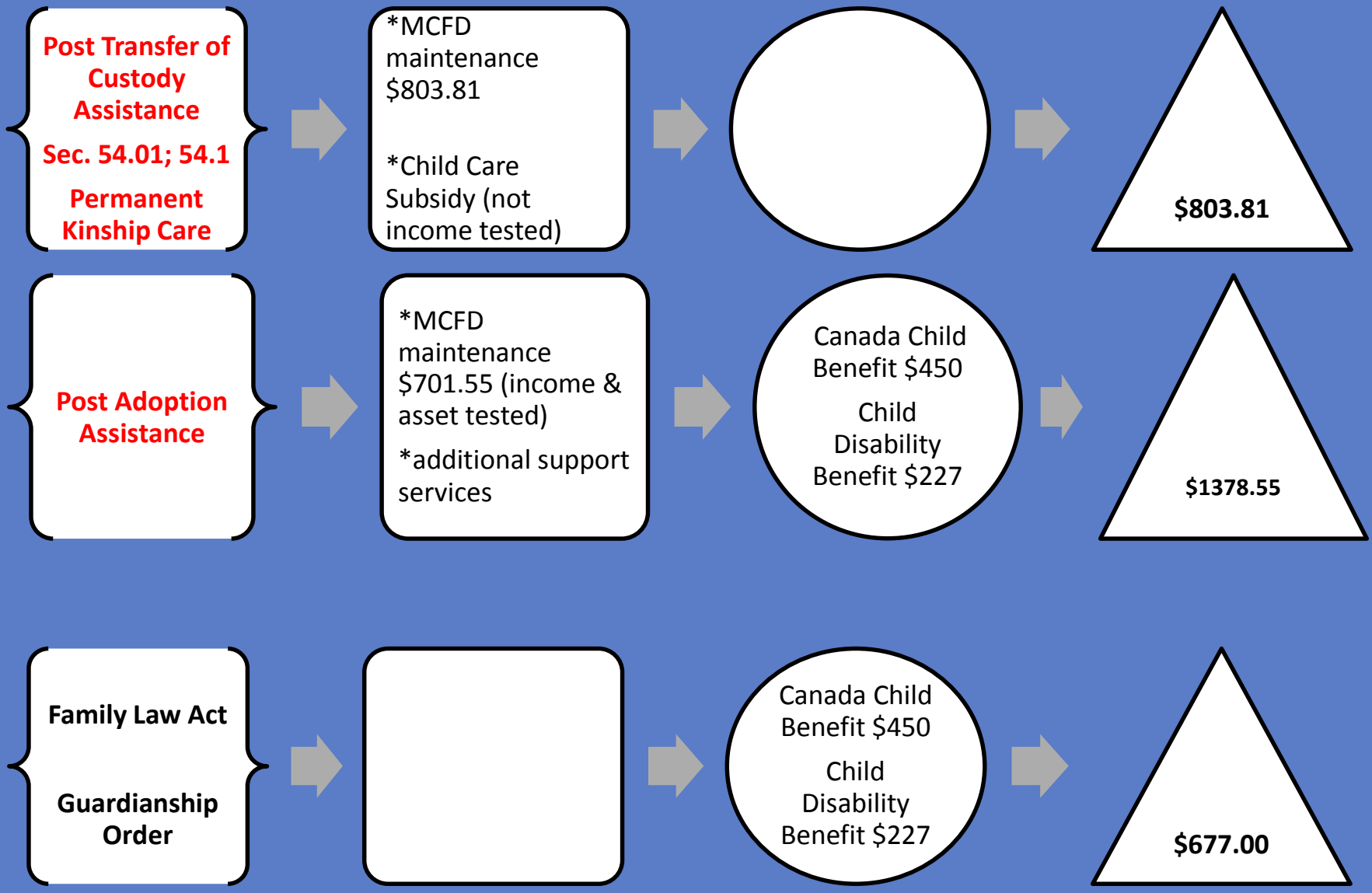
Grandma G: Temporary Care Options



Child in ministry care CSM – MCFD Community Service Manager

Figures are based on Grandma G's story. Diagram created by PSSS and informed by MCFD Payment and Supplemental Benefits Table, Reference for Out-of-Care Options Practitioners May 2015

Grandma G: Permanent Care Options



"The child welfare system reflects the disruption of Aboriginal peoples' social, political and legal institutions, and intergenerational harms of a colonial past"



More Aboriginal children live away from their families and communities today as a result of the child welfare system than lived away from their families in Residential Schools

Over 52% of all children in care in BC as of 2011 were Aboriginal

Aboriginal children are:

- 4.4 times more likely to have a protection concern reported than a non Aboriginal child
- 5.8 times more likely to be investigated
- 7.7 times more likely to be found in need of protection
- 7.1 times more likely to be admitted into care
- 12.5 times more likely to remain in care.

From Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA Guidebook p. 8-9.

Indigenous Resilience, Connectedness and Reunification – from Root Causes to Root Solutions

A Report on Indigenous Child Welfare in British Columbia
Final Report of Special Advisor Grand Chief Ed John, November 2016

TABLE 1: PERCENTAGE OF CYIC BY REASON FOR CARE, MAY 31, 2016

	All	Indigenous	Non-Indigenous
Neglect	70.2%	73.9%	64.4%
Physical harm by parent	9.1%	8.5%	10.1%
Emotional harm by parent	4.8%	4.1%	5.9%
Sexual abuse/exploitation by parent	0.8%	0.7%	1.1%
Other abuse/neglect concerns	3.8%	3.9%	3.5%
By Agreement with Parents	11.3%	8.9%	15.0%

Kinship Care

Safety, permanency, and well-being are goals for all children and youth. Research is clear that stable, healthy and lasting relationships greatly improve the long term social, emotional and physical health of children and youth. These relationships help to minimize the negative impact on young people when they are unable to return to their parents' care.

Placements with relatives or adults who have an established relationship with a child or youth serve to maintain family connectedness, stability of relationships, cultural identity and achieve better outcomes when youth enter adulthood.

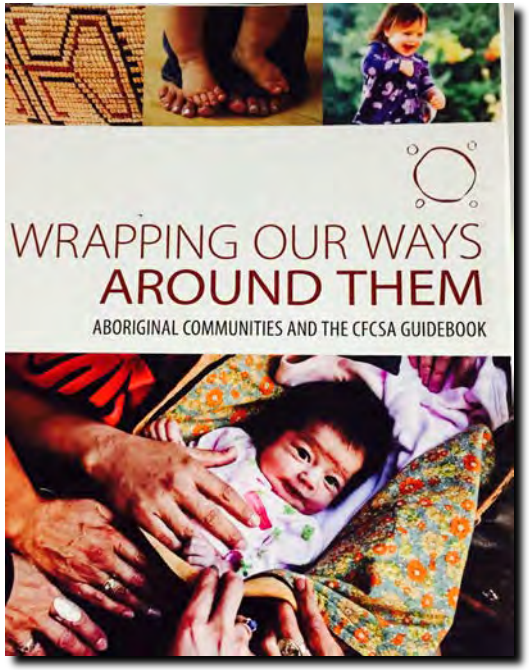
Belonging 4 Ever: Creating Permanency for Youth in and from Care – Federation of BC Youth in Care Networks – August 2010 and Residential Review Project June 2012

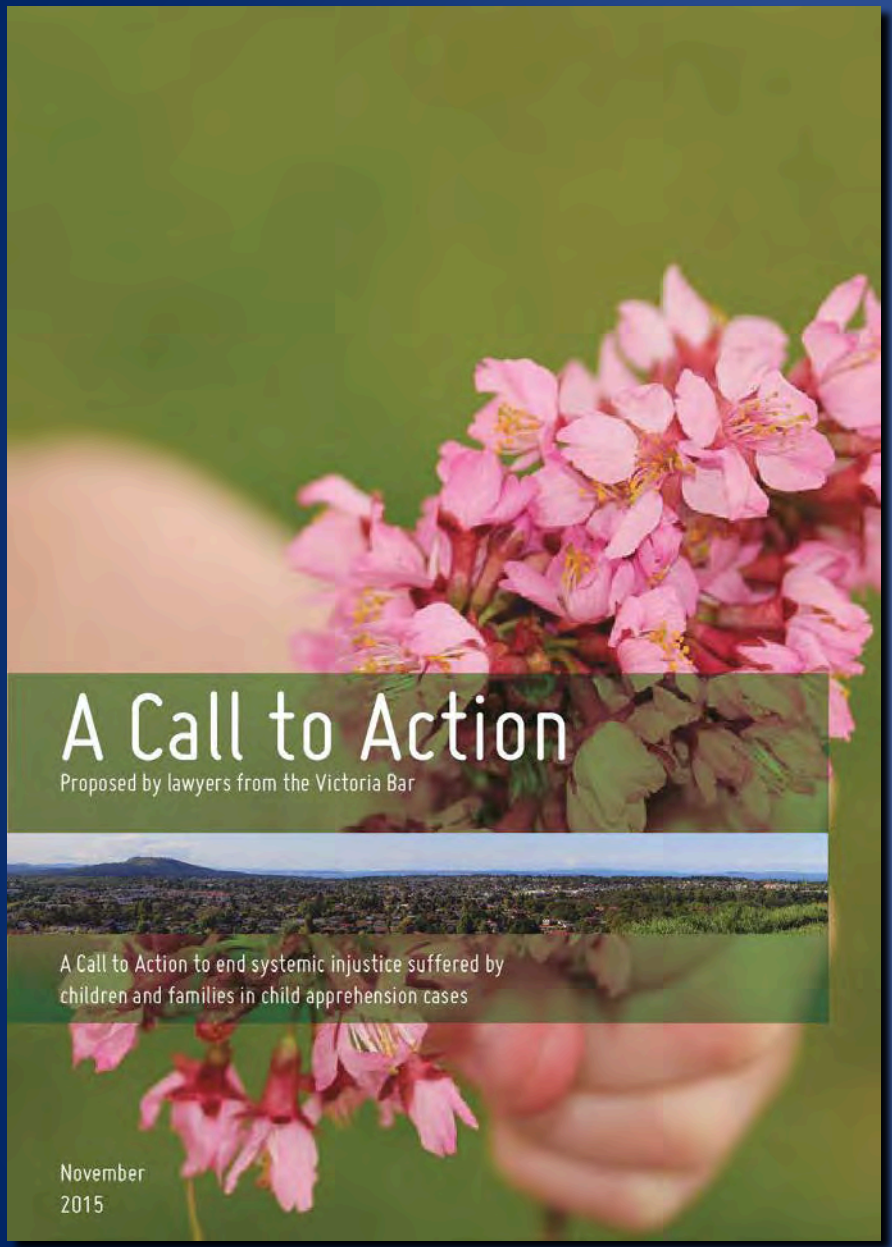
Key Resources

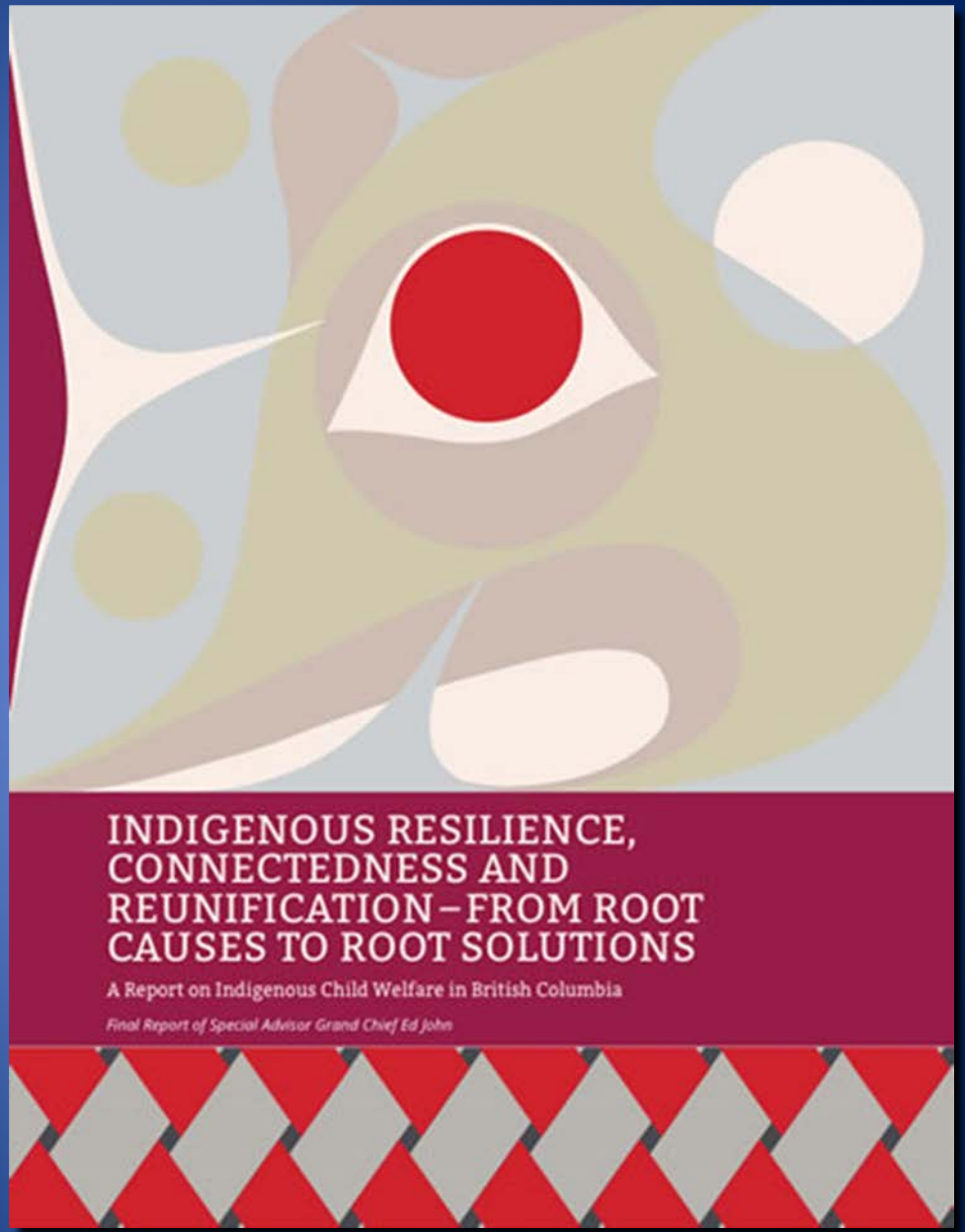
Wrapping Our Ways Around Them:

Aboriginal Communities and the CFCSA Guidebook

How Aboriginal communities can be involved in child welfare matters as contemplated by the CFCSA and sets out strategies to actively seek and facilitate that involvement.




A Call to Action
Proposed by lawyers from the Victoria Bar
A Call to Action to end systemic injustice suffered by children and families in child apprehension cases
November
2015


INDIGENOUS RESILIENCE, CONNECTEDNESS AND REUNIFICATION – FROM ROOT CAUSES TO ROOT SOLUTIONS
A Report on Indigenous Child Welfare in British Columbia
Final Report of Special Advisor Grand Chief Ed John

Questions?


Grandparents
Raising Grandchildren
Support Line
Help for grandparents and other relatives
raising a family member's child
Provincewide
Mon, Tues, Thur, Fri
10:00 am—2:00 pm
604-558-4740
(Lower Mainland) or
1-855-474-9777
(toll-free across BC)
Email
grgline@parentsupportbc.ca
BRITISH COLUMBIA
PSS
Parent Support Services
Society of BC

Payment and Supplemental Benefits Table

Reference for Out-of-Care Options Practitioners

Program	Maintenance Payment	Basic Medical (MSP)	Extended Medical	Dental Optical	Child Care Subsidy & Surcharge	Child Tax Benefit Universal Child Care Benefit Child Disability Allowance
	MCFD					Canada Revenue Agency
Extended Family Program (Sec. 8)	✓ Not income tested	✓	✓	✓ Form CF2190	✓	Care provider to contact CRA about eligibility
Age 0 to 11	$554.27					
Age 12 to 19 (ends 19th birthday)	$625.00					
Interim and Temporary Custody to Other (Sec. 35(2)(d); 41(1)(b); 42.2(4)(c) & 49(7)(b)	✓ Not income tested	✓ CSM Approval	✓ CSM Approval	*	✓	Not Eligible
Age 0 to 11	$803.81					
Age 12 to 19 (ends 19th birthday)	$909.95					
Post Transfer of Custody Assistance (Sec. 54.01 & 54.1)	✓ Not income tested	X	X	X	✓	Not Eligible
Age 0 – 11	$803.81					
Age 12 to 19 (ends 19th birthday)	$909.95					
Family Law Act (FLA) Guardianship Formerly Family Relations Act (FRA)	$0	X	X	X	X	Guardian to contact CRA about eligibility
MCFD Restricted and Regular Foster Care	✓ Not income tested	✓	✓	✓	✓ Subsidy only	Not Eligible
Ages 0 – 11	$803.81					
Age 12 to 19 (ends 19th birthday)	$909.95					
Post Adoption Assistance (PAA)**	Income and asset test Up to	X	X	X	X	Adoptive parent(s) to contact CRA about eligibility
Ages 0 – 11	$701.55					
Age 12 to 19 (ends 19th birthday)	$805.68					

* Funding may be available when considered on a case-by-case basis and approved by the Community Service Manager. (Paid by local cheque: Activity Code 14312)

** Adoptive parents may be eligible for additional support services.

X Not available through MCFD. Section 54.01/54.1/FLA guardians and adoptive parents with low incomes may be eligible for Premium Assistance (MSP) and Healthy Kids Program (dental) available through the Ministry of Social Development.

May 2015



Parent & Grandparent/Kinship

Support Circles in BC

Parent Support Services Society of BC

Free • Confidential

Open to all parents & grandparents with children & teens
Snacks & child minding subsidy are often provided
Each self-help support circle is led by two trained volunteer facilitators
Meetings held regularly

We have Support Circles that operating English, Cantonese, Mandarin, Filipino, Korean, and Spanish; for Fathers; for parents/caregivers of children on the autism spectrum; for Indigenous parents/caregivers; for kinship caregivers; and more.

We have Support Circles for parents and caregivers like you across BC!

Circles in the Lower Mainland & Fraser Valley:

Burnaby, Coquitlam, Port Coquitlam, New Westminster, Vancouver, Richmond, Surrey, Abbotsford, Langley.

Circles ebb and flow. Check regularly & see if there is a Support Circle in your area. Let us know if you are interested in helping us set one up in your community.

For More Info: www.parentsupportbc.ca

Call: 604-669-1616; 1-877-345-9777

We acknowledge the financial support of *the Province* of British Columbia & United Way Lower Mainland

Fact Sheet for Proposed Guardians

Permanent Kinship Care

Safety, permanency, and well-being are goals for all children and youth. Research is clear that stable, healthy and lasting relationships greatly improve the long term social, emotional and physical health of children and youth. These relationships help to minimize the negative impact on young people when they are unable to return to their parents care.

Placements with relatives or adults who have an established relationship with a child or youth serve to maintain family connectedness, stability of relationships, cultural identity and achieve better outcomes when youth enter adulthood.

Belonging 4 Ever: Creating Permanency for Youth in and from Care – Federation of BC Youth in Care Networks – August 2010 and Residential Review Project June 2012

Kinship care is often used to describe situations when you are caring for a child who is a relative; has a significant relationship with you; or a child you have a cultural or traditional responsibility to. This fact sheet describes a process for transferring permanent guardianship of a child in kinship care when the Ministry of Children and Family Development (MCFD) or a Delegated Aboriginal Agency (DAA) is involved and a parent(s) is unable to resume care of their child.

Under the *Child, Family and Community Service Act* (*CFCSA*), the primary goal is to have children return to their parents wherever possible. In the event that a parent(s) is unable to resume care of their child, it is important to have an alternate plan so young people don't have a long period of uncertainty about who will care for them. This alternate plan often includes the permanent transfer of custody to a proposed guardian.

Transferring guardianship when a child is unable to return to parental care

When a child is unable to return to parental care at the end of an out of care Extended Family Program (EFP) agreement or an out of care court order, permanent custody can be legally transferred to extended family or other individuals who have a significant relationship with, or cultural or traditional responsibility to the child.

The safety, well-being and best interests of the child remain the primary consideration throughout the decision-making process. The permanent transfer of custody and guardianship is done only with the **consents** of the proposed guardian, the child, if they are 12 years of age or older, and the parents (when an out of care EFP agreement is in place). Proposed guardians, children 12 years of age and older and parents are advised to consult with independent legal counsel, prior to consenting to permanent kinship care. Others who are served with notice and appear at the hearing, such as a child's Aboriginal representative(s), are entitled to participate at the hearing.

Conditions that must be in place before an application can be initiated

Unless an exception is made in the child's best interests, they must have been living with the proposed guardian for at least six consecutive months under an out of care EFP agreement or an out of care court order prior to an application to the court for permanent kinship care.

The proposed guardian must have completed the MCFD/DAA assessment process to the satisfaction of a social worker and a supervisor, including up-to-date prior contact (MCFD/DAA) and criminal records

checks on themselves and all people living in the home who are 18 years of age or older before the court can grant permanent kinship care.

Responsibilities of a permanent guardian
When permanent kinship care is granted, the legal guardian becomes responsible for the health and well-being of the child which includes, but is not limited to, making sure they are safe, emotionally secure, fed, receive medical care, are clothed, sent to school etc. The guardian is also responsible for the child's cultural and spiritual upbringing and as guardian of the child's estate, protects the legal and financial interests of the child. In general, the guardian has "parental responsibilities" and is expected to care for and raise the child in the way that is expected of all responsible parents.

MCFD involvement after permanent guardianship is established
When permanent kinship care is granted, MCFD will continue to provide financial support for the child's care including $803.81 per child aged 11 years and under and $909.95 per youth 12 years of age and over. The guardian assumes responsibility for the child's medical, dental and optical coverage and care. If the guardian is eligible for MSP premium assistance, the child will qualify for the Healthy Kids Program, which provides basic dental and optical coverage to dependents of low- to moderate-income families. All other supports and decisions for the child become the responsibility of the guardian. Like any parent, guardians can access other MCFD supports and services such as those available to children who quality for specialized services through Children and Youth with Special Needs (CYSN).

Estates, inheritance, status and rights
When guardianship is granted, it includes guardianship of the child's estate. However, it does not affect the child's pre-existing inheritance or succession to property rights. Aboriginal rights or privileges of an Aboriginal child will not be impacted.

Being a child's guardian does not have the same legal effect for estate purposes as an adopted child. This means that a child, for whom you are guardian, will not automatically have any claim to your estate, unless you were to specifically decide to name that child as a beneficiary in your will. If you were to die without a will, the law would not consider the child to have any claim to your estate.

Similarly, you do not have any claim to the child's estate if the child were to die. Although a guardian has rights and responsibilities, if the child's natural or adoptive parents are still alive, those persons would have legal obligations towards their child from their estates and they would be the people who would have a legal entitlement to the child's estate.

Access orders and future legal matters
Any existing access orders made under the CFCSA terminate when permanent kinship care is granted. However, new access orders may be applied for by parents, grandparents and others under CFCSA at the time the permanent transfer of custody is applied for, or under the *Family Law Act* at a later date. Once custody has been transferred any future legal matters pertaining to guardianship fall under the *Family Law Act*.

If you have questions or concerns about permanent kinship care, discuss them with your social worker. MCFD and the Delegated Aboriginal Agencies have formal complaints processes if required. An additional support may be the Grandparents Raising Grandchildren (GRG) Support Line contacts: by phone 604 558-4740 (Lower Mainland) or toll-free 1 855 474-9777 (provincewide); or by e-mail GRGline@parentsupportbc.ca.

Extended Family Program

When circumstances prevent a child from living with their parents, the preferred option is for the child to be with someone they know. This usually means an immediate family member – a grandparent, aunt or uncle, or an older sibling – it can also include someone with an established relationship or cultural connection to the child and their family.

How to determine if you can access the program

Children are better off when they are cared for by their families – and the Extended Family Program offers services and financial supports to help improve outcomes for children and youth. The main criteria for families to access the Extended Family Program include:

- Circumstances temporarily prevent the parent(s) from caring for their child in the home.
- Other services and supports have been tried to help keep the parent(s) and child together. This could include programs to meet the needs of the child or supports for parents such as counselling or parenting programs.
- The care provider, who cannot be the child's legal guardian, is a relative or someone with a significant relationship or cultural connection to the child.
- A parent must request services from the ministry or a Delegated Aboriginal Agency - only the legal guardian of the child can initiate an application.
- Parents must agree to the choice of care provider and the plan for the child and, where possible, contribute financially to their child's care.

What else you need to know about the program

- The goal is always to reunite the child with their parents wherever possible.
- The program puts the child at the center of all decisions being made and their views will be considered in decisions that affect them.
- Together, the social worker and family develop a plan for the child that addresses the child's needs and assists the parent(s) and the care provider.
- The family remains in contact with the social worker – meeting at least every six months and evaluating the plan regularly.
- When reunification cannot be achieved, permanency and legal options that provide the child with long-term stability can be explored as part of the long-term planning.

If the child's needs are best met by a plan to live outside the parental home, and the parents agree, financial and other supports may be provided to the care provider through the Extended Family Program. Care providers may receive monthly benefit payments of $554.27 per child under 12 years of age and $625.00 per child 12 years of age and older. Additional benefits are available based on the child's assessed needs and may include dental and optical coverage, child minding and respite. Your worker will help you determine what is available.

- Steps to Becoming a Care Provider Information Sheet
- Find a Ministry office
- Call our Client Relations office at: 1 877 387-7027/Contact a Delegated Aboriginal Agency

Becoming a Care Provider

1 **Contact an MCFD Office**

The parent(s) must call the local Ministry office or Delegated Aboriginal Agency to request service which may include services under the Extended Family Program. A parent can call 1 877 387-7027 for more information about services.

2 **Meet with a Worker**

A social worker from MCFD or a Delegated Aboriginal Agency will meet with the family – this includes the parent, the proposed care provider and the child – to assess the child's needs and help determine if the Extended Family Program is the best fit, or if alternatives should be considered. If the child's needs are best met by a plan to live outside their parent's home, the family and worker will discuss what financial and other supports may be available through the Extended Family Program.
Even if the family doesn't meet the criteria for the Extended Family Program, there are many programs available that can help families through a difficult period. You may be referred to another program through community services, such as parent/teen mediation, counselling or other services to meet the child's special needs.

3 **Background Check**

The screening process for care providers includes:
• A criminal record check;
• A prior contact check to review any previous involvement the care provider may have had with the ministry or Delegated Aboriginal Agency;
• Three written references, including two from family members and one from a non-family member who has known the applicant for at least three years; and
• A home visit, to interview the care provider and all other individuals living in the home, to ensure the environment is suitable for the child's needs.
• An assessment of the care provider's readiness, capacity and commitment to care for the child.

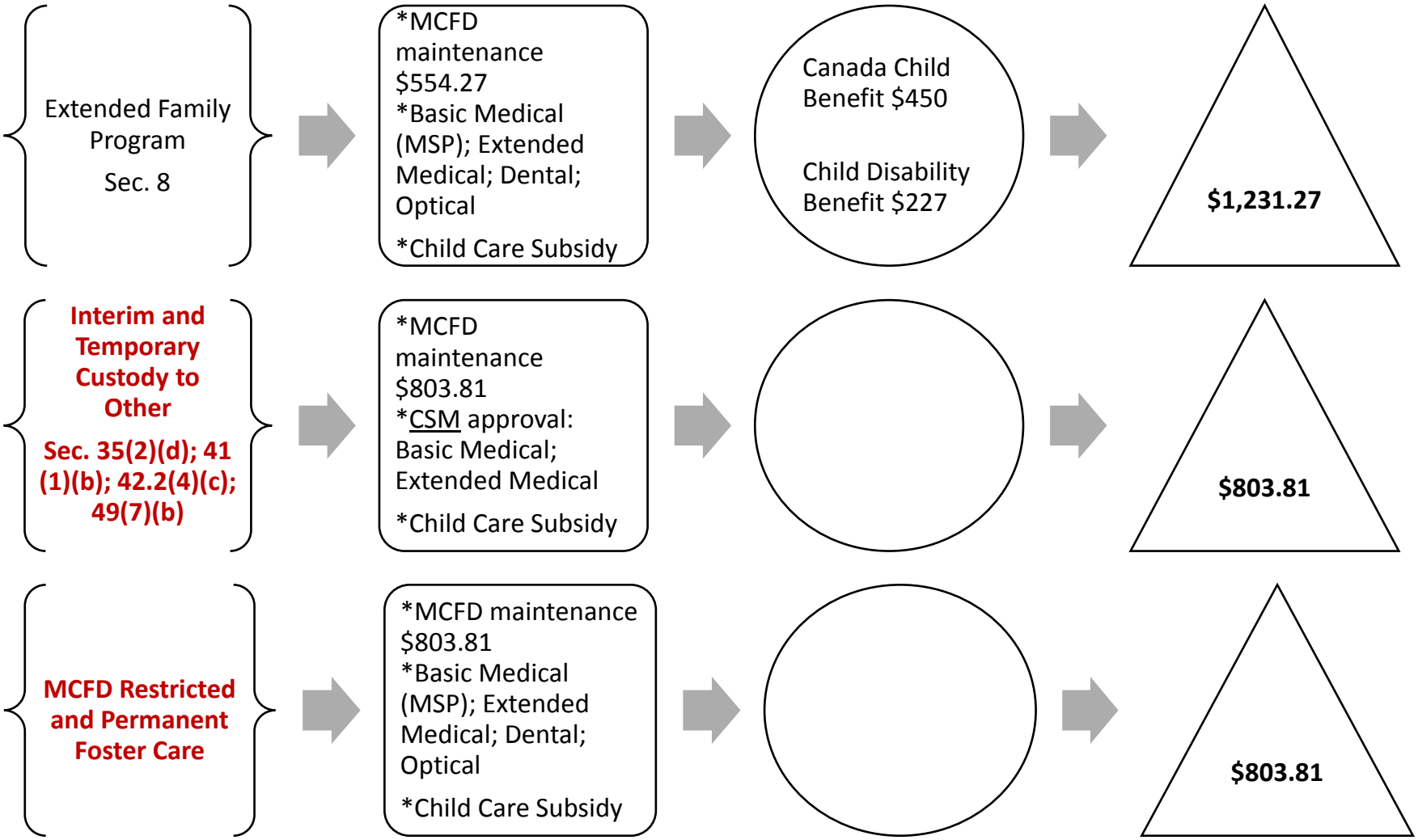
4 **Enter into an Agreement**

An agreement between the parent(s), the care provider and the ministry or Delegated Aboriginal Agency is signed. Working as a team, the family and worker will develop a plan for the child that details the services and supports necessary to meet the child's needs.

5 **Ongoing Contact and Support**

The plan for the child will be reviewed by the social worker and family regularly to make sure that it still fits the child's needs. Ultimately the plan is to reunite the child and their parent(s); however, if reunification cannot be achieved, an alternate permanency plan is developed to meet the child's need for long-term stability.

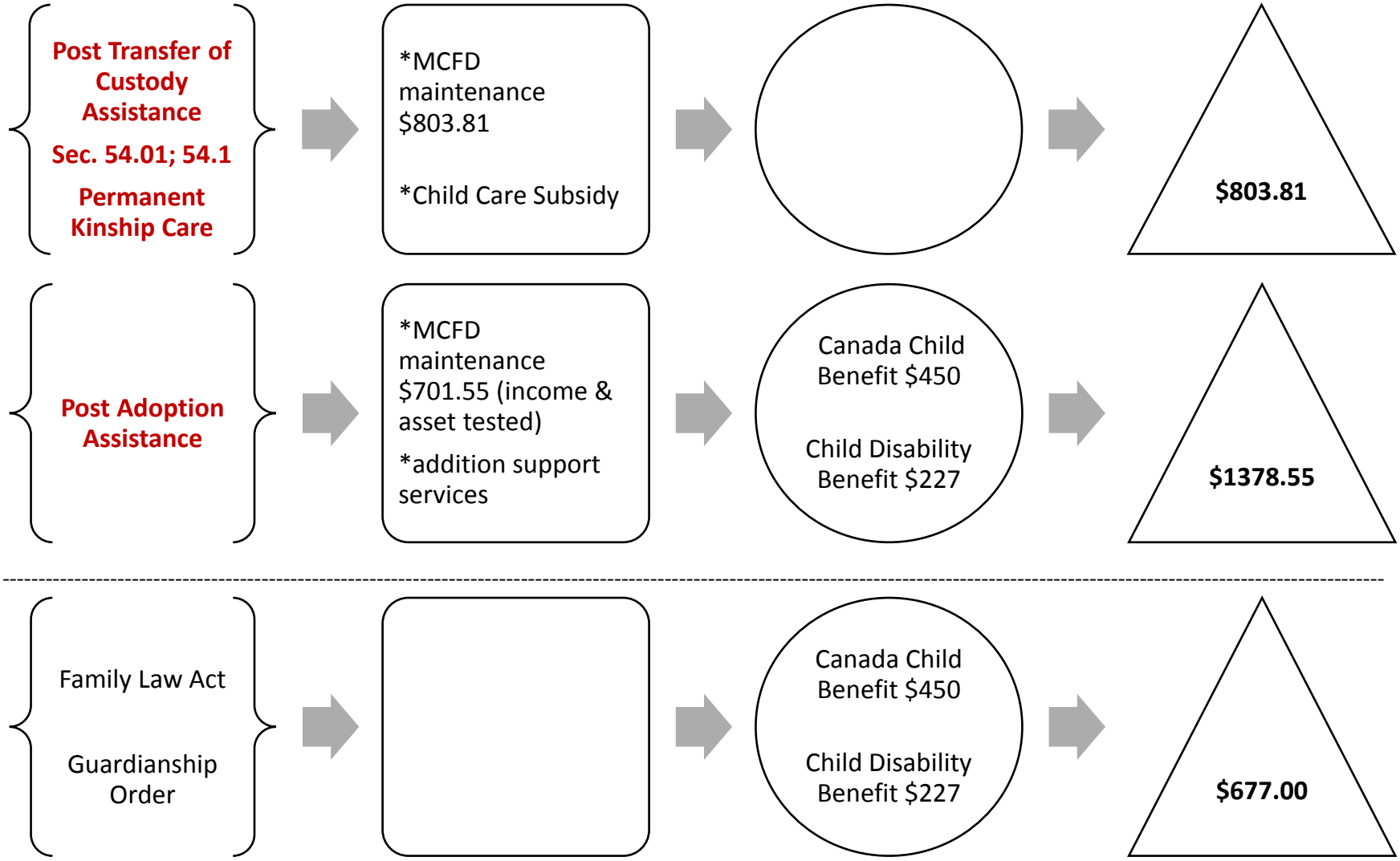
Grandma G: Temporary Care Options



child in ministry care CSM – MCFD Community Service Manager

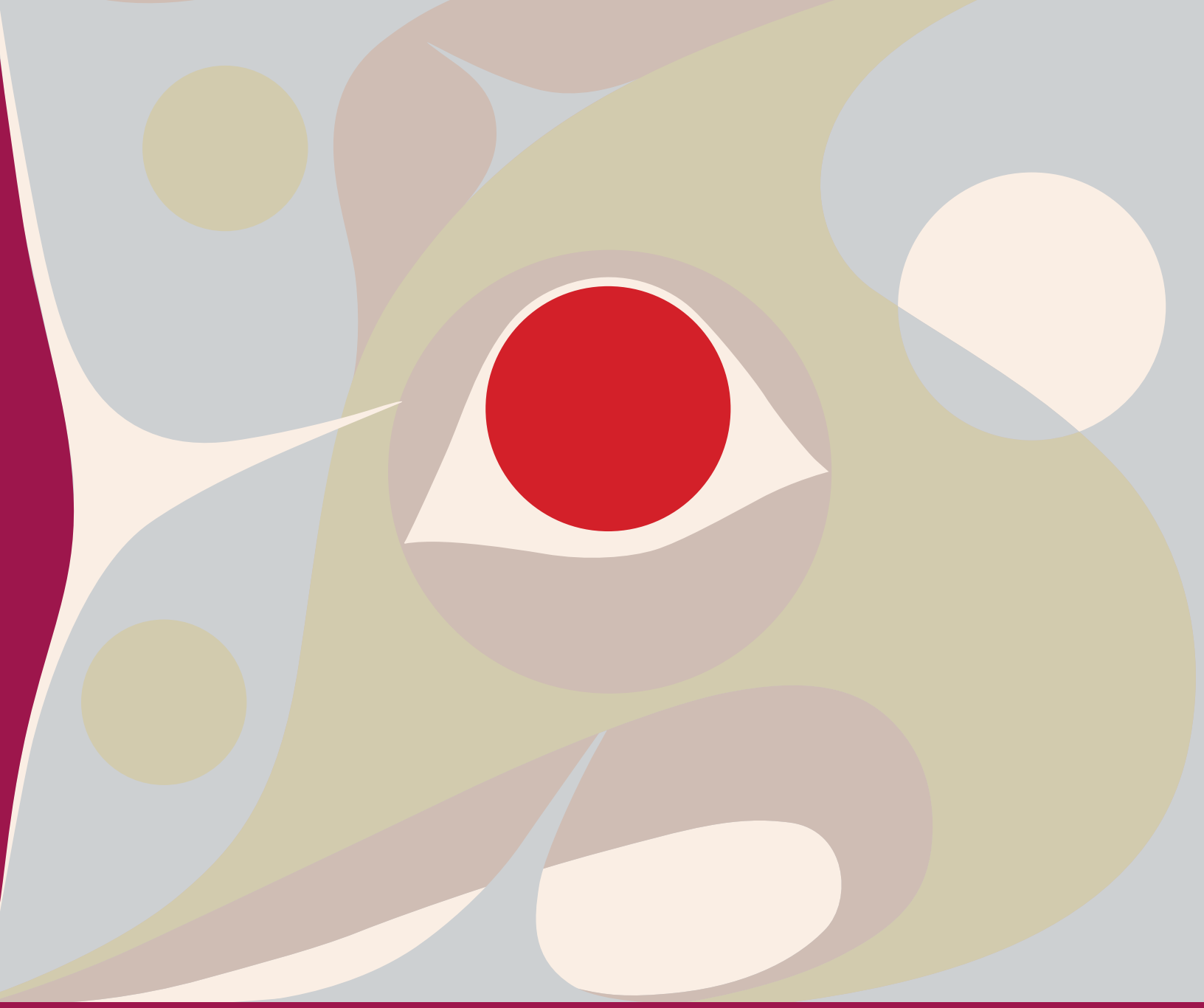
Figures are based on Grandma G's story. Diagram created by PSSS and informed by MCFD Payment and Supplemental Benefits Table, Reference for Out-of-Care Options Practitioners May 2015

Grandma G: Permanent Care Options



child in ministry care CSM – MCFD Community Service Manager

Figures are based on Grandma G's story. Diagram created by PSSS and informed by MCFD Payment and Supplemental Benefits Table, Reference for Out-of-Care Options Practitioners May 2015



INDIGENOUS RESILIENCE, CONNECTEDNESS AND REUNIFICATION–FROM ROOT CAUSES TO ROOT SOLUTIONS

A Report on Indigenous Child Welfare in British Columbia

Final Report of Special Advisor Grand Chief Ed John



COVER ARTIST: CHIEF RANDE COOK (K'ALAPA)

Chief Rande Cook (K'alapa) was born in May 1977 in culture-rich Alert Bay, a small village on the northern tip of Vancouver Island. Surrounded by the beauty of land and art, Rande found the passion of creativity at an early age. From the strong teachings of his grandparents, Gus and Florence Matilpi, Rande learned the strong values of life and culture. In 2008, Rande inherited his grandfather's chieftainship and now carries the name Makwala, which means "moon". Rande is very involved in his culture and has hosted a Potlatch and two feasts for his family and community. Rande is also known for his traditional dancing and singing in Potlatches.

Rande has worked with many great mentors, such as John Livingston for his mastery in wood sculpting, Robert Davidson in metal work, Calvin Hunt for his amazing craftsmanship in wood, and most recently, Repousee and Chasing master Valentin Yotkov.

Rande pushes himself in all his mediums, looking for perfection of each technique. Rande's works can be seen in many galleries in the United States and Canada, and are now in collections around the world.

ABOUT THE DESIGN:

In the top of the piece is an eagle, representing flight and the strength of all First Nations across Canada. The green and blue represent our land and ocean. The grey represents our mountains and the foundation of our lands. The eye in the centre is red as a focal point, representing the vision of a better future for our First Nations people as our reconciliation journey with Canada continues. A traditional weaving pattern is captured in red and grey at the bottom of the image.

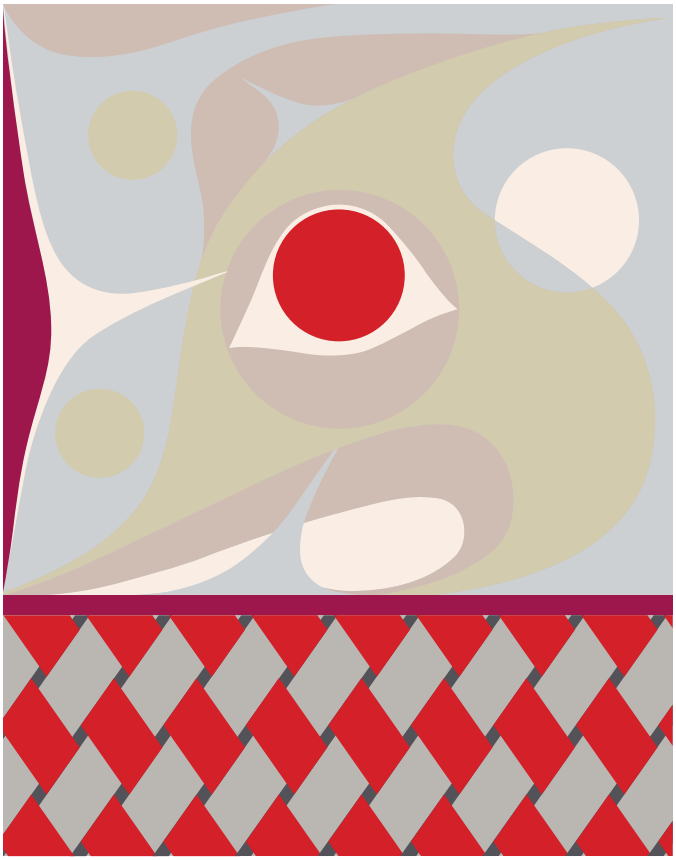


TABLE OF CONTENTS

CONTEXT 8

Appointment as Special Advisor 8

Indigenous Children in Care in British Columbia 11

Indigenous Child Welfare Service Delivery 12

Ministry of Children and Family Development 15

Delegated Aboriginal Agencies 22

Indigenous and Northern Affairs Canada 31

Intergenerational Trauma and "Neglect" 32

A Time for Action – The Changing Legal and Political Landscape 38

United Nations Declaration on the Rights of Indigenous Peoples 39

Section 35 Rights 40

The January 2016 Canadian Human Rights Tribunal's Decision in *First Nations Child and Family Caring Society of Canada* 41

Final Report of the Truth and Reconciliation Commission 42

The Federal Government – Commitments and Actions 44

The Provincial Government – Commitments and Action 45

I. INTRODUCTION 50

Grounding the Work – A Commitment to Focus on Resilience, Connectedness and Reunification 50

Meeting with Gwa'sala-'Nakwaxda'xw Nations, Kwakiutl Nation and Quatsino First Nation 53

Scope of the Report 58

II. AREAS FOR FOCUSED ACTION 60

Area 1. Direct Support for Indigenous Children, Parents and Families in all Indigenous Communities 62

Area 2. Access to Justice and Child and Family Services 86

Area 3. A New Fiscal Relationship – Investing in Patterns of Connectedness 104

Area 4. Prevention Services – Keeping Families Connected 121

Area 5. Reunification and Permanency Planning 128

Area 6. Nurturing a Sense of Belonging and Prioritizing Culture and Language – Care Plans as a Tool for Building Connectedness 146

Area 7. Early Years – Early Investment in Establishing Patterns of Connectedness 158

Area 8. Indigenous Peoples and Jurisdiction Over Child Welfare 166

Area 9. The Existing Policy Framework – Shifting Towards Patterns of Connectedness 180

Area 10. A National Strategy for Indigenous Child Welfare 192

III. FINAL REFLECTIONS 197

ACKNOWLEDGEMENTS 198

APPENDIX A: CONSOLIDATED LIST OF RECOMMENDATIONS 199

APPENDIX B: TERMS OF APPOINTMENT FOR SPECIAL ADVISOR 216

LETTER TO THE MINISTER OF CHILDREN AND FAMILY DEVELOPMENT

21 November 2016

Dear Premier Clark, Minister Cadieux, BC Cabinet Ministers, Chiefs and Leaders:

RE: FINAL REPORT OF THE SPECIAL ADVISOR ON INDIGENOUS CHILDREN IN CARE

In September 2015, I was appointed as Special Advisor on Indigenous Children in Care. Since that time, I have travelled to many Indigenous communities to hear directly from the families and communities about their children who are in care. In every community where I was invited, I was acknowledged and treated with kindness and respect. I heard voices of concern, frustration and, at times, anger. Always, however, there was strong optimism and hope expressed for a better future for our children and grandchildren.

The late Tl'azt'en warrior Chief, Harry Pierre, of the Carrier Sekani Tribal Council put in words a sentiment I heard reflected back to me often during my time in Indigenous communities when parents, families, and communities talked about their deepest hope and responsibility to our children. Chief Pierre stated, "In our time, the helpers would come to help the mother and father…they would remind the parents of their responsibility. Raising a child is very sacred and very powerful…"

I was honoured, many times, when Chiefs, leaders, parents, extended families, children, and youth shared intimate details of their difficult and often wrenching experiences with the existing child welfare system. While the recommendations in this report are often supported through existing statistical data, studies, and other documented research findings, it has been my goal to ensure that these stories I heard and the issues identified by the children and youth, parents, and communities themselves – those with whom I met and those who reached out to me – were told in a strong way.

Your government asked for advice on Indigenous child welfare. "There are too many Indigenous children in care and something needs to be done," I was told in the lead up to my appointment last year. While I was not sure I was the best person to give this advice, my immediate reaction then was to say, "Keep the children at home. Do not remove them; and see those in care returned back home." I had a sense then that the best advice would come from those who were directly impacted by the existing laws, regulations, policies and practices of the state. My time as Special Advisor has served to reinforce this belief.

I respectfully submit my final report, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions*. As emphasized in my report, the opportunity for BC, Canada and Indigenous governments, communities, and families to work in partnership to recognize, constructively address, and reconcile our respective interests to better support the needs of all Indigenous children has never been greater than it is today.

While it is the recommendations within any report that are most likely to become the focal point for scrutiny and discussion, it is my sincere hope that the stories shared with me and that are recounted herein, will inspire and motivate those who read the report, challenge us all to do better, and remind us, as Chief Pierre did me, of the sacred and powerful role of parents and extended families to a child. These stories speak deep truths about the ills of the current system of Indigenous child welfare in BC, but I am convinced they are also the key to establishing pathways and patterns of connectedness that will lead to a better future for Indigenous children, parents, and communities. As we have seen, Indigenous resilience runs deep.

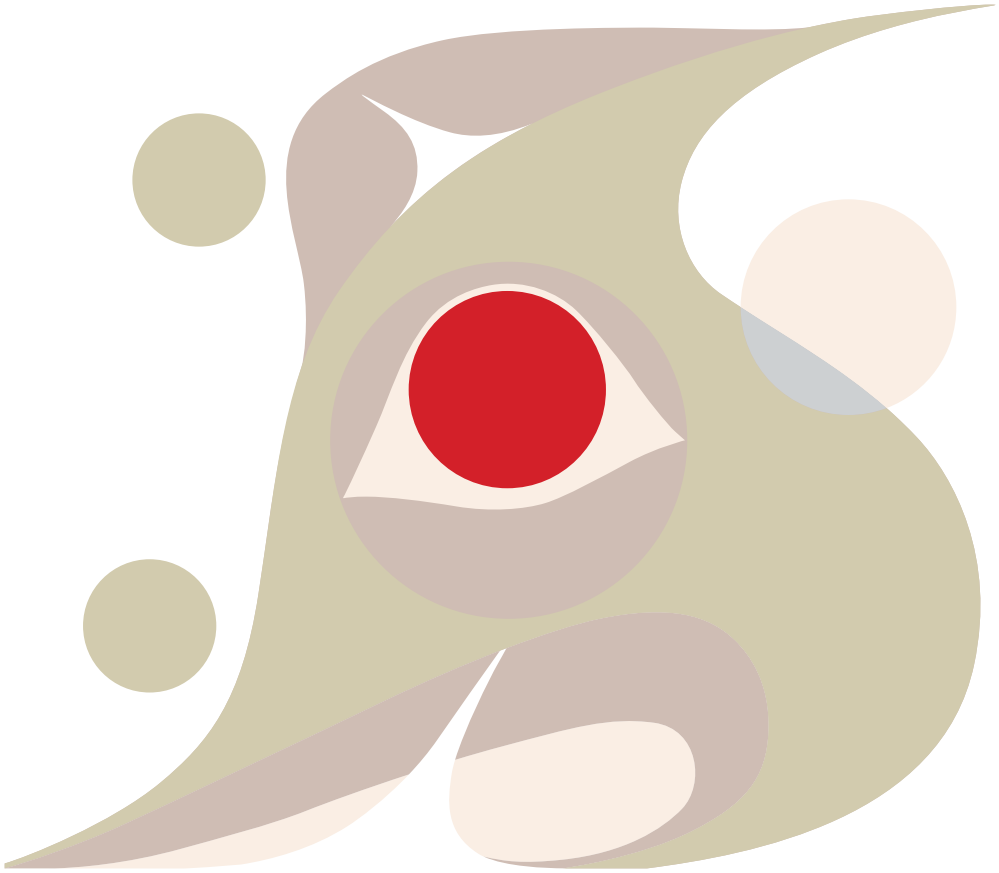
We will not see the desired change without strong and sustained leadership and action by Canada, BC, and Indigenous parents and communities. I trust this report will be useful in your own consideration of what leadership, commitment and action in the area of Indigenous child welfare for BC should look like.

A wet za

Sincerely,



Grand Chief Ed John



CONTEXT

APPOINTMENT AS SPECIAL ADVISOR

In June 2015, I was approached by the BC Premier's Office to discuss a potential appointment to advise and report to the BC government on the following three topics related to Indigenous child welfare:

- "Permanency" for then approximately 2,800 Indigenous children in permanent care under Continuing Custody Orders (CCOs);
- The Council of the Federation's July 2015 report, *Aboriginal Children in Care – Report to Canada's Premiers*, with the expressed interest in focusing on reducing the number of Indigenous children in care and enhancing prevention and intervention work; and
- Early years initiatives for Indigenous children.

Over the summer of 2015, I met with BC's Representative for Children and Youth. She offered guidance and supportive advice, as well as her reflections on the recommendations contained within her own reports on child welfare. I talked to my colleagues, friends, and acquaintances about the potential appointment. My decision to accept the appointment, however, came following a members general meeting in late August in my own village. At that meeting, highly charged and emotional, parents, elders, and leaders spoke about the too many Tl'azt'en children in care. Elders spoke of the many abuses suffered in residential school, expressing how this affected them, their children, grandchildren, and the communities. Too many of their friends and relatives had died early from misunderstood, undiagnosed and untreated trauma, and its impacts. Those from the "60's Scoop" were impacted in similar ways. Taken by social workers, they had been farmed out to foster care where all connections to parents, siblings, extended family, community, culture, and land were gone. They expressed their bitterness, sadness, shame and anger at the enduring impacts from physical, sexual, and psychological abuses while in foster care. Overwhelmingly, parents and grandparents who now had children in care wanted them home.

Accepting the appointment meant first reinforcing with the Minister and with Ministry of Children and Family Development (MCFD) officials that I had specific prior commitments as an elected member of the First Nations Summit (FNS) Executive and as an Expert Member to the UN Permanent Forum on Indigenous Issues (UNPFII). Given these commitments, I advised that I would necessarily need to limit my engagement over the course of the appointment. The Minister agreed to these conditions, and on September 8, 2015 I was officially appointed as Special Advisor on Indigenous Child Welfare with a three-part mandate to do the following:

- Focus on improving permanency options and rates for Indigenous children in care, particularly those in care through continuing custody orders (in care until reaching the age of majority);
- Work to identify next steps for BC following the release of the Council of the Federation's July 2015 report, *Aboriginal Children in Care – Report to Canada's Premiers*; and

- Assist the Minister of Children and Family Development in developing advice to Cabinet on these matters as necessary. (see Appendix B - Terms of Appointment for Special Advisor)

I want to be clear that the advice that I provide in this report is not put forward as a legal opinion. Rather, the findings, analysis and recommendations are based on my legal and political background in a wide range of issues specific to Indigenous peoples, including children and family issues. Based on my own personal experience and knowledge, I have a deep and direct understanding of the circumstances of our peoples in our communities, which is reflected in the report.

Given that my mandate included the 2,800 Indigenous children under continuing custody orders, it was important for me to understand who these children were and where they were from. I was provided a letter of delegation by an MCFD official designated with this authority to receive certain restricted information and documents, such as the names of the children under CCOs.

I felt it was important for the communities and First Nations leaders in particular to have access to the names of children from their own communities who were under CCOs. It was my view that this was consistent with the notice and disclosure provisions in the *Child, Family and Community Service Act (CFCSA),* which provide that First Nations leaders have access to up to date information about the children from their communities under CCOs. I asked for clarification to ensure that I was able to provide this information in a manner that was consistent with the discretionary authority of the Director. I was assured I could share this information, which I did.

Given the time frame of my appointment, my focus has been almost entirely on the approximately 2,800 Indigenous children under CCOs. I made it a priority to meet with Indigenous leaders, elders, and youth, as well as those who are involved or make decisions about these children. This meant traveling to all regions of the province to hear what they had to say about the "child welfare system." As I met with First Nations leaders, elders, hereditary Chiefs, and matriarchs, I provided them with a list of those children from their communities who were under CCOs. No one had seen these lists and all were surprised they could have access to this information.

KEY TERMS

In this report, the term **INDIGENOUS** includes individuals who identify as being First Nations, Inuit or Métis.

The term **FIRST NATIONS** is used to refer to individuals who identify as having a specific First Nations ancestry.

The term **MÉTIS** is used to describe individuals who identify as having Métis ancestry.

Note – while preference is given to the term Indigenous in place of Aboriginal throughout this report, the term Aboriginal is also used when appropriate. For example, Aboriginal is used when necessary to accurately reference or discuss existing legislation, policy, practices or programs.

PERMANENCY

"Permanency" is determined by the province to be the solution to reduce the number of Indigenous children who are under continuing custody orders (CCOs). When the Special Advisor was appointed in September 2015, approximately 2,800 Indigenous children were under CCOs.

At present, the permanency options available for children in BC include the following:

- Family reunification;
- Transfer of custody;
- Adoption

ABORIGINAL CHILDREN IN CARE – A REPORT TO CANADA'S PREMIERS

In August 2014, in response to the overrepresentation of Indigenous children in child welfare systems across Canada, Canada's Premiers directed provinces and territories to work with Indigenous communities in their respective jurisdictions to share information on local solutions. In July 2015, *Aboriginal Children in Care – A Report to Canada's Premiers* was presented to Premiers across Canada, providing examples of existing programs and services that have been shown to reduce the number of Indigenous children in child welfare systems and/or improve outcomes for Indigenous children in care.

EARLY YEARS

The term "early years initiative" is used to describe an initiative aimed at supporting young children, their parents, and families between birth and age six. While a specific section of this report directly addresses early years initiatives, a key focus for the entire report has been strengthening and improving support for Indigenous children during early years throughout the child welfare system.

INDIGENOUS CHILDREN IN CARE IN BRITISH COLUMBIA

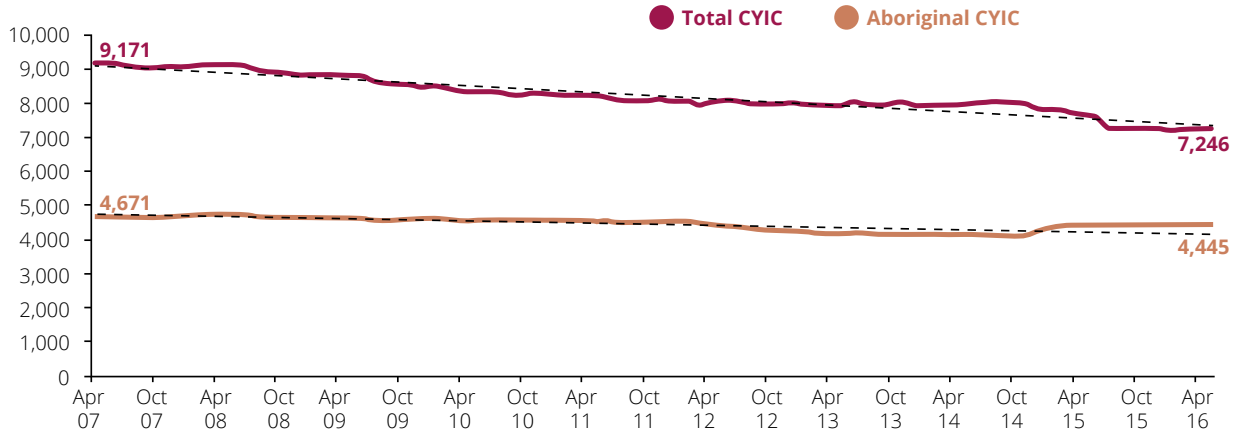
Indigenous children and youth represent the fastest growing demographic in the province, and as such, they are a powerful force in determining our social and economic future. Despite the tremendous potential for Indigenous youth to contribute to economic success, in BC many are unfairly held back as they struggle to overcome myriad challenges within their families, communities, and the child welfare system that is meant to support them.

According to current MCFD data, less than 10% of the child population in BC is Indigenous. And yet, as of May 2016, 60.1% (4,445) of the total (7,246) children and youth in care in BC were Indigenous. This proportion has increased over time, as the downward trend in total children and youth in care in the province has been stronger than the slight downward trend for Indigenous children and youth in care.

Based on a key indicator, MCFD does report a downward trend in the rate of Indigenous children and youth in care per 1,000 population. In May 2016, approximately 55 Indigenous children and youth were in care per 1,000 population (55/1 000). This is down from approximately 64 per 1,000 in April 2002. However, the corresponding rate for non-Indigenous children and youth in care was approximately 4 per 1000. What this means in plain terms is that **INDIGENOUS CHILDREN AND YOUTH IN BC ARE OVER 15 TIMES MORE LIKELY TO BE IN CARE THAN NON-INDIGENOUS CHILDREN AND YOUTH**.

According to MCFD, in May 2016, of the 3,858 children and youth in care who were permanent wards, 2,609 (68%) were Indigenous. Of particular concern when considering these numbers is that Indigenous children are significantly more likely to enter the child welfare system due to "neglect." As summarized in the January 2016 Canadian Human Rights Tribunal decision in *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada),* (2016 CHRT 2), the child welfare system is typically called into

FIGURE 1: TOTAL AND INDIGENOUS CHILDREN AND YOUTH IN CARE (CYIC) - APRIL 2007 TO MAY 2016



As of April 2007, 50.9% of CYIC were Aboriginal

As of May 2016, 61.3% of CYIC were Aboriginal; 10.4 percentage points increase since April 2007

action when someone has concerns about the safety or well-being of a child and in turn reports these concerns to a social worker. The major categories of maltreatment of a child are sexual, physical, or emotional abuse, or exposure to abuse, and neglect. The connection between the high incidence of neglect leading to Indigenous children coming into care and intergenerational trauma is outlined further on in this section of the report, and is picked up on throughout this report where recommendations aimed at building solutions to root causes are explored.

Based on MCFD data, approximately 17% of Indigenous children and youth in care in March, 2015 found "permanency" – meaning they returned to parents, were adopted or saw a permanent transfer of guardianship – in the year following (in 2015/16). For non-Indigenous children and youth in care, approximately 28% found permanency in the year following. Relatedly, less than 60% of Indigenous children and youth in care will find permanency within five years of entering into care. For non-Indigenous children, approximately 75% of children and youth in care will find permanency within five years.

Those at MCFD who have studied the troubling statistics related to Indigenous child welfare and permanency in BC have concluded that even if one accounts for relevant factors such as age and siblings, Indigenous children and youth in care have a significantly lesser chance of finding permanency over time than their non-Indigenous counterparts. In fact, close to 60% of Indigenous children in care will age out without ever finding permanency.

INDIGENOUS CHILD WELFARE SERVICE DELIVERY

Indigenous child welfare services in BC are delivered and funded based on a complex combination of factors, such as the status of a child as being "Indian" under the *Indian Act*, where the child or youth resides, whether a Delegated Aboriginal Agency (DAA) is in or serving that community, and when a DAA does exist, by that particular DAA's level of delegated authority. Figure 2 illustrates the complex system of delivering child welfare services to Indigenous children and youth, and their families. In my meetings, it became clear that this system is not understood by most.

TABLE 1: PERCENTAGE OF CYIC BY REASON FOR CARE, MAY 31, 2016

	All	Indigenous	Non-Indigenous
Neglect	70.2%	73.9%	64.4%
Physical harm by parent	9.1%	8.5%	10.1%
Emotional harm by parent	4.8%	4.1%	5.9%
Sexual abuse/exploitation by parent	0.8%	0.7%	1.1%
Other abuse/neglect concerns	3.8%	3.9%	3.5%
By Agreement with Parents	11.3%	8.9%	15.0%

Throughout the report, various components of the existing Indigenous child welfare service delivery structure and its funding in BC are examined in detail. This particular section of the report is not an exhaustive review and is only intended to provide a high level overview of the current service delivery structure through a brief review of the roles of MCFD, DAAs, and Indigenous and Northern Affairs Canada (INAC).

DEFINITION OF NEGLECT

The BC *Child, Family and Community Service Act* (CFCSA) does not include a statutory definition of neglect. However, the *CFCSA* does specify that "A child needs protection…if the child has been, or is likely to be, physically harmed because of neglect by the child's parent…" (Section 13(1)(d) *CFCSA*)

In other Canadian jurisdictions, such as Alberta, Nova Scotia, Prince Edward Island, and Quebec, a statutory definition of neglect is provided. Nova Scotia has not yet implemented its definition of neglect.

Alberta's *Child Youth and Family Enhancement Act*, as an example, provides the following language around neglect:

(2) *For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered because of any of the following:*

…

(c) the child is neglected by the guardian;

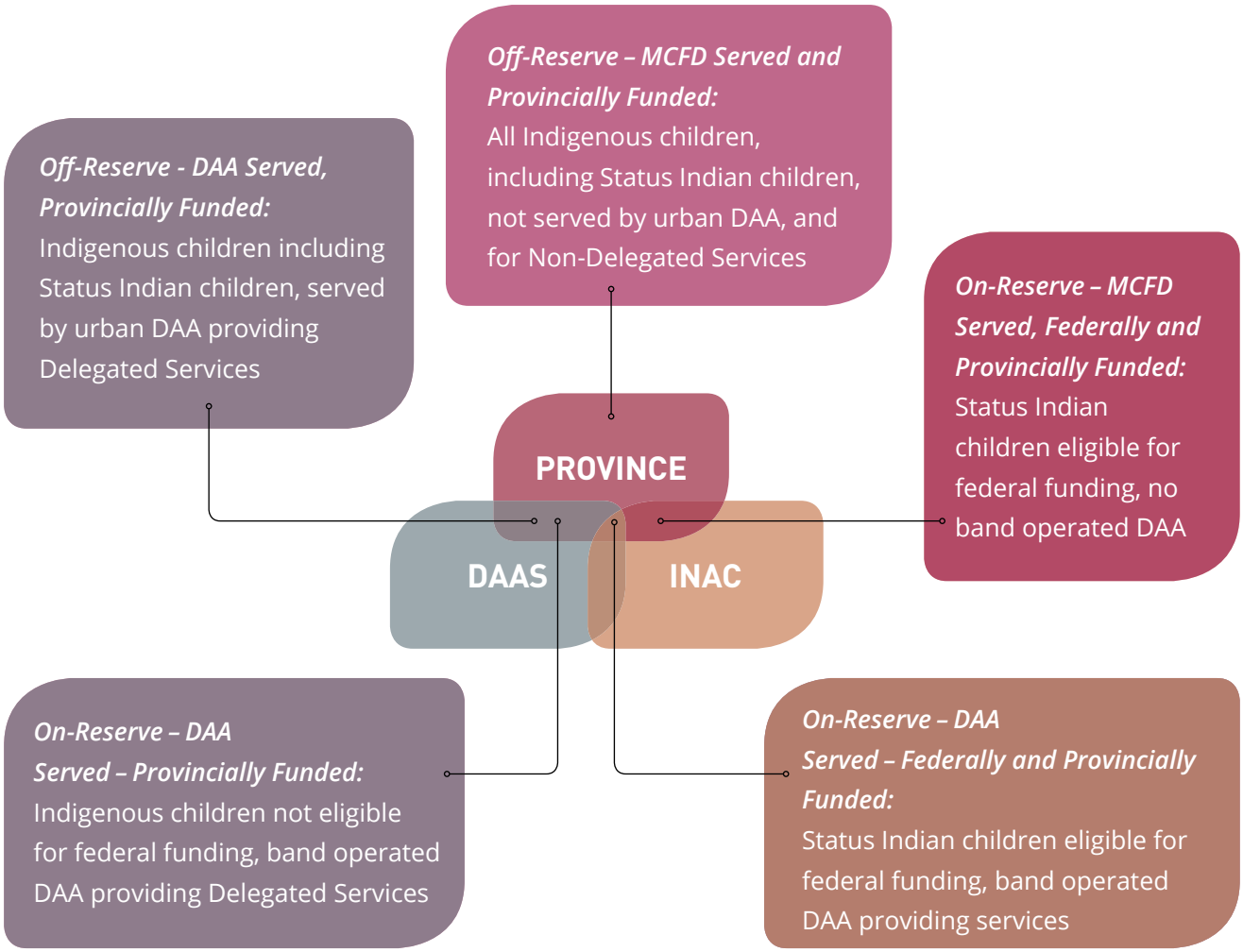
(2.1) *For the purposes of subsection (2)(c), a child is neglected if the guardian*

(a) is unable or unwilling to provide the child with the necessities of life,

(b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well being of the child, or

(c) is unable or unwilling to provide the child with adequate care or supervision.

FIGURE 2: INDIGENOUS CHILD WELFARE SERVICE DELIVERY STRUCTURE (ADAPTED FROM *WHEN TALK TRUMPED SERVICE: A DECADE OF LOST OPPORTUNITY FOR ABORIGINAL CHILDREN AND YOUTH IN B.C.*, REPORT OF THE BC REPRESENTATIVE FOR CHILDREN AND YOUTH)



MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

In BC, MCFD is responsible for both the administration and delivery of child welfare services. The *CFCSA* is the legislation defining the child welfare service delivery structure, providing the authority for the Minister of MCFD to designate a Director(s), as well as the authority for a Director to delegate power, duties or functions under the *CFCSA*, such as the power of social workers to intervene to protect children. While the Minister is responsible for the *CFCSA*, the Director(s) designated by the Minister are able to act only within the parameters of the *CFCSA*. While this distinction is important from a legal perspective, the reality with Indigenous leaders, families and communities is that they deal with MCFD and make no distinctions between MCFD and the Director.

The *CFCSA* also provides the guiding and service delivery principles of the child welfare system in BC. These principles and various sections of the *CFCSA* are further discussed in later sections of this report.

In addition to the *CFCSA,* guidelines and practice standards exist in regulation and policy and provide social workers with more specific instructions on how to deliver child welfare services to children, youth and families.

DESIGNATION AND DELEGATION

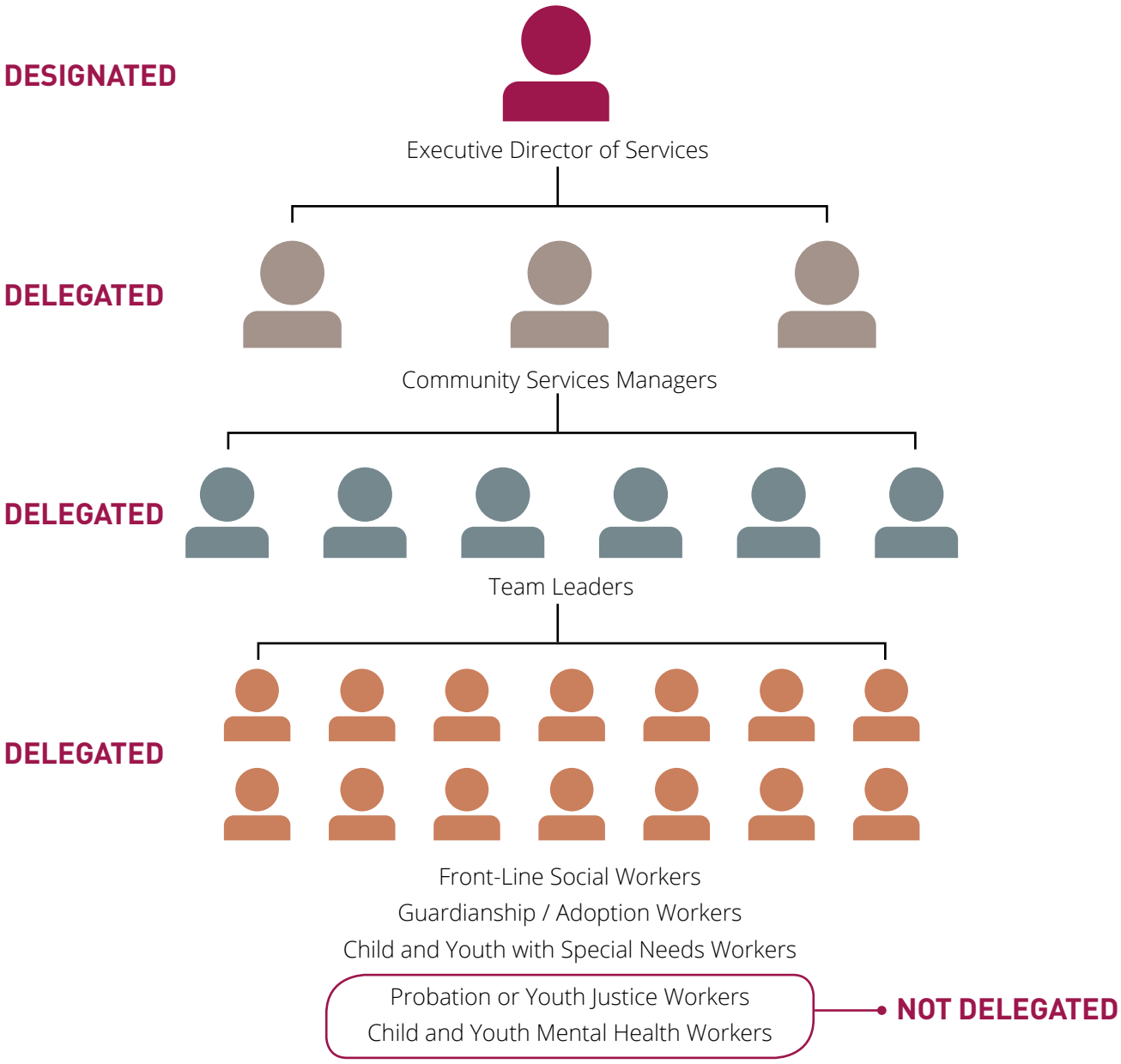
DESIGNATION is the process established under section 91 of the *CFCSA* by which the Minister for MCFD may designate one or more persons as "Directors" for the purposes of any or all of the provisions of the *CFCSA*.

Once designated under section 91, a Director has the power to **DELEGATE** duties or functions under the *CFCSA*. A Director's power to delegate is established under section 92 of the *CFCSA*.

DELEGATION is the process by which a Director can delegate any person or class of person (social workers, for example) any or all of the Director's powers, duties or functions under the *CFCSA*. Those who are delegated by a Director in accordance with the *CFCSA* receive legal authority to carry out specific duties identified in the *CFCSA*, such as the provision of child protection, family support and guardianship services. This statutory authorization allows delegated front-line social workers to exercise broad decision making powers each and every day. In front of a provincial court judge, they are seen as officers of the court.

Information sharing, when it involves the Director, is governed differently than if it involves MCFD employees who are not delegates of the Director.

FIGURE 4: MCFD REGIONAL ORG CHART



NOTE: NUMBER OF 👤 NOT REFLECTIVE OF ACTUAL NUMBER OF MANAGERS, LEADERS, OR WORKERS IN EACH MCFD REGION. THE NUMBER OF MANAGERS, LEADERS, AND WORKERS VARIES BY REGION.

BC'S *CFCSA – PRINCIPLES*

GUIDING PRINCIPLES

SECTION 2 *This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:*

(a) children are entitled to be protected from abuse, neglect and harm or threat of harm;

(b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;

(c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;

(d) the child's views should be taken into account when decisions relating to a child are made;

(e) kinship ties and a child's attachment to the extended family should be preserved if possible;

(f) the cultural identity of aboriginal children should be preserved;

(g) decisions relating to children should be made and implemented in a timely manner.

SERVICE DELIVERY PRINCIPLES

SECTION 3 *The following principles apply to the provision of services under this Act:*

(a) families and children should be informed of the services available to them and encouraged to participate in decisions that affect them;

(b) aboriginal people should be involved in the planning and delivery of services to aboriginal families and their children;

(c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;

(d) services should be integrated, wherever possible and appropriate, with services provided by government ministries, community agencies and Community Living British Columbia established under the Community Living Authority Act;

(e) 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.

CHILD, FAMILY AND COMMUNITY SERVICE REGULATION

CONTENTS OF OTHER PLANS OF CARE

8(1) In this section, "plan of care" means a plan of care prepared for a court hearing to consider an application for an order,

(a) other than an interim order, that a child be returned to or remain in the custody of the parent apparently entitled to custody and be under a director's supervision for a specified period, or

(b) that a child be placed in the custody of a director under

(i) a temporary custody order, or

(ii) a continuing custody order.

(2) A plan of care must include the following information:

...

(g) in the case of an aboriginal child other than a treaty first nation child or a Nisga'a child, the name of the child's Indian band or aboriginal community, in the case of a treaty first nation child, the name of the child's treaty first nation and, in the case of a Nisga'a child, the Nisga'a Lisims Government;

(h) the parents' involvement in the development of the plan of care, including their views, if any, on the plan;

(i) in the case of an aboriginal child other than a treaty first nation child or a Nisga'a child, the involvement of the child's Indian band or aboriginal community, in the case of a treaty first nation child, the involvement of the child's treaty first nation and, in the case of a Nisga'a child, the involvement of the Nisga'a Lisims Government, in the development of the plan of care, including its views, if any, on the plan;

...

(m) a description of how the director proposes to meet the child's need for

(i) continuity of relationships, including ongoing contact with parents, relatives and friends,

(ii) continuity of education and of health care, including care for any special health care needs the child may have, and

(iii) continuity of cultural heritage, religion, language, and social and recreational activities.

MCFD has 13 service delivery areas (SDAs). The day-to-day practice, human resource and operational management of these SDAs are the responsibility of 13 executive directors of service (EDS), supported by community service managers (CSMs) who manage local service areas and who supervise team leaders. The team leaders in each of the SDAs provide direct supervision of MCFD's front-line staff.

MCFD has six core service lines. These are 1) Child Safety, Family Support and Children in Care Services; 2) Early Childhood Development and Child Care Services; 3) Services for Children and Youth with Special Needs; 4) Child and Youth Mental Health Services; 5) Adoption Services; and 6) Youth Justice Services.

FIGURE 3: 13 MCFD "REGIONS" OR SDAS – ADAPTATION OF MCFD MAP

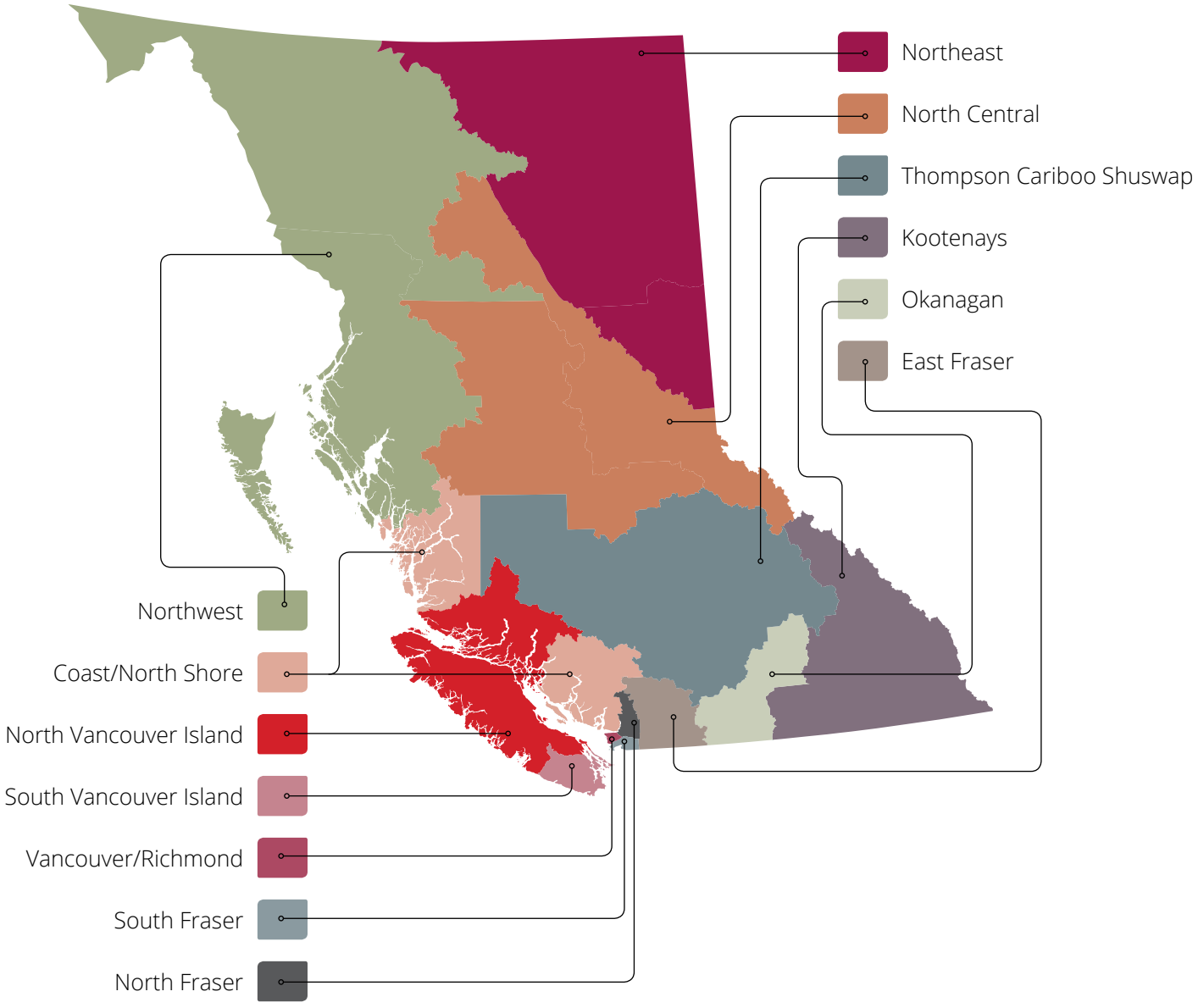


TABLE 2: SERVICE DELIVERY DIVISION (EXCLUDING FACILITIES) BUDGET ALLOCATION – AS OF JULY 31, 2016

ECD – Early Childhood Development
CYSN – Children and Youth with Special Needs
CYMH – Child and Youth Mental Health

DESCRIPTION			TOTAL ECD	TOTAL CYSN	TOTAL CYMH
			TOTAL $$ BUDGET (M)		
SDA11	Kootenays		0.80	7.29	2.85
SDA12	Okanagan		1.18	16.48	5.03
SDA13	Thompson Cariboo Shuswap		1.92	12.06	5.38
SDA21	East Fraser		0.90	15.61	4.41
SDA22	North Fraser		1.20	27.94	6.53
SDA23	South Fraser		1.44	28.92	8.83
SDA24	Vancouver/Richmond	***NOTE 2***	1.44	29.20	9.81
SDA25	Coast/North Shore		0.76	14.58	4.19
SDA31	South Vancouver Island		1.43	18.22	7.14
SDA32	North Vancouver Island		2.21	19.76	6.27
SDA41	Northwest		1.99	6.28	2.83
SDA42	North Central		1.30	10.21	4.66
SDA43	Northeast		1.27	5.33	1.93
		SUB-TOTAL - SDAs	**17.84**	**211.88**	**69.86**
Centralized Screening		***NOTE 2***			
		TOTAL - EDS Allocations	**$17.84**	**$211.88**	**$69.86**

NOTE (1) -SUPPORT SERVICES

- include administrative staff and operating costs that support line staff across the six lines of service

NOTE (2) - CENTRALIZED SCREENING

- managed by EDS for Vancouver/Richmond

SDA24	Vancouver/Richmond		1.44	29.20	9.81
Centralized Screening			-	-	-
		TOTAL - EDS Allocations	**$1.44**	**$29.20**	**$9.81**

TOTAL CHILD SAFETY	TOTAL ADOPTION	TOTAL YOUTH JUSTICE	TOTAL SUPPORT SERVICES *(NOTE 1)*	TOTAL ALL STOBS	% OF TOTAL BUDGET
TOTAL $$ BUDGET (M)					
18.15	1.00	0.64	1.90	32.63	3.4%
38.80	2.89	1.86	3.52	69.76	7.3%
46.10	1.86	1.55	3.76	72.64	7.7%
51.23	3.77	1.64	2.72	80.28	8.5%
39.01	1.51	2.10	4.47	82.76	8.7%
75.74	2.96	4.13	4.78	126.79	13.4%
80.85	1.67	2.95	3.56	129.47	13.6%
20.48	0.82	0.50	2.11	43.43	4.6%
55.55	3.46	2.16	4.03	91.99	9.7%
47.03	3.38	1.95	4.31	84.90	8.9%
21.14	0.94	0.65	2.33	36.16	3.8%
45.88	1.64	1.14	3.21	68.05	7.2%
11.48	0.81	0.43	1.03	22.29	2.3%
551.44	**26.71**	**21.70**	**41.73**	**941.15**	**99.1%**
6.76			1.35	8.12	0.9%
$558.20	**$26.71**	**$21.70**	**$43.08**	**$949.27**	**100.0%**

80.85	1.67	2.95	3.56	129.47	13.6%
6.76	-	-	1.35	8.12	0.9%
$87.61	**$1.67**	**$126.62**	**$99.09**	**$188.36**	**14.5%**

DELEGATED ABORIGINAL AGENCIES

In BC, DAAs also have responsibility for the delivery of child welfare services. DAAs operate through a delegation enabling agreement with the Provincial Director (the "Director"). As described above, the Director may delegate authority to employees of DAAs to undertake administration of all or specific parts of the *CFCSA*. Although the DAAs are referred to as "Delegated" Aboriginal Agencies, legally they do not have delegation status. This creates confusion and should be rectified. There are 3 levels of delegation possible and each of the levels of delegation provide an increasing and cumulative range of responsibility for child welfare services.

THREE LEVELS OF DELEGATION FOR DAAS UNDER THE *CFCSA**

**Language adapted from 2016 MCFD Factsheet on the Delegation Process*

LEVEL C3 DELEGATION: RESOURCE DEVELOPMENT AND VOLUNTARY SERVICE DELIVERY

The areas of service covered under C3 delegation include:

- support services for families;
- voluntary care agreements for children, including temporary in-home care; and
- special needs agreements, including those for children in care on no fixed term.

Operational and Practice standards under C3 delegation address the following:

- case management;
- family assessment;
- service planning and agreements;
- children in voluntary care;
- standards for care in regular, restricted, and specialized family care homes;
- monitoring and evaluation; and
- closure and transfer of cases.

LEVEL C4 DELEGATION: GUARDIANSHIP SERVICES

The areas of service covered under C4 delegation include those found in C3, as well as guardianship of children in the continuing care of the Director. While practice standards for C4 are similar to those for voluntary care in C3, they also include:

- develop, monitor and review comprehensive plans of care for children in care;
- legal documentation;
- permanency planning for children in care;
- prepare youth to transition for independence;
- reportable circumstances;
- ongoing monitoring of child's well-being while in care; and
- quality care reviews.

LEVEL C6 DELEGATION: FULL CHILD PROTECTION SERVICES

The areas of service covered under C6 delegation include those found in C3 and C4, as well as full child protection, which include:

- receiving, assessing and, as required, investigating reports of child abuse and neglect;
- deciding the most appropriate course of action if a child is deemed in need of protection;
- where necessary, removing the child and placing the child in care; and
- obtaining court orders or taking other measures to ensure the ongoing safety and well-being of the child.

Practice standards under C6 delegation address the following:

- intake;
- investigation;
- taking charge of children;
- risk assessment;
- risk reduction;
- ongoing protective family service; and
- investigation of allegations of abuse in foster homes.

The degree of responsibility assumed by each DAA through delegation agreements is the result of negotiations between MCFD and the Indigenous community or communities served by the DAA, a phased and often lengthy planning process, and ultimately the official level of delegation provided by the Director.

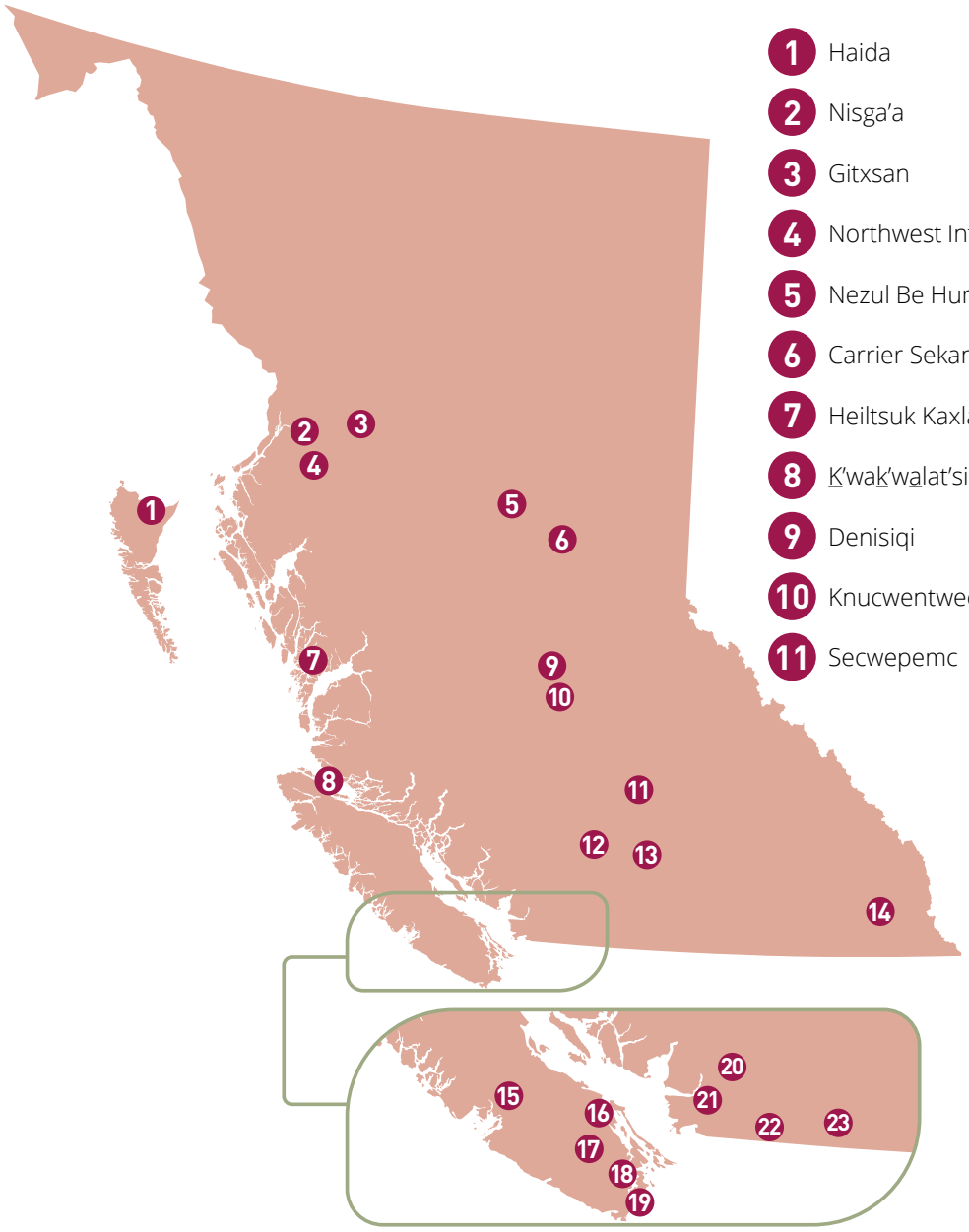
Currently, there are 23 DAAs with varying levels of delegation in BC (Table 3). Two of these DAAs are delegated to do adoptions, Lalum'utul'Smun'eem Child and Family Services (Cowichan Tribes), and the Métis Child and Family Services. Four are level C3 delegation and can provide voluntary services and recruit and approve foster homes; eight are level C4 delegation and therefore have the additional delegation required to provide guardianship services for children in continuing care; and 11 have level C6 delegation and can therefore additionally provide full child protection, including the authority to investigate reports and remove children. All of the DAAs are audited periodically by MCFD to determine level of compliance with Aboriginal Operational and Practice Standards and Indicators (AOPSI), and when applicable, Chapter 3 Child Protection Policies.

MCFD has not approved a new DAA since 2012. Over the course of my appointment as Special Advisor, a number of Indigenous communities interested in pursuing a DAA expressed their frustration with this decision by the Province.

THE ABORIGINAL OPERATIONAL AND PRACTICE STANDARDS AND INDICATORS (AOPSI)

The Aboriginal Operational and Practice Standards and Indicators (AOPSI) emphasize the importance placed upon family and community within Aboriginal cultures. Though the emphasis of some of these standards differ from those of the Ministry, the safety and protection of children are always paramount. The AOPSI standards either meet or exceed those established by the Ministry (AOPSI, p.4).

FIGURE 5: ALL DAAS IN PROVINCE – ADAPTED MCFD MAP



1. Haida
2. Nisga'a
3. Gitxsan
4. Northwest Internation
5. Nezul Be Hunuyeh
6. Carrier Sekani
7. Heiltsuk Kaxla
8. K'wak'walat'si ('Namgis)
9. Denisiqi
10. Knucwentwecw
11. Secwepemc
12. Nlha'7kapmx
13. Scw'exmx
14. Ktunaxa-Kinbasket
15. USMA Nuu-chah-nulth
16. Kwumut Lelum
17. Lalum'utul' Smun'eem
18. NIL TU,O
19. Surrounded by Cedar
20. Ayas Men Men
21. Vancouver Aboriginal
22. Métis
23. Fraser Valley Children & Aboriginal Services Society

TABLE 3: DELEGATED ABORIGINAL AGENCIES AND COMMUNITIES SERVED (AS OF JUNE 2016)

NAME OF AGENCY	AFFILIATED COMMUNITIES
C3 DELEGATION: VOLUNTARY SERVICE DELIVERY	
Denisiqi Services Society	• Alexandria • Alexis Creek (Tsi Del Del) • Anaham (Tl'etinqox) • Nemiah (Xeni Gwet'in)
Haida Child & Family Services Society	• Old Massett Village Council • Skidegate Band
Heiltsuk Kaxla Child & Family Service Program	• Heiltsuk
K'wak'walat'si ('Namgis) Child & Family Services	• 'Namgis • Tlowitsis-Mumtagila
C4 DELEGATION: VOLUNTARY SERVICE DELIVERY AND GUARDIANSHIP SERVICES FOR CHILDREN IN CONTINUING CARE	
Ayas Men Men Child & Family Services (Squamish Nation)	• Squamish
Carrier Sekani Family Services	• Burns Lake • Cheslatta • Lake Babine • Nadleh Whut'en • Nee Tahi Buhn • Skin Tyee
Gitxsan Child & Family Services Society	• Kispiox • Glen Vowell • Gitsegukla • Gitwangak
Kw'umut Lelum Child & Family Services	• Halalt • Lake Cowichan • Lyackson • Malahat • Nanoose
Nezul Be Hunuyeh Child & Family Services	• Nak'azdli • Tl'azt'en
NIL TU,O Child and Family Services Society	• Beecher Bay • Pauquachin • Songhees • Tsartlip
Nisga'a Child & Family Services	Citizens of the Nisga'a Lisims Government including villages of: • Gingolx (Kincolith) • Gitlakdamix
Northwest Internation Family & Community Services Society	• Gitga'at (Hartley Bay) • Gitxaala (Kitkatla) • Haisla (Kitamaat) • Kitselas

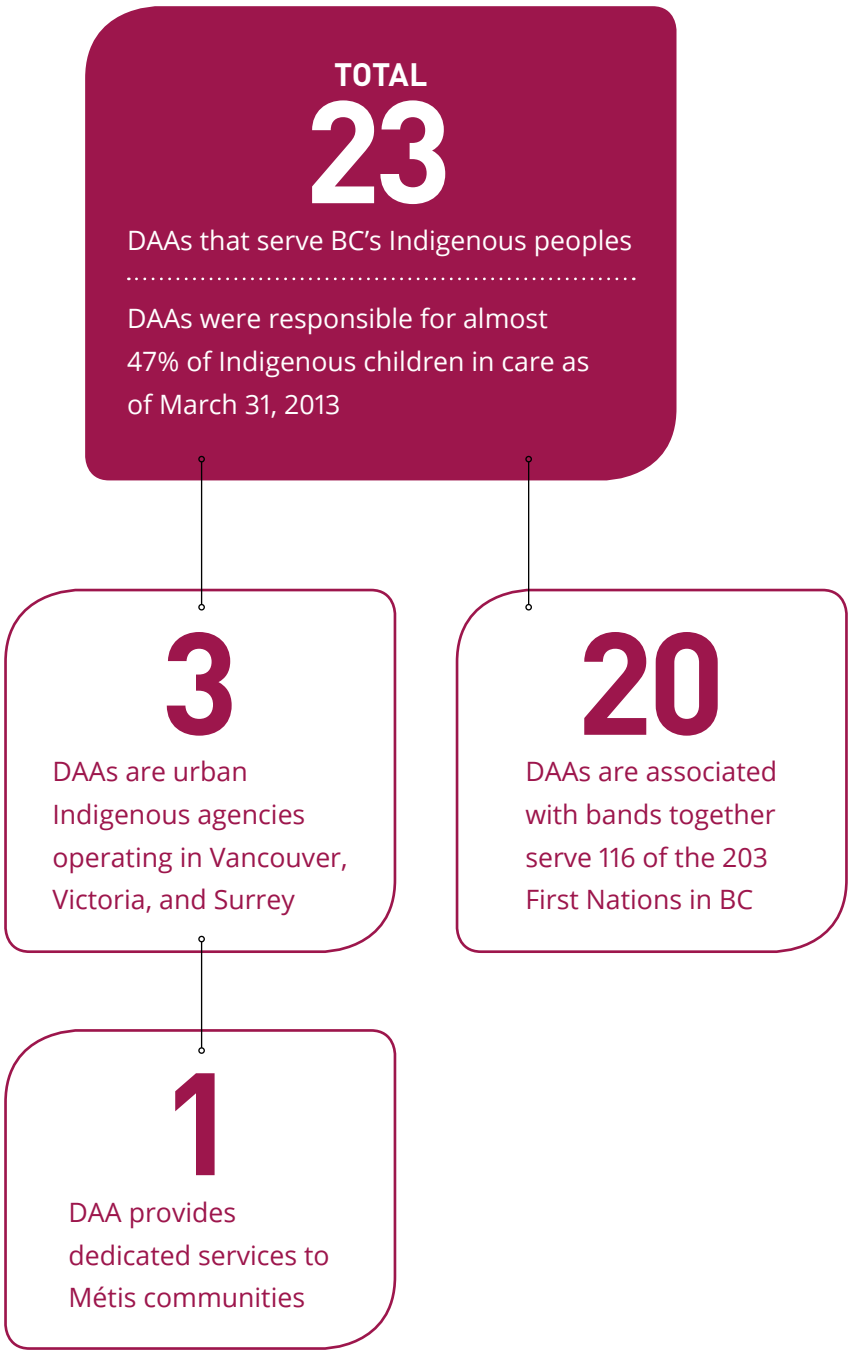
MCFD DATA AS OF JUNE 2016. THE DATA RELIES ON SELF-IDENTIFICATION TO DETERMINE WHETHER A CHILD IS INDIGENOUS

	# OPEN FILES					
	IN CARE		YOUTH AGREEMENTS		OUT OF CARE	
	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES
• Stone (Yunesit'in) • Ulkatcho • Toosey (Tl'esqotin)	0	0	0	0	1	1
	0	0	0	0	0	0
	0	0	0	0	0	0
	0	0	0	0	0	0
	67	67	0	0	0	0
• Stellat'en • Wet'suwet'en • Saik'uz • Yekooche • Takla Lake	91	92	0	0	0	0
• Gitanyow	10	10	0	0	1	1
• Penelakut • Snuneymuxw • Qualicum • Stz'uminus First Nations	98	98	1	1	4	4
	59	59	1	1	0	0
• Tsawout • Tseycum • T'sou-ke	31	31	6	6	3	3
• Gitwinksihlkw • Laxgalts'ap	19	19	1	1	0	0
• Kitsumkalum • Metlakatla • Lax Kw'alaams	28	28	2	2	0	0

NAME OF AGENCY	AFFILIATED COMMUNITIES	
Surrounded By Cedar Child & Family Services	• Victoria Urban	
C6 DELEGATION: VOLUNTARY SERVICES, GUARDIANSHIP SERVICES AND FULL CHILD PROTECTION SERVICES		
Lalum'utul' Smun'eem Child & Family Service	• Cowichan	
Knucwentwecw Society	• Canim Lake	• Canoe Creek
Ktunaxa-Kinbasket Child & Family Services	• Columbia Lake/?Akisq'nuk • Lower Kootenay	• Shuswap • St. Mary's
Nlha'7Kapmx Child & Family Services Society	• Cook's Ferry • Kanaka Bar	• Lytton • Nicomen
Scw'exmx Child & Family Services Society	• Coldwater • Lower Nicola	• Nooaitch • Shackan
Secwepemc Child & Family Services Agency	• Adams Lake • Bonaparte	• Kamloops • Neskonlith
Nuu-chah-nulth Tribal Council USMA Family & Child Services	• Ahousaht • Ditidaht • Ehattesaht • Hesquiaht • Mowachaht/Muchalaht	• Hupacasath • Nuchatlaht • Tla-o-qui-aht • Tseshaht
Fraser Valley Aboriginal Children & Family Services Society FORMERLY Xyolhemeylh Child & Family Services	• Aitchelitz • Chawathil • Cheam • Kwantlen	• Leq'a:mel • Popkum • Shxw'owhamel • Shx'wha:y Village
Métis Family Services (La Societe De Les Enfants Michif)	• Métis (Simon Fraser/ South Fraser)	
Vancouver Aboriginal Child And Family Services Society (VACFSS)	• Vancouver Urban (Vancouver/Richmond)	

	# OPEN FILES					
	IN CARE		YOUTH AGREEMENTS		OUT OF CARE	
	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES	ABORIGINAL CASES	ALL CASES
	89	89	0	0	0	0
	64	64	0	0	0	0
• Soda Creek • Williams Lake	25	25	5	5	9	9
• Tobacco Plains • Métis E. Kootenay Region	47	47	14	15	12	12
• Siska • Skuppah	10	10	0	0	1	1
• Upper Nicola	29	29	0	0	1	1
• North Thompson • Whispering Pines • Skeetchestn	141	141	6	6	13	13
Maa-nulth Treaty: • Huu-ay-aht • Ka:'yu:k't'h'/Che:k'tles7et'h' • Toquaht • Uchucklesaht • Ucluelet	133	133	2	2	8	8
• Skawahlook • Squiala • Skowkale • Sumas • Skwah • Tzeachten • Soowahlie • Yakweakwioose	423	441	30	31	78	81
	109	112	7	7	12	12
	415	418	0	0	25	25
TOTAL OPEN FILES	**4414**	**7204**	**293**	**776**	**717**	**1165**

FIGURE 6: DAAS IN BRITISH COLUMBIA



INDIGENOUS AND NORTHERN AFFAIRS CANADA

The federal government, through Indigenous and Northern Affairs Canada (INAC), is constitutionally responsible for "Indians and lands reserved for Indians" but limits its responsibility in child welfare to funding of services for status First Nations children ordinarily resident on reserve. INAC is not involved in the delivery of these services.

INAC provides funding to First Nations child and family services (FNCFS) agencies or DAAs, which are established, managed and controlled by First Nations, and delegated by provincial authorities to provide culturally-appropriate prevention and protection services to First Nations children and families ordinarily resident on reserve. Directive 20-1 is the INAC policy for administering funds for child welfare services to First Nations child and family service providers. Put simply, Canada's role is limited to funding a provincial system for Indigenous children who are "ordinarily resident on reserve" and who are in care. If a child is not "ordinarily resident on reserve" there is no federal funding.

Directive 20-1 is examined at length later in this report. The policy directive has been condemned in multiple reports and notably in the recent CHRT decision (2016 CHRT 2) for providing financial incentive to bring more Indigenous children into care. In BC, the Director's decision to remove an Indigenous child and a subsequent court order for that child's placement in care, triggers federal funding payments. Alternative placements, where there is no court order, with extended family or the community for example, are not funded. In practice this has seen more children removed, and more court orders issued.

In areas where these DAAs do not exist to serve the on-reserve First Nation population, INAC reimburses BC for the delivery of child and family services to these First Nations communities (INAC, 2016). The *BC Service Agreement* is the funding mechanism that provides for reimbursement of maintenance expenses based on actual expenditures, and for funding to the province for operations expenses based on a costing model agreed to between the

DIRECTIVE 20-1 AND THE BC SERVICE AGREEMENT

DIRECTIVE 20-1 is the INAC policy for administering funds for child welfare services to First Nations child and family service providers. The *2016 CHRT 2* decision considers at length how Directive 20-1 has contributed to greater rates of First Nations children in care, and the systemic bias created through the Directive against alternative care options or early intervention and prevention models, due to Directive 20-1 providing more funding for in-care options.

In BC, the *Service Agreement Regarding the Funding of Child Protection Services of First Nations Children Ordinarily Resident on Reserve* (the "***BC SERVICE AGREEMENT***") is the funding mechanism that provides for reimbursement of maintenance expenses based on actual expenditures, and for funding to the province for operations expenses based on a costing model agreed to between the province and INAC. In 2012, the *BC Service Agreement* replaced a previous memorandum of understanding between the INAC and MCFD.

Province and INAC. As of July 2016, 84 First Nation communities in BC receive services under the *BC Service Agreement*.

INAC funding both through Directive 20-1 and through the *BC Service Agreement* is discussed throughout this report.

INTERGENERATIONAL TRAUMA AND "NEGLECT"

As noted above, the majority of Indigenous children and youth who are removed from their family homes and placed in care are victims of neglect (Table 1). What does this mean when we contemplate the current child welfare system and chart a path forward? While abuse poses an immediate risk to one's well-being, the risks posed by neglect are built up over time and are linked to broader family and community issues such as poverty and isolation; issues which unaddressed can go on to perpetuate a cycle of further neglect.

"60'S SCOOP"

At the height of the residential school system, an amendment was made to the *Indian Act*, which allowed provinces to exercise power where federal legislation did not exist, including in child protection policy. During the 1950's and 1960's, the number of Indigenous children in care rose dramatically. This period is known as the "60's Scoop," and is today considered a key contributor to high incidence of intergenerational trauma among Indigenous individuals and families.

A cycle of neglect can often be directly attributed to intergenerational trauma. Throughout BC, intergenerational trauma and its effects can be seen and felt in many Indigenous communities to varying degrees. The causes of intergenerational trauma include; the experience of Indian residential schools, the 60's Scoop, the child welfare system, the residual effects on those left in a community when children were taken, and the specific abuse – mental, emotional, spiritual, physical, and sexual.

The Truth and Reconciliation Commission (TRC) identifies the residential school period as the beginning of an intergenerational cycle of trauma and neglect. The burdens carried by survivors, including a lack of parenting skills and scars from having witnessed or directly experienced abuse, have had a profound effect on the ability of many Indigenous peoples to care for families.

"Cultural genocide" is the term the TRC used when it concluded its examination of Canada's laws, policies and practices aimed at Indigenous peoples. As documented in the *TRC Final Report*, the impacts, including trauma arising from removal, isolation and abuses are intergenerational and entrenched in significant ways. Indeed, the TRC reports "many former residential school students who spoke to the Commission acknowledged the mistakes they made as parents and feel guilt for passing their trauma on to their own children" (*TRC Final Report*, Volume 5 p.33). Over time, this intergenerational trauma has been compounded by hardships imposed by the *Indian Act* administration, decades of racism, assimilation and discrimination embedded in in laws, policies, practices, attitudes and actions of the state.

The emotional and mental health issues that stem from Canada's legacy of institutionalized

INDIAN RESIDENTIAL SCHOOLS AND THE TRUTH AND RECONCILIATION COMMISSION

In the 1970s, young Indigenous activists, survivors of residential schools wanting answers, began to call for a federal "inquiry" into residential schools to examine the abuses in these schools. Many, if not all, were victims of these abuses. They wanted to know what happened, how widespread the abuses were and what was still going on in those schools which were still open. They wanted their parents and grandparents, many of whom held the church clergy in high regard, to know the abuses and the impacts. Their initial call for an inquiry fell on deaf ears.

For those early advocates it seemed no one listened or wanted to know. Unfortunately, this did not change until survivors began to seek redress through the courts. Individuals, bringing their cases to the courts were forced by lawyers for the federal government and churches to recount and re-live the horrors of their abuse, in all its sordid forms.

In the case called *Blackwater et al v Plint,* the late Chief Justice Brenner listened intently to their stories with a degree of compassion rarely seen in the courts. He decided the survivors were telling the truth and determined that both the federal government and the church operating the residential school had legal responsibilities to the children in their care and were subject to liabilities for abuses perpetrated by Plint, a former supervisor at the school. Both the BCCA and SCC confirmed the decision of Justice Brenner.

Blackwater et al v Plint ultimately paved the way for the 2006 Indian Residential Schools Settlement Agreement, including a solemn commitment to hold a national inquiry to be referred to as the Truth and Reconciliation Commission (TRC).

The 2015 *TRC Final Report*, referenced throughout this report, is remarkable both in depth and scope and is now contributing to an important, expansive, necessary and respectful dialogue on Canada's relationships with and treatment of Indigenous peoples.

discrimination and the social determinants of health in First Nations communities continue to worsen. According to the Office of the Auditor General's 2011 report, "the education gap between First Nations living on reserves and the Canadian population has widened, the shortage of adequate housing on reserves has increased, and comparability of child and family services is not ensured" (p.8).

Add insufficient infrastructure, including a lack of community facilities, food insecurity, a lack of potable water, unemployment and high incidence of suicide, and you begin to understand the realities that find many Indigenous families and children in a self-perpetuating cycle of neglect; a cycle which has seen many children and youth removed from their homes and placed in care.

What can intergenerational trauma look like in Indigenous communities?

A great-grandparent was taken away and placed in residential school at 5 years old, abused and degraded in varying ways, kept from his or her relatives of the opposite sex, deprived of adequate nutrition, received little to no nurturing from those in places of authority, and disallowed from speaking their language or practicing their culture. This great-grandparent is raised in this environment for upwards of 12 years.

This great-grandparent had a child. Their son or daughter, today a grandparent, was raised in a home with very little emotion or affection, addiction was rampant among those trying to overcome their own abuse and mistreatment. Relationships are abusive – ranging from emotional to physical. Traditional teachings may remain, but are fractured due to lack of understanding.

This grandparent has a child. Their son or daughter is raised in a similar disconnected and abusive environment. Showing emotion is punishable. Poverty is normal. There is no sense of worth or attachment. Addictions are fed before food is put on the table. The Ministry is called and the young child is removed from the community and placed in a foster home. Abuses and degradation similar to that suffered by family that attended residential school take place. The connection to healthy community and family members is weakened or severed.

The child, now grown, has a child. The child is born in a town outside of their home community. Generations of family are no longer connected. While a young parent works to do things differently, they are closely monitored by authorities due to their family history. A call from the Ministry seems imminent. A tired single parent, frustrated with all that has happened, lashes out at social workers and without adequate skills and support to cope, turns to drugs and alcohol.

The child of today remains in care, bounced from home to home. The cycle continues.

Based on the stories shared by those with whom I met.

Once placed in care, whether Indigenous or non-Indigenous, studies repeatedly conclude that children can expect poorer outcomes in education, health and general well-being than those of the general youth population. In other words, the vulnerabilities of Indigenous children are compounded the moment they enter the child welfare system.

> ***Without action to reduce the number of Aboriginal children taken from their families, the child welfare system itself will take the place of residential schools in doing damage to them. As adults, the children taken into care in the years to come will place high demands on social assistance and the health and justice systems. They will struggle economically and socially. They may pass damage on to their own children (****TRC Final Report****, Volume 5, p.35).***

The *TRC Final Report* summarizes what will happen if the underlying causes of neglect are not addressed to reduce the number of Indigenous children in care.

As Special Advisor, meeting with Indigenous leaders, parents, and families reinforced the troubling reality that many Indigenous parents and families remain trapped in a vicious cycle of trauma leading to neglect. However, meeting with others in Indigenous communities across BC who are finding their way out, building supports, and re-establishing connectedness within their families and communities served to reinforce that Indigenous families and communities are also key to the solutions.

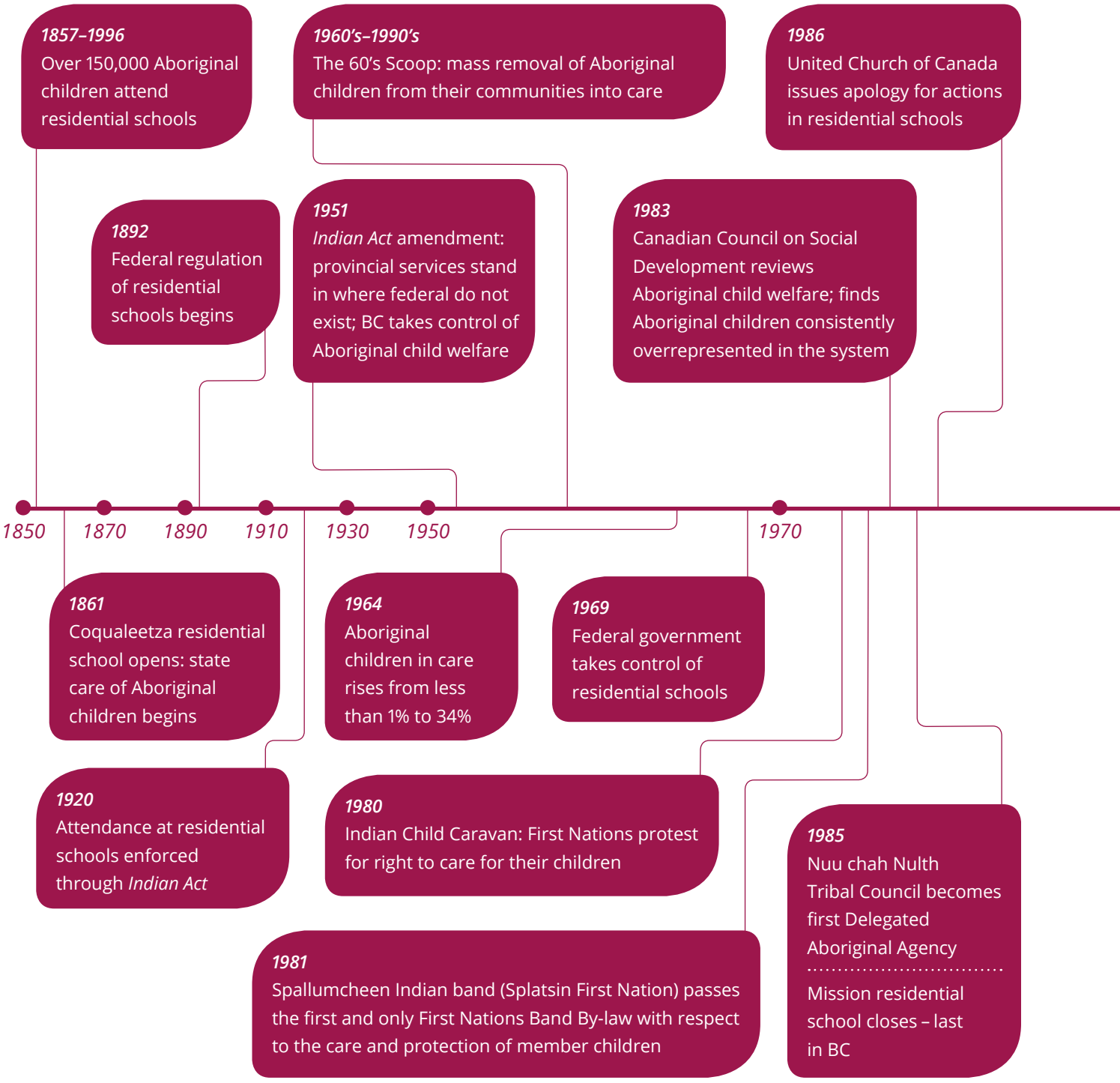
I met with grandparents who, realizing that something had to change for their own family to heal, turned to their culture, language, and traditional ways for answers. These remarkable individuals, having taken healing steps for themselves and their families, spoke openly and freely with me about their journey and the lessons learned.

I met with children who, while they remained in care for longer than they should have, returned to their parents or family members to find not only a family but an entire community was there to embrace them.

I met with young parents who have taken and who continue to take brave steps forward in confronting their own trauma. Often with few to no outside supports, these parents are learning ways to cope and to parent. They acknowledge that they are motivated in large part by their deep desire that their own children will not be trapped in a cycle of trauma or neglect. These parents speak about their journey and are an example to those who continue to struggle that there is a way out by walking through it.

> ***51. Indigenous peoples continue to experience intergenerational trauma secondary to removal of children from families, and residential schooling. The health impacts of these practices are profound, including mental illness, physical and sexual abuse, self-harm and suicide, and drug or alcohol addiction. A correlation has been demonstrated between intergenerational effects of these events and suicide, and sexual abuse during childhood (Draft Study on the Right to Health and Indigenous Peoples, with a Focus on Children and Youth, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples - A/HRC/EMRIP/2016/CP8-1.).***

FIGURE 7: INDIGENOUS CHILDREN IN CARE: A HISTORICAL TIMELINE




1990
2010
2030
1996
Adoption Act is passed
Child and Family Community Service Act is passed
2007
First Nations Child and Family Caring Society of Canada and Assembly of First Nations files complaint with Canadian Human Rights Commission: claims racial discrimination against Aboriginal children
2000
Nisga'a final agreement: CFCSA collaborative work between MCFD and Nisga'a Lisms
2009
AOPSI undergoes re-design
Tsawwassen First Nation Treaty
2015
Truth and Reconciliation Commission Final Report
January 2016
First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada) - Canadian Human Rights Tribunal Decision
1998
Aboriginal Operational and Practice Standards and Indicators developed
2013
Aboriginal Equity and Inclusion Policy Lens is released
April 2016
Tla'amin Nation Treaty
2011
Maa-Nulth First Nations Treaty
May 2016
Canada Endorsed the United Nations Declaration on the Rights of Indigenous Peoples at the United Nations
BC First Nations Children and Family Gathering
1990
INAC creates First Nations Child and Family Services
2008
BC endorses Jordan's Principle
2002
Tsawwassen Accord: increased collaboration betwen MCFD and First Nations on child welfare
2006
Representative for Children and Youth established
23 Delegated Aboriginal Agencies registered with MCFD

In BC, for the child welfare system to respond adequately in policy and practice to the reality that the majority of Indigenous children and youth removed from their family homes and placed in care are victims of neglect will not be easy. Socio-economic indicators, reflecting the impacts of existing and past state policy and practice, point to a chronic state of marginalization and underdevelopment for Indigenous communities and peoples leading to a reliance for many individuals, families and communities on ongoing state level support for many everyday services.

Significantly reducing the number of Indigenous children in care will require Indigenous parents, families, and communities, DAAs, and the federal and provincial governments, to each work together to address underlying root causes and position themselves as part of the root solutions.

A TIME FOR ACTION - THE CHANGING LEGAL AND POLITICAL LANDSCAPE

Inaction on the underlying issues will lead to significant long-term health and justice-related economic costs for BC and Canada, but will also constitute a violation of Canada's international commitments to human rights, Indigenous rights, and the rights of a child. Now is the time for significant steps to be taken to examine and reform the child welfare system in BC and Canada. The imperative to do so has been expressed through international law, multiple declarations on rights, and through domestic law. The legal, moral and socio-economic argument for acting now is further reinforced in the findings of recent commissions, in court and tribunal rulings and within enumerable reports.

Canada's recent endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (the "Declaration"), Section 35 of the *Constitution Act, 1982*, the 2016 Canadian Human Rights Tribunal decision (2016 CHRT 2), the 2015 *TRC Final Report*, recent reports of the Conference of the Federation, and the BC Representative for Children and Youth are key references used throughout this report. Each point to the duty of Canada and BC to take immediate steps to revise and reform the existing child welfare system as it relates to Indigenous peoples.

> *We are committed to implementing all 94 of the TRC's calls to action. The calls to action started with children because good public policy is based on the best interests of the child. That is why this fall, we will hold summit of all the social services and child welfare ministers to address the urgent need for reform of care for kids on reserve.*
>
> *Friends, we all know that together, we have to confront and address the legacy of racist and segregationist policies put forward by successive governments in our past.*
>
> *These were designed to do nothing less than eliminate your languages and cultures, break apart families, do away with your systems of government and knowledge, and ignore your rights.*
>
> *–Minister Bennett at the Assembly of First Nations Annual General Assembly, July 2016.*

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

In May 2016, Canada took an important step towards reconciliation when Minister Bennett (INAC) announced at the United Nations Permanent Forum on Indigenous Issues (UNPFII), Canada's unqualified endorsement of the Declaration. The endorsement is a significant development in state-Indigenous relations in Canada, as the Declaration provides an important framework for human rights, standards and norms for reconciliation and redress. In endorsing the Declaration, Canada agreed, among other things, that Indigenous children shall not be forcibly removed from their communities or culture. As well, Canada agreed to the "Outcome Document" from the 2014 United Nations World Conference on Indigenous Peoples committing to take steps, including a "national action plan", to achieve the ends of the Declaration.

> *"...the way the UNDRIP will get implemented in Canada will be through a mixture of legislation, policy and action initiated and taken by Indigenous Nations themselves. Ultimately, the UNDRIP will be articulated through the constitutional framework of Section 35."*
>
> *– Justice Minister and Attorney General of Canada, Jody Wilson-Raybould (Puglaas) at the Assembly of First Nations Annual General Assembly, July 2016*

The rights of Indigenous children are also addressed in the *United Nations Convention on the Rights of the Child*, in the *Universal Declaration of Human Rights*, and in a number of other international instruments. Article 19 of the United Nations Convention on the Rights of the Child, for instance, provides the right of protection from neglect or negligent treatment, while Article 30 provides Indigenous children the right, "in community with other members of his or her groups, to enjoy his or her own culture."

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP) – WHAT IS IT?

The Declaration is an international human rights instrument adopted by the United Nations General Assembly on September 13, 2007. The Declaration enshrines the rights that "constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the world" (Article 43). Collective rights of Indigenous peoples that may not be addressed in other human rights charters emphasizing individual rights are also protected in the Declaration. Negotiating and adopting the Declaration took almost 25 years of work and deliberation by United Nations member states and Indigenous peoples and NGOs.

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND CHILD WELFARE ISSUES

Preambular paragraph 13 and a number of articles within the Declaration are notable in that they provide guidance relevant to child welfare issues.

PREAMBULAR PARAGRAPH 13: *Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well being of their children, consistent with the rights of the child.*

ARTICLE 9: *Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.*

ARTICLE 19: *States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

ARTICLE 21(2): *States shall take effective measures and, where appropriate, special measures to ensure continuing improvements of their economic and social conditions. Particular attention shall be paid to the rights of indigenous elders, women, youth, children and persons with disabilities.*

ARTICLE 38: *States, in consultation and cooperation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration.*

ARTICLE 40: *Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. What is included in Aboriginal rights has been the customs, traditions, rules and legal systems of the Indigenous peoples concerned and international human rights.*

SECTION 35 RIGHTS

In Canada, Section 35 of the *Constitution Act, 1982* recognizes and affirms existing Aboriginal rights. While what "Aboriginal rights" include has been the subject of much debate and discussion in Canada, over time, Aboriginal rights have been defined through the courts, including Supreme Court cases such as *Calder, Sparrow, Delgamuukw and Tsilhqot'in*.

There are two threads of reasoning indicating that child and family matters are Aboriginal rights recognized and affirmed in Section 35. First, in the case of *Casimel*, the BC Court of Appeal decided that custom adoption was a right recognized and

affirmed in Section 35. Custom adoption is included in the general category of child and family law and as such, child and family law is therefore included as an Aboriginal right under Section 35. Secondly, Canada's Minister of Justice and Attorney General has recently indicated, in remarks to the UNPFII and to the Assembly of First Nations, that "UNDRIP will be articulated through the constitutional framework of section 35." Preambular paragraph 13, and articles 9, 19, 21, 38, and 40 of the Declaration relate to children and families or child welfare. Accordingly, Section 35 through this argument includes child welfare and as such is recognized and affirmed as an Aboriginal right under Section 35.

CONSTITUTION ACT, 1982, SECTION 35

Section 35 of the *Constitution Act* states:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

THE JANUARY 2016 CANADIAN HUMAN RIGHTS TRIBUNAL'S DECISION IN *FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA*

The Canadian Human Rights Tribunal's decision in January 2016 in *First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian Affairs and Northern Development Canada)* made it clear that the human rights of Indigenous peoples, as set out in the Canadian *Human Rights Act*, were violated because the federal government had consistently and deliberately underfunded First Nations child and family services on reserve.

By focusing on bringing children into care, the First Nations Child and Family Services (FNCFS) Program, corresponding funding formulas and other related provincial/territorial agreements, perpetuate the damage done by Residential Schools rather than addressing past harms (2016 CHRT 2, para. 422).

For too long, the CHRT ruled, Canada has been discriminating against First Nations children and their families by providing inequitable child welfare services ("FNCFS Program") and failing to provide equitable access to government services available to other children.

The CHRT further found that:

- While the FNCFS Program is intended to ensure the safety and well-being of First Nations children on reserve and to provide culturally appropriate services in accordance with provincial/territorial standards, these goals are not met by INAC and

First Nations are being impacted adversely or denied adequate child welfare services by the application of the existing FNCFS Program *(2016 CHRT 2, para. 383)*;

- Under the FNCFS Program, Directive 20-1 creates incentives to remove children from their homes and communities, largely as a result of funding shortfalls created by inaccurate and outdated assumptions in funding formulas *(2016 CHRT 2, para. 384)*;
- The FNCFS Program's funding structure makes it difficult, if not impossible, for many FNCFS Agencies to comply with provincial/territorial legislation and standards *(2016 CHRT 2, para. 389)*;
- INAC and Health Canada have narrowly interpreted Jordan's Principle, which in turn has required governments of first contact to provide child services first and resolve jurisdictional questions later, resulting in service gaps, delays, or denials, and ultimately adverse impacts to First Nations children and families on reserves *(2016 CHRT 2, para. 391)*;
- It is due to their race alone that First Nations people living on reserve suffer adverse impacts from INAC's provision of child and family services. These adverse impacts perpetuate the historical disadvantage and trauma Indigneous people have suffered, in particular as a result of the residential school system *(2016 CHRT 2, para. 459)*; and
- Despite being aware of the adverse impacts of the FNCFS Program for many years, INAC has not significantly modified the program since its inception in 1990, and the efforts that have been made to improve the FNCFS Program, including through additional funding, fall short of addressing service gaps, denials, and adverse impacts and, ultimately, fail to meet the goal of providing culturally appropriate child and family services to First Nations children and families living on-reserve that are reasonably comparable to those provided off-reserve *(2016 CHRT 2, para. 461)*.

The First Nations Child and Family Caring Society of Canada has recommended a three step strategy for reforming child and welfare services:

a) reconvene the National Advisory Committee to identify the discriminatory elements in funding and provide recommendations;

b) fund tripartite regional tables to negotiate equitable and culturally based funding mechanisms and policies; and

c) develop an independent oversight mechanism to ensure Indigenous and Northern Affairs maintains "nondiscriminatory and culturally appropriate First Nations child and family services." *(2016 CHRT 2, para. 461)*.

For every First Nation in BC it will be important to work to ensure full, effective, and direct engagement in pursuing strategies and plans going forward in jointly developing solutions pursuant to the federal government's extensive commitments in this area. The findings of the CHRT and the federal government's response thus far are explored more fully throughout this report.

FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION

In 2015, the Truth and Reconciliation Commission released its Final Report, *Honouring the Truth, Reconciling for the Future*. The "Legacy" section of the *TRC Final Report* identifies five critical areas where action is required in order to redress the legacy

TRUTH AND RECONCILIATION COMMISSION FINAL REPORT – FIRST FIVE "CALLS TO ACTION"

TRC FINAL REPORT – CALLS TO ACTION (1-5):

1. *We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:*
   i. *Monitoring and assessing neglect investigations.*
   ii. *Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.*
   iii. *Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.*
   iv. *Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.*
   v. *Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.*
2. *We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.*
3. *We call upon all levels of government to fully implement Jordan's Principle.*
4. *We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:*
   i. *Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.*
   ii. *Require all child-welfare agencies and courts to take the residential school legacy into account in their decision making.*
   iii. *Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.*
5. *We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.*

of residential schools and advance the process of reconciliation. The first five Calls to Action in the *TRC Final Report* deal directly with child welfare, including a call for the federal government to enact Indigenous child welfare legislation, affirming the right of Indigenous governments to establish and maintain their own child welfare agencies, and to establish a requirement that all placements of Indigenous children into temporary and permanent care be culturally appropriate. When taken together, the Calls to Action become an important foundation, supported by governments, for community based "root solutions" to deal with the "root causes" discussed earlier in this report of the inordinate number of Indigenous children in care. As discussed later in this section, the federal government has committed to implement all of the 94 Calls to Action in the *TRC Final Report*, starting with the implementation of the UNDRIP, as was noted above.

THE FEDERAL GOVERNMENT – COMMITMENTS AND ACTIONS

In lead up to the 2015 federal election, the federal Liberal Party, in response to a series of questions put forward by the First Nations Leadership Council regarding their official platform, committed that a Liberal government would work to ensure the following if elected:

- Acknowledge and address specific "root causes" of the overrepresentation of Indigenous children in care, such as high poverty levels and the disproportionate lack of educational and economic opportunities (commitment to include an investment of $2.6B in education over four years);
- Prioritize creation of a new fiscal relationship with Indigenous peoples, providing sufficient, predictable and sustained funding reflecting "actual costs of program delivery;"
  - » To include removal of the two percent funding cap on First Nations in order to aid in ensuring that all First Nations receive equitable funding for child and family services on reserves;
- Engage with First Nations communities and leaders on decisions of investment;
- Extend to BC the Enhanced Prevention Focused Approach (EPFA), if First Nations in BC agree that is the preferred approach; and
- Re-engage with First Nations to specifically address progress in "housing, infrastructure, health and mental health care, community safety and policing, child welfare, and education," as a part of the "root solutions."

Following the 2015 federal election, the new government expressed their continued commitment to many of these campaign commitments. Included in the Prime Minister's 2015 mandate letters to each of the cabinet ministers was the commitment to implement all 94 Calls to Action in the *TRC Final Report*. These commitments form an important foundation for a collaborative approach with First Nations to constructively address the significant social economic gaps.

The federal government, as noted above, has also made the decision not to appeal the *2016 CHRT 2* decision. In a letter dated June 3, 2016 to the First Nations Summit Task Group, Minister Carolyn Bennett, INAC, confirmed that the federal government welcomes the *2016 CHRT 2* decision and is eager to build on the work to reform the First Nations Child and Family Services Program, including engaging with organizations to identify appropriate steps that will "lead to concrete actions on program improvements, promoting

culturally appropriate services on reserve, and supporting positive outcomes for First Nations children and families." The CHRT is now overseeing the implementation of remedies by INAC to rectify the abovementioned discrimination against First Nations children and families.

THE PROVINCIAL GOVERNMENT – COMMITMENTS AND ACTION

In BC, a number of accords and agreements between Indigenous representatives and provincial leadership have included specific commitments to improve Indigenous child welfare: the *Tsawwassen Accord*, the *New Relationship*, the *Transformative Change Accord* are just three examples from the last 15 years where positive change was promised.

On May 30-31, 2016, the province together with the First Nations Summit, BC Assembly of First Nations, and Union of BC Indian Chiefs held a BC First Nations Children and Family Gathering in Vancouver. The two-day session was based on a September 2015 commitment made by Premier Clark to the First Nations leadership attending the BC Cabinet-First Nations Leaders Gathering. At the May 2016 gathering, issues important to the future of Indigenous children, families and communities were carefully considered. A background document prepared by the First Nations Leadership Council (FNLC) organizations for First Nations leadership in advance of the gathering noted the following potential options or strategies to be pursued as Indigenous communities work to find a path forward:

- Options for the recognition and protection of Indigenous jurisdiction over child welfare as a self-government right protected by Section 35(1);
- Options for the recognition of Indigenous customary laws over child welfare;
- Exploration of the Spallumcheen (Splats'in) bylaw approach;
- Explicit mutual agreement that any delegated model is "administrative" in nature only and is an interim measure to support a First Nation to move toward fully exercising its right of self-determination as an aspect of self-government; and
- A challenge to Section 88 of the *Indian Act* and the way that it incorporates provincial child welfare legislation (e.g. that it infringes Aboriginal rights in this area).

Although final decisions on the way forward were not made by First Nations leadership at the May 2016 gathering, Minister of Aboriginal Relations and Reconciliation John Rustad made three commitments on behalf of the Province.

First, Minister Rustad acknowledged the priority to take action at the local level. Immediate support is needed in Indigenous communities working for and with the children. Communities want to know which of their children are in care. The Minister promised to work with Indigenous communities at the local level to let them know where their children are. The Minister committed also that the Province would work to ensure social workers collaborate with Indigneous communities in this effort. MCFD's local supervisors would soon be informed through a series of conferences, that their focus needs to be on reconciliation and working with Indigenous communities to support their work, and to keep their children safe and families together.

Second, the Minister confirmed that the Province would work with Indigenous leaders and the federal government to address a number of funding issues raised during the Gathering. The Province had undertaken this work independently in the past, the Minister offered and would now look to undertake this work collaboratively.

Finally, the Minister reinforced that the Province was committed to tasking a working group to address issues surrounding governance, with the involvement of the federal government and Indigenous representatives. Working together, efforts could be made to change programs, policies, and legislative frameworks. The TRC's Calls to Action and the concerns and calls for action voiced at the Gathering have been heard clearly, with Minister Rustad promising that the work that began at the Gathering, would not end with the close of the Gathering and rather was only the beginning.

Through my term as Special Advisor, consistent with the calls by Indigenous leaders for action, I have come to the conclusion that there is high level political commitment within the provincial government, including Premier Christy Clark, Minister of Children and Family Development Stephanie Cadieux, Attorney General and Minister of Justice Suzanne Anton, and Minister Rustad, as well as across Cabinet, to deal with the underlying root causes to reduce the number of Indigenous children in care. The issue is "how" the Province, Canada, and Indigenous communities will work together to achieve this.

As this report will illustrate, I do not believe it is sufficient to simply refine the existing child welfare structure and authority base with an internally accountable quality assurance framework premised on greater centralization and improved lines of communication. Nor do I believe it will suffice to simply deploy more university-educated social workers, who – though often well intentioned – are without the knowledge and understanding of the Indigenous peoples with whom they work. A bigger and brighter version of the existing children welfare system will not address the concerns or meet the expectations of those Indigenous peoples with whom I met over the course of my engagements as Special Advisor.

The UNDRIP, Section 35 of the *Constitution Act, 1982*, the 2016 Canadian Human Rights Tribunal decision (2016 CHRT 2), the 2015 *TRC Final Report* – together with other legal instruments, including the *United Nations Convention on the Rights of the Child* – should guide reform of existing Indigenous child welfare services in BC. Therein, the minimum standards for respecting and protecting Indigenous human rights, the rights of a child, and the common law Aboriginal rights of Indigenous peoples inside Canada are well established.

Canada and BC have demonstrated willingness and some understanding of the steps required to both address the root causes of the existing ills of the child welfare system and practices, and to work with Indigenous peoples to support root solutions. Going forward, Canada and BC should anticipate that Indigenous peoples in BC will accept nothing less than measures that fully align with, respect and implement the rights of Indigenous children and families.

PRIME MINISTER TRUDEAU'S MANDATE LETTERS TO CABINET MINISTERS

ALL MANDATE LETTERS ADDRESSED TO CABINET MINISTERS INCLUDED THE FOLLOWING HIGH-LEVEL CLAUSE:

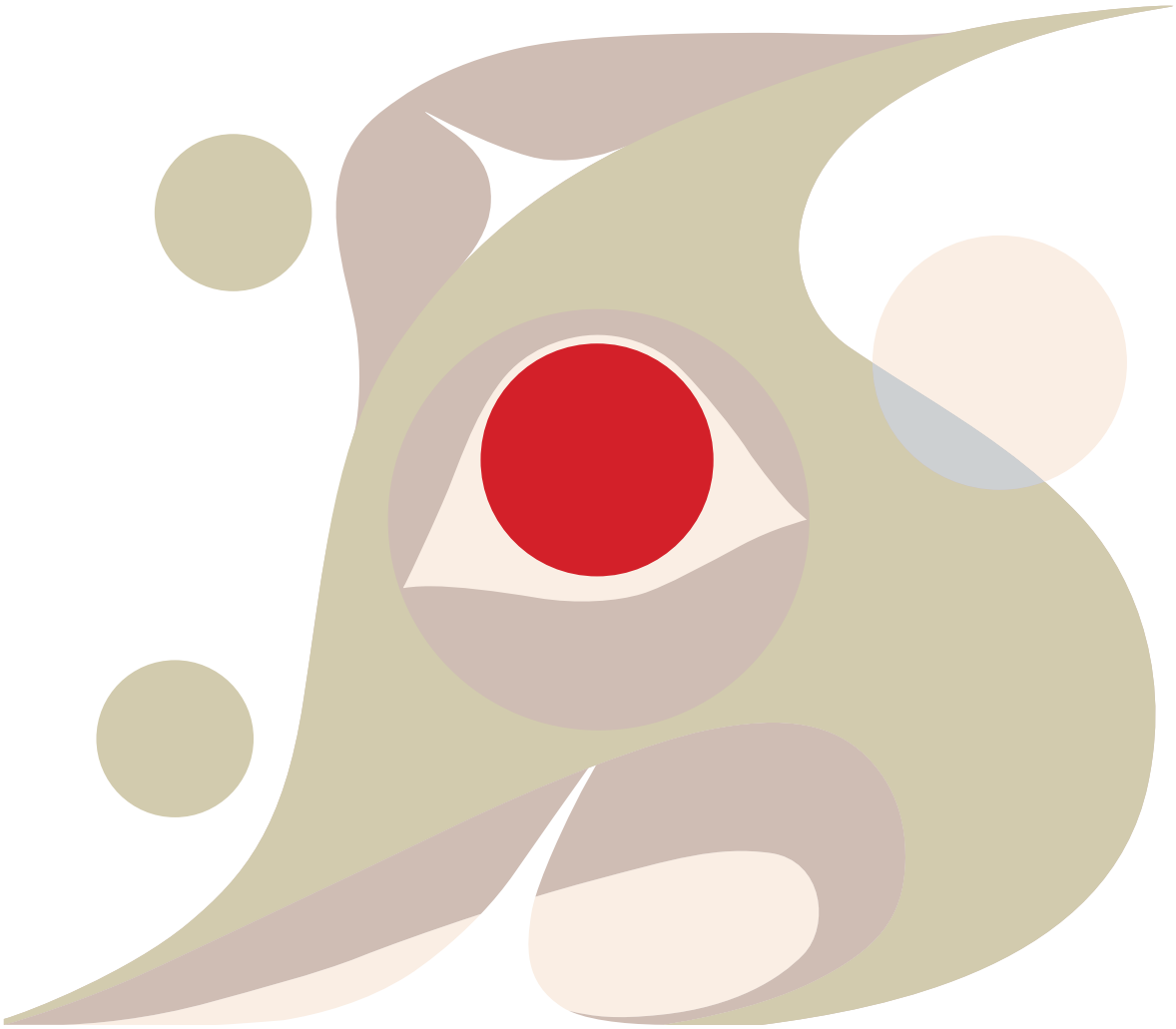
"No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."

EXCERPT FROM THE MINISTER BENNETT'S (INAC) MANDATE LETTER:

"In particular, I expect you to work with your colleagues and through established legislative, regulatory, and Cabinet processes to deliver on your top priorities:

- *To support the work of reconciliation, and continue the necessary process of truth telling and healing, work with provinces and territories, and with First Nations, the Métis Nation, and Inuit, to implement recommendations of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.*
- *Develop, in collaboration with the Minister of Justice, and supported by the Minister of Status of Women, an approach to, and a mandate for, an inquiry into murdered and missing Indigenous women and girls in Canada, including the identification of a lead minister.*
- *Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights.*
- *Work with the Minister of Finance to establish a new fiscal relationship that lifts the 2% cap on annual funding increases and moves towards sufficient, predictable and sustained funding for First Nations communities.*
- *Make significant new investments in First Nations education to ensure that First Nations children on reserve receive a quality education while respecting the principle of First Nations control of First Nations education.*

- *Work with residential school survivors, First Nations, Métis Nation, Inuit communities, provinces, territories, and educators to incorporate Aboriginal and treaty rights, residential schools, and Indigenous contributions into school curricula.*
- *Work, on a nation-to-nation basis, with the Métis Nation to advance reconciliation and renew the relationship, based on cooperation, respect for rights, our international obligations, and a commitment to end the status quo.*
- *Collaborate with the Ministers of Natural Resources, Environment and Climate Change and Fisheries, Oceans and the Canadian Coast Guard to ensure that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects.*
- *Work with the Minister of Health to update and expand the Nutrition North program, in consultation with Northern communities.*
- *Work with the Minister of Families, Children and Social Development to launch consultations with provinces and territories and Indigenous Peoples on a National Early Learning and Childcare Framework as a first step towards delivering affordable, high-quality, flexible and fully inclusive child care.*
- *Work, in collaboration with the Minister of Infrastructure and Communities, and in consultation with First Nations, Inuit, and other stakeholders, to improve essential physical infrastructure for Indigenous communities including improving housing outcomes for Indigenous Peoples.*
- *Work with the Minister of Status of Women to support the Minister of Infrastructure and Communities in ensuring that no one fleeing domestic violence is left without a place to turn by growing and maintaining Canada's network of shelters and transition houses.*
- *Work with the Minister of Employment, Workforce Development and Labour and the Minister of Innovation, Science and Economic Development to promote economic development and create jobs for Indigenous Peoples."*



I. INTRODUCTION

GROUNDING THE WORK – A COMMITMENT TO FOCUS ON RESILIENCE, CONNECTEDNESS AND REUNIFICATION

In preparing this report, I have been especially conscious of the history and continuing experience of Indigenous peoples, including the fallout from the 60's Scoop and the legacy of Indian residential schools. I have met many individuals over the years looking to be reunited with their siblings, family, community, cultures, and languages. These individuals often expressed feelings of abandonment, but also of hope for some form of reunification. While their individual stories matter, they also share a "disconnection" that is deep and lasting. As a survivor of an Indian residential school, I understand intimately feelings of disconnection. These feelings never go away. Therefore, in approaching this work, I have made an effort to examine the issues from a place that recognizes the serious disconnection that exists and seeks out opportunities, based on the power of resilience, for reunification, to regain connectedness.

As a young university student in Victoria, a Kwakwaka'wakw friend gave me a copy of Alan Fry's controversial book, *How A People Die*. Upon reading, I was completely dismayed and infuriated. My friend explained how inaccurate the book was in its portrayal of the Kwakwaka'wakw people.

As Special Advisor, one of my earliest meetings was in Port Hardy in December 2015. When I recounted my experience reading *How a People Die* in that meeting, attended by Kwakwaka'wakw political, cultural and hereditary leaders, elders, and parents and officials from Gwa'sala-'Nakwaxda'xw Nations, Kwakiutl Nation and Quatsino First Nation, they provided me with a copy of their documentary, *How a People Live*.

The history of the Kwakwaka'wakw people and their suffering on the lands where they were re-located is well documented by anthropologists, archaeologists, and historians, all outsiders who described the Kwakwaka'wakw world through their own conceptual lenses. But today, the people tell their own stories, through their own worldview, using their own language. Through their traditional legal and political authority structures, they have revitalized and continue to practice their powerful teachings and culture. Their stories, songs, and ceremonies connect the Kwakwaka'wakw people to their ancient home place, underlying and celebrating who they are and where they come from. My heart lifted.

The federal government's solution to the "Indian problem," enshrined in official policy and practice, was to "kill the Indian in the child." A "solution" that is now condemned in innumerable provincial, federal, and international reports, commissions and studies, and understood instead as the root cause of so many contemporary issues, contributing significantly to the intergenerational trauma described earlier in this report. Witnessing the deep resilience and continued survival of the Kwakwaka'wakw people, despite the historical government imposed challenges struck me then and has stayed with me through this work as Special Advisor.

The concern that I hold and that I heard at that meeting in Kwakwaka'wakw territory, and indeed throughout my engagements in BC with Indigenous leaders, communities and families in their traditional territories, is that the current approach of BC and the federal government to child welfare policies and practices, and the resultant reality for many Indigenous children in BC is reminiscent and as dangerous as previous conduct on behalf of the Crown.

I purposefully recount now the stories and specific comments I heard at this meeting with the representatives from Gwa'sala-'Nakwaxda'xw Nations, Kwakiutl Nation, and Quatsino First Nation. As I come to the end of my work as Special Advisor, my mind returns to these individuals, their stories, and their comments. The meeting was illustrative of what I have heard from Indigenous peoples in other community sessions. Indeed, to varying degrees, all of my engagements have been consistent in tone, in focus, and in their emphasis on the need to address root causes. However, my purpose in singling out this meeting and sharing these stories is that it has been my experience that once these stories are unpacked they cannot, in good conscience, be packed neatly away.

My sincere hope is that the stories shared with me, and that I recount herein, are not packed away, but can instead inspire and motivate all who read the report, challenging each of us to do better and reminding us that parents, families and communities exist behind every child in care and that there is a real opportunity to work together in every instance to ensure each child remains connected and can be reunified. While it is true that the stories and comments shared point to the ills of the current system of Indigenous child welfare in BC, they are also instructive in terms of how we can establish pathways and patterns of connectedness that will lead to better futures for children, parents, and communities.

The Kwakwaka'wakw people–A Story of "Cultural Genocide"

The Kwakwaka'wakw people were forcibly relocated from their mainland homes and villages by federal government officials who, whilst burning their houses and furnishings to ensure they did not return, ostensibly offered assurance to the Kwakwaka'wakw people that it was for their own good. Kwakwaka'wakw children were taken to church-run Indian residential schools, where they were to be "civilized" and "christianized."

For the Kwakwaka'wakw people, the practice of the "potlatch," central to their political authorities and systems, cultural practices, identity and existence as Indigenous peoples, was criminalized when the federal government outlawed it in the 1880s. For the Kwakwaka'wakw people, outlawing the potlatch resulted in the significant undermining of their traditional political and legal structures, authorities, and practices; the confiscation and destruction of their priceless traditional regalia and cultural treasures used to recount their ancient stories and histories about who they are and about their ancient places and ties to their homelands, and the wrongful incarceration of their Hemas/Chiefs and cultural leaders.

The lands and resources within their traditional territories were unilaterally taken by Crown governments to make way for settlement and the considerable natural resources within their traditional lands were tenured to outside economic interests. In many instances, highly valued resources were pillaged and the lands devastated, leaving a peoples without their traditional subsistence base and economic and wealth generating territories. Indeed, in its final report, Canada's Truth and Reconciliation Commission concluded this could be described as nothing short of "cultural genocide."

MEETING WITH GWA'SALA-'NAKWAXDA'XW NATIONS, KWAKIUTL NATION AND QUATSINO FIRST NATION

At the time of my meeting in Port Hardy, the Kwakwaka'wakw communities I met with had between them 62 children and youth from their communities who were in permanent care of the provincial government under continuing custody orders (CCO), either with MCFD or with a DAA outside of the area. To the Hereditary Chiefs, matriarchs, and elected Chief and council of each of these communities, I provided three separate lists of the children and youth in care from their small communities. For these First Nations, there is no DAA in the area to deal with Indigenous child welfare; however, there are three such agencies in Victoria.

Those attending the meeting advised me that they have never had access to this information and that they were not aware that they were entitled to have the specific information on each and every child from their communities who were in permanent care of the government under CCOs. In the past, they shared with me, they were told "privacy" issues existed which prevented their access to this information.

Several individuals in attendance conveyed to me their understanding that MCFD officials routinely use "privacy" as a shield to withhold information. Clearly, those in attendance at this meeting were astounded to know they were entitled to this information and, specifically, to have a detailed list of all of their children who were under CCOs. I had to assure them that, in accordance with existing laws, they were entitled to have access to the lists containing the names of their children. I could confidently offer this assurance given that at the outset of my appointment, I asked for clarification from MCFD officials on the issue of "privacy".

Throughout this meeting, the clarity of their words embodied deep and committed passion for the future of their children and for their collective well being as Kwakwaka'wakw people. Where partners working towards a common cause should have existed, the stories shared with me, unbridled and unrepentant, pointed to what I can only conclude to be a massively ruptured relationship between the communities, and MCFD locally and in the region. Those present admitted their hesitation in meeting with me, fearing repercussions from certain local and regional MCFD officials for doing so.

The stories recounted were heartbreaking. The leadership recommended specifically that I advise senior MCFD officials in Victoria to undertake a review of the practices, which I have done.

The irony of all this is that MCFD receives funding from INAC for services provided to these communities. For those First Nations who are not affiliated with DAAs, INAC pays MCFD $29.5 million a year under a service agreement.

The underlying question is in what way, and to whom, is MCFD accountable. Section 3 of *CFCSA* establishes principles for MCFD relationships and accountabilities to First Nations. Notwithstanding this, it is clear to me that MCFD, in practice, is not accountable to the local First Nations and their elected and hereditary leaders. A written protocol between Indigenous communities and MCFD, respectfully implemented, can assist in rectifying this issue.

What I heard–Meeting with Gwa'sala-'Nakwaxda'xw Nations, Kwakiutl Nation and Quatsino First Nation

I was advised that a young girl, in line for an important traditional name she was to receive at an upcoming potlatch, was denied access to the potlatch by MCFD officials. Seeing this as an act of "insensitivity" by MCFD social officials, representatives at the meeting described the act as one of "cultural alienation" and continued "cultural genocide."

I was told by the uncle of a young father whose children were apprehended and taken into care by MCFD that, despite the best efforts of the father to comply with the MCFD conditions required for his children to be returned to him, including his attendance at a treatment centre on three occasions, this young father was routinely denied access to his children by MCFD officials. MCFD officials, I was advised, had no intention of returning the children. Nowhere to turn, the young father gave up and in the ultimate act of despair, committed suicide.

I spoke with a couple who, struggling with substance abuse, had six of their children removed. The couple explained how they went through mediation and followed up on their commitments to MCFD to have their children returned, but to no avail. The mother emotionally recounted how she had a new baby born in early November 2015 and was invited by MCFD officials to a meeting at the local MCFD office. When she arrived at the office, her newborn with her, the baby was apprehended by a social worker. Desperation in her voice, she pleaded with me, "I want to have hope. I have waited a long time."

Frustrated community members and administrators expressed anger that young parents from their communities are routinely coerced, in their words, by MCFD officials into signing documents, such as voluntary care agreements, which these young parents either do not understand or the implications of which they do not fully realize.

REVERBERATING COMMENTS FROM THE KWAKWAKA'WAKW MEETING

"Our children in (MCFD) care are an industry."

"We develop protocols with MCFD, which they ignore."

"The MCFD protocols are not worth the paper they are written on."

"We meet with MCFD to develop permanency plans and to make recommendations, but these are never followed."

"Social workers constantly change goal posts on their own."

"We do not meet at MCFD offices, it is intimidating."

"Instead of fostering a supportive practice, MCFD officials are punitive."

"Social workers routinely act on rumors, and do not contact us to clarify issues."

"Cultural plans may be required, but they are always seen by MCFD as the least important."

"Foster parents have more authority than the parents, the Council and community."

"Foster parents do not bring the children to our potlatches."

"Our kids are placed all over the region."

"We do not know where our kids are."

"Almost 90% of children in care in our region are Indigenous."

"Eligible homes on reserve are routinely shut down by MCFD."

"MCFD says our homes are unfit."

"There are high rates of social worker turnover in the region, this should be examined by reference to exit interviews."

"We need to be involved in the hiring of new social workers."

"My grandson and his wife had a baby and MCFD took the baby at the hospital, the most inhumane thing to do."

"What accountability do social workers have to our community?"

"Legislation provides support (cultural), but it is not carried out in practice".

Dean Wilson, Director of Child and Family Services at Gwa'sala-'Nakwaxda'xw Nations, himself an advocate for children and families, with over 25 years experience, provided his analysis of the MCFD "structured decision making" model and process. Mr. Wilson concluded that if he applied MCFD's standards, his own home and family would be labelled "high risk," adding "it is almost impossible to get our kids back."

The stories shared in this meeting with Kwakwaka'wakw communities are clearly about people struggling to survive intergenerational trauma. They are stories of dislocation and relocation, of marginalization, and of victims of indifference at best and systemic racism at worst. There is heartbreak behind every one of the 62 children from their communities who are under CCO and whose names are on the lists I provided. I heard it in their tone and in the stories they told.

These Kwakwaka'wakw communities and their children are not lost, however. Enterprising and with many successes of which to be proud, they turn increasingly to their deep cultural roots, guiding traditions, and teachings to provide hope and to nurture lasting solutions for their families and children. They are teaching and training their children and youth their cultural ways and practices, and they are doing so in their languages. As well, they are working to ensure Kwakwaka'wakw children are supported to succeed in the public education system. They are immensely proud of who they are, where they come from and of their accomplishments. This is how a people survive and I left this meeting understanding clearly that they are seeking that those who work with their peoples and communities see this, understand and respect it and support, not frustrate, their efforts to survive. I have the highest regard for the very difficult work MCFD staff, including social workers, do each and every day, often in very trying circumstances. However, I cannot ignore the peoples' stories which were told to me with some apprehension, but with courage and passion.

At this meeting with the Kwakwaka'wakw communities and throughout my appointment, anger and hostility towards MCFD was evident at times. "We have told other people before and nothing has changed," I was often warned. At nearly all of the community sessions I have attended, the feelings of powerlessness have been as evident as the outright expressions of anger. A deep frustration exists that those closest to the impacted Indigenous children and youth, families, and communities remain largely unheard. It is my opinion, given the above situation of the Kwakawaka'wakw peoples and the similar stories and concerns expressed to me throughout BC, continued independent oversight by the BC Representative for Children and Youth (RCY) of the child welfare system is critical.

> *"Our number one priority is our responsibilities for our children; we will make decisions and we will look after our children. We now provide services in health, education and in other areas."*
>
> *- Chief Councillor Leslie Dickie, Kwakiutl First Nation*

> *"What power do we have? We need to uplift our matriarchs and Hereditary Chiefs, who carry our traditional knowledge and expertise."*
>
> *–Chief Paddy Walkus, Gwa'sala-'Nakwaxda'xw Nations*

KWAKWAKA'WAKW MEETING – SUMMARY OF RECOMMENDATIONS

With strong commitment, and exemplifying a spirit of hope and optimism, the Kwakwaka'wakw leaders, officials, elders and community members who attended the December 2015 meeting on child welfare outlined a strong basis for their desired approach going forward, including some specific recommendations.

The following is a short summary of the recommendations brought forward at the Kwakwaka'wakw meeting:

1. A formal community-based protocol is necessary between each First Nation and the regional MCFD office, to confirm commitments regarding building and maintaining constructive and positive working relationships and communications in all aspects of child welfare practice in their communities and in the region;
2. A child and family advocate is needed for each community as support service to families who need it as well as for the leaders and community, for MCFD and for the police;
3. Support and resources are urgently required for community developed services for children and families, which respect who we are as Kwakwaka'wakw and include support to uplift our elders, matriarchs and hereditary leadership;
4. The matter of setting up a DAA for the region was also raised as an option.*

**Note: I am not certain as to the status of this option among all of the First Nations in the region.*

Throughout the struggles and heartache that have been experienced by the Nations in Port Hardy they have worked hard to create solutions. Gwa'sala-'Nakwaxda'xw has reached out to Kw'umut Lelum Child and Family Services to explore the idea of receiving services through the Delegated Aboriginal Agency. Gwa'sala-'Nakwaxda'xw is actively seeking solutions to better support their children and families.

If political will exists, and there is administrative commitment for transformative change, Indigenous people and communities are ready. They understand the root causes best and need to be fully and effectively involved in developing root solutions. They need to be respected partners in the decision-making processes, able to exercise the authorities and responsibilities they have always had for their children.

There is broad acknowledgment that the intergenerational trauma as a result of state policy and practice has to stop. The question is how to effectively act on this acknowledgement. What is required is that citizens and governments recognize the considerable cumulative damages of past and present policy and practice and take immediate steps to support Indigenous children, parents, families, and communities to develop and nurture their own solutions – this is the only road to re-establish patterns of connectedness.

SCOPE OF THE REPORT

Given the limited timeframe of my appointment, and in order to rationalize and prioritize the work, my focus as Special Advisor has been on meeting with Indigenous communities and their leaders (both elected and traditional), families, and children and youth throughout the province to better understand their concerns, the impacts of existing intergovernmental (BC/Canada) relations, as well as the impacts of government legislation, policies, and practice.

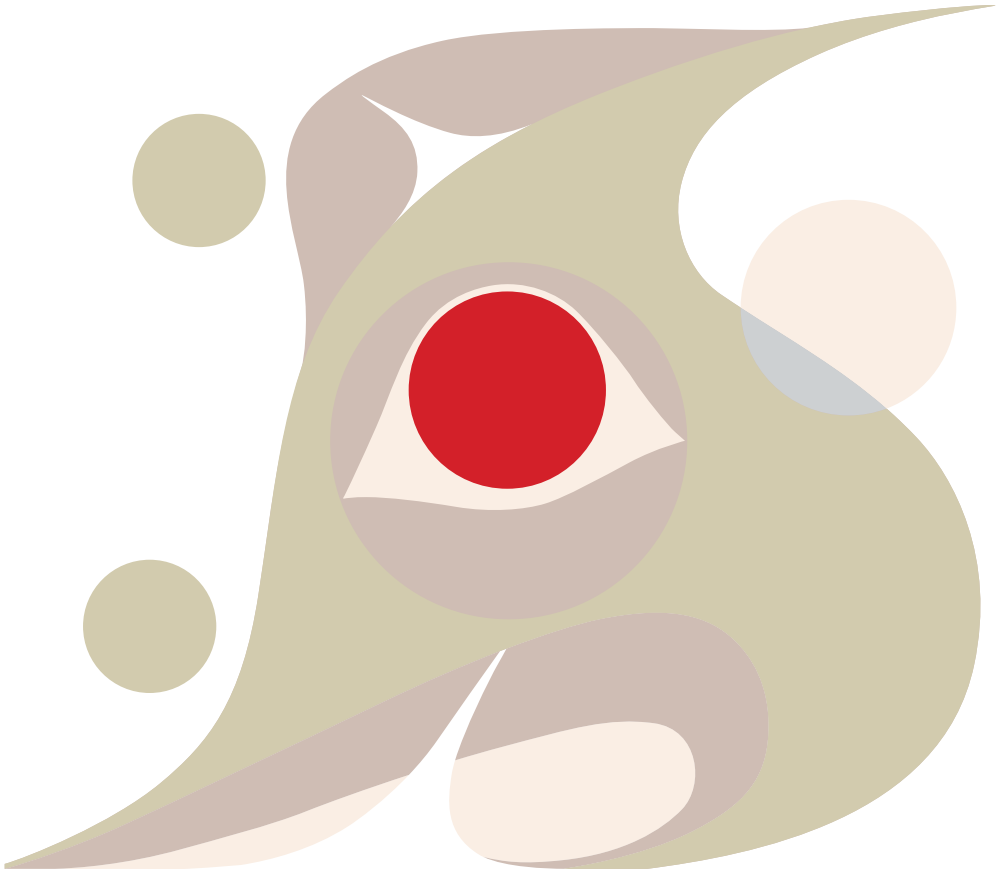
Over the term of my appointment, I have met with First Nations communities, representatives of DAAs, elected politicians from the government and opposition parties in BC, judges, lawyers representing MCFD and Indigenous children and families, MCFD officials from the 13 MCFD regions and Victoria. I met with members of the First Nations Leadership Council, with representatives of many of the First Nations provincial councils and agencies, and with Métis leadership and organizations. In short, I sought out meetings with those who have a direct role in matters relating to Indigenous children in care in BC. In addition, I have had a number of discussions with senior federal officials, including Indigenous and Northern Affairs Minister Carolyn Bennett.

I thank all those with whom I met, and who generously gave of their expertise and time to help inform this report. This report is focused on my observations and information shared with me both at these meetings and in later submissions from those with whom I met. The recommendations herein are derived from listening to and reflecting on the voices of those children, families, elders, leaders, and communities directly engaged in or affected by the existing child welfare system in BC.

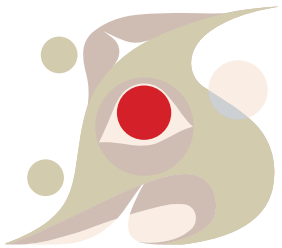
Since the day of my appointment, several guidelines have grounded my work and as a result these also inform the structure and direction of this report and its recommendations. These guidelines have been as follows:

- While the overarching goal is to see the numbers of Indigenous children under CCOs reduced, this should not be an exercise in reducing overall provincial government financial commitments to Indigenous CCO and their parents and families;
- Intergenerational trauma and the associated challenges (poverty, unemployment, education completion, limited and/or inequitable funding to Indigenous communities to provide comparable services, etc.) are faced by parents and families in Indigenous communities and so solutions should focus on addressing the intergenerational trauma and these associated challenges;
- The way forward must be child, parent, family, and Indigenous community based, even where children under CCOs live in towns or cities across the province, Canada or abroad. The underlying principle is to recognize the reality that no matter where a child under CCO resides he/she is still a member of their Indigenous community;

- Necessary financial support must be directed to parents, families, and individual Indigenous communities, or where an Indigenous community decides, to an organization (i.e. DAA) which they have they established to provide the necessary services;
- The autonomy of each Indigenous community is crucial and to be respected and as such the Province needs to have full and effective engagement with Indigenous communities and leadership to develop and agree to joint permanency plans for each child under a CCO; and
- Where specific issues arise, these will be dealt with on an urgent and priority basis.



II. AREAS FOR FOCUSED ACTION



As noted earlier, in September 2015 I was retained by the Minister of Children and Family Development to provide advice on how to address the inordinate number of Indigenous children in care of government. Shortly after my appointment, I was provided with a document presented to the Council of the Federation where the Premiers considered Indigenous child welfare. The document referred to the many and prevalent "root causes" inside Indigenous communities contributing to the high numbers of Indigenous children in care, and inferred that Indigenous peoples were largely, if not solely, responsible for their own situation. Over the term of my appointment, I have come to the conclusion that both federal and provincial legislation, regulations, policies and practices continue to also contribute in significant ways to the root causes identified not only in this document, but indeed in so many of the studies, decisions, and reports that have considered the current state of Indigenous child welfare.

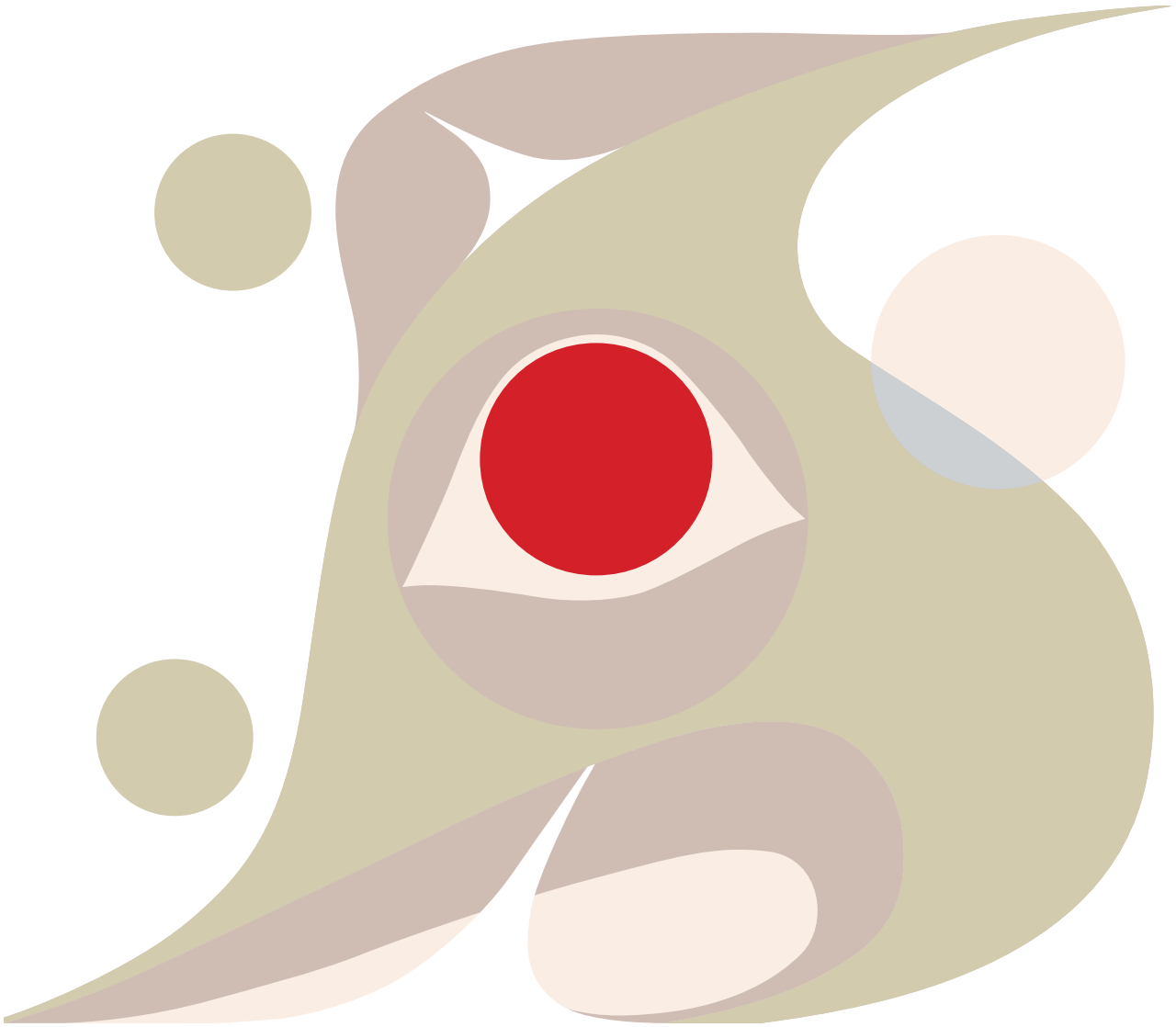
This report is organized under 10 areas for focused action. It identifies the challenges and opportunities present in each of these areas, as well as the root causes linked to many of these existing challenges, which overlap substantively. The reader should therefore be attentive to the linkages and the relationships between all of the recommended actions.

Forging a way ahead in Indigenous child welfare by pursuing the root solutions is the highest objective of this report, and many of the recommended actions speak to addressing the root causes directly, in support of this objective. Often presented as long-term recommendations, root solutions support a vision where Indigenous, federal, and provincial issues of jurisdiction over children, families and communities are considered and resolved; and, where the debilitating socio-economic circumstances that exist today have been met or are currently being addressed with proactive action plans developed jointly by Crown governments, Indigenous governments and Indigenous peoples.

The report, however, also recognizes and speaks to the period of transition currently underway as Indigenous peoples and communities transition away from governance under the *Indian Act,* and work to rebuild our governance capacity, core governance institutions, and assert our jurisdiction based on the needs and priorities determined by our own communities. In recognition of this important period of transition, and motivated by the desire that no child, parent, family, or community be left behind, the report also recommends specific shorter-term actions that should be taken to improve legislative and administrative measures relating to the welfare of Indigenous children, families, and communities. Without important short-term actions, many of the existing standards and practices, including the Director's current exercise of large discretionary authorities and powers within BC, will further exacerbate many of the challenges that exist and contribute to making some of the root solutions further from reach. DAAs, for example, have inherent limitations but

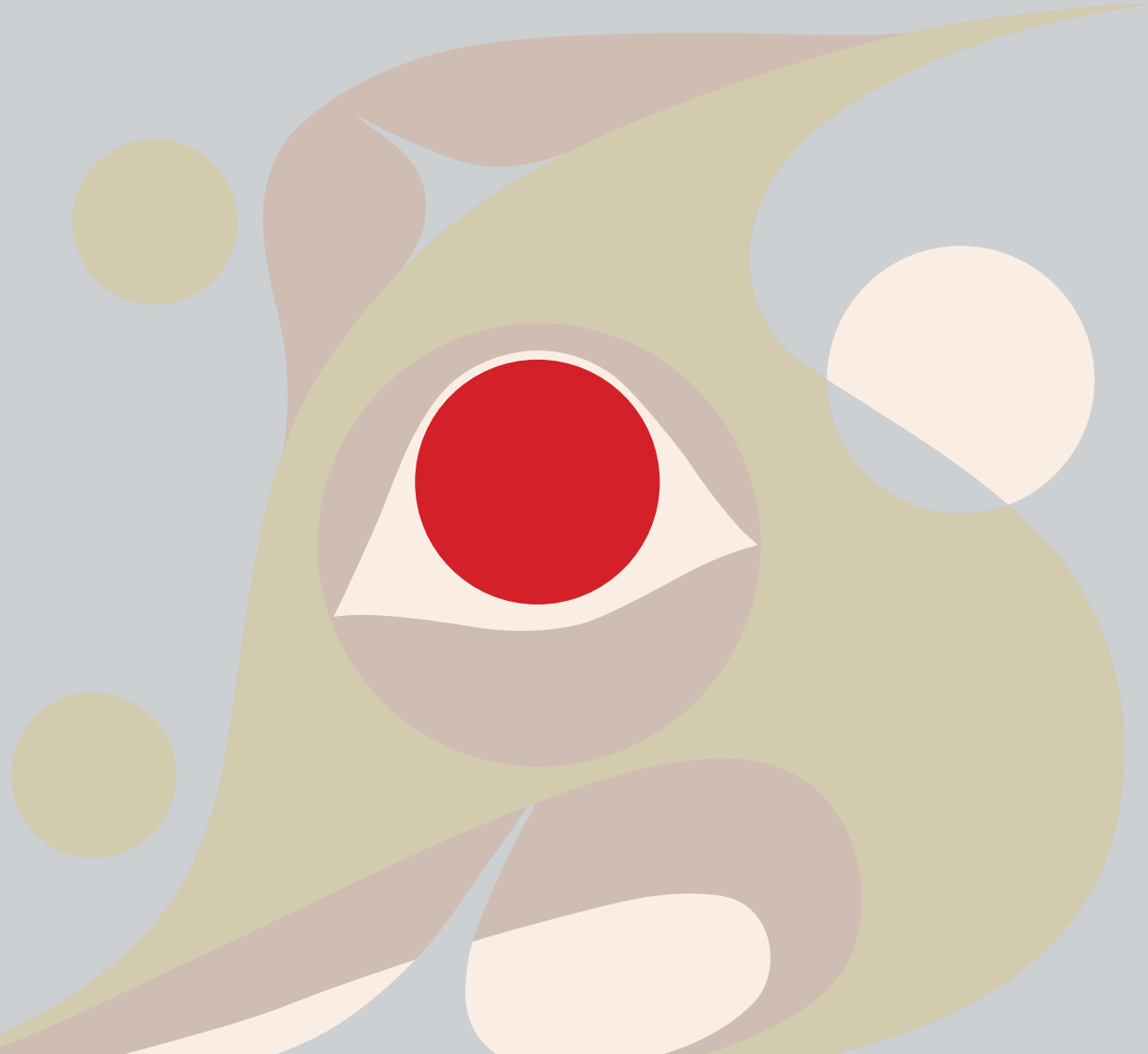
they have experience and expertise that Indigenous communities can build on and use as a spring board to increase Indigenous jurisdiction over child welfare. Well-planned support to a DAA in the short term can therefore be one effective way to support an Indigenous community's longer-term goal of full jurisdiction over child welfare.

All of the recommended actions in this report, whether they are long-term recommendations or shorter-term interim solutions, are based on recognition of and implementation of the rights of Indigenous children, families, and communities.



AREAS FOR FOCUSED ACTION

AREA 1. DIRECT SUPPORT FOR INDIGENOUS CHILDREN, PARENTS AND FAMILIES IN ALL INDIGENOUS COMMUNITIES



AREA 1. DIRECT SUPPORT FOR INDIGENOUS CHILDREN, PARENTS AND FAMILIES IN ALL INDIGENOUS COMMUNITIES

During my many meetings, individuals described their hopes for Indigenous children. They described safe and secure environments inside communities, where our children and parents have access to an education that honours Indigenous languages and culture, and leads to opportunities previous generations have not enjoyed. They expressed optimism that Indigenous children and youth would be able to live out their childhood and grow into adulthood with dignity and well-being as Indigenous people.

Those Indigenous people at the meetings I attended also consistently shared their overwhelming concern for the well-being of our children. They acknowledged intergenerational trauma and the resultant and very serious challenges facing many parents, families, and communities. They emphasized their belief that parents and families are at the heart of community healing that is required to address the challenges of the current child welfare system.

> *"We want our children back, but we have to be careful about what they are returning to..."*
>
> *– Chief Dora Wilson, Hagwilget Village Council*

In virtually every meeting with the hereditary and elected Chiefs, councillors and elders that I attended, what I heard was, "we are fighting for our children; they were taken away." Indeed, it is well-documented, Indigenous parents and families have been engaged in a struggle between state governments and colonial policies throughout Canada's history. On one side, the state and its policies – which we now universally understand as having sought to eradicate Indigenous culture, languages, and peoples – and on the other side, Indigenous parents fighting themselves to survive and to see their children and families survive and thrive as Indigenous people. This report speaks to that continuing struggle, and this section of the report provides specific recommendations to ensure the following:

- A commitment to direct investment on the front-line in Indigenous communities;
- A commitment to invest in Nation-to-Nation partnerships between the state governments and Indigenous communities; and
- A significant commitment to invest in and honour the important role of Indigenous parents and families in the lives of Indigenous children.

Reshaping Indigenous child welfare in BC so that Indigenous children and families have the direct support within their communities is the first area for focused action addressed in this report, and it is also a central theme in each of the subsequent sections of the report.

> *"...they are stealing our children."*
>
> *– Coast Salish elder from Chemainus*
>
> *"The MCFD social workers take our children and place them in foster homes all over the region; meanwhile, our homes which are open are routinely shut down..."*
>
> *– Kwakiutl elder*

The position that focus and investment is required in Indigenous children, parents, and families within their own communities to address root concerns is not new. In 1996, the Royal Commission on Aboriginal Peoples (RCAP) Final Report, reflecting on the child welfare system and Indigenous children in care, made the following observation:

> *Many experts in the child welfare field are coming to believe that the removal of any child from his/her parents is inherently damaging, in and of itself....The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents, he is also removed from a tightly knit community of extended family members and neighbours, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture. The Native child is placed in a position of triple jeopardy. (RCAP, Final Report, Volume 3, p.23-24)*

The RCAP Final Report concluded definitively that there was a need to invest in Indigenous communities in order to address the "inherent damage" done in removing Indigenous children from parents and their communities. Recommendations 3.2.1 and 3.2.4 of the RCAP Final Report, V.3, directly addressed the need to support families and communities.

In addition, the *TRC Final Report* calls upon all governments to provide adequate resources to enable Indigenous communities to keep Indigenous families together when possible and to keep Indigenous children in culturally appropriate environments. Resoundingly, the *TRC Final Report* points to the powerful potential for Indigenous people and communities to lead the work of reconciliation and to direct the change required in areas such as Indigenous child welfare.

THE RCAP FINAL REPORT RECOMMENDED THAT

3.2.1 The government of Canada acknowledge a fiduciary responsibility to support Aboriginal nations and their communities in restoring Aboriginal families to a state of health and wholeness.

3.2.4 Block funding be provided to child welfare agencies mandated by Aboriginal governments or communities to facilitate a shift in focus from alternative child care to family support.

ON THE FRONT-LINE IN INDIGENOUS COMMUNITIES

The work of Indigenous communities each day – managing intergenerational trauma and the deep and crushing poverty that often manifests as a result – is difficult. Many Indigenous parents and families rely on what the land, waters and seas provide: hunting, fishing, and gathering. In the past, these activities were criminalized. However, many of the rights to access food such as deer, salmon, moose, freshwater fish, and coastal seafoods, have now been won in adversarial, costly, and time-consuming court cases. At the same time, state governments have propped up and provided significant financial and administrative support to a child welfare system that the CHRT confirms works in ways to incentivize removing Indigenous children from their parents or families over the alternatives.

A 2011 REPORT TO THE MÉTIS COMMISSION FOR CHILDREN AND FAMILIES OF BRITISH COLUMBIA ON MÉTIS CHILD WELFARE – KEY RECOMMENDATIONS

1. *Métis child and family wellness in British Columbia requires a strong foundation of extended family care and renewed traditional child caring responsibilities such as customary adoption and grandparent teachings.*
2. *Métis services must focus on prevention and support to families to prevent further child welfare intrusion into their lives.*
3. *Métis organizations and leadership need to collaborate to examine some of the broader issues impacting Métis families such as poverty, housing, addictions, family violence and health concerns, including access to mental health services.*
4. *Inter-agency collaboration, secondments and integrated community services will benefit Métis services and build a strong foundation for improved services to Métis children and families in British Columbia.*

11. *Resources are required to ensure that the focus remains on maintaining family ties and community services.*

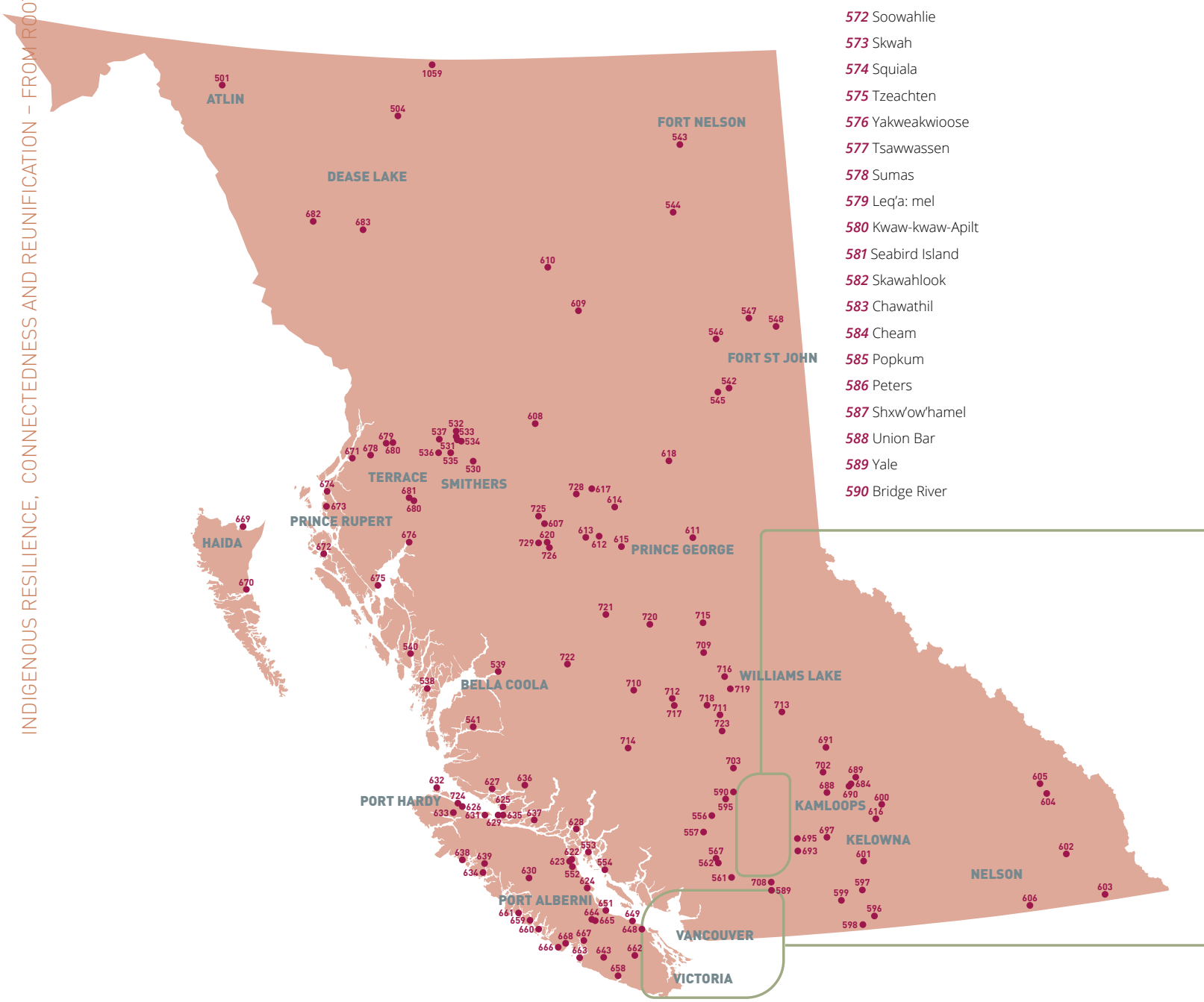
TRUTH AND RECONCILIATION COMMISSION AND CHILD WELFARE – FOCUS ON INDIGENOUS COMMUNITIES

1. *We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:*

   ii. *Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside. (Call to Action 1.ii)*

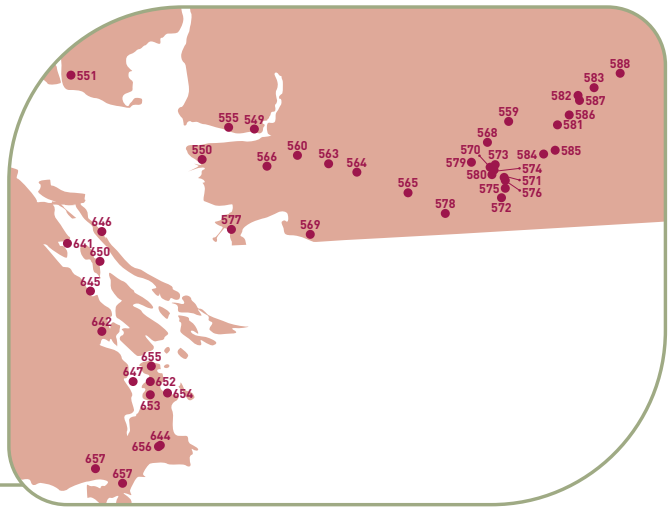
FIGURE 8: FIRST NATIONS COMMUNITIES IN BC

501 Taku River Tlingit
504 Dease River
530 Moricetown
531 Gitanmaax
532 Kispiox
533 Glen Vowell
534 Hagwilget
535 Gitsegukla
536 Gitwangak
537 Gitanyow
538 Heiltsuk
539 Nuxalk
540 Kitasoo
541 Wuikinuxv
542 Saulteau
543 Fort Nelson
544 Prophet River
545 West Moberly
546 Halfway River
547 Blueberry River
548 Doig River
549 Tsleil-Waututh
550 Musqueam
551 Sechelt
552 Homalco
553 Klahoose
554 Tla'amin
555 Squamish
556 N'Quatqua
557 Lil'wat
558 Aitchelitz
559 Sts'ailes
560 Kwikwetlem
561 Douglas
562 Skatin
563 Katzie
564 Kwantlen
565 Matsqui
566 New Westminster
567 Samahquam
568 Sq'éwlets
569 Semiahmoo
570 Shxwhá:y Village
571 Skowkale
572 Soowahlie
573 Skwah
574 Squiala
575 Tzeachten
576 Yakweakwioose
577 Tsawwassen
578 Sumas
579 Leq'a: mel
580 Kwaw-kwaw-Apilt
581 Seabird Island
582 Skawahlook
583 Chawathil
584 Cheam
585 Popkum
586 Peters
587 Shxw'ow'hamel
588 Union Bar
589 Yale
590 Bridge River



591 Cayoose Creek
592 Xaxli'p
593 T'it'q'et
594 Ts'kw'aylaxw
595 Tsal'alh
596 Osoyoos
597 Penticton
598 Lower Similkameen
599 Upper Similkameen
600 Splatsin
601 Westbank
602 ?aqam
603 Tobacco Plains
604 ?Akisq'nuk
605 Shuswap
606 Lower Kootenay
607 Lake Babine
608 Takla Lake
609 Tsay Keh Dene
610 Kwadacha
611 Lheidli T'enneh
612 Nadleh Whut'en
613 Stellat'en
614 Nak'azdli Whut'en
615 Saik'uz
616 Okanagan
617 Tl'azt'en
618 McLeod Lake
619 Burns Lake
620 Cheslatta Carrier
622 Campbell River
623 Cape Mudge
624 K'omoks
625 Kwikwasut'inuxw Haxwa'mis
626 Kwakiutl
627 Gwawaenuk
628 Kwiakah
629 Mamalilikulla
630 Mowachaht/Muchalaht
631 'Namgis
632 Tlatlasikwala
633 Quatsino
634 Ehattesaht
635 Da'naxda'xw
636 Dzawada'enuxw
637 Tlowitsis
638 Ka:'yu:'k't'h'/Che:k:tles7et'h'
639 Nuchatlaht
640 Beecher Bay
641 Stz'uminus
642 Cowichan
643 Lake Cowichan
644 Esquimalt
645 Halalt
646 Lyackson
647 Malahat
648 Snuneymuxw
649 Nanoose
650 Penelakut
651 Qualicum
652 Pauquachin
653 Tsartlip
654 Tsawout
655 Tseycum
656 Songhees
657 T'sou-ke
658 Pacheedaht
659 Ahousaht
660 Tla-o-qui-aht
661 Hesquiaht
662 Ditidaht
663 Huu-ay-aht
664 Hupacasath
665 Tseshaht
666 Toquaht
667 Uchucklesaht
668 Ucluelet
669 Old Massett
670 Skidegate
671 Nisga'a Village of Gingolx
672 Gitxaala
673 Metlakatla
674 Lax Kw'alaams
675 Gitga'at
676 Haisla
677 Nisga'a Village of New Aiyansh
678 Nisga'a Village of Laxgalt'sap
679 Nisga'a Village of Gitwinksihlkw
680 Kitselas
681 Kitsumkalum
682 Tahltan
683 Iskut
684 Adams Lake
685 Ashcroft
686 Bonaparte
687 Skeetchestn
688 Tk'emlúps te Secwépemc
689 Little Shuswap Lake
690 Neskonlith
691 Simpcw
692 Oregon Jack Creek
693 Coldwater
694 Cook's Ferry
695 Lower Nicola
696 Nicomen
697 Upper Nicola
698 Shackan
699 Nooaitch
700 Boothroyd
701 Boston Bar
702 Whispering Pines/Clinton
703 High Bar
704 Kanaka Bar
705 Lytton
706 Siska
707 Skuppah
708 Spuzzum
709 ?Esdilagh
710 Alexis Creek
711 Esk'etemc
712 Tl'etinqox
713 Canim lake
714 Xeni Gwet'in
715 Lhtako Dene
716 Soda Creek
717 Yunesit'in
718 Toosey
719 Williams Lake
720 Nazko
721 Lhoosk'uz Dene
722 Ulkatcho
723 Stswecem'c Xgat'tem
724 Gwa'sala-'Nakwaxda'xw
725 Wet'suwet'en
726 Nee-Tahi-Buhn
728 Yekooche
729 Skin Tyee
1059 Daylu Dena





Currently, a child is removed, without a court order, when the Director investigates an expression of "concern." Section 13 of the *CFCSA* outlines the circumstances in which a child needs protection. Under the current legislation, once a child is removed, parents and Indigenous communities fall under the discretionary authority and power of the Director and in practice this means an extremely large burden is placed on parents, families, and communities. If they wish their children returned, parents must comply with a maze of conditions set out by the Director. Then, at the discretion of the Director, if the conditions are not met, the child remains in care.

I spoke with many Indigenous parents, families, and child welfare practitioners inside communities about the experience of Indigenous parents. I was instructed that in some instances, even where parents meet conditions, the Director has demonstrated a lack of willingness to return the child or has gone further and imposed new conditions on the parents. The need to address the real and perceived power imbalance that exists today within this system was a theme of many of the comments, concerns, and recommendations that were raised with me. Indigenous parents, from the perspective of many I spoke with, have little or no recourse and feel powerless.

At the front-line service level, those I met with spoke about challenges that exist and strained relations in part due to the fact that significant investments in the child welfare system are not currently being made directly inside Indigenous communities. Those on the front-line are most often not located within Indigenous communities, limiting their understanding and their ability to work cooperatively or effectively with Indigenous communities to deliver child welfare services to Indigenous children and youth.

At the time of writing, MCFD has committed to hire 200 new social workers. This commitment came following the BC Government and Service Employees' Union (BCGEU) report in 2014 titled,

WHEN PROTECTION IS NEEDED ACCORDING TO SECTION 13 OF THE *CFCSA*

13 *(1) A child needs protection in the following circumstances:*

(a) if the child has been, or is likely to be, physically harmed by the child's parent;

(b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;

(c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;

(d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;

(e) if the child is emotionally harmed by

(i) the parent's conduct, or

(ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;

(f) if the child is deprived of necessary health care;

(g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;

(h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;

(i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;

(j) if the child's parent is dead and adequate provision has not been made for the child's care;

(k) if the child has been abandoned and adequate provision has not been made for the child's care;

(l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

(1.1) For the purpose of subsection (1) (b) and (c) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be:

(a) encouraged or helped to engage in prostitution; or

(b) coerced or inveigled into engaging in prostitution.

(1.2) For the purpose of subsection (1) (a) and (c) but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides.

(2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe

(a) anxiety;

(b) depression;

(c) withdrawal; or

(d) self-destructive or aggressive behaviour.

> *An indigenous principal at the school district explained that "young moms and parents are living in poverty" creating challenges for their children attending local schools, but communities are working hard to re-vitalize their cultures and language.*
>
> ---
>
> *"I said to a social worker a few weeks ago, it takes you less than five minutes to come into my community and take one of my children. But for us - if we do not get that child back within 18 months, they are not coming back until they are adults."*
>
> *– Chief Susan Miller, Katzie First Nation (First Nations Summit, June 2016)*

Choose Children: A case for reinvesting in child, youth, and family services in British Columbia, and the subsequent 2015 BCGEU report titled, *Closing the Circle – A case for reinvesting in Aboriginal child, youth and family services in British Columbia*. In *Choose Children*, five significant areas for concern and corresponding recommendations are presented. The report paints an alarming picture of the child welfare system in BC, describing how front-line child welfare professionals are being tasked to do more with decreasing resources and highlighting that this is further exacerbated in remote and non-urban regions. *Choose Children* recommended, among other things, that the Province take immediate steps to address chronic problems of understaffing and poor staff management, both for front-line workers directly delivering services and the workers that support them. In 2015, the Province responded by committing to hire 200 new social workers.

MCFD's significant commitment to hire new social workers should be accompanied by a commitment to proactively develop plans to recruit, retain and promote the success of Indigenous individuals in these positions. Additionally, many of the new social workers should be placed not in downtown urban centres, but within the 203 First Nations communities across the province and where there is significant need for their professional skills and services.

In BC, the Sts'ailes project in the Fraser Region is an example of front-line child welfare workers being successfully located inside an Indigenous community. The Sts'ailes project is a model centered around a co-located office in Sts'ailes. In this example, three MCFD social workers, together with advocates and other workers from the community, provide child welfare services to the Sts'ailes community.

The regional MCFD office and the Sts'ailes Nation worked together to develop this model with the stated intention to embed MCFD clinicians/social workers/child protection workers on site with the Sts'ailes Nation in order to increase meaningful engagement and to focus on proactive and preventative child welfare services. Initiating the project required leadership from both the Sts'ailes Nation and the MCFD Regional Executive Director of Services for the Fraser region.

Today, MCFD workers work with the Sts'ailes Nation out of this community office every day on everything from prevention, to apprehension, to permanency. The Sts'ailes Nation works together with MCFD to identify child welfare workers and elder advisors to this office. Those involved with the model describe the strong cultural presence of the elders and the use of the teachings from the Sts'ailes Nation longhouse as central to this model. As well, Sts'ailes Nation has established their own policies and practice standards, appropriate to their needs and culture.

I am advised that for the time being this model is working well for the Sts'ailes Nation and is viewed as a positive step toward assuming more and eventually all of the responsibilities in the area of child welfare for their children and youth. The Sts'ailes peoples have extensive family and cultural relations with Indian Tribes in Washington State who already exercise full authority under the US federal *Indian Child Welfare Act*, and the Sts'ailes Nation have expressed a desire to go further, motivated by what they see is possible. The Sts'ailes model is, nonetheless, a promising practice and offers useful insights on the collaboration possible between governments during this period of reconciliation and transition.

The intention in raising the Sts'ailes model in this report is not to suggest that it can or should be applied universally or that is it the only model worth pursuing. Rather, the model is referenced as a promising practice that other MCFD regions and Indigenous communities can learn from, and is celebrated herein for the investment that one MCFD region has made through this project directly in the Sts'ailes community. Based in part on what has been learned to date through the Sts'ailes pilot, several recommendations are made later in this section of the report that speak to the need for MCFD and INAC to commit jointly to invest core funding directly in Indigenous communities on a sustained basis (Recommendations 1, 2, and 3).

Throughout BC, and in partnership with individual First Nation communities and Métis, DAAs have effectively worked to build capacity within Indigenous communities and effectively advocated for increased services and supports to Indigenous parents and families directly within communities. Many DAAs provide services to multiple First Nations communities and I heard many positive examples of how communities and DAAs have been able to work together to address root causes associated with intergenerational trauma and to ensure Indigenous children remain connected to parents, families, community, and culture wherever possible.

As noted earlier, there are inherent limitations on DAAs as a delegated model of providing child welfare services. At the same time, the expertise and experience of DAAs across BC is clearly valued

BUILDING COMMUNITY CAPACITY – THE STS'AILES PROJECT – EXPANDING THE MODEL ACROSS ALL 203 FIRST NATIONS IN BC

During my appointment, I worked together with MCFD to determine the estimated annual cost to expand the Sts'ailes model. The ideal caseload to social worker ratio was identified by MCFD as 25:1 and that ratio has been used as the baseline for estimating the required number of social workers to expand the Sts'ailes model to all of the 203 First Nations in BC. If MCFD were to commit to implementation of the Sts'ailes model across all First Nations, it is estimated that MCFD would need to fund 92 new employees to work directly within First Nations communities.

by many Indigenous communities with whom I met and many promising community-based practices have developed directly through DAAs or in partnership with DAAs.

Shortly after my appointment I was invited to a "partnership" meeting between the executive directors of the DAAs and senior MCFD officials. The meeting was acrimonious, pointing to a serious breakdown of relationships between those who have legal responsibilities to care for Indigenous children in care. The problem according to the directors was that they were not involved nor consulted by senior MCFD officials on new policy and practice issues. The strained relations between MCFD and DAAs impacts directly on the ability of DAAs to effectively partner with Indigenous communities and to deliver community-based services on the front lines in Indigenous communities.

In this section of the report and throughout, many of the DAAs in BC are profiled. I have highlighted both the challenges they have themselves identified but also some of the achievements of individual DAAs and the promising practices developed in partnerships between DAAs and Indigenous communities.

> *"We are holding up our children, but our agency is a direct replica of MCFD, (which) is dealing with reports rather than supporting our children and families. We continue to fight with MCFD for our children; we need support at two levels including in our communities and at the agency."*
>
> *– Chief Harvey Mcleod, Upper Nicola*

Whether I was meeting with those representing DAAs, individual communities, or with families and parents directly, individuals reinforced the position that resources are desperately needed within Indigenous communities for new or improved infrastructure, and for development of the technical and professional capacity to deliver community-based solutions.

The high level commitment by the Province to hire workers and to further implement accountable service delivery frameworks is important. However, it is critical that resources employed by the Province towards these ends support Indigenous parents, families, and communities directly. For example, new social workers hired, and up to 50 percent of existing MCFD social workers and other support workers within the MCFD regions should be re-profiled and directed to work in and with Indigenous communities to practice social work, to partner with people in need, and to support parents, families, and community based efforts (Recommendation 4).

In the case of on-reserve First Nations communities, if the Province is not willing to commit resources on-reserve then MCFD should step out of the way and allow the federal government and First Nations to do this work given the federal government, in accordance with the constitution, has the legal responsibility and fiduciary obligation for "Indians and Lands reserved for Indians."

> *"So right now, as a Chief, I am reaching out as much as I can in the time that I am given, to let these kids know that they belong. Because in the end, we are only looking for a place to belong and in First Nations we are so lucky because we are all family, we are all community…"*
>
> *– Chief Susan Miller, Katzie First Nation (First Nations Summit, June 2016)*

Gitxsan Child and Family Services Society (GCFSS)

The Gitxsan Child and Family Services Society (GCFSS) is a community-based DAA that first began operations in June 2000. It provides services to five of the six Gitxsan communities, including Glen Vowell, Kispiox, Gitwangak, Gitsegukla, and Gitanyow. It also works with Gitxsan people living off-reserve in BC, as well as members living outside of the province. The GCFSS has a protocol agreement with each of the five Nations that it serves and its Board of Directors is comprised of one representative from each community.

The GCFSS hired its first social worker in 2005 and immediately began bringing children home to the Gitxsan community. I heard from those that I met with that continuous turnover at MCFD has made it difficult for the GCFSS to establish a consistent relationship with the Province.

An agreement signed in 2007 between the GCFSS, MCFD and the federal government transferred responsibility of guardianship services from MCFD to GCFSS. This afforded GCFSS the opportunity to develop tailored and culturally sensitive programs and services in the areas of preventative programs, social work services, and cultural research.

There are a few current challenges with the GCFSS model. There is an early child development service in Hazelton but none in the villages and there are no "in community" services for young moms and dads. According to GCFSS representatives, a process needs to be developed to re-connect youth aging out of care with their families and communities. GCFSS currently does not have a plan in place for this. The Gitxsan communities have 62 Hereditary Chiefs and matriarchs, as well as 5 elected Chiefs. The respective mandates of each base of authority can create some difficulties at times in providing the GCFSS with required direction. These communities also face an acute shortage of housing and high levels of unemployment.

Scw'exmx Child and Family Services Society (SCFSS)

The Scw'exmx Child and Family Services Society (SCFSS) is a fully delegated child protection agency that serves the Coldwater Indian Band, Lower Nicola Indian Band, Nooaitch Band, Shackan Band and Upper Nicola Indian Band. Its board of directors is comprised of appointed representatives from each of the five Nations. SCFSS also holds quarterly meetings with the Chiefs of the five Nations.

SCFSS offers a broad range of unique programs and services for its communities. This includes family group conferencing (FGC) and kinship care, which create opportunities to involve extended family in the care of children. SCFSS champions child and family services programs that are focused on the incorporation of cultural teachings.

When I met with SCFSS representatives and those from the five communities, many aspirations were identified for each of their respective communities. However, the leadership and administration brought forward collective concerns in a number of key areas:

- Adequate funding requirement for the five communities;
- The critical need for, and their interest in, a First Nations Court;
- MCFD's proposed permanency policy; and
- The ongoing efforts of First Nations leadership and organization to organize at the provincial level to discuss Indigenous jurisdiction and child welfare going forward.

NATION-TO-NATION – PARTNERSHIP BUILDING

Given the significant and disproportionate numbers of Indigenous children in care, there is an urgent need to build effective and ongoing relationships and to open lines of communications between the senior MCFD officials in each of the 13 regions and the Métis and First Nations communities the regions are serving. Where they exist, DAAs can also play an integral part in supporting Nation-to-Nation partnerships. Those I met with noted that many times the only MCFD officials known to Indigenous leaders and communities are the social workers tasked with removing children, creating acrimonious and tense circumstances.

A serious lack of knowledge about Indigenous communities and leaders exists, due in part to the minimal or nonexistent communication between senior MCFD officials and Indigenous communities and their leaders about the children from these communities who are in care.

Those I met with acknowledged, however, that relationship building and improved communications between Indigenous leadership and senior MCFD officials would, over time, help to build the necessary understandings and collaborative approaches to address underlying community concerns and needs.

There are several regions where I heard testimony of important and respectful relationships that have developed largely due to the efforts and priorities of individual MCFD officials and the local Indigenous leadership. However, these positive relationships appear to be the exception rather than the rule.

Early in my appointment, I urged the Minister and senior officials at MCFD that improving the relationships between the MCFD regions and Indigenous communities be an important administrative priority for the Ministry in support of the broader goal of strengthening Nation-to-Nation relations. Three early recommendations were made to MCFD in support of this.

First, the recommendation that **MCFD REGIONAL MANAGERS BE REQUIRED TO MEET REGULARLY WITH FIRST NATIONS LEADERS/ELDERS FROM COMMUNITIES WITHIN THEIR REGION**. I am pleased to report that MCFD has taken a first step in addressing this early recommendation by building the requirement into the job description and into performance measures for all regional managers.

Secondly, the recommendation that **A LIST OF ALL THEIR CHILDREN UNDER CCO BE PROVIDED TO FIRST NATION CHIEFS, COUNCILS, HEREDITARY CHIEFS, AND MATRIARCHS**. Previously, "privacy" concerns were cited as the impediment for Indigenous leaders to have access to a list of their children under CCO. The Province conducted a review of existing legal opinions and the opinion supported sharing with First Nations leaders the access to this information. I was then able to provide a list of children under CCO to each First Nation in BC, and I have received assurances that this information will be made available to First Nations going forward.

Finally, the recommendation that **THE MCFD REGIONAL EXECUTIVE DIRECTORS OF SERVICES FOR EACH REGION HAVE SPECIFIC JOB REQUIREMENTS AND PERFORMANCE MEASURES THAT REFLECT THE PROVINCE'S HIGH LEVEL COMMITMENT TO RECONCILIATION AND THE SPECIFIC COMMITMENT TO STRENGTHEN MCFD'S RELATIONSHIP WITH INDIGENOUS LEADERSHIP, FAMILIES, AND COMMUNITIES**. MCFD has taken an early step and developed a new reporting template which identifies a number of principles that all MCFD Regional Executive Directors of Services are

accountable to through their regular performance reviews. I am informed that this new reporting template is now in effect.

Memoranda of understanding, protocols, and other similar arrangements are generally statements of intention to work together. These usually non-binding arrangements have proven to be useful in navigating the day to day and ongoing working relationships between Indigenous communities, DAAs, and MCFD.

As one example, the Nlha'kapmx Nation have used their agreement with MCFD to establish constructive administrative and working relationships with the local MCFD office. Over the course of my sessions with First Nations, this was a rare example where regional MCFD staff and management were singled out by the First Nations involved and praised for their efforts to build a constructive relationship.

MCFD NEW REPORTING TEMPLATE FOR ABORIGINAL RECONCILIATION

PRINCIPLES:

- *Interaction must be consistent with the approach and principles espoused in the Aboriginal Practice and Policy Framework (APPF)*
- *The historical and cultural context captured by the Truth and Reconciliation Commission (TRC) should be considered in the development of the plan*
- *Plans and reports will be made available to all First Nations, Tribal councils and Aboriginal organizations within the Service Delivery Area (SDA)*
- *Executive Directors of Service (EDSs) and Managers will be held accountable to plans*
- *Plans should be developed collaboratively with affected First Nations, Tribal councils and Aboriginal organizations*
- *Reporting on plans will be completed quarterly at the SDD quarterly reporting meetings*
- *First Nations and Aboriginal communities should be involved in the planning for their children in care and the delivery of services to First Nations and Aboriginal families and children*
- *Services should be planned and provided in ways that are sensitive to the needs and the culture of those receiving services*

– MCFD internal administrative document, August 2016

The Nation-to-Nation Protocol was one of the tools consistently identified by those I met as having potential to improve relationships. There is no one model for these protocols, but most include many of the same components since they address the same or similar child welfare issues (See below – Sample framework of Nation-to-Nation Protocol). Financial matters are generally not included in these protocols. If funds are available to support activities or objectives of the protocol agreements, they are negotiated separately.

Those I met with shared specific recommendations as to the components that each Nation-to-Nation Partnership Protocol should at minimum include.

SAMPLE FRAMEWORK – NATION TO NATION PROTOCOL

The following is a sample framework for a Nation-to-Nation Protocol, highlighting some of the key components that protocols have included to date.

PROTOCOL AGREEMENT
BETWEEN
[INDIGENOUS COMMUNITY/NATION]
AND
THE MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

PREAMBLE: Including reference to the inherent right of Indigenous peoples to care for their children, regardless of where they reside, the preamble has usually included references to Canadian and provincial law and the responsibilities of all Parties under the law. Going forward, these protocols could include other valuable references such as that of International law, the Truth and Reconciliation Commission findings, and relevant Canadian Human Rights Tribunal decisions.

THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS: Including all defined terms in the agreement.

GUIDING PRINCIPLES: Jointly agreed to by the Parties to the agreement, these principles often speak to high level commitments, such as the joint commitment to ensure the safety and well-being of children. But these principles can and should also include commitments to ensure Indigenous children remain connected to their culture, community, and family, and to work in a matter that prioritizes prevention, and permanency planning.

PURPOSE OF THE AGREEMENT: A high level articulation of the responsibilities of both the Ministry and the Indigenous Community/Nation in carrying out the work of the protocol.

PROCEDURES: Speaks to the desired relationship when certain circumstances arise. For example, outlining the procedure for when the Ministry receives a call that a child who is living on-reserve or off-reserve may be in need of protection.

INFORMATION SHARING: Addresses the requirements for information sharing under the law (*CFCSA*), but also outlines commitments of both Parties to share information. For example, while delegated decisions over children in care may presently rest with the Ministry, committing that such decisions will not be made without engaging and discussing with Indigenous representatives under the protocol.

RESOURCE DEVELOPMENT: Including details about any joint planning processes, and training, etc.

CONFLICT RESOLUTION PROCESS: In the event of any disagreements regarding the application or interpretation of the protocol, a conflict resolution process is often laid out identifying specific steps and a timeline.

DURATION OF THE PROTOCOL: Identifying the period of time the agreement is effective. This component also speaks to a process that can be undertaken jointly by the parties to amend the protocol or to review its implementation and effectiveness.

DATED SIGNATURES: At present, these protocols have most often been signed by Indigenous leaders and senior staff in the relevant MCFD region on behalf of the Ministry. It is encouraged that in future these protocols are signed by the MCFD Minister or Deputy Minister.

The components emphasized most often were the following:

- A reciprocal commitment to baseline principles and objectives for a results based approach to child welfare, including emphasis on the rights of the child and parents/extended families and communities (*UN Convention on the Rights of the Child*, UNDRIP and UN World Conference on Indigenous Peoples (UNWCIP) Outcome Document commitments, and statutory commitments in *CFCSA*);
- A joint commitment to alternative dispute resolution as the default approach in advance of any child removal order;
- A reciprocal commitment to build and maintain constructive working relationships in all aspects of child welfare practice impacting on an Indigenous community, including culturally based child care plans with a focus on permanency;
- The identification of jointly agreed to obligations and responsibilities, including the commitment to communications and accountability standards;

- An agreed-to approach to implementation of the protocol, including but not limited to joint planning, monitoring and a review process;
- The term of the protocol (i.e. Year to year; or longer term);
- An established timeframe for periodic review of the protocol; and
- Commitment to youth engagement (See later recommendations in this report).

Those I met with stressed the need to see MCFD and DAAs work with all Indigenous communities to take immediate action to ensure a current Nation-to-Nation Partnership Protocol exists between each Indigenous community (First Nation or Métis) and the regional MCFD office or DAA (as appropriate) and, that these protocols are meaningfully implemented. In some instances, these protocols do not exist at all and would need to be developed. In other instances, the existing protocol will need to be reviewed in order to ensure it is both current and well understood by all parties.

Unfortunately, many Indigenous communities who have existing protocols with DAAs and MCFD complain that these protocols are routinely ignored or violated. One Chief described their existing protocol as "not worth the paper it is written on." This statement captures the frustration of many I spoke with who wanted to see existing and new protocols truly become the powerful relationship building tools they are intended to be. Recommendations 8-9 directly address these protocols.

PARENTS AND FAMILIES

Many I met with view social workers and foster parents as complicit in their relationship and often working together to oppose Indigenous parents, families and communities who are working to get their children back. I heard repeated accounts of instances where parents, families, or communities complained about this real or perceived behavior and then faced MCFD officials acting quietly through reprisals.

> *"MCFD has no respect for our parents or grandparents. Parents are belittled and intimidated by MCFD social workers…there is a question of suitability of the social workers who work with our people, such that my priority has become to be with our parents when they meet with MCFD social workers."*
>
> *– Chief Lee Spahan, Coldwater Indian Band*

Over time, an adversarial dynamic has developed and it is not benefiting anyone involved, least of all Indigenous children within the child welfare system. As is emphasized repeatedly throughout this report, a prevention based system that provides necessary supports to struggling parents and families within communities should instead be our collective goal. The child welfare system should support and enable parents to become the best educators and support for their child or children. To this end, many I met with expressed their specific desire to see MCFD and INAC work together to ensure that a child and family liaison and advocate is funded for each Indigenous community as a necessary support service to families who need it as well as for the leaders and members within a community (Recommendation 1).

The limited funding to support Indigenous parents and families has not prevented Indigenous communities or DAAs from taking action to honour the role of parents in children's lives and to support parents in many of the struggles they

may encounter in caring for their children. At Musqueam, for example, I was invited to attend a feast held in honour of seven Musqueam fathers in the community. These fathers were nominated by their immediate or extended family, or friends for having taken extraordinary steps to support their children and/or grandchildren. They were stood up and celebrated in a ceremony and blanketed in accordance with traditional Musqueam ways. In this way, the community recognized and offered thanks to the men for their strength and for the positive contributions they had made to their families and to the Musqueam community.

> *"We need to implement our way to care for our children by working with our parents and extended family members."*
>
> *– Grand Chief Percy Joe, Shackan Indian Band*

In Indigenous communities across the province, in urban areas like Vancouver or in the rural and often remote villages on the coast or in the north, I heard from Indigenous grandmothers and grandfathers, elders, and cultural leaders who are playing a significant intergenerational role, teaching their children, grandchildren, and many other young members within Indigenous communities. Many, if not most, are survivors of the Indian residential schools system or the 60's Scoop.

Over the term of my appointment I was struck by the pivotal role that grandmothers in particular play in the lives of many of our children – their teachings serving to guide families and communities through intergenerational trauma and the challenging realities of life today for many Indigenous people. When their grandchildren are "removed," these grandmothers often do not sleep, they worry and wonder about their small loved ones. Often, what these grandmothers can offer materially is a modest pension from government and, as I heard from so many I met with, they work to stretch this as far as they can each month. The individual stories these women shared impacted me greatly. I revisit the topic of grandmothers and their stories later in the report in relation to current funding inequities that exist and that have, in practice, discriminated against extended family members such as these grandmothers who take on the care of grandchildren.

Elders are the knowledge keepers of the traditional teachings, stories, legends, songs, genealogies, territories, and Indigenous place names. They remind us of who we are and where we come from as Indigenous peoples. The United Nations places a high value on traditional knowledge, such that it is recognized in international United Nations instruments such as the *2030 Sustainable Development Agenda*, the *Paris Climate Change Agreement*, the *Convention on Biological Diversity*, and the *Declaration on the Rights of Indigenous Peoples*.

Within Canada, the Supreme Court of Canada Justices, in deciding the landmark case of *Delgamuukw/Gisdayway* confirmed that they recognize the traditional knowledge, handed down as part of the oral history of Indigenous peoples, as a valuable independent source for proving the existence of Indigenous legal rights to their territories.

While traditional knowledge holders may not have the qualifications that the provincial or federal government looks for when considering hiring workers to look after the most vulnerable in communities, these individuals do hold something of great value to Indigenous peoples, communities, families, children, and youth

that cannot be gained through post secondary institutions. Traditional knowledge is essential in educating Indigenous children on their cultural identify and connectedness.

Protecting a child's cultural identity should be an important consideration and deserves focused attention in both the design and delivery of child welfare services to Indigenous children and youth. Current provincial legislation, namely the *CFCSA*, supports this already, but the question is how to ensure cultural identity and connectedness are valued and prioritized in practice. Later in this report the importance of language, culture and traditional knowledge to care plans for all Indigenous children in care is examined at length.

One critical component of Indigenous community development and empowerment is a continuing effort aimed at strengthening education, knowledge, and training on the province's child welfare system. Those I met with expressed strong support for community-based training and curriculum which is further discussed later in this report (Recommendation 10). They identified an urgent need to ensure that child welfare training, curriculum, and services respect who Indigenous people are, and thus involve and uplift the traditional knowledge holders – our Indigenous elders, matriarchs, and hereditary leadership – in both the design, development and delivery.

The *Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA – Guidebook* ("the Guidebook") is a tool that has been designed to identify practical strategies for involving Indigenous communities in child welfare issues. It was championed to completion by the ShchEma-mee.tkt ("Our Children") Project, a culturally-based and prevention-focused Nlaka'pamux child and family wellness initiative. During the sessions I attended with Indigenous communities, this Guidebook was referenced as a critical tool for communities to better navigate the child welfare system. An accompanying workshop has also been designed to assist participants in understanding the key topics outlined in the Guidebook. Some workshops have been held across BC to date, and later in this report, the recommendation is made that the Province support further development of and training based on the Guidebook.

CHILD, FAMILY AND COMMUNITY SERVICE ACT ON CULTURAL IDENTITY

GUIDING PRINCIPLES

2(f) the cultural identity of aboriginal children should be preserved.

SERVICE DELIVERY PRINCIPLES

3(c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services.

Another model that has been employed to increase community level capacity and to support connectedness and the reunification of Indigenous children to their parents, families, and communities has been the Care Committee Model. Care Committees or Groups were re-established through the Aboriginal Children and Families Chiefs Coalition with a focus on community care prevention in support of families.

Individuals involved in the Care Committee Model are trained through curriculum that is both community-based in focus and developed by the community. Those involved report the positive impact the committees have had on capacity building in communities. Unfortunately, the model is not consistently or adequately funded by the Province or the federal government and so in order to continue, these committees rely heavily on community members within individual First Nations communities volunteering of their time.

Despite these challenges, the model is highly regarded by many I spoke with for its promise in aiding in the development of re-unification and permanency plans for Indigenous children and for its ability to incorporate cultural components effectively into this planning and is highlighted in this report as a promising practice deserving of INAC and MCFD support (Recommendations 3 and 10).

WRAPPING OUR WAYS AROUND THEM: ABORIGINAL COMMUNITIES AND THE *CFCSA* – GUIDEBOOK

The *Wrapping Our Ways Around Them: Aboriginal Communities and the CFCSA – Guidebook* is based on the understanding that Aboriginal peoples need to understand how to work within the systems that are currently impacting the welfare of children and families such as the:

- *Child, Family and Community Services Act (CFCSA);*
- Provincial court System;
- Ministry of Children and Family Development (MCFD);
- Delegated Aboriginal Agencies (DAAs)

The Guidebook puts forward practical tools for Indigenous communities to navigate these systems to help improve outcomes for Indigenous children and families. It also identifies opportunities to restore Indigenous ways of doing things within the existing systems of child welfare. The Guidebook makes a series of strong suggestions for the integration of traditional practices to support the well-being of children and families. Topics explored through the series of 'best-practices' identified in the Guidebook include:

- The critical role of an Indigenous community in decision-making related to a child's welfare;
- The necessity of a broader distribution of responsibility of care beyond just the parents (i.e. extended families, Indigenous community, etc.); and
- The need for attention to be paid to the vital social and cultural connections of Indigenous children.

THE CARE COMMITTEE MODEL IN THE STO:LO AND NLAKA'PAMUX AREAS OF THE EASTERN FRASER REGION

A key initiative within the Sto:lo and Nlaka'pamux areas of the Eastern Fraser region for child welfare has been the development of "Care Committees" with the focus on preventive supports for Indigenous children and families.

Those individuals involved in the Care Committee Model are trained in curriculum that is developed through community involvement and is community based. To date, the training has followed an intensive curriculum and has included cultural teachings, information about the historical impacts of residential schools and the 60's scoop, trauma and attachment theories, as well as existing child welfare legislation (sec. 13 *CFCSA*).

RECOMMENDATIONS AND RELATED ACTIONS

The following recommendations are focused on ensuring direct support for Indigenous children and youth, as well as parents and families within Indigenous communities. They are based on the underlying assumption that the child welfare system and services in BC need to be substantively transformed in order to realize existing legislated requirements, as well as the recent commitments made by the federal and provincial governments in support of the full involvement of Indigenous communities in child welfare matters impacting Indigenous children and youth.

Recommendation 1:

MCFD and INAC invest in the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- MCFD and INAC commit to invest an additional $8 million annually to increase the social workers, support workers, and others serving First Nations communities in BC by at least 92 FTEs over the next two years;
- MCFD take immediate action to ensure that the additional front-line staff identified above are placed directly within First Nations communities in BC; and
- MCFD and INAC work together to ensure that a child and family liaison and advocate is funded for each First Nation community as a support service to parents, families, leaders, and members who require support within the community or navigating the child welfare system.

- MCFD, with the objective of maximizing its child safety recruitment, review the entry level qualifications for front-line workers. The review to consider educational and experiential requirements for child safety positions.

Recommendation 2:

MCFD and INAC invest in the development and delivery of child and family services directly with the Métis in BC, by increasing the number of front-line staff working directly with Métis in BC.

Recommendation 3:

MCFD support existing promising practices that are focused on the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- In conjunction with Recommendation 1, MCFD and INAC provide support for the expansion of the Sts'ailes pilot project as a model for other interested First Nations communities within BC; and
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model to support prevention based on active interventions in support of children and families.

Recommendation 4:

Each MCFD region undertake a review of planned and existing front-line staff with a view to re-profile and direct, according to need, full time employees to work directly within Indigenous communities to directly support parents and families, and enhance community-based services.

EARLY RECOMMENDATIONS AIMED AT STRENGTHENING NATION-TO-NATION PARTNERSHIPS

As outlined earlier in this section, MCFD has taken some initial steps to action the following three early recommendations:

Recommendation 5:

MCFD require their Regional Executive Directors of Services for each region to meet regularly with Métis leaders, and First Nations leaders/elders from communities within their region.

Recommendation 6:

MCFD regularly provide to each First Nation (First Nation Chiefs, councils, Hereditary Chiefs, and matriarchs) a list of all their children under a custody of care order.

Recommendation 7:

MCFD require that Regional Executive Directors of Services for each region have specific job requirements and performance measures that reflect the Province's high level commitment to reconciliation and the specific commitment to strengthen MCFD's relationship with Indigenous leadership, families, and communities.

Recommendation 8:

MCFD take the following immediate actions to ensure Nation-to-Nation Partnership Protocols are implemented between each Indigenous community (First Nation or Métis) and the regional MCFD office and DAA (as appropriate):

- Each MCFD regional director arrange to meet before January 2017 with all Indigenous communities and DAAs with the purpose of
  1) ensuring a current Nation-to-Nation Partnership Protocol exists between each Indigenous community (First Nation or Métis) and the regional MCFD office or DAA (as appropriate) or, in the instances where a protocol already exists,
  2) ensuring that the existing protocol is current, understood, and agreed to by all parties to the protocol;
- MCFD commit to an annual review of all Nation-to-Nation Partnership Protocols with all of the parties to each protocol.

Recommendation 9:

MCFD commit, at minimum, to the inclusion of the following core components of each Nation-to-Nation Partnership Protocol:

- A reciprocal commitment to baseline principles and objectives for a results-based approach to child welfare, including emphasis on the rights of the child and parents/extended families and communities (*UN Convention on the Rights of the Child*, UNDRIP and UNWCIP Outcome Document commitments and statutory commitments in *CFCSA)*;
- A joint commitment to alternative dispute resolution as the default approach in advance of any child removal order;
- A reciprocal commitment to build and maintain constructive working relationships in all aspects of child welfare practice impacting on an Indigenous community, including culturally based child-care plans with a focus on permanency;
- The identification of jointly agreed to obligations and responsibilities, including the commitment to communications and accountability standards;
- An agreed-to approach to implementation of the protocol, including but not limited to joint planning, monitoring, and a review process;
- The term of the protocol (i.e. Year to year; or longer term);
- An established timeframe for periodic review of the protocol; and
- Commitment to youth engagement (See later recommendations in this report).

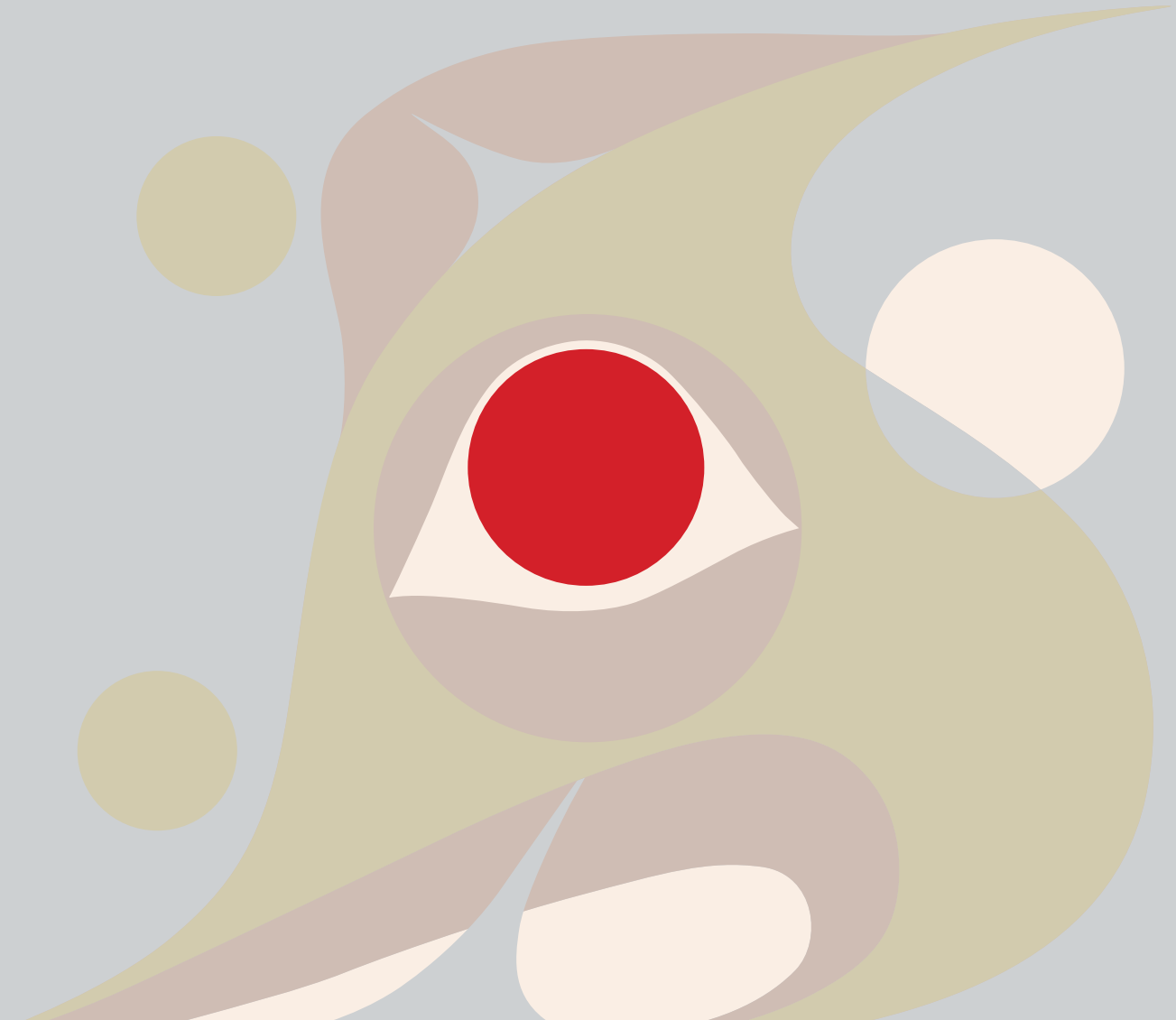
Recommendation 10:

MCFD and INAC provide the specific support for community-based curriculum and community developed services for Indigenous children and families involving and uplifting Indigenous elders, matriarchs and hereditary leadership:

- MCFD and INAC commit to support training so Indigenous individuals and communities understand their rights regarding child welfare and capacity within communities grows;
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model (identified in Recommendation 3) by providing funding for training of Care Committee/Group workers similar in scope to the training provided for those involved in the community Care Committee Model that was created through the Aboriginal Children and Families Chiefs Coalition.

AREAS FOR FOCUSED ACTION

AREA 2. ACCESS TO JUSTICE AND CHILD AND FAMILY SERVICES



AREA 2. ACCESS TO JUSTICE AND CHILD AND FAMILY SERVICES

The justice system and the "rule of law" are an integral part of the effective functioning of Canada as a federal state. 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.

What I heard resoundingly through my engagement with Indigenous people and communities was that the justice system in Canada, and in particular court proceedings in BC, are not serving the best interests of Indigenous children and youth, and that improving access to justice for Indigenous people must be something we all work together to collectively address in order to see meaningful improvements in the child welfare system.

As noted earlier in this report, many Indigenous parents and families confront a myriad of obstacles in everyday life, relating to housing, adequate nutrition, medical care, and transportation. In BC, the demands placed on any parents facing a child removal order by MCFD create challenging hurdles for family reunification. Where Indigenous parents and families are engaged in the child welfare system and not supported, the incremental effects of these demands by MCFD prove a devastating roadblock for the reunification of Indigenous families. I heard repeatedly that without judicially imposed restraint on MCFD action and without full comprehension of and actions to address the struggles of Indigenous parents, families, and communities, it is likely that Indigenous families will continue to be denied access to justice, and that Indigenous children will remain disconnected and further traumatized in disproportionate numbers through the child welfare system.

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (THE "DECLARATION") ON ACCESS TO JUSTICE FOR INDIGENOUS PEOPLES

ARTICLE 40: *Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.*

I heard consistently of the frustration Indigenous parents, families, and communities experienced when denied access to justice through the existing child welfare system. Individuals described how social workers, considered "officers of the court," are afforded a large degree of discretion, authority and power, and they further elaborated on how this was proving problematic, given the lack of a concerted effort to date by BC or MCFD specifically to ensure these front-line workers, and the judges hearing their testimony, are equipped with an understanding of the effects that

intergenerational trauma have had on Indigenous children, parents and families. Individuals shared firsthand accounts of their experience regarding the way that Indigenous parents are treated by the justice system, often not afforded fairness in court proceedings and in many cases not even present in court due to delayed proceedings and other significant obstacles to their attendance. As for the children themselves, Indigenous child welfare advocates and practitioners expressed concern that BC is one of only two provinces in Canada that does not provide systematic provision for legal representation for children. Overall, those I met with described a system where a great deal of room for conflict exists, where confusion or ambiguity in proceedings and orders is commonplace, and where the end result is undue potential for overlapping and inconsistent or unfair orders that lead to more Indigenous children being placed or continuing in care.

In her remarks at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice, Chief Justice Beverley McLachlin stated, "Access to justice, by providing for the just resolution of disputes and sustaining the rule of law, benefits both individuals and society." Justice McLachlin identifed four **BARRIERS TO ACCESS JUSTICE: PROCEDURAL BARRIERS, FINANCIAL BARRIERS, INFORMATIONAL BARRIERS, AND CULTURAL BARRIERS**. Borrowing from Justice McLachlin's analysis, this section of the report is organized around access to justice barriers as they pertain to Indigenous peoples and the child welfare system. Recognizing that these barriers are inextricably linked, this section contains specific recommendations intended to address one or more of these barriers.

While speaking to the judiciary is not officially part of my mandate, it is impossible to adequately address certain challenges within the child welfare system without acknowledging the interconnectedness to the overall justice system. My meetings with many across BC reinforced the important roles that judges, lawyers, Indigenous leaders, and all advocates for Indigenous children have to play in ensuring access to justice. The good news is that many have been awakened to the need for changes through the TRC Calls to Action and through the recent CHRT decisions concerning First Nations child welfare.

In BC, for example, members of the Victoria Bar Association recently collaborated in the development of the *Victoria Bar Association Initiative*, aimed at addressing significant challenges and systemic deficiencies encountered in the representation of parents who have had their children apprehended. According to the association, the overarching goals of the initiative were to 1) identify problems, 2) call on the Victoria Bar to fill the void created by legal aid under-funding, and 3) champion reform in the approach in BC to child apprehension. Many of the challenges, systemic deficiencies and associated calls to action identified through the initiative are particularly relevant for Indigenous people in BC, and are thus highlighted throughout this section of the report.

PROCEDURAL BARRIERS

In the context of Canada's overall justice system, Justice McLachlin describes **PROCEDURAL BARRIERS** as "rules and processes that are more complicated than they should be…". As described throughout this report, substantive jurisdictional, legislative, policy, and practice-related complexities exist within the child welfare system serving Indigenous children and youth. Indeed, the 2016 CHRT 2 decision necessarily spends nearly 40 pages simply documenting the complexities that exist in terms

of the provision of child and family services to First Nations children.

As a result of the complexity, understanding and navigating the child welfare system in BC can be a daunting challenge for many Indigenous parents, families, and communities, and the struggle to understand and navigate the rules and processes represents a substantial barrier to and subsequent denial of access to justice.

> ***Procedural barriers** are rules and processes that are more complicated than they should be. This leads to unnecessary delay and cost. And in some cases, it prevents people from using the justice system or availing themselves of their rights. The complicated structure of the courts and administrative tribunals, the complex rules and procedures and the sheer difficulty of finding one's way in the law, all present formidable challenges to access to justice...*
>
> *– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice*

FINANCIAL BARRIERS

FINANCIAL BARRIERS within the child welfare system were a consistent theme during nearly every engagement as Special Advisor. Justice McLachlin describes financial barriers as continuing to "thwart access to justice". McLachlin points out that while large business and wealthy individuals are not impacted greatly by cost, nearly everyone else is impacted and that for many Indigenous people the financial barriers are formidable.

Insufficient advocacy funding exists for parents and families. The *Victoria Bar Association Initiative*, discussed earlier in this section, points out that legal advocates are severely constrained by limited legal aid hours, as well as an ethical framework which precludes attention to emotional/ supportive/ economic problems that affect all parents who have lost a child. The initiative highlighted the need for reform to ensure that advocacy is provided for the affected community who are working to navigate the court system.

> ***Financial barriers** continue to thwart access to justice. Solving legal problems takes time and money, and, sometimes, specialized expertise. For rich people and large businesses, cost may not be an issue, but for everyone else it is...*
>
> *– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice*

When a concern about a child's safety is raised, the current system allows designated social workers to remove a child and present the child before the court within ten days. Unfortunately, this approach in the *CFCSA* shifts the onus to parents and community. For parents and communities faced with no or little financial resources, this becomes an inordinate burden. While existing legislation provides for some safeguard for the parents or community in that there must be a presentation hearing before a provincial court judge, the practice generally ends with an order from the court to remove the child.

MCFD retains 40 law firms in the province to carry out its legal work in the courts. Funding for some of these legal costs is provided by INAC to MCFD in the annual service agreements, which are discussed later in this report (Area for Focused Action – 3). Under the annual service agreements, MCFD is to

provide services to Indigenous children, families and communities. On the other hand INAC does not provide any support to Indigenous communities.

Parents whose children are being removed generally have few to no financial resources and Indigenous communities have no finances to retain lawyers. Legal aid becomes the last resort. The Legal Services Society (LSS) advise me that 41% of their child protection cases involve Indigenous peoples. LSS provides an "Aboriginal community service worker" program but it has funds for only one worker who is located in Duncan/Nanaimo. I heard from many that I met with that the existing LSS program should be expanded to more communities.

Within the existing system, often insurmountable financial barriers mean Indigenous parents and families are routinely denied access to justice. Those I met with were adamant that Indigenous parents and families should not be expected to navigate the complex child welfare system alone and require increased supports (Recommendations 15, 16 and 17).

> *I spoke to a family who told me one of their relatives, a father, had gone to a child protection proceeding in a small Northern BC town, optimistic that his child would be returned. That hope was dashed. A decision was made not to return the child. Shortly afterwards, brokenhearted, he put himself in front of an oncoming freight train, ending his life.*
>
> *– Engagement meeting with Grand Chief Ed John*

INFORMATIONAL BARRIERS

Many acknowledge the **INFORMATIONAL BARRIERS** that exist for Indigenous parents, families and communities who are trying to navigate the complex child welfare system. Justice McLachlin described the "information deficit" that exists, where individuals "lack the understanding and information to fully access the justice system."

> *...the third barrier to justice – the **information deficit**. Many people – including (but not refined to) in-person litigants – lack the understanding and information to fully access the justice system. They may lack information on just about every legal issue, be it the criminal process, the family law process, the ancestral rights to fish and hunt, or residential schools claims.*
>
> *– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice*

Within the current child welfare system in BC, the court is the venue to determine whether the 'concerns' of child protection workers are valid or tainted by bias and misinformation. Unfortunately, as the Victoria Bar Association reported through their recent initiative, in practice **INADEQUATE INQUIRY OCCURS AT AN EARLY STAGE INTO WHETHER INTERVENTION IS JUSTIFIED, WITH AN ETHNO-CENTRIC VIEW OFTEN PERPETUATED THROUGH THE COURT PROCESS**. For Indigenous people in BC, trust in the validity of MCFD 'concerns' is highly problematic as these reported 'concerns' may involve cultural stereotyping, borne of a reaction to poverty resulting often from intergenerational trauma and suffering, and lack of understanding regarding a particular Indigenous culture. For indigenous communities, the Victoria

Bar Association stressed the importance of ensuring evidence relating to concerns be disclosed in a comprehensible and timely manner, rather than through the provision of impressionistic forms or reports. I heard from many about the frustrations that have grown due to the lack of understanding or information to fully access the justice system. The courts or MCFD routinely frame the cause for removal and the expectations before a child can return in a context foreign to Indigenous communities. In doing so, I heard accounts where parents' abilities to advocate effectively for the return of their child were greatly diminished, causing both delays and in some cases working to make reunification unachievable.

CULTURAL BARRIERS

I heard impassioned testimony from many individuals who believe strongly that the current legal system works in opposition to Indigenous peoples' interests. Those involved in the administration of child welfare laws, including judges, lawyers and social workers, are generally not familiar with the diversity and complexities of Indigenous peoples' traditional and customary institutions and laws. These are not consistently taught in law schools, lawyers are not immersed in these, and judges do not apply it in their courts. The lack of cultural understanding has most certainly created, and continues to contribute to, significant barriers to access to justice.

The **LACK OF CULTURAL UNDERSTANDING WITHIN THE COURTS AND CHILD WELFARE SYSTEM** was something that I heard emphasized often throughout my appointment. Child protection workers are largely seen as antagonistic to the interests of indigenous children and communities, which impacts the ability to canvass community options. In practice, the system's focus on the 'best interest of the child' is not easily reconciled with the holistic approach toward family and community in many Indigenous communities. Indeed, I heard disturbing accounts across MCFD regions where the 'best interest of the child' was pitted against or understood as contrary to culturally appropriate approaches that emphasize the involvement of family and community. At its worst, the current model can accurately be described as serving as an instrument of social control, imposing culturally based judgments of the dominant non-Indigenous society.

> *...by **cultural barriers**, I mean attitudes of mistrust or fear toward the justice system... many First Nations people bear little trust towards the Canadian justice system, as the Canadian Bar Association recognized in its 1988 report on Aboriginal Rights. The Truth and Reconciliation Commission led by Justice Murray Sinclair recently stated that Aboriginal people "often see Canada's legal system as being an arm of a Canadian governing structure that has been diametrically opposed to their interests." There is a sense that the legal system is not there to protect what Aboriginal people hold dear, but rather to impose non-Aboriginal law on them... indigenous concepts of justice may differ in important ways from those held by most of the population. Indigenous dispute resolution systems may see the goal as finding a practical resolution, restoring co-operative co-existence, and eliminating bad feelings...*
>
> *– Chief Justice, Beverley McLachlin, Speech at the 2015 Annual Conference of the Canadian Institute for the Administration of Justice*

MÉTIS AND CULTURAL BARRIERS

Métis culture and identity is unique and separate from other Indigenous cultures in BC. Because of this, it is necessary for policy makers as well as front-line social workers to understand and implement knowledge of Métis culture into their work. The need for a unique understanding of a particular Indigenous culture is not specific to Métis – it is included in many sets of recommendations addressing all Indigenous children in care.

Métis leaders I met with expressed their concern that Métis culture, history and identity are perceived as having taken a backseat in BC. For these leaders, the public understanding of Métis culture and history is low and the province has yet to take meaningful action in their response to the *Daniels* (2015) decision.

The common theme for Métis I met with was the lack of public and government recognition or knowledge of Métis culture and identity, high levels of Métis children in care, unbalanced funding, unclear rights and a general perception that Métis issues are not as well recognized as First Nations issues despite similar levels of suffering.

Every child placed in care must come before a provincial court judge. That judge's background and experience will determine how they understand the issue at hand and what potential solutions they see as fit. Equipping select judges with an appreciation of intergenerational trauma and its effects would help ensure that the interests of Indigenous children are truly reflected in court proceedings and orders. Limiting the number of judges who can oversee proceedings that involve Indigenous children to those who have undergone education or training related to intergenerational trauma would also help to reduce the potential for overlapping and inconsistent orders, a problem Bob Plecas describes in part one of his review:

> *There are too many cases where an order made in one court, informed by evidence of clear concern for the safety of the children, may simply not be brought to the attention of another judge who is hearing a different aspect of the case. That Judge may well then make an inconsistent order that could create conflict, confusion or ambiguity. Plecas p.33*

In addition to participating in education or training programs focused on Indigenous history and the effects of intergenerational trauma, the judges selected to oversee Indigenous children's cases should also learn skills and best practices relating to the form of order. Oftentimes the form of order used in access orders of parents / guardians in children in care proceedings results in short access opportunities in a very controlled setting where many issues cannot be raised or discussed by the child or parent.

Immediate actions should be taken to ensure that a culturally appropriate approach within the courts and justice system is possible. As noted earlier in this report, the *Wrapping Our Ways Around them – Aboriginal Communities and the CFCSA Guidebook*, attempts to mitigate the shortcomings

of the *CFCSA*, which does not take into account the importance of community in raising an Indigenous child and can place the entire responsibility on the parents. The *Victoria Bar Association Initiative* makes reference to the Guidebook, highlighting that it is unclear whether those in the justice system follow the guidance of this comprehensive work intended to serve as a benchbook. I heard from many who suggested the Guidebook is underutilized and who advocated it be further supported as one existing tool to support a culturally appropriate approach.

ADDRESSING BARRIERS – THE COURTS AND THE ROLE OF PROVINCIAL COURT JUSTICES

THE COURTS

The Supreme Court of Canada ruling, *R v. Ipeelee* reaffirms the critical need to ensure that the courts focus on taking a restorative justice approach in the sentencing of Indigenous offenders. This ruling revisits *R v. Gladue*, which made the recommendation that courts explore alternatives to imprisonment. It argues that sentencing should always consider factors such as cultural oppression, poverty, historical abuses, and systemic discrimination, and seek culturally-relevant solutions (R v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433).

IN *R V. IPEELEE*, THE SCC PROVIDES THE FOLLOWING IMPORTANT GUIDANCE WHICH IS RELEVANT AND WORTH CONSIDERATION IN THE CONTEXT OF INDIGENOUS CHILD WELFARE AND THE COURTS:

> *"The* Gladue *principles direct sentencing judges to abandon the presumption that all offenders and all communities share the same values when it comes to sentencing..." (para. 74).*

> *"Sentencing judges, as front line workers in the criminal justice system, are in the best position to re-evaluate these criteria to ensure that they are not contributing to ongoing systemic racial discrimination." (para. 67).*

> *"Section 718.2(e) is...properly seen as a 'direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process'..." (para. 68).*

> *"...courts must take judicial notice of ... the history of colonialism, displacement and residential schools." (para. 60).*

PROVINCIAL COURT JUDGES

In the administration of *CFCSA*, provincial court judges play an important role in decision making which impacts Indigenous children, families, and communities. In every instance where a child comes under a CCO in BC, a judge had to make that decision. Without inherent authority, judges must apply *CFCSA*. However, they have both discretion and latitude in their decision making within the legislative framework..

Those I met with reinforced for me that many Indigenous parents and families, without access to legal counsel or other support, are overwhelmed in court and by the court processes. Though *CFCSA* requires, for example, that notice be provided to First Nations for child protection proceedings, many First Nations are not able to attend. As highlighted earlier in the discussion around access to justice, this is often because of lack of finances to hire legal counsel, the distance required to travel to a court hearing, or other such factors. In light of this, many I met with expressed their hope that judges

better exercise their discretion, with a presumption in favour of parents and communities. MCFD and DAAs have resources to retain legal counsel, I was reminded often, but most often Indigenous communities and families do not.

A social worker I met with recounted one of her first presentations before the court on a child apprehension. She described how she agonized over the details of her file, preparing to appear in court, and then reflected on how surprised she was when the judge so easily gave the order requested. To her memory, the court proceeding was over in less than 2 minutes and the child's parents did not have a chance.

Conversely, a provincial court judge explained he was not sure why First Nations did not appear in court in the lower mainland when they were given notice. I inquired as to whether the judge knew where the particular First Nation was located. If the child is from a northern or coastal community, the likelihood that a First Nation would appear in a lower mainland court decreases dramatically.

First Nations communities across BC advised me that they spend a considerable amount of money, which they do not have, to retain legal counsel in order to represent their interests in legal proceedings.

Together, what these comments regarding the social worker, the provincial court judge, and First Nations help to illustrate is that at present access to justice is heavily tilted in favour of the state.

In view of the considerable number of access to justice issues, it is advisable that provincial court judges carefully consider the decisions they make. As noted earlier, in BC, every child placed into care must come before a provincial court judge and as such, provincial court judges are uniquely positioned to both understand the problems that exist and to be a part of the potential solutions including legislative, regulatory, policy and practice reform.

In November 2015, I met with Justice Thomas Crabtree in Vancouver to discuss children in care specifically and the role of provincial court justices in permanency options relating to Indigenous CCOs. The meeting with Justice Crabtree and subsequent meetings with other judges provided opportunity to review many of the reports and recommendations that have already been issued in relation to the role of the courts and of provincial court judges. BC's Representative for Children and Youth (RCY), Mary Ellen Turpel-Lafond has reported extensively on permanency options to the provincial government. Key recommendations in Turpel-Lafond's reports highlight specific options for provincial court judges to consider. My meetings with Indigenous communities and provincial court judges reinforced the need for certain reforms previously highlighted by Turpel-Lafond.

ADDRESSING BARRIERS – ALTERNATIVE DISPUTE RESOLUTION AND OTHER PROMISING PRACTICES

The *CFCSA* provides the legislative authority for the use of a variety of alternative dispute resolution (ADR) processes, referred to inside MCFD as collaborative planning and decision making (CPDM). ADR processes can be requested or used at any point during the management of the case, or during legal proceedings. Under the *CFCSA* there is a presumption in favour of ADR processes and the court is intended to be the alternative. In practice, however, ADR processes are not the default approach.

A variety of ADR processes exist, including traditional decision making, family group conference, family case planning conference,

The CFCSA provides opportunities for Aboriginal community participation within alternative decision-making processes. Options including mediation, family group conferences or case conferences are cooperative planning mechanisms to resolve child protection concerns outside of Court. Participation by Aboriginal communities in alternative dispute resolution processes could be an effective way for Aboriginal communities to participate in planning for their child members (Wrapping Our Ways Around Them", p.113).

integrated case management, family circles, and mediation. Determining which option is optimal should depend on the circumstances of the parents and family, and the issues that the family is encountering.

According to MCFD data, in 2015, Indigenous families participated in over 1100 ADR programs; some families engaging in more than one process. MCFD reports that use of ADR processes are often under-recorded by workers, and it is difficult therefore to provide accurate statistics of how often ADR processes are undertaken.

Currently, the primary ADR processes MCFD and DAAs in BC utilize are the following:

- **TRADITIONAL DECISION MAKING (TDM)** refers to a meeting which includes family members, community, Elders and/or Indigenous leadership. It encourages decisions based on cultural traditions and values. It allows for each First Nations or Indigenous community to practice their own tradition. A family circle is one example. This would be considered family or community centred.
- **FAMILY GROUP CONFERENCE (FGC)** refers to a formal meeting where members of the child's immediate family come together with extended kin and members of the child's community who are, or possibly may become, involved to develop a plan to keep the child safe. The conference is arranged and facilitated by a FGC Co-ordinator. This is a family or client-driven process.
- **FAMILY CASE PLANNING CONFERENCE (FCPC)** is a time limited (usually 90 minutes) and facilitated planning meeting. The participants endeavour to establish consensus on the next steps in a plan to promote the safety of the child. FCPC frequently results in a referral for a FGC where a broader family group is engaged and a more comprehensive plan is developed. This is a professionally driven process.
- **INTEGRATED CASE MANAGEMENT MEETING (ICM)** involves multiple key players already involved in the life of a child or family. It is not time limited and may be facilitated by a neutral party. The primary purpose of an ICM is to achieve a coordinated and comprehensive care plan. This is a professionally driven process.
- **MEDIATION** refers to a meeting of parents, child protection workers, and other collaterals to discuss concerns and ideas. The goal is to reach an agreement that is in the child's best interests and is acceptable to everyone. A mediator leads the meeting and ensures each person has the chance to speak and be heard. Mediation is primarily used for legal decisions. This is a legally and professionally driven process.

The **CONSISTENT MESSAGE I HEARD IN REGARDS TO ADR PROCESSES IS THAT ADR SHOULD BE THE DEFAULT APPROACH AND NOT JUST AN OPTION**. Courts should be the last resort and, as noted above, *CFCSA* provides many options for ADR processes that do not involve the court. While the Director, in accordance with *CFCSA*, may employ ADR approaches at any point, the criticism I heard consistently is that the Director does not always use ADR processes as early as is possible, if at all. I heard that most often Indigenous parents and communities are not advised or aware of the ADR processes that are possible as an alternative to court. **THE LACK OF CONSIDERATION FOR AND UTILIZATION OF OF ADR PROCESSES BY MCFD CAUSES GREAT HARM TO INDIGENOUS FAMILIES AND COMMUNITIES**.

Those I spoke with highlighted the existence of certain cultural barriers that inhibit more frequent use and sometimes even the success of ADR processes. For example, in nearly all ADR processes, the definition of family in an Indigenous context is much broader than in the "western" framework, and it is essential that child welfare systems recognize and honour this definition; it is often based on deep cultural values and that children's needs may be taken care of by communities as part of an Indigenous worldview.

Parents and communities I spoke with were often unaware of the options available to them, depending on the quality of the relationship between Indigenous communities and the MCFD office or DAA where they are connected. Most agreed that on-going education about which ADR processes are available, and increased collaboration between MCFD and First Nations or Indigenous communities is needed. A detailed review in Court of the efforts made to notify the affected Indigenous community, assist the community in participating, as well as the detailing of ADR processes investigated are necessary to ensure meaningful compliance with sections 34 and 35 of the *CFCSA* (Recommendations 14 and 19).

Engaging parents and involving the First Nations or Indigenous community earlier in conversations can lead to a clearer understanding of the child protection concerns, and what parents and/or extended families can do to address these. There are a variety of ways of engaging the parents, families, and communities during ADR processes. Some DAAs have FGC and FCPC Indigenous facilitators and staff focused on ADR processes and it is considered a best practice for FGC, FCPC facilitators, and mediators to involve members of the Indigenous community, elders, and extended family wherever possible. Some DAAs have elders attached to their ADR programs and these elders participate regularly. Efforts to increase the use of ADR processes and to enhance existing ADR processes need to be supported by the province, Canada and Indigenous communities.

> ***...PIVOT interviewed Social Workers leaving the system. Most reported not considering less disruptive measures as required by the legislation. The most marked departure from the standard was when aboriginal children were involved (Victoria Bar Association Initiative - Call to Action, p. 21, in referencing Hands Tied: Child Protection Workers talk about working in, and leaving B.C.'s child protection system, May 2009).***

REMOVING BARRIERS AND PROMOTING CONNECTEDNESS – PROMISING PRACTICES

When discussing the justice system and child welfare, a number of promising practices were highlighted during my engagements in addition to the ADR processes discussed above. Four of these were the Parents Legal Centre Pilot, the Extended Family Program (also discussed in subsequent areas of this report), the Native Courtworkers, and the Aboriginal Family Healing Court.

LEGAL SERVICES SOCIETY OF BC AND PARENTS LEGAL CENTRE PILOT

The Legal Services Society of BC (LSS) is a non-profit organization created in 1979 under the *Legal Services Society Act*. The LSS handles 2,500 child protection cases per year and 40% of its child protection clients are Indigenous. LSS provides the following legal aid services to low-income individuals in BC: information services, advisory services, representation, and mediation. The LSS is funded partially by the provincial government with additional support from the Law Foundation of BC and the Notary Foundation of BC.

PARENTS LEGAL CENTRE (PLC) 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. It is located at the Vancouver Provincial Courthouse at Robson Square and currently is only serving clients from Vancouver and Burnaby.

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. The LSS identify the following successes:

- Better collaboration: Half of the PLC's clients were referred to the centre by MCFD social workers;
- Earlier advice: Half of the PLC's clients contacted the centre before their children were removed;
- More support: The PLC's advocate helps clients resolve non-legal issues that prevent them from keeping their children;
- Cultural competence: An Aboriginal lawyer and an Aboriginal advocate for Aboriginal clients;
- Faster resolution: The PLC's holistic approach to resolving legal and non-legal issues combined with its location at the courthouse leads to faster resolution of cases.

Aboriginal Legal Aid in BC is a division of LSS, which offers specialized services to Indigenous people in BC in all areas, including family and child protection law. A report titled *Building Bridges: Improving Legal Services for Aboriginal Peoples* identified key areas for the LSS to make changes in order to improve legal aid service delivery to Indigenous peoples. The LSS made the decision to recruit staff to assist the organization to reach out more effectively to Indigenous people, including through the formation of the Parents Legal Centre Pilot project at the Vancouver Provincial Courthouse at Robson Square.

The LSS recommends expanding the PLC model across BC. It suggests consideration be made for regional offices in eight high-demand areas (Vancouver, Surrey, Victoria, Nanaimo, Kelowna, Kamloops, Prince George and Terrace) and a phone service for communities that are unable to travel to these locations. The importance of regional offices is emphasized, as Indigenous people have identified a strong preference for in-person intake options, but have also cited barriers such as transportation, restrictive hours and insufficient service points. During my engagement, I heard strong support for expansion of the PLC pilot to better serve Indigenous communities across the province (Recommendation 16).

EXTENDED FAMILY PROGRAM

The Extended Family Program (EFP) is a program operated by MCFD. The EFP allows for children to live with extended family or other individuals to whom they have a significant cultural connection in situations where their parents are unable to provide the necessary level of care.

When children are removed, there is uncertainty around when the child can be returned to his or her parent. Placement with family or friends can make access to the child much easier for the parents. It also helps to reduce the disconnection and trauma that children can experience when they are removed from their home and community.

There is a critical need to enhance available education on the EFP option. I heard from many parents who were not immediately made aware that their children could be placed with family or friends. This can lead to lengthy delays in the screening and approval process if the parents decide to pursue this option after a child has already been placed.

A number of recommended changes to the EFP have been identified to expedite the placement of children. As an example, changes to allow for parents to leave the family home so that an extended family member can provide care for the children. This could reduce the disruption felt by children through the relocation process. It could also allow for caregivers that may have otherwise not had the means to house the children.

Despite the deficiencies, many I spoke with considered EFP a promising practice deserving of further support from MCFD, DAAs, and Indigenous communities.

ABORIGINAL FAMILY HEALING COURT

In 2006, the first First Nations Court (FNC) started in New Westminster for criminal cases under provincial court Judge Marion Buller. Today, FNCs operate in four communities around the province. The FNC process is different from the criminal court process in the following important ways:

- The FNC process includes community-based elders in the process;
- The FNC process considers the historical, social and cultural context of the offenders'

circumstances – usually as articulated in Gladue Reports; and

- The FNC process works to develop inclusive and respectful healing plans as opposed to determination of consequences.

In 2012, Judge Buller approached MCFD about expanding the FNC model to include *CFCSA* matters for cases involving Indigenous families. In 2013, the Fraser Region took the lead in working with a committee to develop a proposal, budget, and implementation and evaluation plan for a new Aboriginal Family Healing Court. The new model, it is envisioned, would address how *CFCSA* matters could be handled in a manner similar to the FNC.

Elders of the existing FNC in New Westminster have taken a lead in developing this new model, with support from MCFD regional staff and Spirit of the Children Society. The three main goals of the Aboriginal Family Healing Court are identified as follows:

1. To reduce the over-representation of Indigenous children in care that has resulted from the enduring effects of colonization by providing interventions to increase the effectiveness of court processes to address the trauma and other root causes which have led to the parents coming into contact with the child welfare system;
2. To reduce court costs with respect to Indigenous *CFCSA* matters by reducing the number of adjournments relating to administrative delays and reducing court time by avoiding the need for trials; and
3. To improve health, social and justice outcomes for Indigenous children and families by increasing the meaningful engagement of Indigenous families, promoting healing, and providing Indigenous families with a culturally appropriate court process to have their *CFCSA* matters heard.

The Aboriginal Family Healing Court would serve Indigenous families living in New Westminster, who are receiving services from MCFD Burnaby Aboriginal Services Team, and who voluntarily chose to have their Family Case Conference (FCC) heard at the FNC for *CFCSA* matters in New Westminster. It is envisioned that up to 10 to 15 families a year will be served by this pilot project. This would be approximately 50% of Indigenous families from the New Westminster office who are involved with the MCFD Burnaby Aboriginal Service Team.

While ADR processes have been sensitized with Indigenous approaches to problem solving, FCC, in particular, have not benefitted from the application of an Indigenous-led model of decision making. This pilot is a clear effort to address underlying causes (e.g. intergenerational trauma related to residential schools) that have led to Indigenous children, parents, and families becoming involved with the child welfare system. For this reason, and given the support I heard for the FNC model as well, I strongly advise that MCFD continue support for the Aboriginal Family Healing Court and simultaneously consider further investment in the FNC model across BC (Recommendation 15).

WHAT IS THE ABORIGINAL FAMILY HEALING COURT?

Just as FNCs for criminal matters are limited to sentencing, an Aboriginal Family Healing Court would be limited to hearing Family Case Conferences (FCC) after an initial presentation hearing.

As per *CFCSA Court Rule 2*, at a presentation hearing, the Judge would order an FCC, which would be held in the courtroom used for the existing FNC, involving community-based elders, family members, relevant community-based supports and an MCFD protection social worker. The result of the FCC would be a collaborative healing plan, which would be filed with the court and reviewed regularly.

In conventional court settings, the presiding judge does not always have the cultural competencies to effectively address how the enduring effects of colonization have created the social and economic factors that may have led the parents into contact with the child welfare system. The Aboriginal Family Healing Court would coordinate the participation of Elders, community members and support services at a FCC for those families who consent to participate.

Under the Aboriginal Family Healing Court, the legal steps would not differ from those of the current court system; however, the model would represent a paradigm shift in terms of understanding and approaching an Indigenous child protection matter. A holistic Indigenous approach to conflict resolution with a focus on healing would form the underpinnings of the Aboriginal Family Healing Court processes and include problem-solving principles based on healing inter-generational trauma.

RECOMMENDATIONS AND RELATED ACTIONS

The justice system is not serving the best interests of Indigenous children and youth, parents, and families. Improving access to justice for Indigenous people must be something we all work together on to collectively address in order to see meaningful improvements in the child welfare system. The following recommendations are made in support of improved access to justice for Indigenous children, parents, and families within the child welfare system.

Recommendation 11:

The Ministers of Justice and Attorney General, and Public Safety and Solicitor General convene a Justice Summit, within the context of the TRC Calls to Action on justice, to deal specially with Indigenous child welfare matters.

Recommendation 12:

MCFD take the following specific actions, including legislative amendments to improve court proceedings relating to child welfare, thus improving access to justice for Indigenous children and youth, families and communities:

- Commit to a more collaborative approach with Indigenous communities at the start of a child protection file and in advance of the court, by defaulting to presumptions that help instead of hinder an Indigenous community wishing to participate in court proceedings or ADR processes;
- The issue of "privacy" has been used by MCFD officials as a reason to deny First Nations and Métis communities access to information, and as such, *CFCSA* should be amended to clarify, confirm and ensure appropriate First Nations and Métis community leadership have access to information on their children who are in care under CCO and other child-care orders;
- Provide a notice for each presentation hearing, as well as clear, comprehensive, and up-to-date information to the First Nation or Indigenous community where each child in care is from; and
- Provide the same information to the First Nation or Indigenous community and/or their designated representative through email, as well as through the existing processes identified in the *CFCSA* regulations.

Recommendation 13:

The provincial court appoint provincial court judges whose work will focus exclusively on Indigenous children, families and communities.

Recommendation 14:

Provincial court judges undertake the following in order to improve access to justice within the child welfare system for Indigenous children and youth, parents, families, and communities:

- Ensure meaningful compliance with s. 34 and s. 35 of *CFCSA* by requiring a review in court of the effort made by MCFD or a DAA to: 1) notify the affected Indigenous community, 2) assist the Indigenous community in participating, and 3) detailing any less disruptive measures investigated in advance of court;
- Review the form of order used in access orders for parents/guardians for children in care proceedings so that relevant issues can be raised by the child or parent and discussed;
- Exercise the authority in s. 39 (4) *CFCSA* where a child at age 12 and older has the legal right to be provided with and represented by an advocate or lawyer;
- Take into consideration how the rules of evidence are used to introduce hearsay evidence by MCFD officials in presentation hearings;
- Balance the highly discretionary, unfettered and powerful authority of the Director under *CFCSA* by exercising a greater degree of scrutiny and discretion in considering presentation application made on the behalf of the Director by MCFD officials;
- Ensure their practice in court supports a trauma-based approach for Indigenous children and youth, parents, families, and communities, acknowledging the existing inter-generational trauma that has its roots in discriminatory laws, policies and practices of the state; and

- Make every possible effort to keep siblings together in their orders.

Recommendation 15:

MCFD take immediate action to support and expand promising practices, programs, and models that have demonstrated success in improving access to justice for Indigenous children and youth, parents, families and communities.

- MCFD support and expand the First Nations Court model across BC so that all Indigenous communities have the opportunity to be served under this model;
- MCFD continue support for the Aboriginal Family Healing Court in New Westminster.

Recommendation 16:

The BC Ministry of Justice support and provide resources to the Legal Services Society (LSS) to continue and expand the "Parents Legal Centre" model to other locations where a high demand exists, including expanding to Prince George, Kamloops, Williams Lake, Campbell River, Terrace/ Smithers, Surrey, and Victoria.

- A final determination of the locations for expansion should be made in consultation with LSS and Indigenous communities and organizations.

Recommendation 17:

Native courtworkers be supported to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters.

- The mandate of the Native Courtworker and Counselling Association of BC (NCCABC) be expanded to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters; and
- Canada and BC provide the necessary financial support to NCCABC to effectively deliver these services.

Recommendation 18:

MCFD take the following immediate actions to support alternative dispute resolution (ADR) processes within the child welfare system:

- Dedicate new MCFD staff, or realign existing staff, to provide facilitation for various ADR processes;
- Reinforce with MCFD staff that ADR processes be the default and not the exception, including the use of new or strengthened performance and evaluation measures regarding the effective use of ADR processes;
- Ensure that ADR processes, appropriate to the circumstances, are the default and are utilized at the earliest instance, including before a removal, or even when there is a threat of removal and that the courts be treated as an option of last resort; and
- When a removal does occurs, mandate MCFD officials to offer some form of ADR process.

Recommendation 19:

The BC Attorney General continue and expand the existing mediation program so that it is an available option for all Indigenous parents and families involved in child welfare matters and interested in utilizing an ADR process.

Recommendation 20:

MCFD and INAC collaborate to ensure similar funds are provided to Indigenous communities for their effective participation in child protection hearings, and; that these funds are provided directly to First Nations or an alternate through the INAC-MCFD service agreement.

Recommendation 21:

The Province undertake the following change to *CFCSA*, in the interest of improving access to justice for Métis children and youth, parents, families, and communities:

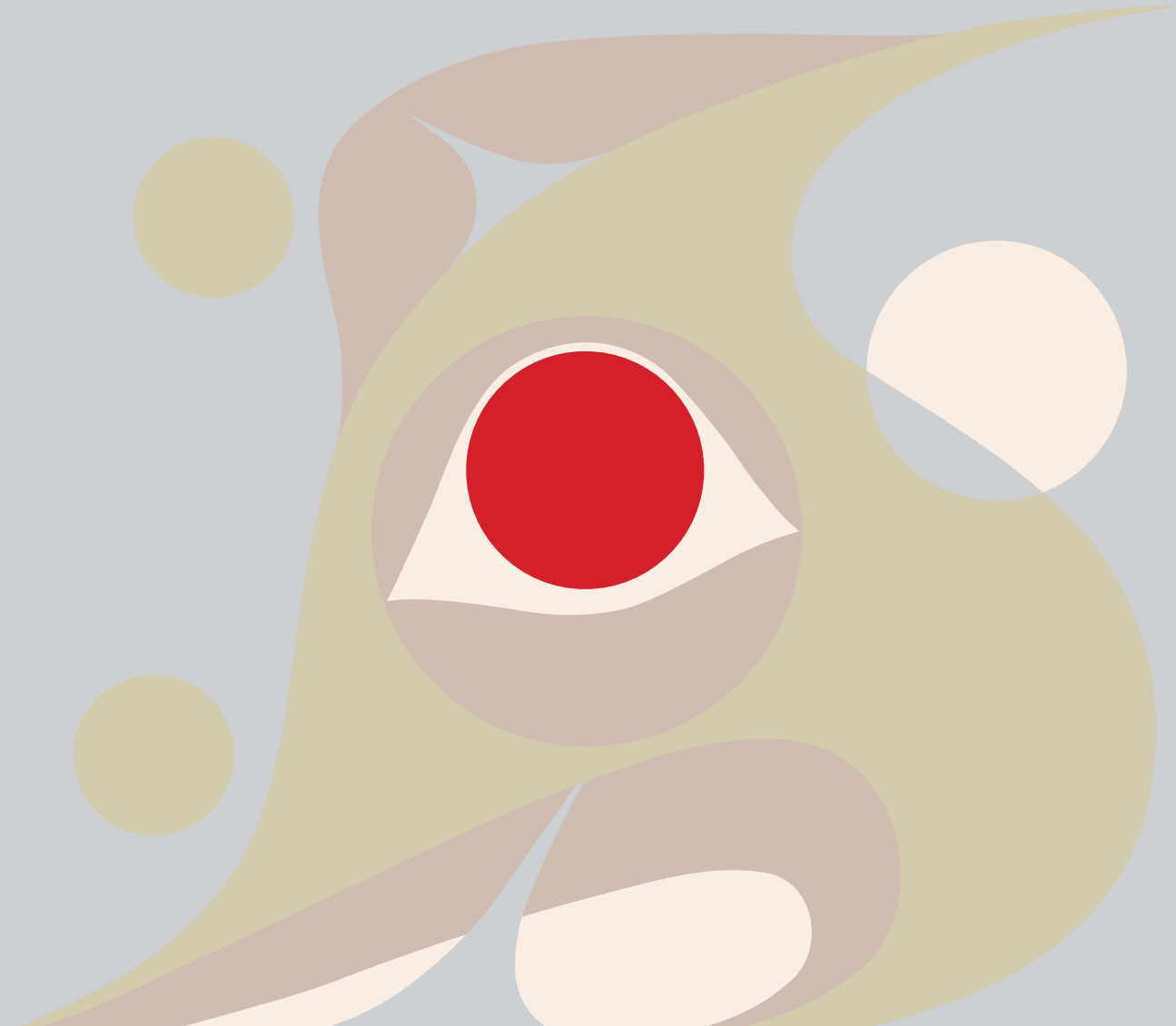
- Consistent with the Supreme Court of Canada decision in *Daniels*, the definition of "Aboriginal child" in *CFCSA* be amended to add "Métis child" with consequential amendments as necessary.

Recommendation 22:

MCFD provide First Nations and the Métis Nation BC with the financial support to create online information and corresponding print materials for First Nations and Métis citizens to inform them about the child welfare system and specifically about how to obtain First Nations or Métis-specific assistance and their related rights.

AREAS FOR FOCUSED ACTION

AREA 3. A NEW FISCAL RELATIONSHIP – INVESTING IN PATTERNS OF CONNECTEDNESS



AREA 3. A NEW FISCAL RELATIONSHIP – INVESTING IN PATTERNS OF CONNECTEDNESS

At all the meetings I participated in, the existing fiscal relationships between BC, Canada, DAAs, and Indigenous communities was a key topic. Those I met with highlighted key reforms they believe are necessary to directly address the significant issues with regards to funding of child welfare services for Indigenous children and youth, families and communities in BC. Since the existing fiscal relationships impact on every aspect of the child welfare system, many of the issues discussed in this area for focused action are explored in other areas of the report as well. For example, prevention services and permanency planning are topics that warrant their own fulsome discussion and so they are taken up again in later areas of this report.

To argue that not enough money is being allocated by Canada or BC to child welfare services for Indigenous children and youth is to oversimplify the challenges that exist. I heard consistently that existing funding formulas are broken, and that a new fiscal relationship is required between Canada, BC, DAAs, and Indigenous communities and representative organizations, building on the findings and orders of the *TRC Final Report* and the *2016 CHRT 2* decision. While it is substantiated in the *2016 CHRT 2* decision that more funding is required in many areas, many I met with emphasized that legislation, policies (including funding formulas), and the overall fiscal relationships between INAC, MCFD, DAAs, and Indigenous communities need to be improved.

THE CHRT IMPLEMENTATION PANEL ON THE NEED TO FOCUS ON THE FLAWED FUNDING FORMULAS

2016 CHRT 16, para [38] Again, the objectives of the FNCFS Program can only be met if INAC's funding methodology is focused on service levels and the ***real needs*** *of First Nations children and families, which may vary from one child, family or Nation to another. A focus on the overall amount of funding, through the continued application of flawed funding formulas, does little, if anything, to correct the discrimination found in the Decision…*

DIRECTIVE 20-1 – A FLAWED FUNDING FORMULA

As I have discussed elsewhere in this report, Directive 20-1 is an INAC program that provides funding for child and family services that are delivered through First Nations Child and Family service (FNCFS) agencies or DAAs. In BC, there are two sets of funding agreements under Directive 20-1, the direct agreements between DAAs and INAC, and the *BC Service Agreement Regarding the Funding of Child Protection Services of First Nations Children Ordinarily Resident on Reserve* (the *"BC Service Agreement"*). In the absence of DAAs in a region, funding is delivered to the province by way of the *BC Service Agreement*.

The Canadian Human Rights Tribunal (CHRT) confirmed in the *2016 CHRT 2* decision that the complaint of inequity in funding child and family services on reserves was substantiated, and it identified significant "adverse impacts," to First Nations children and youth. Specifically, the CHRT found that the design of **DIRECTIVE 20-1 WAS BASED ON FLAWED ASSUMPTIONS AND THAT IT HAS RESULTED IN "AN INCENTIVE TO BRING CHILDREN INTO CARE**." INAC's Enhanced Prevention Focused Approach (EPFA), not currently applied in BC, was also found by the CHRT to perpetuate the incentive to remove children from their homes (*2016 CHRT 2*, para 458).

The impact of Directive 20-1 in BC is clear: in order for MCFD or DAAs to satisfy INAC's funding requirements for reimbursement, a court order for removal of a child becomes necessary. The decision in *2016 CHRT 2* identifies this as a concern, but I also heard directly from many within communities who identified this as a significant contributing factor to the number of Indigenous children in care, and consequently, the significant overrepresentation of Indigenous children in care relative to non-Indigenous children. In re-examining the funding formulas, and to address this specific concern, **MCFD AND INAC SHOULD WORK WITH INDIGENOUS COMMUNITIES AND ORGANIZATIONS TO ENSURE THAT NEW OR REVISED FUNDING FORMULAS PROVIDE FOR ADR PROCESSES TO BE FUNDED AS A PREVENTION MEASURE AND, FURTHER, THAT CHILD PLACEMENTS ARRIVED AT THROUGH ADR PROCESSES BE FUNDED IN A MANNER AND TO THE EXTENT THAT CHILDREN WHO ARE REMOVED UNDER A COURT ORDER ARE CURRENTLY FUNDED** (Recommendation 24).

RULING FROM THE PANEL OVERSEEING INAC'S IMPLEMENTATION AND ACTIONS IN RESPONSE TO FINDINGS IN 2016 CHRT 2 – SEPTEMBER 2016

2016 CHRT 16, para.18:

One of the main findings in the [2016 CHRT 2 decision] is that ***INAC's FNCFS Program, which flows funding through formulas, Directive 20-1 and the Enhanced Prevention Focused Approach (EPFA), provides funding based on flawed assumptions about the number of children in care, the number of families in need of services, and population levels that do not accurately reflect the real service needs of many on-reserve communities****. This results in inadequate fixed funding for operation costs (capital costs, multiple offices, cost of living adjustment, staff salaries and benefits, training, legal, remoteness and travel) and prevention costs (primary, secondary and tertiary services to maintain children safely in their family homes), hindering the ability of FNCFS Agencies to provide provincially/territorially mandated child welfare services, let alone culturally appropriate services. Most importantly,* ***inadequate funding for operation and prevention costs provides an incentive to bring children into care because eligible maintenance expenditures to maintain a child in care are reimbursable at cost****.*

IS THE ENHANCED PREVENTION FOCUSED APPROACH (EPFA) ANY BETTER THAN DIRECTIVE 20-1?

Select provinces (Alberta, Saskatchewan, Nova Scotia, Quebec, Prince Edward Island, and Manitoba) have transitioned from Directive 20-1 into a funding program called the Enhanced Prevention Focused Approach (EPFA). As noted earlier in this report, EPFA identifies prevention as a third funding stream in addition to operations and maintenance, which in theory should open up funding support for prevention services for Indigenous children who are in care. EPFA does not, however, address the service inequities that are caused by Directive 20-1.

To date, there has been no demonstration that the EPFA program results in service delivery on reserve that is comparable to provincial services (*2016 CHRT 2*, para. 189-190). Similarly to Directive 20-1, EPFA also faces challenges such as INAC having not built into it any provision for adjustments according to inflation (para. 387), and failure to account for the administrative circumstances of agencies operating in remote areas (i.e. the need for multiple office locations) (para. 287).

The panel overseeing INAC's implementation and actions in response to findings in *2016 CHRT 2* has ordered INAC to immediately take specific measures to address the assumptions and flaws in its existing funding formulas and to provide comprehensive reports explaining how the flaws and assumptions are being addressed (*2016 CHRT 10*, para 19). INAC has also been ordered to provide detailed information on budget allocations for each First Nation Child and Family Services (FNCFS) they fund and timelines for when budget allocations will be rolled-out. This work is ongoing and in BC as elsewhere across the country it is critical that the province, Indigenous communities and citizens hold INAC to account in this regard.

Funding administered through Directive 20-1 is limited to Indigenous children who are considered to be "ordinarily resident on reserve" and who are in care. This means that in cases where a child is not "ordinarily on reserve", there is no federal funding available through Directive 20-1.

The review of Directive 20-1 within *2016 CHRT 2* addresses a series of issues with the funding model, including as I have already mentioned, the inherent bias towards placing Indigenous children in care. However, other critical issues with the program that have been identified in the CHRT decision include the following:

- Limited modifications to the monetary amounts available over time since its introduction in 1990;
- Limitations in the scope of funding; and
- A strong bias against prevention services, such as those that favour and offer supports for family preservation and reunification.

Directive 20-1's strong bias against prevention services was cited as especially troubling by nearly all those I met with. Indigenous communities and DAAs identified consistently the need for additional financial resources to support trauma counselling for Indigenous individuals, with a particular focus on Indigenous parents and extended families.

For those with whom I met, making provisions for trauma services is seen as a necessary investment that will directly contribute to more Indigenous children remaining with their families and communities and at the very least connected to their traditions, cultures, values, languages and their way of life as Indigenous peoples. Ensuring the protection of an Indigenous child's cultural identity is provided for in the *CFCSA*, but to date the fiscal relationship between Indigenous communities and other governments has not adequately supported those working to achieve this. In partnership with Indigenous communities and representative organizations, INAC and MCFD should work to ensure that trauma services are funded at a level consistent with the findings and recommendations of the TRC and *2016 CHRT 2* decision (Recommendation 26).

The *2016 CHRT 2* decision also identifies significant shortcomings in the budget allocations for Directive 20-1, particularly in the limited modifications that have been made to the program, despite the embedded directive for a 2% annual increase (*2016 CHRT 2*, para. 134). Para. 163 of the decision goes on to review the First Nations Child and Family Caring Society's *Wen:de Report Two* and its discussion of the misalignment of the adjustments to the program as compared to the increasing cost of living:

> *Although Directive 20-1 contains a cost of living adjustment, it has not been Implemented since 1995… To restore the loss of purchasing power since 1995, it found $24.8 million would be needed to meet the cost of living requirements for 2005 alone. (*2016 CHRT 2*, para. 163)*

Para. 152-153 of the *2016 CHRT 2* decision goes on to explore how these limited budgets are then administered to FNCFS agencies and DAAs with the expectation that they deliver "a comparable range of services on reserve with the funding they receive through Directive 20-1" (*2016 CHRT 2*, para. 152). There is little regard given to the scope of services that they are delivering, nor is attention paid to the administrative costs associated with operating small agencies or delivering services in remote areas.

The *2016 CHRT 2* decision frequently comments on the inadequacy of Directive 20-1 to provide funding support for prevention services due to the nature of how the formula is written. In particular, the Directive 20-1 provides dollar-for-dollar reimbursement of 'maintenance' expenditures, and prevention services are most often now included in allowable 'maintenance' expenditures (*2016 CHRT 2*, para. 168). Over time, **THE RESULT OF DIRECTIVE 20-1 HAS BEEN THE EMERGENCE OF A CHILD WELFARE SYSTEM THAT PLACES INDIGENOUS CHILDREN IN CARE TO ACCESS SERVICES, RATHER THAN PROVIDING SERVICES TO PROMOTE INDIGENOUS FAMILIES STAYING TOGETHER**.

The structure of the Directive 20-1 funding program has also been criticized for its inability to adjust to changing provincial legislation and standards (*2016 CHRT 2*, para. 334) and the adverse impacts that has on those delivering service on reserve. I heard directly about the ways in which Directive 20-1's inflexibility in this regard places a tremendous burden on DAAs that are required to comply with changes in provincial legislation and administrative requirements without assurance that they will have the funding framework to match, inhibiting their

ability to deliver equitable services to First Nations communities.

Indigenous children who are engaged with the child welfare system deserve a funding program that has kept up with the changes in this country's economy, and one that is able to provide equitable services to Indigenous children, regardless as to where they are located in the province. These children are also deserving of a funding model that supports them to remain with their families, and that is not something that Directive 20-1 is designed to support.

For their part, and in response to *2016 CHRT 2* and later rulings, INAC has openly acknowledged that Directive 20-1 is "broken," contributes to dysfunctional relationships, continues a bias towards 'protection' versus 'prevention' services, and is not keeping up with provincial changes.

In September 2016, the panel overseeing INAC's implementation and actions in response to the *2016 CHRT 2* decision requested from the CHRT an order that INAC immediately make adjustments to its funding formulas to ensure operations budgets for FNCFS Agencies (DAAs in BC) approximate actual costs. The panel made the argument that the "assumptions about the number of children in care, the number of families in need of services, and population levels are the starting point for addressing the discriminatory impacts of INAC's funding formulas" (*2016 CHRT 16, para 33*) and urged that INAC address these immediately in their consideration of funding. The panel suggested various modifications to INAC's funding formulas, including:

- Increases to the base amounts in the formula, including for the child purchase amount;
- That FNCFS Agencies, serving a population where the percentage of children in care and percentage of families receiving services exceeds 6% and 20% respectively, be provided with an upward adjustment for their operations and

THE CANADIAN HUMAN RIGHTS TRIBUNAL (CHRT) IMPLEMENTATION PANEL ON ADDRESSING THE DISCRIMINATORY IMPACTS OF INAC'S FUNDING FORMULAS

2016 CHRT 16, para [33] ...It is the way in which the FNCFS Program is delivered and funding is determined that results in discriminatory effects for First Nations children and families. The Panel's focus is on whether funding is being determined based on an evaluation of the distinct needs and circumstances of First Nations children and families and their communities. ***While other key factors come into play in determining whether the amount of funding provided to FNCFS Agencies is adequate to address the needs of the communities they serve, such as remoteness and the extent of travel to meet children and families (which will be addressed later in this ruling), the assumptions about the number of children in care, the number of families in need of services and population levels are the starting point for addressing the discriminatory impacts of INAC's funding formulas.***

prevention budgets in proportion to the excess percentages;

- That no downwards adjustments be applied to FNCFS Agencies with fewer than 6% of children in care and/or serving fewer than 20% of families;
- That adjustments to the fixed amount in the funding formula for population levels be increased; and
- That the fixed amount in the funding formula for all FNCFS Agencies serving fewer than 251 Registered Indian children be the same amount provided to agencies serving at least 251 Registered Indian children. (2016 CHRT 16, para 27).

THE BC SERVICE AGREEMENT

In the absence of DAAs in a region, the *BC Service Agreement* is the funding mechanism that provides for MCFD's reimbursement of maintenance expenses based on actual expenditures, and for funding to the province for operations expenses based on a costing model agreed to between MCFD and INAC. In 2012, the *BC Service Agreement* replaced a previous memorandum of understanding between the INAC and MCFD. The *BC Service Agreement* determines the scope of service areas, including limitations such as covering services only to "Status Indians" who are "ordinarily resident on reserve," and the agreed upon funding levels. In the existing agreement, Canada and BC confirm:

- INAC does not deliver child and family services;
- Child and family services are matters of provincial or territorial jurisdiction;
- INAC's role is to fund or reimburse MCFD to deliver child welfare services to First Nations children and families ordinarily resident on reserve; and
- MCFD is responsible for providing direct child and family services in 84 First Nations communities without DAAs as well as for delivering services provided on behalf of 23 fully or partially delegated agencies as needed.

IN THE 2015-2016 FISCAL YEAR, INAC COMMITTED TO REIMBURSE $29.1M TO THE PROVINCE THROUGH THE BC SERVICE AGREEMENT for eligible MCFD employee costs, MCFD operational and maintenance costs, purchased services, operations, transition funding, and an escalator of 2%. However, MCFD has expressed the concern that not all eligible services paid for by MCFD are being adequately reimbursed

TABLE 4: FUNDING UNDER THE 15/16 BC SERVICE AGREEMENT

INAC FUNDING TO MCFD	**Core Budget**	$15,000,000
	Transition Funding	$4,500,000
	Actual Maintenance	$9,200,000
	2% escalator that was added to 15/16 *BC Service Agreement*	$400,000
TOTAL FUNDING TO MCFD FROM INAC PER 15/16 *BC SERVICE AGREEMENT*		**$29,100,000**

WHAT ARE "OPERATIONAL" FUNDING AND "MAINTENANCE" FUNDING ACCORDING TO DIRECTIVE 20-1?

OPERATIONAL FUNDING *is intended to cover operations and administration costs for such items as salaries and benefits for agency staff, travel expenses, staff training, legal services, family support services and agency administration including rent and office expenditures. It is calculated using a formula based on the on-reserve population of children aged 0-18 as reported annually by First Nation bands across Canada (2016 CHRT 2, para 126).*

MAINTENANCE FUNDING *is intended to cover actual costs of eligible expenditures for maintaining a FN child ordinarily resident on reserve on alternate care out of parental home. Children must be taken into care in accordance with provincially …approved legislation, standards and rates for foster home, group home and institutional care (2016 CHRT 2, para 131).*

by Canada. The Province has conducted its own cost analysis of child and family welfare services that should be eligible for reimbursement but are not currently paid by Canada. Based on a costing exercise completed in 2010/2011 fiscal year, **MCFD PREDICTS THE ACTUAL COSTS FOR SERVICES DELIVERED FOR 2015/2016 WILL BE APPROXIMATELY $42 MILLION**. These differences highlight the need for all parties to come together to review and develop new funding formulas for Indigenous child welfare.

While the *BC Service Agreement* has been described by some as the most well funded arrangement in Canada when compared with other jurisdictions, at present, federal funding under the *BC Service Agreement* is deficient. This is a message delivered through the *2016 CHRT 2* decision, but is also the message I heard in BC from Indigenous communities, DAAs, and MCFD.

Despite the direct implications for Indigenous communities, there is no consultation with, nor direct involvement of Indigenous communities in negotiation of the *BC Service Agreement*. At many of the meetings I attended, individuals expressed their desire that going forward Indigenous communities could be more involved as a partner in negotiating the *BC Service Agreement*.

DAA FUNDING AGREEMENTS

The provincial government, through MCFD and on behalf of both the provincial and federal governments, delegates to DAAs the legal authority to provide services to both on and off reserve populations in a defined geographic area. As described in the beginning of this report, funding flows to the DAAs from the federal government through INAC in support of the on-reserve child protection services, and from MCFD in support of the off-reserve services. As noted earlier in

the report, federal funding is provided through agreements between DAAs and INAC under Directive 20-1. Table 5 provides a summary of the funding provided to each of the DAAs by INAC (through Directive 20-1) and by MCFD.

INAC provides funds to DAAs, but only to provide services to "status Indians" who are "ordinarily resident on reserve," and in BC, this means there are DAAs exclusively funded by MCFD. Vancouver Aboriginal Child and Family Services Society (VACFSS) and the Métis Family Services in South Fraser are two such DAAs.

VACFSS is a DAA situated in the downtown eastside (DTES) of Vancouver, serving urban Indigenous children and families living in the greater Vancouver area. Since the DAA is not serving First Nations clients "ordinarily on reserve," MCFD, not INAC, funds the DAA. VACFSS was founded and continues to operate in the DTES, but many of the children and families served by VACFSS find their origins in different parts of the province, country, and beyond.

The Province estimates that $1 million per day in government funding is spent on services for people in the DTES. There is no question that there are incredible challenges facing Indigenous peoples who for one reason or another end up in the DTES and VACFSS provides essential services for Indigenous children and families who migrate to this urban environment.

In many ways, however, the story of VACFSS is not unlike those of other DAAs across the province. VACFSS works hard to position itself to ensure that Indigenous children and youth remain connected to their extended families, territories and cultural foundations, but this important agenda is challenged by jurisdictional complexities, failed federal and provincial funding formulas and the lack of an overall child welfare policy framework in BC that is prevention focused, encouraging connectedness and promoting family preservation.

DAA WAGE PARITY

INAC and MCFD have different funding models to support DAA delegation agreements. INAC's Directive 20-1 is a standardized funding formula that applies to all on-reserve services. In contrast, MCFD does not have a standardized funding model for off-reserve services. The delegation of child and family services to DAAs in BC occurred over a period of time, and MCFD funding developed based on separate methodologies and calculations by each MCFD Service Delivery Area (SDA) or region. For DAAs across the province, this has created funding inconsistencies that remain today.

MCFD is aware of the inconsistencies, however, to date insufficient steps have been taken to address them. During my many meetings, I heard from DAAs and Indigenous communities about how the different provincial and federal approaches to funding transfer due to jurisdictional complexity have created strained relations with DAAs who, in providing the same service to First Nations children both on and off reserve, are often left to reconcile the impact of cost pressures with two governments.

Senior officials with MCFD have committed and begun work to review and assess existing MCFD funding agreements, and have expressed agreement with an equity-based principle across all budget expenditures lines between the Province and DAAs. A precedent established for a new funding model is the current arrangement with Fraser Valley Child and Family Services Society (FVCFSS). The funding for this DAA was recently renegotiated on the principles of equity with MCFD, inclusive of wage parity.

ADDITIONAL IMMEDIATE MEASURES TO BE TAKEN BY INAC IN RESPONSE TO ORDERS IDENTIFIED IN THE *2016 CHRT 2* DECISION*

The Panel overseeing INAC's response to orders identified in the 2016 CHRT 2 decision ordered the following additional immediate measures to be taken by INAC in order to comply with the 2016 CHRT 2 decision:

1. INAC will not decrease or further restrict funding for First Nations child and family services or children's services covered by Jordan's Principle;
2. INAC will determine budgets for each individual FNCFS Agency based on an evaluation of its distinct needs and circumstances, including an appropriate evaluation of how remoteness may affect the FNCFS Agency's ability to provide services;
3. In determining funding for FNCFS Agencies, INAC is to establish the assumptions of 6% of children in care and 20% of families in need of services as minimum standards only. INAC will not reduce funding to FNCFS Agencies because the number of children in care they serve is below 6% or where the number of families in need of services is below 20%;
4. In determining funding for FNCFS Agencies that have more that 6% of children in care and/or that serve more than 20% of families, INAC is ordered to determine funding for those agencies based on an assessment of the actual levels of children in care and families in need of services;
5. In determining funding for FNCFS Agencies, INAC is to cease the practice of formulaically reducing funding for agencies that serve fewer than 251 eligible children. Rather, funding must be determined on an assessment of the actual service level needs of each FNCFS Agency, regardless of population level;
6. INAC is to cease the practice of requiring FNCFS Agencies to recover cost overruns related to maintenance from their prevention and/or operations funding; and
7. INAC is to immediately apply Jordan's Principle to all First Nations children (not only to those resident on reserve).

* Based on the Orders identified in *2016 CHRT 16*

TABLE 5: 16/17 BUDGETED FUNDING OF DAAS

		SECTION A: INAC FUNDING OF DAAS (ON-RESERVE)		
		2016/17 Core Budget based on last years actuals	2016/17 Immediate Remedies Allocation*	2015/16 Actual Maintenance used as budget for 2016/17
C3	Namgis	280,001	70,000	-
C3	Denisiqi	660,650	165,163	50,354
C3	Haida	362,553	90,638	-
C3	Heiltsuk	323,832	80,958	15,000
C4	Ayas Men Men	580,830	669,909	3,555,143
C4	Nezul Be Hunuyeh	374,005	425,374	803,453
C4	Carrier Sekani	972,567	695,761	2,268,241
C4	NIL TU,O	950,618	346,909	543,227
C4	Northwest Inter-Nation	812,232	281,138	49,738
C4	Gitxsan	824,131	340,803	145,028
C6	Cowichan/Lalum'utul	1,025,551	742,534	762,724
C6	Usma Nuu-chah-nulth	1,074,065	738,085	729,266
C6	Secwepemc	738,874	772,166	1,415,234
C6	Ktunaxa Kinbasket	253,981	261,922	419,496
C6	Fraser Valley Aboriginal Children and Family Services Society	935,379	680,427	653,121
C6	Kwumut' Lelum	1,137,993	688,499	1,187,360
C6	Nlha'7Kapmx	381,378	385,804	422,763
C6	Knucwentwecw	370,595	408,890	335,530
C6	Scw'exmx	404,075	520,723	619,434
Bylaw	Splatsin Stsmamlt	88,807	383,697	773,248
C6	La Societe De Les Enfants Michif (MFS)	-	-	-
C4	Nisga'a Nation	-	-	-
C4	Surrounded By Cedar Child & Family Services Society	-	-	-
C6	Vancouver Aboriginal Child & Family Services Society	-	-	-
SUB-TOTALS - Funding to DAA		**$12,552,117**	**$8,749,400**	**$14,748,360**

***(INCREASE FOLLOWING 2016 FED BUDGET AND HUMAN RIGHTS TRIBUNAL DECISION. INCLUDES PREVENTION FUNDING)**

	SECTION B: MCFD FUNDING OF DAAS (OFF-RESERVE) – 2016/17 BUDGET			TOTAL FUNDING OF DAAS
Total INAC Funding of DAAs (on-reserve)	Delegated	Non-Delegated (prevention, care team, ADR, etc.)	Total MCFD Funding of DAAs (off-reserve)	
350,001	-	77,004	**77,004**	**427,005**
876,167	-	417,924	**417,924**	**1,294,091**
453,191	-	215,634	**215,634**	**668,825**
419,790	36,317	90,300	**126,617**	**546,407**
4,805,882	1,558,656	247,778	**1,806,434**	**6,612,316**
1,602,832	2,354,233	292,763	**2,646,996**	**4,249,828**
3,936,569	2,108,421	2,194,657	**4,303,078**	**8,239,647**
1,840,754	464,870	381,336	**846,206**	**2,686,960**
1,143,108	1,008,314	312,179	**1,320,493**	**2,463,601**
1,309,962	313,634	-	**313,634**	**1,623,596**
2,530,809	1,051,206	456,984	**1,508,190**	**4,038,999**
2,541,416	3,175,476	808,726	**3,984,202**	**6,525,618**
2,926,274	5,945,048	510,739	**6,455,787**	**9,382,061**
935,399	2,920,976	932,526	**3,853,503**	**4,788,902**
2,268,927	21,417,416	2,519,072	**23,936,488**	**26,205,415**
3,013,852	2,048,062	680,199	**2,728,261**	**5,742,113**
1,189,945	12,861	-	**12,861**	**1,202,806**
1,115,015	465,731	27,144	**492,875**	**1,607,890**
1,544,232	263,864	238,706	**502,570**	**2,046,802**
1,245,752	184,591	144,348	**328,939**	**1,574,691**
-	6,965,146	879,034	**7,844,180**	**7,844,180**
-	2,005,408	-	**2,005,408**	**2,005,408**
-	4,271,546	406,716	**4,678,262**	**4,678,262**
-	27,451,433	2,502,304	**29,953,737**	**29,953,737**
$36,049,877	**$86,023,209**	**$14,336,073**	**$100,359,283**	**$136,409,160**

The funding for the Fraser Valley Child and Family Services Society (FVCFSS) is now based on parity with current MCFD workload ratios and salaries adjusted to the current BCGEU collective agreement that determines the wage rates paid to MCFD delegated workers. As a result, both MCFD and FVCFSS are now paying delegated workers in the Fraser Valley geographic area the same wages. The current contract contains provisions to provide the DAA with future funding adjustments to reflect any negotiated adjustments to the BCGEU wage structure.

FVCFSS is jointly funded by MCFD (93%) and INAC (7%), and during the negotiation of the new funding agreement, FVCFSS fully disclosed INAC funding information, in the hope that each party contribute its 'fair-share' to the overall agency funding requirements.

Moving to a similar model of wage parity for all DAAs would require the commitment of DAAs, and the provincial and federal governments. Many DAAs receive a larger proportion of their funding from INAC than does FVCFSS, and MCFD have cautioned that it is not clear whether the current federal funding formulas would support a move to full MCFD wage parity. Moving to wage parity for DAAs would require commitment on the part of both funding parties, MCFD and INAC, to parallel and align their funding models.

Historically, provincial funding to DAAs for off-reserve delegated services gave some level of consideration to wage parity by mirroring BCGEU wage grids. Over time, however, funding agreements with DAAs have seen an erosion of this parity and there has been no consistent practice on the part of MCFD to open agreements and flow additional funding to DAAs as BCGEU wages are renegotiated through collective bargaining. Many I met with attested that while they have witnessed MCFD regions typically receive a budget lift for their own staff when wages are renegotiated, there is no consistent practice or approach to ensure that the DAAs are similarly funded.

For many of the DAAs I met with, staff retention and recruitment were identified as a real issue, as DAA staff who were paid lower than MCFD staff, would migrate to MCFD when opportunities arose. FVCFSS reported that prior to their newly negotiated agreement, staff turnover and inability to fully staff positions were challenges. With wage parity, turnover has reduced and FVCFSS is able to maintain full staffing.

The FVCFSS agreement provides a funding model that could be applied to all DAAs. MCFD adopted the principle of wage parity with BCGEU rates in this FVCFSS agreement. Going forward, MCFD should take steps to ensure that the principle of wage parity is included in all agreements with DAAs in BC (Recommendation 30).

OUT OF CARE OPTIONS AND PARITY

During a meeting with the Wet'suwet'en Wellness Working Group (WWWG), a 15-year-old Indigenous girl spoke about her experience in care for the past seven years and her desire to be in a permanent placement with her aunt and uncle. Upon review, I was troubled to learn that the difference between the caregiver rates and Post-Adoption Assistance (PAA) rates was a barrier to permanency for this girl. The various rates for out of care options are summarized in Figure 9. During my many meetings, individuals stressed how harmonizing the rates could increase permanent placements for many Indigenous children currently in care.

The economic standing of Indigenous families with children placed in foster care continues to be a barrier in long-term permanency placement. Inequity in funding for various out-of-care options for Indigenous children was something that routinely came up during meetings. In particular, the difference of caregiver rates and the rates of the PAA program and other out-of-care options was identified as problematic.

MCFD should take immediate steps to harmonize the financial assistance to families who have permanent care of children in order to promote permanency opportunities for Indigenous children. Further, MCFD should work to ensure that the payments for permanent legal out-of-care options are flexible to accommodate foster families who need the financial income that a levelled foster home provides. Finally, the Province should undertake a legislative review and financial policy review to determine the necessary changes that would allow those families under the "Extended Family Program" to receive the Canada Child Benefit and ensure the Canada Child Benefit amount is not deducted from MCFD payments for permanency placements.

RECOMMENDATIONS AND RELATED ACTIONS

Responding to the *TRC Final Report*, the *2016 CHRT 2* decision, and International doctrine, Canada has agreed to a wholescale reform of the Indigenous child welfare system. BC has also expressed their high level commitment to review and reform the child welfare system to better meet the needs of Indigenous children and youth. Those I met with highlighted that what is required now are commitments from Canada and BC to immediately address failed funding formulas and commit to a new fiscal relationship to match what have, thus far, been high level political commitments. Collectively, the recommendations within this area call for a new fiscal relationship for Indigenous child welfare services, imploring both Canada and BC invest now in patterns of connectedness and reunification.

Recommendation 23:

Canada demonstrate its commitment to Jordan's Principle by acting immediately to revisit its practice of providing funding only for those First Nations children and families "ordinarily resident on reserve."

Recommendation 24:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work collaboratively to develop alternative funding formulas that will address the shortcomings of INAC's Directive 20-1 and the EPFA identified specifically by the CHRT in *2016 CHRT 2*, and ensure equitable service delivery to all Indigenous children in BC.

Recommendation 25:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that new or revised funding formulas provide for ADR processes to be funded as a prevention measure and, further, that a child placement arrived at through an ADR process be funded in a manner and to the extent that a child who is removed under a court order is funded.

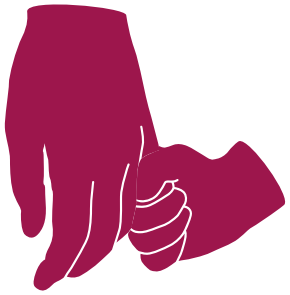
Recommendation 26:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that trauma services are funded at a level consistent with the findings and recommendations of the TRC and *2016 CHRT 2* decision.

FIGURE 9: BC OPTIONS: CHILDREN LIVING AWAY FROM HOME

Funding amounts shown are the maximum identified in policy and are at the discretion of MCFD.

KIN CARERS



CIHR* PAYMENTS

$257.46 to $454.32

CANADA CHILD BENEFIT
Up to $533.33

BENEFITS
Basic medical coverage; PharmaCare coverage

** Child in the Home of a Relative*

EXTENDED FAMILY PROGRAM

$554.27 to $625

BENEFITS
Medical; Dental; Optical

SUPPLEMENTAL BENEFITS (WHEN NEEDED)
Funding for start-up costs, child care expenses/child minding, formal respite, transportation expenses and training

OUT OF CARE ORDERS

$803.81 to $909.95

CANADA CHILD BENEFIT
Caregiver not eligible

BENEFITS*
No additional benefits

SUPPLEMENTAL BENEFITS*
Child care subsidy available

** Sec. 35(2(d) and Sec. 41(1)(b).*

INDEPENDENT LIVING OR YOUTH AGREEMENT*

$700 for basic shelter & support. Up to **$500** for other living expenses plus additional funds for utilities and housing start-up costs.

CANADA CHILD BENEFIT
Not eligible

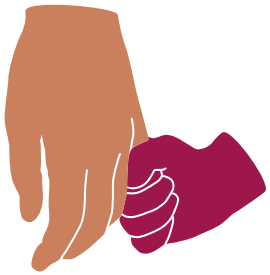
BENEFITS
Medical; Dental; Optical

**A Youth Agreement is a legal agreement under the CFCSA between MCFD and the youth. A youth entering into a youth agreement is not "in care" but receives support and services from MCFD.*

LEVEL OF GOVERMENT INVOLVEMENT

MCFD DATA - CURRENT AS OF AUGUST 2016

CHILDREN AND YOUTH IN CARE



RESTRICTED FAMILY (FOSTER) CARE WITH KIN	REGULAR FAMILY (FOSTER) CARE	SPECIALIZED FAMILY (FOSTER) CARE Level 1	SPECIALIZED FAMILY (FOSTER) CARE Level 2	SPECIALIZED FAMILY (FOSTER) CARE Level 3
$803.81 to $909.95	$803.81 to $909.95	$1261.83 to $1367.97**	$1944.21 to $5422.77**	$2620.47 to $4933.02**

CANADA CHILD BENEFIT*

Caregiver not eligible

BENEFITS Medical; Dental; Optical **SUPPLEMENTAL BENEFITS** Child care subsidy available	**BENEFITS** Medical; Dental; Optical **SUPPLEMENTAL BENEFITS** Funding for supplementary supports and services as needed, including start-up costs, child care expenses/child minding, formal respite/relief, transportation expenses and training.

**Canada Child Benefit is paid to MCFD by the federal government.*

*** Payment varies based on the age and number of children in the home.*

Recommendation 27:

In advance of the development of alternative funding formulas, INAC ensure that in the short term the additional funding committed to Indigenous child welfare address the most discriminatory aspects of INAC's current funding formulas, such as the incentive created through Directive 20-1 to bring Indigenous children into care.

Recommendation 28:

INAC and MCFD work together to ensure Indigenous communities not represented by DAAs are directly engaged in the negotiation of the annual *BC Service Agreement* between INAC and MCFD.

Recommendation 29:

Where Indigenous communities, through their own decision making processes, decide to give their free, prior, and informed consent to DAAs that they have established, Canada and BC should ensure fair and equitable funding to DAAs based on needs and that are, at minimum, similar to the formula under which Canada transfers funds to the province.

Recommendation 30:

INAC and MCFD take the following immediate actions to address the issue of wage parity for DAAs in BC:

- INAC and MCFD commit in policy to ensure that the principle of wage parity is included in all agreements with DAAs in BC; and
- INAC and MCFD commit the required time and resources to negotiate in good faith and make the required amendments to all DAA agreements to ensure DAA workers are compensated at the same rate at MCFD workers now and in the future.

Recommendation 31:

MCFD take immediate steps to harmonize the financial assistance to families who have permanent care of children in order to promote permanency opportunities for Indigenous children.

Recommendation 32:

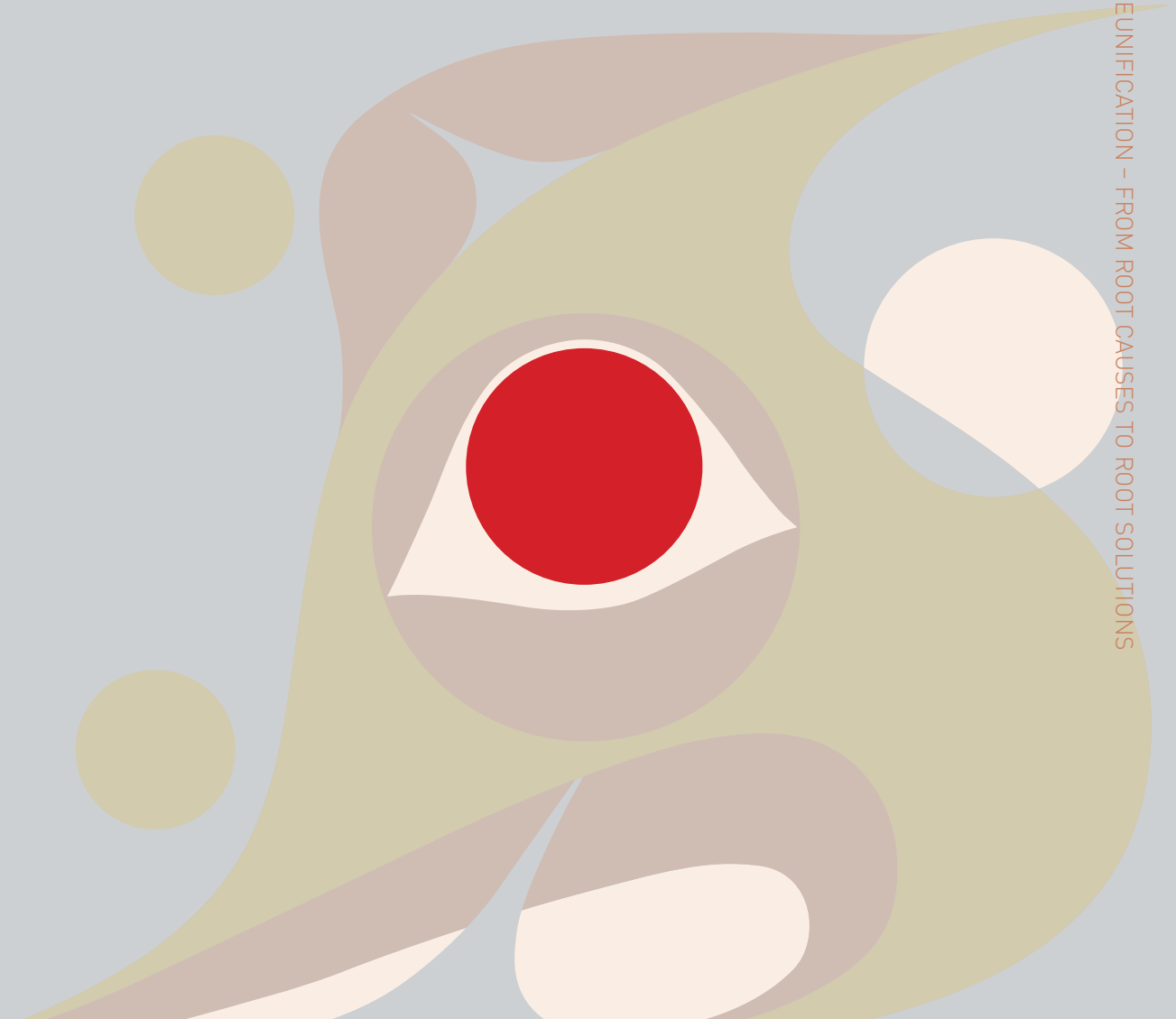
MCFD should ensure that the payments for permanent legal out-of-care options are flexible to accommodate foster families who need the financial income that a levelled foster home provides.

Recommendation 33:

The Province should undertake a legislative review and financial policy review to determine the necessary changes that would see those families under the "Extended Family Program" to receive the Canada Child Benefit and ensure the Canada Child Benefit amount is not deducted from MCFD payments for permanency placements.

AREAS FOR FOCUSED ACTION

AREA 4. PREVENTION SERVICES – KEEPING FAMILIES CONNECTED



AREA 4. PREVENTION SERVICES – KEEPING FAMILIES CONNECTED

As discussed throughout this report, children are always best served when we are successful in keeping them together with their families, and if that is not possible, at the very least connected to their own communities. Keeping Indigenous families connected requires that we do everything possible to ensure these families are supported to best provide safe and stable homes to their children. We know that successfully supporting families to stay together helps to break the cycles of intergenerational trauma remnant from the 60's Scoop and the residential school system.

Realizing this vision is twofold. It requires BC, Canada, DAAs and Indigenous communities to: 1) prioritize the establishment of preventative services that can contribute to building the overall capacity in communities to address family health and well-being, and respond to child welfare concerns; and; 2) work together to ensure that Indigenous families have access to a full range of preventative services that will support their own efforts to preserve, and in some cases reunify, their family.

When working to ensure the protection of our children, every effort should be made to prevent the removal of a child from his or her home. The *2016 CHRT 2* decision suggests that the key role of social workers is to, wherever possible, offer supports to keep a child together with their family.

Each family and situation requires the development of a plan with a unique set of prevention services and family preservation programs to target their specific needs.

> *... child welfare in Canada includes a range of services designed to protect children from abuse and neglect and to support families so that they can stay together. The main objective of social workers is to do all they can to keep children safely within their homes and communities (2016 CHRT 2, para. 115).*

PREVENTION AND FAMILY PRESERVATION

Prevention services are intended to provide the necessary supports to strengthen families and communities, and to lead to a reduction in the number of situations that result in children being removed from their families or taken into care.

There are many layers of prevention services. The *2016 CHRT 2* decision identifies, in para. 115, that these can generally be divided into three main categories:

- **PRIMARY:** these are services that are aimed at the community as a whole and promote a public awareness on what makes a healthy family and how to prevent and respond to child maltreatment;
- **SECONDARY:** these services are initiated when concerns come forward and a need for early intervention arises in order to avoid a crisis; and
- **TERTIARY:** these services are targeted to specific families when a crisis or risks to a child have been identified.

Primary prevention programs are not targeted to any individual family, but are intended to instead provide education and promote public awareness as it relates to family development in the community. These prevention methods are

proactive in nature and they work to build the collective knowledge and networks of support in our communities that will help to strengthen families.

'PREVENTION SERVICES' VERSUS 'FAMILY PRESERVATION'

These two terms are often used alongside one another in reference to the services available to support family development. However, in order to facilitate a better understanding through this section, these terms are utilized as follows:

PREVENTION SERVICES

The term applied to a full range of proactive and reactive services that are delivered in order to prevent children from experiencing abuse, neglect, and/or maltreatment that may result in their removal from the family home. Family preservation programs are an example of a prevention service.

FAMILY PRESERVATION PROGRAMS

These are prevention services programs delivered, and measures taken, either in response to concerns expressed relating to a child's well-being, or in situations where a child has been removed and a plan is in place for family reunification. These programs are often targeted to the specific needs of the parents and/or family.

Secondary and tertiary prevention programs are more reactive in nature, and emerge in response to issues of concern or the risk of crisis. These services are generally targeted to the needs of individual families in the form of family preservation programs. Family preservation programs are often presented as an alternative to removing children from their family home. They can also be used when children may have been removed, but there is a plan to support them to return home.

An Aboriginal child who is a Status Indian but does not reside on-reserve, or resides on a reserve that is not served by a DAA, receives the full range of child welfare services funded and delivered by MCFD. If that same child lives on a reserve served by a DAA, he or she receives a more limited range of services focused on protection rather than prevention. The federal government has recognized and is taking steps to provide additional funding to support prevention services for Status Indian children on-reserve, but very limited progress has been made in implementing the Enhanced Prevention Focus Approach in BC (RCY Report 2014 – p.54).

PROVISION OF SERVICES

Prevention services, including family preservation programs, are primarily delivered through MCFD, in accordance with s. 5 of the *CFCSA*. However, in some cases, DAAs are tasked with delivering these services to children and families.

It is intended for all Indigenous children to have access to a level of service comparable to all other children in the province, regardless as to whether they are served by MCFD or a DAA. However, in practice, as identified by the RCY in the report *When*

Talk Trumped Service and in the *2016 CHRT 2 decision*, funding eligibility requirements under Directive 20-1 have significant impacts on the availability of services on reserve. This translates into many Indigenous children, youth, and families being underserviced by their responsible DAA in critical areas, including prevention and family preservation services.

In response to the *2016 CHRT 2 decision*, INAC has made a commitment to new funding for prevention for child welfare. This funding could flow directly to Indigenous communities.

> *Now that the budget has passed Parliament, I am happy to report this funding will begin to flow into your communities…It is new funding for enhanced prevention for child welfare, which will flow to communities to begin the essential work of reducing the number of children in care.*
>
> *– Minister Bennett at Assembly of First Nations Annual General Assembly, July 2016*

Call to Action 2 in the *TRC Final Report* identifies the need for the federal government to work with the provinces and territories to ensure that there is accountability in place for spending on preventative and care services, as well as how effective interventions have been. At the provincial level, it is critical for this analysis to include a review of MCFD delivered prevention services compared to those services delivered by DAAs. This will support a review of equity challenges facing program delivery in Indigenous communities.

SECTION 5 OF *CFCSA*

Support services for families

5 (1) A director may make a written agreement with a parent to provide, or to assist the parent to purchase, services to support and assist a family to care for a child.

(2) The services may include, but are not limited to, the following:

(a) services for children and youth;

(b) counselling;

(c) in-home support;

(d) respite care;

(e) parenting programs;

(f) services to support children who witness domestic violence.

TRC FINAL REPORT – CALLS TO ACTION

2. We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, ***the total spending on preventive and care services by child-welfare agencies, and the effectiveness of various interventions.*** *(p. 140)*

Community-developed programs that are delivered inside communities are often best suited to address the unique needs of Indigenous families. I heard often about the immediate and critical need to ensure that more of these services are made available through both MCFD and DAAs to connect Indigenous families with available prevention services close to home.

COMMUNITY-BASED PREVENTION SERVICES MODELS

In BC, there are a number of community-based models and programs delivering prevention services to Indigenous children and families. These programs develop prevention services tailored to the unique needs of each community, and are best able to ensure that culturally appropriate methods are applied in cases of prevention and family

FAMILY PRESERVATION PROGRAMS AT CARRIER SEKANI FAMILY SERVICES (CSFS)

CSFS provides culturally based wellness services to First Nations people in Carrier and Sekani territory. CSFS utilizes what is called the Carrier Life Cycle Model, which recognizes the interconnectedness and interdependency of everyone and everything, as well as the multiple determinants of wellness for people in each age group.

There are multiple service offerings available to families under CSFS, including tailored family preservation programs. These programs embed culturally appropriate approaches to family preservation.

FAMILY PRESERVATION AND MATERNAL CHILD HEALTH (ON RESERVE) PROGRAM

This program is available to families living on reserve in Sai'kuz, Nadleh Whut'en, Stellat'en, Takla, Yekooche, Lake Babine Nation, Burns Lake Band, Wet'suwet'en, Nee Tahi Buhn, Skin Tyee and Cheslatta. In keeping with the Life Cycle Model, services are provided from pre-conception until the time a youth is 19 years of age with an approach that addresses both community prevention and family preservation services.

Clients can self-refer to the program or may receive referrals from social workers, medical professionals, teachers, counsellors, women's shelters, etc. Services are tailored individually to each family and offer support in areas including counselling services, maternal child health, life skills and parenting programs, family events, and legal support.

This program operates with the goals of keeping children together with their families, and increasing each family's ability to safely care for and nurture their children.

INTENSIVE FAMILY PRESERVATION SERVICES (IFPS)

The IFPS program is available to families who are at an imminent risk of having children placed outside of the home. This program is available to all families in the Prince George area, and it requires a referral from an MCFD social worker.

IFPS clinicians work with each client to develop a tailored plan to support family preservation. They will utilize a variety of counseling approaches and connect clients with any necessary skills training. Meetings can be held either in the client's own home, or in the community, at the request of the client.

The IFPS program recognizes that every situation is different, and every family has a unique set of needs.

preservation. Carrier Sekani Family Services (CSFS) is one example of a DAA which delivers culturally based family preservation programs.

CSFS is one DAA receiving funding under the Aboriginal Services Innovations (ASI) program. Expansion of the ASI program funding would be one important way to ensure the necessary development and expansion of culturally appropriate prevention and family preservation services in Indigenous communities across BC (Recommendation 35).

LEAST DISRUPTIVE MEASURES

While efforts should always be made to keep a child together with their family, in those situations where a need for protection or high risk has been identified, considerations must of course be made to ensure the well-being of the child. In these instances, there is still an opportunity to think about how services can be designed and delivered to be the least disruptive measures possible. A number of provisions under *CFCSA* require that MCFD ensure that the least disruptive measure is being applied, including in s. 6, which suggests coordination of supports to allow a parent to care for a child in his or her own home.

SECTION 6(4)(A) OF *CFCSA*

s. 6(4)(a) consider whether a less disruptive way of assisting the parent to look after the child, such as by providing available services in the child's own home, is appropriate in the circumstances…

Removing a child prior to a court order is not conducive to a model supportive of least disruptive measures, nor does it support a model of connecting families with preventative and family preservation services. For these reasons, I urge that the Province amend legislation to require

a court order prior to the removal of a child (Recommendation 39).

RECOMMENDATIONS AND RELATED ACTIONS

We must work to ensure that children and youth have every opportunity to safely remain at home with their families. Adopting prevention-based service models helps to support family preservation and reunification, and ultimately helps to break the cycles of intergenerational trauma present in our Indigenous communities. The following recommendations seek to promote the strength of prevention service delivery to Indigenous families across the province. Additional recommendations regarding funding of prevention services are found in Area for Focused Action 4 of this report.

Recommendation 34:

MCFD, DAAs and INAC work together to ensure core funding and other supports that will allow for the development of community based prevention and family preservation services for all Indigenous people and communities in BC.

Recommendation 35:

MCFD take the required steps to ensure that Aboriginal Services Innovations (ASI) family preservation can offer adequate core funding support to community-based program delivery.

Recommendation 36:

INAC take immediate action to develop, in partnership with First Nations in BC, an effective and efficient method to fund prevention services, taking into account economy-of-scale issues for all those First Nations in BC that are not represented by a DAA (see also RCY Report – *When Talk Trumped Service*).

Recommendation 37:

BC take immediate action to ensure family preservation funding is provided. MCFD increase the annual Aboriginal Services Innovations budget by $4 million in 2016/2017 (to be split evenly between MCFD and INAC) in order to expand the program and provide increased services through additional agencies.

Recommendation 38:

INAC and MCFD take action to ensure equity in prevention services delivery for all Indigenous communities in BC.

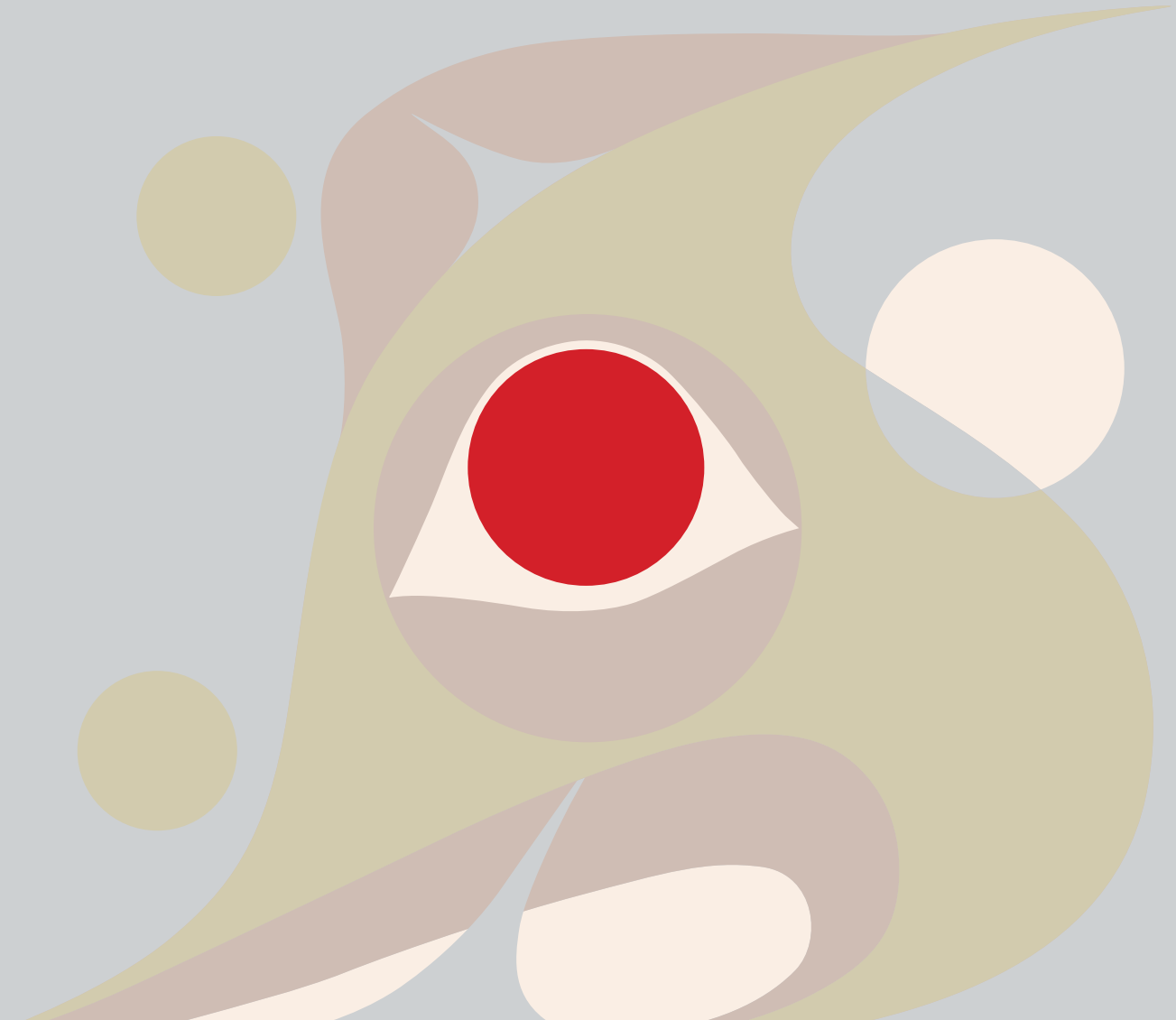
Recommendation 39:

Increase support for 'least disruptive measures' through provincial legislation:

- Amend existing legislation to require a court order prior to removal of a child, instead of the status quo that allows for a child to be removed before a court order.

AREAS FOR FOCUSED ACTION

AREA 5. REUNIFICATION AND PERMANENCY PLANNING



AREA 5. REUNIFICATION AND PERMANENCY PLANNING

REUNIFICATION

In the middle of this past winter, I met Sonia, a remarkable grandmother in Lillooet. The Chiefs had invited me to meet with them on matters relating to their children who were in care of MCFD or the Secwepemc Child and Family Services, a DAA located in Kamloops. Sonia spoke to me then about her efforts to get her 3-year-old granddaughter back. She gave me a handful of documents she had brought with her to the meeting. She had kept a meticulous set of notes, documenting her tireless effort to be reunited with her granddaughter.

On June 26, 2016, I attended a ceremony in Cayoose Creek to commemorate the return of the granddaughter by the non-Indigenous foster parents. It was a moment of anticipation for all those in attendance. Invited Chiefs, leaders, elders, and friends from neighbouring communities all attended. There were drums, songs of celebration and honouring, and a feast in the small community hall. I was advised that earlier in the day there were also songs of welcome between Cache Creek and Lillooet at the boundary with the neighbouring Indigenous peoples. The ceremony was to welcome the young child back to her territory and to her people.

Sonia and her husband brought their drums, offering songs and prayers and conveying their deep appreciation for the little girl's return. The little girl stayed close to the non-Indigenous foster mom and dad, obviously having established a meaningful bond during her time with them. I saw the love from the foster mom and dad. It was clear they had taken good care of this little girl. The process of reunification was at once one of happiness and heartbreak. Later, I learned from the foster parents that when the child was placed in their care they were advised by government officials that no one was there for the child and that no one wanted her.

This story was not about money, not for the grandmother or the foster parents. However, I wanted to know how MCFD had supported the foster parents and how they were planning to support the Indigenous grandmother. I requested a briefing from MCFD and was surprised to learn the grandmother would receive approximately $1,200 less per month than the foster parents. This disparity in payments is reflective of an inherent financial policy bias against permanency options for Indigenous children, which is particularly troubling in cases such as this one where a child has the opportunity to find permanency within his or her own family. This bias often results in permanency options not being seen as a preferred approach in caring for Indigenous children, and temporary placements end up becoming more prevalent. This funding inequity is taken up in further detail later in the report.

The Story of Sonia James

Sonia's story is the story of one First Nation grandmother and her determination to be reunited with her granddaughter. Sonia is a mother and grandmother from St'át'imc territory. She has two children and two grandchildren, and at the time that I met her, she had a third grandchild on the way. When I first met with Sonia, she was fighting to be reunified with her granddaughter who had been taken into care by MCFD. She resided on Sekw'el'was land where she has been an honorary band member since November 2014. Sonia has two half-brothers and eight half-sisters. She is her mother's middle child and her father's eldest child and was born in Vancouver, BC in a taxi cab.

I first met with Sonia early in my appointment as Special Advisor. Her story was at once heart wrenching, and empowering – poignantly illustrating the humanity of the issues that so many reports have addressed, highlighting the serious challenges we need to address in terms of the child welfare system, but at the same time demonstrating the resilience of Indigenous people and the power of reunification.

This is the story, written in Sonia's own words and abbreviated in a few instances, documenting her journey to ultimately be reunited with her granddaughter.

Sonia:

Early October 28, 2012, I got home from a long day – 17 hours plus driving home. Got home around 11:30 pm. Visited my daughter and grandchildren. We fixed a big bed for all of us in the living room and went to sleep. At around 1 or 1:30 am a Ministry worker and police came to my door. When I answered the door the cop asked if my daughter and the baby were okay and I said, "Yes she is sleeping." They pushed the door hard and sprained my hand. They had the ambulance outside. I tried to ask why they were there and they said to take them to the hospital.

A few months went by before we could see our granddaughter in the Kamloops Ministry office. The lady at the front mentioned we could not take pictures. They wouldn't really let us hold her, so we basically sat there and just talked to my granddaughter and held her hand. When I told my daughter someday we will take your daughter home and that's when they said my granddaughter was addicted to drugs and had a heart machine she sleeps on. I told her that the doctor said my granddaughter was healthy …

I tried to go see my granddaughter by myself, but was told I needed my daughter there. That's when we needed to make appointments in the Lillooet's Ministry office to see my granddaughter in the Kamloops office.

I went back to work and sent money to ensure my daughter could make it to all of her visits and court dates from where she was living. A year went by and we still didn't get anywhere.

When I was done work for the season, I tried to find out what was going on. I found out my

granddaughter's file was transferred to the Kamloops office. Going to talk to them they wouldn't give me information, except that she may have been transferred to Kelowna office. I couldn't find out where she was, and my daughter had already given up… Then one day I got a call about my granddaughter from the Secwepemc family find. I was so happy and said yes I'm Sonia and yes she is my granddaughter. Yes, I would like to take her home and I can fill out any papers and asked when I can see her…

I met with the Secwepemc worker here in Lillooet on June 9, 2014. We filled out all the papers and started the process. We talked about our drinking and said we were 6 months sober at the time. They mentioned we need to be sober for at least a year, but it will take about 8 months to do all the paper work so it should be good. I asked for copies and was told they need to be typed out and we can sign them at the next meeting.

July 14, 2014

We filled out more papers and they gave me forms for 3 people to fill out and send in: Reference letters, questionnaires and resources.

I got a call saying we need to talk about a few things. So, I told the social worker I could be there in a few hours. We got there and she mentioned we lied on our forms and it was about my partner's information, but he didn't lie. When he left the room she asked if I would leave him to get my granddaughter, and I said no, but maybe.

The meeting we had in April didn't go well, because they didn't support us. All I could say was why we are not bad people. I asked for once a week visits and they called about a week later saying I got it. I just had to wait for a return call from them and set the dates.

I have taken many workshops and a few courses that were suggested to me:

- *Connections*
- *Deeper Connections*
- *Character of Leadership*
- *Food Safe*
- *Emergency Medical Responder*
- *Women's Group*
- *Parenting – Nobody's Perfect*
- *FAS – workshop*
- *Wellbriety*
- *Hanen I'm ready*

I'm currently doing a course in foster parenting.

I talked to a duty council and asked what I could do. She said nothing, that no lawyer would touch the case…

During the process, I answered questions like:

- *Best describe early dating experiences*
- *Check the boxes that best describe your early sexual experiences*
- *How sexually compatible are you and your spouse/partner*

Books I have read:

- *Wrapping our ways around them*
- *Foster Parenting*
- *Raising Relative's children*
- *Foster Family handbook*
- *BC Foster Care Education Program*
- *Standards for Foster Homes*
- *Child and Family Development*

I am at a standstill as to what I do next. They haven't given me any idea what I am told I need to do for another Safe Home Study.

I have learned lots over the past few years and have met many in the same boat who are walking the same beaten path.

I have lots to teach, I am teaching my niece:

- *How to listen to her surroundings*
- *What the animals mean, and what to harvest when you see or hear certain animals*
- *The stories and legends*
- *Songs and dances and what they mean and where they come from*
- *About medicinal and edible plants*
- *Fishing*
- *Tanning*
- *Net making*
- *Beading*
- *How to harvest cedar bark roots and what they are used for*
- *What each tree is used for*

Most of what I can teach them is what I was taught as a St'át'imc woman. I was raised to respect the Elders, leaders and ancestors.

I am proud of what our leaders are doing for our future generation. Protecting our rights as people, our lands/territory, our water, our fish, our four-legged and winged animals.

What good is all this if our future generation is being raised by the Ministry, away from our traditional lands at home?

I am fighting for my future generation, my granddaughter. I want her home, to learn what I can teach her.

She is in a Ministry approved foster home. She does not know our culture, she knows very little of our language, knows only what I teach her on our visits. They've taught her that sweat rocks are just rocks, Eagle feathers carry diseases, that the drum beat is too loud. No traditional foods "liked" because she wasn't raised eating it.

She already lost so much and she is only 3 years and 2 months old. She has so much to gain if she is returned to us… I was told by the foster mom that I was mean to take her away from the only family she knows. I don't see it as being mean. She belongs at home. The Ministry has been mean, taking kids from the parents and putting them with total strangers. What's wrong with family?

PERMANENCY PLANNING

Permanency planning for Indigenous children in care should be systematic and consistent, and be done early. I heard from many I met with the criticism that this is often not the case. Many Indigenous children in care, it was reported to me, do not have effective permanency planning in place. Not surprising, Indigenous children in care are often then without permanency, on average, three years longer than their non-Indigenous counterparts.

At present, there are **THREE PERMANENCY OPTIONS FOR INDIGENOUS CHILDREN IN CARE IN BC: FAMILY REUNIFICATION, TRANSFER OF CUSTODY, AND ADOPTION**. The reunification of a child with his or her biological family should be prioritized as the goal for permanency. However, there are cases where this is not possible or not in the best interests of the child, such as when there has been the presence of violence or various forms abuses, including both physical or sexual abuse.

For a child under a continuing custody order (CCO), I understand that MCFD considers adoption to be the preferred option for achieving a stable and familial environment. Social workers responsible for adoption planning for Indigenous children in care, are urged under the *CFCSA* in BC, as well as international law (*United Nations Convention on the Rights of the Child*), to work collaboratively with Indigenous communities in the development of plans in order to maintain connections to culture.

*The **United Nations Convention on the Rights of the Child** provides that all children who cannot be looked after by their own family have the right to special care, and "must be looked after properly, by people who respect their ethnic group, religion, culture and language."*

Among Indigenous communities, however, adoption is not always seen as a positive option, and many Indigenous communities and families have a sense of mistrust towards the idea. Much of this can be attributed to the unsettling experience associated with the 60's Scoop, but it is further exasperated by the absence of collaboration

FINAL REPORT ON "A FORUM FOR CHANGE" – BC REPRESENTATIVE FOR CHILDREN AND YOUTH

"A Forum for Change" brought together First Nations elders and leadership from across the province, representatives from federal and provincial governments, as well as Delegated Aboriginal Agencies (DAAs) with the goal of building upon the RCY's June 2014 report, *Finding Forever Families: A Review of the Provincial Adoption System in BC.*

The following is an excerpt from the forum final report:

For many First Nations, Métis and Aboriginal people and communities, adoption is a dirty word because of the history of the use of adoption as a tool in the broader project of assimilation… Adoption is associated with an era of failed federal and provincial policies regarding children, including residential schools and other strategies aimed at "taking the Indian out of the child." (p.9)

and information sharing between MCFD and Indigenous communities about the permanency planning process for Indigenous children in care. Issues inherent in the term itself were raised at the Representative for Children and Youth's "A Forum for Change" event held in April 2015.

Concerns remain today when Indigenous children are adopted into non-Indigenous families and away from their communities. In a recent case of adoption involving a three-year-old Métis child, BC's Representative for Children and Youth has been joined by many in expressing the opinion that insufficient attention was paid to the Métis heritage of the child when the child was removed from Métis foster parents and adopted by a non-Indigenous family in Ontario. Responding to this case, the RCY urged those parties involved give proper respect and scope for Indigenous legal traditions, and more broadly, work to ensure a child's culture is protected to the best standard possible.

Indeed, many Indigenous communities refuse to consider or support regular adoption as an option for our children. While there are examples of adopted Indigenous children who have had positive experiences and pursued and been successful on their chosen paths, including in professional careers, from the outset it was clear, in my view, that regular adoption should not be the focus of permanency planning for Indigenous children in care. My engagements with many across BC have reinforced that a permanency strategy focused narrowly on adoption will not satisfy the goals and aspirations of Indigenous peoples in terms of an appropriate pathway to address the overrepresentation of Indigenous children in the child welfare system.

CUSTOM ADOPTIONS AND CUSTOMARY CARE

The idea of custom adoption carries with it less stigma, but there are barriers to its uptake among Indigenous families. First and foremost, prospective parents and communities are simply not receiving the necessary information about the custom adoption process as an option. Moreover, the discrepancy in post-adoption assistance for custom adoption versus regular adoption makes the idea of custom adoption less financially feasible for many Indigenous families.

> ***MCFD, by holding private all the information about children, is seen to be continuing a practice of removal and reassignment of children into a non-Aboriginal family system, thus raising significant alarm for Aboriginal families and leaders (Final Report on "A Forum for Change" – BC Representative for Children and Youth, p.10).***

MCFD needs to do a better job of communicating with Indigenous communities and prospective parents about the options available, as well as what some of the expected outcomes might be. Doing so effectively means first engaging Indigenous community leadership to understand how best to share and frame information in a respectful and positive way.

What is perhaps most urgent, however, is the reality that most MCFD staff involved in permanency planning are not adequately educated on custom adoption as an option. MCFD must improve its education and communications internally, to ensure staff members appreciate custom adoption as a concept, and understand both its cultural significance and legal nuances.

During my appointment, I met with Sophie Pierre, former Chief of ʔaq'am, a member community of the Ktunaxa Nation, and former Chief Commissioner of the BC Treaty Commission. We discussed the Ktunaxa traditional customary adoption and she described an entrenched practice of other Ktunaxa members raising Ktunaxa children when there was a need. In the Ktunaxa traditional customary adoption, extensive discussions are held in advance of a custom adoption and when a decision is made to go forward with an adoption, a formal custom adoption with the rights and responsibilities to the new family for the child is undertaken.

Indigenous communities undertake custom adoptions according to their own cultural practices. A custom adoption process allows for Indigenous communities to plan for the care of their children, including supporting a connection that allows children to maintain their cultural identity.

> *In 2009, my sister's children were to be adopted by a non-aboriginal couple in town when the father felt he could not take care of the two little girls. So we met with the adopting parents and we decided to adopt these parents in a cultural ceremony in the longhouse, with their promise to keep the girls connected to their family, community and culture. We always thought we had to do things the non-aboriginal way, but we have our own ways and we have responsibilities to the next generation. Our teachings are not written down, they are taught in the longhouse.*
>
> *– Sts'ailes Elder at the Traditional Custom Adoption Session at Musqueam, March 2016*

CASIMEL V. INSURANCE CORPORATION OF BRITISH COLUMBIA

In this case, the British Columbia Court of Appeal recognized the Carrier custom of adoption, in which grandparents may adopt a grandchild. In this decision, the grandparents were granted the rights entitled to natural parents of a child.

This case is recognized for the way that the courts incorporated Indigenous customary law into Canadian law and applied the provisions of statute law to individuals whose status of parents is established by way of customary adoption.

Custom adoptions are allowed under s. 46 of the *BC Adoption Act*, and have been recognized by the courts in cases, such as in the *Casimel* case. This legal recognition grants custom adoptive parents the legal right to make decisions for the custom adoptive child. It also provides certain legal entitlements to both the custom adoptive parents and child.

While custom adoptions are legally permitted in BC, there is tension between respect for the inherent rights of Indigenous communities to utilize custom adoption, and the responsibility of the province to ensure child safety and provide funding support to a child who is adopted through a custom adoption. Some I met with voiced their concern that custom adoption continues to be viewed within MCFD as a

less reliable option in terms of the ability to address child safety concerns, if and when concerns are raised. MCFD, DAAs and Indigenous communities need to work together to directly address these tensions, which I believe are presently acting as significant barriers to custom adoptions.

Custom adoptions are legally recognized. Therefore, going to BC Supreme Court should not be an additional step Indigenous families looking to adopt feel they need to take, and yet so many that I spoke with described the reasons they chose to go to court. Going to court is onerous, costly and time consuming for all involved. Implementing a formal mechanism where custom adoptions could be registered should be considered in BC to address the perceived need to go to court.

A custom adoption registrar recognizes, and provides a record of, custom adoptions that have occurred in Indigenous communities. Both Nunavut and the Northwest Territories have a system for recording custom adoptions, which appoints a custom adoption commissioner that is responsible for maintaining a record for the community or region in which they reside. In BC, implementing a registry of custom adoptions would help to facilitate the recognition of custom adoptions that have occurred, and help to simply the process of allocating post adoption assistance to custom adoptive parents.

Custom adoptions require Indigenous adoptive parents. In order to effectively recruit Indigenous parents as adoptive parents, MCFD will need to increase post-adoption financial assistance for custom adoption to be on par with or greater than standard post-adoption assistance. The discrepancy is a significant barrier faced by a number of Indigenous families who are prepared to welcome a child into their homes.

There are other real barriers to custom adoption. In cases where a child is in care of the MCFD Director, a practical problem arises, making a "custom adoption" impossible. Where an Indigenous child is under a CCO, the parental ties to that child are severed, and as such, the parents cannot consent to a custom adoption. In this situation, following a home assessment, the MCFD Director may agree to move a child into "customary care," with rights and benefits similar to an adoption. Many that I spoke with identified the need for a legislative change to address this issue. Existing legislation currently does not include customary care as an option, which is a challenging situation. Legislative changes will need to be undertaken to allow for this process, and to ensure that customary care arrangements afford children and their families the same support and rights as those in a custom adoption arrangement.

THE ADOPTION REGISTER AND CULTURAL DISCONNECTION

On a few occasions throughout my appointment, I was alerted to a troubling issue facing Indigenous children who are adopted into non-Indigenous families: the 'A-list.' INAC's Adoption Register, otherwise known as the A-list, is a closed, confidential list of Indigenous children who have been adopted to non-Indigenous families. Children who are registered on the A-list do not have the ability to access information about their birth families, nor do they, or their adoptive parents, have the ability to access information about the child's community of origin.

Many children included on the A-list are those who were registered at the time of their adoption. This ensures that their registration can be moved, relatively simply, from the open list of the child's birth community to the A-list. When an adoptive

THE 'A-LIST' – INAC'S ADOPTION REGISTER

The Adoption Register, commonly referred to as the 'A-list', is a confidential list of First Nations children, who have been registered through the Indian Registry System (IRS), and have been adopted by non-Indigenous parents. This list contains information that connects children to their birth and adoptive identities, and the information contained within is accessible only to INAC's Adoption Unit staff.

The non-Indigenous adoptive parents of those children who are placed on the A-list receive a written notification explaining that their children are eligible to receive a registration number, access benefits and funding support that would be available to status children, and they are also notified that any funds that are disbursed by their birth community will be held for the child in trust until the age of 18. The parents are notified that, at the age of 18, the adoptive child may submit a written request for the release of funds, and he or she may also request to be transferred from the A-list to the open portion of the list.

child is on the A-list, the adoptive parents receive notice about their child's Indigenous ancestry, including the various benefits that are available to the child through their registration. This is, in no way, a perfect system, as it places the onus on non-Indigenous adoptive parents to connect their child with Indigenous culture without providing the adoptive parents with basic information, such as the name of their child's birth community. A significant disconnection between the child and their Indigenous culture in general is often the result. The other consequence of a child being moved to the A-list, is that their name is removed from the list for their band. This impacts on youth who, as an example, are no longer listed as a band member and may attempt to access education funds from their band.

Even more significant problems arise for those children who are not registered at the time of their adoption. In these cases, the onus falls upon a child's social worker to ensure that the administratively rigorous registration process is followed – that eligible children are registered and that their registration is appropriately transferred to the A-list. As I have discussed elsewhere in this report, social workers and support workers currently face unrealistic caseloads, and on top of that, there are high turnovers and frequent reassignments for social workers. This often results in Indigenous children never becoming registered at all, let alone placed on the A-list. Many children facing this scenario never learn of their Indigenous ancestry, and spend their lives disconnected from their Indigenous culture and identity.

INAC should, together with the Provincial Directors and Indigenous representatives, immediately undertake a review of the federal A-List policy and practices with the goal of ensuring that Indigenous children placed for adoption with non-Indigenous adoptive families are not denied their inherent rights or their rights to connection to birth family and community until their eighteenth birthday (Recommendation 52). This important work could be undertaken at the next Federal/Provincial/Territorial Adoption Co-ordinators Annual Meeting.

Given the repeated and unanswered concerns I heard from all parties on the adoption of status or registered children, it is important that INAC, MCFD and Indigenous communities and organizations collaborate and prepare a report, as soon as practically possible, on the legal and practical implications of adopting status/registered children.

AGING OUT – INDIGENOUS YOUTH IN CARE

At 19 years of age, young people 'age out' of care. I heard from many I met with that this transition poses significant challenges to Indigenous young people in care, who often do not have access to the services that they need to be supported through this transition. Without ensuring that each young person has a clear plan in place for him or her to move into adulthood, and without providing these young people with the necessary supports, we are further perpetuating cycles of poverty.

As I have previously mentioned in this report, Indigenous youth are the fastest-growing demographic in Canada. I have had the opportunity to speak with many Indigenous youth. At the time of our meeting, these youth were in care, or had previously been in care. Meeting with the Youth Advisory Council for the Provincial Director of Child Welfare was one such example. These inspiring young people called attention to some of the failures of the child welfare system and also offered recommendations on how the system could be improved to support Indigenous youth in the future. I thank each of the young people who took the time to speak with me. Their insights have been an important part of building recommendations relating to the supports and planning for youth in care.

We need to recognize the important voice of Indigenous young people as we move forward, and we need to provide them with a platform to meaningfully engage in the process of reshaping our child welfare system.

The Usma Youth Council (UYC) is an example of a model utilized by the Nuu-chah-nulth Nations to empower their youth to participate in important discussions relating to youth in care and other issues. The UYC is one example of how Indigenous youth in care can be engaged successfully in transforming Indigenous child welfare, with a focus on connectedness to community, family and Indigenous culture. As such, this model is one that we need to explore across BC as a method of bringing the youth voice into our dialogue as we move forward.

Presently, MCFD has the ability to enter into an Agreement with a Young Adult (AYA) to help cover the costs of transitioning into adulthood, including housing, childcare, tuition, healthcare, and other services. Young people are eligible for an AYA if they are between the ages of 19 and 26 and were in a care arrangement when they turned 19.

Support should be given to each Indigenous youth aging out of care by their social worker, either through MCFD or the appropriate DAA. An aging-out plan should be a required component of each care plan for youth, and as with other aspects of the care plan, this plan should be developed with the support and direct involvement of an Indigenous youth's community. The necessary funding resources must be allocated to support this involvement. There should be a mandatory requirement for MCFD to proactively develop AYA to ensure continued support for youth who are transitioning out of care and into adulthood. Finally, a youth transition team should be established in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care. These teams will be responsible for monitoring

YOUTH ADVISORY COUNCIL FOR THE PROVINCIAL DIRECTOR OF CHILD WELFARE

Members of the Youth Advisory Council for the Provincial Director of Child Welfare were candid and identified important issues and proposed practical solutions. All of the youth on this advisory council have or had been in government care for 24 months or more. Each member had their unique experience, thoughts, and recommendations relating to the child and youth welfare system.

Street entrenched inner city youth are caught in an in-between world; a place of confusion. You can't trust government and you are disconnected from your people. The system took my parents and my grandparents. Why should I trust them (the system)? But the past is the past. It's okay to forgive. Homecoming is important; it is a part of your identity. Even if your community has problems, you have a place and an identity. – Bryant

I was in care – in white homes. There was a homecoming by the council of Haida Nation. It connected me to family members I didn't know. My nana, she unofficially adopted me. I was also moved from MCFD to VACFSS. The impact on me was less resources available to me from VACFSS. – Raven

I attended a homecoming, but no one from the chief and council attended. After that nothing has happened, feels like I've been forgotten. – Timothy

I have never been to Kitkatla. Going home is important. – Brenda

I have a Métis background from Saskatchewan, but I don't know anything else. MCFD needs to promote culture, encourage both sides (MCFD and Indigenous communities) to work together. – Guy

Connection is an important common denominator. Face to face meetings with the youth is important because it has a psychological impact. Go to their environment. Need to make extra efforts to humanize the face of MCFD. – Bryant

There are not enough aboriginal foster homes. But being in care in a foster home does not mean you lose a family, but you gain a family. – Ashley

It is important to facilitate communication with the First Nation where a youth who is aging out is from. This should be done in each of the 13 MCFD regions. – Chelsea

Cultural competency for MCFD social workers is awesome, but it is not enough. There is a need for a "trauma informed" mindset when working with indigenous children and families. – Audrey

EMPOWERING INDIGENOUS YOUTH – THE USMA YOUTH COUNCIL (UYC) MODEL

Usma Family and Child Services is a DAA serving 14 Nuu-chah-nulth Nations. UYC is a council representing youth in care from the Nuu-chah-nulth Nations. The council is focused on issues that impact youth in care on a daily basis, and on other youth-related issues.

The council began in May 2015 at the request of one of Usma's youth in care. The vision was that the council could bring awareness to issues facing Nuu-chah-nulth youth by creating a youth voice to inform Usma staff, communities and working groups. Now in its second year, the UYC is supported by Usma in areas of leadership, governance, youth in care rights, culture, traditions, and overall well-being. UYC is currently a 10-member council, but is open to all youth in care with Usma.

Since it was created in 2015, Usma officials report that UYC has created positive change for their youth through inclusion, empowerment, and culture. Usma reports that UYC has succeeded in increasing communication within the Usma organization, training and development opportunities, and youth involvement in the communities through volunteering and other opportunities to participate.

the AYAs and ensuring effective communication with Indigenous communities.

MODELS THAT PROMOTE CONNECTEDNESS

When planning for permanency for Indigenous children, every effort must be made to provide the child with a living arrangement that allows him or her to maintain a connection to family, community and culture. Through my appointment, a number of models were highlighted as being models to consider in our revisions to the child welfare system.

This report has spoken at length about just how critical it is to see our children placed with extended families, or other families within the community. Models such as the Kinship Program operated by the Children's Aid Society of Toronto offer examples of how a child welfare system can successfully ensure that every effort is made to place children within families that will support the preservation of their cultural identity.

Other programs, such as the Safe Babies Court Team Project, serve as models for developing community-based programming to address unique needs of children and their families. This particular model is noteworthy for the way that it strives to promote multiple approaches to achieving family

CHILDREN'S AID SOCIETY (CAS) OF TORONTO: KINSHIP PROGRAM

The CAS Kinship Program is founded on the recognition that children should be afforded every opportunity to a permanency placement with family or another individual who is close to the child. They recognize that it is critical for the cultural and ethnic identity of a child to be supported, and that all children should be able to remain in their own community.

The Kinship Program actively seeks kith and/or kin for the purpose of placement. Additionally, those from within the child's family or community can volunteer as foster parents, and CAS will work through the eligibility process with them to ensure that they are the best possible fit for permanency for the child.

reunification, and in the absence of reunification, ensuring that a connection is maintained between the child and his or her parent and extended family. It is especially unique in the way that each regional team is encouraged to develop tailored models to address local needs and circumstances. The success of this approach can be seen in its outcomes, including high rates of family reunification (38% of children), and comparably high rates of achieving permanency (2 to 3 times faster than children not served by the model).

The Safe Babies Court Team model is admirable in the way that it provides flexibility to allow regional Safe Babies Court Teams to draw on local networks and build tailored community support programs. There is much to be learned from the unique programs that have been developed at the community level, and the positive outcomes for the children and families who have been involved.

THE BC REPRESENTATIVE FOR CHILDREN AND YOUTH AND PERMANENCY PLANNING

In 2014, the BC Representative for Children and Youth issued her report, titled, *Finding Forever Families: A review of the provincial adoption system*. The Representative's Recommendation 4 called on MCFD, "in immediate partnership with First Nations and Métis communities and organizations, including DAAs, take specific measures to improve rates of successful permanency planning for Indigenous children in care through the following immediate actions or commitments:

- Produce annual reports to each First Nations Chief and Indigenous community on the status of children from their community who are eligible for custom adoption or other permanency options.
- Changes to existing regulations.
- Engage with Indigenous leadership to assist in developing a process to easily recognize these custom adoption practices, including an education element to assist MCFD staff in understanding all aspects of custom adoption.
- Work with INAC to ensure post adoption supports and out of care equal to PAA are provided for First Nations adoptive parents on reserve.

ZERO TO THREE – THE SAFE BABIES COURT TEAMS PROJECT

The Safe Babies Court Team is a program that began in 2005 in the United States. The intent of this program is to facilitate collaboration between partners in the child welfare system to assist with improving community response to child abuse and neglect for young children.

Each team is comprised of local representatives, including a judge, members of the local court system, community leaders, child welfare agencies, early childhood educators, and attorneys. These teams work together to offer services to abused, neglected, and maltreated infants and toddlers between the ages of 0-3. They also work to counter the structural issues in the child welfare system that may prevent families from succeeding.

The model prioritizes methods of encouraging family reunification, and offers individualized supports to birth parents and families. The program advocates for frequent opportunities for visitation and connection between parents and children, recognizing that this increases the likelihood for reunification, and helps to promote healthy attachments between parents and children. The local teams also work to provide parents with the necessary tools to assist on their personal healing journeys, recognizing the need to help interrupt cycles of intergenerational trauma. Services given to parents include supports for victims of domestic violence, programs for individuals struggling with substance abuse, and assistance to those facing enduring unemployment.

What is most notable in this model is that the regional teams are undertaking unique projects targeting the specific needs of the communities they serve. The team in Des Moines, Iowa was able to found 'R House', a home-like visitation centre, complete with playrooms, a bathtub, and a working kitchen. This allows parents and children to connect in a setting that is warm and inviting, rather than in child welfare offices, which are not child-friendly spaces. The Cherokee, North Carolina Safe Babies community team worked to gather donations of toys to help support the Child-Parent Psychotherapy (CPP) program in their community. The CPP program is having a tremendously positive impact on parents in that community, and many parents have come forward saying that the program is helping them to bond with their children in healthy ways.

- Work collaboratively with DAAs to develop an Indigenous-specific permanency planning strategy, including the development of a provincially delegated Indigenous adoption agency and Indigenous permanency committees in each of the regions, with a focus on timely permanency plans for Indigenous children.

- Engage with Indigenous communities and leadership to develop a consensus on how prospective adoptive parents are identified as First Nations or Métis and what validation requirement should be added to MCFD on custom adoption practice.
- Ensure all adoption and guardianship workers have mandatory cultural competency training as well as additional support and specialized training

RECOMMENDATIONS AND RELATED ACTIONS

Recommendation 40:

The Province work to amend the *CFCSA* to ensure an Indigenous child's connection to his or her natural parents is not severed.

Recommendation 41:

The Province consider the following amendments to the *CFCSA* in order to support improved permanency planning for Indigenous children and youth:

- Strengthening of s. 70 of the *CFCSA* to include mandatory permanency planning for all children in care;
- Including a provision(s) to ensure that for Indigenous children permanency plans are jointly developed by each child's family and community, including elders, cultural leaders, elected leaders, and matriarchs; and
- Including a provision(s) requiring independent review of permanency plans on an annual basis.

Recommendation 42:

MCFD develop a practice guide with instruction on how to prepare, develop, implement, and monitor jointly developed permanency plans for Indigenous children and youth:

- The practice guide should be developed in close partnership with DAAs, Indigenous leaders, communities, and organizations.

Recommendation 43:

MCFD and INAC act immediately to allocate funding required to prepare, implement, and monitor permanency plans for every Indigenous child or youth in care:

- INAC will only fund services for status children and families that are "ordinarily resident on reserve" and MCFD will need to take the necessary steps to ensure that the nature and scope of services required are properly identified; and
- Funding levels for agreed-to services should be reflected in the annual service agreement between INAC and MCFD.

Recommendation 44:

MCFD regional offices provide quarterly progress updates to Indigenous communities within their region regarding permanency planning for each child from that community.

NOTE: *The Nation-to-Nation Partnership Protocol referenced earlier in this report should establish regular meetings as agreed between Indigenous communities and the Executive Director of Services and/or the Community Services Manager to review the status of each of the community's children under a CCO and to provide Indigenous leaders, including Hereditary Chiefs and matriarchs with the necessary and full information to understand the situation of their children in care.*

Recommendation 45:

The BC Representative for Children and Youth be provided with a mandate and the appropriate resources to review and ensure resiliency, reunification and permanency planning be done for each Indigenous child under a CCO.

Recommendation 46:

MCFD develop in partnership with Indigenous communities, a provincial adoption awareness and recruitment strategy that includes a specific focus on recruiting more Indigenous adoptive parents from the Indigenous communities of origin of Indigenous children.

Recommendation 47:

MCFD develop and implement a quality assurance program for all adoptions, developing key performance measures and targets to track timely permanency planning, including adoption placements for children in care, as well as timely approvals for prospective adoptive families:

- Specific targets should be developed for moving Indigenous children in care into permanency.

Recommendation 48:

The Province commit to the creation of an Indigenous custom adoption registry for Indigenous children and youth, such as those models existing in Nunavut and NWT:

- Amend the *Adoption Act* to provide a mechanism, such as a custom adoption registrar, to register Indigenous custom adoptions.

Recommendation 49:

MCFD ensure all custom adoptions are eligible for post adoption services and pay rates similar to the current post adoption assistance, to those caregivers who utilize custom adoption:

- The determination of necessary post adoption services should be determined in consultation with Indigenous communities.

Recommendation 50:

The Province commit to legislative amendments in order to provide support for customary care options to be developed:

- Ensure that funding support for customary care is at the same level as custom adoptions.

Recommendation 51:

INAC, MCFD and Indigenous communities and organizations collaborate and prepare a report, as soon as practically possible, on the legal and practical implications of adopting status/ registered children.

Recommendation 52:

At the next Federal/Provincial/Territorial Adoption Co-ordinators Annual Meeting, working together with the Provincial Directors and Indigenous representatives, INAC undertake to review and reform the federal A-List policy and practices to ensure that Indigenous children placed for adoption with non-Indigenous adoptive families are not denied their inherent rights or their rights to connection to their birth family and community until their eighteenth birthday.

Recommendation 53:

INAC, MCFD and Indigenous communities work together to ensure that non-Indigenous adoptive parents have the necessary information and support to provide their Indigenous adoptive children with culturally appropriate resources that facilitate a connection between a child, and his or her Indigenous ancestry, including the culture of their birth community.

Recommendation 54:

MCFD continue to support the existing Youth Advisory Council for the Provincial Director on Child Welfare and work to expand their role and the reach of their voice:

- The goal of the expanded role should be to better integrate Indigenous youth voices in both strategies and long-term plans of MCFD; and
- Consideration should be given to ensuring Indigenous youth have opportunity to provide insight on permanency on a regular basis to MCFD, DAAs and the RCY.

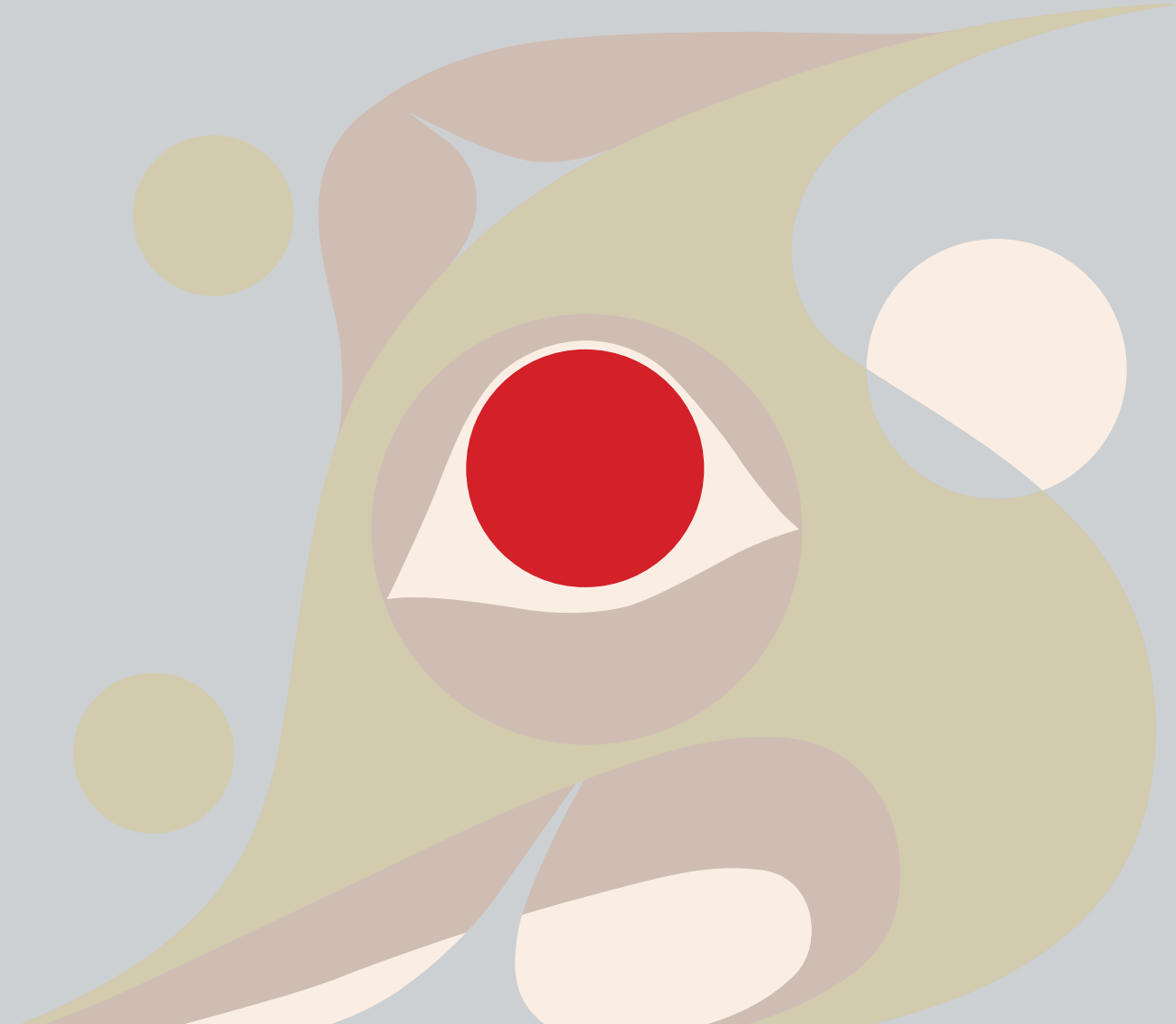
Recommendation 55:

MCFD and DAAs commit to the following specific supports for Indigenous youth who age out of care:

- An Aging Out Plan be undertaken as a required component of each care plan for youth, and as with other aspects of the care plan, this plan should be developed with the support and direct involvement of the child's Indigenous community;
- MCFD proactively develop Agreements with Young Adults (AYA) to ensure continued support for youth who are transitioning out of care and into adulthood; and
- MCFD establish a youth transition team in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care.

AREAS FOR FOCUSED ACTION

AREA 6. NURTURING A SENSE OF BELONGING AND PRIORITIZING CULTURE AND LANGUAGE – CARE PLANS AS A TOOL FOR BUILDING CONNECTEDNESS



AREA 6. NURTURING A SENSE OF BELONGING AND PRIORITIZING CULTURE AND LANGUAGE – CARE PLANS AS A TOOL FOR BUILDING CONNECTEDNESS

CULTURE, LANGUAGE, CONNECTEDNESS

Over my appointment, I heard consistently about the importance of cultural connection for children and youth to their communities. People often spoke of the importance of ensuring that children have access to cultural teachings and traditional language resources from a young age.

THE TRC FINAL REPORT ON THE DESTRUCTION OF RACE AND CULTURE

Until recently, Canadian law was used by Canada to suppress truth and deter reconciliation. Parliament's creation of assimilative laws and regulations facilitated the oppression of Aboriginal cultures and enabled the Indian residential school system. In addition, Canada's laws and associated legal principles fostered an atmosphere of secrecy and concealment. When children were abused in residential schools, the law, and the ways that it was enforced (or not), became a shield behind which churches, governments, and individuals could hide to avoid the consequences of horrific truths. Decisions not to charge or prosecute abusers allowed people to escape the harmful consequences of their actions. **In addition, the right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws, and cultures was taken away by law.** *Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression.*

To this point, the country's civil laws continued to overlook the truth that the extinguishment of peoples' languages and cultures is a personal and social injury of the deepest kind. ***It is difficult to understand why the forced assimilation of children through removal from their families and communities – to be placed with people of another race for the purpose of destroying the race and culture from which the children come – is not a civil wrong even though it can be deemed an act of genocide under Article 2(e) of the United Nations Convention on Genocide.***

Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: Reconciliation*, Final Report of the Truth and Reconciliation Commission of Canada, (Montreal/Kingston: McGill-Queen's University Press, 2015), Volume 6, p. 47-48

Knowledge of one's own language and culture is an essential part of establishing a strong sense of identity, and it has been proven that having a strong cultural identity as a child and adolescent leads to improved outcomes in education, employment, and health and wellness in adulthood.

In BC, it is a legal requirement that all children in care have a care plan that outlines the steps intended to preserve the child's cultural identity as provided for in s.2 of *CFCSA*. However, in my discussions with Indigenous community leaders and individuals at DAAs throughout the province, it was made abundantly clear that in practice there are a number of shortcomings in developing care plans. Care plans, I was informed, rarely include a strong cultural component that adequately addresses the language, culture and identity. For children who are residing outside of their community, it is even more unlikely that care plans include an adequate cultural component.

As I have discussed frequently throughout this report, many of our children are growing up feeling a sense of disconnection from their family, culture and communities. We know that this is at least partially attributed to the high numbers of Indigenous children who are growing up in care with little to no provisions in place to ensure a lasting connection with his or her family, community and culture. If we do not act to rectify this situation, by strengthening all care plans and by ensuring that children in care are supported to engage with their culture and communities, we can expect severe loss of language and cultural identity among Indigenous children in care and continuing intergenerational trauma due to the lack of connectedness.

THE CARE PLAN

In accordance with provincial law, and under the requirements outlined in the *CFCSA* regulations, MCFD must prepare a written plan of care for each child in care. MCFD utilizes a standard form to ensure the required elements under the legislation and regulations, as well as a series of items that they have identified to help support their process of planning for a child, are included in every plan of care. A section of this plan is intended to address cultural identity, including each child's individual strengths and needs, and an area to identify actions aimed at preserving a child's cultural identity.

Presently, no targeted funding exists to ensure the protection, as required under the Guiding Principles outlined in s. 2 of *CFCSA*, of an Indigenous child's cultural identity. Social workers, mainly non-Indigenous, who are delegated to ensure this vital protection, do not have knowledge of Indigenous cultures and languages. So, how do they include this in a child's plan of care? The answer is simple: they do not.

There is no consistent or predictable funding for Indigenous elders and cultural leaders who have the traditional knowledge, expertise, and experience. As well, where elders and cultural leaders express a desire to bring a child home to participate in their cultural ceremonies, I heard many personal accounts of how this is routinely denied by social workers.

Efforts to maintain a child's Indigenous identity are generic at best, and grossly fail to expose children to the necessary depth to help them build a true sense of connection to their family, culture, and community. The *Wrapping Our Ways Around Them* Guidebook identifies some of the generic efforts and ultimate failures in the current practices of building a cultural plan within a child's care plan:

CFCSA REGULATIONS ON CARE PLANS

PLANS OF CARE

s. 6 A plan of care must be prepared in writing by the director responsible for the child.

CONTENTS OF OTHER PLANS OF CARE

s. 8 (1) In this section, "plan of care" means a plan of care prepared for a court hearing to consider an application for an order,

(a) other than an interim order, that a child be returned to or remain in the custody of the parent apparently entitled to custody and be under a director's supervision for a specified period, or

(b) that a child be placed in the custody of a director under

(i) a temporary custody order, or

(ii) a continuing custody order.

S. 8(2)

...

(g) in the case of an aboriginal child other than a treaty first nation child or a Nisga'a child, the name of the child's Indian band or aboriginal community, in the case of a treaty first nation child, the name of the child's treaty first nation and, in the case of a Nisga'a child, the Nisga'a Lisims Government;

(h) the parents' involvement in the development of the plan of care, including their views, if any, on the plan;

(i) in the case of an aboriginal child other than a treaty first nation child or a Nisga'a child, the involvement of the child's Indian band or aboriginal community, in the case of a treaty first nation child, the involvement of the child's treaty first nation and, in the case of a Nisga'a child, the involvement of the Nisga'a Lisims Government, in the development of the plan of care, including its views, if any, on the plan;

...

(m) a description of how the director proposes to meet the child's need for

(i) continuity of relationships, including ongoing contact with parents, relatives and friends,

(ii) continuity of education and of health care, including care for any special health care needs the child may have, and

(iii) continuity of cultural heritage, religion, language, and social and recreational activities;

Efforts to maintain a child's Aboriginal cultural heritage are often generic, reflecting a failure to understand the child's unique cultural identity. Courts have found acceptable efforts to preserve the Aboriginal identity of a child in care as including: attending powwows or cultural activities; internet searches; age-appropriate reading materials; having Aboriginal artwork or artefacts in the foster home, or providing a child with Aboriginal foods.

Pan-Aboriginal daycares, play groups or cultural events should not be read as sufficient to fulfill the legal requirements under the CFCSA, because they do not achieve the benefits that flow from the involvement of the Aboriginal child's community, and do not protect a child's unique Aboriginal identity

Further, as I have discussed previously in this report, it is surprising to me that the leadership of First Nations communities, and representatives at many DAAs still are not aware of their right to access the list of their children currently under CCOs with MCFD. This makes it challenging, if not impossible, for the child's community to actively participate in the act of providing input into a child's care plan, as is required under s. 8(2)(i) of the *CFCSA* Regulations. Not providing this information to Indigenous communities is contributing to a significant disconnect between the child and their culture, language and home community.

In meeting with Indigenous communities, families, and leadership throughout BC, I am convinced that the only way to properly incorporate a cultural component into care plans is to have the child's Indigenous community work directly with MCFD or a DAA in the development of a plan. As BC's Representative for Children and Youth has reinforced in numerous of her reports, including in *When Talk Trumped Service* (2013), good policy can give prominence to ensuring cultural connection for children to their communities. This is something I heard reinforced often through my own engagements and I have made reference to many of the suggested changes to policy and practice that were referenced in the recommendations.

There are also opportunities for better incorporation of culturally appropriate resources and relevant tools into cultural planning in working alongside Indigenous communities in care plan development. Many communities such as Wet'suwet'en, Ktunaxa, and the Okanagan Nation Alliance have established comprehensive approaches to reintroducing culture and language to their respective people. These can include activities such as culture camps and educational tools. A 2011 report to the Métis Commission for Children and Families of British Columbia reinforced the importance of community developed and led approaches that are focused specifically on Métis culture and language. The need for community developed and led approaches that reintroduce the specific Indigenous culture and language that are appropriate to a child's unique heritage and that reinforce and recognize the importance of a child's own language and culture should be supported by INAC, MCFD and DAAs.

COLLABORATION AND CARE PLANS

Given that MCFD has financial resources available to them and generally individual Indigenous communities do not, a priority requirement for senior MCFD officials should be to meet on a regular basis with Indigenous leaders in their communities, rather than requiring them to travel to distant towns or cities for meetings. While this commitment on the part of MCFD is something

emphasized in other areas of this report, it is a particularly important step to ensure collaboration on care plans with Indigenous communities.

At these community-based meetings, Indigenous leaders and senior MCFD officials can review the community's children under CCO and assign teams (including elders, Indigenous cultural, elected and hereditary leaders, and the child's immediate and extended family) to jointly develop strategies (i.e. timelines, finances, and annual assessment process).

The community-based meetings could be used to review existing care plans, and jointly develop, establish and agree to permanency plans (including Indigenous language fluency) appropriate to the child's Indigenous cultural heritage. Permanency plans should recognize, support, and utilize traditional forms of permanency, including custom adoptions. These customary forms of permanency are known, used, and respected by cultural and traditional leaders and are discussed in other areas of this report in further detail. They substantiate the importance of cultural teachings and culturally based family and community connections.

These collaborative meetings will also serve as an opportunity to review the costs associated with developing and delivering culturally appropriate

OUR PAST, PRESENT, AND FUTURE – FRAMEWORK FOR MÉTIS CHILD AND FAMILY WELLNESS IN BRITISH COLUMBIA – RECOMMENDATIONS 6, 8, AND 10

In 2011, a report to the Métis Commission for Children and Families of British Columbia was prepared and presented by Dr. Jeannine Carriere, titled *Our Past, Present, and Future – Framework for Métis Child and Family Wellness in British Columbia*. Within the report, Dr. Carriere made 12 recommendations regarding Métis child welfare, including:

- *Recommendation 6: Cultural and spiritual ties for children in care should be enhanced through building capacity for cultural camps, language revitalization and ceremonial experiences that foster a positive Métis identity.*
- *Recommendation 8: Reconnection support through programs such as Roots can greatly address the current needs of Métis children in care.*
- *Recommendation 10: Policies and practices that guide Métis services must be holistic and based in Métis traditional values.*

This report also highlighted the need to ensure that Métis history and culture is incorporated into the training of MCFD staff and social workers, which would support the delivery of culturally appropriate services to children in care.

programs and services identified in the care plan to ensure that the culture component of every plan is fully actionable by all parties involved in its implementation. MCFD and INAC should work together to ensure that there is regularized funding allocated to support the implementation of the cultural components of all care plans.

MCFD has already recognized the need to support the development of cultural components in the development of all care plans and have been open to discussions on how this important work would be best supported and funded. MCFD has estimated that an additional $500-1,000 per child in funding would be required to support the development of both permanency plans and cultural planning supports. MCFD and INAC need to work together to ensure that this funding is made available to support adequate care plans for all Indigenous children in care (Recommendation 56).

LANGUAGE PLANNING

Exposure to one's ancestral language is a critical aspect of cultural identity. As discussed elsewhere in this report, during the time of the residential school system, Indigenous children were forbidden from speaking their own languages, resulting in many children being unable to communicate with

CANADA'S RESPONSE TO DATE ON THE *2016 CHRT 2* DECISION – CULTURALLY APPROPRIATE PROGRAMS AND SERVICES

Reflecting on what Canada has done and has not done to date to respond to the 2016 Canadian Human Rights Tribunal ruling regarding First Nations child welfare in Canada *(2016 CHRT 2 decision)*, *2016 CHRT 16* identifies the critical need to allocate funding towards culturally appropriate programs and services, and to support the First Nations Child and Family Caring Society of Canada (FNCFS) to develop appropriate programming:

[45] For their part, the CCI Parties do not understand why the issue of funding legal fees, capital infrastructure and culturally appropriate programs and services cannot be addressed at this stage. There are actions that can be taken now to alleviate discrimination that fall entirely within federal jurisdiction and do not depend on corresponding provincial action, including simply adopting and adequately funding applicable provincial/territorial standards regarding these issues. Specifically, the CCI Parties request:

- *Each FNCFS Agency be provided $75,000 in fiscal year 2016/2017 to develop and/or update a culturally based vision for safe and healthy children and families, and to begin to develop and/or update culturally based child and family service standards, programs and evaluation mechanisms;*

their families when they returned home. This served as one of the key disconnects between Indigenous children, their communities, and their traditional culture.

> *Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them (Mahe v. Alberta, [1990] 1 S.C.R. 342).*

As we move forward in developing a plan to restore cultural teachings in the lives of our Indigenous children and youth, language planning needs to sit at the forefront, and special attention needs to be paid to revitalizing Indigenous languages, many of which have become threatened by a long history of colonization.

I want to thank the First Peoples' Cultural Council (FPCC) for taking the time to speak with me about developing a language plan for children in care. The insights that they have provided on available language resources, as well as the opportunities that they have identified for collaboration to support language learning for children in care, have been invaluable.

In our discussions, the FPCC was able to identify some of the challenges facing children in care as it relates to learning their language. These include the following:

UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES, REPORT OF THE FIFTEENTH SESSION, MAY 2016 - ON INDIGENOUS LANGUAGES

Clause 5: Indigenous languages form the bedrock of continuity for the survival and well-being of indigenous cultures from one generation to the next. This important intergenerational responsibility has been severely disrupted by colonialism and colonial practices, laws, policies and practices of discrimination, assimilation, forced relocation and residential and boarding schools among others.

Clause 9: The Permanent Forum recommends that States recognize the language rights of Indigenous peoples and develop language policies to promote and protect Indigenous languages, with a focus on high-quality education in Indigenous languages, including by supporting full immersion methods such as language nests and innovative methods such as nomadic schools. It is essential that States develop evidence-based legislation and policies to promote and protect Indigenous languages and, in that regard, they should collect and disseminate baseline information on the status of Indigenous languages. These activities should be conducted in close cooperation with the Indigenous peoples concerned.

- Children and youth in care are frequently separated from their home community and do not have access to their languages;
- Caregivers and social workers often know little about the language and culture of the child in care, and do not know how to support him/her to access available resources;
- Some children in care may not know which Indigenous nation or community they are from, as this information is not always documented when a child comes into care; and
- Children and youth need age-appropriate language and culture resources that are easy to access and that are engaging.

Staff at FPCC identified the following set of opportunities where the FPCC has the potential to deliver and/or partner with MCFD, DAAs and communities to deliver services:

- The development of language resources for children and youth in care;
- The gathering and development of language information and education for child welfare workers and caregivers;
- The development and delivery of programs connecting children and youth in care with their home communities;
- The development and/or delivery of prevention strategies for Indigenous families at risk; and
- Grant programs for language and culture projects, for social development agencies.

Upon my request, the FPCC developed a basic outline for a Language Plan to support meaningful and robust language learning for children in care. The outline provides valuable insight into what will be required by all parties to ensure the cultural component of each care plan for a child in care is robust and effective in helping a child retain connectedness to family, culture, and community through language.

The FPCC offers a range of expertise, resources, and tools for Indigenous language revitalization. I strongly urge that their organization be supported to play a key role in working with Indigenous communities and knowledge holders to ensure an appropriate language component of all care plans.

THE FIRST PEOPLES' CULTURAL COUNCIL (FPCC)

The FPCC is a Crown Corporation, founded by BC in 1990. FPCC operates with the mandate to support the revitalization of Indigenous language, arts, and culture in BC. They operate a number of language immersion and planning programs, and provide funding support to First Nations communities interested in undertaking language and cultural revitalization work. The FPCC has also developed a number of helpful tools to support language learning and sharing, as well as language revitalization planning

As an example, the FPCC curates the FirstVoices language archiving platform and provides technologies, training, and support to community language champions seeking to document their language for future generations. Indigenous communities across Canada are using this platform to archive their languages.

TABLE 6: FPCC BASIC OUTLINE FOR A LANGUAGE PLAN

	ACTION	WHO	OUTCOME
1	Identify the child's Nation and language	Social worker	The language, Nation and community are identified for each child.
2	Use FirstVoices to educate the caregivers and the social worker on the Nation and language	Social worker, caregivers	The social worker and caregivers are aware of the language and nation and the online resources available, and are able to support the child to access these resources.
3	Create an individualized Child & Family Language Plan for the child in care and her/his caregivers	Social worker, caregivers	The caregiver family and the social worker collaboratively develop a family language plan that identifies strategies and resources for language access and learning.
4	Connect the child to her/his language through FirstVoices and FirstVoices Kids (including apps)	Child, caregivers, social worker	The child gains online access to language resources using computers and/or tablets, and gains introductory knowledge of her/his language.
5	Participate in *Our Living Languages* tour event and/or cultural centre tour/event	Child, caregivers, social worker	The child and her/his caregivers develop more understanding of the language, and gain pride in being First Nations.
6	Welcome Home Culture Camp (This could include camps for children with their caregivers, and youth camps for older children. This model could also work for children in urban settings.)	Child, caregivers, social worker	The child and her/his caregivers connect to the home community and engage with the language and culture.
7	Connect the child with language support, resources and/or language mentors in the home community (This could include weekly calls or Skype chats.)	Child, caregivers, social worker	The child has the opportunity to build language proficiency and strengthens the connection to her/his home community.

	ACTION	WHO	OUTCOME
8	Mentor-Apprentice Program for youth in care (This would be for children who are committed to becoming speakers of the language.)	Youth	The youth has the opportunity to become a proficient language speaker, and strengthens her/his connection to identity and culture.
9	Mentor-Apprentice Program for Social Workers and Caregivers (who are First Nations and would like to become speakers of their languages)	First Nations social workers, caregivers	These social workers and caregivers would develop a deeper understanding of the importance of First Nations languages and the worldviews they encode, and would be able to provide improved cultural services.

RECOMMENDATIONS AND RELATED ACTIONS

Recommendation 56:

As required in *CFCSA*, MCFD ensure robust, action-orientated cultural components within care plans are developed for each Indigenous child in care and that the cultural components include a focus on Indigenous language revitalization.

- The cultural component must be more than a high-level document and must address specific actions that will be taken to support the preservation of each Indigenous child's cultural identity, in accordance with s. 2, 4, 35, and 70 of the *CFCSA*;
- The cultural component must address all aspects of culture for children in care, including but not limited to the sharing of customs, ceremonies, traditional knowledge, and language; and
- The necessary supports must be made available to ensure all of the activities that have been identified within the cultural component of a child's care plan can be implemented.

Recommendation 57:

MCFD and INAC allocate immediate funding to support the involvement of Indigenous organizations, such as the First Peoples' Cultural Council (FPCC), in the development of the cultural components of care plans.

Recommendation 58:

The BC Representative for Children and Youth, the provincial court, or another independent body be required to conduct an annual review of care plans for Indigenous children in care, with special attention to ensuring that a cultural and language component of each care plan exists and is implemented.

Recommendation 59:

MCFD and INAC allocate immediate funding to support the engagement of Indigenous leadership, traditional knowledge holders, experts, elders, families, etc. in the process of developing the cultural components of care plans, and to support cultural teaching for Indigenous children in care.

Recommendation 60:

MCFD engage the First Peoples' Cultural Council for assistance in preparing a language plan as part of the cultural component of care plans, taking into consideration the tools and models that have been developed to support language revitalization in communities.

Recommendation 61:

MCFD ensure mandatory staff training regarding individual Indigenous identities and cultures, including Indigenous rights.

Recommendation 62:

MCFD and DAAs work collaboratively with Indigenous communities to review the suitability requirements for foster parents and foster homes to ensure compliance with the statutory obligations outlined in s. 71(3) of the *CFCSA*, which prioritizes placement of Indigenous children within their extended family or community.

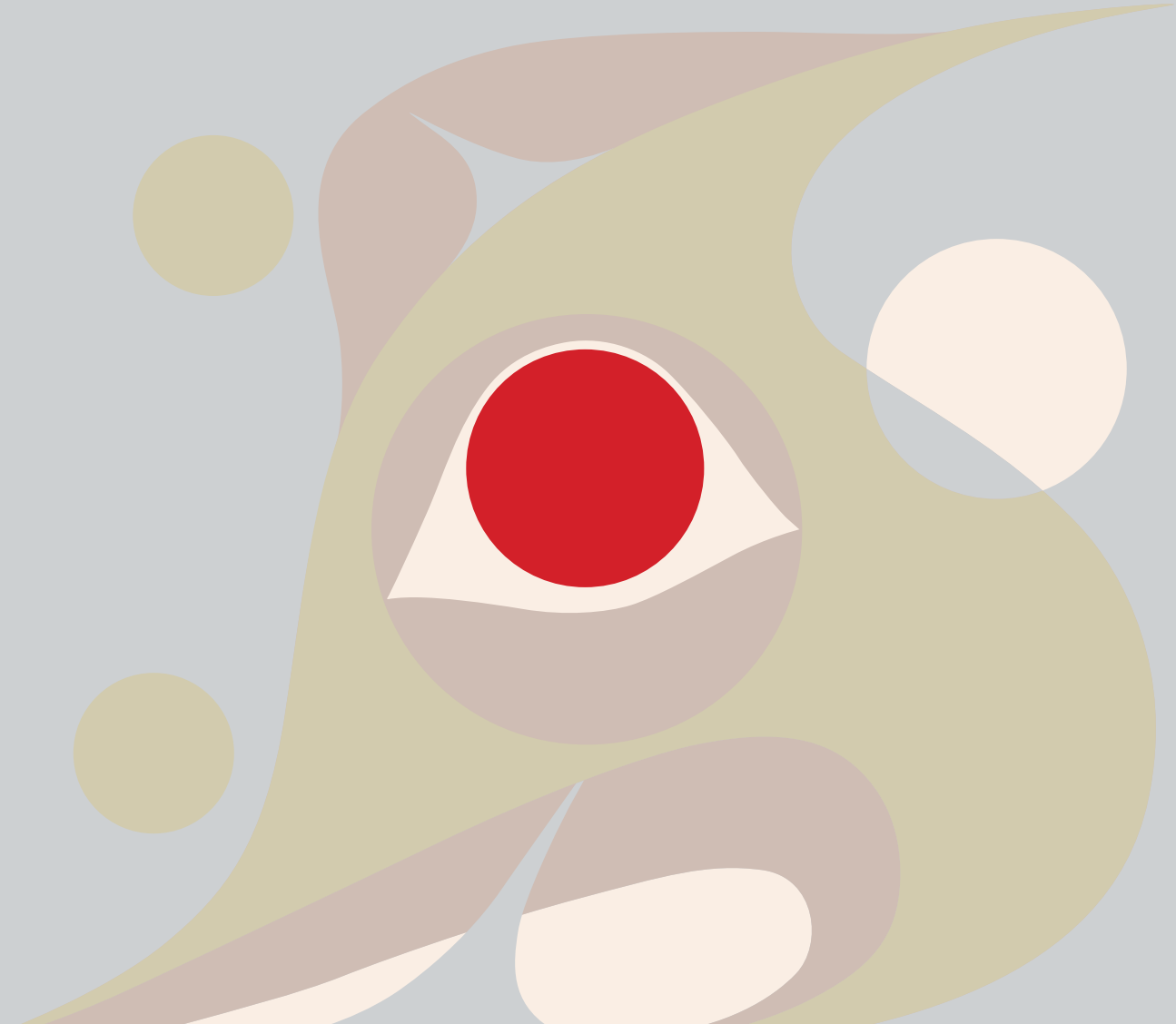
- Supports must be made available to assist a child's family and/or community to navigate the eligibility process for fostering a child;
- MCFD and DAAs must provide the necessary resources and support to meet the statutory requirements; and
- Possible amendments should be considered to the existing eligibility requirements for foster homes that would allow for more Indigenous foster parents who may currently be discriminated against under the existing MCFD requirements.

Recommendation 63:

MCFD must provide support to foster parents to ensure that they are equipped to meet the legislative obligation to preserve a child's cultural identity, as required under s. 4(2) of the *CFCSA*, particularly in the event that a child cannot be placed with family or within his or her community.

AREAS FOR FOCUSED ACTION

AREA 7. EARLY YEARS – EARLY INVESTMENT IN ESTABLISHING PATTERNS OF CONNECTEDNESS



AREA 7. EARLY YEARS – EARLY INVESTMENT IN ESTABLISHING PATTERNS OF CONNECTEDNESS

Every child and youth deserves the best we can offer to support every aspect of their physical, emotional, spiritual and cultural development. Our families' time and investments in the early years of each and every child are essential and are absolute necessities for their future – investments for their survival as Indigenous peoples and for their dignity and well-being. The works of experts in the field, such as the late Fraser Mustard and Clyde Hertzman, and of those Indigenous professors such as Cindy Blackstock (University of Alberta), Margo Greenwood (UNBC) and Amy Bombay (Dalhousie) attest to the value of such investments.

Dr. Bombay's groundbreaking research, cited in *2016 CHRT 2*, provides insightful understanding of the "the impacts of the individual and collective trauma experienced by Aboriginal peoples" (para. 415) and serves as a solid basis for developing initiatives and support for the well-being, health and dignity of Indigenous peoples and communities.

As we were advised in the *TRC Final Report*, Indigenous cultures, ways of life and languages were the subject of highly discriminatory assimilationist practices of the federal government. Institutions, such as residential schools, were mechanisms for the state to develop and apply policies and practices to "'civilize" and "Christianize" Indigenous peoples, and under these assimilationist practices, Indigenous children, were viewed as vehicles for the demise of their own cultures and languages (*TRC Final Report*, p. 144). When the children lost their connections to parents, siblings, extended families, teachings, cultures, traditional territories, and their languages, the State would have achieved its goal, contained in the discriminatory policies of assimilation. While these collective actions of the State did not succeed in killing "the Indian in the child", they had a major and direct hit, resulting in the sense of "disconnection" amongst many Indigenous people that I have discussed previously in this report.

The *2016 CHRT 2 decision* recognized and acknowledged the "transmission of Indigenous languages and cultures [as] a generic Aboriginal right possessed by all First Nations children and their families" (para. 106), and recognizes that "the culture, language and the very survival of many First Nations communities was put in jeopardy" (para. 408) by the residential school system, particularly due to the separation of children from traditional systems of knowledge sharing.

Many Indigenous languages in BC are endangered, in some cases critically, and on the verge of extinction. It is therefore essential for the provincial and federal governments to provide the resources to support early years initiatives in each and every First Nations community, and where they exist, in community health centres, early child development centres, pre-schools, and in the home. This will create more opportunities to bring language and cultural teachings back into the early years of childhood development.

A good example of this is the vision underlying Home Instruction for Parents of Preschool Youngsters (HIPPY). HIPPY is not an Indigenous-only program. In this program, the three-year-old child, before entering kindergarten, is introduced to lessons and skill development in the home. The child's parents become active partners in supporting the child's growth and development, and the program supports the child's parent(s) to become effective early years teachers. This supports

both their own and their child's development. These are the types of initiatives that need to be developed by Indigenous people and communities, promoted and supported in each community, as there is an emerging capacity in these communities to deliver these types of initiatives.

It is my advice that children, youth, and families in every First Nation community should have access to culturally-appropriate initiatives and services in their community. It is a significant "root solution" to the devilish root problems, which concern the Premiers in their report on Indigenous child welfare.

> *Honouring Indigenous methods of teaching also acknowledges the variance in Indigenous learning styles from non-Indigenous educational systems (from Indigenous Wise Best Practices for Early Childhood Development Programs, a report prepared by Celeta Cook for the Aboriginal Policy division of the Province of British Columbia).*

DESCRIPTION OF CURRENT MCFD EARLY YEARS PROGRAMMING AND SERVICES

The developmental period of a child's life from pre-conception to kindergarten transition (0-6 years) is where children have the opportunity to build a solid foundation for life-long well-being. Having access to strong early years supports and programming is a proven core social determinant of health in both adolescence and adulthood.

MCFD provides a range of early years programs and services. Some of these offerings, such as early intervention therapies, autism funding, and child and youth with special needs support services, are intended to be accessible to Indigenous children and families. MCFD also administers universal funding programs, including the child care subsidy and child care operating funding.

Other programming includes culturally-centred and relevant program delivery and, in some instances, programs intended to provide necessary support and training to parents, families, and communities. Based on the information provided to me, such programs include:

- **ABORIGINAL SERVICE INNOVATIONS-EARLY YEARS (ASI-EY):** this funding initiative targets Indigenous early years programs to support direct services for Indigenous children aged 0-6 and their families. The programs funded through ASI-EY include outreach and home visiting, family literacy, developmental screening, speech-language development, pre-kindergarten school readiness, teaching circles for parents and children, elder support, language and cultural activities, programs to support fathers, and child daycare.
- **BUILDING BLOCKS:** this umbrella term captures a number of family support programs and services that aim to increase the ability of parents or other caregivers to support the healthy development of children aged 0-6. The funding for Building Blocks does not target Indigenous communities specifically.
- **CHILDREN FIRST:** this program is a community development initiative that promotes the healthy development of children aged 0-6 by facilitating cross-sectoral partnerships and building early childhood development capacity within communities. Children First is open to all communities, including Indigenous communities.

- **ABORIGINAL FAMILY RESOURCE PROGRAMS:** these community-based programs are designed to strengthen parenting skills, promote family and community engagement, and provide stimulating environments for children.
- **ABORIGINAL EARLY CHILDHOOD DEVELOPMENT REGIONAL INITIATIVE:** this is a targeted program for Indigenous communities.
- **BC ABORIGINAL EARLY YEARS:** there are 12 Aboriginal/First Nations Early Years Centres in BC, in rural, remote and urban settings. These centres offer a range of supports and services to families with young children within Indigenous communities.

EARLY YEARS PROGRAMS AND SERVICES EXPANSION IN INDIGENOUS COMMUNITIES

I heard from many I met with that early years programs and services in Indigenous communities are an essential part of supporting the holistic development of our Indigenous children. While MCFD's early years programs are intended to provide supports that are universal or accessible to all Indigenous families within a community boundary, I heard often about the very limited services available to many Indigenous parents, families, and communities in BC. Therefore, I strongly urge that MCFD take immediate action, including working together with Canada as required, to expand the early years offerings and, in particular, those services available in Indigenous communities.

Canada should fulfill the commitment from the *Government of Canada Budget 2016* to: "Undertake urgent repairs and renovations of the facilities used by the Aboriginal Head Start On-Reserve Program and the First Nations and Inuit Child Care Initiative through a proposed investment of $29.4 million in 2016-17." As well, the budget proposal in 2017-18, providing $100 million towards Indigenous early learning and child care on reserve, also signals a positive investment that Canada should be held to. These federal funding commitments represent an opportunity for Indigenous communities and governments in BC, and Canada to work together to ensure appropriate early years services for Indigenous children and families.

CANADA'S ABORIGINAL HEAD START ON RESERVE (AHSOR) PROGRAM

The AHSOR program was established in 1998 by the Government of Canada to help enhance child development and school readiness for First Nations, Inuit and Métis children living in urban centres and large northern communities. The AHSOR program both seeks opportunities to build self-confidence and a desire to learn in children, while also recognizing the critical role of parents, guardians and other family members as teachers in a child's life. It assists parents and caregivers in improving their skills to contribute to healthy childhood development.

As noted above, there is a critical need to establish long-term, sustained and predictable core funding for early years programming. Currently, many programs are delivered with limited funds that have been secured through the submission of proposals, and the lifespan of these programs often depends

on the success of short-term funding applications. Programs such as the Aboriginal Service Innovations – Early Years (ASI-EY) are founded on the availability of term-based funding with little assurance that programs will continue beyond the end of a funding cycle.

MCFD provides proposal-based funding to a range of early years programs (Table 7). These programs offer a range of services to Indigenous children and families, including support for family development, programming for children with special needs or developmental delays and/or disabilities, and education support for Indigenous students in early childhood education programs.

MCFD has considered expanding early years core services for Indigenous communities over a five-year implementation period. This would require the collaboration of the federal and provincial governments, as well as the First Nations Health Authority, to ensure the appropriate allocation of funding resources. MCFD and INAC should work directly with First Nations and Métis partners to determine the most appropriate early years services. A significant new investment is required so that these important services are treated as mandatory and not discretionary, with reliable annual funding.

TABLE 7: MCFD FUNDING FOR SELECT EARLY YEARS PROGRAMS

PROGRAM NAME	FUNDING FOR FY 14/15 ($)
ABORIGINAL EARLY YEARS PROGRAMS AND SERVICES	
Urban Aboriginal Service Delivery Area	7,583,000
Aboriginal Service Innovations – Early Years	5,700,000
Aboriginal Early Childhood Development Regional Initiative	3,500,000
Building Blocks	936,000
Early Years Centres	624,000
Children First Regional	93,000
Aboriginal Success By 6	88,000
Aboriginal Family Resource Programs	66,000
ABORIGINAL EARLY CHILDHOOD DEVELOPMENT PROGRAMS AND SERVICES (CHILDREN AND YOUTH WITH SPECIAL NEEDS)	
Aboriginal Supported Child Development (ASCD) Programs	11,184,000
Aboriginal Infant Development Programs (AIDP)	4,506,000
Early Intervention Therapy Program	539,000
Fetal Alcohol Spectrum Disorder (FASD) Key Worker and Parent Support program	866,000
School-Aged Therapy Program	15,000
CHILD CARE PROGRAMS AND SERVICES	
Early Childhood Educator (ECE) Bursary Program	2,000,000*
Child Care Resource & Referral	430,000

***THIS FUNDING IS ALLOCATED OVER FY 14/15 AND 15/16**

ABORIGINAL SERVICE INNOVATIONS – EARLY YEARS (ASI-EY) PROGRAM

The ASI-EY Program provides $5.7 million in funding to the Indigenous communities across BC. These programs offer targeted services to Indigenous children aged 0-6 and their families. The funding support secured through ASI-EY allows DAAs and Indigenous organizations to deliver direct services to children and families over a two year funding period.

This fiscal year, the program received 74 applications, of which 56 organizations were eligible for funding under the program requirements. Due to funding constraints, only 31 agencies were granted funding:

1. Carrier Sekani Family Services
2. Cheslatta First Nation
3. Circle of Indigenous Nations Society
4. Fraser Valley Aboriginal Child and Family Services Society
5. Haisla Nation
6. Hiiye'yu Lelum Society
7. Kw'umut Lelum Child and Family Services
8. Lake Babine Nation
9. Lii Michif Otipemisiwak Family and Community Services
10. Little Shuswap Indian Band
11. Lower Fraser Valley Aboriginal Society
12. Métis Community Services
13. Nuuchahnulth Child and Youth Services
14. Nzen'man' Child and Family Society
15. Okanagan Indian Band
16. Pauquachin First Nation
17. Port Alberni Friendship Center
18. Prince George Native Friendship Centre
19. Qualicum First Nation
20. Quatsino First Nation
21. Seabird Island Band
22. Secwepemc Child and Family Services
23. Southern Stl'atl'imx Health Society
24. Spirit of the Children Society
25. Squamish First Nation/Ayas Men Men Child and Family Services
26. Tillicum Lelum Aboriginal Friendship Centre
27. Upper Island Women of Native Ancestry
28. Victoria Native Friendship Centre
29. Wachiay Friendship Centre
30. Westbank First Nation
31. Wet'suwet'en Treaty Office Society

These organizations collectively offer over 100 tailored early years programs to over 78 Indigenous communities across the province.

RECOMMENDATIONS AND RELATED ACTIONS

With respect to the early development of an Indigenous child, it is absolutely necessary to provide short- and long-term support, as well as intensive support to families and to all children, especially those who are in vulnerable circumstances. This helps to ensure the best possible start and a strong foundation for adolescence and adulthood. Studies and common sense inform us that, in the long term, early investment in building a strong sense of "connectedness" in families and communities will help break down the cycle of poverty and underdevelopment. This will ultimately contribute to reducing the extensive social and economic gaps facing many Indigenous peoples.

The following recommendations are made in the area of early years programming and services, and link directly to recommendations made throughout this report in support of parents, families and Indigenous communities:

Recommendation 64:

MCFD and the federal government work to immediately expand Indigenous early years programming and provide new offerings and services to all First Nations communities, and Métis within BC:

- MCFD should engage immediately with DAAs and Indigenous communities across the province to determine the most appropriate core services required in the immediate term and long-term expansion;
- MCFD begin hiring immediately to support the expansion of early years programs and services across BC, including new staff positioned directly within Indigenous communities (see Recommendation 1, in *Area for Focused Action 1*) and support to manage the expansion of early years programs; and
- MCFD increase ASI-EY funding by $6 million annually in response to the high number of eligible proposals this fiscal that were denied funding based on availability, and with the objective of investing the additional $5 million directly in Indigenous communities.

Recommendation 65:

MCFD and INAC invest in long-term and sustainable funding for early years programming:

- Special attention should be given to offering multi-year funding support to organizations based in Indigenous communities that have developed or wish to develop early years programming tailored to their culture, traditions and practices.

Recommendation 66:

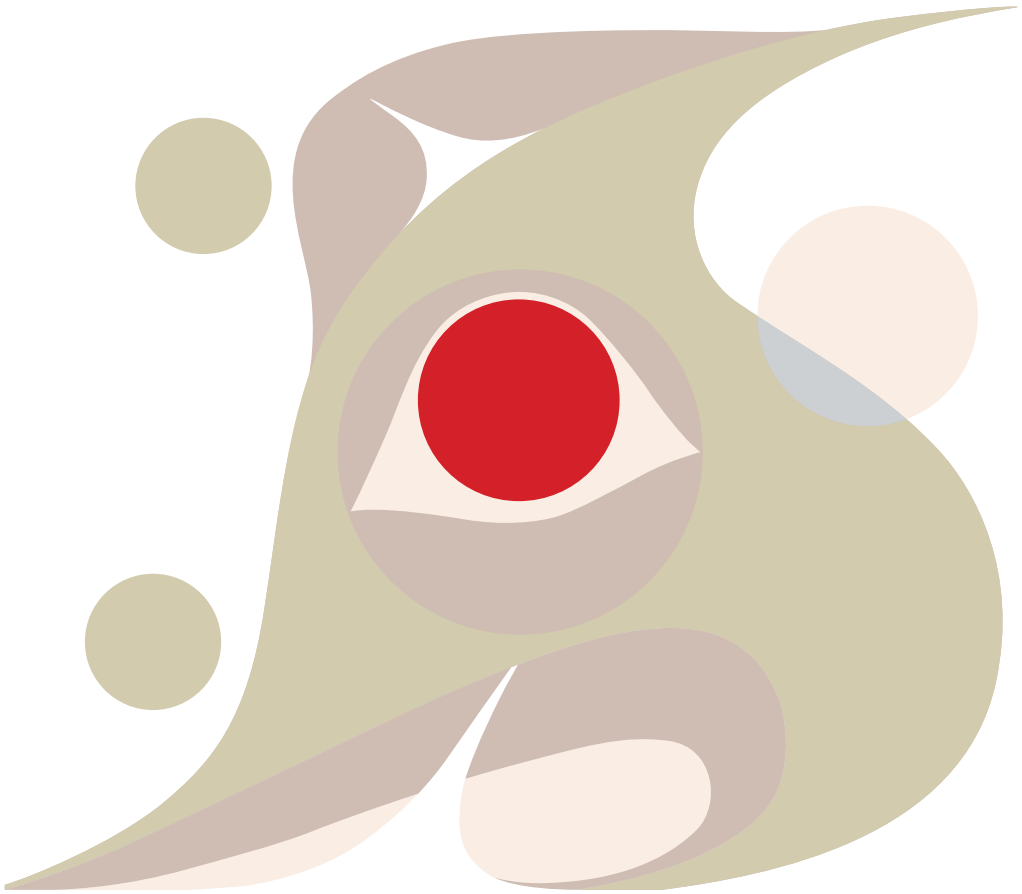
MCFD, DAAs, and INAC work immediately and in partnership with Indigenous communities to expand parenting programs and services available to Indigenous parents and families, as well as other professional expertise to assist Indigenous parent:

- Attention should be paid to ensure these programs are accessible for Indigenous parents and part of this means a commitment to ensuring that long-term, these programs are developed and delivered inside Indigenous communities.

Recommendation 67:

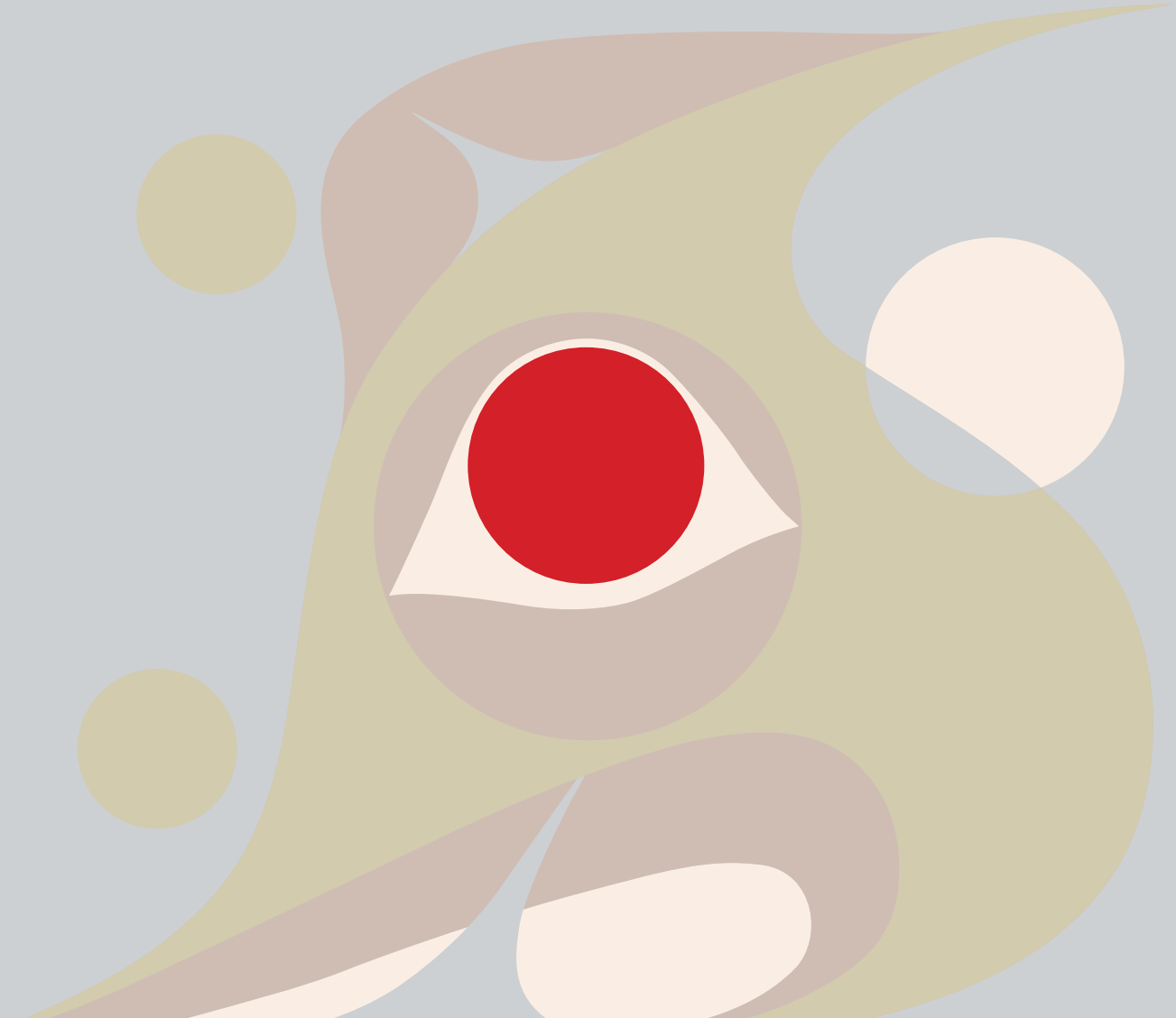
MCFD, DAAs, and INAC take immediate steps to ensure that any new or existing parenting programs and curricula are updated to include traditional values, knowledge, teachings and practices and that available parenting programs utilize, as much as possible, Indigenous elders and cultural leaders:

- Specifically, programming should be developed to support language and cultural revitalization in Indigenous communities, honouring traditional approaches to teaching and knowledge sharing (see *Area for Focused Action 6*.)



AREAS FOR FOCUSED ACTION

AREA 8. INDIGENOUS PEOPLES AND JURISDICTION OVER CHILD WELFARE



AREA 8. INDIGENOUS PEOPLES AND JURISDICTION OVER CHILD WELFARE

Twenty years ago, Canada's Royal Commission on Aboriginal Peoples (RCAP) urged that provincial, territorial and federal governments promptly acknowledge that child welfare is a core area of self-government in which Indigenous peoples can undertake self-starting initiatives and exercise jurisdiction over child welfare.

In BC, the federal government has jurisdiction regarding "Indians and Lands reserved for Indians," under s. 91(24) of the *Constitution Act, 1867*, and the province has jurisdiction over child welfare matters under s. 92(13) and (16). Unless there is a treaty or a federal law on child welfare, provincial laws of general application apply to "Indians." The Canadian Human Rights Tribunal (*2016 CHRT 2*) explained the application of provincial child welfare legislation as follows:

> *Instead of legislating in the area of child welfare on First Nations reserves, pursuant to Parliament's exclusive legislative authority over "Indians, and lands reserved for "Indians" by virtue of section 91(24) of the* **Constitution Act, 1867**, *the federal government took a programing and funding approach to the issue. It provided for the application of provincial child welfare legislation and standards for First Nations on reserves through the enactment of section 88 of the* **Indian Act**. *However, this delegation and programing/funding approach does not diminish AANDC's constitutional responsibilities... (2016 CHRT 2, para 83).*

While certain important developments have occurred and are discussed in this area of the report, Indigenous people in BC are not yet exercising full jurisdiction over child welfare and there is no federal legislation on Indigenous child welfare.

Nearly all of the meetings I attended included discussion around the importance of Indigenous communities increasing authority over child welfare, policies and practices that impact on the lives of Indigenous children and youth. This area for focused action discusses the past and ongoing efforts of Indigenous people and communities in BC to move beyond the self-administration of federal or provincial programs and services, and towards self-government in the area of child welfare. Several promising practices already employed

RECOMMENDATIONS REGARDING INDIGENOUS JURISDICTION OVER CHILD WELFARE IN THE *RCAP FINAL REPORT*

3.2.2 Aboriginal, provincial, territorial and federal governments promptly acknowledge that child welfare is a core area of self-government in which Aboriginal nations can undertake self-starting initiatives.

3.2.3 Aboriginal, provincial, territorial and federal governments promptly reach agreements on the authority of Aboriginal nations and their communities for child welfare, and its relation to provincial, territorial and federal laws respecting child welfare.

by Indigenous people and communities in BC governing in the area of child welfare are explored, as are existing challenges and opportunities for Indigenous leadership and communities that were raised during my engagements.

> *Legitimate and strong Indigenous Nations have already begun to change the way Canada is governed for the better, and will continue to do so. There is room in our country for different legal traditions and ways of governing – for an approach that respects diversity and equality and supports the social and economic advancement of Indigenous peoples as part of our evolving system of cooperative federalism and multi-level governance.*
>
> *– Justice Minister and Attorney General of Canada, Jody Wilson-Raybould (Puglaas) at the AFN 2016 Annual General Assembly*

DEVOLUTION AND REGIONALIZATION – LEARNING FROM THE PAST AND ENGAGING IN A DIALOGUE

In the 1970s, First Nations in BC pushed very hard for INAC (then DIAND) to devolve its programs and services to communities and to close their "district" level offices across the province in favor of locally based First Nations and Tribal Councils that would deliver devolved programs, applying to each and every First Nation regardless of size, location or capacity. Over the years, many INAC programs have been devolved to First Nations communities, to Métis, and some to regionally based Tribal Councils, including delivery of services in education, health, housing and infrastructure, economic development, social assistance, and membership. In BC, First Nations built offices, developed community-based staffing, and in some instances designed programs to meet community needs. In many ways, this was a period of growth for First Nations governments.

In BC, 2001 to 2008 was a period of opportunity and marked progress in Indigenous child welfare. The provincial government had announced a commitment to establish Indigenous child welfare authorities in the regions and many felt this opened the door for Indigenous authorities based on the inherent rights and authorities of Indigenous peoples. The intention seemed to be focused in the right direction. Quickly though, it became clear that these new authorities would be similar in nature to the provincial health authorities – a regional delegation model, this time with a focus on child welfare. While it was anticipated that provincial legislation would be passed into law to support Indigenous peoples' increased jurisdiction over Indigenous child welfare, the legislation was never tabled in BC's Legislative Assembly, as there were First Nations' concerns regarding the adequacy of consultation on the contents of the proposed legislation.

Despite challenges inherent in federal and provincial laws and policies concerning Indigenous people in BC, Indigenous communities have made important progress on many fronts through the devolution and regionalization of programs and services. Child welfare, however, has not been one of the areas where programs and services were devolved. The Province, with the support of the federal government, has continued to provide child welfare programs and services to many Indigenous peoples and communities. Under s. 88 of the *Indian Act*, provincial child welfare legislation is considered a "law of general application" applying to Indians on reserve and based on this, the inherent authority that Indigenous people and communities have for their children and families has largely been disregarded.

Today, circumstances have and are changing. From those I met, I heard resoundingly that we are at a new juncture and the existing federal-provincial arrangement concerning Indigenous child welfare is not acceptable to Indigenous peoples. In 2007, the United Nations General Assembly, with its adoption of the *United Nations Declaration on the Rights of Indigenous Peoples*, finally recognized the human rights of Indigenous peoples, providing a critically important and practical framework for reconciliation and redress. Earlier this year, Canada adopted without qualification the *United Nations Declaration on the Rights of Indigenous Peoples*, including the right to self-determination and self-government. The way forward on child welfare in this province must be cognizant of these important developments.

In *The Road to Aboriginal Authority over Child and Family Services*, the late Kelly MacDonald examined the governance models, finances, capacity, labour relations, culturally appropriate services, and overall strengths of the process for creating DAAs, and called the process to achieve authority "a bumpy road." I have referenced this history and the process of devolution and regionalization with the goal of framing the road ahead based on what those I met with instructed we have learned from past opportunities, actions, and the results. **THE FOLLOWING TWO KEY LESSONS LEARNED FROM THE REGIONALIZATION PROCESS WERE IDENTIFIED REPEATEDLY DURING MY MEETINGS, AND EMPHASIZED AS CRITICAL TO ANY FUTURE PROCESS AIMED AT ACHIEVING INDIGENOUS JURISDICTION OVER CHILD WELFARE:**

1. **A SOLID COMMUNITY-BASED APPROACH FOR CHILD WELFARE – A COMMUNITY OWNED AND DEVELOPED PROCESS – IS NECESSARY TO REALIZE INDIGENOUS JURISDICTION OVER CHILD WELFARE; AND**
2. **EXISTING DAAS AND PROPOSED REGIONAL CHILD WELFARE AUTHORITIES SHOULD BE UNDERSTOOD AS "INTERIM MEASURES," AND SUPPORTED AS PART OF A TRANSITION PROCESS TO THE EXERCISE OF FULL INDIGENOUS JURISDICTION IN CHILD WELFARE.**

The period of devolution provided Indigenous peoples with some limited opportunities in governance, but these amounted to small building blocks for Indigenous self-government. While these opportunities were limited, Indigenous communities should be celebrated for having, in many cases, converted these opportunities into a substantial and progressive foundation for self-government. Today, the area of Indigenous child welfare presents opportunities for Indigenous communities, Canada and BC to work together to form strong partnerships. No one party alone can do this work.

How should these partnerships be envisaged and emerge within the context of this modern era? This question is not new, and was canvassed during the four First Ministers conferences in the 1980s and in the Charlottetown process in the 1990s. There was no resolution then, but the absence of one singular vision for the path forward today should not diminish the resolve and determination of any of the parties to this work. The political will of Indigenous people and communities exists today, but in the context of Indigenous child and family services, what does this mean?

INDIGENOUS APPROACHES TO INCREASED JURISDICTION OVER CHILD AND FAMILY SERVICES

Indigenous peoples must necessarily be engaged as true partners and must be trusted with making decisions about their children, families and

communities. Partnerships must recognize and respect the authorities of elected Indigenous leadership and Hereditary Chiefs and matriarchs who are ably guided by respected elders and cultural leaders. The lack of focus on and respect for Indigenous communities, and the values and traditions that direct their work, have been serious gaps identified by those evaluating the devolution and regionalization processes. The positive news is that Indigenous communities and organizations have employed many different approaches to address the gaps themselves and to move towards full or increased jurisdiction over Indigenous child welfare. The development of community-based wellness frameworks that exercise inherent rights, along with the Splatsin by-law approach, the Nisga'a Treaty approach, the Métis MOU with MCFD and with the Adoptive Families Association of BC, and the activities of First Nations organizations at the provincial level, are just some of the Indigenous-led approaches that are being employed. Several of these are discussed in brief below for the purpose of illustrating the success and opportunities created through Indigenous-led root solutions.

THE OKANAGAN NATION ALLIANCE SYILX WELLNESS FRAMEWORK AND WET'SUWET'EN APPROACH TO WELLNESS – ANUK NU' AT'EN BA'GLGH'IYI Z'ILHDIC

During my meetings, those I met with reinforced that Indigenous communities and their values and traditions cannot be taken for granted or overlooked in the design of any process going forward. The **OKANAGAN NATION ALLIANCE (ONA)** and the Wet'suwet'en hereditary and elected leadership both shared information about their own culturally grounded approaches to child welfare.

The ONA serves to promote the health and wellness of all Syilx (Okanagan) people. Its approach to health and social development programs promotes self-sufficiency and also seeks to incorporate traditional and cultural approaches into program delivery. This base on Syilx values, traditions, teachings, and authorities forms an important foundation for the way forward in child and family services for ONA.

The ONA has undertaken a number of planning initiatives to shape service delivery for Syilx Child and Family Services, and has ensured that these plans are consistently designed to address complex root issues that have resulted from colonial policies and practices and their intergenerational trauma. The ONA approach to planning for child welfare places families at the centre of the process, with a focus on methods of prevention. The vision for the ONA planning processes seeks to integrate key aspects of Syilx culture – including captikwl (stories), the Nsyilxcen language, the Enowkin'wix process for conflict resolution, and community engagement in planning – into a framework for service delivery.

The **WET'SUWET'EN WELLNESS WORKING GROUP (WWWG)**, comprised of both hereditary and elected Chiefs, and organizational leadership from the five communities, has worked to build an approach for **ANUK NU' AT'EN BA'GLGH'IYI Z'ILHDIC (ANABIP)** that returns to Wet'suwet'en holistic approaches to wellness.

Through a participatory action research process, involving over 200 Wet'suwet'en people, the WWWG has built the Wet'suwet'en Holistic Wellness Conceptual Framework. This conceptual model is based on placing Yinta (meaning the people connected to the land) at the centre, with five key themes building off that foundation. These themes include: 1) being seen/being heard, 2) Hiltus (strengths), 3) spirituality, 4) sustainable livelihood,

and 5) social responsibility. Each of these five key themes has an identified and emerging set of cultural competencies, as well as quantitative and qualitative outcome indicators.

This model is utilized by the ANABIP practitioners to design, plan, implement, and evaluate all child welfare service activities delivered to the Wet'suwet'en, throughout their traditional territory. The application of this model ensures that ANABIP practitioners are delivering supports to clans and house groups, with consideration of how to incorporate traditional cultural protocols and practices relating to health and wellness.

Based on this conceptual model, ANABIP has developed a permanency planning framework for Wet'suwet'en children in care. It has been utilized with Wet'suwet'en children in care with VACFSS in Vancouver to help ensure Wet'suwet'en children remain connected to their extended families and cultural identities.

ANABIP is funded through MCFD's existing ASI funding program. As discussed elsewhere in this report, the ASI fund is year-to-year proposal driven funding. There are no guarantees that ASI funds will available for the following year, which severely jeopardizes program sustainability.

ANABIP has made it clear that they continue to offer culturally relevant support to families, but that it is not a Wet'suwet'en DAA. The Wet'suwet'en communicated to me that their child and family governance and legislation negotiations have stalled since release of the BC RCY's report, *When Talk Trumped Service*. Since then, they have been relegated to the role of short-term service provider. The Wet'suwet'en continue to pursue jurisdiction over child welfare to ensure that all child welfare services are delivered with the Wet'suwet'en Holistic Conceptual Framework in mind.

The ONA and Wet'suwet'en approaches outlined briefly herein are just two examples. There are many such plans and initiatives in Indigenous communities, and their continued development and subsequent implementation, should be supported by Canada and BC, as argued throughout this report.

As well, the 23 DAAs in BC have developed valuable expertise and experience, many becoming leaders in the area of Indigenous child welfare and recognized within BC, Canada and internationally. The DAAs and their staff have much to contribute to ensure community-based challenges are met with community-based solutions and that effective child welfare services are delivered in culturally appropriate ways. To exercise Indigenous jurisdiction over child welfare, the way forward needs to be culturally appropriate, fully inclusive of all interests, and properly and fully authorized by community members providing direction to their political leadership. Those I met with also expressed their hope that Indigenous jurisdiction over child welfare could help ensure a prevention-focused approach with needs-based funding, and be outcomes-oriented, confirmed by measurable indicators.

SPLATSIN CHILD WELFARE BY-LAW APPROACH

In 1980, Splatsin (then the Spallumcheen Indian Band) demonstrated a strong commitment to child welfare in the ratification of ***A BY-LAW FOR THE CARE OF OUR INDIAN CHILDREN: SPALLUMCHEEN INDIAN BAND BY-LAW #3***. This by-law establishes that First Nations have a legal right to develop laws to govern the responsibilities surrounding the care and welfare of their children. This by-law approach is an excellent example of where a First Nation, in exercising its inherent authority, has assumed and

is exercising responsibility for all of its children, including those who come into care.

The focus of this by-law is to support the Splatsin Chief and Council to ensure that all Splatsin children are afforded the opportunity to remain connected to their families and to gain an understanding of what it means to be Splatsin and Secwepemc.

Splatsin Stsmamlt Services is an organization within the Splatsin administration that operates on behalf of Chief and Council to ensure the effective execution of the Splatsin Child Welfare By-law. The Splatsin Stsmamlt Services program has faced challenges in recent years. MCFD maintains a position that the by-law only applies on Splatsin lands reserved under the *Indian Act*. This has resulted in ever-decreasing cooperation between the First Nation and MCFD when it comes to the transfer of off-reserve cases for Splatsin children to Splatsin Stsmamlt Services.

It is the Province's view that *CFCSA* applies to all Indigenous children in BC, regardless of where they reside, and that the Splatsin by-law is therefore invalid both on and off reserve. It is my hope that this important matter is one that can be resolved politically, rather than through the courts. This view is a clear example of the adversarial nature of matters relating to Indigenous child welfare and the inherent authority of Indigenous peoples to exercise jurisdiction for their children. As such, I consider this to be a very important political and policy question that Indigenous peoples, the Province and Canada must address.

Splatsin filed a Notice of Civil Claim on October 13, 2015 with the intent to address the issue of jurisdiction and to initiate a fruitful discussion with Canada and BC on how to address some of the procedural challenges that the Splatsin Nation currently faces.

Identified shortcomings in the *CFCSA* have led to key procedural challenges in the Splatsin model. S. 8 of *CFCSA* does not identify an Indigenous government as being eligible for custody, as the legislation currently reads that custody may only be transferred to a "person." This can often pose a significant barrier for Splatsin to ensure the transfer of cases from MCFD to Splatsin Stsmamlt Services.

A simple revision to *CFCSA* – changing "person" to "party" and including "First Nations" or "Indigenous governments" under the list of eligible parties – would offer a solution to Splatsin, and would set the necessary legislative framework to support other Indigenous communities to adopt a similar legislative model, or adopt other by-laws that would work for their communities.

As identified by the RCY in the first recommendation in *When Talk Trumped Service*, it is critical that legislation supports the jurisdictional transfer and exercise of governmental powers over child welfare to Indigenous communities. MCFD should, as part of an overall review of *CFCSA*, ensure necessary changes are made to the legislation to support community-based initiatives like the Splatsin By-law model.

INDIGENOUS JURISDICTION UNDER A MODERN TREATY – THE NISGA'A APPROACH

This year, the Nisga'a Nation celebrated the 16th anniversary of their treaty with BC and Canada. The Nisga'a Final Agreement includes specific provisions on child and family services, including:

> *Chapter 11, s. 89: Nisga'a Lisims Government may make laws in respect of child and family services on Nisga'a Lands, provided that*

those laws include standards comparable to provincial standards intended to ensure the safety and well-being of children and families.

Chapter 11, s. 92: At the request of Nisga'a Lisims Government, Nisga'a Lisims Government and British Columbia will negotiate and attempt to reach agreements in respect of child and family services for Nisga'a children who do not reside on Nisga'a Lands.

When I met with the Nisga'a child welfare workers, they shared with me that there have been no removals of Nisga'a children in the last six years. They further explained that services on Nisga'a lands are delivered by Nisga'a people and within Nisga'a homes. Resources for protecting Nisga'a children and youth have been developed and are used as necessary. This is all possible, it was communicated to me, because of the existing relationship between Nisga'a and MCFD. Workers in Nisga'a communities are hired as "auxiliary" employees with MCFD.

Representatives from Nisga'a did suggest that there was room for further improvement, emphasizing that a preventative strategy on family wellness, with a focus on domestic violence, was important going forward in order to see things change substantively for communities and families.

The modern treaty Nations in BC all have different experiences and lessons to teach about the path forward in regards to Indigenous jurisdiction over child and family services. While many modern treaties provide the basis for the First Nations signatories to enact their own child welfare laws, thus far in BC, treaty First Nations have not fully exercised their authority.

MÉTIS AND JURISDICTION OVER CHILD AND FAMILY SERVICES

The Métis Memorandum of Understanding (MOU) with MCFD and with the Adoptive Families Association of BC is based on the perspective that "Métis people have traditionally acknowledged their children as sacred gifts from the ancestors" to ensure "the protection of 'Takaki Awasisiwin' a good childhood for our future." The MOU is an example of one initiative directed at increasing Métis jurisdiction over child and family services in BC.

Despite initiatives like this MOU, the issue of Métis jurisdiction over child and family services in BC is complicated. Following the *Daniels* decision by the Supreme Court of Canada, the Métis Nation of BC (MNBC) has been working with Métis people in the province to determine "who is Métis." Whether the federal or provincial government is "responsible" for Métis child and family services is currently a topic of much debate and discussion. Answering this question will be a challenge, as there are many historical and contemporary factors that the Métis need to consider.

Regardless of which government is determined to have the responsibility, child and family services for Métis should be equitable and provided without discrimination. Most of the recommendations and advice in this report should be interpreted as applying to Métis child and family services, although there are some instances where it was necessary to single out actions required to address specific challenges for Métis children, youth and families. Overall, I found in my engagements with MNBC and Métis leadership that there were more similarities than differences when Métis leadership described root causes and the need for root solutions.

RECOMMENDATION 12: *There is a need for thoughtful and visionary leadership, collaboration and communication in overseeing the development of a new system of Métis child and family services in British Columbia.*

- Report to the Métis Commission for Children and Families of British Columbia on Métis child welfare, 2011.

BC'S ROLE IN SUPPORTING INDIGENOUS JURISDICTION

While there are reasons to be optimistic about the opportunities for Indigenous jurisdiction over child and family services in BC – particularly given recent political commitments of the BC government, such as those at the BC First Nations Children and Family Gathering in May 2016 – it also needs to be acknowledged that the Province has fought Indigenous peoples in the courts to maintain provincial jurisdiction over child welfare.

In 2010, provincial statutory commitments were exuberantly paraded before the Justices of the Supreme Court of Canada in *NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union (2010 SCC 45)* to demonstrate the Province had legislation supporting a culturally appropriate child welfare system for Indigenous children. In oral submission, the Province took the position that federal jurisdiction under s.91(24) should not be construed broadly to include First Nations authority in child welfare, since doing so could, among other things, effectively result in:

- Reducing predictability in determining division of power issues;
- Reinforcing the notion of federal enclaves;
- Creating disincentives for provinces to establish and foster provincial programs and services to be delivered in a manner fully accommodating of Indigenous culture and tradition; and
- Placing at significant risk the province's management of land and resources in the province and the revenues generated from the land and resources by applying an interpretation of s. 91(24) to include broad asserted Aborignal rights of self-government or general matters of culture, tradition and matters relating to Aboriginal community.

Conversely, First Nations argued that s. 91(24) of the *Constitution Act, 1867* should be interpreted broadly to include First Nations self-government to support First Nations authority in cultural matters and child welfare. While ultimately the Supreme Court of Canada decided that provincial labour laws applied to employees of a DAA in this case, in the absence of federal legislation, the legal arguments of all parties illustrated the highly complex, controversial and adversarial nature of Indigenous child welfare.

Despite the adversarial relations inside the courts in Canada and BC, there is evidence that Indigenous jurisdiction over child welfare is being considered by the Province. BC RCY, Mary Ellen Turpel-Lafond, has recommended to BC that the matter of jurisdiction and Indigenous child welfare authority should be handled by the BC Attorney General and that MCFD should focus its efforts and resources on services to Indigenous children and families:

RECOMMENDATION 1: *The government of British Columbia, with the leadership of the Attorney General, develop an explicit policy for negotiation of jurisdiction transfer and exercise of government powers over child welfare.*

- BC RCY report, *When Talk Trumped Service*

NIL/TU,O CHILD AND FAMILY SERVICES SOCIETY V. B.C. GOVERNMENT AND SERVICE EMPLOYEES' UNION, 2010 SCC 45

In *2010 SCC 45*, an Indigenous child welfare agency sought to organize and negotiate a collective agreement. Although the case before the SCC was on the issue of whether federal or provincial labour legislation applied, the underlying issue was the respective jurisdictional authorities of the federal government, the provinces and that of First Nations in matters relating to Indigenous child welfare.

Two letters between BC's Attorney General, Suzanne Anton and the RCY, dated May 27, 2016 and May 31, 2016, deal with this particular recommendation. The May 27 letter from Minister Anton to the RCY relates that self-government jurisdiction is a matter BC and Canada negotiate with First Nations under the BC Treaty process and that BC is "committed to working collaboratively with First Nations to implement new approaches to self-governance and the delivery of child welfare services." As Canada's participation is also required, Minister Anton instructed in the letter that BC would be having discussions on child welfare jurisdiction and services with First Nations and Canada, though would not be developing an express policy like the one recommended by the RCY.

If the Province wants to address the serious inequities in Indigenous child and family services in BC and develop "root solutions" that directly address the "root causes" identified in the July 2015 *Report to Canada's Premiers on Aboriginal Children in Care*, there needs to be a serious commitment to move forward in support of Indigenous jurisdiction over Indigenous child and family services. The Province's current direction, towards a more centralized child welfare services approach, with more MCFD employees and with an expanded quality assurance program, may make it a more effective organizational structure for the provincial government. However, I do not believe these changes alone will significantly improve child welfare services to and outcomes for Indigenous children, families and communities.

CFCSA CHANGES TO SUPPORT INDIGENOUS JURISDICTION

Throughout my appointment, I was frequently alerted to the shortcomings of our provincial legislation for child and family services. One of the issues that I encountered most frequently was the existing limitations of the *CFCSA* to allow Indigenous governments to be assigned guardianship of children once they are removed. This legislative barrier has been exceptionally frustrating to Indigenous communities who are working hard to develop innovative programs to care for their children, such as in the case of Splatsin.

The existing provincial legislation fails to serve Indigenous communities in a number of ways. First, "custody" is an out-of-date term and a concept that fails to capture the complexity of caring for children. The *BC Family Law Act* has been updated with new terms and concepts, such as guardianship and parental responsibilities, that better address the needs in planning for the care of children. Updating the *CFCSA* to include this terminology would offer more flexibility in terms of assigning the various duties involved in raising a child, particularly in cases where the Indigenous government may be assigned the duty of guardianship, but may wish to assign a family or individual within the community to carry out the day-to-day care for a child. As it stands, "custody," as defined in the *CFCSA*, encompasses both care and guardianship, which does not effectively support Indigenous communities seeking to employ alternative models of providing care to children. The *CFCSA* needs to be modernized so it can realistically address the complexities of caring for children and ensure that culturally relevant models of caring for children are supported.

A change in language alone will not fully address the limitations in the application of the *CFCSA*. For example, although the *CFCSA* provides for less disruptive measures, in practice, the *CFCSA* does not allow for children to be easily placed within their families and communities. This is because, throughout the *CFCSA*, the provisions only allow for custody to be assigned to an individual person, and do not allow for custody to be transferred to a collective, such as to an Indigenous government. This can pose a significant barrier to Indigenous governments and their supporting organizations, which are well equipped to provide placements that would be in the best interests of the child, but often struggle to bring that child into the care and control of Indigenous community.

An example of the challenges in applying this legislation can be seen in s. 8 of the *CFCSA*, which allows the Provincial Director of Child Welfare to enter into an agreement with a "person" who has been identified to provide care for a child. An Indigenous government does not fall within the legal definition of a "person," nor does the legislation recognize a collective as being an eligible guardian. The Director cannot therefore enter into an agreement with an Indigenous government for the provision of child and welfare services.

There are similar issues within the legislation relating to both interim and temporary orders, as well as permanent orders, that arise from an absence of legal recognition of Indigenous governments as parties eligible for custody or guardianship. Amendments need to be made to the *CFCSA* to allow for Indigenous governments to be identified as eligible guardians.

Some of these issues could be rectified if the *CFCSA* were amended to replace "person" with "party" and with any additional required changes to ensure that Indigenous governments are identified as being an eligible party. This change is an example of the legislative support that can be developed to aid Indigenous communities to manage the placement of children within their families and communities much more effectively.

Currently, all parties to *CFCSA* proceedings are persons. This means the regulations under *CFCSA* would also need to be amended.

As noted elsewhere in the report, the existing provincial legislation allows for the current delegation model, which at present supports 23 DAAs under various levels of delegation. *CFCSA* provides that the Director may enter into the delegation agreements to establish DAAs. Going

forward, these agreements could be revisited and reframed by the underlying rights in the *UN Convention on the Rights of the Child* and UNDRIP. In other words, the legislation could be amended to provide a greater scope for new forms of government-to-government partnerships moving beyond the existing delegation model.

Under s.91 of *CFCSA*, the Minister for MCFD is authorized to "designate one or more persons as directors…" Designation must be in writing and may include any terms or conditions the Minister considers advisable. The Director has the power to delegate, in writing, any or all powers, duties or functions under the *CFCSA*. This is the mechanism for social workers who are delegated to exercise authority under the *CFCSA*. The power of the Director is a highly discretionary power and how it is exercised in relation to Indigenous child welfare is understandably a matter of serious concern in Indigenous communities. The possibility of the Minister designating an "Indigenous Director" is something that came up during my meetings. The underlying rationale of this approach is that an Indigenous person is more likely to understand and be sensitive to the historic circumstances, cultures and languages of indigenous peoples when making decisions under the authority of the *CFCSA*.

All of these critical changes and actions regarding *CFCSA* need to be considered immediately to ensure that the necessary legal mechanisms are in place to allow Indigenous governments to move towards full jurisdiction over Indigenous child and family services.

RECOMMENDATIONS AND RELATED ACTIONS

The following recommendations are made in support of Indigenous communities increasing authority over child and family services and are focused on empowering Indigenous people and communities in BC to move beyond the self-administration of federal or provincial programs and services, and towards self-government in the area of child welfare. Further recommendations relating to Indigenous jurisdiction are found in *Area for Focused Action 9 – The Existing Policy Framework – Shifting Towards Patters of Connectedness*, and *Area for Focused Action 10 – A National Strategy for Indigenous Child Welfare*.

Recommendation 68:

Recognizing Indigenous communities' right to self-government, Canada, BC, DAAs and Indigenous communities and organizations collectively move towards a model where Indigenous communities can exercise full jurisdiction over Indigenous child welfare. This will require the parties to undertake the following collaboratively:

- Develop and implement an action plan to ensure that Indigenous communities have effectively built the necessary range of capacities to ensure equity of services to Indigenous children and families; and
- Build a comprehensive funding framework to ensure Indigenous communities are fully supported to offer equitable services for Indigenous children (see related recommendations in *Area for Focused Action 3 - A New Fiscal Relationship – Investing in Patterns of Connectedness*).

Recommendation 69:

While Indigenous communities move to implement full jurisdiction over Indigenous child and family services, MCFD and INAC work concurrently to also support the continued capacity building of DAAs in the following ways:

- Ensure DAAs maintain key involvement in the planning for and delivery of child welfare services to Indigenous children and families; and
- Ensure DAAs continue to have opportunities to develop expertise in exercising authority over Indigenous child welfare.

Recommendation 70:

The Province review and amend *CFCSA* in order to offer legislative support to Indigenous communities that have developed, or are seeking to develop, strong community-driven initiatives. This review of *CFCSA* should consider the following:

- Methods of ensuring *CFCSA* can support an Indigenous community and its government to exercise full authority and jurisdiction over decision-making related to the best interest of the child; and
- The limits that *CFCSA* places on specific models for increased Indigenous jurisdiction, such as the Splatsin's *By-Law for the Care of Our Indian Children: Spallumcheen Indian Band By-Law #3*.

Recommendation 71:

The Province review and amend *CFCSA* to provide for 'least disruptive measures' that make it simpler for a child to remain with his or her extended family or community in the event that there is a removal:

- Allow for the transfer of custody to a "party" rather than just a "person," as under the existing legislation. The legislation must recognize Indigenous governments as an eligible "party" to which custody may be transferred;
- Amend s. 8 of *CFCSA* to allow for Indigenous governments to enter into either temporary or long-term agreements with MCFD for the care of a child;
- Amend s. 35 and s. 41 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing interim and temporary orders; and
- Amend s. 49, s. 50, and s. 54 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing permanent orders.

Recommendation 72:

The Province review and amend *CFCSA* with the goal of achieving consistency with the *Family Law Act*:

- Moving away from "custody" as an out-of-date concept currently utilized in the *CFCSA*, and towards the concepts of guardianship and parental responsibility as defined in the *Family Law Act*.

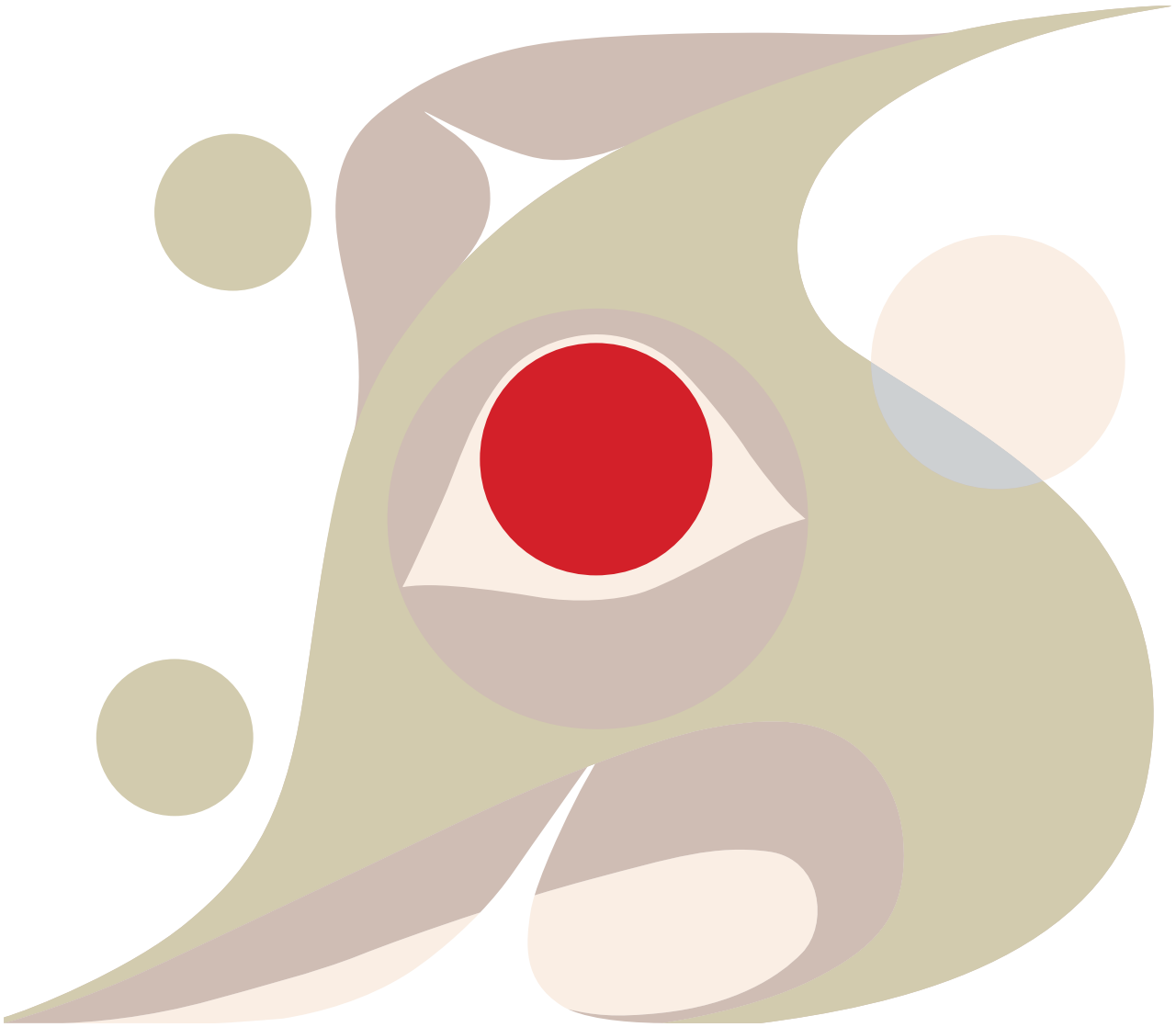
Recommendation 73:

MCFD review *CFCSA* with the specific aim of identifying legislative changes needed to minimize circumstances where a child is moved out of temporary care and under a CCO:

- Consideration during this review should be given to potentially requiring an Indigenous community's consent to move the child under a CCO.

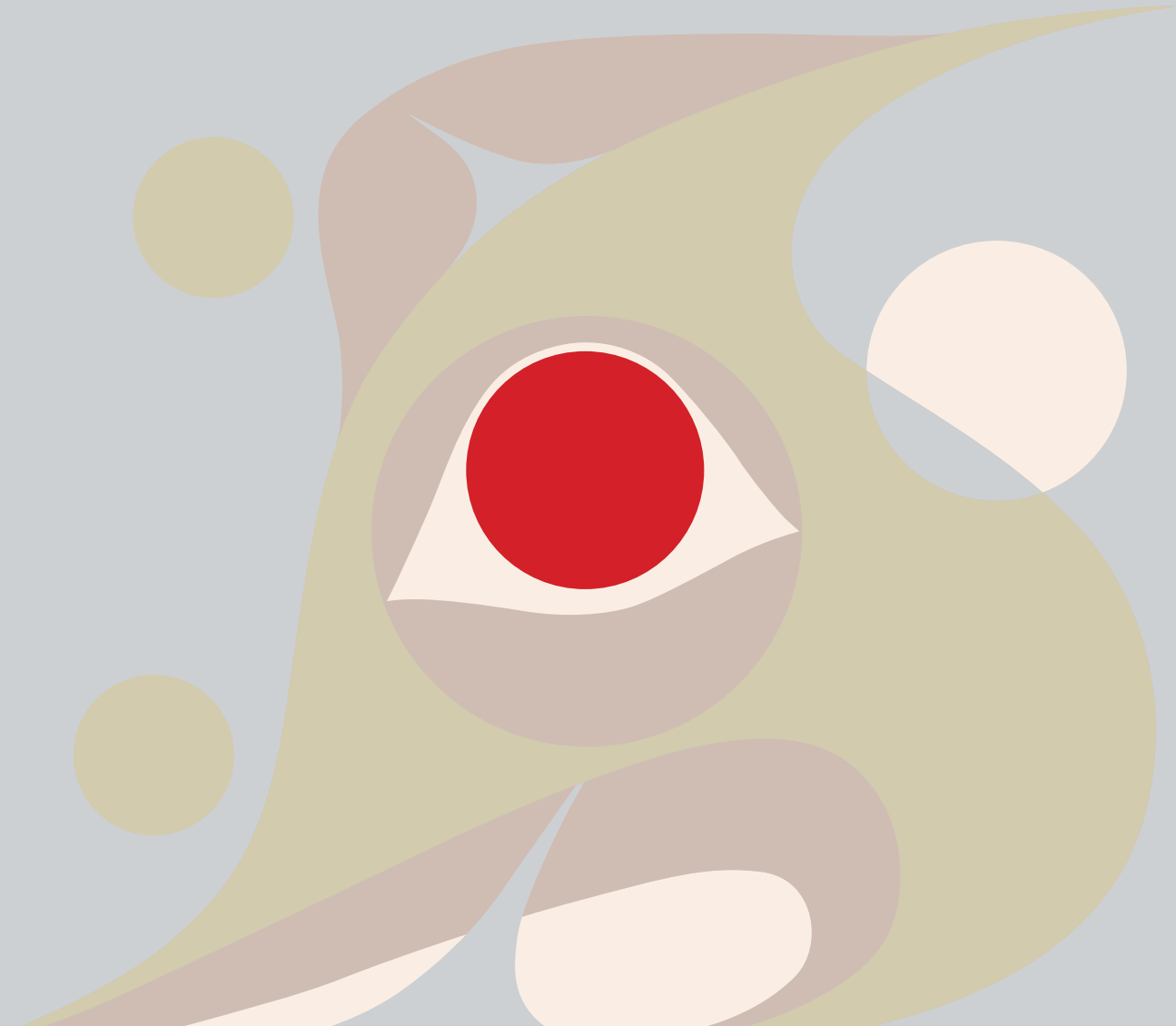
Recommendation 74:

MCFD designate an Indigenous Director under the authority of *CFCSA*, equipped to make decisions under the authority of *CFCSA* that are based on cultural knowledge, and better account for historical circumstances and resultant intergenerational trauma.



AREAS FOR FOCUSED ACTION

AREA 9. THE EXISTING POLICY FRAMEWORK–SHIFTING TOWARDS PATTERNS OF CONNECTEDNESS



AREA 9. THE EXISTING POLICY FRAMEWORK – SHIFTING TOWARDS PATTERNS OF CONNECTEDNESS

Numerous reports have described the inadequate policy framework governing Indigenous child and family services in BC. Still, the Province has seen "action plans" without timely commitments to the actions articulated. To quote the RCY, the provincial story of Indigenous children in care represents "a colossal failure of public policy to do the right thing for citizens" (RCY Report, *When Talk Trumped Service*, p.4). Without a strong policy framework guiding the efforts of the Province, I believe that those I met with are correct in warning that we can only expect to see the child welfare system continue to fail Indigenous children, youth, and families.

The Province requires an immediate investment in the development of a clear policy framework to govern its own service provision, and a renewed vision for engagement with the federal government and Indigenous governments and organizations.

While the Province is responsible for the regulation and provision of child welfare services to children in BC, the federal government has a responsibility to provide services for Indigenous Canadians. The relationship between the federal and provincial governments is far from straightforward, and a lack of clarity around roles and responsibilities has, in practice, confused reporting structures and negatively impacted the quality of services delivered to Indigenous children in BC.

As discussed earlier in this report, the *2016 CHRT 2* decision confirmed that the level of service provided by the federal government on reserves is significantly lower than the support provincial governments provide to children off reserve, and that this constitutes discrimination. Challenges to funding for the child welfare system are explored at length throughout the *2016 CHRT 2* decision and in other sections of this report; however, the issues facing the system do not solely relate to funding levels.

There exists a significant departure between what is increasingly recognized as best practice in Indigenous child welfare, and existing public policy approaches. Most notable, Canada and the Province continue to invest in and support an expensive foster care system, rather than investing in the necessary supports to strengthen Indigenous families and communities, and break cycles of intergenerational trauma.

Throughout this report, I have made a series of recommendations for necessary changes to practice that will offer supports to Indigenous children, youth, parents, families, and communities. However, without a clear policy framework to guide the actions at all levels of government and service delivery, these changes – in isolation – are far less likely to be implemented effectively.

This section seeks to address some of the high-level policy changes that will be critical, at both the federal and provincial levels, to support the necessary changes to the child welfare system that serves Indigenous children and their families.

EXISTING MCFD POLICY DIRECTIVES

MCFD child welfare services and operations continue to suggest a bias towards child protection activities. Despite having available mechanisms in place to allow for flexibility in approaches, the absence of clear policy directives to prioritize preventative action and family preservation, for

example, often results in a child welfare system that remains focused on protection services versus preventative services.

The MCFD 2015/17 – 2018/19 Service Plan is premised entirely on child protection, including five goals and supporting objectives, strategies, and performance measures. There are opportunities throughout the Service Plan to have incorporated preventative actions and services to support the preservation of families. As an example of a gap, in order to advance and assist in achieving permanency for children and youth in care, attention must be paid to the critical need of parents who require access to services in order to keep their children. The plan addresses a number of supports to be made available to foster and adoptive parents, but does not set out a plan to support birth parents. The policy direction given by this Service Plan does not offer MCFD the necessary guidance to alter existing practices towards an approach that favours prevention.

In reviewing the Service Plan, I saw that there were references to Indigenous community services throughout. I would recommend that a completely separate service plan be developed, in accordance with the provisions within the *CFCSA* and the *BC Budget and Transparency Act*, that explicitly targets the needs of Indigenous communities and families (Recommendation 77). This will help to facilitate much more effective monitoring in terms of services delivered to Indigenous children and families.

Another potentially useful tool that is being underutilized is the *Aboriginal Policy and Practice Framework*. This Framework was co-developed by MCFD and DAAs in 2015, but has yet to be fully implemented. This framework outlines an approach to developing policy and practice that is grounded in restorative practices that empower Indigenous communities to deliver services based on their own cultures and traditions.

The *Aboriginal Policy and Practice Framework* seeks to incorporate Indigenous practices for raising

THE *ABORIGINAL POLICY AND PRACTICE FRAMEWORK* – A GUIDE

The *Aboriginal Policy and Practice Framework* has been designed to support improved outcomes for Indigenous people through restorative policies and practices, which are those that are informed by experiences of trauma, and support and honour Indigenous cultural practices.

The foundational model of the framework is based on four key aspects of effective policy and practice:

1. Child, Youth, Family and Community-centred;
2. Culture-centred;
3. Inclusive, Collaborative and Accountable; and,
4. Resilience, Wellness and Healing.

The framework also includes a set of key values to guide and inform policy and practice and advocates for the use of a model called "The Circle" to shape approaches to care.

children. The framework highlights the importance of traditional approaches, such as prioritizing the need to incorporate a child's entire community into their upbringing, as well as placing an emphasis on supporting children to learn about their Indigenous identity and culture.

In BC, MCFD needs to work to implement the *Aboriginal Policy and Practice Framework* with the DAAs that see it as being complementary to their existing practice. This framework offers guidelines that can serve to alter practice in the Province in favour of preventative action and efforts to

THE ABORIGINAL POLICY AND PRACTICE FRAMEWORK AND INDIGENOUS APPROACHES TO RAISING CHILDREN

Roles of ancestors, community, elders, family and extended family in upholding the sacredness of children: Aboriginal cultures honour the sacred link between past generations and their responsibilities for current and future generations. For many Aboriginal peoples, children are considered sacred gifts from the Creator, with their place in the centre of the Circle. Of equal importance in the Circle are youth, young adults, family and community (inclusive of extended family and traditional family systems), and organizational and governing structures each have a role and share an important responsibility to uphold and support children, youth and families within the Circle.

The family, including extended family, is recognized as the expert in caring for their children. Elders and traditional knowledge keepers also hold an important role in sharing the traditional values and sacred teachings of caring for and nurturing children.

Roles of Ancestors, Community, Elders, Family and Extended Family in Upholding the Sacredness of Children – As policy leads and practitioners we must understand and value traditional approaches and cultural systems of caring. (p.13)

CULTURE, TRADITION, VALUES, LANGUAGE and IDENTITY: The roles of culture, tradition, values and language are essential to the well-being of Aboriginal children, youth and families, and are fundamental to healthy processes of identity formation. The way in which services are delivered – and the way in which Aboriginal children, youth and families are engaged with these services – must reflect and respect their particular cultures, language, traditions and values.

Role of Culture, Tradition, Values, Language and Identity – As policy leads and practitioners we must consider community protocol on how individuals are approached, who needs to be involved, the process of involving them, the language used and when translators, Elders or cultural persons are required. Traditional decision-making processes must be considered to strengthen the inclusion of culture, tradition, values and language and to support positive identity formation. (p.14)

ensure that every child is afforded the opportunity to remain connected to his or her family and community.

DOCUMENTING INDIGENOUS IDENTITY

Clearly documenting Indigenous identity is a critical part of ensuring that children and families have access to relevant services, including culturally relevant approaches and materials. The current system of gathering this information in BC is reliant on self-identification, or having a social worker make the identification. The current system results in a high level of underreporting for Indigenous children currently engaged in the child welfare system, including Indigenous children in care. It also leads to inaccuracies in data when it comes to analysis and monitoring of program impacts.

SUPPORTING CHILD WELFARE PROFESSIONALS IN INDIGENOUS COMMUNITIES

Well-trained and dedicated professionals are essential to effectively delivering child welfare services to Indigenous peoples. It is critical that child welfare providers are supported by their organizations, and that front-line social workers are given a manageable case volume, and access to a full range of services to support their clients. The RCY released a report in October 2015 titled *The Thin Front Line: MCFD staffing crunch leaves social workers over-burdened, B.C. children under-protected*. This report identified some of the challenges facing MCFD front-line social workers, including decreasing staffing levels and the increasing complexity of their work.

The British Columbia Government and Services Employees' Union (BCGEU) has also released multiple reports identifying systemic failures in the child welfare system in the province and how these failures have translated into substandard service delivery on the ground. In their 2015 report, *Closing the Circle*, BCGEU identified a series of issues that front-line workers and clients face on an ongoing basis, including a lack of culturally appropriate programming, unrealistic case load volumes, and systemic complexity.

BUILDING AND SUPPORTING AN INDIGENOUS WORKFORCE

Indigenous people are significantly underrepresented in the child welfare workforce in BC. The RCY has, on many occasions, made recommendations to see enhanced Indigenous representation at MCFD. The 2014 RCY report, *When Talk Trumped Service*, suggested that "at least one person on the senior executive team must be an Aboriginal person." The 2015 RCY report, *The Thin Front Line*, identified the need to increase the number of Indigenous staff members at MCFD, suggesting that there be a minimum increase in representation amongst social workers to at least 15%.

Many individuals I met with emphasized there is a critical need for a strong plan to be developed to recruit and retain Indigenous people to roles within MCFD (Recommendation 78 and 79). Those I met with reinforced that it is essential that this plan apply not only to front-line social worker positions, but also to positions within the senior executive team at MCFD. MCFD has developed an *Aboriginal Recruitment & Retention Workplan* that applies to all job classifications, across all six service lines, and corporate functions. The odds of successfully implementing this workplan would increase substantively if Indigenous communities and organizations were invited and supported to participate as active partners in this work to recruit and retain Indigenous workers.

CLOSING THE CIRCLE: A CASE FOR REINVESTING IN ABORIGINAL CHILD, YOUTH AND FAMILY SERVICES IN BRITISH COLUMBIA

In October 2015, the BC Government and Services Employees' Union (BCGEU) released a report titled, *Closing the Circle: a case for reinvesting in Aboriginal child, youth and family services in British Columbia* as a part of its Choose Children Campaign. This campaign seeks to bring attention to the systemic failures in the BC child welfare system and began with a report released in November 2014 titled *Choose Children: A Case for Reinvesting in Child, Youth, and Family Services in British Columbia*. This report identified a number of critical shortcomings in the child welfare system in BC, including a significant deficit in qualified and trained staff to work in Indigenous service agencies. It stressed the demand for specialized knowledge to ensure the effective delivery of services to Indigenous children, families and communities.

The *Closing the Circle* report took the next step to identify the systemic failures that existed specifically in the Indigenous child welfare system. The report reviewed key themes, including historical and cultural factors, mistrust, systemic complexity, lack of culturally appropriate services, insufficient funding, and workloads. Throughout this review, the BCGEU identified an extensive set of challenges facing the Indigenous child welfare system.

The report made a series of recommendations in response to this review, including:

- Developing a comprehensive policy framework for Indigenous child, youth and family services;
- Changing the existing welfare system to promote consistency for funding/services available to both on- and off- reserve populations;
- Enhancing systems to support the success of DAAs (i.e. relationship building, reducing bureaucratic obstacles, recruitment support, etc.); and
- Creatiing a core MCFD business area for Aboriginal Services that is responsible for developing a yearly "Operational Performance and Strategic Management Report" with clear indicators and statistics pertaining to service delivery and performance outcomes.

BCGEU suggested that establishing a core MCFD business area for Indigenous Services would afford the Ministry the opportunity to establish a transparent system of tracking for services delivered and funds expended on the needs of Indigenous children and families in the province. This would facilitate enhanced oversight for all operational areas of the province's Indigenous child welfare system.

BC'S REPRESENTATIVE FOR CHILDREN AND YOUTH ON THE NEED FOR AN INCREASED INDIGENOUS WORKFORCE

RCY Report, The Thin Front Line, Recommendation 5: *That MCFD and the B.C. Public Service Agency make the recruitment and retention of Aboriginal staff at MCFD a priority and set specific targets to reach this goal.*

The child welfare system needs the unique insights and perspectives that Aboriginal social workers can bring to their practice, and, as the number of children in care of Aboriginal background is a majority, this imperative to diversify is clear.

MOVING TO A NEW MODEL

Moving to a new model for Indigenous child welfare in BC will mean looking seriously at all child welfare services and the promising practices that are emerging to meet the needs of Indigenous children, youth, and families.

One example is Touchstones of Hope, a set of guiding principles intended to build reconciliation into child welfare services. These guiding principles have been utilized by DAAs in Northern BC to help shape their five- and ten- year child and family welfare plans. The Saskatchewan Advocate for Children and Youth has also adopted Touchstones of Hope as guiding principles for promoting changes to the Indigenous child welfare system in Saskatchewan.

In addition to promising practices like Touchstones of Hope, it is also essential for BC to review various on-the-ground models of service delivery that support preventative action and family development. This will assist in developing a set of tools and practices that will better support children and families.

The Ktunaxa Kinbasket Child & Family Services Society (KKCFSS) is a DAA providing child welfare and child protection services to Indigenous peoples (First Nations, Métis, and Inuit) on and off reserve in Ktunaxa traditional territory. They have adopted an approach called Signs of Safety, which is a model that they feel aligns with Ktunaxa beliefs and culture.

This model employed by the Ktunaxa empowers Indigenous families to take ownership of their plan, and allows them to identify areas of concern, and develop their own solutions. The KKCFSS view the Signs of Safety as a non-threatening approach that helps the team, which is made up of the family and the KKCFSS, to visually showcase positive aspects of the situation, as well as areas that need to be improved. They have been using this model since 2008 and have found it to be a powerful tool for the work that they do.

During my appointment, I was advised by Ktunaxa leadership that MCFD was considering ending their support for the Signs of Safety model used by KKCFSS. This did not make sense to me, as this approach is producing positive and constructive results for Ktunaxa children, families, and communities. Fortunately, MCFD reconsidered and will continue to support Ktunaxa to utilize the approach that is working for them.

TOUCHSTONES OF HOPE

The four Touchstones of Hope were developed collectively by approximately 200 invited leaders who attended the conference *Reconciliation: Looking Back, Reaching Forward – Indigenous Peoples and Child Welfare* in October 2005.

They are a set of guiding principles put forth to support a reconciliation process for those involved in Indigenous child welfare activities. They are laid out in the report titled *Reconciliation in child welfare: Touchstones of hope for Indigenous children, youth, and families* where the authors discuss the touchstones as the four phases of reconciliation:

Truth Telling
A process in which there is an open exchange regarding the history of child welfare, including past and current harms. This account will require a full and truthful account that respects Indigenous children, youth, and families.

Acknowledging
An affirmation of Indigenous child welfare practices as the best way forward for Indigenous peoples and communities, and recognition that the practices that have been imposed on Indigenous communities are not effective.

Restoring
A situation where the problems of the past are addressed, and Indigenous and non-Indigenous people can take mutual responsibility for child welfare and its outcomes in the future.

Relating
A recognition that reconciliation is an iterative process and a new form of ongoing relationship building that requires Indigenous and non-Indigenous people to work together to develop and implement a plan for child welfare.

SIGNS OF SAFETY

Signs of Safety is a model developed in Australia by Andrew Turnell and Steve Edwards based on information received from a range of front-line practitioners about what methods actually work in practice. This model has since been utilized in communities across the world, including Indigenous communities in Canada.

The model is based on the idea that parents and families need to be involved in the planning process relating to child welfare, rather than having a practitioner telling the family what to do.

It is based on collaborative efforts to assess the situation and build a plan that will address the needs of the family.

The process includes a risk assessment framework that is completed collaboratively with the parents and family. There are also opportunities to ensure that the child has the opportunity to incorporate his or her voice into the plan. The development and implementation of a plan also requires the involvement of a family's community and network. This helps to ensure the family is supported to find success.

The Signs of Safety model is one promising practice that MCFD and DAAs can learn from going forward, as it is already working to shape new approaches to child welfare activities, particularly in the way that this model seeks to empower parents and families to take an active role in planning (Recommendation 80).

INDEPENDENT OVERSIGHT

Early in my appointment, I reviewed a consolidated list of recommendations on permanency that have been made by the RCY through various reports on the topic of Indigenous child welfare. These reports and the associated recommendations are insightful, sometimes cutting, yet unequivocally support efforts to ensure the safety, dignity and well-being of all children and youth in care, including Indigenous children and youth. I carefully reviewed those permanency-related recommendations the RCY provided to me and I support their implementation.

BC's RCY reports are tabled in the Legislature, and it would be helpful for MCFD and other ministries like Education and Health, to be required to table their respective considerations and actions taken in response to the recommendations in these reports. This should be done annually to ensure the Province remains accountable to the recommendations presented in RCY reports.

I would additionally recommend that the mandate of the RCY should be revised to ensure that reports dealing with Indigenous children and youth are also tabled by RCY with the elected leaders of Indigenous communities and their representative organizations (Recommendation 81). Presently, many Indigenous leaders are not made aware of the reports, nor are they kept updated on developments made or actions taken on the recommendations put forth, and this is a lost opportunity. The reports deal with issues of critical importance to Indigenous peoples and their only source of information should not be the media or websites. There needs to be a better system of engaging Indigenous communities and leaders in this reporting process in order to support ongoing feedback.

The independent nature of the RCY's office provides important assurances that Indigenous child welfare issues do not languish in the bewildering layers of bureaucracy, legislation, regulations, policies and practice standards. The authority and power of the Director appointed by the Minister under *CFCSA* is immense, and for this reason alone there

is a continuing need for an independent-oversight mechanism. An improved but internal MCFD quality assurance model will not provide this in the same way that an independent officer of the legislature can.

In my opinion, given the gravity of what I have heard during meetings with Indigenous communities and families across BC, it is essential to continue to have an independent officer of the legislature review MCFD operations and practice involving Indigenous children under CCOs (Recommendation 81). I am certain that internal MCFD quality assurance instrument and accountability processes, no matter how well designed, will not provide the necessary level of comfort to the parents, extended families, matriarchs, Hereditary Chiefs, elected Chiefs and councillors. The divide is too wide and too deep, and suspicions about government intentions are always just below the surface.

RECONCILIATION AND A REFORMED POLICY FRAMEWORK

Positive changes to the child welfare system in BC will only happen if there is collaboration between the Province, the federal government, Indigenous governments, and non-government organizations. Each party has committed to put the interests of children first, but to achieve this goal in practice requires a clear Indigenous child welfare policy framework.

Nearly ten years ago, Members of Parliament in Canada's House of Commons unanimously supported Jordan's Principle and agreed to resolve jurisdictional disputes relating to Indigenous children in care. In BC, the time for a collaborative approach to developing Indigenous child welfare policy framework is now. In July 2016, on the heels of the *2016 CHRT 2* decision that found that the narrow definition of the Jordan's Principle applied by the federal government is insufficient, Canada's Minister for INAC announced up to $382 million in new funding to implement Jordan's Principle.

JORDAN'S PRINCIPLE

Jordan's Principle is based on the principle that First Nations children should never be denied immediate access to essential public services that would otherwise be available to all other Canadian children. The principle states that children should always come first in cases of jurisdictional disputes between the different branches of government and/or departments or ministries within the same branch of government – in the case of dispute the agency of first contact must pay for the service without delay or disruption.

It is named in honour of Jordan River Anderson. This young boy from Norway House Cree Nation in Manitoba who spent over two years in hospital waiting for services while the provincial and federal government disputed who would be responsible for him to have access to in-home care. He passed away in hospital in 2005 before the dispute was resolved.

The Canadian House of Commons unanimously passed a motion endorsing Jordan's Principle in 2007. The Principle has broad support with over 8,800 individuals and organizations having signed on as supporters of the principle in December 2014, including various government agencies such as INAC, Health Canada and the BC MCFD.

RECOMMENDATIONS AND RELATED ACTIONS

Through CHRT decisions, the *TRC Final Report*, numerous reports from the BC RCY, and others, the stage has been set to develop a comprehensive Indigenous child welfare policy framework that will support reconciliation and the resiliency of Indigenous families and communities in the province. Together with Indigenous communities and leaders, the federal and provincial governments can and should develop a framework that embeds an understanding and acknowledgement of trauma, outlining specific, goal-oriented actions to achieve change. The following recommendations identify specific actions towards the goal of a comprehensive Indigenous child welfare policy framework in BC:

Recommendation 75:

MCFD, INAC, and DAAs move to jointly adopt a clear and overarching Indigenous child welfare policy framework in BC that is premised on support for prevention and connectedness, reconciliation, and resiliency.

Recommendation 76:

MCFD take immediate steps to implement the jointly developed *Aboriginal Policy and Practice Framework* for those DAAs that see it as complementary and in support of their practices.

Recommendation 77:

MCFD, in collaboration with DAAs and representatives of Indigenous communities, develop a separate service plan for Indigenous child and family welfare, including an Indigenous ADM to oversee the plan, and confirm a distinct budget allocation for this planning process and its subsequent implementation.

Recommendation 78:

MCFD commit to immediate actions to recruit and retain Indigenous individuals for leadership positions within MCFD and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of those individuals who are recruited to these positions.

Recommendation 79:

MCFD commit to immediate actions to recruit and retain Indigenous social workers and front-line staff and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of the individuals recruited to these positions.

Recommendation 80:

MCFD work to remove any existing barriers for DAAs that have expressed an interest in continuing or shifting their child welfare approaches to utilize approaches that support community involvement, prevention, and reconciliation, such as Signs of Safety and Touchstones of Hope.

Recommendation 81:

The Province support the continued independent oversight role of the BC Representative for Children and Youth (RCY) as it relates to Indigenous children and youth through the following specific actions:

- Allocate funding to support the continuation of this oversight role;
- Expand the mandate of the BC RCY to ensure distribution of reports and reporting documents to Indigenous communities and organizations; and
- Expand the mandate of the BC RCY to provide oversight that will ensure the Province's commitment to actively involve Indigenous communities in planning for all Indigenous children under CCOs is upheld.

Recommendation 82:

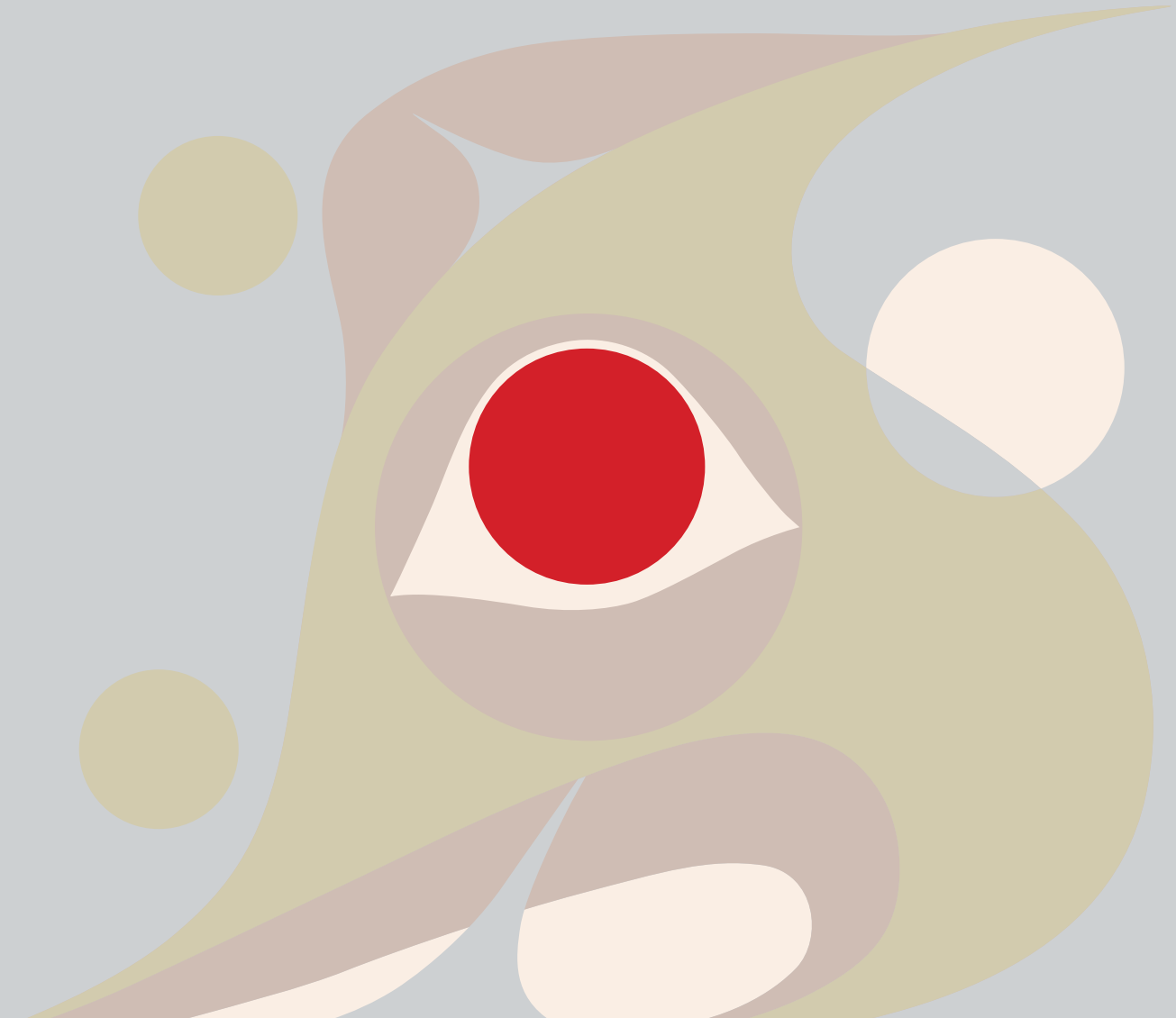
Provincial ministries, including MCFD, Education and Health, be required to table annually in the provincial Legislature their respective responses to BC RCY reports and recommendations regarding Indigenous child welfare.

Recommendation 83:

The Province and Canada commit to jointly develop improved data collection and analysis that will support program development and effective service delivery for Indigenous child welfare in BC.

AREAS FOR FOCUSED ACTION

AREA 10. A NATIONAL STRATEGY FOR INDIGENOUS CHILD WELFARE



AREA 10. A NATIONAL STRATEGY FOR INDIGENOUS CHILD WELFARE

The intergenerational trauma that is so prevalent in Indigenous communities across BC is a direct result of federal policies, such as those behind the 60's Scoop and the residential school system. This trauma has resulted in a breakdown of families in Indigenous communities, and a growing disconnect between our children and their cultures. The federal government must come to the table to work with the provinces, and Indigenous communities and organizations, to rectify the past damage that has been done and to develop action-centered policy that will support a child welfare system that truly serves Indigenous families.

While the regulation and provision of child welfare services may be a responsibility delegated to the provincial government, Canada's reconciliation with Indigenous people requires the federal government to be an active partner in addressing the existing ills of the child welfare system that are highlighted throughout this report.

> *The over-representation of Aboriginal children in Canadian child welfare systems is a serious national problem for which a solution must be found for the benefit of Aboriginal children, and all Canadians (Hon. Ted Hughes, The Legacy of Phoenix Sinclair: Achieving the Best for All Our Children, 2013, Vol. 1, p.49).*

FEDERAL LEGISLATION ON INDIGENOUS CHILD WELFARE

I have discussed, throughout this report, the national Calls to Action set forth in the *TRC Final Report*, and the orders given through the *2016 CHRT 2* decision. In TRC *Call to Action 4*, the TRC tasks the federal government with developing national level Indigenous child-welfare legislation:

> *We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:*
>
> *i. Affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies.*
>
> *ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision-making.*
>
> *iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.*

To date, commitments made by the federal government to act on recommendations, such as those made by Prime Minister Trudeau in his response to the *TRC Final Report* in December 2015, have yet to be fully realized.

> *... we will, in partnership with Indigenous communities, the provinces, territories, and other vital partners, fully implement the Calls to Action of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.*
>
> *– Prime Minister Justin Trudeau during his Statement by the Prime Minister on the release of the Final Report of the Truth and Reconciliation Commission, December 2015*

I heard directly from many with whom I met that Canada needs a new, strong legislative foundation. Consistent with the TRC's Calls to Action, I urge the federal government to act immediately to engage Indigenous peoples in Canada in the development of national legislation, such as an Indigenous Child Welfare Act (Recommendation 84). New federal legislation is required to set a national-level policy framework for Indigenous child welfare service providers across the country.

There have been many agencies and organizations addressing issues of national strategies for Indigenous child welfare, and many have addressed the need for national-level legislation. As an example, in 2010, children's advocates from nine provinces, together forming the Canadian Council of Provincial Child and Youth Advocates (CCPCYA), produced a position paper titled, *Aboriginal Children and Youth in Canada: Canada Must Do Better*. In it, the CCPCYA put forth a series of recommendations, a few of which I wish to highlight, and expect to see addressed in legislation.

Strong federal legislation must be jointly developed with Indigenous communities and organizations. It must also ensure that mechanisms have been developed to overcome the jurisdictional challenges that currently impact data collection, equitable funding and service delivery, and must include clear definitions of roles and responsibilities. The development of this legislation should be a critical component of a new national strategy for Indigenous child welfare. In this regard, a

CCPCYA POSITION PAPER: *ABORIGINAL CHILDREN AND YOUTH IN CANADA: CANADA MUST DO BETTER*

The CCPCYA is an association of children and youth advocates from across Canada. They work to further the rights of children and youth across the country. They released a position paper in June 2010 titled, *Aboriginal Children and Youth in Canada: Canada Must Do Better*. This paper addressed some of the significant gaps in the Indigenous child welfare system and made a series of recommendations for national level actions.

Selected recommendations include:

1. Creation of a statutory officer independent from the Parliament of Canada, but accountable to the Parliament, a "National Children's Commissioner" with particular emphasis on Aboriginal children and youth and the national dimension of the work on programs, evaluation and outcomes;
2. A national initiative to measure and report on child welfare, education and health outcomes for Aboriginal children and youth. This will require creation and coordination of data, and clear assignment of roles and accountabilities.

critical examination of the Indian child welfare laws, standards, and practices in the US should be undertaken to inform the discussions about legislative development and the implementation of a national strategy.

NATIONAL ACTION PLANNING

In the *2016 CHRT 2* decision, the CHRT referred to the federal government's ad-hoc funding adjustments in the area of child welfare as being analogous to "adding support pillars to a house that has a weak foundation in an attempt to straighten and support the house. At some point the foundation needs to be fixed or the house will fall down" (para. 463). This analogy should be more broadly applied to the policies, practices and regulations pertaining to Indigenous child welfare across the country. The need for a national-level strategy is evident.

Numerous international policy frameworks have called for national-level approaches and action plans relating to issues impacting Indigenous peoples. As an example, in the Outcome Document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, a resolution was adopted in September 2014, wherein the General Assembly addressed the importance of developing "national action plans, strategies or other measures" that would help to support achieving what has been set out in the *United Nations Declaration on the Rights of Indigenous Peoples*:

> *Resolution 8: We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration.*

Despite numerous calls, by multiple parties with diverse interests, for better coordination across jurisdictions, Canada continues to lack a comprehensive Indigenous child welfare strategy at the national level. Without such a strategy, provinces and service providers lack the ability to coordinate action. This results in failures that cause inconsistent data collection, inequitable standards of service delivery across jurisdictions, and gaps in child safety services and supports between provinces and/or territories.

In 2014, Premiers across the country agreed to work together towards the development of solutions to reduce the number of children in care. A working group of provincial and territorial Ministers was assembled in August 2014 with the goal of reporting promising practices to Canada's Premiers by the following summer. Representatives at the federal level did not respond to invitations to participate in the work, an issue that is reflected in authors' concluding words of the report:

> *As provinces and territories, and Aboriginal partners focus on reducing Aboriginal children in care and improving outcomes for Aboriginal children – either separately or in collaboration with each other – the need for meaningful federal engagement remains a critical necessity for positive change. (Aboriginal Children in Care: Report to Canada's Premiers, July 2015)*

I recommend that there be an immediate move towards the development of a national action plan on Indigenous child welfare involving the provinces, Canada and Indigenous governments. I challenge BC's Premier to work jointly with the Council of the Federation to move this action forward (Recommendation 85) and develop a national-level strategy that specifically, though not exclusively, targets all key areas of jurisdictional dispute.

RECOMMENDATIONS AND RELATED ACTIONS

The following recommendations are made in support of a national strategy for Indigenous child welfare in Canada, and urge the federal government to act to fulfill their commitment to reconciliation with Indigenous peoples in BC and across Canada in the area of child welfare. While these recommendations target the federal government, Indigenous peoples and governments, as well as the provinces, are viewed as critical partners in ensuring the effective implementation of these recommendations.

Recommendation 84:

Canada move immediately to develop new federal Indigenous child welfare legislation in partnership with Indigenous peoples and to support more consistent and improved outcomes for Indigenous children and families. At minimum, the new federal legislation should provide for:

- The creation of a statutory officer independent from the Parliament of Canada, but accountable to the Parliament, whose role is to oversee the development of a comprehensive national strategy, as well as its implementation, and evaluate progress towards the outcomes laid out therein;
- The establishment of clear roles and responsibilities for various levels of governments in the provision of child welfare services;
- The setting of national standards for the provision of out-of-province / territory placements for children in their guardianship, and details on compliance with these standards; and
- The development of a national strategy that includes: principles and agreed-upon indicators to guide the national coordination of data collection, and collective, measurable targets and strategies to achieve them.

Recommendation 85:

The Premier of BC champion and work with other Premiers through the Council of the Federation to develop a national action plan on Indigenous child welfare. This plan should be developed in a way that:

- Ensures Canada's national approach to child welfare is consistent with the findings of the *2016 CHRT 2* decision and subsequent orders of the CHRT;
- Promotes the effective implementation of the TRC's Calls to Action 1-5;
- Ensures Canada's national approach to child welfare is consistent with commitments made in international decision documents such as the *World Conference on Indigenous Peoples Outcome Document*, the *United Nations Declaration on the Rights of Indigenous Peoples*, and the *United Nations Convention on the Rights of the Child*; and
- Promotes child welfare services and approaches nationally that are culturally based, prioritize prevention and resilience, support connectedness with communities, and preserve and reunify families where possible.

III. FINAL REFLECTIONS

Over the past year, visiting Indigenous communities across BC, and meeting with leadership, parents, and families, has reinforced for me that progress towards addressing the serious challenges with child and family services, has been achieved through the determined leadership of Indigenous people, as well as strong community engagement, comprehensive strategic planning, and the creative execution of community-based solutions. I am convinced that the roles of federal and provincial governments should be to support community-driven initiatives within Indigenous communities, and not to direct solutions they deem to be in Indigenous communities' or children's best interests.

Indigenous peoples have been re-building new pathways in a modern world. Remarkable progress has been made when Indigenous peoples have built on the strengths of their cultures, and traditional knowledge and practices, combining these with teachings in universities, colleges and technical institutions. Countless examples are offered in this report of that important work. In BC, our Indigenous children and youth, with guidance and support from their elders and cultural leaders, are going to the longhouses in ever-increasing numbers. They are picking up their drums, learning their ancestral songs, creating new songs, listening to and gaining understanding of the teachings and practices on the floors of the potlatch houses. We all need to stand with them.

That there will continue to be challenges goes without saying. That there are situations in this province where Indigenous children are not able to return to their parents' home is a difficult truth. Intergenerational trauma is very real and, to date, has not received anywhere close to an appropriate response, in terms of supports from all levels of government. As indicated in this report and numerous studies before it, it is also a reality that the socio-economic gaps between Indigenous and non-Indigenous people and families remain wide. Yet, no one, least of all Indigenous children and youth, is served by sitting and lamenting about these challenges. Our time is better spent working together to understand the root causes – the source and magnitude of these challenges – and to collectively develop root solutions.

The recommendations in this report reflect the collective advice I received from Indigenous communities and leadership in BC. I hope that the recommendations will be taken up in true partnership with Indigenous parents, families, and communities so that the root solutions can be developed to support our current generation of Indigenous children and parents.

ACKNOWLEDGEMENTS

I wish to acknowledge the small, dedicated team that worked to support me over the term of my appointment and in the development of this report. To Priscilla Sabbas-Watts and Holden Chu, who joined me on the journey from the beginning and were present at all of the meetings across the province with families, communities, organizations and leadership, thank you for your commitment to this work together. Thank you to Colin Braker and the First Nations Summit staff, who expertly dealt with the challenging logistics that made possible our meetings with so many. Thanks to Alyssa Melnyk, who joined our small team late in my term to support the writing and who worked expertly to ensure that the voices and strong recommendations of those I met with were reflected in this report.

Thanks are due to my colleagues on the First Nations Leadership Council for their support, and encouragement in this work.

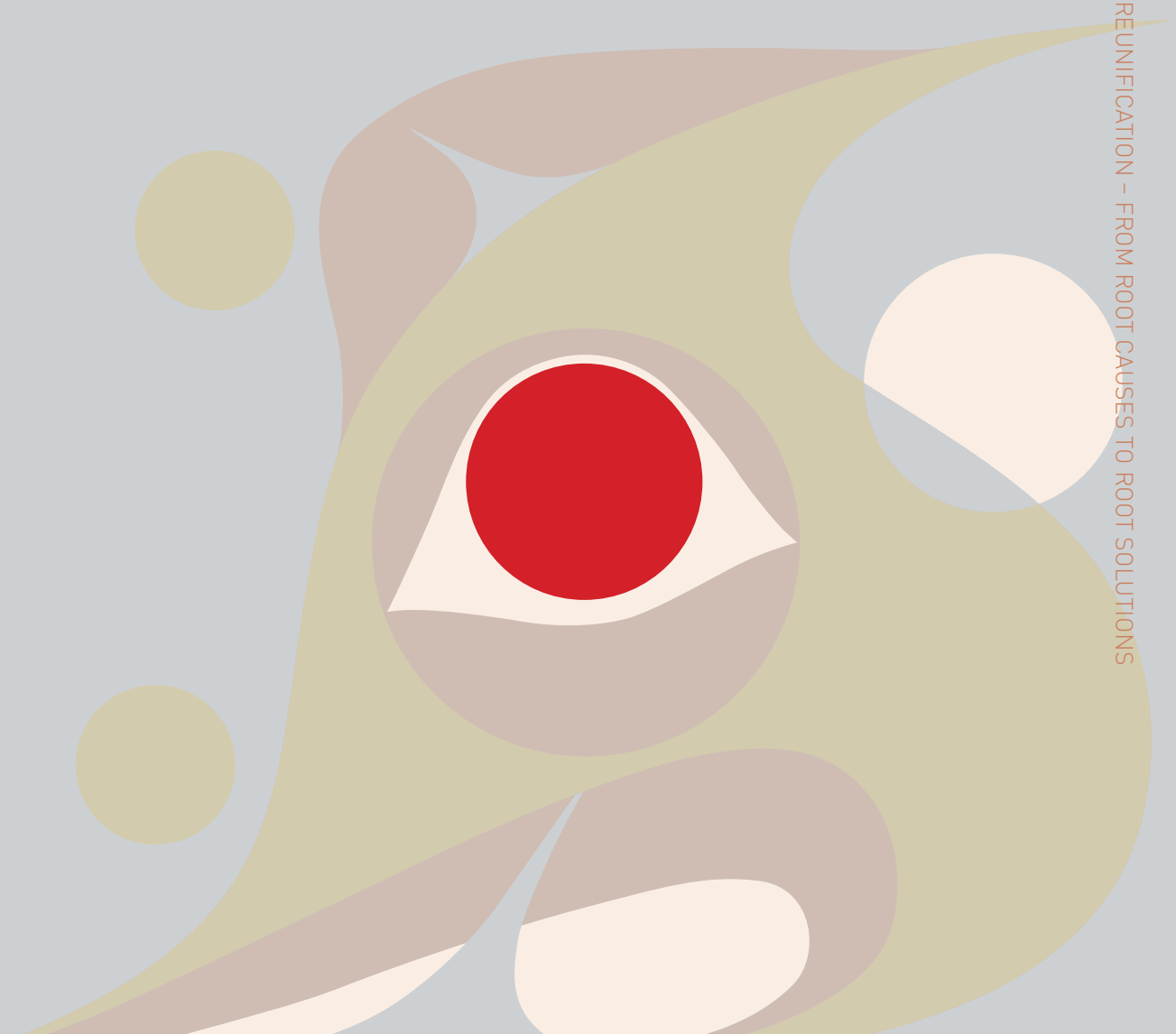
Throughout my appointment, I often requested information from the Ministry, and without exception, this information was provided quickly. This report benefited from the cooperation and support of leadership and staff at MCFD headquarters.

Many Indigenous children and families in BC are served by the 23 Delegated Aboriginal Agencies (DAAs) operating in BC. Special thanks are due to the devoted leadership and staff at these DAAs who gave so generously of their time and expertise during my appointment.

Finally, to all the dedicated individuals I met with over my appointment, thank you for the courage of your words and your steadfast commitment to our children. It is my sincere hope that this report will serve to support the advancement of the root solutions that you have so strongly advocated for and that we all desire.

APPENDIX A

CONSOLIDATED LIST OF RECOMMENDATIONS



AREA FOR FOCUSED ACTION 1. DIRECT SUPPORT FOR INDIGENOUS CHILDREN, PARENTS AND FAMILIES IN ALL INDIGENOUS COMMUNITIES

Recommendation 1:

MCFD and INAC invest in the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- MCFD and INAC commit to invest an additional $8 million annually to increase the number of social workers, support workers, and others serving First Nations communities in BC by at least 92 FTEs over the next two years;
- MCFD take immediate action to ensure that the additional front-line staff identified above are placed directly within First Nations communities in BC;
- MCFD and INAC work together to ensure that a child and family liaison and advocate is funded for each First Nation community as a support service to parents, families, leaders, and members who require support within the community or to navigate the child welfare system; and
- MCFD, with the objective of maximizing its child safety recruitment, review the entry-level qualifications for front-line workers. to consider educational and experiential requirements for child safety positions.

Recommendation 2:

MCFD and INAC invest in the development and delivery of child and family services directly to the Métis in BC, by increasing the number of front-line staff working directly with Métis in BC.

Recommendation 3:

MCFD support existing promising practices that are focused on the development and delivery of child and family services directly within First Nations communities in BC, through the following specific actions:

- In conjunction with Recommendation 1, MCFD and INAC provide support for the expansion of the Sts'ailes pilot project as a model for other interested First Nations communities within BC; and
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model to support prevention based on active interventions in support of children and families.

Recommendation 4:

Each MCFD region undertake a review of planned and existing front-line staff with a view to re-profile and direct, according to need, full-time employees to work directly within Indigenous communities to directly support parents and families, and to enhance community-based services.

Recommendation 5:

MCFD require their Regional Executive Directors of Services for each region to meet regularly with Métis leaders, and First Nations leaders/elders from communities within their region.

Recommendation 6:

MCFD regularly provide to each First Nation (First Nation Chiefs, councils, Hereditary Chiefs, and matriarchs) a list of all their children who are under a custody of care order.

Recommendation 7:

MCFD require that Regional Executive Directors of Service for each region have specific job requirements and performance measures that reflect the province's high-level commitment to reconciliation and the specific commitment to strengthen MCFD's relationship with Indigenous leadership, families, and communities.

Recommendation 8:

MCFD take the following immediate actions to ensure Nation-to-Nation Partnership Protocols are implemented between each Indigenous community (First Nation or Métis) and the regional MCFD office and DAA (as appropriate):

- Each MCFD regional director arrange to meet before January 2017 with all Indigenous communities and DAAs with the purpose of
  1) ensuring a current Nation-to-Nation Partnership Protocol exists between each Indigenous community (First Nation or Métis) and the regional MCFD office or DAA (as appropriate) or, in the instances where a protocol already exists,
  2) ensuring that the existing protocol is current, understood, and agreed to by all parties to the protocol;
- MCFD commit to an annual review of all Nation-to-Nation Partnership Protocols with all of the parties to each protocol.

Recommendation 9:

MCFD commit, at minimum, to the inclusion of the following core components of each Nation-to-Nation Partnership Protocol:

- A reciprocal commitment to baseline principles and objectives for a results-based approach to child welfare, including emphasis on the rights of the child and parents/extended families and communities (*UN Convention on the Rights of the Child*, UNDRIP and UNWCIP Outcome Document commitments and statutory commitments in *CFCSA)*;
- A joint commitment to alternative dispute resolution as the default approach in advance of any child removal order;
- A reciprocal commitment to build and maintain constructive working relationships in all aspects of child welfare practice impacting on an Indigenous community, including culturally based child care plans with a focus on permanency;
- The identification of jointly agreed-to obligations and responsibilities, including the commitment to communications and accountability standards;
- An agreed-to approach to implementating the protocol, including but not limited to joint planning, monitoring, and a review process;
- The term of the protocol (i.e. year to year or longer term);
- An established timeframe for periodic review of the protocol; and
- Commitment to youth engagement (See later recommendations in this report).

Recommendation 10:

MCFD and INAC provide the specific support for community-based curriculum and community-

developed services for Indigenous children and families, involving and uplifting Indigenous elders, matriarchs and hereditary leadership:

- MCFD and INAC commit to support training so Indigenous individuals and communities understand their rights regarding child welfare and capacity within communities grows;
- MCFD and INAC support Indigenous communities that wish to employ the community care committee/group model (identified in Recommendation 3) by providing funding for training of Care Committee/Group workers similar in scope to the training provided for those involved in the community Care Committee Model that was created through the Aboriginal Children and Families Chiefs Coalition.

AREA FOR FOCUSED ACTION 2. ACCESS TO JUSTICE AND CHILD WELFARE

Recommendation 11:

The Ministers of Justice and Attorney General, and Public Safety and Solicitor General convene a Justice Summit, within the context of the TRC Calls to Action on justice, to deal specifically with Indigenous child welfare matters.

Recommendation 12:

MCFD take the following specific actions, including legislative amendments to improve court proceedings relating to child welfare, thus improving access to justice for Indigenous children and youth, families and communities:

- Commit to a more collaborative approach with Indigenous communities at the start of a child protection file and in advance of the court, by defaulting to presumptions that help instead of hinder an Indigenous community wishing to participate in court proceedings or alternative dispute resolution (ADR) processes;
- The issue of "privacy" has been used by MCFD officials as a reason to deny First Nations and Métis communities access to information, and as such, *CFCSA* should be amended to clarify, confirm and ensure appropriate First Nations and Métis community leadership have access to information on their children who are in care under CCO and other child-care orders;
- Provide a notice for each presentation hearing, as well as clear, comprehensive, and up-to-date information to the First Nation or Indigenous community where each child in care is from; and
- Provide the same information to the First Nation or Indigenous community and/or their designated representative through email, as well as through the existing processes identified in the *CFCSA* regulations.

Recommendation 13:

The provincial court appoint provincial court judges whose work will focus exclusively on Indigenous children, families and communities.

Recommendation 14:

Provincial court judges undertake the following in order to improve access to justice within the child welfare system for Indigenous children and youth, parents, families, and communities:

- Ensure meaningful compliance with s. 34 and s. 35 of *CFCSA* by requiring a review in court of the effort made by MCFD or a DAA to:

  1) notify the affected Indigenous community,

2) assist the Indigenous community in participating, and

3) detailing any less disruptive measures investigated in advance of court;

- Review the form of order used in access orders for parents/guardians for children in care proceedings so that relevant issues can be raised by the child or parent and discussed;
- Exercise the authority in s. 39 (4) *CFCSA* where a child at age 12 and older has the legal right to be provided with and represented by an advocate or lawyer;
- Take into consideration how the rules of evidence are used to introduce hearsay evidence by MCFD officials in presentation hearings;
- Balance the highly discretionary, unfettered and powerful authority of the Director under *CFCSA* by exercising a greater degree of scrutiny and discretion in considering presentation applications made on the behalf of the Director by MCFD officials;
- Ensure their practice in court supports a trauma-based approach for Indigenous children and youth, parents, families, and communities, acknowledging the existing inter-generational trauma that has its roots in discriminatory laws, policies and practices of the state; and
- Make every possible effort to keep siblings together in their orders.

Recommendation 15:

MCFD take immediate action to support and expand promising practices, programs, and models that have demonstrated success in improving access to justice for Indigenous children and youth, parents, families and communities:

- MCFD support and expand the First Nation Court model across BC so that all Indigenous communities have the opportunity to be served under this model;
- MCFD continue support for the Aboriginal Family Healing Court in New Westminster.

Recommendation 16:

The BC Ministry of Justice support and provide resources to the Legal Services Society to continue and expand the "Parents Legal Centre" model to other locations where a high demand exists, including expanding to Prince George, Kamloops, Williams Lake, Campbell River, Terrace/Smithers, Surrey, and Victoria:

- A final determination of the locations for expansion should be made in consultation with the Legal Services Society and Indigenous communities and organizations.

Recommendation 17:

Native Courtworkers be supported to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters:

- The mandate of the Native Courtworker and Counselling Association of BC (NCCABC) be expanded to provide services to Indigenous families who end up in legal proceedings and in the courts on child welfare matters; and

- Canada and BC provide the necessary financial support to NCCABC to effectively deliver these services.

Recommendation 18:

MCFD take the following immediate actions to support alternative dispute resolution (ADR) processes within the child welfare system:

- Dedicate new MCFD staff, or realign existing staff, to provide facilitation for various ADR processes;
- Reinforce with MCFD staff that ADR processes be the default and not the exception, including the use of new or strengthened performance and evaluation measures regarding the effective use of ADR processes;
- Ensure that ADR processes, appropriate to the circumstances, are the default and are utilized at the earliest instance, including before a removal, or even when there is a threat of removal, and that the courts be treated as an option of last resort; and
- When a removal does occurs, mandate MCFD officials to offer some form of ADR process.

Recommendation 19:

The BC Attorney General continue and expand the existing mediation program so that it is an available option for all Indigenous parents and families involved in child welfare matters and interested in utilizing an ADR process.

Recommendation 20:

MCFD and INAC collaborate to ensure similar funds are provided to Indigenous communities for their effective participation in child protection hearings, and that these funds are provided directly to First Nations or in the alternative through the INAC-MCFD service agreement.

Recommendation 21:

The Province undertake the following change to *CFCSA*, in the interest of improving access to justice for Métis children and youth, parents, families, and communities:

- Consistent with the Supreme Court of Canada decision in *Daniels*, the definition of "Aboriginal child" in *CFCSA* be amended to add "Métis child" with consequential amendments as necessary.

Recommendation 22:

MCFD provide First Nations and the Métis Nation BC with the financial support to create online information and corresponding print materials for First Nations and Métis citizens to inform them about the child welfare system and specifically about how to obtain First Nations or Métis-specific assistance and their related rights.

AREA FOR FOCUSED ACTION 3. A NEW FISCAL RELATIONSHIP – INVESTING IN PATTERNS OF CONNECTEDNESS

Recommendation 23:

Canada demonstrate its commitment to Jordan's Principle by acting immediately to revisit its practice of providing funding only for those First Nations children and families "ordinarily resident on reserve."

Recommendation 24:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work collaboratively to develop alternative funding formulas that will address the shortcomings of INAC's Directive 20-1 and the EPFA identified specifically by the CHRT in *2016 CHRT 2*, and ensure equitable service delivery to all Indigenous children in BC.

Recommendation 25:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that new or revised funding formulas provide for ADR processes to be funded as a prevention measure and, further, that a child placement arrived at through an ADR process be funded in a manner and to the same extent that a child who is removed under a court order is funded.

Recommendation 26:

In partnership with Indigenous communities and representative organizations, INAC and MCFD work to ensure that trauma services are funded at a level consistent with the findings and recommendations of the TRC and *2016 CHRT 2* decision.

Recommendation 27:

In advance of the development of alternative funding formulas, INAC ensure that, in the short term, the additional funding committed to Indigenous child welfare address the most discriminatory aspects of INAC's current funding formulas, such as the incentive created through Directive 20-1 to bring Indigenous children into care.

Recommendation 28:

INAC and MCFD work together to ensure Indigenous communities not represented by DAAs are directly engaged in the negotiation of the annual *BC Service Agreement* between INAC and MCFD.

Recommendation 29:

Where Indigenous communities, through their own decision-making processes, decide to give their free, prior, and informed consent to DAAs that they have established, Canada and BC should ensure fair and equitable funding to DAAs based on needs and, at minimum, similar to the formula under which Canada transfers funds to the province.

Recommendation 30:

INAC and MCFD take the following immediate actions to address the issue of wage parity for DAAs in BC:

- INAC and MCFD commit in policy to ensure that the principle of wage parity is included in all agreements with DAAs in BC; and
- INAC and MCFD commit the required time and resources to negotiate in good faith and make the required amendments to all DAA agreements to ensure DAA workers are compensated at the same rate at MCFD workers, both now and in the future.

Recommendation 31:

MCFD take immediate steps to harmonize financial assistance for families who have permanent care of children in order to promote permanency opportunities for Indigenous children.

Recommendation 32:

MCFD should ensure that the payments for permanent, legal out-of-care options are flexible to accommodate foster families who need the financial income that a levelled foster home provides.

Recommendation 33:

The Province should undertake a legislative review and financial policy review to determine the necessary changes that would allow the families that are under the "Extended Family Program" to receive the Child Tax Benefit and ensure the Child Tax Benefit amount is not deducted from MCFD payments for permanency placements.

AREA FOR FOCUSED ACTION 4. PREVENTION SERVICES – KEEPING FAMILIES CONNECTED

Recommendation 34:

MCFD, DAAs and INAC work together to ensure core funding and other supports that will allow for the development of community-based prevention and family preservation services for all Indigenous people and communities in BC.

Recommendation 35:

MCFD take the required steps to ensure that Aboriginal Service Innovations (ASI) family preservation can offer adequate core funding support to community-based program delivery.

Recommendation 36:

INAC take immediate action to develop, in partnership with First Nations in BC, an effective and efficient method to fund prevention services, taking into account economy-of-scale issues for all First Nations in BC that are not represented by a DAA (see also RCY Report – *When Talk Trumped Service*).

Recommendation 37:

BC take immediate action to ensure family preservation funding is provided. MCFD increase the annual Aboriginal Service Innovations budget by $4 million in 2016/2017 (to be split evenly between MCFD and INAC) in order to expand the program and provide increased services through additional agencies.

Recommendation 38:

INAC and MCFD take action to ensure equity in prevention services delivery for all Indigenous communities in BC.

Recommendation 39:

Increase support for 'least disruptive measures' through provincial legislation:

- Amend existing legislation to require a court order prior to the removal of a child, instead of the status quo, which allows for a child to be removed before a court order.

AREA FOR FOCUSED ACTION 5. REUNIFICATION AND PERMANENCY PLANNING

Recommendation 40:

The Province work to amend the *CFCSA* to ensure an Indigenous child's connection to his or her natural parents is not severed.

Recommendation 41:

The Province consider the following amendments to the *CFCSA* in order to support improved permanency planning for Indigenous children and youth:

- Strengthening of s. 70 of the *CFCSA* to include mandatory permanency planning for all children in care;
- Including a provision(s) to ensure that for Indigenous children, permanency plans are jointly developed by each child's family and community, including elders, cultural leaders, elected leaders, and matriarchs; and
- Including a provision(s) requiring the independent review of permanency plans on an annual basis.

Recommendation 42:

MCFD develop a practice guide with instructions on how to prepare, develop, implement, and monitor jointly developed permanency plans for Indigenous children and youth:

- The practice guide should be developed in close partnership with DAAs, Indigenous leaders, communities, and organizations.

Recommendation 43:

MCFD and INAC act immediately to allocate the funding required to prepare, implement, and monitor permanency plans for every Indigenous child or youth in care:

- INAC will only fund services for status children and families that are "ordinarily resident on reserve," and MCFD will need to take the necessary steps to ensure that the nature and scope of the services required are properly identified; and
- Funding levels for agreed-to services should be reflected in the annual service agreement between INAC and MCFD.

Recommendation 44:

MCFD regional offices provide quarterly progress updates to Indigenous communities within their region regarding permanency planning for each child from that community.

NOTE: *The Nation-to-Nation Partnership Protocol referenced earlier in this report should establish regular meetings, as agreed between Indigenous communities and the Executive Director of Services and/or the Community Services Manager, to review the status of each of the community's children under a CCO and to provide Indigenous leaders, including Hereditary Chiefs and matriarchs, with the necessary and full information to understand the situation of their children in care.*

Recommendation 45:

The BC Representative for Children and Youth be provided with a mandate and the appropriate resources to review and ensure resiliency, reunification and permanency planning be done for each Indigenous child under a CCO.

Recommendation 46:

MCFD develop, in partnership with Indigenous communities, a provincial adoption awareness and recruitment strategy that includes a specific focus on recruiting more Indigenous adoptive parents from the communities of origin of the Indigenous children in care.

Recommendation 47:

MCFD develop and implement a quality assurance program for all adoptions, developing key performance measures and targets to track timely permanency planning, including adoption placements for children in care, as well as timely approvals for prospective adoptive families:

- Specific targets should be developed for moving Indigenous children in care into permanency.

Recommendation 48:

The Province commit to the creation of an Indigenous custom adoption registry for Indigenous children and youth, such as those models existing in Nunavut and NWT:

- BC amend the *Adoption Act* to provide a mechanism, such as a custom adoption registrar, to register Indigenous custom adoptions.

Recommendation 49:

MCFD ensure all custom adoptions are eligible for post-adoption services, and pay rates similar to the current post-adoption assistance, to those caregivers who utilize custom adoption:

- The determination of necessary post-adoption services should be decided in consultation with Indigenous communities.

Recommendation 50:

The Province commit to legislative amendments in order to provide support for customary care options to be developed:

- Ensure that funding support for customary care is at the same level as custom adoptions.

Recommendation 51:

INAC, MCFD and Indigenous communities and organizations collaborate and prepare a report, as soon as practically possible, on the legal and practical implications of adopting status/registered children.

Recommendation 52:

At the next Federal/Provincial/Territorial Adoption Co-ordinators Annual Meeting, working together with Provincial Directors and Indigenous representatives, INAC undertake to review and reform the federal A-List policy and practices to ensure that Indigenous children placed for adoption with non-Indigenous adoptive families are not denied their inherent rights or their rights to connection to their birth families and communities until their eighteenth birthday.

Recommendation 53:

INAC, MCFD and Indigenous communities work together to ensure that non-Indigenous adoptive parents have the necessary information and support to provide their Indigenous adoptive children with culturally appropriate resources that facilitate a connection between a child, and his or her Indigenous ancestry, including the culture of their birth community.

Recommendation 54:

MCFD continue to support the existing Youth Advisory Council for the Provincial Director of Child Welfare and work to expand their role and the reach of their voice:

- The goal of the expanded role should be to better integrate Indigenous youth voices in both strategies and long-term plans of MCFD; and
- Consideration should be given to ensuring Indigenous youth have opportunity to provide insight on permanency on a regular basis to MCFD, DAAs and the RCY.

Recommendation 55:

MCFD and DAAs commit to the following specific supports for Indigenous youth who age out of care:

- An Aging Out Plan be undertaken as a required component of each care plan for youth, and as with other aspects of the care plan, this plan should be developed with the support and direct involvement of the child's Indigenous community;
- MCFD proactively develop Agreements with Young Adults (AYA) to ensure continued support for youth who are transitioning out of care and into adulthood; and
- MCFD establish a youth transition team in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care.

AREA FOR FOCUSED ACTION 6. NURTURING A SENSE OF BELONGING AND PRIORITIZING CULTURE AND LANGUAGE – CARE PLANS AS A TOOL FOR BUILDING CONNECTEDNESS

Recommendation 56:

As required in *CFCSA*, MCFD ensure robust, action-orientated cultural components within care plans are developed for each Indigenous child in care and that the cultural components include a focus on Indigenous language revitalization:

- The cultural component must be more than a high-level document and must address specific actions that will be taken to support the preservation of each Indigenous child's cultural identity, in accordance with s. 2, 4, 35, and 70 of the *CFCSA*;
- The cultural component must address all aspects of culture for children in care, including but not limited to the sharing of customs, ceremonies, traditional knowledge, and language; and
- The necessary supports must be made available to ensure all of the activities that have been identified within the cultural component of a child's care plan can be implemented.

Recommendation 57:

MCFD and INAC allocate immediate funding to support the involvement of Indigenous organizations, such as the First Peoples' Cultural Council (FPCC), in the development of the cultural components of care plans.

Recommendation 58:

The BC Representative for Children and Youth, the provincial court, or another independent body be required to conduct an annual review of care plans for Indigenous children in care, with special attention to ensuring that a cultural and language component of each care plan exists and is implemented.

Recommendation 59:

MCFD and INAC allocate immediate funding to support the engagement of Indigenous leadership, traditional knowledge holders, experts, elders, families, etc. in the process of developing the cultural components of care plans, and to support cultural teaching for Indigenous children in care.

Recommendation 60:

MCFD engage the First Peoples' Cultural Council for assistance in preparing a language plan as part of the cultural component of care plans, taking into consideration the tools and models that have been developed to support language revitalization in communities.

Recommendation 61:

MCFD ensure mandatory staff training regarding individual Indigenous identities and cultures, including Indigenous rights.

Recommendation 62:

MCFD and DAAs work collaboratively with Indigenous communities to review the suitability requirements for foster parents and foster homes to ensure compliance with the statutory obligations outlined in s. 71(3) of the *CFCSA*, which prioritizes the placement of Indigenous children within their extended family or community:

- Supports must be made available to assist a child's family and/or community to navigate the eligibility process for fostering a child;
- MCFD and DAAs must provide the necessary resources and support to meet the statutory requirements; and
- Possible amendments should be considered to the existing eligibility requirements for foster homes that would allow for more Indigenous foster parents who may currently be discriminated against under the existing MCFD requirements.

Recommendation 63:

MCFD must provide support to foster parents to ensure that they are equipped to meet the legislative obligation to preserve a child's cultural identity, as required under s. 4(2) of the *CFCSA*, particularly in the event that a child cannot be placed with family or within his or her community.

AREA FOR FOCUSED ACTION 7. EARLY YEARS – EARLY INVESTMENT IN ESTABLISHING PATTERNS OF CONNECTEDNESS

Recommendation 64:

MCFD and the federal government work to immediately expand Indigenous early years programming and provide new offerings and services to all First Nations communities, and Métis within BC:

- MCFD should engage immediately with DAAs and Indigenous communities across the province to determine the most appropriate core services required in the immediate term and long-term expansion;
- MCFD begin hiring immediately to support the expansion of early years programs and services across BC, including new staff positioned directly within Indigenous communities (see Recommendation 1, in *Area for Focused Action 1*) and support to manage the expansion of early years programs; and
- MCFD increase ASI-EY funding by $6 million annually in response to the high number of eligible proposals this fiscal that were denied funding based on funding availability, and with the objective of investing the additional $5 million directly in Indigenous communities.

Recommendation 65:

MCFD and INAC invest in long-term and sustainable funding for early years programming:

- Special attention should be given to offering multi-year funding support to organizations based in Indigenous communities that have developed or wish to develop early years programming tailored to their culture, traditions and practices.

Recommendation 66:

MCFD, DAAs, and INAC work immediately and in partnership with Indigenous communities, to expand parenting programs and services available to Indigenous parents and families, as well as other professional expertise to assist Indigenous parents:

- Attention should be paid to ensuring these programs are accessible for Indigenous parents, and part of this means a commitment to ensure that long-term, these programs are developed and delivered inside Indigenous communities.

Recommendation 67:

MCFD, DAAs, and INAC take immediate steps to ensure that any new or existing parenting programs and curriculum are updated to include traditional values, knowledge, teachings and practices and that available parenting programs utilize, as much as possible, Indigenous elders and cultural leaders:

- Specifically, programming should be developed to support language and culture revitalization in Indigenous communities, honouring traditional approaches to teaching and knowledge sharing (see *Area for Focused Action* 6)

AREA FOR FOCUSED ACTION 8. INDIGENOUS PEOPLES AND JURISDICTION OVER CHILD WELFARE

Recommendation 68:

Recognizing Indigenous communities' right to self-government, Canada, BC, DAAs, and Indigenous communities and organizations.collectively move towards a model where Indigenous communities can exercise full jurisdiction over Indigenous child welfare. This will require the parties to undertake the following collaboratively:

- Develop and implement an action plan to ensure that Indigenous communities have effectively built the necessary range of capacities to ensure equity of services to Indigenous children and families; and

- Build a comprehensive funding framework to ensure Indigenous communities are fully supported to offer equitable services for Indigenous children (see related recommendations in *Area for Focused Action 3 - A New Fiscal Relationship – Investing in Patterns of Connectedness*).

Recommendation 69:

While Indigenous communities move to implement full jurisdiction over Indigenous child and family services, MCFD and INAC work concurrently to also support the continued capacity building of DAAs in the following ways:

- Ensure DAAs maintain key involvement in the planning for and delivery of child welfare services to Indigenous children and families; and
- Ensure DAAs continue to have opportunities to develop expertise in exercising authority over Indigenous child welfare.

Recommendation 70:

The Province review and amend *CFCSA* in order to offer legislative support to Indigenous communities that have developed, or are seeking to develop, strong community-driven initiatives. This review of *CFCSA* should consider the following:

- Methods of ensuring *CFCSA* can support an Indigenous community and its government to exercise full authority and jurisdiction over decision-making related to the best interest of the child; and
- The limits that *CFCSA* places on specific models for increased Indigenous jurisdiction, such as the Splatsin's *By-Law for the Care of Our Indian Children: Spallumcheen Indian Band By-Law #3*.

Recommendation 71:

The Province review and amend *CFCSA* to provide for 'least disruptive measures' that make it simpler for a child to remain with his or her extended family or community in the event that there is a removal:

- Allow for the transfer of custody to a "party" rather than just a "person," as under the existing legislation. The legislation must recognize Indigenous governments as an eligible "party" to which custody may be transferred;
- Amend s. 8 of *CFCSA* to allow for Indigenous governments to enter into either temporary or long-term agreements with MCFD for the care of a child;
- Amend s. 35 and s. 41 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing interim and temporary orders; and
- Amend s. 49, s. 50, and s. 54 of *CFCSA* to enable more flexibility in allowing for the role of an Indigenous community in managing permanent orders.

Recommendation 72:

The Province review and amend *CFCSA* with the goal of achieving consistency with the *Family Law Act*:

- Moving away from "custody" as an out-of-date concept currently utilized in the *CFCSA*, and towards the concepts of guardianship and parental responsibility as defined in the *Family Law Act*.

Recommendation 73:

MCFD review *CFCSA* with the specific aim of identifying legislative changes needed to minimize circumstances where a child is moved out of temporary care and under a CCO:

- Consideration during this review should be given to potentially requiring an Indigenous community's consent to move the child under a CCO.

Recommendation 74:

MCFD designate an Indigenous Director under the authority of *CFCSA*, equipped to make decisions under the authority of *CFCSA* that are based in cultural knowledge and better account for historical circumstances and resultant intergenerational trauma.

AREA FOR FOCUSED ACTION 9. THE EXISTING POLICY FRAMEWORK – SHIFTING TOWARDS PATTERNS OF CONNECTEDNESS

Recommendation 75:

MCFD, INAC, and DAAs move to jointly adopt a clear and overarching Indigenous child welfare policy framework in BC that is premised on support for prevention and connectedness, reconciliation, and resiliency.

Recommendation 76:

MCFD take immediate steps to implement the jointly developed *Aboriginal Policy and Practice Framework* for those DAAs that see it as complementary and in support of their practices.

Recommendation 77:

MCFD, in collaboration with DAAs and representatives of Indigenous communities, develop a separate service plan for Indigenous child and family welfare, including an Indigenous ADM to oversee the plan, and confirm a distinct budget allocation for this planning process and its subsequent implementation.

Recommendation 78:

MCFD commit to immediate actions to recruit and retain Indigenous individuals for leadership positions within MCFD and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of those individuals recruited to these positions.

Recommendation 79:

MCFD commit to immediate actions to recruit and retain Indigenous social workers and front-line staff and ensure that there are plans in place, developed in partnership with Indigenous leaders and Indigenous organizations, that support the success of those individuals recruited to these positions.

Recommendation 80:

MCFD work to remove any existing barriers for DAAs that have expressed an interest in continuing or shifting their child welfare approaches to utilize approaches that support community involvement, prevention, and reconciliation, such as Signs of Safety and Touchstones of Hope.

Recommendation 81:

The Province support the continued independent oversight role of the BC Representative for Children and Youth (RCY) as it relates to Indigenous children and youth through the following specific actions:

- Allocate funding to support the continuation of this oversight role;
- Expand the mandate of the BC RCY to ensure distribution of reports and reporting documents to Indigenous communities and organizations; and
- Expand the mandate of the BC RCY to provide oversight that will ensure the Province's commitment to actively involve Indigenous communities in planning for all Indigenous children under CCOs is upheld.

Recommendation 82:

Provincial ministries, such as MCFD, Education and Health, be required to table annually in the provincial Legislature their respective responses to BC RCY reports and recommendations regarding Indigenous child welfare.

Recommendation 83:

The Province and Canada commit to jointly develop improved data collection and analysis that will support program development and effective service delivery for Indigenous child welfare in BC.

AREA FOR FOCUSED ACTION 10. A NATIONAL STRATEGY FOR INDIGENOUS CHILD WELFARE

Recommendation 84:

Canada move immediately to develop new federal Indigenous child welfare legislation, in partnership with Indigenous peoples and to support more consistent and improved outcomes for Indigenous children and families. At minimum, the new federal legislation should provide for:

- The creation of a statutory officer independent from the Parliament of Canada, but accountable to the Parliament, whose role is to oversee the development of a comprehensive national strategy, as well as its implementation, and evaluate progress towards the outcomes laid out therein;
- The establishment of clear roles and responsibilities for various levels of governments in the provision of child welfare services;
- The setting of national standards for the provision of out-of-province / territory placements for children in their guardianship, and details on compliance with these standards; and
- The development of a national strategy that includes: principles and agreed-upon indicators to guide the national coordination of data collection, and collective, measurable targets and strategies to achieve them.

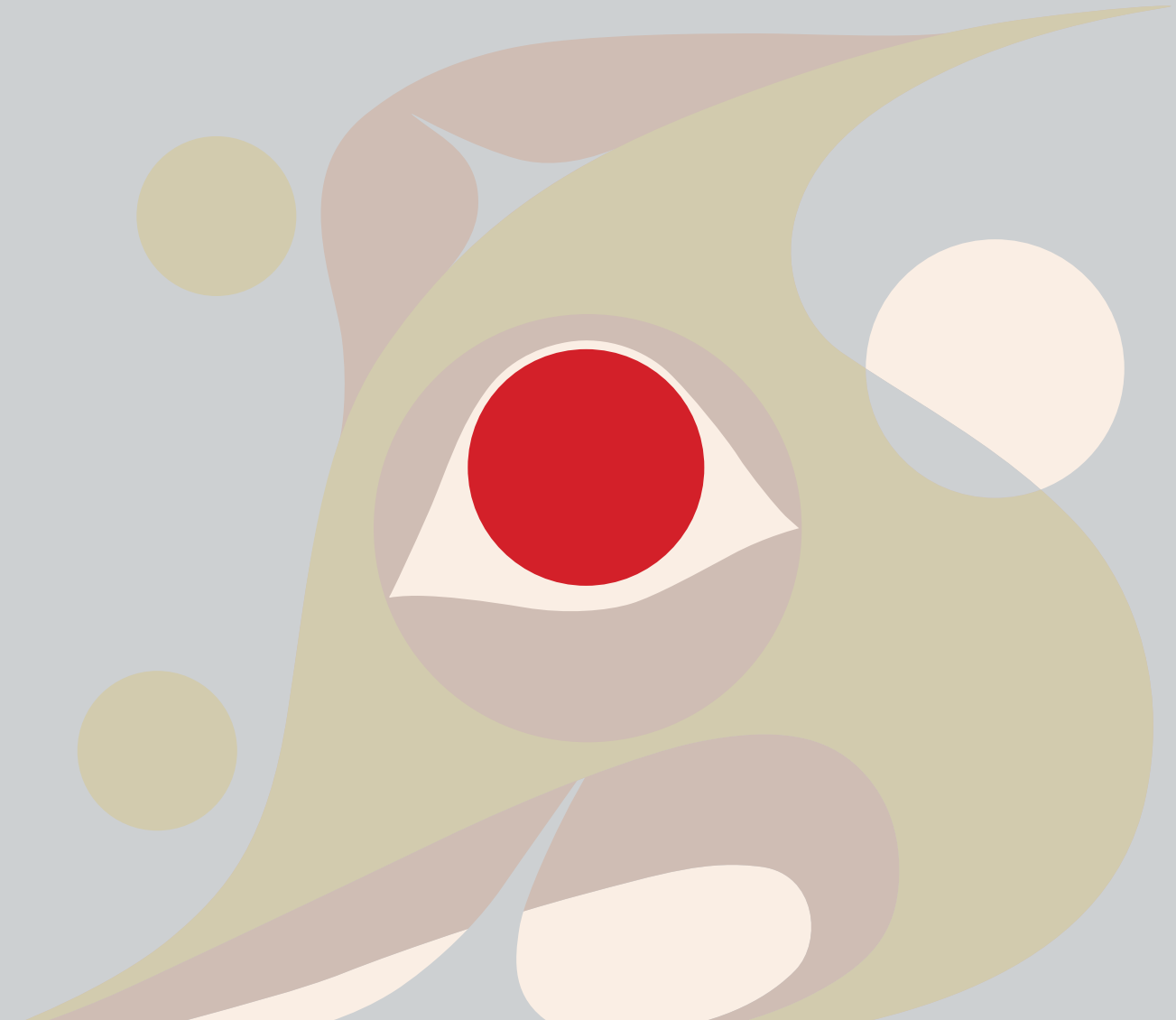
Recommendation 85:

The Premier of BC champion and work with other Premiers through the Council of the Federation to develop a national action plan on Indigenous child welfare. This plan should be developed in a way that:

- Ensures Canada's national approach to child welfare is consistent with the findings of the *2016 CHRT 2* decision and subsequent orders of the CHRT;
- Promotes the effective implementation of the TRC's Calls to Action 1-5;
- Ensures Canada's national approach to child welfare is consistent with commitments made in international decision documents such as the *World Conference on Indigenous Peoples Outcome Document*, the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child*; and
- Promotes child welfare services and approaches nationally that are culturally based, prioritize prevention and resilience, support connectedness with communities, and preserve and reunify families where possible.

APPENDIX B

TERMS OF APPOINTMENT FOR SPECIAL ADVISOR



PART 1. TERM:

1. Subject to section 2 of this Part 1, the term of this Agreement commences on September 14, 2015 and ends on March 31st, 2016.
2. The term of these services can be renewed for a term of one year pending agreement of both parties.

PART 2. SERVICES:

Aboriginal children (First Nations, Inuit and Métis) in Canada are served by systems that include legislation, policies and standards developed by provincial/territorial, federal, and Aboriginal governments, are in a state of change. As well, there is increasing recognition of, and support for, the need for more culturally appropriate and culturally based services for Aboriginal children and families. Across Canada, high numbers of Aboriginal children are reported to be at high risk of neglect and abuse, and as a result, they are removed and placed in care at rates far in excess of non-Aboriginal children. Once Aboriginal children come into care, they stay in care longer and are returned to their parent's care less than that occurs with non-aboriginal children. The impacts on the child, parents /family, including the extended family and community are traumatic and often become lasting and inter-generational.

The Canadian *National Household Survey* indicated that 48% of 30,000 children and youth in foster care across Canada are Aboriginal children, even though Aboriginal peoples account for only 4.3% of the Canadian population.

In British Columbia, the Aboriginal child population makes up 8% of the total child population, yet more than 55% of children living out of their parental home in the province are Aboriginal. One in five Aboriginal children in the province will be involved with child welfare at some point during his or her childhood. The total number of Aboriginal children in care has been relatively the same since 2001, but the proportion has increased as the Province has been successful in reducing the non-Aboriginal children in care population.

In August 2014, Canada's Premiers directed the provinces and territories to work together to share potential solutions to mitigate child protection concerns that would result in a reduction in the overall number of Aboriginal children in child welfare systems.

A follow-up report was provided to Premiers at the Council of the Federation (COF) in July 2015.

Also, the Ministry of Children and Family Development (MCFD) supports early childhood development and child care in British Columbia, including hosting the Provincial Office for the Early Years, which is responsible for facilitating collaboration among ministries, service providers, and stakeholders regarding early years and child-care programs, goals and outcomes. Promoting improved services for Aboriginal children and families, and the development of relevant performance outcomes are areas of interest for MCFD and many Aboriginal communities. It is clear that supporting child development in the early years results in greater levels of improvements and successes in later years.

OUTPUTS

The purpose of this contract is to appoint a Special Advisor to the Minister of MCFD, Hon. Stephanie Cadieux, on Aboriginal Child Welfare to:

- Provide a focused role on creating permanency for Aboriginal children in care, particularly those

in care through continuing custody orders (in care until reaching the age of majority);

- After the release of the COF report, assign follow-up for British Columbia (encourage national-level leadership and facilitate provincial level discussions); and
- As necessary, assist the MCFD Minister in developing advice to Cabinet members on these matters.

Staff in MCFD and the Office for the Representative of Children and Youth are engaged in activities to support planning and outreach for permanency. This team may be augmented by further assignments (with policy/operational experience in permanency) plus secondments from Aboriginal agencies in consultation with the Special Advisor. Chief among the Special Advisor's role will be to lead the team's outreach to First Nation leaders at both a provincial and community level in order to:

- Assess and strengthen current plans of care, for children and youth in care, through continuing custody orders; and,
- Meet with local First Nations to identify, confirm, and review plans for children and youth, with a view to exploring permanency options for the children and youth.

The Special Advisor will also work with the MCFD Minister and Deputy Minister to develop plans consistent with the direction emerging from the Council of the Federation (COF), specific to British Columbia, to engage:

- First Nations and Aboriginal leaders in discussions to assist the Province and Aboriginal communities to jointly and collaboratively reduce the number of First Nations and Aboriginal Children in care;
- With the federal government in meaningful work to enhance prevention and intervention work, as well as to address 'root causes' as discussed in the COF report.

As discussed with the Minister and in conjunction with her, the Special Advisor may also speak and work with other members of Cabinet in pursuit of these objectives.

The Special Advisor, along with the MCFD Minister, Deputy Minister, ministry staff and staff from the office of the Representative have developed a work plan to guide the work above.

There may also be an opportunity for the Special Advisor to work with the MCFD Minister and Deputy Minister on projects related to Early Child Development. A work plan will be considered for this area between the Special Advisor, Minister, Deputy Minister, and ministry staff.

PART 2. DELIVERABLES:

The Special Advisor will provide:

- Monthly reports to the MCFD Minister to inform of progress, identify barriers and strategies to address them;
- Monthly reports to First Nations/Aboriginal leaders on progress, barriers and strategies; and,
- A final report summarizing the Special Advisor's activities relating to both permanency planning, as well as advancing British Columbia's work, after the release of the COF report, and any activity relating to Early Childhood Development.

INPUTS

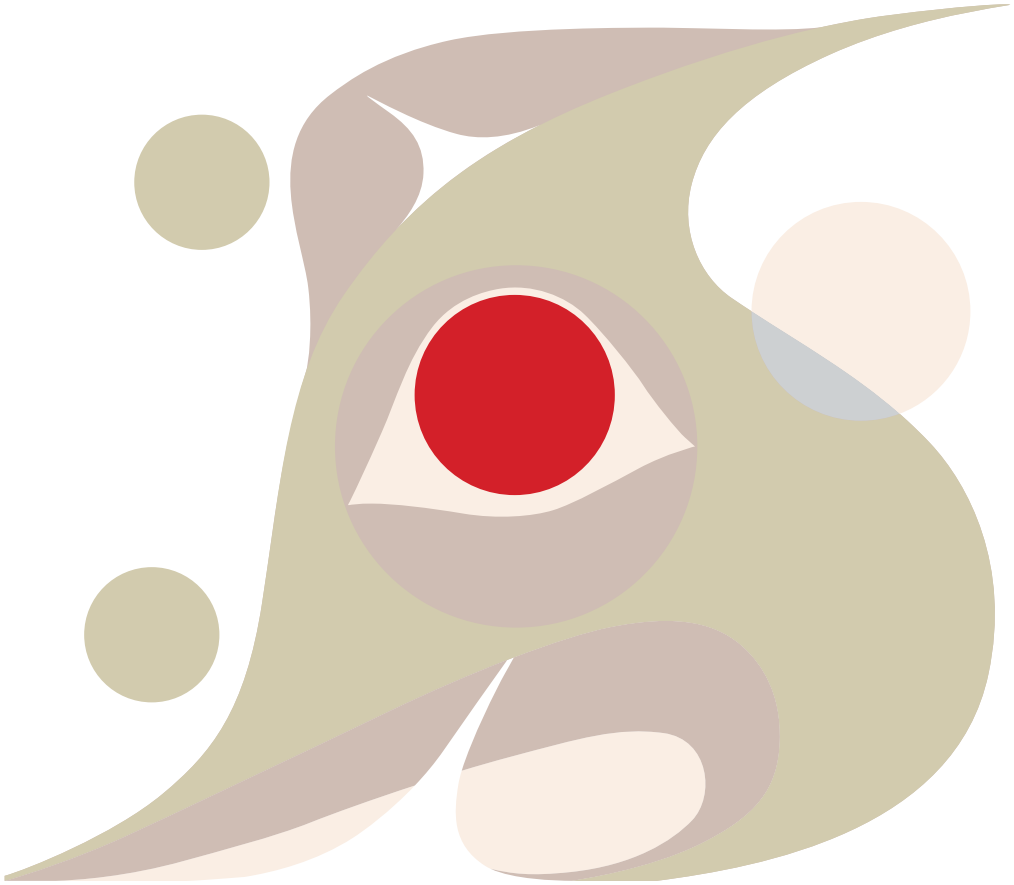
The Special Advisor must provide the equipment and software required to provide the services associated with the deliverables.

OUTCOMES

Throughout the delivery of the services, the Province wishes to realize the following outcomes and, without limiting the obligation of the Contractor, to comply with other provisions of this Part, the Special Advisor will provide effective First Nations leadership to MCFD and the Office of the Representative for Children and Youth, to improve permanency planning, including securing permanency plans for First Nations and Aboriginal children in continuing custody.

Given the Special Advisor's background and expertise, the Contract will also consider current legal and policy frameworks and provide advice to improve effective and ongoing support for families to raise their child/children in their community, or to develop permanency options in their communities for children currently in care.

The Special Advisor will assist the MCFD Minister and Deputy Minister to, after the release of the COF report, facilitate related dialogue with First Nation leaders on how to collaboratively approach reducing the over representation of First Nation and Aboriginal children in care, and to assist the MCFD Minister and Deputy Minister to engage in strategies and discussions to address over representation with the federal government.







WRAPPING OUR WAYS AROUND THEM

ABORIGINAL COMMUNITIES AND THE CFCSA GUIDEBOOK



Wrapping Our Ways AROUND THEM

Aboriginal Communities and the Child, Family and Community Service Act (CFCSA) Guidebook

WRAPPING OUR WAYS AROUND THEM:
Aboriginal Communities and the Child, Family and Community Service Act (CFCSA) Guidebook

Book ISBN: 978-0-9940652-0-9
Electronic Book ISBN: 978-0-9940652-1-6
Author: Ardith Walkem
Publisher: ShchEma-mee.tkt Project (Nlaka'pamux Nation Tribal Council)

ShchEma mee.tkt

To order copies of this Guidebook
contact Romona Baxter, romona@nzenman.org

Acknowledgements

Editorial Board:
Don Bain
Cunliffe Barnett
Romona Baxter
Ray Harris
Louise Mandell, Q.C.
Crystal Reeves

Author:
Ardith Walkem

Research and Writing Assistance:
Halie Bruce

ShchEma-mee.tkt Board and NkshAytkn Community Team Members who supported and contributed to the development of this Guidebook:

Debbie Abbott, Ralph Abbott, Jim Brown, Amy Charlie, Ruby Dunstan, Matt Frost, John Haugen, Kevin Loring, Susan Machelle, Doug McIntyre, Sherry McIntyre, Patricia Munro, Grand Chief Robert Pasco, Naomi Peters, Shirley Raphael, Vernon Raphael, Janet Webster.

Thank you to these people who spoke at our pilot workshops, and contributed to the development of this Guidebook:

Romona Baxter, Hugh Braker, Halie Bruce, Honourable Marion Buller, Robyn Gervais, Grand Chief Ed John, Louise Mandell, Grand Chief Stewart Phillip, Pamela Shields, Linda Thomas, Marie Tonasket, and George William.

Thank you to these people who reviewed and commented on drafts:

Pamela Shields, Linda Thomas, Sarah Rauch, and participants at two province-wide workshops held in Vancouver and Harrison Hot Springs.

Text design by: Alice Joe (alicejoe.com)

Photo Credits:

Child running - Nadya Kwandibens, Red Works Studio; Child in basket - Nadya Kwandibens, Red Works Studio; Nlaka'pamux Basket - Royal BC Museum; Feet - Blend Images

Thank you to:

Andrea Halpin (legal support);
Suzy Lyster and Elizabeth Bulbrook (additional case research)

The ShchEma-mee.tkt Project acknowledges the generous support of the Law Foundation of BC.

THE LAW FOUNDATION OF BRITISH COLUMBIA

We also wish to acknowledge the support of:

Union of BC Indian Chiefs, Legal Services Society of BC and Cedar and Sage Law Corporation.

SHCHEMA-MEE.TKT ("OUR CHILDREN") PROJECT— OUR LIFE IS A CIRCLE

Our logo was designed by Nlaka'pamux youth and elders and shows our collective responsibility to gather around and protect children. A pictograph of the same design was described by Nlaka'pamux elder Annie York as representing our cosmos:

"The circle…tells the earth and the four directions. The little circle at the top, right is the North. Opposite is South. Lower right is West, upper left is East. East is the sunrise, West is the sunset, North is midday, and South is the middle of the night. You must pray at those four times and to the directions. The big circle is the earth that travels all the time without end. The living earth never has an end. Nothing that travels and has the circle has an end. …The circle tells them, "Look, you're living on this earth, but the whole earth is round and it has no end." The directions were given to them to tell them where they divide the people out. It tells them there's other peoples, not just you on this earth."

Annie York, et al, *They Write their Dreams on the Rock Forever* (Vancouver: Talon Books, 1993) at 124-125 and fig. 86.

Index

01. INVITATION TO A TRANSFORMATIVE APPROACH 3
- I. Aboriginal Jurisdiction and the Ground we are standing on (CFCSA Process) 3
- II. How is this Guidebook Useful? 3
  - A. Aboriginal Communities and Children 4
  - B. Courts 5
  - C. MCFD/Delegated Aboriginal Agencies 6
  - D. Aboriginal Parents/Parents' Counsel 7
- III. Recognizing Continued Impacts of a Colonial History 8

02. CFCSA AND THE LEGAL LANDSCAPE 13
- I. Aboriginal jurisdiction 13
  Aboriginal Self-Government in Child Welfare 14
- II. Federal and Provincial Jurisdictions 16
  Case Study: Jordan's Principle 17
- III. Treaties or Other Inter-Governmental Agreements 18
  Spallumcheen (Splatsin) "A By-law for the Care of Our Indian Children" 19
- IV. International Instruments and the CFCSA 20
  United Nations Declaration on the Rights of Indigenous Peoples 21
- V. United Nations Convention on the Rights of the Child 22
  Human Rights of Aboriginal Peoples in Child Welfare Matters 23

03. BEST INTERESTS OF ABORIGINAL CHILDREN AND IDENTIFYING BIASES 29
- I. Defining the Best Interests of Aboriginal Children 29
  - A. Racine v. Woods 30
  - B. CFCSA: BC Adopts a Different Approach 31
- II. Identifying Biases and False Assumptions 32
  - A. Questioning a Child's Aboriginal Identity 33
  - B. Mistakenly Applying a Blood Quantum Analysis 34
  - C. Analyzing Aboriginal Identity as Inauthentic or Frozen 35
  - D. Poverty 38
  - E. Disabling Aboriginal Care 39
  - F. Past Challenges (including CFCSA Involvement) Used to Invalidate Care 40
  - G. Assuming a Conflict Between the Interests of Aboriginal Children and Communities 42
  - H. Dismissing the Involvement of Aboriginal Communities is "Political" 44
  - I. Aboriginal Distrust of the Child Welfare Process 45

III. Biases that Aboriginal Communities must Address to Protect Children 46

IV. Positive Considerations of the role of Aboriginal Communities and Identity 48

04. PROTECTING A CHILD'S ABORIGINAL IDENTITY, CULTURE AND HERITAGE 57

I. Provisions of the CFCSA Maintaining a Child's Aboriginal Heritage and Identity 58
- A. A Remedial Approach to Interpreting the CFCSA Provisions Aboriginal Identity and Heritage 59
- B. Case Study: Indian Child Welfare Act and Tribal Jurisdiction in the United States 60
- C. ICWA and Canadian Aboriginal Children 61

II. What is an Aboriginal Community? 62

III. Who is an "Aboriginal Child"? 63
- A. Parent or Child Registered, or Entitled to be Registered, Under the Indian Act 64
- B. Nisga'a and Treaty First Nation Children 65
- C. Self-identified Aboriginal Children and Families 65

IV. Delegated Agencies 67

05. STEPS WITHIN THE CFCSA PROCESS 71

I. Voluntary Agreements 71
- A. Support Services Agreements 72
- B. Voluntary Care Agreements 72
- C. Special Needs Agreements 72
- D. Extended Family Program (Formerly Kith and Kin Agreements) 73
- E. Agreements with Youth or Young Adults 73

II. Report, Assessment and Investigation 75

III. Notice and Aboriginal Community Involvement 76

IV. Importance of Early Involvement by Aboriginal Communities 77
- A. Non-Appearance by Aboriginal Communities 79
- B. Aboriginal Communities as Self-Represented Litigants 81
- C. Confidentiality and Disclosure 82

V. Presentation Hearing 85

VI. Plan of Care 88

VII. Proposing an Aboriginal Cultural Preservation Plan 89

VIII. Protection Hearing 91
- A. Determining Whether a Child is in Need of Protection 92
- B. Case Study: Choosing Traditional Medicine for a Child's Care 93
- C. Judicial Notice of the Long Term Impacts on Aboriginal Child Raised in Care 95

IX. Exploring Permanency Alternatives 97
Ensuring Both Attachments and Cultural Continuity 100

X. After a CCO has been Granted 102
A. Access 102
B. Custom Adoption, Adoption or Alternatives to Permanency 104
C. Cancelling a CCO 106

XI. Appeal 106

XII. Representative of Children and Youth 107

06. TRADITIONAL AND ALTERNATIVE DISPUTE RESOLUTION MECHANISMS WITHIN THE CFCSA 113

I. Cooperative Planning and Alternative Dispute Resolution 113
A. Case Conferences 114
B. Family Group Conference 114
C. Mediation 115

II. Aboriginal Traditional Decision-Making Process 117
A. Case Study: ShchEma-mee.tkt (Our Children) Project 118
B. Case Study: Opikinawasowin 119

III. New or Parallel Judicial Institutions 122
A. Restorative Justice or a Therapeutic Aboriginal CFCSA Court 123
B. Section 104 Tribunal 123
C. Invitation to Start the Journey Toward a Transformative Approach 124

07. BEST PRACTICES RECOMMENDATIONS 129

08. FORMS AND MAKING APPLICATIONS 153

I. Introduction 153

II. In Person Applications (Without Filing a Form) 154

III. Forms 155
A. Steps in Applying For an Order 156
B. User Generated Forms for Aboriginal Communities 156
i. Application for An Order 158
ii. Affidavit 162
iii. Certificate of Service 165
iv. Aboriginal Child Aboriginal Community Plan of Care 167

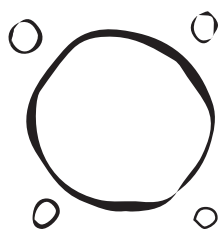
09. SOURCES 173

I. CASES 173

II. LEGISLATION 176

III. BOOKS AND ARTICLES 177

01. Invitation to a Transformative Approach



01. Invitation to a Transformative Approach

I. Aboriginal Jurisdiction and the Ground We Are Standing On (CFCSA Process)

Restoring aboriginal ways is essential for the health and well-being of children

This Guidebook is based on the belief that Aboriginal peoples need to know, and work with, the systems that impact children and families today such as the *Child, Family and Community Service Act* (CFCSA)[1], Provincial Court (Child, Family and Community Service Act) Rules (Rules)[2], *Child, Family and Community Service Regulation*[3] (CFCSA Regulation), Ministry of Children and Family Development (MCFD) and delegated Aboriginal agencies.

Exercising exclusive jurisdiction over child welfare remains the goal for Aboriginal peoples: Restoring Aboriginal ways of doing things, especially in caring for children, is essential for the health and well-being of children and families. Successive generations of Aboriginal children continue to be taken into the child welfare system. Without intervention, experience has shown that the outcome for these children will be bleak and reverberate outward, influencing the future of entire families, communities and nations. This Guidebook suggests immediate steps that can be taken on the ground we are standing on—within the CFCSA and systems that impact Aboriginal children and families today—to improve outcomes for Aboriginal children while building toward a better future.

II. How is this Guidebook Useful?

This Guidebook identifies tools available in the CFCSA to improve outcomes for Aboriginal children through actively involving Aboriginal communities in child welfare matters. Similar to a "bench book" in the United States, the Guidebook provides direction to Aboriginal communities, judges and lawyers about how Aboriginal communities can become involved in CFCSA matters. Involvement of Aboriginal communities can address the rising number of Aboriginal children in care and prevent the loss of identity and disconnection experienced by past generations of Aboriginal children.

Involvement of Aboriginal communities could wrap laws and culture around children and end the isolation parents and children experience within the child welfare process. This Guidebook suggests—in a practical way—how Aboriginal communities could be involved in child welfare matters as contemplated by the CFCSA and sets out strategies to actively seek and facilitate that involvement. This Guidebook proposes methaods for resolving child protection concerns starting from the premise that the early involvement of a child's Aboriginal community can animate the provisions of the CFCSA directed at maintaining a child's Aboriginal identity and heritage.

BEST PRACTICE 1.01

A transformative and remedial approach to involving Aboriginal communities in child welfare matters is required

1. A transformative and remedial approach involving Aboriginal communities in child welfare matters under the CFCSA is required which:

- *Reflects a belief that Aboriginal laws and community approaches to achieving safety and permanency can shift the legal ground and improve outcomes for Aboriginal children;*
- *Places obligations on members of the extended Aboriginal community to take positive actions in a process that mirrors the requirements within many Aboriginal legal systems and so have a higher likelihood of success; and*
- *Invites the Court, child welfare agencies, parents and Aboriginal communities to work together to ensure that the interests of children are protected and placed at the centre of decision-making, by recognizing an active voice for Aboriginal communities and creating space for Aboriginal ways of making decisions.*

Aboriginal Communities and Children

The CFCSA allows for the active involvement of Aboriginal communities in planning for their child members.[4] Despite this, participation by Aboriginal communities as legal parties remains rare. The CFCSA requires that a child's Aboriginal culture and identity be preserved and creates legal party status for Aboriginal communities who choose to become involved in CFCSA matters. Interventions by Aboriginal communities could breathe life into the CFCSA provisions meant to preserve a child's Aboriginal identity and cultural connections by requiring that they be implemented and offering clear and effective steps for how that could be done.

The child welfare system impacts entire Nations and communities—and yet individual children, parents and families often face the system alone. This disconnect prevents culturally based solutions. Interventions designed to heal families, or, where this is not possible, to protect children and keep them connected to their Aboriginal culture, could help to mitigate the negative impacts of involvement within the child welfare system. Acting in CFCSA matters today is a strong investment in the collective future for Aboriginal communities.

Aboriginal community involvement can mitigate negative impacts of involvement in the child welfare system

This Guidebook proceeds on the basis that the rights of Aboriginal children should be understood in the context of their broader social and cultural connections. Different members of Aboriginal communities have skills that can help to transform child protection situations, and often transformations cannot occur without their help. Child protection resolutions dictated solely to the parents—without a broader distribution of responsibility within an Aboriginal community, or extended family—are not likely to be successful. Solutions based on accountability and compassion, under Aboriginal laws and traditions, place obligations on members of the broader Aboriginal community to assist and take positive actions to help.

BEST PRACTICE 1.02

Early and active interventions in CFCSA matters by Aboriginal communities is required

1. *Early and active interventions by Aboriginal communities when child members first become involved in the child welfare system is required and could make a real difference in the future of Aboriginal children and communities.*

2. *A distributed sense of responsibility which recognizes that people live in community, and that our actions—or inactions—impact others now and into the future, means that Aboriginal communities have a strong interest in acting now to protect their child members.*

Courts

Courts have struggled with how to understand the role and responsibility of Aboriginal communities in proceedings involving their child members. The current child welfare focus on parents and nuclear families—from an Aboriginal perspective—leaves parents and children standing alone.

This Guidebook:

- Provides methods and insights that allow the Court to engage Aboriginal communities and receive the benefit of Aboriginal wisdom, strengths and solutions in making decisions that affect Aboriginal children;
- Discusses biases and prejudices of the colonial past, which find expression, often unconsciously, in the political and legal culture, that can operate when decisions are made about Aboriginal children;
- Identifies systemic barriers to the participation of Aboriginal communities in child welfare proceedings, and ways to minimize those barriers; and
- Outlines how active efforts to involve Aboriginal communities could drastically change outcomes for Aboriginal children.

BEST PRACTICE 1.03

A remedial and purposive approach to interpreting the CFCSA to protect a child's Aboriginal identity and heritage and involving Aboriginal communities is necessary

1. *Highlighting the remedial purposes of the CFCSA provisions that involve Aboriginal communities could breathe life into these provisions so that they are brought to bear in a real and meaningful way in judicial decisions about the lives of Aboriginal children.*

2. *Effective legal problem solving requires acknowledging and confronting biases and false assumptions about Aboriginal cultures or parenting which result in Aboriginal children being disproportionately removed from their families and communities.*

MCFD/Delegated Aboriginal Agencies

This Guidebook suggests ways the director can ensure that the best interests of children are met through the active engagement of Aboriginal communities. In too many instances, the involvement of Aboriginal communities and protection of a child's Aboriginal identity and heritage, as required in the CFCSA, exist only as "paper rights" or requirements, but not in practice.

BEST PRACTICE 1.04

The director should make active interventions to involve Aboriginal communities

1. *The director should make active interventions to implement CFCSA provisions involving Aboriginal communities based on the understanding that a child's Aboriginal community is in the best position to preserve a child's Aboriginal cultural identity and heritage, and that this involvement can lead to better and lasting resolutions for Aboriginal children.*

Aboriginal communities can identify permanency solutions that keep children connected to their Aboriginal culture

Aboriginal Parents/Parents' Counsel

Efforts to resolve child protection concerns working solely with the parents or immediate family are not likely to be successful, especially where Aboriginal parents cannot safely parent their child(ren) on their own, or come from families who have also been unable to keep the children safe. Aboriginal community involvement could distribute responsibility away from individual parents to the extended family and community and stand up teachings of forgiveness, compassion, love, wholeness and balance by identifying what it means to keep children safe within the Aboriginal cultures.

BEST PRACTICE 1.05

Parents' counsel can actively seek the involvement of a child's Aboriginal community

1. *Parents' counsel can actively seek the involvement of a child's Aboriginal community in CFCSA matters. Aboriginal communities may be able to provide supports to help parents heal. If parents cannot restore their ability to safely parent, a child's Aboriginal community can identify permanency options that can keep parents involved in their child's life and ensure that the children maintain or develop connections to their Aboriginal culture and identity.*

III. Recognizing Continued Impacts of a Colonial History

The child welfare system reflects Canada's history of colonization. Canadian laws and policies subjected Aboriginal peoples to "debilitating policies" which systematically weakened Aboriginal peoples' legal, social and cultural traditions for the care of children and families:[5]

The child welfare system reflects the disruption of Aboriginal peoples' social, political and legal institutions, and intergenerational harms of a colonial past

- Generations of Canadian laws and policies denied Aboriginal title and forcibly removed Aboriginal peoples from their territorial homelands and undermined Aboriginal laws and governance systems: "[The] legal system has played an active role in the destruction, denial or limitation of First Nations cultural practices."[6]
- The Indian Act denied status recognition to Aboriginal women who married non-Indian men. These women (and their children) could no longer live within, or actively participate in, their Aboriginal communities. Denied recognition under Canadian law as "status Indians" generations of children were born without the legal right to live in their home communities, subject to both cultural and geographic dislocation.[7] This dislocation continues in many families involved in child welfare processes.
- The Residential School system forcibly removed Aboriginal children from their families, cultures and communities and prevented generations of Aboriginal people from parenting their children, while often subjecting those children to horrific levels of abuse.[8] Residential Schools "separated successive generations of Aboriginal children from their families and communities" damaging "feelings of self-worth, family connectedness, the intergenerational transfer of skills and traditions, and the essential core of trust in and respect for others."[9] Many child protection concerns are rooted in the intergenerational impacts of trauma from Residential Schools. Aboriginal children came through these systems disconnected from their Aboriginal communities and families.
- The child welfare system continues the large-scale removal of Aboriginal children from their families. More Aboriginal children live away from their families and communities today as a result of the child welfare system than lived away from their families in Residential Schools.[10] Numbers of Aboriginal children in BC's child welfare system have continued to grow since the closure of Residential Schools. Over 52% of all children in care in BC as of 2011 were Aboriginal.[11] A class action suit is currently underway in Ontario seeking to hold Canada accountable for the large numbers of Aboriginal children taken up in the "Sixties Scoop".[12]

Aboriginal children and families involved in the child welfare system today reflect the disruption of Aboriginal peoples' social, political and legal institutions, and carry the intergenerational harms and violence of a colonial past.

> Not surprisingly, the legacy of this history is that Aboriginal people continue to be disproportionately enmeshed with Canadian law and legal systems, reflected in the high numbers of Aboriginal peoples involved in criminal law, youth justice, and child protection systems. To many Aboriginal people, the legal process continues this history of interference, domination, and control, and its operation is far removed from any concept of justice or fairness.[13]

Outcomes for Aboriginal children within the child welfare system are bleak

There is a significant over-representation of Aboriginal children at all stages of BC's child welfare system and outcomes for these children are bleak. Placing increasing numbers of Aboriginal children in care has only amplified the problem over generations, not solved it; more Aboriginal children are at risk now as a result of interventions through the child welfare system rather than less. Aboriginal children are: 4.4 times more likely to have a protection concern reported than a non Aboriginal child; 5.8 times more likely to be investigated; 7.7 times more likely to be found in need of protection; 7.1 times more likely to be admitted into care; and, 12.5 times more likely to remain in care.[14]

BEST PRACTICE 1.06

Creating a better future for Aboriginal children requires acknowledging and addressing the impacts of colonization and historic trauma that Aboriginal peoples have been subject to

1. *Creating a better future for Aboriginal children requires acknowledging and addressing the colonization and historic trauma that Aboriginal peoples have been subject to, and which continues in decisions made under the CFCSA today. Colonial endeavors, such as denial of Aboriginal title and laws; legislation and policies meant to attack and diminish the role of Aboriginal women; Residential Schools; and the child welfare system, continue to be reflected in the overrepresentation of Aboriginal children within the child welfare system.*

Endnotes

1. [RSBC 1996] Ch. 46.

2. B.C. Reg. 533/95.

3. B.C. Reg. 527/95.

4. For example: s. 2; s. 33.1(4)(c); s. 34; s. 36(2.1); s. 38(1)(c), (c.1), (c.2), (d); s. 39; s. 49(2)(c), (c.1), (c.2), (d); s. 54.01(3)(c), (d), (e), (f); s. 54.1(2)(c), (d), (d.1), (e); s. 60(1)(e); s. 71 (3)(a); s. 90; s. 93(g)(iii); s. 103(2)(f), (g).

5. The Royal Commission on Aboriginal Peoples. Report of the Royal Commission on Aboriginal Peoples. Vol. 1: Looking Forward, Looking Back. (Ottawa: Royal Commission on Aboriginal Peoples, 1996) [RCAP, Vol. 1] at 333-339 and Volume 3: Gathering Strength (1996): 23-29, 34-36 [RCAP, Vol. 3].

6. St. Lewis, Joanne. "Virtual Justice: Systemic Racism and the Canadian Legal Profession" in Racial Equality in the Canadian Legal Profession (Ottawa: Canadian Bar Association, 1999) [St. Lewis] at 69; See also: Sarich, Anthony (Commissioner), Report on the Cariboo-Chilcotin Justice Inquiry (Victoria Ministry of Attorney General, 1993) [Sarich].

7. Indian Act, R.S.C., 1985, c. I-5 (and earlier versions). See, for example: Corbierre v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203, McIvor v. The Registrar, Indian and Northern Affairs Canada 2007 BCSC 827 (the trial judge extensively reviewed the discriminatory provisions, the BCCA considered this case in McIvor v. Canada (Registrar of Indian and Northern Affairs) 2009 BCCA 153), and Lovelace v. Canada, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) (1981).

8. For a general overview of the Residential School system and its impacts see RCAP, Vol. 1, at 376-379, which recognized the connection "between the schools' corrosive effect on culture and the dysfunction in their communities… Abuse had spilled back into communities, so that even after the schools were closed their effects echoed in the lives of subsequent generations of children…"

9. Dussault, Justice Rene, "Indigenous Peoples and Child Welfare: The Path to Reconciliation" First Peoples Child & Family Review, Vol. 3:3 (2007) 8 at 9 [Dussault]. Ted Hughes in "BC Children and Youth Review - Keeping Aboriginal Children Safe and Well" (Victoria: April 2006) [Hughes] at 49-50 observed of the "inter-generational" impact of residential schools "I have no hesitation in laying a significant portion of responsibility for today's unacceptable level of involvement of Aboriginal families in our child welfare system on the doorstep of that ill-conceived program of years ago."

10. It is estimated that three times as many children have been taken into the child welfare system than ever were taken into the Indian Residential Schools: See for example, Blackstock, C., "First Nations child and family services: restoring peace and harmony in First Nations communities" in K. Kufedlt & B. McKenzie (Eds.), Child Welfare: Connecting Research Policy and Practice, at 331-342. (Waterloo, Ontario: Wilfred Laurier University Press: 2003).

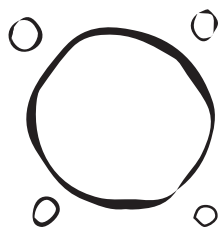
11. Special Report by the Council of Child and Youth Advocates "Aboriginal Children and Youth in Canada: Canada must do better" submitted to UN Committee on the Rights of the Child 2011, at 7.

12. In Brown v. Attorney General of Canada, 2014 ONSC 6967 (CanLII) [Brown], a panel of the Ontario Superior Court of Justice rejected an application by Canada to dismiss a class action suit commenced on behalf of people who were taken up in the "Sixties Scoop" where unprecedented numbers of Aboriginal children were removed from their homes. The suit alleges that "many of these children lost their identity as Aboriginal persons, and their connection to their Aboriginal culture, that ultimately led to them suffering emotional, psychological and spiritual harm. More specifically, it is alleged that these children were deprived of their culture, customs, traditions, language and spirituality. This led them to experience loss of self-esteem, identity crisis and trauma in trying to reclaim their lost culture and traditions." (at para. 2)

13. Walkem, Ardith. Building Bridges: Improving Legal Services for Aboriginal Peoples (Vancouver: Legal Services Society, 2007) [Walkem, LSS] at 1-2.

14. Ministry of Children and Family Development, Aboriginal Children in Care, October 2009 Report, Prepared by Research, Analysis and Evaluation Branch, at 10. Available online: http://www.fndirectorsforum.ca/downloads/Aboriginal-children-in-care-10-09.pdf. References omitted.

02. CFCSA and the Legal Landscape



02. CFCSA and the Legal Landscape

The CFCSA occupies conflicted territory, with roots in deeply contested jurisdictional battles, arising from Crown governments' historical denial of Aboriginal title, laws and legal orders, and also subject to ongoing division of powers disputes between Crown governments.

I. Aboriginal Jurisdiction

Inherent Aboriginal jurisdiction empowers Aboriginal peoples to care for and protect their children in accordance with their own legal orders

There is a sphere of inherent Aboriginal jurisdiction, collectively vested, empowering Aboriginal peoples to care for and protect their children in accordance with their own legal orders. Aboriginal peoples' laws and legal orders pre-dated and survived the assertion of Crown sovereignty and received constitutional protection through s. 35 of the *Constitution Act, 1982: Mitchell v. M.N.R.,*[1] *R. v. Van der Peet,*[2] and *Delgamuukw v. B.C.*[3] Crown governments, for the most part, have ignored or denied this jurisdiction since Confederation. Nonetheless, Aboriginal laws remain an essential part of Canada's constitutional framework.

Canadian courts have recognized the legitimacy of customary laws, and encouraged solutions based on Aboriginal laws for children and families in the past. Recognition of Aboriginal laws as "customary law" in Canadian common law is well established where the matters are primarily internal to Aboriginal communities.[4] In *Connolly v. Woolrich,*[5] the Superior Court of Quebec recognized a marriage under Cree law, noting that the arrival of newcomers did not displace Aboriginal laws, instead "the Indian political and territorial right, laws and usages remained in full force …" In *Campbell v. British Columbia (A.G.)* the B.C. Supreme Court recognized "the legitimacy of an evolving customary or traditional law,"[6] and that "since 1867 courts in Canada have enforced laws made by Aboriginal societies" and that "such rules, whether they result from custom, tradition, agreement, or some other decision making process, are "laws"".[7] Laws for the protection of children fit within this category.

In *Casimel v. I.C.B.C.*—the BC Court of Appeal recognized the legality of an Aboriginal custom adoption:

> When the rights in issue are rights in relation to the social organization of the Aboriginal people in question, such as rights arising from marriage, rights of inheritance, and I would add, rights arising from adoption …:
>
> > No declaration by this court is required to permit internal self-regulation in accordance with Aboriginal traditions, if the people affected are in agreement.
> >
> > But if any conflict between the exercise of such Aboriginal traditions and any law of the Province or Canada should arise the question can be litigated.[8]

The right of self-government protected under s. 35 includes the inherent right to care for and protect children according to Aboriginal cultures, laws and traditions

The rationale for many customary adoptions falls within what is now considered child welfare law, including situations where a young parent is unprepared or unable to care for a child; the illness or death of a parent; or, financial hardship.

Aboriginal Self-Government in Child Welfare

The right of self-government has been found to be a right protected under s. 35 of the *Constitution Act, 1982*.[9] Aboriginal peoples assert the inherent right to care for and protect their children according to their cultures, laws and traditions, which is constitutionally protected.[10]

Some Aboriginal peoples seek to apply Aboriginal laws today to address the situation of children in need of protection. The circumstances in which child welfare matters arise make them less than ideal for establishing a s. 35 right: most cases involve individual families in challenging circumstances. Child welfare matters proceed within the statutory framework of the CFCSA, are bound by the facts of each child's situation, and subject to strict time limits. Without a prior declaration of an Aboriginal right to self-government in the area of child welfare, child welfare cases are a poor forum to try to establish a s. 35 right. Section 35 cases (involving extensive evidence and constitutional matters) usually play out over a longer time and at considerable expense.

Cases where Aboriginal groups have sought to establish a s. 35 right to self-government in Aboriginal child-welfare have not succeeded due to (1) insufficient evidence;[11] (2) the lateness of Aboriginal community involvement;[12] or, (3) where courts have suggested that the concerns of communities are political rather than directed toward the interests of the child.[13]

The fact that cases have not yet successfully established a s. 35 right in this area should not be read as indicating that Aboriginal rights in this area do not exist but rather as highlighting the barriers to this approach, posed by the nature of the proceedings. The nature of some court proceedings pose inherent difficulties to Aboriginal rights recognition. In the context of Aboriginal rights claims made in criminal or quasi-criminal cases, the Supreme Court of Canada has noted:

Aboriginal children share in and are entitled to have their Aboriginal rights recognized

> Procedural and evidentiary difficulties inherent in adjudicating Aboriginal claims arise not only out of the rules of evidence, the interpretation of evidence and the impact of the relevant evidentiary burdens, but also out of the scope of appellate review of the trial judge's findings of fact. These claims may also impact on the competing rights and interests of a number of parties who may have a right to be heard at all stages of the process.[14]

CFCSA matters originate in Provincial courts which do not hear constitutional questions. Children are living and growing beings who cannot wait for matters to move through the Court. The challenge in these circumstances is how to have Aboriginal voices meaningfully heard and incorporated into child welfare decisions, without advance recognition of a s. 35 right. This Guidebook contemplates actions Aboriginal communities can take to help children and families today while building toward recognition of Aboriginal jurisdiction in the future.

BEST PRACTICE 2.01

Aboriginal self-government rights in the area of child welfare exist

1. *The family-specific and statutorily driven nature of CFCSA matters makes it difficult to have s. 35 Aboriginal self-government rights in child welfare recognized absent a prior agreement or court declaration. This difficulty should not be taken to mean that an Aboriginal child (who shares in Aboriginal rights and is equally entitled to benefit from them) cannot benefit from them absent a declaration.*

- *Exploring options to have Aboriginal ways respected within the limits of the forum of the CFCSA is necessary for the well-being of Aboriginal children.*
- *Actively listening to, and incorporating, the Aboriginal community's voice and input is one way to ensure some measure of consideration.*

BEST PRACTICE 2.01, CON'T

2. Aboriginal communities who wish to rely on s. 35 rights could:

- *Pass their own child welfare legislation based on their Aboriginal legal orders and traditions (relying on their s. 35 rights and also international law to support their assertion) with a view to supplanting all aspects of provincial child welfare laws relating to their Aboriginal children;*
- *Enter into separate agreements or Protocols with provincial and federal governments that recognize the community's s. 35 rights in child welfare, and commitment to work collaboratively to implement the transition to Aboriginal laws and legal orders in this area; or*
- *Bring a separate court case seeking a declaration of those rights.*

Aboriginal peoples were not involved in the creation of Provincial child welfare laws and view these laws as infringing constitutionally protected rights

II. Federal and Provincial Jurisdictions

While child welfare is not a listed head of power in the *Constitution Act, 1867*, it has generally been found to be an area of provincial responsibility. "Indians, and Lands reserved for the Indians" fall under exclusive federal jurisdiction under s. 91(24). Historically, it was widely accepted that provincial child welfare legislation did not apply to Indian children because this was an area of exclusive federal responsibility. The role of the provinces regarding Aboriginal children changed when the federal government amended the *Indian Act* to include s. 88 which referentially incorporated provincial laws to apply to Indians, subject to the terms of any treaty or federal legislation.[15] In *Re Nelson and Children's Aid Society of Eastern Manitoba*[16] the Manitoba Court of Appeal found that s. 88 of the *Indian Act* makes provincial child welfare legislation applicable to Indians. In *Natural Parents v. Supt. of Child Welfare*[17] the Supreme Court of Canada confirmed that while provincial adoption laws apply to a status Indian child, adoption under provincial legislation does not impact a child's status registration as an Indian.

The recent trend in constitutional law and interjurisdictional immunity would now likely hold that provincial legislation applies of its own force and effect to Indian children and does not rely on invigoration through s. 88.[18] However, this discussion highlights, from an Aboriginal perspective, how the jurisdictional questions remain outstanding. Aboriginal

people were not consulted with, nor involved in, the decision to transfer this jurisdiction, and the control over their children that resulted. Most Aboriginal nations in BC view the continued imposition of provincial legislation on Aboriginal children and communities as an infringement of their constitutionally protected Aboriginal rights.[19]

Until the sphere of Aboriginal jurisdiction to care for Aboriginal children is recognized by Crown governments and properly resourced, or remedies are provided by Court Order recognizing an Aboriginal right in the area of child welfare, Aboriginal children are under the assumed authority of Crown governments.

Inequitable funding to children living on reserve continues, and on-reserve Aboriginal agencies receive less funding than their off-reserve counterparts

After enacting s. 88, Canada entered agreements with the provinces to provide child welfare services to status Indian children. Aboriginal Affairs and Northern Development Canada (AANDC), the department most responsible for the administration of the federal government's obligations to Aboriginal people, negotiates and funds the programs and services delivered to Aboriginal people that fall within its mandate, including negotiating with provincial governments for the delivery of programs and services to Aboriginal children.

The provision and funding of programs and services for on-reserve children and families is problematic for Aboriginal communities. Inequitable funding to children living on reserve (or ordinarily resident on reserve) continues, and Aboriginal agencies delivering child welfare services on reserve receive less funding than their off-reserve counterparts. For example, foster parents off-reserve receive more funds to care for children, and may have greater access to services. Many Aboriginal communities are remote and may lack the professional and support services that would help children and families remain together. Socio-economic issues such as overcrowded housing, poverty, and chronic underfunding of programs and services keep Aboriginal children and families at risk of overrepresentation within the child welfare system.[20]

Case Study: Jordan's Principle

The federal and provincial governments have disagreed about who has financial responsibility to pay for services to Aboriginal people. This jurisdictional wrangling often resulted in a situation where both federal and provincial governments denied financial responsibility to vulnerable Aboriginal children, leaving them without services.

Jordan's Principle arose from the situation of a child from Norway House Cree Nation in Manitoba who died at five years of age.

He had special needs that his parents could not pay for on their own, and they put him into care to get government assistance. Jordan spent his first two years in hospital. After that, Canada and Manitoba could not agree on who should pay for his at home medical care. He remained hospitalized while the governments continued to disagree about who should pay for his home care supports. Jordan passed away in the hospital, and was never able to be in a home, because Canada and Manitoba could not agree on who should cover costs for his care outside of the hospital.

Treaties, bylaws or agreements with the Province may influence the interpretation or implementation of the CFCSA

Jordan's Principle is an agreement that, where a jurisdictional dispute arises between federal and provincial governments concerning a status Indian child, the government of first contact pays for the service and the governments agree to work out jurisdiction and financial responsibility later. Despite Jordan's Principle, the federal government has challenged the extent of its funding responsibilities. In 2012, the Federal Court ruled that Jordan's Principle is legally binding on the federal government, and that the inequitable funding provided by the federal government for on-reserve Aboriginal services is a ground for a claim of racial or ethnic discrimination before the Canadian Human Rights Commission (CHRC) allowing a complaint brought by the Assembly of First Nations and the First Nations Child and Family Caring Society (FNCFCS) to proceed.[21] The case is currently before the CHRC.

III. Treaties or Other Inter-Governmental Agreements

Aboriginal groups may have treaties, band bylaws or intergovernmental agreements (such as Memorandums of Understanding (MOUs) or Protocol agreements), which influence the interpretation or implementation of the CFCSA with respect to their child members, and address the jurisdictional interplay between Aboriginal and Crown government jurisdictions.

Treaties may provide for special notice or jurisdictional space for Aboriginal groups to pass laws to occupy the area of child welfare. The extent of these provisions are set out in the agreements themselves, and generally include that the Aboriginal group can pass laws which apply to children who are resident on their treaty settlement or reserve lands. Where a treaty allows an Aboriginal community to occupy jurisdiction, these provisions only become fully operational once that group has passed laws to occupy that jurisdiction. In many cases, Aboriginal groups have negotiated this space, but have yet to legislatively occupy it.

Agreements which include child welfare provisions are listed in Schedules 1A and 1B of the CFCSA Regulation and include: Nisga'a Lisims Government, Huu-ay-aht First Nations, Ka:'yu:'k't'h'/ Che:k'tles7et'h' First Nations, Toquaht Nation, Tsawwassen First Nation, Uchuklesaht Tribe, and Ucluelet First Nation. To date, Tsawwassen is the only First Nation which has occupied the legislative space and passed the *Tsawwassen First Nation 2009 Children and Families Act* which applies to Tsawwassen children on their lands.[22]

Spallumcheen (Splatsin) has jurisdiction over their child members on or off reserve

Spallumcheen (Splatsin) "A By-law for the Care of Our Indian Children"

Spallumcheen (Splatsin) "A By-law for the Care of Our Indian Children" (Bylaw #3-1980) gives to the Band exclusive jurisdiction over any proceeding involving the removal of a child from their family, notwithstanding the residency of the child.[23] It is the only child welfare bylaw which has been allowed under s. 81 of the *Indian Act*.

Key provisions of the by-law include:

1. …The Spallumcheen Indian Band finds:

(a) that there is no resource that is more vital to the continued existence and integrity of the Indian Band than our children.

(b) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-band agencies.

(c) that the removal of our children by non-band agencies and the treatment of the children while under the authority of non-band agencies has too often hurt our children emotionally and serves to fracture the strength of our community, thereby contributing to social breakdown and disorder within our reserve.

3. (a) The Spallumcheen Indian Band shall have exclusive jurisdiction over any child custody proceeding involving an Indian child, notwithstanding the residence of the child.

5. The Chief and Council shall be the legal guardian of the Indian child, who is taken into the care of the Indian Band.

6. The Chief and Council and every person authorized by the Chief and Council may remove an Indian child from the home where the child is living and bring the child into the care of the Indian Band, when the Indian child is in need of protection.

The Bylaw makes chief and council guardians of the first instance for a child deemed in need of protection, and contains provisions setting out the process that the Band will follow in determining a placement of a child apprehended under the bylaw. The Province has an agreement to work with Splatsin.

Recognition of children's human rights to Aboriginal culture and identity could transform child welfare law

BEST PRACTICE 2.02

Treaties, band bylaws and intergovernmental agreements may influence the interpretation or operation of the CFCSA with respect to some Aboriginal children

1. *Treaties, band bylaws and intergovernmental agreements should be reviewed by all parties (director, Aboriginal communities, counsel for parents or children) as they may influence the interpretation of the CFCSA with respect to some Aboriginal children.*

2. *Children who are members of, or entitled to be enrolled under, a treaty may have a different set of laws or policies that apply to them.*

3. *Children who are members of the Spallumcheen (Splatsin) Indian Band are subject to that Band's Bylaw Respecting Indian Children whether they live on or off reserve, and that Bylaw gives jurisdiction to the Chief and Council of the Splatsin on child welfare matters.*

4. *Where an Aboriginal community has negotiated an MOU or Protocol with the Province, that agreement may set out specific steps the parties have agreed to follow.*

IV. International Instruments and the CFCSA

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)[24] and the *United Nations Convention on the Rights of the Child* (UNCRC),[25] both endorsed by Canada, set out international standards governing state conduct that should guide the interpretation of domestic law, including the CFCSA. Implementation of the recognition of Aboriginal peoples' rights as human rights, and recognition of children's rights to their Aboriginal culture and identity, have the power to transform the application of child welfare law to Aboriginal children.

The Supreme Court of Canada has recognized that international instruments, such as UNDRIP and UNCRC, should guide interpretations of domestic law: "international custom, as the law of nations, is also the law of Canada unless, in a valid exercise of its sovereignty, Canada declared that its law is to the contrary."[26] It should be assumed that the CFCSA is consistent with international principles, as an "interpretation that produces compliance with international law is preferred over one that does not."[27]

Aboriginal children have human rights as members of Indigenous Nations which must be respected in the interpretation of child welfare legislation

United Nations Declaration on the Rights of Indigenous Peoples

The UNDRIP sets standards to ensure the human rights and dignity of Aboriginal peoples and recognizes that the cultures, traditions, and laws that ensure the cultural survival and continuity of Aboriginal peoples are carried forward through children and emerging generations. Key provisions relevant to the area of child welfare include:

> **Article 7**
>
> 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
>
> 2. Indigenous Peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
>
> **Article 8**
>
> Indigenous Peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. States shall provide effective mechanisms for prevention of, and redress for:
>
> Any form of forced assimilation or integration…
>
> **Article 9**
>
> Indigenous Peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

V. United Nations Convention on the Rights of the Child

The UNCRC recognizes the rights of communities in caring for children and the human rights of children to have their Aboriginal culture and identity preserved. A full measure of a child's human rights must reflect their broader cultural and societal relationships. Key provisions relevant to child welfare include:

Aboriginal children have the human rights to have their culture and identity preserved

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the right recognized in the present Convention.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse…

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and … for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

3. Such care could include … placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 30

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Children have the right to be heard in matters affecting them

In *G. (B.J.) v. G. (D.L.),* [28] Justice Martinson contemplated a child's right to be heard in a domestic family law matter, applying the international standards set out in the UNCRC to find that as "all children in Canada have legal rights to be heard in all matters affecting them," that "[d]ecisions should not be made without ensuring that those legal rights have been considered." She noted that the UNCRC "does not give decision makers the discretion to disregard the legal rights contained in it because of the particular circumstances of the case or the view the decision maker may hold about children's participation."

Human Rights of Aboriginal Peoples in Child Welfare Matters

The rights of Aboriginal children, outlined in international instruments, has been described as including "the right to grow up in strong Indigenous families, participating in their culture and community, free from abuse and neglect" which suggests state obligations to:

> increase Indigenous self-government in child welfare; recognize cultural differences in child rearing and child protection practices; address the root causes of neglect and abuse; provide support to families to prevent the removal of children and promote healing; and place children within the same community/culture whenever possible if removal is necessary.[29]

In light of the guidance provided by the UNDRIP and UNCRC, the provisions of the CFCSA relating to Aboriginal children should be read to be consistent with international human rights standards. This implies a positive duty to keep Aboriginal children within their families or cultural community, similar to the active efforts required in the United States under the *Indian Child Welfare Act* (ICWA).[30] "Active efforts" to keep an Indian child within their tribes and families could include "utilizing the available resources of the Indian child's extended family, tribe, tribal and other Indian social services agencies, and individual Indian caregiver service providers."[31]

BEST PRACTICE 2.03

Interpretive principles set out in the UNDRIP and UNCRC should guide an analysis of the CFCSA

1. *Incorporation of International standards to interpret the CFCSA suggests:*

- *Positive duties and obligations on Courts, the director, and Aboriginal communities to make active efforts to maintain Aboriginal children's identity and cultural heritage;*
- *Active measures are required to involve the child's Aboriginal community in planning to protect and maintain an Aboriginal child's cultural identity and heritage.*

2. *The UNDRIP recognizes that the ability to pass the laws, traditions, and language fundamental to cultural survival to Aboriginal children are protected as an incidence of Aboriginal peoples' human rights. Courts should be conscious of this fact when entertaining submissions by Aboriginal communities under the CFCSA.*

3. *The UNCRC recognizes the child's right to be heard; the CFCSA requires that a child over the age of 12 be notified and given an opportunity to be heard in matters that impact them. These sections provide an opportunity to examine an Aboriginal child's own opinions on staying connected to their Aboriginal culture and heritage. Courts should require that these investigations be made, and Aboriginal communities could help assist in this conversation.*

- *Courts can ask whether the Aboriginal child was invited to attend the hearing or to provide testimony in some other way, to give evidence of their views about their Aboriginal heritage and culture and the need to preserve those connections;*
- *An advocate from the child's own Aboriginal community could be identified to help them articulate their wishes, and children are likewise entitled to legal representation where required to have their voice heard.*

Endnotes

1. [2001] 1 S.C.R. 911 [Mitchell].

2. [1996] 2 S.C.R. 507 [Van der Peet].

3. [1997] 3 S.C.R. 1010 [Delgamuukw].

4. See for example: Casimel v. I.C.B.C., [1994] 2 C.N.L.R. 22 (B.C.C.A.) [Casimel]. Justice Within: Indigenous Legal Traditions (Ottawa: Law Commission of Canada, 2006) contains an extensive discussion of Aboriginal laws and legal traditions, and their recognition within Canadian common law.

5. (1867), 1 C.N.L.C. 70 (Que. S.C.).

6. [2000] B.C.J. No. 1525 [Campbell] at para 106.

7. Campbell, at para. 86.

8. Casimel at 26, citing the B.C.C.A. judgment in Delgamuukw v. B.C., [1993] 5 W.W.R. 97 (BCCA). See also Re Beaulieu's Petition (1969), 3 D.L.R. (3d) 479 (N.W.T.T.C.); R. v. Bear's Shin Bone (1899), 4 Terr. L.R. 173 (N.W.T.S.C.); Re Katie's Adoption Petition (1961), 32 D.L.R. (2d) 686 (N.W.T.T.C.); Re Wah-Shee (1975), 57 D.L.R. (3d) 743 (N.W.T.S.C.).

9. See for example: R. v. Pamajewon, [1996] 2 S.C.R. 821, and Delgamuukw.

10. RCAP, Vol. 3, at 10: "The authority of Aboriginal nations and their communities to exercise jurisdiction is central to specific strategies for protecting children, restoring balance between men and women in families, and establishing ethical standards of respect for vulnerable peoples…"

11. See for example: A […] (First Nation) v. Children's Aid Society Toronto, 2004 CanLII 34409 (ON SC) [A […]] at para. 40: "There was no evidence of any particular, or even general, child-rearing practices of the First Nation, or of First Nations in general. Thus it was impossible to find there were any traditional rights that had been guaranteed by s. 35, and thus infringed."

12. See for example: A […]; L. (M.S.D.), Re 2007 SKQB 200 (CanLII) [L. (M.S.D.)]: The best interests of the child "could not be obtained if I were to permit this application to be the springboard for the substantive political and legal determinations of constitutionally protected inherent rights and treaty rights of First Nations' persons" (at para. 8); L. (M.S.D.), Re, 2008 SKCA 48 (CanLII); In the Matter of Q. (N.), [2004] 3 C.N.L.R. 262; 2003 YKTC 35 (CanLII), the court expressed concern "that the hearing will be unduly prolonged or become side tracked should the issue of intergovernmental relationships be injected into the proceedings," at para. 20.

13. See for example: Racine v. Woods, [1983] 2 S.C.R. 173 [Racine], Re R.T. 2004 SKQB 112 and 2004 SKQB 503; A.[...]; Winnipeg (Child and Family Services) v. M.A., 2002 MBQB 209.

14. R. v. Marshall; R. v. Bernard, 2005 SCC 43, [2005] 2 S.C.R. 220, LeBel, J., concurring, at para. 142.

15. As it now reads:
88. Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the First Nations Fiscal Management Act, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts.

16. (1975) 56 L.R. (3d) 567 (Man. CA).

17. [1976] 2 S.C.R. 751, (1975) 60 D.L.R. (3d) 148.

18. See for example: Tsilhqot'in Nation v. B.C. 2004 SCC 44 [Tsilhqot'in]; Quebec (A.G.) v. Canadian Owners and Pilots Assn, [2010] 2 S.C.R. 526.

19. In allowing the class action challenging Canada's decision to allow the "Sixties Scoop" the Ontario Superior Court of justice in Brown noted that Canada maintained its obligations for Indian children, despite delegating powers to administer the child welfare system to the provinces: "It is acknowledged by Canada that it could have set up its own child welfare system to deal with these persons," while the decision to delegate child welfare in the provinces "undoubtedly made good sense from a practical and efficiency point of view, Canada cannot avoid its responsibilities as a fiduciary by delegating its discretionary authority to another." (at para. 26). Canada's good intentions do not remove its responsibility for the results of its actions: "The fact that Canada was trying to do something positive for these children does not remove the need for Canada to undertake its good work free

of negligence. In other words, a duty of care is not eliminated just because the person who has the duty is engaged in what is intended to be an affirmative or beneficial act." (at para. 37).

20. National Collaborating Centre for Aboriginal Health: "Aboriginal and Non-Aboriginal children in child protection services" (National Collaborating Centre for Aboriginal Health, 2013) at 3.

21. First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada, (2012) [Ongoing].

22. Available online at: www.tsawwassenfirstnation.com/laws-regulations-and-policies/laws/

23. The jurisdiction of the Splatsin Bylaw has never been successfully challenged in court. See for example: S. (E.G.) v. Spallumcheen Band Council, [1999] 2 C.N.L.R. 318 (B.C.S.C.). The Bylaw was discussed in M.M. (Re), 2013 ABPC 59 (CanLII) at paras 86-87.

24. United Nations Resolution adopted by the General Assembly 61/295, United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007.

25. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

26. R. v. Hape, 2007 SCC 26; [2007] 2 S.C.R. 292 at para. 39 [Hape]; Canada (A.G.) v. Canadian Human Rights Commission, 2007 SCC 26; [2007] 2 S.C.R. 292.

27. Sullivan, Ruth. Statutory Interpretation (2nd) (Toronto: Irwin Law, 2007) [Sullivan] at 241.

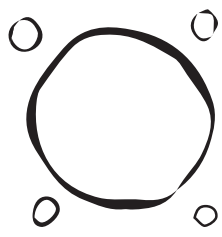
28. 2010 YKSC 44, 324 D.L.R. (4th) 367, at paras. 2-4.

29. First Nations Child and Family Caring Society of Canada. Indigenous Children: Rights and Reality. A Report on Indigenous Children and the U.N. Convention on the Rights of the Child. (Toronto: First Nations Child and Family Caring Society of Canada, 2006) [Indigenous Children] at 71.

30. 25 U.S.C. 1901-63.

31. California Legal Services, California Judges Benchguide: The Indian Child Welfare Act (Sacramento, CA: California Legal Services, 2012 [California Benchguide].

03. Best Interests of Aboriginal Children and Identifying Biases



03. Best Interests of Aboriginal Children and Identifying Biases

Child welfare law is embedded with biases and assumptions which compel intervention to protect children, while simultaneously rejecting or limiting the involvement of Aboriginal communities. Stereotypes about Aboriginal peoples impede the transformation that could occur through recognition of Aboriginal laws in the area of children and families. The Supreme Court of Canada has cautioned courts to be aware of equality and fairness considerations in child protection matters, where members of disadvantaged groups, such as women and Aboriginal people, are "vulnerable to judgments based on cultural or class bias."[1]

I. Defining the Best Interests of Aboriginal Children

Child welfare law is embedded with biases which limit the involvement of Aboriginal communities

The "best interests of the child" test guides all aspects of child welfare matters. The CFCSA contemplates that the preservation of an Aboriginal child's cultural identity and heritage is vital to a full consideration of what is in the child's best interests.

> 4 (1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interest, including for example:
>
> a. the child's safety;
>
> b. the child's physical and emotional needs and level of development;
>
> c. the importance of continuity in the child's care;
>
> d. the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;
>
> e. the child's cultural, racial, linguistic and religious heritage;
>
> f. the child's views;
>
> g. the effect on the child if there is delay in making a decision.

> (2) 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.

The best interests of the child test has been used to justify removal of many Aboriginal children from their homes, making the operation of child welfare law "appear natural, necessary, and legitimate, rather than coercive and destructive" and "has served to constrain judicial decision making so as to minimize, and even negate … the relevance and importance of maintaining a child's First Nations identity and culture."[2]

An Aboriginal child's best interests require the full and active involvement of their Aboriginal community over their lifetime

This Guidebook reflects the belief that an Aboriginal child's best interests can be best achieved through the full and active involvement of their Aboriginal community. In practice, the application of the best interests test to considerations of an Aboriginal child's culture, identity, and lifelong need for connection and support from their Aboriginal community(ies), has been limited. The failure to recognize that maintaining a child's Aboriginal cultural connections and identity is in their best interests has resulted in the continued overrepresentation of Aboriginal children in the child welfare system.

A. Racine v. Woods

Racine continues to stand as an authority on the best interests of the child test in the context of Aboriginal children. *Racine* concerned an Ojibwe child, whose mother was experiencing some difficulties when she was born, and entered into a one-year temporary care arrangement where the child was placed with the Woods family. The mother voluntarily extended this agreement, and returned after several years to collect the child. The foster parents refused to return her. The Ojibwe mom sought the return of her child; and the proposed adoptive parents sought an adoption.

Justice Wilson, in *Racine,* considered the "best interests of the child" test to mean that "the significance of cultural background and heritage as opposed to bonding abates over time. The closer the bond that develops with the prospective adoptive parents the less important the racial element becomes."[3] The Supreme Court of Canada adopted the statement of an expert witness and concluded that the case: "has nothing to do with race, absolutely nothing to do with culture, it has nothing to do with ethnic background. It's two women and a little girl, and one of them doesn't know her. It's as simple as that."[4]

Racine has been widely used to stand for the principle that in the case of Aboriginal children, the importance of culture diminishes over time and that bonding to adoptive or foster parents becomes more important.[5] Aboriginal communities have consistently argued that the *Racine* analysis fails to adequately or fully reflect the life-long importance of cultural identity and connections.

Cultural identity and connections are of lifelong importance to Aboriginal children

Racine has been characterized as based on "the underlying notion" that "with time, First Nations and Aboriginal peoples can somehow become less Indigenous; that, with time, Indigenality somehow becomes less constitutive and important; that, with time, if First Nations and Aboriginal children are separated from their families and communities, they can be 'successfully assimilated.'"[6]

B. CFCSA: BC Adopts a Different Approach

The BC legislature adopted a different approach to that articulated in the *Racine* decision by creating legislative space in the CFCSA for the involvement of Aboriginal communities and requiring that plans of care maintain a child's Aboriginal identity and heritage. In *N.H. and D.H. v. H.M., M.H. and the Director of Child, Family and Community Service*,[7] the *Racine* principles were considered in light of the CFCSA provisions. The biological mom was a child of the Sixties Scoop, raised in the United States and adopted by the H's. She had a child with an African American dad (absentee). After his birth, she stayed with her adoptive parents for several months, and then came to Vancouver to meet her biological dad. The baby then lived with the Aboriginal grandfather for several years. Both the Aboriginal grandfather and adoptive parents wanted to keep the baby.

At trial, the Aboriginal mom's non-Aboriginal adoptive parents were described as having a lively intellect; interested in Aboriginal culture (local groups in Connecticut); having researched the child's Aboriginal home community on the internet; having access to African American culture; owning a large farmhouse in Connecticut; and as being able to provide private prep school for the child. The Aboriginal grandfather was described as being on social assistance, with a loving home; having experienced difficult younger years, including alcohol abuse and a short time in prison; being unemployed and volunteering on the Downtown Eastside of Vancouver; not comfortable with traditional spiritual practices; and having cared for his daughter who was charged with car theft. (His parenting style was found to indicate his "high regard for the independence of his offspring"—an attitude which the trial judge seemed to view as an absence of parenting.)

The BC Court of Appeal, interpreting the CFCSA, would have kept the child with the Aboriginal grandfather. The BC Court of Appeal found that the CFCSA directed that a child's Aboriginal culture and identity must be considered in determining a child's best interests, and that "the trial judge placed undue emphasis on economic matters and underemphasized ties of blood and culture that bind" the child to his Aboriginal family and heritage.[8]

The high number of Aboriginal children in care reflects false assumptions about Aboriginal peoples

The decision of the BC Court of Appeal was overturned by the Supreme Court of Canada[9] which found that cultural identity of Aboriginal children was to be considered but not determinative. Considerable weight was placed on the fact that the child was both African-American and Aboriginal, and the Court cited with approval the trial judgment that "[t]his is not a case of taking an Aboriginal child and placing him with a non-Aboriginal family in complete disregard for his culture and heritage."[10] The Supreme Court emphasized the importance of economic factors and the fact of the child's mixed Aboriginal/African American heritage, despite the child's "bonding" with his Aboriginal grandfather. In *Van de Perre v. Edwards*,[11] the Supreme Court of Canada referred to *H.(D.), SCC* as saying that race "can be a factor in considering the best interests of the child because it is connected to culture, identity and emotional well-being of the child."[12]

II. Identifying Biases and False Assumptions

False assumptions about Aboriginal culture and identity, or the inability of Aboriginal peoples to parent, or Aboriginal communities to care for their children, are reflected in the inordinately high number of Aboriginal children involved in the child welfare system. Common examples include:

- Children or their families may be found to not be "Aboriginal enough"—because of a mixed heritage or a perceived disconnect with their cultural roots—and so not entitled to benefit from provisions of the CFCSA which protect Aboriginal culture or identity.
- Responsibility for care of Aboriginal children in Aboriginal cultures is often distributed, and may be misunderstood. The failure to recognize the role of extended families or community members in Aboriginal parenting can lead to a finding that a child has been abandoned or neglected if left in temporary or distributed care.

- Aboriginal parenting styles that allow for a greater degree of autonomy or exploration, or discipline that is less obvious—such as teaching or storytelling—may be judged "too permissive" or as poor or neglectful parenting. [13]
- A real or perceived disability of an Aboriginal child or parent (such as FAS/FAE) may be used to justify the disqualification of Aboriginal family or community members from caring for that child.
- Some child welfare concerns may reflect poverty, rather than poor or neglectful parenting, such as overcrowding in a home, lack of seasonally appropriate clothes, or, not participating in school or community activities.

Questioning whether a child (or their family) is truly "Aboriginal"

BEST PRACTICE 3.01

Child protection concerns must be assessed in a culturally appropriate way

1. *Aboriginal communities should be involved in assessing child protection concerns in a culturally appropriate way. Aboriginal communities could identify where protection concerns stem from cultural differences and should not be read to indicate that a child is in need of protection. For example, leaving children with grandparents or extended family members, or keeping a child from school to attend important cultural or harvesting activities, may reflect cultural practices rather than neglect.*

A. Questioning a Child's Aboriginal Identity

Questioning whether a child (or their family) is truly "Aboriginal" and therefore entitled to have their Aboriginal identity or cultural heritage protected can be a way of avoiding CFCSA provisions aimed at preserving Aboriginal cultural connections. Where a child or family is found to be "not Aboriginal enough," based on a racial/blood quantum analysis, or an assessment of cultural authenticity, it is less likely for that child's Aboriginal cultural heritage to be protected, or for efforts to be made to involve their Aboriginal community.

Mistakenly Applying a Blood Quantum Analysis

Examples where courts have found a child to be "not Aboriginal enough" include:

A blood quantum analysis should not be used to disqualify Aboriginal children from the protections of their culture and heritage in the CFCSA

- *D. (M.B.) v. Saskatchewan (Minister of Social Services)*[14]—where a child's Aboriginal heritage was minimized, as the Court concluded that the child's racial identity is "unclear and clearly mixed": "Her mother is Aboriginal, her father was black and apparently was partially of East Indian origin. … She has dark skin, a broad nose and white palms and footpads."[15]
- *A.J. v. S.J.M.*[16]—where the Court delved into the dad's Aboriginal identity, and despite that the dad had Indian status and was a member of Squamish First Nation, the Court found he "is no more than approximately one-sixteenth to one-eighth Squamish Indian in terms of his genetic make-up". This investigation ultimately lead the Court to conclude that to acknowledge the child's Squamish identity would prejudice the child's other identities: "this Court cannot conclude that [the child's] other cultural heritages, other than Native Indian, have no importance. [The child] has a right to know and learn about all of the distinct cultures underlying his genetic makeup, without fostering one to the exclusion of the others."
- *Tearoe*[17]—where the BC Court of Appeal refused the Aboriginal birth mother's application to revoke an adoption and diminished the importance of the child's Aboriginal heritage, observing that the child is "one-quarter native Indian" and seemed reluctant to allow that 1/4 to prejudice the child's 3/4 non-Aboriginal heritage.
- *Wesley v. CFCS*[18]—where the BC Supreme Court noted that the director had considered the children's Aboriginal heritage as "that the children were Métis, having a white mother and Aboriginal father," so were placed "in a Métis foster home." This assessment is troubling because Métis are an Aboriginal people with historical roots and a distinct culture and language. The fact that a child (particularly in the context of British Columbia where many Aboriginal nations recognize a matrilineal or bi-lineal heritage and tend to own children completely, recognizing their full citizenship, regardless of mixed parentage) has one parent who is non-Aboriginal does not mean that the child is Métis.

BEST PRACTICE 3.02

A blood quantum definition of Aboriginal identity should be rejected

1. *A blood quantum definition of Aboriginal identity should be rejected in the application of the CFCSA. That a child has a non-Aboriginal parent or heritage does not make them "less Aboriginal". Where a child is of mixed parentage, to accord the Aboriginal identity of that child less weight, and so to overlook the ways citizenship and belonging form part of Aboriginal cultural identity, should be avoided.*

Aboriginal peoples in urban environments are equally entitled to have their culture and heritage reflected in child welfare decisions

Analyzing Aboriginal Identity as Inauthentic or Frozen

Adopting a frozen view of Aboriginal identity or cultures can lead to an impoverished analysis that overlooks the lived political and social experience of Aboriginal children, and can be used to diminish the importance of maintaining a child's Aboriginal heritage. That Aboriginal families live in an urban setting, or do not live a "traditional" lifestyle, have been used to support arguments that there is no "cultural connection"—and hence no cultural loss—in removing children from those families. Examples include:

- *Saskatchewan (Social Services) v. L.B.*[19]—The Court decided the grandmother could not preserve the child's Aboriginal culture as they did not find her connected to it. The "grandmother did not know what cultural activity she was last involved in" and testified that "culture means to be a family/to sit around with one another."
- *Children's Aid Society of Halifax v. H.*[20]—The relevance of Aboriginal culture was diminished because of the parents' lack of connection or knowledge: "The impact of religious and cultural heritage is not as profound when … reliance by the parents on those heritages is not occurring."
- *CJK v. Children's Aid Society of Metropolitan Toronto*[21]—The Court minimized consideration of an Aboriginal grandmother's ability to maintain the child's connection to Aboriginal cultural heritage: "there is very little in [her] life … which recognizes or maintains a native tradition, beyond her knowing some words of her native tongue."

- *Tearoe*[22]—The judge described the Aboriginal mom's connection to her culture as more illusory or hopeful than real, noting she "has not lived on the reserve for approximately six years," that "[t]here is little, if any, evidence of any contact by her with members of her family," and that she did not speak Cree. The mother's cultural disconnection and off-reserve residency was used to minimize the weight to be given the child's Aboriginal culture and identity.
- *L. (M.S.D.) (SKCA)*[23]—The child and family's disconnection from the Aboriginal community was used to defeat the participation of the band. The fact that the child was raised outside the community (a situation which the band sought to remedy by its intervention) was used to deny the band standing.

Aboriginal communities and individuals define what Aboriginal culture and identity is

Increasing numbers of Aboriginal peoples live in urban environments, this does not mean they are less Aboriginal, rather that they translate and transport Aboriginal culture to urban environments.[24] Colonization through residential schools and the child welfare systems forcibly removed and disconnected Aboriginal peoples from their cultures and languages. The Court should not substitute its own view of what real or authentic "Aboriginal culture" is for that presented by Aboriginal families or communities. False assumptions about what it means to be truly or authentically "Aboriginal" should not be allowed to defeat the purposes of the CFCSA.

> According to 2006 Census, more than half (623,470) of the 1,172,790 people identifying themselves as members of at least one of Canada's Aboriginal groups, that is, North American Indian, Métis or Inuit, resided in urban areas. Of this urban Aboriginal population, almost 34% (213,945) lived in five cities: Winnipeg, Edmonton, Vancouver, Calgary and Toronto.[25]

In the wake of the disruptions that have been caused by colonialism, for some Aboriginal peoples it may not be possible to re-establish connections to their home communities.[26] This fact should not be used to excuse no effort, or insufficient effort, to investigate what connections to a family's home community or culture might exist or be capable of repair. The cultural disconnect itself may create and enforce the reasons families become involved in the child welfare system and are unable to independently address the challenges that they face in keeping their children safe. Aboriginal parents raised in care and dislocated from their home communities face a catch-22: They may not know, or be connected to, their Aboriginal heritage

and it is that very lack of connection that leads them to further involvement in the child welfare system as parents.

The Supreme Court of Canada has explicitly rejected a "frozen rights" approach to Aboriginal or treaty rights,[27] arguing that the constitutional recognition of Aboriginal and treaty rights must be "interpreted flexibly so as to permit their evolution over time." This flexibility ensures effective protection over time. The same flexibility should be incorporated into the consideration of Aboriginal culture and heritage under the CFCSA.

Areas where Aboriginal communities could help resolve child protection concerns go unexplored, especially in urban areas

BEST PRACTICE 3.03

A frozen rights approach to defining Aboriginal culture or identity should be rejected

1. *The child welfare system should not further penalize Aboriginal peoples for the impacts of colonialism (such as loss of language, culture or increased urbanization). Decisions of a Court in child welfare proceedings should not further isolate Aboriginal children from their Aboriginal cultural community.*

2. *Off-reserve Aboriginal parents and children live in circumstances which may bring them into contact with child welfare agencies in significantly greater numbers than non-Aboriginal families. The urban Aboriginal experience, though different from the on-reserve experience, should not be assumed to be devoid of culture and tradition, and a frozen rights approach to defining Aboriginal culture or identity should be rejected.*

3. *Where a parent was raised in the child welfare system or isolated from their community through Residential Schools or other reasons, or a child was born and partially raised away from their home community, active efforts may be required to build connections to an Aboriginal community to establish permanency and stability for a child. The absence of connection to an Aboriginal community may be a key factor leading to protection concerns.*

B. Poverty

> …Indigenous children face a disproportionate risk of child abuse and neglect, …maltreatment by caregivers and by other individuals in positions of day-to-day power over the child. Additionally, there are many indications that most systems to prevent and address such abuse are failing Indigenous children as they focus primarily on mediating risk at the level of the family and fail to address the societal factors (poverty, poor housing, discrimination, dislocation, etc.) which have the most significant impact on child maltreatment experienced by Indigenous children.[28]

Poverty should not be a ground for removing a child from their family

"A lack of material or social advantage does not ground the need for a finding that a child is in need of protection"[29] courts should carefully consider where poverty might be at the root of child protection concerns. Aboriginal women make up the majority of off-reserve urban population, many are single parents living on low-incomes, and the number of Aboriginal children living in poverty is twice the amount of non-Aboriginal children.[30] Likewise, Aboriginal dads represent the largest portion of single dads. Though poverty may not be overtly a factor in a finding that a child needs protection, an examination of reasoning can reveal that it is.

Justice Smith, in *Director v. M.B.*, identified poverty (as opposed to bad parenting) as a factor in a contentious situation where a mom was heating her home with her oven because her natural gas was not connected: Noting that while "[u]nquestionably the mother needed to be taught that there were more proper interim measures that could be taken to heat the trailer," nonetheless caution must be taken "not to overemphasize protection concerns that are primarily rooted in poverty, otherwise a significant portion of our population would be deemed to be in need of protection."[31] Factors related to poverty can be listed as disincentives to placing a child within their Aboriginal community, including housing shortages, "a lot of movement on and off the reserve"[32] or a relative lack of educational or social opportunities.

BEST PRACTICE 3.04

In assessing child protection concerns for Aboriginal children and families, determine where these concerns reflect poverty rather than actual safety concerns

1. *In assessing child protection concerns for Aboriginal children and families, determine where these concerns reflect poverty rather than actual safety concerns. Factors that may reflect poverty rather than neglect or not caring include: overcrowding; a child not having their own room or bed; a child not having seasonally appropriate clothing; a family not having fresh or nutritious food available; or, parents or extended family not calling or attending at access visits regularly (where transportation or telephone access is limited due to financial concerns).*

An Aboriginal parent or child's disabilities often ground a finding that children cannot be cared for within their communities

C. Disabling Aboriginal Care

A parent or child's disabilities often ground a finding that parents or caregivers cannot care for a child and that removing them from their Aboriginal family and community is in their best interests. Examples where Aboriginal caregivers appear to have been refused based on perceived disabilities of the parent(s) or child include:

- *In the Matter of the Children NP and BP*[33]—custody of the children was granted to a non-Aboriginal couple rather than their Aboriginal aunt and uncle, because the Court "afforded significant weight to the "greater understanding" of the non-First Nations couple of the special educational needs of children suffering learning disorders. Comparatively little consideration was accorded to the presumably far greater understanding of the First Nations aunt and uncle of the special cultural needs of First Nations children."
- *RRE (Re)*[34]—an Aboriginal grandmother sought to have her grandson, with FAS, placed in her care. The Court was troubled by the grandmother's suggestion that she had "finished" raising her eldest grandchild, a 19 year old woman with FASD because it showed "a lack of understanding of her role as a parent in a vulnerable child's life"[35] and "a disturbing lack of understanding of [her] limitations as an adult living with FASD."[36]
- *R.S.B. (Re)*[37]—the Court found the child with FAS needed parents who could "manage and guide him" not the Aboriginal community who had little resources to assist and which the

Court characterized as an "amorphous group of well-intentioned members of the extended family."[38]

That a child has a disability should not be used to ground a finding that they cannot be cared for within their Aboriginal community, nor to deny them a lifelong identity and sense of belonging.

BEST PRACTICE 3.05

Parent or child disabilities should not be used to find that a child cannot be cared for within their Aboriginal community

1. *Decisions about where to place a child with a disability must include a full consideration of the range of individual, family, and community support available within Aboriginal communities that can provide safety and connectedness for the child.*

2. *Before determining if a child needs to be removed due to a protection concern, in the case of a parent with confirmed or suspected FASD or other disability, the child's Aboriginal community should be actively involved in an exploration about whether there are support or supervision options which would allow the family to remain together. Support agreements between the director and Aboriginal community could help families who need additional support because of parent or child disabilities to remain together.*

D. Past Challenges (including CFCSA Involvement) used to Invalidate Care

There are numerous cases that suggest that there is little parents or grandparents can do to repair or overcome the negative implications of their history of involvement within the child welfare system. Examples of how an Aboriginal family member's past challenges have been used to find they are unfit to care for a child include:

- *D.C.W. v. Alberta (Child, Youth and Family Enhancement, Director)*[39]—where the Court noted that a grandmother had all of her children removed because of her "severe and long-term addiction issues" and "domestic violence." The fact that the grandmother had stopped actively using and was now employed did not displace the implications of her personal history.

- *D.(M.B.)*[40]—where the Court was concerned about a proposal to return a child to her Aboriginal family: "Social services wants to return her to her own culture which they say is Aboriginal. She would be returned to the same extended family in which she was exposed to drugs in utero."
- *Children's Aid Society of Sudbury and Manitoulin v. B.(J.)*[41]—an Aboriginal grandmother's application for custody of her grandchildren, who were subject to child protection proceedings, was denied due to her past involvement with the society, criminal record, and history of substance abuse. On appeal, the Band supported the grandmother and argued that "extended family systems are important factors in the rearing of Aboriginal children" and highlighted "critical differences between the traditional child-rearing practices of Aboriginal people and the non-Aboriginal emphasis on the nuclear family as the model for child care". The Band highlighted its communal responsibility to its members and "argued that the agency's narrow-mindedness causes it to focus on Ms. M.B.'s failures rather than on her gains, highlighted her life-altering changes and underscored her education."[42] The Band argued that the grandmother "struggled and fought hard to overcome her unhealthy lifestyle and has managed to turn her life around and is definitely ready to take ownership and the responsibility of parenting her grandchildren."[43]

Aboriginal communities could highlight how caregivers have transformed their lives and provide a more balanced consideration of their suitability

Even where Aboriginal parents have stopped substance abuse or removed themselves from dangerous situations, their histories may still be used to deny them the opportunity to care for their children.

> If a history of substance abuse exists, the court will choose to ignore the good (i.e. child-care support from within the Aboriginal community) and emphasize the bad (i.e. previous incidents of alcohol abuse). There is no consideration of whether community resources for treatment are available or the extent to which an applicant has been personally involved in excessive drinking or violence that may be taking place elsewhere in the extended family.[44]

The involvement of Aboriginal communities could reorient the discussion by helping to highlight how caregivers may have transformed their lives and providing a more balanced consideration of the suitability of prospective caregivers.

BEST PRACTICE 3.06

Past history should not be used to invalidate care by Aboriginal caregivers

1. *Aboriginal caregivers' ability to safely protect and care for Aboriginal children should be assessed in a fair and equitable way in each situation, taking into account how people have transformed their lives.*

2. *Given the history of colonization and historic trauma that Aboriginal peoples have experienced, many prospective caregivers may have histories (of substance abuse, crime, involvement in the child welfare system and so forth) that they have had to work hard to overcome. This history should not be automatically used to disqualify them as caregivers.*

The bonds an Aboriginal child has through their culture creates stability and connection over their lifetime

E. Assuming a Conflict Between the Interests of Aboriginal Children and Communities

The belief that an adversarial relationship exists between Aboriginal children and Aboriginal communities, or between Aboriginal communities and child protection agencies, can prevent consideration of the voice of Aboriginal communities in planning for the future of their child members. The bond an Aboriginal child has through his or her culture creates stability, social wealth, and connections over their lifetime: "Aboriginal identity lies at the heart of Aboriginal peoples' existence; maintaining that identity is an essential and self-validating pursuit for Aboriginal peoples."[45]

> A child's right to love and nourishment (cultural, emotional, spiritual, and physical) is the community's responsibility; in turn, these collective "responsibilities are [the child's] individual rights." Thus, to place a child outside her kinship community absent culturally relevant safeguards is to deny that child basic individual rights. Moreover, from a collective rights standpoint, such a placement works to break the cycle of indigenous life.[46]

Courts often fail to appreciate that a child's rights should not be seen in opposition to their Aboriginal community, and so discount the benefits and possibilities over a lifetime that a child has a result of their connection to their Aboriginal community. For example:

- *Adoption - 07202, 2007*[47]—the Court opined that a band's interests relating to the child's cultural heritage, ancestry, and identity "must not obscure … the moral, intellectual, emotional, and physical needs of the child, as well as the child's age, health, personality and family environment."[48] The Court assessed the matter as one of the individual rights of the child juxtaposed against the collective interests of the Aboriginal community: "adoption involves individual rights that cannot be fettered by collective interests".[49]
- *Catholic Children's Aid Society of Toronto v. C.(B.) and H.(J.C.)*[50]—the society asked for an adjournment to track down the *suggestion* that the child might have Indian status based on a statement made by the father who made a phonetic guess about the spelling of his Aboriginal community. The father had been adopted as a child and had no knowledge of his natural parents. The Court failed to see the benefit to a child of Aboriginal community involvement and felt this approach only impacted the rights of the unnamed Aboriginal community, not the rights of the Aboriginal child. "An approach to decision making under this legislation that tries to avoid potential deprivation to an as yet unidentified Indian band runs the risk of elevating the rights of an Indian band above the rights of the child who is the ***central*** focus of the statute."[51]

The best interests of the child should not be understood as requiring a choice between protecting a child or preserving their Aboriginal culture

The best interests of the child should not be understood as requiring a choice between protecting a child or preserving their Aboriginal culture.

> To ignore the rights of the collective is … to invalidate the structure of many First Nations and Aboriginal societies which are based on cooperation and consensus … [T]o ignore Indigenous collective rights on the grounds of the protection of individual liberty is to ignore the extent to which the fundamental liberty of First Nations and Aboriginal children to imagine and make themselves is so bound up in the fundamental liberty of Indigenous communities to do the same.[52]

BEST PRACTICE 3.07

All parties to a child welfare proceeding involving an Aboriginal child should start with the presumption that there is a mutually beneficial (non-adversarial) relationship between an Aboriginal community and their child members

1. All parties to a child welfare proceeding involving an Aboriginal child should start with the presumption that there is a mutually beneficial (non-adversarial) relationship between an Aboriginal community and their child members. An approach which sees Aboriginal communities as having a quasi-parental relationship with their child members, and a mutual interest in protecting the best interests of their child members and their collective future, would be helpful in understanding the relationship of Aboriginal children and their communities.

There is no inherent contradiction between an Aboriginal community's political efforts, and their love or concern for a child

F. Dismissing the Involvement of Aboriginal Communities is "Political"

Aboriginal communities become involved in child welfare matters for many different reasons having to do with care and concern for their child members. There is no inherent contradiction between an Aboriginal community's political efforts, and their genuine love and concern for an Aboriginal child. Yet, the fact that Aboriginal communities may be acting politically is often mistakenly used to dismiss their involvement or to diminish valid concerns they may raise about their child members.[53]

BEST PRACTICE 3.08

Involvement of Aboriginal communities in child protection matters should not be diminished or dismissed as "political"

1. Involvement of Aboriginal communities in child protection matters should not be diminished or dismissed as "political". An Aboriginal community can be motivated to take political and legal actions due to genuine care and concern for Aboriginal children.

G. Aboriginal Distrust of the Child Welfare Process

Justice Anthony Sarich observed in the *Report on the Cariboo-Chilcotin Justice Inquiry* that the "court process is a strange and bewildering one to most native people. Even those who have been through the process a number of times remain confused and frightened. With rare exceptions, natives simply don't trust those who operate in it and administer it."[54] Courts often assess that parents or band representatives are antagonistic toward child welfare agencies, social workers, or the Court, and this has repercussions for their legal position. For example:

Distrust of the child welfare system may reflect valid fears about a lack of justice

- *Racine*—the Supreme Court of Canada noted the "venom of [the] anti-white feelings" of the Aboriginal mom who was seeking to have her daughter returned.[55]
- *RRE (Re)*—the Court noted three of the grandmother's grandchildren had died in care and that her "faith and trust in the Ministry has been badly bruised as a result."[56] Nonetheless, the grandmother's distrust toward the Ministry was weighted against her.

Distrust or hostility toward the child welfare system may reflect feelings of powerlessness, fears about a lack of justice or equality. In some cases, there may be systemic biases and stereotypes actively at work which Aboriginal community and family members are reacting to.

BEST PRACTICE 3.09

That Aboriginal community representatives or family members express distrust of the child welfare system or its participants should not be used as a justification to ignore, disqualify or diminish their input

1. *That Aboriginal community representatives or family members express distrust of the child welfare system or its participants should not be used as a justification to ignore, disqualify or diminish their input.*

2. *There are times when Aboriginal distrust of the child welfare process is a normal, appropriate and rational response to systemic racism, and may reflect intergenerational trauma expressed by the Aboriginal communities.*

III. Biases that Aboriginal Communities must Address to Protect Children

Aboriginal peoples also hold biases—rooted in histories of colonization—which need to be addressed to protect Aboriginal children within the child welfare process. Due to the collective trauma experienced by Aboriginal people where generations of Aboriginal children were wrongfully removed from their families, Aboriginal communities may automatically support a parent without first asking about the child protection concern, thereby missing an opportunity to bring Aboriginal laws and practices to bear on what actions are necessary to protect a child.

The interest of the Aboriginal community should not be understood as the "same" as that of the parents or extended family

The interest of the Aboriginal community should not be understood as the "same" as that of the parents or extended family. The Aboriginal community itself collectively has a relationship with its child members. Failure to make a distinction between the interests of parents or caregivers, or to adequately and fully address protection concerns, has led to situations where children were left without protection. *Jane Doe v. Awasis Agency of Northern Manitoba,*[57] for example, was a case where an Aboriginal child was returned to her home community without protections and subject to severe abuse and sexual assault.

In some cases, both courts and Aboriginal communities appear to fail to make this distinction. The exercise of Aboriginal laws requires asking what a child needs for their protection and acting to ensure that happens, and a willingness to support (or challenge) the positions of both the director and the parents, based on the community's own assessment of safety.

Biases that Aboriginal communities need to address to fully act to protect Aboriginal children include:

- The automatic belief that a child protection concern is invalid, and so failing to ask whether a child needs protection and what steps need to be taken to protect them;
- Not knowing how to address issues such as sexual abuse or violence and so allowing shame or uncertainty to drive a response which denies that those harms exist;[58] or
- Not wanting to create a rift or divisions within the community, and so not challenging parenting practices or activities that the community knows to be unsafe.[59] For example, situations in

which community members do not want to interfere with the relationship of children to their parents, despite potentially dangerous and unhealthy circumstances. In *P.(C)*, the Court noted that families or community members often "do not want to be seen as part of the structure that interferes with the parent":[60]

> The closeness of the community on the reserve is both a positive and negative. Although the people appear from the evidence to support each other, they appear to loathe to be critical or to interfere. This makes a special challenge for any placement of children within the parents' community. … [A] child should not be made a foster child permanently just to make the situation easier on the adults involved.[61]

There is an overwhelming need for Aboriginal communities to exercise their jurisdiction and laws—acting as a legal and political entity—rather than as unquestioned support for parents

There is an overwhelming need for Aboriginal communities to exercise their jurisdiction and laws—acting as a legal and political entity—rather than as unquestioned support for parents.

BEST PRACTICE 3.10

Assessing each child protection situation through the lens of Aboriginal laws—and asking what the legal standard and practice would be under Aboriginal law—could be a powerful tool for protecting Aboriginal children

1. *Assessing each child protection situation through the lens of Aboriginal laws—and asking what the legal standard and practice would be under Aboriginal law —could be a powerful tool for protecting Aboriginal children.*

2. *Advocating for a child within the context of Aboriginal laws may mean advocating that a child remain within their nation or community, but not with their parents or extended family if they cannot safely care for them.*

3. *Aboriginal communities must honestly examine in each case whether there is a real child protection concern rather than rejecting outright any intervention.*

4. *Asking Aboriginal communities how their perspective is different from that of the parent(s) may be useful to focus the discussion on the best interests of the child and the protection concerns. An Aboriginal community may support the parents' position because they do not want more of their child members lost to the child welfare*

system, and may not have considered other options to keep a child either within the community or actively connected through participation in community activities, events and practices. Engaging in a conversation with the Aboriginal community can help to highlight their actual position in child welfare matters.

There are examples where courts have made conscious efforts to set aside biases and stereotypes in making decisions that keep children safe while still protecting their Aboriginal heritage and culture

IV. Positive Considerations of the Role of Aboriginal Communities and Identity

There are examples where courts have made conscious efforts to set aside biases and stereotypes in making decisions that keep children safe while still protecting a child's Aboriginal heritage and culture. For example:

- *Re S.M.S.*[62]—Justice Dhillon identified "systemic barriers" related to an Aboriginal mother's background in declining to grant the CCO and granting a last chance order, giving the mother six additional months to continue with her progress toward sobriety and parenting skills. The systemic barriers included the mother's "difficult life," "childhood trauma from the effects of the Indian residential school system on her family of origin," and that as "an Aboriginal woman, she has lived in poverty and been subject to discrimination, particularly in her quest for adequate family housing."
- *Director of Family and Child Services v. M.B.*[63]—an expert report was presented which suggested the mother had challenges which rendered her unfit to parent. The analysis in this case highlights the importance of the Aboriginal community in identifying safety concerns and providing a culturally sensitive assessment of parenting skills and capacities. Support for the mother from the local Aboriginal community included a native drug and alcohol counselor, and advocates from the local friendship centre who described her as a very capable and loving parent to her youngest infant child, and her home as "very clean and organized" expressing the belief that she "was doing a good job raising her baby." Justice Smith disagreed to a considerable extent with the expert assessment based on her own observation of the ways in which the mother acted in the Court after several days of testimony, her personality seeming to be more closely aligned with that described by her supporters than the expert report. Justice Smith noted the mother's difficult upbringing in returning one child to the mother's care under supervision:

> M.B. was born into a dysfunctional family … They lived a very rustic lifestyle, mostly in a tent, where the family had a trap line in the Chilcotin near Chezakut Lake, and they had minimal contact with the rest of society. Her father was very physically abusive towards her mother and the family dysfunction also included the parents having a serious addiction to alcohol. Within their Aboriginal community, the father was feared and the family was regarded as dysfunctional. The children never received any proper upbringing and they found themselves in foster care from time to time.
>
> When M.B. was just 14 years old, she became pregnant and gave birth to her first child named A.B. who was born on (date). The mother drank alcohol during several months of that pregnancy, and she was too young to even realize she was pregnant until seven months into the pregnancy…

Efforts to positively consider Aboriginal identity and cultural heritage are required

The mom had met pre-conditions set by the director for unsupervised access to her child, but that access was still denied. Justice Smith found that the mom was denied a fair opportunity to have her kids returned based, in part, on cultural differences, and noted that the "perception from the Aboriginal community was that the social workers were so predetermined to have the girls adopted out into the white foster home that there was no proper focus on the mother's request for unsupervised access or on attempting to reunite the family."[64]

- *A.L. et al v. D.K. et al*[65]—involved a family law custody dispute rather than a CFCSA matter. Both family members vying for custody were members of the same Aboriginal nation, connected to the Namgis and Tsawataineuk communities. Justice Owen-Flood discussed at length the importance of Aboriginal community and culture, finding that the child was tied by blood and culture to her extended family and members of her communities: "These people constitute the epicentre of M.'s familial and cultural identity. In short, they are her roots."[66] Her findings about "the need for preserving and nurturing the child's cultural identity" and the nature and benefits of Aboriginal cultural connection and involvement included:

    i. The need to preserve and nurture "any ties similar to love and affection that exist between the child and the traditional lands of his or her community"[67]

and the "opportunity to be instructed in the language of one's people."[68]

ii. "[A] consideration and emphasis of the education and training for M. must go beyond formal schooling. The continuity of an Aboriginal people's culturally integral practices, traditions and customs is to be ensured by teaching." Justice Owen-Flood cited *R. v. Côté*[69] for the proposition that: "In the Aboriginal tradition, societal practices and customs are passed from one generation to the next by means of oral description and actual demonstration."[70]

iii. Potlatching was described as "a form of moral education and lifeskills training" which "transmits culture across generations," with the trial judge concluding that the "opportunity to prepare and participate regularly in the potlatches of one's relations should be emphasized when considering how best to equip M. for life as an adult and, at the same time, preserve and nurture M.'s cultural identity."[71]

BEST PRACTICE 3.11

Efforts to positively consider Aboriginal identity and cultural heritage are required

1. Efforts to positively consider Aboriginal identity, cultural heritage and the benefits to Aboriginal children of the active involvement of their Aboriginal community could include:

- *Identifying systemic barriers that Aboriginal parents, caregivers or communities may face and a plan for how to address those.*
- *Involving the Aboriginal community in assessing child protection concerns, including a cultural examination of safety factors and solutions.*
- *Undertaking a full and broad consideration of the benefits to an Aboriginal child of being actively connected to, and involved within, the cultural and spiritual life of their Aboriginal community.*

Endnotes

1. L'Heureux-Dubé with Gonthier and McLachlin JJ. concurring in the result, New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 S.C.R. 46, at para. 114, citing the United States Supreme Court in Santosky v. Kramer, 455 U.S. 745 (1982).

2. Kline, Marlee. "Child Welfare Law, 'Best Interests of the Child' Ideology, and First Nations." Osgoode Hall L.J. 30.2 (1992): 375-425, at 393-394.

3. Racine, at 187.

4. Racine, at 188.

5. For example, in Tearoe v. Sawan, 1993 CanLII 2581 [Tearoe] at para. 47, the BCCA refused the Aboriginal mother's application to revoke an adoption consent, noting "To return this child as requested by the respondent, is to place him in an uncertain future that would take away from him the continuity and stability which he now has. As in the Racine case, the cultural background and heritage must give way in the circumstances of this case. … The child's best interests must come first."

6. Smith, Ashley. "Aboriginal Adoptions in Saskatchewan and British Columbia: An Evolution to Save or Lose our Children" (2009) 25 Can J.F.L. 297 [Smith].

7. [1988] BCJ No. 221 (QL) [N.H. and D.H.]; at BCCA: H.(D.) v. M.(H.), [1998] 3 C.N.L.R. 59 [H.(D.), BCCA].

8. H.(D.), BCCA, paras. 16-19.

9. H.(D.) v. M.(H.), 1999 CanLII 710 (SCC), [1999] 1 S.C.R. 761 [H.(D.), SCC].

10. H.(D.), SCC, at para. 46.

11. [2001] 2 S.C.R 1014 [Van de Perre].

12. Van de Perre at para. 40.

13. Bull, Samuel. "The Special Case of the Native Child" The Advocate (1989) Vol 4. See also the trial judgment in N.H. and D.H. where the grandfather's parenting seemed to be questioned because he believed in allowing children to learn on their own which the Court called a "high regard" for his child's independence.

14. 2001 SKQB 513 (CanLII) [D.(M.B.)]. See also A. […] First Nation, at para. 53, where the Court observed of a child who was Aboriginal and Chinese that "all of the children's rights are important".

15. D. (M.B.), at paras. 3, 71, 77 and 83. For a contrary approach see M.S. v. G.S. 2013 BCSC 1744 (CanLII), where a non-Aboriginal mother and Aboriginal grandparents each applied for custody. The Court found the grandparents could "best educate the children about their Aboriginal identity" and were granted shared custody: "The children have one-eighth Aboriginal blood, which is sufficient to provide them with Indian status and the resulting benefits. I agree that it is important for these children to be educated and counselled on their Aboriginal status."

16. 1994 CanLII 264 (BC SC) [A.J.] at 46.

17. At para 24.

18. 2006 BCSC 1666, at para. 14.

19. Saskatchewan (Social Services) v. L.B., 2009 SKQB 46 [L.B.], at para. 60. See also: A.[…] First Nation, at para. 45. Family and Children's Services of Waterloo Region v. Bonnie Y. and Frank D. (1988), [1995] W.D.F.L. 1011, [1988] O.J. No. 2699 (Ont. Prov. Ct., Fam. Div.) where the parents themselves had given the children no exposure to their Aboriginal culture, and had in fact severed ties with their cultural heritage and traditions.

20. 2006 NSSC 1 (CanLII) [C.A.S.H. v. H.] at paras. 36 and 37. The facts in this case showed parents who were disconnected from their Aboriginal heritage. The mom was told she was Aboriginal on her father's side, but was uncertain about this connection. As a child she lived with her grandmother in the United States near a reservation where she attended school and visited. She does not have Aboriginal status and has not applied for it. As an adult she is not associated with an Aboriginal community or culture. The father, likewise, has no Aboriginal status, believes he has Mic Mac and/or Apache roots, and has not participated in Aboriginal culture.

21. [1989] 4 CNLR 75, at para. 81.

22. Tearoe, at paras. 20-21.

23. 2008 SKCA 48 (CanLII) at para. 29.

24. The urban community is made up of a diverse number of Aboriginal cultures and nations, and may be concentrated in areas where low-income families

live. Programs and services may be concentrated in these areas, as well as a rich and vibrant cultural community. For example, according to a 2012 City of Vancouver Area Profile [http://vancouver.ca/files/cov/profile-dtes-local-area-2012.pdf] in Vancouver Aboriginal people comprise 2% of the overall population and 10% of Vancouver's Aboriginal population reside in the Downtown Eastside. Within geographic proximity of this area, a myriad of programs and services are offered as well as the Vancouver Aboriginal Friendship Centre, which houses cultural programming offered by various Aboriginal nations.

25. Aboriginal Affairs and Northern Development Canada, Fact Sheet—Urban Aboriginal Population in Canada, N.D. Available online: www.aadnc-aandc.gc.ca/eng/1100100014298/1100100014302

26. See for example: Brant Castellano, Marlene. Contemporary Family Trends, Aboriginal Family Trends: Extended Families, Nuclear Families, Families of the Heart (The Vanier Institute of the Family, Occasional Papers, 2002) at 1.

27. R. v. Sparrow, [1990] I S.C.R. 1075 at 1093 [Sparrow]; Van der Peet, at para. 64; R. v. Sundown [1999] 1 S.C.R. 393, at para. 32; Simon v. The Queen, [1985] 2 S.C.R. 387 [Simon].

28. Indigenous Children, at 68.

29. Re Aubichon (1970), 4 R.F.L. 39 (Sask Q.B.).

30. Aboriginal Affairs and Northern Development Canada, Fact Sheet—Urban Aboriginal Population in Canada, N.D. Available online: www.aadnc-aandc.gc.ca/eng/1100100014298/1100100014302.

31. Director of Family and Child Services v. M.B., 2003 BCPC 0429 [Director v. M.B.], at para. 39.

32. Children's Aid Society of Owen Sound and Grey County v. P.(C.) 2004 ONCJ 453, at para. 40.

33. Lynch, Philip. "Keeping Them Home: The Best Interests of Indigenous Children and Communities in Canada and Australia" (2001) 23 Sydney L. Rev. 501 [Lynch] at 524 citing In the matter of the children NP and BP: NP and SM v. the Director of Child, Family and Community Service (BCSC Prince George Registry 03998, 1999).

34. 2011 SKQB 282 (CanLII) [RRE (Re)].

35. RRE (Re), at para. 54.

36. RRE (Re), at para. 55.

37. [1994] 4 CNLR 191 [R.S.B.] Re:

38. R.S.B. (Re) cited in Smith at note 160.

39. 2012 ABPC 199 (CanLII) [D.C.W.] at para. 35. See also: RRE (Re), at para. 47, the Court observed that: "there have been multi-generational issues in [the grandmother's] home which make her an unacceptable placement."

40. D. (M.B.), at para. 5; see also: D. (M.B.) v. Saskatchewan (Minister of Social Services), 2002 SKQB 308 (CanLII).

41. 2007 ONCJ 137.

42. At para. 6.

43. At para. 2.

44. Macdonald, Kisa. "Returning to Find Much Wealth: Identifying the Need for a Revised Judicial Approach to Aboriginal Kinship in British Columbia." (2010) 15 Appeal 114-135 [Macdonald (Wealth)], at 128.

45. RCAP, Vol. 4, Perspectives and Realities at 521.

46. Graham, L. "Reparations, Self-Determination, and the Seventh Generation" 21 Harv. Hum. Rts. J. 47 at 95-96 (references omitted).

47. 2007 QCCQ 13341.

48. At para. 27, see also: M.-K.K. (Dans la situation de), (2004) R.D.F. 264 (C.A.).

49. At para. 19.

50. 2004 ONCJ 27 (CanLII) [C.(B.)].

51. C.(B.) at para. 31. Emphasis in original.

52. Lynch, at 528-529 (references omitted).

53. In Racine, at 165, for example, the Supreme Court of Canada was concerned that the Aboriginal mother had sought support of political organizations and wondered if her concern was for the child, or the political issue.

54. Sarich.

55. Racine at 165.

56. RRE (Re), at para. 49. See also Kenora-Patricia

Child and Family Services v. P.(L.), 2001 CanLII 32703 (ONCJ), at para. 27, where the court noted the Aboriginal father was "antagonistic to the agency."

57. 72 DLR (4th) 738. This case is discussed in Friedland, Hadley. "Tragic Choices and the Division of Sorrow: Speaking About Race, Culture and Community Traumatisation in the Lives of Children" (2009) 25 Can. J. Fam. L. 223 - 256.

58. Borrows, John and Rotman, Leonard. Aboriginal Legal Issues: Cases, Materials & Commentary (2003: LexisNexis; Markham, Ont.) at 830, citing RCAP, Vol. 3, at 23, characterized this as shame based on the "Failure to care for these gifts bestowed on the family, and to protect children from the betrayal of others, is perhaps the greatest shame that can befall an Aboriginal family. It is a shame that countless Aboriginal families have experienced, some of them repeatedly over generations."

59. P.(C.), at paras. 15 and 39, where the band agreed that an adoption was likely best for the child but did not support this option as they did not want a "rift in the community". The band "seems focused on the father's interests" and "committed simply to keeping her on the reserve" without regard for her best interests.

60. P.(C.), at para. 22.

61. P.(C.), at para. 43.

62. Director v. M.W. and A.M.S., 2003 BCPC 396 (CanLII) [Re S.M.S.], at paras. 9, 11 and 58.

63. Director of Family and Child Services v. M.B., 2003 BCPC 0429 [Director v. M.B.], at paras. 2, 3, 20-28 and 37.

64. Director v. M.B. at para. 29.

65. 2000 BCSC 480 (CanLII) [A.L. v. D.K.].

66. A.L. v. D.K., at para. 50.

67. A.L. v. D.K., at para. 52. See also paras. 53 and 55.

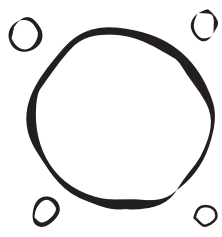
68. A.L. v. D.K., at para. 57, citing: L.A.P. v. R.P., Q.L. 1996 B.C.J. No. 2353 (S.C.) at paras. 34 and 48, (27 November 1996) Vancouver Registry Nos. A911476 and 0004283 (B.C.S.C.).

69. 1996 CanLII 170 (SCC), [1996] 3 S.C.R. 139 at 176.

70. A.L. v. D.K., at para. 58.

71. A.L. v. D.K., at para. 59.

04. Protecting a Child's Aboriginal Identity, Culture and Heritage



04. Protecting a Child's Aboriginal Identity, Culture and Heritage

> [N]o authority is required to make a convincing argument that culture and heritage are significant factors in the development of a human being's most fundamental and enduring attributes. For anyone, Aboriginal or otherwise, they are the stuff from which a young person's identity and sense of self are developed. This being so, to suggest that concerns about a child's early upbringing and cultural environment can be addressed as if they were school courses to be taken at some later date totally misses the point. [1]

This Guidebook outlines options for, and potential benefits of, Aboriginal community involvement throughout the stages of the child protection process.

I. Provisions of the CFCSA Maintaining a Child's Aboriginal Heritage and Identity

Specific provisions of the CFCSA, which focus on maintaining, preserving or protecting a child's Aboriginal heritage and identity, include:

s. 2 Guiding Principles—decisions made about a child should consider that
(e) kinship ties and a child's attachment to the extended family should be preserved if possible; (f) the cultural identity of Aboriginal children should be preserved;
s. 3 Service delivery principles
(b) Aboriginal people should be involved in the planning and delivery of services to Aboriginal families and their children; (c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;
s. 4 Best interests of child
(1) (d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship; (e) the child's cultural, racial, linguistic and religious heritage; (f) the child's views; (2) 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.
s. 35 Presentation Hearing
At a presentation hearing, the director must provide a report to court which includes [s. 35 (1)(b)] "an interim plan of care for the child, including, in the case of an Aboriginal child, the steps to be taken to preserve the child's Aboriginal identity". An interim plan of care presented for a child must set out, under CFCSA Regulation s. 7 2(h) "if the child is an Aboriginal child, the steps to be taken to preserve the child's Aboriginal identity."
s. 42.1 Protection Hearing
At a protection hearing, the director must provide a report to court which includes [s. 42.1(5)(b)] "an interim plan of care for the child, including, in the case of an Aboriginal child, the steps to be taken to preserve the child's Aboriginal identity." The CFCSA Regulation (s. 8) requires that a child's plan of care include: • The involvement of the child's Indian band/Aboriginal community in the development of the plan of care and their views on the plan; • a description of how the director proposes to meet the child's need for continuity of the child's cultural heritage, religion, language, and social and recreational activities; and • for an Aboriginal child, the steps taken to preserve the child's cultural identity.
s. 70 Rights of children in care
Children in care have the right to receive guidance and encouragement to maintain their cultural heritage.
Placement Preferences (s.71)
Priority placement for an Aboriginal child: • With the child's extended family or within the child's Aboriginal cultural community; • With another Aboriginal family, if the child cannot be safely placed within their extended family or community; or • If placing the child within their family, cultural community or another Aboriginal family is not possible, where the child can remain in contact with relatives and friends; with their siblings; or where they can stay in the same school.

Referring to the provisions of the CFCSA concerning Aboriginal communities, the Majority of the Supreme Court of Canada in *NIL/TU,O Child and Family Services v. BCGEU* observed that these provisions:

> [B]y expressly recognizing, affirming and giving practical meaning to the unique rights and status of Aboriginal people in the child welfare context, and by expressly respecting Aboriginal culture and heritage, [represent] a commendable, constitutionally mandated exercise of legislative power. The very fact that the delivery of child welfare services is delegated to First Nations agencies marks significantly and positively, public recognition of the particular needs of Aboriginal children and families.[2]

A remedial interpretive approach to the CFCSA could reorient the child protection discussion

Creating space for the participation of a child's Aboriginal community can "[assist] the court in making a more informed and sensitive decision"[3] as Aboriginal communities are "unique communities with a deep seated collective ethic that extends to the children of the community and their well-being" and a child's best interests "extend to the child's *cultural* and *psychological* needs" which can be addressed by their Aboriginal community.[4]

A. Remedial Approach to Interpreting the CFCSA Provisions Aboriginal Identity and Heritage

A remedial interpretive approach to the CFCSA could reorient the child protection discussion. Where "legislation [is] enacted to protect vulnerable groups in society," including children,5 the standard adopted by courts has been to view this legislation as remedial and to interpret the legislation so as to ensure the objects or purposes of the legislation are achieved.[6] The CFCSA sets out a comprehensive scheme for the preservation of children's Aboriginal identity and cultural heritage, and for the involvement of Aboriginal communities in planning for their child members, including through notice of court proceedings and the opportunity to become involved as a legal party in those proceedings.

Child welfare legislation has been noted to be remedial in nature: "A court should try to plot the course most likely to remedy parental inadequacies and bring about family reunion. The purpose of the Act is not to tear families apart, but to heal them…"[7] A similar approach is required when considering provisions protective of the relationship of an Aboriginal child involved with the child protection process and their Aboriginal community.

Canadian Courts have recognized the sacred nature of the agreements made between the Crown and the Aboriginal peoples through treaties and have set out principles of interpretation to ensure those agreements are interpreted in a manner which upholds the honour of the Crown in its dealings with Aboriginal peoples. The approach to interpreting the CFCSA provisions involving Aboriginal communities proposed here draws from that remedial and purposive approach. [8]

The United States Indian Child Welfare Act empowers tribal jurisdiction

BEST PRACTICE 4.01

A remedial and purposive interpretation of the CFCSA provisions designed to maintain an Aboriginal child's identity and heritage is required

1. *The goal in interpreting the provisions of the CFCSA designed to maintain an Aboriginal child's identity and cultural heritage should be to choose from amongst the various possible options, the one which best achieves permanency and safety in the lives of Aboriginal children by keeping them connected to their Aboriginal communities, identity and heritage.*

B. Case Study: *Indian Child Welfare Act* and Tribal Jurisdiction in the United States

The *Indian Child Welfare Act* (ICWA)[9] is federal legislation in the United States that recognizes Tribal jurisdiction in disputes involving Aboriginal children, and empowers Tribes to resume child welfare jurisdiction. The ICWA's remedial goal is to address the damage done to children, families, and Tribes by the removal of Indian children through the residential schools and the child welfare system. The ICWA provides an illustrative example of how the provisions of the CFCSA to actively involve Aboriginal communities could be implemented, and also illustrates the benefits of Tribal involvement.[10]

The ICWA includes these congressional findings:

- that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

- that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
- that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

The ICWA recognizes the ways in which the interests of children and Tribes are intertwined, and has been read to require affirmative, continuing, and active efforts to contact and involve a child's Tribe in planning for Indian children. A key component of the ICWA is the recognition that an Indian child has the right to maintain or develop his or her relationship with their Tribe. The ICWA defines the best interests of the child and the Tribe as being joined rather than in opposition to each other, and the tribal interest in children has been described as that of a "quasi parent" with an "interest in protecting the best interests of their children while also protecting the existence and future of their citizenry.[11]

ICWA and Canadian Aboriginal Children

The ICWA applies to Indian children and defines an "Indian child" to include those who are a member of a federally recognized tribe in the United States, or children who are eligible for membership in a federally recognized tribe and the biological child of a tribal member. Technically, the ICWA does not apply to children who are members or Aboriginal Nations recognized solely in Canada, and not on the American Registrar of recognized tribes.[12]

There are many instances when Canadian Aboriginal children have become involved in child welfare proceedings in the United States. Aboriginal Nations (such as Nlaka'pamux, Sto:lo, Sylix, and many others) whose territorial land and water base was artificially divided by the imposition of the Canada-United States border continue to live their lives on both sides of the border, without legal recognition of their Nation status. Aboriginal nations who are based primarily in Canada, and have learned that their child members are involved in child welfare proceedings before American courts have chosen to appear and participate in those proceedings. Though the ICWA does

not technically apply, Canadian tribes have been successful in asking American courts to honour the spirit, intent and purpose of the ICWA in making decisions about their child members. For example, there are instances where children have been returned to relatives living in Canada or where courts have followed the placement suggestions made by Canadian Aboriginal Nations.

The approach followed may vary state by state. Aboriginal communities should feel encouraged to participate and advocate for their involvement in planning for their child members, with reference to the spirit and intent of the ICWA and in the best interests of their child members.

BEST PRACTICE 4.02

Though not technically recognized under the ICWA in the United States, Canadian Aboriginal communities can appear in proceedings involving their child members in the United States and ask to have their involvement recognized as being in the child's best interests. Canadian Aboriginal communities may wish to point out that it is in their child member's best interests that they be involved in the proceedings, and suggest to the Court a disposition which would allow the child to remain within their Aboriginal family or nation.

II. What is an Aboriginal Community?

The CFCSA s. 1(1) defines an "Aboriginal community" as being designated by the Minister. Indian Bands or First Nations' designated contact persons are listed at Schedule 1. Schedule 2 lists other Aboriginal organizations such as Friendship Centres or other organizations primarily connected to urban Aboriginal communities. Notice requirements, depending on a child's Aboriginal identity, may be to a child's Indian band, a "designated representative of an Aboriginal community" identified by the parents or child, or a treaty nation. It is important to note that many Aboriginal people who live in an urban setting may see their primary or only cultural connection to their home community and not to an urban Aboriginal organization, or vice versa.

Aboriginal communities, bands or First Nation governments, are political and social entities that represent the collective social and cultural societies which Aboriginal peoples are part of. Within the

Canadian constitutional structure they have an independent place and source of rights/responsibilities to, and in, children. Treating Aboriginal peoples as cultural minorities or "racial groups" negates the fact that Aboriginal peoples are "political and cultural entities" with "legitimate political authority" and "ancestral and historical rights" and that "their identity lies in their collective life, their history, ancestry, culture, values, traditions and ties to the land, rather than in their race."[13]

Many areas where the involvement of Aboriginal communities could help resolve child protection concerns go unexplored

Many areas where the involvement of Aboriginal communities could help to resolve child protection concerns go unexplored because of misunderstandings about the role that Aboriginal communities could play, or of the relationships between the interests of Aboriginal children and communities. The individual rights of children and the collective interests of Aboriginal nations and communities are intertwined and mutually reinforcing. A fundamental lesson of Aboriginal cultures is that looking at a child as an individual—without the family, community, and nation connections that provide their cultural background and identity—can harm that child, not protect them. Consideration of the possibilities inherent in preserving a child's relationship with their Aboriginal community, and the losses which result in the child's life when that relationship is severed, is required for a full consideration of a child's best interests.

III. Who is an "Aboriginal child"?

The definition of an Aboriginal child under the CFCSA does not require that a child be a status Indian, a member of a band, entitled to be registered as a status Indian, or officially recognized as a member of the Métis nation. If a child (age 12 and over) self-identifies, or their parent self-identifies, as a member of an Aboriginal community the provisions of the CFCSA apply.

The CFCSA defines an "Aboriginal child" under s. 1(1) as a child:

(a) who is registered under the *Indian Act* (Canada),

(b) who has a biological parent who is registered under the *Indian Act* (Canada),

(b.1) who is a Nisga'a child,

(b.2) who is a treaty first nation child,

(c) who is under 12 years of age and has a biological parent who

(i) is of Aboriginal ancestry, and

(ii) considers himself or herself to be Aboriginal, or

(d) who is 12 years of age or over, of Aboriginal ancestry and considers himself or herself to be Aboriginal.

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

While Status Registration is a common way to determine whether someone is Aboriginal, it is not conclusive or exclusionary of other Aboriginal identities

Registration under the *Indian Act* determines "Indian" status. It is a legal category. Registration is not automatic. It requires an application to be filed on behalf of each child. Registration may entitle a child to certain benefits, such as health, education or have tax implications. The definition of an Aboriginal child includes Aboriginal children who are entitled to be registered as an Indian, though they may not be.

Status or registration is not the same as membership in a band or belonging to an Aboriginal community:

- A child can be a member of a band or community (a matter determined by the community) and not have status (a matter determined by the federal government).
- Where both parents are members of different bands, the child may be registered with one band but have the right to transfer that membership to another band, and may consider themselves culturally connected to both communities.

While status registration is a common way to determine whether someone is Aboriginal, it is not conclusive or exclusionary of other Aboriginal identities. Courts have misunderstood what "status" is and there are examples where the fact that a child has status has been used to justify making no further efforts to preserve their Aboriginal identity or culture. For example, courts have relied on the fact that adoption would not sever a child's Indian status as showing that their Aboriginal heritage was preserved, mistakenly conflating Indian status registration (under a federal statute) with maintenance of Aboriginal culture or identity.[14]

The federal government has historically used denial of status as a tool of assimilation. Increasing numbers of Aboriginal children are not eligible for status registration due to contested federal policy aimed at phasing-out "status" Indian registration. That a child or parent does not have status does not mean that they are non-Aboriginal. Métis, Inuit, and other Aboriginal people have historically been denied status or had their status revoked.

BEST PRACTICE 4.03

Indian status, absent active involvement in their Aboriginal culture, is insufficient to protect a child's Aboriginal identity, heritage and connection to their culture.

B. Nisga'a and Treaty First Nation Children

The definition of children who are a "treaty First Nation child" in s. 1(1)(b.2) references modern treaty agreements. The terms of treaties may set out processes for the Aboriginal community's planning for their child members.

BEST PRACTICE 4.04

Where a child or parent is a member of a modern treaty agreement investigate whether or not that treaty sets out specific provisions for how the Aboriginal community may be involved in planning or decision making for their child members.

C. Self-identified Aboriginal Children and Families

The Supreme Court of Canada said that Aboriginal identity is found in a combination of self-identification, community acceptance and historic connection to a community, subject to *Charter* scrutiny.[15] Membership and belonging within an Aboriginal community are matters largely internal, reflecting the peoples' own laws and traditions: "courts must approach the task of reviewing membership requirements with prudence and due regard to the [Aboriginal group's] own conception of the distinct features of their community."[16] If a child is

twelve years or older they can self-identify as Aboriginal; or, where a child is younger than twelve years and has a parent who is Aboriginal, the parent can identify a child as Aboriginal.

Canadian common law recognizes the right of Aboriginal peoples to define their own membership. If an Aboriginal community recognizes a parent or child as a member or a child or family self-identifies, that identity should be respected and guide the way a child protection concern is considered. Evidence supporting a finding that a child is Aboriginal, or that a child is considered a member of a particular Aboriginal community could include:

1. Statements or affidavits from leadership, elders, or knowledge keepers outlining a child's connection to the Aboriginal community;
2. Statements by the child about how they identify;
3. The family or child's participation in cultural activities; and
4. How family members and people closest to the child identify culturally.

BEST PRACTICE 4.05

Self-identification is very important for Aboriginal children and parents to ensure that a child's Aboriginal identity and heritage are considered and protected

1. Self-identification is very important for Aboriginal children and parents to ensure that a child's Aboriginal identity and heritage are considered and protected.

- *Aboriginal communities could educate their members about the need to self-identify. This is particularly important where children do not have status and involvement of an Aboriginal community is only triggered by the self-identification of the child or parent. Aboriginal communities could develop an affidavit or letter which can be shared with the director and Court setting out how the Aboriginal community recognizes membership or belonging and their connection to a particular child or family.*
- *Due diligence should be exercised in locating a child's Aboriginal community and providing notice of the proceedings, which could include interviewing the parent, extended family and the child (if appropriate) and asking about the child's status and membership within, or connection to, an Aboriginal community.*

IV. Delegated Agencies

The Service Delivery Principles in s. 3 of the CFCSA recognize the vital role of the Aboriginal community in the early intervention and prevention stages of a child protection concern, and offer at risk Aboriginal families and children an opportunity to benefit from the support of their community in a culturally appropriate way. Section 3(b) directs that "Aboriginal people should be involved in the planning and delivery of services to Aboriginal families and their children."

The involvement of a delegated Aboriginal agency does not diminish the need to separately notify and work with a child's Aboriginal community

Aboriginal delegated agencies have been established, in part, to fulfill the mandate to involve Aboriginal people in planning for the care of Aboriginal children. Delegated agencies deliver services under the CFCSA with an Aboriginal focus. Delegated Aboriginal agencies are creations of provincial statute, they are bound by, and administer, the same provincial legislation and policies as other MCFD offices. *NIL/TU,O*[17] outlines how delegated Aboriginal agencies are provincially regulated child welfare agencies, and the province maintains ultimate decision making control of their operations.

Aboriginal agencies may be funded at lower rates, yet still be required to implement provincial policies, standards and programs. There are different degrees to which Aboriginal delegated agencies are part of (or isolated from) their originating Aboriginal communities. There are approximately 83 Aboriginal communities that do not operate within the framework of delegated agencies. The existence or involvement of a delegated agency does not diminish the need to separately notify and work with a child's Aboriginal community(ies).

BEST PRACTICE 4.06

Delegated Aboriginal agency involvement does not fulfill the need to involve a child's Aboriginal community

1. *The role and opportunities for Aboriginal communities under the CFCSA does not change depending on whether a child protection matter arises through a delegated Aboriginal agency or a regular MCFD office. The involvement of an Aboriginal delegated agency does not reduce or limit the rights and opportunities for Aboriginal community involvement as a legal party in CFCSA matters.*

Endnotes

1. T.(E.J.) v. V.(P.M.), (1996), 110 Man. R. 219 (Man. C.A.) at 223.

2. [2010] 2 S.C.R. 696, at para. 41 [NIL/TU,O].

3. L (M.S.D.) (SKCA), at para. 22.

4. L (M.S.D.) (SKCA), at para. 26.

5. Sullivan at 232. For examples of where courts have applied a remedial analysis to legislation or enactments involving Aboriginal peoples see: Mitchell v. Peguis Indian Band, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 (S.C.C.), at 143; and Nowegijick v. The Queen, [1983] S.C.J. No. 5, [1983] 1 S.C.R. 29.

6. Sullivan at 234, citing Roberts v. Ontario, (1994) 19 O.R. (3d) 387. See also: Twaddle J.A. in Child and Family Services of Winnipeg (East) v. K.A.D. et al, [1995] M.J. No. 178; Man.R. (2d) 262, at paras. 27 and 33.

7. Winnipeg Child and Family Services (East) v. T.S.L., 125 D.L.R. (4th) 255, at para. 27.

8. See, for example, the treaty interpretation principles set out in R. v. Marshall (I) [1999] 3 S.C.R. at 456; R. v. Badger, [1996] 1 S.C.R. 771; and R. Marshall (I), [1999] 3 S.C.R. 456; R. v. Sundown, [1999] 1 S.C.R. 393.

9. 25 U.S.C. §§ 1901-63. In 2015 the Bureau of Indian Affairs issued new guidelines for status in the interpretation of the ICWA: Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (Bureau of Indian Affairs, Interior; Federal Register, Vol. 80, No. 37, February 25, 2015).

10. For further discussion of the ICWA see: Native American Rights Fund. A Practical Guide to the Indian Child Welfare Act. (Denver: Native American Rights Fund, 2011) [available online at www.narf.org]; California Center for Judiciary Education and Research, of the Administrative Office of the Courts. Bench Handbook The Indian Child Welfare Act (Revised 2013); ICWA Special Committee State Court Administrative Office July, 2012 (Michigan); Indian Child Welfare Act of 1978: A Court Resource Guide [Michigan, ICWA]; Minnesota Judicial Branch. Minnesota Judges Juvenile Protection Benchbook (November 2011) "Chapter 35: Indian Child Welfare Act" [Minnesota, ICWA]; California Indian Legal Services. California Judges Benchguide: The Indian Child Welfare Act (June 2012) [California Benchguide].

11. Michigan ICWA at 18.

12. See for example: In re Wanomi P. (1989) 216 CA3d 156, 166-168.

13. Dussault at 10.

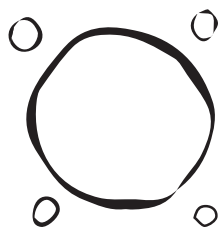
14. See for example: Adoption—07202 at para. 26.

15. R. v. Powley, [2003] 2 S.C.R. 207, and Alberta (Aboriginal Affairs and Northern Development) v. Cunningham, 2011 SCC 37 [Cunningham].

16. Cunningham, at para. 82.

17. NIL/TU,O, esp. paras. 38-39.

05. Steps Within the CFCSA Process



05. Steps Within the CFCSA Process

The CFCSA sets out a comprehensive scheme to protect children from abuse, neglect, harm or threat of harm including from physical or sexual abuse, emotional harm, or failure to provide healthcare. The CFCSA outlines steps from receiving, assessing and investigating a child protection complaint through increasing levels of intervention and involvement in a child's life.

I. Voluntary Agreements

Not all child protection matters start with a report of a child protection complaint to the director. In some cases, a parent or child may enter into a voluntary agreement with the director. The CFCSA authorizes the director to enter into a number of different agreements with parents or others for the support and/or temporary care of a child.[1] These agreements include situations where a parent requests (or the director determines the parent needs) assistance, where a parent seeks respite or voluntarily places the child in the director's care for a specified period of time (for example, to attend a treatment program, seek counseling or the parent temporarily is unable to care for the child); or, where a child with special needs requires specialized care the parent cannot temporarily provide.

Parents may enter voluntary agreements to avoid court hearings, to resolve issues quickly, or to access supports. Legal counsel may not be involved at this stage unless a parent or child seeks independent legal advice in relation to the agreement. Aboriginal communities may not be involved when an Aboriginal parent or child enters a voluntary agreement with the director. Voluntary agreements can lead to increased scrutiny of a family, and may lead to child protection concerns.

A. Support Services Agreements

Support services agreements made under s. 5 allow the director to provide or purchase support services for a term (renewable) of up to 6 months, including counseling, home support, respite care, parenting programs, and support for children who have witnessed domestic violence. Support services agreements provide an underutilized opportunity for the director and Aboriginal communities to work together. Other options for agreements, which provide an opportunity for the director to work with the Aboriginal community, are found in s. 93 which allow a director to provide preventive and support services for families to promote the purposes of the CFCSA, make payments to a parent or other person who has care of a child with special needs "to assist the parent or other person to purchase support services... so that the child can reside at home," to establish services to "assist communities to strengthen their ability to care for and protect their children".

B. Voluntary Care Agreements

Voluntary care agreements are an option under s. 6 where a parent is temporarily unable to look after a child in the home. Before making the agreement the director must consider if there is a "less disruptive way of assisting the parent to look after the child" which could include providing services in the child's home. A plan of care must be included in voluntary care agreements. Voluntary care agreements may allow the Aboriginal community to identify alternate caregivers within a child's family or cultural community who can assist in caring for a child, and have that alternative care funded by the director.

C. Special Needs Agreements

Special needs agreements under s. 7 allow a parent to "delegate to the director as much of the parent's authority as … required" to provide services to the child for an initial term of 6 months, renewable for 12 month terms. A special needs agreement could be a tool to allow parents to seek help in caring for a child with special needs, such as FAE/FAS. Special needs agreements may allow the Aboriginal community to identify alternate caregivers within a child's family or cultural community who can assist in caring for a child, and have that alternative care funded by the director.

D. Extended Family Program (Formerly Kith and Kin Agreements)

Under s. 8, the director can enter an agreement with "a person who (a) has established a relationship with a child or has a cultural or traditional responsibility toward a child, and (b) is given care of the child by the child's parent." Agreements under the extended family program can allow for the director to contribute to the child's support while the child is in care recognizing traditional Aboriginal care providers. Extended Family Program (formerly Kith and Kin agreements) allow a child to remain within, and connected to, their family, extended family, and community. A challenge of the Extended Family Program is the discretion the director has to decide whether to provide funding to support the child's care. This discretion may result in a child's relatives being provided with no, or reduced, financial support. Likewise, there may be less funding available for this program as compared with outside funding for care.

Aboriginal communities can identify alternate care givers or supports within a child's community

E. Agreements with Youth or Young Adults

Under ss. 12.2 and 12.3, the director can enter into agreements with youth/young adults who cannot be re-established with their family or who do not have parents able to assist to provide residential, financial or educational support. The support services generally end when a youth turns 19; however, under s. 12.3, support can be continued to allow a young adult who was in care when they turned 19 to continue with educational/vocational training or a rehabilitative program until the age of 24.

BEST PRACTICE 5.01

Aboriginal community involvement could be very beneficial in structuring voluntary agreements

1. *Aboriginal communities may have knowledge about a family's strengths and challenges and could contribute to strengthening voluntary agreements, by identifying potential problems, and developing a cultural plan to ensure that the child's Aboriginal identity is preserved and protected from the earliest point of contact with the child welfare system.*

2. *Aboriginal communities can identify, and potentially provide, services (which the director could pay for all or part of) under a Support Services Agreement or*

BEST PRACTICE 5.01, CON'T

separate agreement to address child protection concerns in a culturally meaningful way.

3. *Aboriginal communities could identify solutions that address a child's special needs, and may be able to identify, provide, or help access, additional supports or resources while ensuring that a child remains connected to their Aboriginal community.*

4. *Extended Family Program (formerly Kith and Kin agreements) can allow a child to remain within the community and promote the development and preservation of the child's Aboriginal cultural heritage and identity. Wider use of the Extended Family Program could be useful as an intervention and prevention tool that allows the director and Aboriginal community to work actively together.*

5. *Aboriginal children who—post CCO—were raised in care, and are disconnected from their Aboriginal communities and extended families, could enter voluntary agreements that involve their Aboriginal community. Aboriginal communities could work with the director to seek to re-connect Aboriginal youth with their cultures and communities, and provide broader support to youth who are subject to a CCO and may be isolated from their Aboriginal community through participation in agreements with youth or young adults.*

6. *Agreements between the director, parents, caregivers or Aboriginal communities under s. 93 could include providing funding to allow a child to remain at home, with supports, or to assist Aboriginal communities to strengthen their ability to care for and protect their children. These options cover a wide range of services that an Aboriginal community might identify as culturally necessary and appropriate to address child protection concerns within their community.*

II. Report, Assessment and Investigation

Once the director receives a report that a child may be in danger, the director must assess the report and decide if the report should be investigated. After a preliminary assessment, the director may offer support services and agreements to the family, refer the family to a community agency, or investigate the child's need for protection. The director has broad powers at this stage to decide if the child may be in danger and whether the child should be removed immediately, or if there are less disruptive measures that can be taken that would allow the child to stay in the home with supports or supervision.

Aboriginal community involvement at the investigation stage could encourage a preventative approach

If the director decides there are reasonable grounds to believe that the child needs protection, the director can:

1. Remove the child if there is no less disruptive measure available to protect the child; or

2. Apply for a supervision order (setting out terms and conditions that the parents must follow) if they believe that the child can safely remain in the home with supervision from the director.

In some cases, parents may agree to supervision terms to avoid a court hearing, or because they are embarrassed, do not understand their options, or believe that they will get their children back sooner if they agree to the supervision conditions. If parents do not agree to be supervised, or if the director does not believe that a supervision order with the child remaining with the parent(s) is adequate to protect a child, they must remove the child and a protection hearing will be scheduled.

Notice to Aboriginal organizations is not required at the investigation stage. Decisions made in the early stages of the child welfare process are often difficult to displace and become permanent. The early involvement of Aboriginal communities can have a profound and lasting impact on the possibility for resolution. Under s. 16(3)(c) the director must report the results of the assessment or investigation "to any other person or community agency if the director determines this is necessary to ensure the child's safety or well-being." This provision could support the need to notify an Aboriginal child's community of child protection concerns before they escalate. An Aboriginal parent or child could also notify their Aboriginal community (or request that their community) be notified as soon as they become aware of a child protection investigation.

BEST PRACTICE 5.02

Aboriginal community involvement at the report, assessment and investigation stage could encourage a preventative approach and ensure that an Aboriginal child's safety and cultural needs are properly assessed

1. Aboriginal community involvement at the report, assessment and investigation stage could encourage a preventative approach and ensure that an Aboriginal child's safety and cultural needs are properly assessed. Aboriginal community involvement could help to:

- *Assess child protection concerns in a culturally sensitive way;*
- *Identify the least disruptive measures available to avoid removing the child from their family or Aboriginal community;*
- *Identify culturally appropriate interventions, programs and services;*
- *Provide supports to the child and the child's family to keep the child in the home or within the family or community;*
- *Put family supports in place to divert children from entering the foster care system; or*
- *Ensure a child stays within their family, community or nation by identifying placement options.*

III. Notice and Aboriginal Community Involvement

The CFCSA requires the director to give Aboriginal communities notice at several points when one of their child members becomes involved in child welfare proceedings. Notice provides an opportunity for the Aboriginal community to officially appear in Court and become a "party" to the proceedings. Party status allows the Aboriginal community to participate in the court proceedings, to receive information about the child protection concern (disclosure), to speak in Court, to call witnesses, and to participate in case conferences and alternative dispute resolution processes. Participation as a legal party allows the Aboriginal community to advocate for the child's Aboriginal identity and cultural heritage to be taken into account in decisions about supervision, removal, and temporary or continued custody.

In the United States, courts have recognized that notice requirements to Indian tribes under the ICWA recognizes their right to participate in decisions about their child members, and that without notice, Indian tribes could not exercise that right. The heavy purposes

of notice (to trigger tribal involvement) suggest the seriousness with which it should be addressed.[2] A similar seriousness should be assumed in the context of notice and Aboriginal community involvement under the CFCSA.

IV. Importance of Early Involvement by Aboriginal Communities

Aboriginal communities should be encouraged to become involved as early as possible in decision making about their child members. Temporary arrangements quite often become permanent solutions in child welfare matters given the fact that children are likely to become attached to their temporary caregivers: "a temporary order is often the first step in a fairly inexorable march to permanent wardship."[3] The longer an Aboriginal community remains uninvolved the less likely it is that their involvement will be capable of transforming the outcome for their child members.

In *Dilico Anishinabek Family Care v. M.T.*[4] the Court highlighted the importance of early planning, noting that concerns about addressing a child's Aboriginal identity and culture are at their "highest point during the period from the child's apprehension through to the point where the agency caring for the child needs to make permanency planning decisions for the child" as it is here when "the best possible plan for the preservation of a child's native culture is most critical" and including options such as customary care agreements, extended family or Aboriginal community placements.[5]

The potential for permanency must be at the forefront when making temporary arrangements for children. This suggests the need to involve Aboriginal communities as early as possible. Courts, the director and parents' counsel can each request this involvement. Temporary care and custody plans have the potential to establish a status quo, which ends up becoming permanent. Repeated extensions of temporary placements may be found to establish bonds between the child and the interim caregiver that Courts may be unwilling to disrupt.

The CFCSA sets very clear time limits on how long a child can remain in the temporary custody of the director. Under s. 45(1), the upper limits of how long a child can remain in temporary care are: "(a) 12 months, if the child or the youngest child who was the subject of the initial order was under 5 years of age on the date of that order, (b) 18 months, if the child or the youngest child who was the subject

of the initial order was 5 years of age or over but under 12 years of age on the date of that order, and (c) 24 months, if the child or the youngest child who was the subject of the initial order was 12 years of age or over on the date of that order." Under s. 45(1.1) a Court can extend the time limit if it is in the best interests of a child to do so.

There are a number of cases where the outcome of child welfare matters for Aboriginal children is determined not on the merits of a particular case, but rather because parents, grandparents, or the Aboriginal community, have missed deadlines. A delay may reflect a number of things, rather than that an Aboriginal community does not care. An Aboriginal community may not be involved immediately out of respect for the parents' or family's efforts to resolve the matter on their own first, or the history of Aboriginal peoples' past involvement with government institutions may prevent active engagement that might resolve child protection concerns. Aboriginal peoples may not view courts as places of help or justice, but rather as another institution which they did not create, cannot influence, and which has enormous detrimental impact.[6] Early involvement of Aboriginal communities could transform outcomes for Aboriginal children.

BEST PRACTICE 5.03

Aboriginal communities should become involved in the child welfare process as early as possible

1. *Even where there is no positive duty on the director to involve the Aboriginal community, the best practice is to seek the intervention of the Aboriginal community as early as possible.*

2. *Educating Aboriginal communities, Aboriginal parents, as well as director's and parents' counsel, and the Court, about the need for, and benefits of, early involvement of Aboriginal communities in CFCSA matters is necessary.*

3. *Information provided to Aboriginal communities with notice of child welfare matters involving their child members could include steps that they could take or options for involvement.*

A. Non-Appearance by Aboriginal Communities

It is routine in Aboriginal child protection matters for notice that an Aboriginal child is involved in a CFCSA proceeding to be sent to an Aboriginal community, for no representative of the Aboriginal community to appear, and for the matter to proceed to subsequent stages without involvement of the Aboriginal community. Notification of Aboriginal communities can operate as more of a procedural hurdle rather than a practice that makes any meaningful difference to the operation of the child welfare system for Aboriginal children. At earlier stages of the CFCSA process (such as the presentation stage or at an application for a consented temporary custody order) the director must notify a child's Aboriginal community "if practicable". This wording can allow the director to avoid giving notice to Aboriginal communities at earlier stages. As well, some Aboriginal communities have observed that a time-saving practice may be for the director to say they do not know if a child is Aboriginal, or what their Aboriginal community is, at earlier stages.

A lack of response to efforts to notify a child's Aboriginal community does not mean the Aboriginal community is not interested or does not care

A lack of response to efforts to notify a child's Aboriginal community does not mean the Aboriginal community is not interested or does not care. There may be a number of reasons why Aboriginal communities do not respond. Aboriginal communities may:

- Not have received the notice. For example, faxes may not have gone through, or have been brought to the appropriate person's attention;
- Lack the professional, human and financial resources to respond in a timely way or to attend the Court proceedings;
- Not have legal counsel, and instead may send a chief, councilor, social worker, or support worker to attend Court. In some instances, these people may not identify themselves in Court; or
- Face barriers as a result of recent involvement with Residential Schools, and the child welfare system, that might paralyze actions in this area.

In practice, the time between the presentation and protection hearings can be lengthy, with no or little involvement of the child's Aboriginal community until the protection hearing stage. By this time, decisions about placement, access, cultural and other concerns relating to the care of the child have been made. *Racine*-type considerations privileging newly formed attachments over culture may start to be used to lessen the significance of the Aboriginal community's involvement. Consequently, early involvement of Aboriginal communities should always be actively encouraged.

Aboriginal communities may not have the financial resources to hire a lawyer, and be self-represented in child welfare proceedings

BEST PRACTICE 5.04

Identifying barriers to Aboriginal community involvement in child welfare proceedings (e.g. resources, personnel, travel) could help Aboriginal communities to be involved in planning for their child members

1. *Tools available within the CFCSA, Rules and Regulations to address barriers which prevent Aboriginal communities from becoming involved in child welfare include:*

- *Members of the Aboriginal community or extended family could participate in CFCSA court proceedings by video- or tele-conferencing where they are unable to participate in person: Rule 1(7).*
- *Matters could be transferred to a Registry closer to the child's home community where this would allow the Aboriginal community, or family members, to take a more active role in planning and participating in the care of the child.*
  - *Under Rule 8(12), a Judge may order the transfer of the file after considering the balance of convenience, any special circumstances that exist, and the best interests of the child. The balance of convenience test requires the judge to consider each party's circumstances. This could include what issues or barriers the community faces that would prevent their active involvement, and why transferring the file is in the child's best interests.*
  - *Alternatively, under Rule 8(13), the parties can consent to the transfer of the file and file a written consent in the Registry where the file is located.*
- *Matters could be addressed through a traditional dispute resolution process suggested by the Aboriginal community (under s. 22), which is more culturally appropriate and relevant for the child and family.*
- *A judge may permit an application to be made orally in court, without the filing of a form. The CFCSA proceedings may be informal (s. 66(1)(b) and s. 66(2)) in nature. The best interests of the child are most important. Where an Aboriginal community makes an application, they should be prepared to explain how it is in the child's best interests that they be involved as a party in the proceeding.*

B. Aboriginal Communities as Self-Represented Litigants

Aboriginal communities may not have the financial resources to hire a lawyer, and this poses challenges to the community, the Court, and to counsel in child protection proceedings. Aboriginal communities may send a chief or council member, a band or community social worker to CFCSA hearings.

A band may send an employee, chief or council member to a child protection hearing under the belief that merely having someone in the courtroom is sufficient to secure standing and participation in the proceedings and at subsequent stages, not making a distinction between having a representative merely attending in court versus making an official appearance.

It is not always clear to Aboriginal communities and lay persons that "appearance" in a legal sense does not simply mean being in the courtroom when a child protection matter is called, but means actively taking part in the proceedings in person, or through a lawyer or agent. Thus, there are times when an Aboriginal community sends a representative to court, but their presence is not officially noted on the record.

The Director v. C.S. and J.K.[7] illustrates how an Aboriginal community's lack of knowledge about court procedure can undermine the band's role in child protection proceedings. A representative of the Band was in court but did not officially appear. The Court noted that a "representative of the … Band was present during the hearing, but did not take an active role in the proceeding."[8] If an Aboriginal community has sent someone to court, it is likely at considerable expense and cost; they are there because the Aboriginal community cares, and wants to contribute in planning for their child members.

Aboriginal communities who send representatives to court in response to notice provided under the CFCSA should be treated as self-represented litigants who need the Court's assistance to ensure the Aboriginal community's participation and the child's rights are fully realized. The Canadian Judicial Council made suggestions about appropriate conduct when dealing with self-represented litigants, which include:[9]

1. Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.

2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.

3. Where appropriate, a judge should consider engaging in such case management activities as are required to protect the rights and interests of self-represented persons. Such case management should begin as early in the court process as possible.

Disclosure to Aboriginal communities allows a child's community to protect and plan for the safety and well-being of the child

4. …Depending on the circumstances and nature of the case, the presiding judge may:

   a. explain the process;

   b. inquire whether both parties understand the process and the procedure;

   c. make referrals to agencies able to assist the litigant in the preparation of the case;

   d. provide information about the law and evidentiary requirements;

   e. modify the traditional order of taking evidence; and

   f. question witnesses.

BEST PRACTICE 5.05

The Court and counsel should make specific inquiries at the start of the hearing if a representative of an Aboriginal community is present

1. *If an Aboriginal community representative is present, and appearing without a lawyer, they should be treated as a self-represented litigant.*

2. *Where Aboriginal communities appear without legal counsel, they should identify themselves [name/position] and the fact that they are representing the child's Aboriginal community and state clearly that they are self-represented.*

C. Confidentiality and Disclosure

One of the most powerful aspects of an Aboriginal community participating as a full party in child welfare proceedings under the CFCSA is that it provides an opportunity for the Aboriginal community to request, and be provided with, full disclosure about the child protection concerns that must be addressed. Due to the sensitive nature of child protection issues, (including suspected child abuse, neglect and/or exploitation) timely and full disclosure and information sharing

between the director and the child's Aboriginal community is critical to ensure the safety of the child. The CFCSA provides for the protection of confidential information, but allows information to be shared where it is necessary to make or implement an agreement about the child or to ensure the safety of the child or another person.

In the CFCSA, disclosure is possible in a number of ways:

Lack of disclosure can prevent an Aboriginal community from acting to protect their child members

1. Section 64 of the CFCSA requires all parties to a child protection proceeding to make full and timely disclosure before a protection hearing to a party that requests it. The intent of disclosure in s. 64 is to provide parties with evidence of the case they have to meet if the matter goes to a hearing.

2. Under s. 79 the director can disclose information obtained under the CFCSA where necessary to ensure the safety or well-being of a child, or necessary for an alternative dispute resolution process.

On a broader and purposive analysis, full disclosure allows parties to protect and plan for the safety and well-being of the child; and for the parties to pursue alternatives to court. Aboriginal communities need disclosure to be able to plan for the safety of children and how best to provide supports and resources in the best interests of the child. Disclosure can be an essential tool allowing for the full participation of the Aboriginal community.

The guiding principles for disclosure in child protection matters were set out in *K. (T.L.),* [10] including that s. 64 is a "statutory minimum" of disclosure and applies to all parties. Disclosure must be timely. A minimum amount of disclosure may be enough where the director is seeking a minimal amount of interference (e.g. return to parent with supervision, or a 3 month temporary custody order where the director's plan of care is to work with the parent to return the child). Greater disclosure is needed where the director intends to permanently remove the child from the parent, including where the alleged abuse (e.g. physical abuse) is such that the child cannot ever safely be returned to the parents. Director's counsel (and other legal counsel) is responsible for deciding what documents must be disclosed (not the social workers, their supervisors, or parents). Counsel can apply to the Court if necessary to withhold or edit documents. Relevant documents to be disclosed include those that are adverse to the party's interest, and not limited to the party's intended evidence. Disclosure can be "providing the other parties a reasonable and timely opportunity to inspect all documents," and to make copies at their own expense.

The information the director must disclose to the parties includes the social worker's file recordings ("running records") and notes ("black book notes").[11] Disclosure by the director "may be by attendance to the director's office for a review of file materials."[12] The director can edit these documents to protect the confidentiality of informants and privilege, remove information not related to the child, and provide the edited copies to the parents' counsel, who must keep and use the information only for the child protection matter.

A coordinated response with the director working with the Aboriginal community is in the best interests of the Aboriginal child. Not disclosing potentially crucial information could prevent the Aboriginal community from presenting valid options to ensure the child's safety and preserve the child's connections to their extended family and Aboriginal community.

BEST PRACTICE 5.06

Disclosure can allow the Aboriginal community to participate effectively in planning for the safety of Aboriginal children

1. *Disclosure can allow the Aboriginal community to participate effectively in planning for the safety of Aboriginal children. The director and the child's Aboriginal community could work together, guided by the Court where necessary, to identify and resolve any concerns about confidentiality and disclosure that would impede a full consideration of the least disruptive measures and services needed to support the child and the family.*

2. *Disclosure (subject to awareness of confidentiality laws) is essential to ensuring Aboriginal communities can engage in a discussion of what steps are necessary. An Aboriginal community may support the parents' position due to a lack of disclosure and lack of knowledge about the severity of the problem. Participation as a full and effective party by Aboriginal communities requires an honest assessment of parental challenges and capacity and not simply an approach that advocates for the parents.*

3. *Failing to provide full disclosure can undermine the principles of the CFCSA as it applies to Aboriginal children. Complete confidentiality may place Aboriginal children at higher risk, and prevent the sharing of information that would help their Aboriginal community to keep them safe. Confidentiality concerns should not be used to protect abusers and harm children.*

V. Presentation Hearing

Under Rule 1(5), once a child is removed, the director must file a presentation form within 7 days in the Registry closest to where the child lives or closest to where the child was taken into care. At a presentation hearing, the Court decides whether there is some evidence that a child is in need of protection. This hearing is designed to ensure that a child is not arbitrarily taken into care.

The earliest possible involvement of a child's Aboriginal community can help preserve a child's Aboriginal identity and heritage

At the presentation hearing the director must show:

- That the removal was justified;
- That they took the least disruptive actions possible (i.e., that removing the child was the least disruptive action that could be taken in order to protect the child);
- Steps taken to preserve a child's Aboriginal identity in planning for the care of a child; and
- Any less disruptive steps the director considered before removing the child.

In practice, it is common that, after the first appearance, the matter is adjourned for a short period of time (for example, to allow parents to get legal counsel).

Aboriginal community involvement in the time between the first appearance and presentation hearing could provide a culturally appropriate consideration of the protection concerns, and help to plan for the care of the child to ensure that they remain within their extended family or Aboriginal community where this can be done safely. When a child is placed in the interim custody of the director, the director becomes the guardian of the child until another order (for example, a temporary custody order, return with supervision or continuing custody order) is made. Although an interim order is for an initial term of 45 days, this can be extended. At this stage, the parties may seek to explore alternatives, such as mediation, and Aboriginal community involvement could be very important.

Possible outcomes at a presentation hearing include:

1. The child may be returned to their parent(s) with no conditions.
2. An interim (temporary) order might be made placing the child under the custody of the director or other person. Where a child is removed and not remaining with the parents under a supervision order, access to the child is addressed at a presentation hearing, including for parents, grandparents, extended family members, or culturally important people to the child.

3. A finding that the child needs protection, and that the child may be returned to their parent(s) under a supervision order. If the director decides that there are some protection concerns, but that a child can remain in the home with supervision (s. 29.1(1)), the director can apply for an interim (temporary) supervision order keeping the child with the parent(s) under the supervision of the director. Section 33.2(1) requires the director to present a written report to the Court about their grounds for seeking the supervision order and an interim plan of care for the child. There is some area of uncertainty about whether courts can merely accept supervision terms proposed by the director or whether courts can dictate supervision terms different from those proposed by the director. While s. 41.1 lists terms the director may recommend, it does not limit supervision terms to those recommended by the director.

Aboriginal community input could strengthen the effectiveness of supervision terms

4. The Court can make a s. 60 supervision or custody order with the parents' written consent without the finding that a child is in need of protection.

Despite the principles and provisions of the CFCSA about Aboriginal community involvement, the Courts in some cases have interpreted the role of the Aboriginal community at the presentation stage narrowly. In *A.N.G. (Re)*[13] an application by a representative of the Aboriginal community at the presentation hearing was denied. The Court said that the Aboriginal community was entitled to be a party at the protection stage, and could remain in the Court to support the mother, but held that at the presentation hearing the Aboriginal community did "not really have at law a position to make or place before the Court". In other proceedings, Aboriginal communities who appear are routinely added as a party at early stages of CFCSA proceedings. A broad and remedial interpretation of the principles outlined in the CFCSA suggests that the earliest possible involvement of the child's Aboriginal community is contemplated to help plan for, and preserve, the child's Aboriginal identity and heritage.

Where an Aboriginal community is not automatically added as a party after an appearance, they can make an application to be added as a party by asking the judge in court to be added as a party, under the Rules (Rule 1(4)) at a hearing or case conference. An Aboriginal community can also initiate a motion to be added as a party by filing a Form 2 application for an Order (available online or at the Provincial Court Registry).

BEST PRACTICE 5.07

Aboriginal communities could make submissions at presentation hearings with the goal of ensuring an Aboriginal child remains connected to their Aboriginal cultural heritage

1. *At a presentation hearing, the director is required to show that the least disruptive actions possible were taken (i.e., that removing the child was the least disruptive action that could be taken in order to protect the child), and steps taken to preserve a child's Aboriginal identity. Submissions by Aboriginal communities could speak to these points and present alternatives.*

2. *Aboriginal communities could strengthen the effectiveness of supervision terms that the director suggests and offer alternatives. Aboriginal communities could:*

- *Do emergency planning with the director and parents for what to do in case of breach of a supervision order, identifying options to address protection concerns while having a child remain within their extended family or community.*
- *Identify where supervision terms are not workable or not likely to ensure a child is protected. For example, it makes no sense for a parenting course or anger management course to be part of a supervision order if there are no locally offered courses. An Aboriginal community could highlight that the courses do not exist locally, and propose separate supports within the community with the same purpose, including traditional parenting classes or elders counseling or mentoring.*
- *Ensure that access visits to the child are addressed as part of the terms of any orders that are made at an interim stage, particularly where the child is placed outside of their community, and/or the community is remote or transportation is likely to be an issue for the extended family or community members who wish to visit the child.*
- *Identify alternate caregivers within the child's Aboriginal community.*

3. *Aboriginal communities could work with the director where there are reasonable grounds to believe that contact between a child and another person would endanger the child.*

- *The director can seek a protective intervention order (s. 28) which can include a 6 month no contact order prohibiting*

5.07, CON'T

a person from living with the child or being in the same dwelling, vehicle or vessel with the child, or a restraining order under s. 98 against a person who the director believes poses a danger to a child. Under the Family Homes on Reserve and Matrimonial Interests or Rights Act, S.C. 2013, c. 20, it is possible for a spouse or third party (including a social worker) to apply for a 90 day Emergency Protection Order forcing a party to vacate a family home on reserve where there is a risk of violence within the family.

- *An Aboriginal community could exercise its authority (where possible) to ban a person from residing on or entering the Aboriginal community, which could add another layer of protection to the child.*
- *The Aboriginal community could help to ensure there is no contact with the child at cultural or community gatherings.*

Efforts to maintain a child's Aboriginal cultural heritage are often generic, reflecting a failure to understand the child's unique cultural identity

VI. Plan of Care

The director must provide the Court with a plan of care when applying for interim supervision and custody orders at presentation and protection hearings. The plan of care must address an Aboriginal child's cultural development and cultural identity in determining their best interests. CFCSA Regulation s. 8(2) outlines the information that must be included in a plan for care for each child, including:

- Whether or not the child's views on the plan of care have been considered;
- The name of the child's Aboriginal community (including treaty first nation or Nisga'a Lisims Government);
- The involvement of the child's Aboriginal community in the development of the plan of care, including its views, if any, on the plan;
- How the director plans to meet the child's need for continuity of relationships, including ongoing contact with parents, relatives and friends, and continuity of cultural heritage, religion, language, and social and recreational activities;
- Steps taken to preserve an Aboriginal child's cultural identity, and to comply with the placement priorities for Aboriginal children under s. 71(3) of the CFCSA which require that they be placed within their extended family, Aboriginal cultural community, or with another Aboriginal family before other options are considered;

- If applying for a continuing custody order, what arrangements are made to meet the child's need for permanent stable relationships; and
- A schedule for the review of the plan of care.

VII. Proposing an Aboriginal Cultural Preservation Plan

Maintaining a child's Aboriginal identity requires connection to their unique Aboriginal cultural community

While the CFCSA contains provisions to maintain, preserve and protect a child's Aboriginal cultural identity and heritage, it does not define what that means. All too often considerations of a child's Aboriginal identity or cultural heritage are treated as a procedural hoop (considered and either dismissed or met with simplistic actions) rather than guiding decisions about a child's plan of care. The lifelong importance of Aboriginal culture, identity and belonging may simply not be understood, or may be improperly weighed against an assessment of a child's permanency and attachment needs, and so dismissed.

Efforts to maintain a child's Aboriginal cultural heritage are often generic, reflecting a failure to understand the child's unique cultural identity. Courts have found acceptable efforts to preserve the Aboriginal identity of a child in care as including: attending powwows or cultural activities;[14] internet searches;[15] age-appropriate reading materials; [16] having Aboriginal artwork or artifacts in the foster home,[17] or providing a child with Aboriginal foods.

Pan-Aboriginal daycares, play groups or cultural events should not be read as sufficient to fulfill the legal requirements under the CFCSA, because they do not achieve the benefits that flow from the involvement of the Aboriginal child's community, and do not protect a child's unique Aboriginal identity: "[A] full understanding of one's culture comes through a day to day exposure to it."[18]

> …fostering an Aboriginal identity can be a lifelong process. A person learns from what is passed down from generation to generation orally, and through sharing experiences through relatives, friends and community, as well as from geography, language, and other social facts. Within this process, the individual identity is "inseparable" from the collective identity of Aboriginal people. For Aboriginal people, early childhood attachment is to relatives and the community. In western cultures, however, early attachment focuses on the nuclear family.[19]

Aboriginal identity and heritage is a sense of belonging with cultural, social and historical roots, reflecting membership and affiliations with a particular historic cultural and linguistic group. Maintaining a child's access to, or involvement with, their Aboriginal identity and heritage cannot be achieved through general measures. Maintaining a child's Aboriginal identity and heritage require concrete efforts to maintain or establish relationships to their particular Aboriginal cultural community (for example, a Nlaka'pamux child would require connections to the Nlaka'pamux community).

This Guidebook provides an example of the benefits of, and pathways toward, actively ensuring the involvement of Aboriginal communities in child welfare matters at different stages of the CFCSA process.

For some Aboriginal children, it may be important to attend at cultural gatherings hosted by the child's family, extended family, clan or community where rites of passage and relationships are formalized and recognized (e.g. potlatches, feasts, winter ceremonies, as well as teaching hunting and/or fishing traditions at culturally significant times of the year). Participation at such gatherings may confer rights, solidify relationships and maintain the child's culture, traditions, language and identity.

BEST PRACTICE 5.08

Aboriginal Communities could provide information to assist the Court to make a decision which could include placing a child within that community and the ways that a child could be kept safe within that community; and, identify and present an Aboriginal Cultural Preservation Plan

1. An Aboriginal Cultural Preservation Plan could:

- *Identify cultural factors that need to be included in a child's plan of care (including identifying specific steps or opportunities for a child to participate in cultural activities that maintain or establish their connection to their land and culture, such as language classes, gathering activities, spiritual or cultural celebrations, community dinners or sporting events, lahal or other activities);*
- *Identify cultural supports or programs to assist the family;*
- *Implement community supports to maintain a child's connection with their Aboriginal community and cultural heritage;*

BEST PRACTICE 5.08, CON'T

- *List less disruptive means than removal to keep families together (including culturally-based and appropriate resources within the community);*
- *Identify family or community members that could take care of the child on a temporary basis while the child protection matter is addressed to keep the child within their extended family or cultural community; or, on a permanent basis, if necessary, which would keep the child within their extended family, community, or nation where the parent(s) are unable to address the child protection concern;*
- *Name family or community members that play an important role in the child's life (such as elders or extended family members), together with a proposal for how to maintain those relationships;*
- *Identify a network of people or supports to assist the family in addressing protection concerns, or where it is not possible to restore a family's ability to parent, to assist in keeping a child safe and ensuring that they can grow to adulthood within their culture;*
- *Identify elders, cultural or spiritual supports from within the nation who can work with the child or family within a traditional wellness or healing model; and*
- *Identify alternative or traditional decision making processes —including those based in Aboriginal traditions—that the Aboriginal community may wish to refer the matter to, as allowed under s. 22 of the CFCSA.*

At the protection hearing Aboriginal communities could make interventions to ensure children maintain their Aboriginal identity and cultural connections

VIII. Protection Hearing

The director must serve Notice on the child's Aboriginal community at least 10 days before the date set for the protection hearing, and include a copy of the plan of care proposed and any orders the director is requesting. Under s. 39(1)(c), if the Aboriginal community appears on the first day of the protection hearing, they will be given party status, and are entitled to notice to subsequent hearings (and be a party to those proceedings if they appear), including enforcement of a supervision order; extension of supervision and temporary orders; supervision of a child after a temporary custody order ends; continuing custody hearings and orders; access to the child in interim or temporary custody; changes to supervision, temporary custody and access orders; and appointment of a public guardian and trustee.

At the protection hearing, the Court decides whether or not a child is in need of protection. Permanent custody decisions with long term impacts may be decided at the protection hearing stage. At a protection hearing, Aboriginal communities could make interventions aimed at ensuring that Aboriginal children maintain their Aboriginal identity and cultural connections, including:

1. Identifying and putting in place supports within the community with the aim of helping a family to heal the problems that have led to the child protection concern;

2. Where the parents are unable to safely parent, identifying options that can keep a child safely within their extended family, Aboriginal community or nation; or

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

A. Determining Whether a Child is in Need of Protection

Section 13(1) of the CFCSA sets out the circumstances under which a child will be found to be in need of protection, including where there is evidence or a likelihood that a child will be physically harmed or sexually abused or exploited by the parent or another person, a parent is unwilling or unable to protect the child (for example, where the parent puts the child at risk through exposure to family violence, or unsafe conditions or people), and conditions of neglect, deprivation, emotional harm or failing to provide medical care.

Making a determination about whether a child is in need of protection involves multiple considerations. Courts must be "careful to avoid parent-shopping" in determining if a child is in need of protection. The question is not whether the children "might be better off, or happier, or obtain a better upbringing in the care of other 'parents' than with their natural parents. If that were the criterion for a protection order, not many children would remain with their natural parents."[20]

BEST PRACTICE 5.09

The Aboriginal community could assist in assessing child protection concerns in a culturally sensitive way

1. The Aboriginal community can help to assess child protection concerns in a culturally sensitive way, and identify any stereotypes, or false assumptions, that may be reflected in the consideration of a child's risk. Defining the risks that a child faces with regard to cultural factors, requires asking:

- *How removing an Aboriginal child from their cultural connections may endanger them over the long term;*
- *How cultural factors may insulate an Aboriginal child against identified risks; and*
- *How false assumptions about Aboriginal cultures or parenting styles may be influencing a determination that a child is at risk.*

Case Study: Choosing Traditional Medicine for a Child's Care

Hamilton Health Sciences Corp. v. D.H.[21] concerned an application brought by a hospital concerning a young child, a member of the Six Nations of the Grand River, who has leukemia. Her mom elected to treat her with traditional medicines, and refused chemotherapy. The hospital brought a motion, seeking to force child welfare authorities to intervene, declare that the child was in need of protection, and force the child into chemotherapy. The mother was found to be a loving parent, but the hospital alleged that the decision to discontinue chemotherapy in favour of traditional Aboriginal medicines made the child a child in need of protection.

The band intervened in support of the mother, and argued for a s. 35(1) right. The Court investigated whether the Six Nations of the Grand River had a practice—constitutionally protected—of using traditional medicine, ultimately finding, "traditional medicine continues to be practiced on Six Nations as it was prior to European contact and, in this court's view, there is no question it forms an integral part of who the Six Nations are."[22] Ultimately the Court concluded that it could not find the child to be "in need of protection when her substitute decision-maker [her mother] has chosen to exercise her constitutionally protected right to pursue their traditional medicine over the [hospital's] stated course of treatment of chemotherapy."[23] *Hamilton Health Sciences* illustrates how the intervention of the Aboriginal community helped to provide a culturally sensitive

assessment of cultural practices and whether or not a child was in need of protection.

At a protection hearing, a court can order that a child:

1. Does not need protection and should be returned to their parent, and any interim orders about the child be terminated;

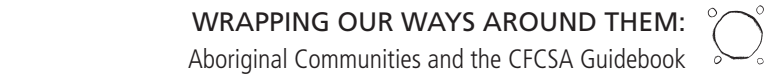
2. Remain with their parent(s) under supervision of the director;

3. Be placed in custody of a person other than their parent under supervision of the director;

4. Be placed in custody of the director for a specified period of time (also known as a "last chance order") (either to another person or to the director). An order, made under s. 49(7)(b) or (c), may occur where a parent is addressing protection concerns but has reached the time limit for how long a child can remain in temporary care of the director under the CFCSA. Rather than issuing a CCO, the Court may issue a further extension of the time the children can be in care to give the parent a "last chance" to address protection concerns and potentially regain custody of their child. To grant a last chance order, the Court must be satisfied that "sufficient progress has been made" toward addressing the child protection concerns - "[g]ood intentions are not enough and there has to be some demonstrated basis for a determination that [the parent] is able to parent the child without endangering her safety. There is not to be experimentation with a child's life with the result that in giving the parents another chance, the child would have one less chance;"[24] or

5. Be placed in the continuing custody of the director ("CCO"). A CCO has the legal impact of putting the child in the permanent care of the director. Section 41(2) contemplates a CCO where a parent cannot be found, is unable or unwilling to resume custody of the child, or the nature and extent of the harm the child has suffered, or likelihood that they will suffer such harm, indicates it is in the child's best interest to not be returned to their parent. Section 49 contemplates a CCO at the end of a temporary custody order where there is no significant likelihood that the circumstances that lead to the child's removal will improve, or that the parent will be able to meet the child's needs. *British Columbia (Director of Family & Child Services)* v. W.(D.)[25] set out the test for granting a CCO

Practically speaking, the importance of Aboriginal cultural heritage does not abate over time



> under the criteria in s. 49 as being: "whether there is a significant likelihood that the circumstances that lead to the children's removal will improve within a reasonable time. The test is not whether there is a possibility of change, but whether there is a probability."[26]

B. Judicial Notice of the Long Term Impacts on Aboriginal Child Raised in Care

Asking about the impacts on children of being raised in care could re-orient the discussion of protection concerns for Aboriginal children by focusing on protecting a child over the course of their lives

Judicial notice refers to the approach of going outside the record of the case and taking judicial notice of facts that are important to a decision in the case. Judicial notice is usually confined to facts that are considered to be uncontroversial and well known within the community. In *R. v. Williams,*[27] *R. v. Ipeelee,*[28] and *R. v. Gladue*,[29] the Supreme Court of Canada directed an approach which takes judicial notice of systemic racism and barriers that Aboriginal peoples face.

> Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. … [T]he threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy.[30]

The interest of an Aboriginal child in maintaining and fostering their connections to their Aboriginal culture and heritage over their lifetime must be considered in an assessment of their best interests. In *H.(D) v. M.(H.)* the BC Court of Appeal observed the "considerable history of unsuccessful outcomes" of the adoption of Aboriginal children into non-Aboriginal families.[31] Contrary to the analysis of the Supreme Court of Canada in *Racine*, practically speaking, the importance of Aboriginal cultural heritage does not abate over time; evidence suggests that it becomes increasingly important. Outcomes for children in care are not positive. Children in care are less likely to graduate, and more likely to end up in prison, to have their own children taken into care, or to experience unemployment, substance abuse or suicide.[32]

C.M.B. v. Ministry for Children and Families[33] concerned an appeal from a decision dismissing an application to cancel a CCO. An Aboriginal mom, raised by non-Aboriginal adoptive parents, sought to cancel the CCO. Self-represented, her submissions were:

> The Ministry of Social Services took me from my mother at birth on the 9 day of March 1975 and sentenced to me a life without an identity. This is an identity that I searched for twenty years until I returned to my family 3 years ago. All I ask is for the courts to look at my daughter's future and see that being placed back with myself or my biological mother A.H. and her spouse J.S. will open many doors for L.B. … I have already faced prejudices in Bella Coola because I am different (I was raised white) though maybe not fair this is reality. This is something that I want to prevent in my daughter's life.[34]

Under the limitation periods that are set out in the CFCSA in a relatively short period of time, decisions are often made to permanently sever a child's relationship with their parents, extended family and Aboriginal community

Asking about the impacts on children of being raised in care could re-orient the discussion of protection concerns for Aboriginal children by focusing on protecting a child over the course of their lives. "A court should … consider not only what is best for the child immediately, but also whether the disposition … will also serve the child's long-term interests."[35] Assessing protection concerns in the immediate timeframe, without asking what the mid- to long-term impacts of removing a child from their families and Aboriginal community(ies) is, may have devastating impacts for a child.

A forward looking principle, sometimes referred to as a "seventh generation" principle, asks what the impacts of our actions and decisions today will be into the future. Asking what the impacts of a particular child protection decision are in the long term, such as to remove a child from their parents and put them into care, requires a consideration of what will happen to a child over the course of their life, and in the lives of their children and descendants, and not merely during the immediate future. The CFCSA limitation periods allow a relatively short period of time for decisions to be made to permanently sever a child's relationship with their parents under the rationale that this will create permanency for that child. From a long-term perspective, when an Aboriginal child is put into care, and their ties to their birth family and culture are severed, these children often age out of care with no replacement connections.

An analysis of the best interests of Aboriginal children must consider the long-term impact on children of actions ostensibly taken to address immediate protection concerns. The long-term outcomes of children raised in care continue to be very poor, including the risk of low education attainment,[36] higher risks of street involvement and drug use,[37] and contact with the criminal justice system. Aboriginal children spend longer in care than non-Aboriginal children, "if a

…[CCO] has been granted, Aboriginal children are more likely to "age-out" of care than their non-Aboriginal counterparts, without being adopted or entering other out-of-care arrangements,"[38] and Aboriginal youth represented only 6% of all youth in BC, but in, in 2008–2009 represented: 27% of youth remanded, 36% of youth admitted to sentenced custody, and 24% of youth admitted to probation.[39] Aboriginal children's best interests rest with their community and their psychological integrity and well-being are seriously impacted by the disruption of that relationship. Interference with those relationships last over a child's lifetime and could forever foreclose a lifetime of cultural connections and belonging, denying the child access over their lifetime to a rich cultural and spiritual tradition.

From a long-term perspective, when an Aboriginal child is put into care, and their ties to their extended family and Aboriginal culture are severed, these children often age out of care with no replacement connections

BEST PRACTICE 5.10

Courts could take judicial notice of the long-term negative outcomes for Aboriginal children raised in care

1. *Courts could take judicial notice of the long-term negative outcomes for Aboriginal children raised in care. The best interests of Aboriginal children should be assessed to ensure that their long term well-being is not sacrificed for short term safety. An appropriate consideration of an Aboriginal child's best interests must consider their safety in the immediate term, and into the future. Maintaining and fostering a child's connection to their Aboriginal culture and identity has a better chance of protecting a child in the long term and ensuring a better life outcome.*

IX. Exploring Permanency Alternatives

The experience of children raised within the child welfare system has shown that long term stability does not result from an approach which puts attachments to foster or adoptive parents—which can, and often do, change over time, or are experienced differently by different children—before permanency expressed through maintaining lifelong connections to Aboriginal culture, community and extended family.

> [T]here is … considerable evidence demonstrating that removing Indigenous children from their homes in large numbers … is making things worse, not better, for both Indigenous children and their communities. While removal may be the best option in some cases, research … shows that in-home support would be a far better response than removal for

> most Indigenous children. In all cases, it needs to be recognized that separated Indigenous children face substantial new threats in 'the system'. They tend to experience a lack of permanence, feelings of not belonging and not being loved, and are sometimes exposed to further abuse. Additionally, Indigenous children removed from their families are usually removed from their culture, causing additional anxiety and loss, and rupturing the transmission of Indigenous culture and identity from generation to generation.[40]

The balanced approach suggested in this Guidebook seeks to ensure both attachment and cultural connection for Aboriginal children over their lifetime

Under the limitation periods that are set out in the CFCSA in a relatively short period of time, decisions are often made to permanently sever a child's relationship with their parents, extended family and Aboriginal community, under the rationale that this will create permanency for that child. Justice Ryan-Froslie in *J.B.B. (Re)* expressed the importance of timely action when Aboriginal children come into care:

> [W]hen children are apprehended, they cannot wait indefinitely for their parents to make changes to their lives. With every passing day, with every move, the risk of emotional, physical and psychological damage to them increases. Parents have a choice. They can take steps to address the issues which led to the apprehension of their children. The system has a choice. It determines the supports and resources it offers to both the parents and the children and until a final resolution is reached, it determines the placement of the children. The Band can choose to offer cultural experiences and they have a choice what resources to pursue. The children have no choice.
>
> All children need stability. A child's view of time is very different from that of adults. The younger a child is, the greater the need to quickly ensure a stable long-term placement to avoid emotional and psychological damage.[41]

Currently, removing a child from parents who cannot safely parent them often means removing them from their extended family, Aboriginal culture and community, for the mid- to long-term. To guarantee short term safety and permanence, children are put at longer term and serious risk. Adoptions or long-term foster arrangements for Aboriginal children often break down, and so what appears to be a "permanent" arrangement for Aboriginal children is often not: "adoption of native children by non-native families is a major

issue and more often than not, there is a break down in the adoption in the early teenage years of the adopted child." [42] From a long-term perspective, when an Aboriginal child is put into care, and their ties to their extended family and Aboriginal culture are severed, these children often age out of care with no replacement connections. They are left, at the end of a process meant to protect them, radically isolated.

Efforts to keep Aboriginal children connected to their Aboriginal cultural heritage, or to preserve their Aboriginal identities, often fail because they occur too late, or reflect an "either/or" scenario which does not consider possibilities which might allow children to remain in homes where they have formed attachments and still be actively connected to their Aboriginal cultural heritage. For example:

- *T.E. v. Alberta (Child, Youth and Family Enhancement Act, Director)*[43]—the Court considered a case where two children were removed from a foster home that they had lived in for a long time, and were attached to the foster mom who made efforts to keep them connected to their Aboriginal culture, to place them in their home community. The Court found that the Aboriginal agency's plan was "overly aggressive and singularly focused on restoring these children to their Aboriginal community of origin … at the expense of all other important considerations." The Court objected to a "position that blindly follows policy" over a consideration of the best interests of the child.
- *Saskatchewan (Social Services) v. L.B.*[44]—a child was in care from 2 months to nearly 6 years of age, at which time her Aboriginal grandmother sought custody. An expert recommended that the child maintain contact with her extended family, noting that not taking culture into consideration "could have devastating consequences, causing resentment in the child, without knowledge of where she came from."[45] The Court found it must consider all factors in a child's best interest, not merely culture. Culture does not "supercede all other factors which the Court must take into account" and rejected a "dogmatic approach intent on realizing an equity adjustment for historic wrongs and discrimination."[46]
- *Wpg. Child and Family Services v. M.A. et al.*[47]—an Aboriginal agency and the band refused placements which would have adopted a young Aboriginal child into a non-Aboriginal home, though they offered no permanent alternative for her. The Court found that the end result of the policy is that "the child is being held hostage by a child welfare system that has put its own political interests and expediencies ahead of her best interests." [48]

> This is a case about an Aboriginal child who is being denied her right to a permanent, secure family because the Aboriginal agency and the band's community committee have vetoed any such placement. The reason for the veto arises from a desire to stop the removal of Aboriginal children from their cultural heritage. While a laudable goal, its dogmatic application is counterproductive and unfair. The tragedy in this case is that the best plan for the child, which would see her placed with a permanent family, has been rejected for historical and political reasons that have nothing to do with her case.[49]

Aboriginal communities can facilitate solutions that allow for both permanency of placement and ongoing and meaningful connection to a child's Aboriginal culture and heritage

- *T.E. v Alberta (Director of Child Welfare)*[50]—the Court considered a plan to move children from a settled foster home to an Aboriginal placement and found that "the needs of children supercede policy considerations," noting "children are not widgets who can simply be moved from one column to another on a balance sheet."[51]

A. Ensuring both Attachments and Cultural Continuity

The balanced approach suggested in this Guidebook seeks to ensure *both* attachment and cultural connection for Aboriginal children. Making decisions "either/or" ("either" Aboriginal identity and culture "or" attachment and security) without meaningfully exploring options of working collaboratively with a child's Aboriginal community denies possibilities which would allow children to be permanently placed (certainly there is a higher likelihood of identifying Aboriginal placements with the active involvement of Aboriginal communities—but no matter where a child is placed) while also maintaining and fostering their connections to their Aboriginal families, culture and heritage. Aboriginal communities could be instrumental in achieving arrangements that allow for permanency of placements while maintaining a child's Aboriginal identity and cultural heritage.

In cases where Aboriginal children have been placed with foster or prospective adoptive parents over a long period, a wrongful assumption persists that the only solution is one which chooses either permanency through a foster or adoptive family, or severs that connection in favour of preserving Aboriginal culture and heritage. Aboriginal communities can facilitate solutions that allow for both permanency of placement and ongoing and meaningful connection to a child's Aboriginal culture and heritage.

When the potential repercussion of leaving a child alone as they reach adulthood is assessed, it requires different decisions about permanency in a child's life by recognizing broader parenting practices or distributed responsibility within the child's Aboriginal community. A broader approach to finding permanency for Aboriginal children is required that explores models based in Aboriginal laws (such as customary adoption, extended family care and guardianship situations where the birth parents or family maintain an ongoing set of obligations and relations with the adoptive family, and so forth) rather than requiring a complete severance of parental rights, Aboriginal community connections and placing of children into a foster care system.[52]

The potential repercussions of leaving a child isolated and alone as they reach adulthood, illustrate why different decisions are required: "cutting peoples off from their cultures and histories has a devastating impact upon the self, dividing peoples from 'the wealth of experience and reflection that constitutes the language in which we understand ourselves in the world."[53] Permanency options that keep Aboriginal children actively and meaningfully involved with their Aboriginal communities and extended family are needed. Expanding and reorienting notions of permanency could ensure stability and safety over a child's lifetime.

In the United States, the federal government "acknowledges that a Tribe's traditional and/or customary adoptions, without termination of parental rights, are an acceptable permanency option,"[54] allowing arrangements of distributive parenting and shared responsibility.[55]

> Customary care is an important strategy for avoiding the cultural displacement experienced by First Nations children separated from their families, extended families and communities. While customary care can be generally understood as a traditional approach to caring for children through extended family members in ways that are grounded in the traditions, values and customs of the community … this concept is more comprehensive in nature in the sense that it is care that extends throughout the life-cycle from birth to death. Customary care is not merely about alternative care arrangements; it is a way of life that ensures natural cultural resiliency and promotes positive cultural identity by way of language, clan and family.[56]

The CFCSA contains provisions which allow for recognition of alternative permanency solutions, including through the Extended Family

Program (formerly Kith and Kin agreements) or a permanent transfer of custody before or after a CCO is entered. These arrangements may allow for families or other caregivers to enter agreements for some level of financial support or assistance from the director. Collaborative planning with the Aboriginal community provides the best hope of reaching a resolution, which maintains a child's Aboriginal identity and connection to their cultural heritage over their lifetime, in the context of a continuing custody order.

Under s. 56 of the CFCSA a parent or any other person can apply for access to a child who is the subject of a CCO

BEST PRACTICE 5.11

A fluid approach is required to finding permanency for Aboriginal children that explores models based in Aboriginal laws

1. A fluid approach to finding permanency for Aboriginal children is required that explores models based in Aboriginal laws, and provides permanency solutions for children while maintaining their Aboriginal identity, culture and community connections. Options include:

- *Customary adoption;*
- *Extended family care and guardianship situations where the birth parents or family maintain an ongoing set of obligations and relations with the adoptive family rather than requiring a complete severance of parental rights and connection to Aboriginal community and extended family;*
- *Broader and extensive supports to enable parenting where Aboriginal parents cannot safely parent on their own;*
- *Parenting solutions which reflect Aboriginal ways of caring for children across several families or homes, providing permanency by recognizing shared parenting practices or distributed responsibility amongst a community or extended family.*

X. After a CCO has been Granted

A. Access

Under s. 56 of the CFCSA, a parent or any other person can apply for access to a child who is the subject of a CCO, and this would include the child's grandparents and extended family members. In deciding if the parent or another person should have access to the child, the Court must find that access "(a) is in the child's best interests, (b) is consistent with the plan of care, and (c) is consistent with the wishes of the child, if 12 years of age or over." Granting access to parents after a CCO is "the exception rather than the norm, although in recent

years such access is becoming more common."[57] In determining whether to grant post-CCO access, the child's interests will be considered ahead of the parent's and "[i]f adoption is more important than access for the welfare of the child and would be jeopardized if a right of access were exercised, access should not be granted."[58]

In *Children's Aid Society of Owen Sound and Grey County v. P. (C.)*[59] the Court granted an application terminating parental access because such access interferes with adoption options: "a child should have an opportunity to be a full member of a family," and "there can be no placement for adoption if there are outstanding access orders."[60] The presumption that Aboriginal children (especially those not burdened by parental or family access orders) will be adopted is not necessarily true. The presumption is contrary to the actual lived experience of Aboriginal children subject to a CCO, many of whom are not adopted, and far more likely to age out of the system.

Once in care, Aboriginal children are likely to remain in care until they age out of the system

> [T]he court has been asked to find that that anything interfering with adoption for an Indian or native child should not be seen as an impediment to a permanent placement because the court should recognize that, *for Indian and native children, foster care is an appropriate form of permanency placement.* Although the [Act] recognizes special interests of Indian and native children, it does not support the premise that they should have less rights. A decision that finds that placement in foster homes (whether on the reserve or not) is good enough as permanency planning for some children because of their cultural heritage, is not in their best interests.[61]

In *New Brunswick (Minister of Health and Community Services) v. L.(M)*,[62] the Supreme Court of Canada noted that the right of access is a right of the child and not the parents after a CCO has been granted:

> Parents have rights in order that they may fulfil their obligations towards their children. When they are relieved of all of their obligations, they lose the corresponding rights, including the right of access. After a permanent guardianship order is made, access is a right that belongs to the child, and not to the parents.

Reference re Child Welfare Act[63] concerned an appeal of a decision of the trial judge to grant access to the Aboriginal grandmother and mother after a CCO had been granted. The Alberta Court of Appeal

upheld the decision of the trial judge, made, in part, on the understanding that maintaining contact with his Aboriginal heritage was beneficial to the child ("the child is of Indian ancestry and is being raised in a white home. He expressed the view that the child, as he grew, should have some happy exposure to the native community and culture.")[64] The Alberta Court of Appeal found that the "child is a member of a visible minority. He must, some day, adjust to that fact. It is a fair and respectable point of view that that adjustment will be made easier if he has grown up in happy acquaintanceship with the native community and the native culture."[65]

Implementing a traditional or custom adoption once a child is the subject of an ongoing child protection concern requires working with the director who has the legal responsibility—having taken a child into care—to ensure their safety

BEST PRACTICE 5.12

Aboriginal communities could work with parents, extended family or community members to apply for access to children currently under a continuing custody order

1. *Aboriginal communities could work with parents, extended family or community members to apply for access to children currently under a continuing custody order under s. 56. This could involve:*

- *Developing a plan which would establish or maintain cultural connection of Aboriginal children with their cultural community; or*
- *A plan for reunification of the child to their parents, extended family or Aboriginal cultural community where possible.*

B. Custom Adoption, Adoption or Alternatives to Permanency

Under s. 80 of the *Adoption Act*, financial assistance is only available where the director has placed a child for adoption. Parties will have to be aware of this if seeking to create permanent solutions for Aboriginal children by customary adoptions. In *Prince & Julian v. HMTQ et al*,[66] the BC Supreme Court set out factors necessary for a finding that an Aboriginal custom adoption has occurred, where parties seek a declaration:

1. Consent of natural and adopting parents;
2. Voluntarily placement with the adopting parents;
3. That the adopting parents are Aboriginal or entitled to rely on Aboriginal custom;

4. That the rationale for Aboriginal custom adoptions is present (there is a recognized reason within the scope of the custom, whether it be to provide for children without parents, or otherwise, for the adoption to take place);

5. The relationship created by custom must be understood to create fundamentally the same relationship as that resulting from an adoption order under provincial adoption legislation.

Once a CCO has been granted, children are eligible to be placed for adoption

If a transfer of custody occurs under s. 54.1 of the CFCSA, a custom adoption could follow and still leave an adopting family eligible for financial assistance.

Permanency placements through custom adoption are very common in Aboriginal cultures.[67] However, implementing a traditional or custom adoption once a child is the subject of an ongoing child protection concern requires working with the director who has the legal responsibility—having taken a child into care—to ensure their safety. Though a custom adoption may be valid under Aboriginal law, legal recognition may require an application for recognition in Provincial Court, or an application to the federal government that a custom adoption has occurred and is recognized under the *Indian Act*.

Justice Ryan-Froslie said in *R.T. (Re)*:[68]

> ... Adoption and the ability of children to maintain their culture are not mutually exclusive objectives. There is no reason why children cannot have a permanent, stable and loving home through adoption and still be guaranteed a connection with their community and cultural roots. This is so even if a child has no extended family or community resources and the adoption is with a non-Aboriginal family. ...[69]

Under s. 54.1, the director can apply *after* a CCO is granted to transfer permanent custody of a child to another person if the CCO was entered by consent, or the 30 days limitation period set out in s. 81 (Appeals to the Supreme Court) has expired, or all appeals have been exhausted. The director must notify the child's Aboriginal community and anyone who has access to the child of the hearing, time, date and place.

Once a CCO has been granted, children are eligible to be placed for adoption. Whether a child will be adopted depends upon the policy in place within different agencies. Most Aboriginal children in care in BC age out of care without being adopted.[70] Nonetheless,

the director often uses the possibility of adoption (and fact that the need to maintain a continuing connection with a child's family will hinder an adoption) to limit the access of a child's family after a CCO has been granted.

These materials do not generally discuss the *Adoption Act*. They are solely concerned with the CFCSA. The *Adoption Act* requires notification of a child's Aboriginal community when an adoption is contemplated, and efforts to involve the Aboriginal community in proposed adoption placements.[71]

C. Cancelling a CCO

Section 54 allows a party to a CCO proceeding to apply to the Court to cancel a CCO "if circumstances that caused the court to make the order have changed significantly" or to receive notice if another party makes an application to cancel the continuing custody order. Only a party to a child protection proceeding can apply to cancel (set aside) a continuing custody order. Parties include the parents and, where an Aboriginal community appeared at the continuing custody hearing, the Aboriginal community. Leave (permission of the Court) is required to even ask for a CCO to be set aside, and that will only be granted where "the circumstances that caused the court to make the order have changed significantly".

N. P. v. British Columbia (Director of Child, Family and Community Services),[72] was a case where the applicants (uncle and aunt) sought to cancel a CCO for three Aboriginal children. While they were unsuccessful in having the CCO cancelled, as the trial judge was not convinced that the children would be safe with the applicants full-time, she granted access under s. 56 and Rules 6(3)(c) and 8(2), which included "at least one month in the summer", "at least half of the spring break holiday", "one-half of every Christmas holiday", "other access in Mackenzie or in Fort Ware, at the expense of the director" and "telephone access at the expense of the director."

XI. Appeal

Matters decided by a Provincial Court (court that hears CFCSA matters) can be appealed to the BC Supreme Court within 30 days (s. 81). Decisions of the BC Supreme Court can be appealed to the BC Court of Appeal, on a matter of law, but require leave (permission) of the BC Court of Appeal. Under s. 66(2) of the CFCSA no order may be set aside because of any informality at the hearing or for any other technical reason not affecting the merits of the case."[73]

XII. Representative of Children and Youth

The Representative for Children and Youth Act (RCYA)[74] creates the position of Representative for Children and Youth who has the power to review programs or services or initiate an investigation, of services offered under the CFCSA. The RCY can advocate for children, and review or investigate services provided to children. The scope of this review would include the ability to investigate whether services were being provided as required under the CFCSA to Aboriginal children, or to assist Aboriginal children in advocating for themselves. This could include advocating to make certain that the provisions of the CFCSA preserving a child's Aboriginal identity and cultural heritage are honoured.

Endnotes

1. Part 2 of the CFCSA lists several types of voluntary agreements: Support Services Agreements; Voluntary Care Agreements; Special Needs Agreements; Extended Family Program (Formerly Kith and Kin Agreements); and Agreements with Youth or Young Adults.

2. Re C.I., 491 Mich. 81, 82 (2012).

3. G. M. Thomson, "Judging Judiciously in Child Protection Cases", in R. S. Abella and C. L'Heureux-Dubé, eds., Family Law: Dimensions of Justice (1983), 213, at p. 233, cited at para. 121 of New Brunswick concurring judgment. In New Brunswick, the Court noted that "generally speaking, the longer the separation of parent from child, the less likely it is that the parent will ever regain custody."

4. 2010 ONCJ 105 (CanLII) [Dilico].

5. Dilico at paras. 31-32.

6. See, for example: Sarich, Walkem, LSS, and St. Lewis.

7. 2007 BCPC 19 (CanLII) [C.S. and J.K].

8. C.S. and J.K. para. 4.

9. Canadian Judicial Council, Statement of Principles on Self-Represented Litigants and Accused Persons, September 2006, at 2-5.

10. [1996] B.C.J. No. 2554; reaffirmed in 2013 in Director v. K.S.

11. Re A.L.S., [1996] B.C.J. No. 2668 (Prov. Ct.).

12. Director v. K.S., at para. 34.

13. 1996 BCPC 1 (CanLII).

14. A. […], at para. 53.

15. H.(D) v. M.(H.), at para. 25.

16. D.C.W., at para. 51.

17. A. […], at para. 53.

18. M.(R.) No. 2, at para. 39.

19. Smith at 309-310.

20. Saskatchewan (Minister of Social Services) v. S.E. and E.E., [1992] 5 W.W.R. 289 (Sask. U.F.C.), at para. 296.

21. 2014 ONCJ 603 (CanLII) [Hamilton Health Sciences].

22. Hamilton Health Sciences at para. 79.

23. Hamilton Health Sciences at para. 83.

24. CAS v. L.T. and R.S. 2013 ONSC 6512 (CanLII), CAS at paras. 33-35. In that case, the mother had addressed the protection concerns, including by finding safe, affordable housing; becoming an active participant at the Native Friendship Centre; she attended access visits regularly; she found daycare that could address her child's special needs; she has separated from the father; she worked cooperatively with the Society and community service providers to acquire basic skills, and attends counseling and parenting courses.

25. 2002 BCPC 616 (B.C. Prov. Ct.).

26. Kirwin at 6-11.

27. [1998] 1 S.C.R. 1128.

28. 2012 SCC 13, [2012] 1 S.C.R. 433.

29. 1999 CanLII 679 (SCC), [1999] 1 S.C.R. 688.

30. R. v. Find, 2001 SCC 32.

31. At para. 16.

32. Turpel-Lafond, M.E., Representative for Children and Youth. "Aboriginal Children, Human Rights as a lens to break the intergenerational legacy of Residential Schools." Submission to the Truth and Reconciliation Commission of Canada (July 2012).

33. 2000 BCSC 774 (CanLII) [C.M.B.].

34. C.M.B., at para. 4.

35. Twaddle J.A. in Child and Family Services of Winnipeg (East) v. K.A.D. et al, [1995] M.J. No. 178; Man.R. (2d) 262, at paras. 27 and 33.

36. Ministry of Children and Family Development [MCFD]: Educational Experiences of Children Under a Continuing Custody Order. Victoria: Ministry of Children and Family Development; 2012.

37. Research Report for Bio Med Central Ltd., 2014

(Contributors Barker, Kerr, Alfred, Fortin, Nguyen, Wood, DeBeck), "High prevalence of exposure to the child welfare system among street-involved youth in a Canadian setting: implications for policy and practice," BMC Public Health 2014, 14:197. Electronic copy: http://www.biomedcentral.com/1471-2458/14/197 [Bio Med].

38. Bio Med at 11.

39. Calverley, D., Cotter, A., & Halla, E. 2010. "Youth custody and community services in Canada — 2008/2009," Juristat 30(1). Ottawa, ON: Statistics Canada.

40. Indigenous children at 69. [References omitted]

41. 2008 SKQB 419 (CanLII) at paras. 169-171.

42. C.D.R1. and C.D.R2. v. Native Child and Family Services of Toronto 2007 CFSRB 20 (CanLII) at para. 19.

43. 2013 ABPC 265 (CanLII) [T.E.], at paras. 65 and 67.

44. 2009 SKQB 46 [L.B.].

45. L.B. at para. 95.

46. L.B. at para. 103.

47. 2002 MBQB 209 [M.A.].

48. M.A. at para. 2.

49. M.A. at para. 1.

50. T.E. at para. 78.

51. T.E. at para. 78.

52. See for example: Atwood, B. "Permanency for American Indian and Alaska Native Foster Children: Taking Lessons from Tribes" (2009) Capital U.L.R. Arizona Legal Studies Discussion Paper No. 08-22, and Macdonald, K. "Customary Adoption in British Columbia: Recognizing the Fundamental Differences" (2009) 14 Appeal: Rev. Current L. Reform 17.

53. Lynch citing J. Webber, "Individuality, Equality and Difference: Justifications for a Parallel System of Aboriginal Justice" in Canadian Royal Commission on Aboriginal Peoples, Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues (Ottawa: RCAP. 1993).

54. Minnesota ICWA at 35-16.

55. Customary care arrangements reflect Aboriginal traditions and enable a child to maintain their cultural and social ties. Sections 57(4) and 57(5) of the Ontario Child and Family Services Act contemplate customary care agreements: "this form of family or community placement is not intended to be foster care. The offer to assist a child in this way would seem to be expected to arise from a sense of connection to the child: family, community or band. … Although there are not the tight lines limiting the length of supervision, some courts have recognized that, for the child's sake, there needs to be some long-term planning. This often takes the form of a custody order with limiting access terms where appropriate." (P.(C.), at para. 23.

56. Ferris, P., Simard, E., Simard, G. and Ramdatt, J. "Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services" (2005, Promising Practices in First Nations Child Welfare Management and Governance Series, First Nations Child and Family Caring Society of Canada).

57. Kirwin, at 6-12.

58. Kirwin, at 6-11, citing New Brunswick.

59. 2004 ONCJ 453 (CanLII) [P.(C.)]

60. P.(C.), at para. 37.

61. P.(C.), at para. 42.

62. [1998] 2 S.C.R. 534 [New Brunswick], at para. 17.

63. 1984 ABCA 28 (CanLII) [Reference re Child Welfare Act (Alta)].

64. Reference re Child Welfare Act (Alta), at para. 44.

65. Reference re Child Welfare Act (Alta), at para. 45.

66. 2000 BCSC 1066 (CanLII). The first four factors were originally listed in Re Tagornak Adoption Petition [1984] 1 C.N.L.R. 185 (N.W.T.S.) and the final factor was originally listed in B.C. Birth Registration No 1994-09-040399,Re, 1998 CanLII 5839 (BCSC) [paraphrased].

67. See Casimel for example.

68. 2004 SKQB 503 (CanLII), [R.T. (Re)].

69. R.T. (Re) at para. 104.

70. Turpel-Lafond, Mary Ellen. "Some Thoughts on Inclusion and Innovation in the Saskatchewan Justice System" (2005) 68 Sask. L. Rev. 293.

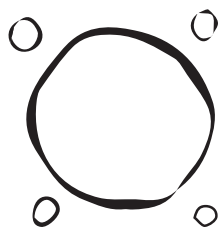
71. Olthuis, Kleer, Townshend LLP, Aboriginal Law Handbook (4th) (2012, Thomson Reuters Canada Ltd., Toronto) at 349 [References omitted.]

72. 1999 CanLII 6514 (BCSC), at para. 30 citing the decision of the trial judge.

73. Kirwin at 8-10.

74. SBC 2006, Ch. 29.

06. Traditional and Alternative Dispute Resolution Mechanisms



06. Traditional and Alternative Dispute Resolution Mechanisms

Joint decision-making, incorporating Aboriginal legal orders can change outcomes for Aboriginal children

The CFCSA provides opportunities for Aboriginal community participation within alternative decision-making processes. Options including mediation, family group conferences or case conferences are cooperative planning mechanisms to resolve child protection concerns outside of Court. Participation by Aboriginal communities in alternative dispute resolution processes could be an effective way for Aboriginal communities to participate in planning for their child members.

Joint decision-making, which incorporates Aboriginal legal orders, has the potential to change outcomes for Aboriginal children by building a cooperative – rather than adversarial – approach that involves the child's extended family and Aboriginal community in making decisions. The success of alternative dispute resolution processes, and the degree to which they are able to reflect Aboriginal values in the outcomes, depends upon the willingness of the parties to explore the strengths and supports within the child's culture and community, and to listen in new ways to Aboriginal communities.

I. Cooperative Planning and Alternative Dispute Resolution

Cooperative planning and alternatives to court have become a common practice in child protection disputes. Active participation of Aboriginal communities within these processes provides an opportunity for Aboriginal ways of considering child protection concerns and culturally appropriate solutions to be addressed.

A. Case Conferences

At the commencement of a protection hearing, the Rules (Rule 2) require that a case conference must be directed unless the matter is resolved by consent. Parties can also request a case conference at other times in the child protection process. At a case conference the judge can:

A family group conference (FGC) provides an opportunity for the Aboriginal community to plan for the care of children

- Attempt to resolve issues and can facilitate the resolution of any issues in dispute, other than the issue of whether the child needs protection;
- With the consent of the parties, refer any issue, other than the issue of whether a child needs protection, to mediation or other alternative dispute resolution mechanism under s. 22 (this would include traditional Aboriginal dispute resolutions);
- Give a non-binding opinion on the probable outcome of a hearing;
- Address outstanding procedural issues between the parties (for example, whether adequate disclosure has been provided); or
- Give other directions for the fair and efficient resolution of the issues.

Aboriginal communities could request that traditional decision-making practice be incorporated into the case conference to consider the Aboriginal child's culture, community, and identity, as well as short and long-term care options. As case conferences are presided over by a judge, there is a greater chance that the parties, including the director, will act in good faith and be more willing to listen and consider alternatives presented.

B. Family Group Conference

A family group conference (FGC) provides an opportunity for the Aboriginal community to plan for the care of children. Family members and others who care and concern for a child are invited to talk about concerns and encouraged to reach a plan together for how to address these concerns. The child's social worker usually attends to review the FGC's proposed care plan and to ensure it addresses the director's child protection concerns. The FGC is promoted as a shared decision-making process that provides parents and caregivers, extended family and the child's Aboriginal community, an opportunity to come together in an informal setting to develop a plan for the child.

FGCs may suffer from disclosure constraints, leading serious child abuse issues to be un- or under-examined, and so prevent the development of a comprehensive safety plan for the child, further frustrating relationships between the parties, extended family, community and the director. While the director's staff may summarize the child protection concerns, key information necessary to address the child protection concerns may not be shared. Aboriginal communities can request full disclosure by consent or, if consent is not possible, under s. 79(a), where required to ensure a child's safety.

FGCs are family focused and so may not adequately reflect an Aboriginal community's role and perspective

While FGCs are envisioned as a way to involve extended families and potentially communities in the planning for the child, and may be successful for some matters, they often do not ensure the broader community or nation participation necessary to care for Aboriginal children.[1] The director has ultimate authority to approve a plan. The FGC is family focused and may not adequately reflect an Aboriginal community's sense of shared responsibility beyond the immediate family.

C. Mediation

Section 22 of the CFCSA allows the parties to try to settle issues in dispute through mediation or other dispute resolution mechanisms. Any party can request mediation at any time where the parties are trying to work out an agreement regarding the safety of the children. A mediator is a neutral third party who guides the discussion between the parties (parents, other family members, Aboriginal community representatives, the director, and usually the lawyers for the parents and director). The role of the mediator is to address the power imbalance between the parties, and to try to create a safe place and process for discussions to occur. With some exceptions, information that is shared or gained within mediation cannot be used in Court.

Benefits of mediation include the possibility of transforming the relationships between the parties and of building a cooperative approach toward caring for children and families, which provides an opportunity for different parties to share their perspectives and to offer solutions in a non-adversarial environment where a mediator can help to ensure a fair discussion. A successful mediation may allow the parties to identify misunderstandings, resolve issues more quickly, and assist in realigning the relationships between the parties. A limitation of mediation under the CFCSA is that there are matters that cannot be mediated. For example, the decision about

whether a child is in need of protection is not open for discussion and this can be frustrating for parents or community members who think that this is something that can and should be discussed.

Mediation's success depends on the willingness of the parties to participate, and on the skills of the mediator. Aboriginal communities have raised concern that the child protection mediation roster is not always culturally relevant for the needs of Aboriginal children from their particular communities. While mediators with experience dealing with Aboriginal child welfare issues are necessary, the mediator must also have knowledge and sensitivity with the particular Aboriginal community's own unique traditions, practices, and laws. Mediators may not know or be able to reflect Aboriginal values or ways of making decisions, and so these may not be reflected in the mediation process.

Benefits of mediation include the possibility of transforming the relationships between the parties and of building a cooperative approach toward caring for children and families

BEST PRACTICES 6.01

Aboriginal community participation in alternative or traditional dispute resolution processes can ensure the child's right to their Aboriginal identity and cultural heritage are central to any protection proceedings and planning

1. *Aboriginal community participation in case conferences provide an opportunity to actively plan for child members and encourage discussions to resolve issues based on the provisions of the CFCSA which protect a child's Aboriginal identity and cultural heritage.*

2. *Aboriginal community participation in the FGC can help to increase the cultural safety of the family and open new pathways of dialogue.*

3. *Aboriginal communities could actively participate in mediation processes, or seek to have mediation processes amended to reflect the cultural values and requirements of the community. Mediation can provide an opportunity for Aboriginal communities to participate in dialogue and joint decision-making regarding their child members.*

    - *Aboriginal communities could be invited to identify any concerns about a mediator's appointment and what can be done to overcome any real or perceived deficits or gaps in knowledge.*

6.01, CON'T

- *The Aboriginal community could identify a mediator with specific knowledge about the child's Aboriginal culture, traditions, and community, or identify individuals trained within the child's culture and traditions to be appointed as co-mediators.*
- *If the Aboriginal community finds that there are no culturally acceptable mediators to them on the roster, mediation may not be a desired option, and traditional dispute resolution mechanisms based in Aboriginal culture should be considered.*

II. Aboriginal Traditional Decision-Making Process

Solutions within the area of child welfare law must combine the being and the becoming:[2] to find a way to combine the present-day reality in which Aboriginal children, family and communities and nations exist within Canadian law and legal practices while reaching forward and back to Aboriginal legal orders, making space for their present day formulations. Solutions in the area of child welfare must be transformative, reflecting a state of flux, which recalls and re-establishes Aboriginal traditions and laws, while aware of the road-blocks and the opportunities presented by Canadian law.

Traditional decision-making processes provide a promising opportunity within the CFCSA for genuine Aboriginal community involvement in considering the child's best interests and rights to protection, care, community and identity.

The CFCSA allows for "other alternative dispute resolution mechanism[s]" than those listed in the CFCSA to resolve issues relating to children and families. Traditional Aboriginal dispute resolution processes, based on Aboriginal culture and traditions, would be an "other dispute resolution mechanism". Aboriginal dispute resolution mechanisms may provide a cooperative, rather than an adversarial lens, through which to explore solutions in child welfare matters. Section 22 allows the director and any person to explore mediation or other alternative dispute resolution mechanisms, which includes traditional dispute resolution processes: "If a director and any person are unable to resolve an issue relating to the child or a plan of care, the director and the person may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the issue." Section 23 allows a judge to adjourn/suspend a child protection matter for up to 3 months once an alternate dispute resolution process is engaged to attempt to resolve issues without going to court.

A. Case Study: ShchEma-mee.tkt (Our Children) Project

The goal of the ShchEma-mee.tkt Project is to reinvigorate Nlaka'pamux traditions to involve communities to protect and keep children safe

The ShchEma-mee.tkt ("Our Children") Project is a project of three communities (Lytton, Skuppah and Oregon Jack Creek) within the Nlaka'pamux Nation that advances Nlaka'pamux ways to work with children and families involved, or at risk of becoming involved, in the child welfare system. The goal of the ShchEma-mee.tkt Project is to reinvigorate Nlaka'pamux traditions to involve communities to protect and keep children safe while intervening in the CFCSA process as a legal party and applying s. 22 to have matters referred to the ShchEma-mee.tkt Project's Circle of Care and Accountability Process.

To address child protection issues, matters are referred to a Circle of Care and Accountability process. A separate Circle of Care and Accountability is formed at the community level so that family and community strengths are called together to help children, including in an emergency response model that empowers the community to act quickly when a child is in danger. The NkshAytkn Community Team (NCT) is a response team, trained with knowledge of the modern monsters and challenges that Aboriginal people face such as historical trauma and the intergenerational impacts of involvement in the Indian Residential School and Child Welfare systems; substance abuse; sexual abuse; violence; special needs (FASD, disabilities, mental health issues); and erosion of traditional parenting and spiritual knowledge. Members of the NCT also sit as part of individual Circles.

The Circle of Care and Accountability process brings together parents (and counsel), extended family, the director (and counsel), community members, Nation representatives (and counsel), elders, and NCT members in an ongoing decision-making forum that operates until the child protection concerns are resolved.

Decisions made by the Circles are reflected in voluntary agreements or consent orders. The Circle of Care and Accountability (unlike mediation) continues to meet on a regular basis until the child protection concern is resolved. A Circle could conceivably meet over the course of years if this was required to keep a child safe. Each member of the Circle has responsibilities and it is a way of spreading the responsibility for keeping a child safe to the extended family and community rather than just with the parents.

B. Case Study: Opikinawasowin

In *D.(J.) (Re),*[3] Justice Wright proposed a hybrid process, incorporating features of the parents' Cree and Métis heritages, (finding authority for this novel approach in sections of Saskatchewan's *The Child and Family Services Act*,[4] and ordered that an Aboriginal form of community decision-making—an Opikinawasowin—be used in a child protection matter.[5]

The Opikinawasowin reflected a hybrid process, incorporating features of Cree and Métis heritages, and Saskatchewan law

> 3. With the approval of R.P. and H.D., Saskatchewan Justice shall arrange for three traditional Elders from across the province to form a council of Elders that will preside over the Opikinawasowin, on a date and time acceptable to the Elders. At least one Elder is to be Metis, in recognition of the importance of Metis culture to the P. family. At least one Elder is to be Cree, in recognition of the importance of Cree traditions to the D. family. Although Elders from Onion Lake First Nation [the mom's home community] may be invited to attend the Opikinawasowin, no Elder from that community shall be asked to sit on the council.
>
> 4. Saskatchewan Justice shall provide the three Elders forming the council with appropriate instruction on the general legislative framework of The Child and Family Services Act. This instruction is to be a minimum of six hours in length, non case specific, and must occur before the Opikinawasowin commences.
>
> 5. … [T]he Department of Community Resources and Employment shall be responsible for any costs that may reasonably be incurred by the Elders …
>
> 12. The Elders shall preside over the Opikinawasowin, and direct the proceedings, including the manner of participation by attendees. The Elders may request opening and closing prayers, purification processes or the inclusion of any other rituals consistent with traditional customs, in any manner that they deem appropriate.
>
> 13. The Elders shall permit legal counsel for the Department and for the parents to be present throughout the Opikinawasowin, other than during deliberations by the council alone.

> 14. The Opikinawasowin shall last as long as the council of Elders deems necessary, but it shall be concluded on or before July 3, 2003 at 5 p.m.
>
> 15. Within 7 days from conclusion of the Opikinawasowin, the council of Elders shall submit written recommendations to the Court of Queen's Bench, Family Law Division, regarding their recommendations ... These recommendations shall be accompanied by written reasons that support the recommendation… Alternatively, with the approval of the Court, one or more Elders shall appear in Chambers and provide this information orally.
>
> 19. The recommendation from the Opikinawasowin shall be given careful judicial deference, however, it is subject to the residual jurisdiction of the Court of Queen's Bench, and the parties may appeal any order to the Court of Appeal, subject to the provisions in The Child and Family Services Act.

Although the Opikinawasowin was ordered by a Provincial Court judge, under the provincial child welfare law, the elders set the process

In this case, the Elders of the Cree and Métis nations (forming the Opikinawasowin) were to consider the matter and make recommendations to the Court about how to resolve the matter. The Court said that this process was in the best interests of the children because:

> An Opikinawasowin …[utilizes] a hybrid of alternative methods including negotiation, mediation and adjudication, while ensuring that the court maintains its supervisory jurisdiction to ensure that the outcome complies with the legislation and is in the best interests of the child. Broad participation by the family, professionals working with the family, extended family and the community, under the control and direction of a council of Elders, is consistent with the concept of restorative justice embraced in the criminal justice system in Aboriginal communities. It has the potential to address child protection concerns in a manner more responsive to the needs of the large number of Aboriginal families appearing in this court together with the possibility that the outcome will be more effective and legitimate to those most directly affected. The children involved can only benefit from a resolution that is both non-adversarial and more culturally significant.

Although the Opikinawasowin was ordered by a Provincial Court judge, under the provincial child welfare law, the process was left to the elders to set. The elders were asked to consider the principles of

the provincial child welfare Act in making their decision (the judge ordered that a one-day course in the principles of the Act be offered to them). The Opikinawasowin made recommendations to the judge about what to do, but the judge made the final decision about which recommendations to accept, reject, or modify.

BEST PRACTICE 6.02

Aboriginal communities could seek to have their own traditional dispute resolution processes used to address child protection concerns under the CFCSA

1. *Consistent with the guiding principles and s. 22 of the CFCSA, where an Aboriginal child's community or family identifies or requests it, traditional dispute resolution mechanisms and decision-making processes could be used to plan for Aboriginal children.*

- *There are options to propose mechanisms that blend traditional decision-making processes with other strands of ADR (such as the family group conference, mediation and/or arbitration) to create a model that involves Aboriginal elders, community and family members, if appropriate, the child, working together with the director, and legal counsel.*
- *For many Aboriginal communities, their traditional practices draw on different people, experiences and approaches to create a plan to ensure the well-being and continued connection of their children, families, people, lands, and resources, and can be amended to work within the CFCSA process as a way of bringing Aboriginal ways and traditions into decision-making about Aboriginal children.*
- *Adapting alternative dispute resolution models could be a vehicle for developing an Aboriginal traditional decision-making model that reflects Aboriginal child and family wellness and could ultimately mature into a stand-alone process, including adjudication falling under the jurisdiction of Aboriginal laws and legal orders.*

III. New or Parallel Judicial Institutions

Aboriginal peoples cannot continue to be unwilling consumers of child welfare services imposed by the state. New or parallel judicial institutions are necessary. To be effective, transformation requires allowing for true participation of Aboriginal communities, and changes in the way that the process of child welfare is carried out. Aboriginal laws and ways of doing things must be incorporated.

Aboriginal lawyers and judges are likewise necessary. Though far from perfect, the process of mutual recognition and stated goal of mutual decision-making which respects the autonomy of Aboriginal peoples and with the aim of preserving Aboriginal cultural identity tied to lands and resources, as outlined in s. 35 jurisprudence in cases such as *Sparrow* and *Haida*, offers hope in the area of child welfare.[6]

Aboriginal child welfare courts could be transformative

A. Restorative Justice or a Therapeutic Aboriginal CFCSA Courts

In Canada, "problem solving courts" attempt to address legal problems in a holistic and healing rather than adversarial manner. The First Nations Courts in New Westminster, North Vancouver, Duncan and Kamloops, the *Gladue* (Aboriginal Persons) Court in Toronto, and the Tsuu T'ina Peacemaker Court in Alberta, operate on a restorative justice model that takes into account an Aboriginal offenders individual, family and community background in sentencing.

These models are built on principles of restorative or therapeutic justice with the goal of correcting and healing, and so offer a greater chance of innovative solutions shaped by healing principles. Within these flexible models efforts have been made to identify opportunities to reflect the values and ways of doing things of the Aboriginal community who participates. These courts often focus on healing plans that put in place community or nation-based supports that are necessary to correct behaviours including establishing and accessing services and relationships within the Aboriginal community. Restorative or therapeutic justice courts which address CFCSA matters—reflecting Aboriginal communities and healing principles—could be transformative.

Aboriginal child welfare courts (similar to the *Gladue* sentencing courts) offer the opportunity to develop innovative solutions that incorporate Aboriginal values, ways of making decisions and healing.

Section 104 Tribunal

Under s. 104, the Lieutenant Governor in Council may make regulations "(a) for the purpose of establishing, as a pilot project, a tribunal … and enabling the tribunal to act under this Act in that area in place of the court, (b) governing the powers, duties, functions and rules of procedure of the tribunal and the effect of its decisions, (c) governing appeals from the tribunal's decisions, and (d) modifying, or making an exception to, any requirement of this Act to the extent necessary to enable the tribunal to act under this Act in place of the court."

The Province has the power currently to take steps within the CFCSA framework to recognize parallel Aboriginal legal institutions to apply to the area of Aboriginal children and families.

BEST PRACTICE 6.03

Aboriginal parallel legal institutions and judges are needed

1. *The appointment of Aboriginal judges to the bench who apply Canadian law while incorporating Aboriginal principles and ways of considering or making decisions could expand and transform notions of justice in child welfare matters. In the longer term, this could potentially include the appointment of judges who are tasked to apply Aboriginal legal principles to cases coming before them.*

2. *The establishment of Aboriginal parallel judicial institutions could transform the situation for Aboriginal children, families and communities. Options for the recognition of Aboriginal parallel judicial institutions include:*

- *Aboriginal CFCSA courts (similar to the Gladue/First Nations sentencing courts already in operation) which implement the CFCSA provisions in a culturally sensitive and appropriate way. This could include having Aboriginal people involved at all level of the process (bench; directors, parents and children's counsel; specific efforts to involve Aboriginal communities in matters concerning their child members; a process which has its purpose healing and restoration).*
- *Creation of a Tribunal under s. 104 of the CFCSA. The Province could enact enabling legislation for the establishment of a community-based decision making model in place of the Courts to resolve specific child and family issues. Such*

BEST PRACTICE 6.03, CON'T

tribunals—created in close collaboration with different Aboriginal communities or nations—could reflect Aboriginal ways and cultural practices and be culturally relevant to specific Aboriginal peoples. The Province could exercise this power to establish an administrative tribunal specifically for Aboriginal child welfare or to establish a pilot project that the CFCSA contemplates to increase the use of an ADR system that could reduce the high numbers of Aboriginal child welfare matters in the courts, and as part of an access to justice initiative based on the CFCSA's guiding principles.

- *Options for parallel legal institutions within the framework of Aboriginal legal orders where – perhaps by protocol or agreement between Aboriginal peoples and the Crown – decisions are respected across jurisdictions. In some cases this could involve an Aboriginal group passing its own child welfare laws, that would apply to the child or family irrespective of residence on or off reserve, and which envisions the judicial and administrative institutions necessary to carry out that legislative scheme.*

B. Invitation to Start the Journey toward a Transformative Approach

An examination of colonial history that Aboriginal peoples have been subject to, which has lead to the high rates of Aboriginal children embroiled in the child welfare system, shows that the root of the problem is the disruption of Aboriginal communities, families, and legal orders. Turning legal attention to healing this wound requires acknowledging how the problem came about (denial of Aboriginal jurisdiction) and then crafting a solution (healing through restoration of Aboriginal jurisdiction). This healing is necessary to make a better future for Aboriginal children, families, communities, and society as a whole.

Endnotes

1. In New Zealand, legislation was passed to recognize a family-centred approach through family group conferencing. While the extended family clans or descent group and tribe are recognized in principle, the Family group conference provisions specifically mention the extended family, but not the clans or tribe. In the result, they have not been successful in incorporating or reflecting that broader view consistently in planning for the care of children, and the number of Indigenous Maori children in care has continued to rise [See: http://www.nzfamilies.org.nz/web/maori-children-whanau/mauri-oracultural-identity.html]. (The family group conferencing outlined in this model was subsequently imported to Canada.)

2. This section is adapted from Walkem, Ardith. "Indigenous Laws in the Area of Children and Families: Transformative Possibilities of Recognition" (Continuing Legal Education Society of British Columbia Conference: Indigenous Legal Orders and the Common Law, Vancouver, November 2012).

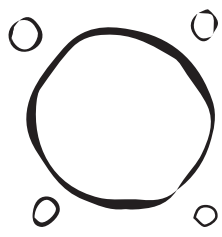
3. Re D(J), [2003] 4 C.N.L.R. 1 2003 SKQB 309.

4. S.S. (1989-90), c. C-7.2).

5. "Opikinawasowin" is a Cree word, which literally translated, means "the lifting up of the children" or "holding the children in high esteem" and is the name given by a Métis Elder and pipe carrier to a traditional method of dispute resolution. An Opikinawasowin requires the family, the extended family and others from the community to appear before a council of Elders, often three in number, who are regarded within their community as the "guardians of the society's history and the repository of its collective wisdom".

6. Haida Nation v. B.C. (Ministry of Forests) [2004] 3 S.C.R. 511.

07. Best Practices Recommendations



07. Best Practices Recommendations

BEST PRACTICE 1.01

A transformative and remedial approach to involving Aboriginal communities in child welfare matters is required

1. A transformative and remedial approach involving Aboriginal communities in child welfare matters under the CFCSA is required which:

- *Reflects a belief that Aboriginal laws and community approaches to achieving safety and permanency can shift the legal ground and improve outcomes for Aboriginal children;*
- *Places obligations on members of the extended Aboriginal community to take positive actions in a process that mirrors the requirements within many Aboriginal legal systems and so have a higher likelihood of success; and*
- *Invites the Court, child welfare agencies, parents and Aboriginal communities to work together to ensure that the interests of children are protected and placed at the centre of decision-making, by recognizing an active voice for Aboriginal communities and creating space for Aboriginal ways of making decisions.*

BEST PRACTICE 1.02

Early and active interventions in CFCSA matters by Aboriginal communities is required

1. Early and active interventions by Aboriginal communities when child members first become involved in the child welfare system is required and could make a real difference in the future of Aboriginal children and communities.

2. A distributed sense of responsibility which recognizes that people live in community, and that our actions—or inactions—impact others now and into the future, means that Aboriginal communities have a strong interest in acting now to protect their child members.

BEST PRACTICE 1.03

A remedial and purposive approach to interpreting the CFCSA to protect a child's Aboriginal identity and heritage and involving Aboriginal communities is necessary

1. *Highlighting the remedial purposes of the CFCSA provisions that involve Aboriginal communities could breathe life into these provisions so that they are brought to bear in a real and meaningful way in judicial decisions about the lives of Aboriginal children.*

2. *Effective legal problem solving requires acknowledging and confronting biases and false assumptions about Aboriginal cultures or parenting which result in Aboriginal children being disproportionately removed from their families and communities.*

BEST PRACTICE 1.04

The director should make active interventions to involve Aboriginal communities

1. *The director should make active interventions to implement CFCSA provisions involving Aboriginal communities based on the understanding that a child's Aboriginal community is in the best position to preserve a child's Aboriginal cultural identity and heritage, and that this involvement can lead to better and lasting resolutions for Aboriginal children.*

BEST PRACTICE 1.05

Parents' counsel can actively seek the involvement of a child's Aboriginal community

1. *Parents' counsel can actively seek the involvement of a child's Aboriginal community in CFCSA matters. Aboriginal communities may be able to provide supports to help parents heal. If parents cannot restore their ability to safely parent, a child's Aboriginal community can identify permanency options that can keep parents involved in their child's life and ensure that the children maintain or develop connections to their Aboriginal culture and identity.*

BEST PRACTICE 1.06

Creating a better future for Aboriginal children requires acknowledging and addressing the impacts of colonization and historic trauma that Aboriginal peoples have been subject to

1. *Creating a better future for Aboriginal children requires acknowledging and addressing the colonization and historic trauma that Aboriginal peoples have been subject to, and which continues in decisions made under the CFCSA today. Colonial endeavors, such as denial of Aboriginal title and laws; legislation and policies meant to attack and diminish the role of Aboriginal women; Residential Schools; and the child welfare system, continue to be reflected in the overrepresentation of Aboriginal children within the child welfare system.*

BEST PRACTICE 2.01

Aboriginal self-government rights in the area of child welfare exist

1. *The family-specific and statutorily driven nature of CFCSA matters makes it difficult to have s. 35 Aboriginal self-government rights in child welfare recognized absent a prior agreement or court declaration. This difficulty should not be taken to mean that an Aboriginal child (who shares in Aboriginal rights and is equally entitled to benefit from them) cannot benefit from them absent a declaration.*
    - *Exploring options to have Aboriginal ways respected within the limits of the forum of the CFCSA is necessary for the well-being of Aboriginal children.*
    - *Actively listening to, and incorporating, the Aboriginal community's voice and input is one way to ensure some measure of consideration.*
2. *Aboriginal communities who wish to rely on s. 35 rights could:*
    - *Pass their own child welfare legislation based on their Aboriginal legal orders and traditions (relying on their s. 35 rights and also international law to support their assertion) with a view to supplanting all aspects of provincial child welfare laws relating to their Aboriginal children;*
    - *Enter into separate agreements or Protocols with provincial and federal governments that recognize the community's s. 35 rights in child welfare, and commitment to work collaboratively to implement the transition to Aboriginal laws and legal orders in this area; or*
    - *Bring a separate court case seeking a declaration of those rights.*

BEST PRACTICE 2.02

Treaties, band bylaws and intergovernmental agreements may influence the interpretation or operation of the CFCSA with respect to some Aboriginal children

1. *Treaties, band bylaws and intergovernmental agreements should be reviewed by all parties (director, Aboriginal communities, counsel for parents or children) as they may influence the interpretation of the CFCSA with respect to some Aboriginal children.*

2. *Children who are members of, or entitled to be enrolled under, a treaty may have a different set of laws or policies that apply to them.*

3. *Children who are members of the Spallumcheen (Splatsin) Indian Band are subject to that Band's Bylaw Respecting Indian Children whether they live on or off reserve, and that Bylaw gives jurisdiction to the Chief and Council of the Splatsin on child welfare matters.*

4. *Where an Aboriginal community has negotiated an MOU or Protocol with the Province, that agreement may set out specific steps the parties have agreed to follow.*

BEST PRACTICE 2.03

Interpretive principles set out in the UNDRIP and UNCRC should guide an analysis of the CFCSA

1. *Incorporation of International standards to interpret the CFCSA suggests:*
   - *Positive duties and obligations on Courts, the director, and Aboriginal communities to make active efforts to maintain Aboriginal children's identity and cultural heritage;*
   - *Active measures are required to involve the child's Aboriginal community in planning to protect and maintain an Aboriginal child's cultural identity and heritage.*

2. *The UNDRIP recognizes that the ability to pass the laws, traditions, and language fundamental to cultural survival to Aboriginal children are protected as an incidence of Aboriginal peoples' human rights. Courts should be conscious of this fact when entertaining submissions by Aboriginal communities under the CFCSA.*

3. *The UNCRC recognizes the child's right to be heard; the CFCSA requires that a child over the age of 12 be notified and given an opportunity to be heard in matters that impact them. These sections provide an opportunity to examine an Aboriginal child's own opinions on staying connected to their Aboriginal culture and heritage. Courts should require that these investigations be made, and Aboriginal communities could help assist in this conversation.*
   - *Courts can ask whether the Aboriginal child was invited to attend the hearing or to provide testimony in some other way, to give evidence of their views about their Aboriginal heritage and culture and the need to preserve those connections;*
   - *An advocate from the child's own Aboriginal community could be identified to help them articulate their wishes, and children are likewise entitled to legal representation where required to have their voice heard.*

BEST PRACTICE 3.01

Child protection concerns must be assessed in a culturally appropriate way

1. *Aboriginal communities should be involved in assessing child protection concerns in a culturally appropriate way. Aboriginal communities could identify where protection concerns stem from cultural differences and should not be read to indicate that a child is in need of protection. For example, leaving children with grandparents or extended family members, or keeping a child from school to attend important cultural or harvesting activities, may reflect cultural practices rather than neglect.*

BEST PRACTICE 3.02

A blood quantum definition of Aboriginal identity should be rejected

1. *A blood quantum definition of Aboriginal identity should be rejected in the application of the CFCSA. That a child has a non-Aboriginal parent or heritage does not make them "less Aboriginal". Where a child is of mixed parentage, to accord the Aboriginal identity of that child less weight, and so to overlook the ways citizenship and belonging form part of Aboriginal cultural identity, should be avoided.*

BEST PRACTICE 3.03

A frozen rights approach to defining Aboriginal culture or identity should be rejected

1. *The child welfare system should not further penalize Aboriginal peoples for the impacts of colonialism (such as loss of language, culture or increased urbanization). Decisions of a Court in child welfare proceedings should not further isolate Aboriginal children from their Aboriginal cultural community.*

2. *Off-reserve Aboriginal parents and children live in circumstances which may bring them into contact with child welfare agencies in significantly greater numbers than non-Aboriginal families. The urban Aboriginal experience, though different from the on-reserve experience, should not be assumed to be devoid of culture and tradition, and a frozen rights approach to defining Aboriginal culture or identity should be rejected.*

3. *Where a parent was raised in the child welfare system or isolated from their community through Residential Schools or other reasons, or a child was born and partially raised away from their home community, active efforts may be required to build connections to an Aboriginal community to establish permanency and stability for a child. The absence of connection to an Aboriginal community may be a key factor leading to protection concerns.*

BEST PRACTICE 3.04

In assessing child protection concerns for Aboriginal children and families, determine where these concerns reflect poverty rather than actual safety concerns

1. *In assessing child protection concerns for Aboriginal children and families, determine where these concerns reflect poverty rather than actual safety concerns. Factors that may reflect poverty rather than neglect or not caring include: overcrowding; a child not having their own room or bed; a child not having seasonally appropriate clothing; a family not having fresh or nutritious food available; or, parents or extended family not calling or attending at access visits regularly (where transportation or telephone access is limited due to financial concerns).*

BEST PRACTICE 3.05

Parent or child disabilities should not be used to find that a child cannot be cared for within their Aboriginal community

1. *Decisions about where to place a child with a disability must include a full consideration of the range of individual, family, and community support available within Aboriginal communities that can provide safety and connectedness for the child.*

2. *Before determining if a child needs to be removed due to a protection concern, in the case of a parent with confirmed or suspected FASD or other disability, the child's Aboriginal community should be actively involved in an exploration about whether there are support or supervision options which would allow the family to remain together. Support agreements between the director and Aboriginal community could help families who need additional support because of parent or child disabilities to remain together.*

BEST PRACTICE 3.06

Past history should not be used to invalidate care by Aboriginal caregivers

1. *Aboriginal caregivers' ability to safely protect and care for Aboriginal children should be assessed in a fair and equitable way in each situation, taking into account how people have transformed their lives.*

2. *Given the history of colonization and historic trauma that Aboriginal peoples have experienced, many prospective caregivers may have histories (of substance abuse, crime, involvement in the child welfare system and so forth) that they have had to work hard to overcome. This history should not be automatically used to disqualify them as caregivers.*

BEST PRACTICE 3.07

All parties to a child welfare proceeding involving an Aboriginal child should start with the presumption that there is a mutually beneficial (non-adversarial) relationship between an Aboriginal community and their child members

1. *All parties to a child welfare proceeding involving an Aboriginal child should start with the presumption that there is a mutually beneficial (non-adversarial)*

relationship between an Aboriginal community and their child members. An approach which sees Aboriginal communities as having a quasi-parental relationship with their child members, and a mutual interest in protecting the best interests of their child members and their collective future, would be helpful in understanding the relationship of Aboriginal children and their communities.

BEST PRACTICE 3.08

Involvement of Aboriginal communities in child protection matters should not be diminished or dismissed as "political"

1. *Involvement of Aboriginal communities in child protection matters should not be diminished or dismissed as "political". An Aboriginal community can be motivated to take political and legal actions due to genuine care and concern for Aboriginal children.*

BEST PRACTICE 3.09

That Aboriginal community representatives or family members express distrust of the child welfare system or its participants should not be used as a justification to ignore, disqualify or diminish their input

1. *That Aboriginal community representatives or family members express distrust of the child welfare system or its participants should not be used as a justification to ignore, disqualify or diminish their input.*

2. *There are times when Aboriginal distrust of the child welfare process is a normal, appropriate and rational response to systemic racism, and may reflect intergenerational trauma expressed by the Aboriginal communities.*

BEST PRACTICE 3.10

Assessing each child protection situation through the lens of Aboriginal laws—and asking what the legal standard and practice would be under Aboriginal law—could be a powerful tool for protecting Aboriginal children

1. *Assessing each child protection situation through the lens of Aboriginal laws—and asking what the legal standard and practice would be under Aboriginal law —could be a powerful tool for protecting Aboriginal children.*

2. *Advocating for a child within the context of Aboriginal laws may mean advocating that a child remain within their nation or community, but not with their parents or extended family if they cannot safely care for them.*

3. *Aboriginal communities must honestly examine in each case whether there is a real child protection concern rather than rejecting outright any intervention.*

4. *Asking Aboriginal communities how their perspective is different from that of the parent(s) may be useful to focus the discussion on the best interests of the child and the protection concerns. An Aboriginal community may support the parents' position because they do not want more of their child members lost to the child welfare system, and may not have considered other options to keep a child either within the community or actively connected through participation in community activities, events and practices. Engaging in a conversation with the Aboriginal community can help to highlight their actual position in child welfare matters.*

BEST PRACTICE 3.11

Efforts to positively consider Aboriginal identity and cultural heritage are required

1. *Efforts to positively consider Aboriginal identity, cultural heritage and the benefits to Aboriginal children of the active involvement of their Aboriginal community could include:*
   - *Identifying systemic barriers that Aboriginal parents, caregivers or communities may face and a plan for how to address those.*
   - *Involving the Aboriginal community in assessing child protection concerns, including a cultural examination of safety factors and solutions.*
   - *Undertaking a full and broad consideration of the benefits to an Aboriginal child of being actively connected to, and involved within, the cultural and spiritual life of their Aboriginal community.*

BEST PRACTICE 4.01

A remedial and purposive interpretation of the CFCSA provisions designed to maintain an Aboriginal child's identity and heritage is required

1. *The goal in interpreting the provisions of the CFCSA designed to maintain an Aboriginal child's identity and cultural heritage should be to choose from amongst the various possible options, the one which best achieves permanency and safety in the lives of Aboriginal children by keeping them connected to their Aboriginal communities, identity and heritage.*

BEST PRACTICE 4.02

Though not technically recognized under the ICWA in the United States, Canadian Aboriginal communities can appear in proceedings involving their child members in the United States and ask to have their involvement recognized as being in the child's best interests. Canadian Aboriginal communities may wish to point out that it is in their child member's best interests that they be involved in the proceedings, and suggest to the Court a disposition which would allow the child to remain within their Aboriginal family or nation.

BEST PRACTICE 4.03

Indian status, absent active involvement in their Aboriginal culture, is insufficient to protect a child's Aboriginal identity, heritage and connection to their culture.

BEST PRACTICE 4.04

Where a child or parent is a member of a modern treaty agreement investigate whether or not that treaty sets out specific provisions for how the Aboriginal community may be involved in planning or decision making for their child members.

BEST PRACTICE 4.05

Self-identification is very important for Aboriginal children and parents to ensure that a child's Aboriginal identity and heritage are considered and protected

1. *Self-identification is very important for Aboriginal children and parents to ensure that a child's Aboriginal identity and heritage are considered and protected.*
    - *Aboriginal communities could educate their members about the need to self-identify. This is particularly important where children do not have status and involvement of an Aboriginal community is only triggered by the self-identification of the child or parent. Aboriginal communities could develop an affidavit or letter which can be shared with the director and Court setting out how the Aboriginal community recognizes membership or belonging and their connection to a particular child or family.*
    - *Due diligence should be exercised in locating a child's Aboriginal community and providing notice of the proceedings, which could include interviewing the parent,*

extended family and the child (if appropriate) and asking about the child's status and membership within, or connection to, an Aboriginal community.

BEST PRACTICE 4.06

Delegated Aboriginal agency involvement does not fulfill the need to involve a child's Aboriginal community

1. *The role and opportunities for Aboriginal communities under the CFCSA does not change depending on whether a child protection matter arises through a delegated Aboriginal agency or a regular MCFD office. The involvement of an Aboriginal delegated agency does not reduce or limit the rights and opportunities for Aboriginal community involvement as a legal party in CFCSA matters.*

BEST PRACTICE 5.01

Aboriginal community involvement could be very beneficial in structuring voluntary agreements

1. *Aboriginal communities may have knowledge about a family's strengths and challenges and could contribute to strengthening voluntary agreements, by identifying potential problems, and developing a cultural plan to ensure that the child's Aboriginal identity is preserved and protected from the earliest point of contact with the child welfare system.*

2. *Aboriginal communities can identify, and potentially provide, services (which the director could pay for all or part of) under a Support Services Agreement or separate agreement to address child protection concerns in a culturally meaningful way.*

3. *Aboriginal communities could identify solutions that address a child's special needs, and may be able to identify, provide, or help access, additional supports or resources while ensuring that a child remains connected to their Aboriginal community.*

4. *Extended Family Program (formerly Kith and Kin agreements) can allow a child to remain within the community and promote the development and preservation of the child's Aboriginal cultural heritage and identity. Wider use of the Extended Family Program could be useful as an intervention and prevention tool that allows the director and Aboriginal community to work actively together.*

5. *Aboriginal children who—post CCO—were raised in care, and are disconnected from their Aboriginal communities and extended families, could enter voluntary agreements that involve their Aboriginal community. Aboriginal communities could work with the director to seek to re-connect Aboriginal youth with their cultures and communities, and provide broader support to youth who are subject to a CCO and may be isolated from their Aboriginal community through participation in agreements with youth or young adults.*

6. *Agreements between the director, parents, caregivers or Aboriginal communities under s. 93 could include providing funding to allow a child to remain at home, with supports, or to assist Aboriginal communities to strengthen their ability to care for and protect their children. These options cover a wide range of services that an Aboriginal community might identify as culturally necessary and appropriate to address child protection concerns within their community.*

BEST PRACTICE 5.02

Aboriginal community involvement at the report, assessment and investigation stage could encourage a preventative approach and ensure that an Aboriginal child's safety and cultural needs are properly assessed

1. *Aboriginal community involvement at the report, assessment and investigation stage could encourage a preventative approach and ensure that an Aboriginal child's safety and cultural needs are properly assessed. Aboriginal community involvement could help to:*
   - *Assess child protection concerns in a culturally sensitive way;*
   - *Identify the least disruptive measures available to avoid removing the child from their family or Aboriginal community;*
   - *Identify culturally appropriate interventions, programs and services;*
   - *Provide supports to the child and the child's family to keep the child in the home or within the family or community;*
   - *Put family supports in place to divert children from entering the foster care system; or*
   - *Ensure a child stays within their family, community or nation by identifying placement options.*

BEST PRACTICE 5.03

Aboriginal communities should become involved in the child welfare process as early as possible

1. *Even where there is no positive duty on the director to involve the Aboriginal community, the best practice is to seek the intervention of the Aboriginal community as early as possible.*

2. *Educating Aboriginal communities, Aboriginal parents, as well as director's and parents' counsel, and the Court, about the need for, and benefits of, early involvement of Aboriginal communities in CFCSA matters is necessary.*

3. *Information provided to Aboriginal communities with notice of child welfare matters involving their child members could include steps that they could take or options for involvement.*

BEST PRACTICE 5.04

Identifying barriers to Aboriginal community involvement in child welfare proceedings (e.g. resources, personnel, travel) could help Aboriginal communities to be involved in planning for their child members

1. *Tools available within the CFCSA, Rules and Regulations to address barriers which prevent Aboriginal communities from becoming involved in child welfare include:*
    - *Members of the Aboriginal community or extended family could participate in CFCSA court proceedings by video- or tele-conferencing where they are unable to participate in person: Rule 1(7).*
    - *Matters could be transferred to a Registry closer to the child's home community where this would allow the Aboriginal community, or family members, to take a more active role in planning and participating in the care of the child.*
        - *Under Rule 8(12), a Judge may order the transfer of the file after considering the balance of convenience, any special circumstances that exist, and the best interests of the child. The balance of convenience test requires the judge to consider each party's circumstances. This could include what issues or barriers the community faces that would prevent their active involvement, and why transferring the file is in the child's best interests.*
        - *Alternatively, under Rule 8(13), the parties can consent to the transfer of the file and file a written consent in the Registry where the file is located.*

- *Matters could be addressed through a traditional dispute resolution process suggested by the Aboriginal community (under s. 22), which is more culturally appropriate and relevant for the child and family.*
- *A judge may permit an application to be made orally in court, without the filing of a form. The CFCSA proceedings may be informal (s. 66(1)(b) and s. 66(2)) in nature. The best interests of the child are most important. Where an Aboriginal community makes an application, they should be prepared to explain how it is in the child's best interests that they be involved as a party in the proceeding.*

BEST PRACTICE 5.05

The Court and counsel should make specific inquiries at the start of the hearing if a representative of an Aboriginal community is present

1. *If an Aboriginal community representative is present, and appearing without a lawyer, they should be treated as a self-represented litigant.*

2. *Where Aboriginal communities appear without legal counsel, they should identify themselves [name/position] and the fact that they are representing the child's Aboriginal community and state clearly that they are self-represented.*

BEST PRACTICE 5.06

Disclosure can allow the Aboriginal community to participate effectively in planning for the safety of Aboriginal children

1. *Disclosure can allow the Aboriginal community to participate effectively in planning for the safety of Aboriginal children. The director and the child's Aboriginal community could work together, guided by the Court where necessary, to identify and resolve any concerns about confidentiality and disclosure that would impede a full consideration of the least disruptive measures and services needed to support the child and the family.*

2. *Disclosure (subject to awareness of confidentiality laws) is essential to ensuring Aboriginal communities can engage in a discussion of what steps are necessary. An Aboriginal community may support the parents' position due to a lack of disclosure and lack of knowledge about the severity of the problem. Participation as a full and effective party by Aboriginal communities requires an honest assessment of parental challenges and capacity and not simply an approach that advocates for the parents.*

3. *Failing to provide full disclosure can undermine the principles of the CFCSA as it applies to Aboriginal children. Complete confidentiality may place Aboriginal children at higher risk, and prevent the sharing of information that would help their Aboriginal community to keep them safe. Confidentiality concerns should not be used to protect abusers and harm children.*

BEST PRACTICE 5.07

Aboriginal communities could make submissions at presentation hearings with the goal of ensuring an Aboriginal child remains connected to their Aboriginal cultural heritage

1. *At a presentation hearing, the director is required to show that the least disruptive actions possible were taken (i.e., that removing the child was the least disruptive action that could be taken in order to protect the child), and steps taken to preserve a child's Aboriginal identity. Submissions by Aboriginal communities could speak to these points and present alternatives.*

2. *Aboriginal communities could strengthen the effectiveness of supervision terms that the director suggests and offer alternatives. Aboriginal communities could:*
   - *Do emergency planning with the director and parents for what to do in case of breach of a supervision order, identifying options to address protection concerns while having a child remain within their extended family or community.*
   - *Identify where supervision terms are not workable or not likely to ensure a child is protected. For example, it makes no sense for a parenting course or anger management course to be part of a supervision order if there are no locally offered courses. An Aboriginal community could highlight that the courses do not exist locally, and propose separate supports within the community with the same purpose, including traditional parenting classes or elders counseling or mentoring.*
   - *Ensure that access visits to the child are addressed as part of the terms of any orders that are made at an interim stage, particularly where the child is placed outside of their community, and/or the community is remote or transportation is likely to be an issue for the extended family or community members who wish to visit the child.*
   - *Identify alternate caregivers within the child's Aboriginal community.*

3. *Aboriginal communities could work with the director where there are reasonable grounds to believe that contact between a child and another person would endanger the child.*

- *The director can seek a protective intervention order (s. 28) which can include a 6 month no contact order prohibiting a person from living with the child or being in the same dwelling, vehicle or vessel with the child, or a restraining order under s. 98 against a person who the director believes poses a danger to a child. Under the Family Homes on Reserve and Matrimonial Interests or Rights Act, S.C. 2013, c. 20, it is possible for a spouse or third party (including a social worker) to apply for a 90 day Emergency Protection Order forcing a party to vacate a family home on reserve where there is a risk of violence within the family.*
- *An Aboriginal community could exercise its authority (where possible) to ban a person from residing on or entering the Aboriginal community, which could add another layer of protection to the child.*
- *The Aboriginal community could help to ensure there is no contact with the child at cultural or community gatherings.*

BEST PRACTICE 5.08

Aboriginal Communities could provide information to assist the Court to make a decision which could include placing a child within that community and the ways that a child could be kept safe within that community; and, identify and present an Aboriginal Cultural Preservation Plan

1. An Aboriginal Cultural Preservation Plan could:

- *Identify cultural factors that need to be included in a child's plan of care (including identifying specific steps or opportunities for a child to participate in cultural activities that maintain or establish their connection to their land and culture, such as language classes, gathering activities, spiritual or cultural celebrations, community dinners or sporting events, lahal or other activities);*
- *Identify cultural supports or programs to assist the family;*
- *Implement community supports to maintain a child's connection with their Aboriginal community and cultural heritage;*
- *List less disruptive means than removal to keep families together (including culturally-based and appropriate resources within the community);*
- *Identify family or community members that could take care of the child on a temporary basis while the child protection matter is addressed to keep the child within their extended family or cultural community; or, on a permanent basis, if necessary, which would keep the child within their extended family, community, or nation where the parent(s) are unable to address the child protection concern;*
- *Name family or community members that play an important role in the child's*

life (such as elders or extended family members), together with a proposal for how to maintain those relationships;

- *Identify a network of people or supports to assist the family in addressing protection concerns, or where it is not possible to restore a family's ability to parent, to assist in keeping a child safe and ensuring that they can grow to adulthood within their culture;*
- *Identify elders, cultural or spiritual supports from within the nation who can work with the child or family within a traditional wellness or healing model; and*
- *Identify alternative or traditional decision making processes —including those based in Aboriginal traditions—that the Aboriginal community may wish to refer the matter to, as allowed under s. 22 of the CFCSA.*

BEST PRACTICE 5.09

The Aboriginal community could assist in assessing child protection concerns in a culturally sensitive way

1. *The Aboriginal community can help to assess child protection concerns in a culturally sensitive way, and identify any stereotypes, or false assumptions, that may be reflected in the consideration of a child's risk. Defining the risks that a child faces with regard to cultural factors, requires asking:*
   - *How removing an Aboriginal child from their cultural connections may endanger them over the long term;*
   - *How cultural factors may insulate an Aboriginal child against identified risks; and*
   - *How false assumptions about Aboriginal cultures or parenting styles may be influencing a determination that a child is at risk.*

BEST PRACTICE 5.10

Courts could take judicial notice of the long-term negative outcomes for Aboriginal children raised in care

1. *Courts could take judicial notice of the long-term negative outcomes for Aboriginal children raised in care. The best interests of Aboriginal children should be assessed to ensure that their long term well-being is not sacrificed for short term safety. An appropriate consideration of an Aboriginal child's best interests must consider their safety in the immediate term, and into the*

future. Maintaining and fostering a child's connection to their Aboriginal culture and identity has a better chance of protecting a child in the long term and ensuring a better life outcome.

BEST PRACTICE 5.11

A fluid approach is required to finding permanency for Aboriginal children that explores models based in Aboriginal laws

1. *A fluid approach to finding permanency for Aboriginal children is required that explores models based in Aboriginal laws, and provides permanency solutions for children while maintaining their Aboriginal identity, culture and community connections. Options include:*
   - *Customary adoption;*
   - *Extended family care and guardianship situations where the birth parents or family maintain an ongoing set of obligations and relations with the adoptive family rather than requiring a complete severance of parental rights and connection to Aboriginal community and extended family;*
   - *Broader and extensive supports to enable parenting where Aboriginal parents cannot safely parent on their own;*
   - *Parenting solutions which reflect Aboriginal ways of caring for children across several families or homes, providing permanency by recognizing shared parenting practices or distributed responsibility amongst a community or extended family.*

BEST PRACTICE 5.12

Aboriginal communities could work with parents, extended family or community members to apply for access to children currently under a continuing custody order

1. *Aboriginal communities could work with parents, extended family or community members to apply for access to children currently under a continuing custody order under s. 56. This could involve:*
   - *Developing a plan which would establish or maintain cultural connection of Aboriginal children with their cultural community; or*

- *A plan for reunification of the child to their parents, extended family or Aboriginal cultural community where possible.*

BEST PRACTICES 6.01

Aboriginal community participation in alternative or traditional dispute resolution processes can ensure the child's right to their Aboriginal identity and cultural heritage are central to any protection proceedings and planning

1. *Aboriginal community participation in case conferences provide an opportunity to actively plan for child members and encourage discussions to resolve issues based on the provisions of the CFCSA which protect a child's Aboriginal identity and cultural heritage.*

2. *Aboriginal community participation in the FGC can help to increase the cultural safety of the family and open new pathways of dialogue.*

3. *Aboriginal communities could actively participate in mediation processes, or seek to have mediation processes amended to reflect the cultural values and requirements of the community. Mediation can provide an opportunity for Aboriginal communities to participate in dialogue and joint decision-making regarding their child members.*
   - *Aboriginal communities could be invited to identify any concerns about a mediator's appointment and what can be done to overcome any real or perceived deficits or gaps in knowledge.*
   - *The Aboriginal community could identify a mediator with specific knowledge about the child's Aboriginal culture, traditions, and community, or identify individuals trained within the child's culture and traditions to be appointed as co-mediators.*
   - *If the Aboriginal community finds that there are no culturally acceptable mediators to them on the roster, mediation may not be a desired option, and traditional dispute resolution mechanisms based in Aboriginal culture should be considered.*

BEST PRACTICE 6.02

Aboriginal communities could seek to have their own traditional dispute resolution processes used to address child protection concerns under the CFCSA

1. *Consistent with the guiding principles and s. 22 of the CFCSA, where an Aboriginal child's community or family identifies or requests it, traditional*

dispute resolution mechanisms and decision-making processes could be used to plan for Aboriginal children.

- *There are options to propose mechanisms that blend traditional decision-making processes with other strands of ADR (such as the family group conference, mediation and/or arbitration) to create a model that involves Aboriginal elders, community and family members, if appropriate, the child, working together with the director, and legal counsel.*
- *For many Aboriginal communities, their traditional practices draw on different people, experiences and approaches to create a plan to ensure the well-being and continued connection of their children, families, people, lands, and resources, and can be amended to work within the CFCSA process as a way of bringing Aboriginal ways and traditions into decision-making about Aboriginal children.*
- *Adapting alternative dispute resolution models could be a vehicle for developing an Aboriginal traditional decision-making model that reflects Aboriginal child and family wellness and could ultimately mature into a stand-alone process, including adjudication falling under the jurisdiction of Aboriginal laws and legal order*

BEST PRACTICE 6.03

Aboriginal parallel legal institutions and judges are needed

1. *The appointment of Aboriginal judges to the bench who apply Canadian law while incorporating Aboriginal principles and ways of considering or making decisions could expand and transform notions of justice in child welfare matters. In the longer term, this could potentially include the appointment of judges who are tasked to apply Aboriginal legal principles to cases coming before them.*

2. *The establishment of Aboriginal parallel judicial institutions could transform the situation for Aboriginal children, families and communities. Options for the recognition of Aboriginal parallel judicial institutions include:*

   - *Aboriginal CFCSA courts (similar to the Gladue/First Nations sentencing courts already in operation) which implement the CFCSA provisions in a culturally sensitive and appropriate way. This could include having Aboriginal people involved at all level of the process (bench; directors, parents and children's counsel; specific efforts to involve Aboriginal communities in matters concerning their child members; a process which has its purpose healing and restoration).*

- *Creation of a Tribunal under s. 104 of the CFCSA. The Province could enact enabling legislation for the establishment of a community-based decision making model in place of the Courts to resolve specific child and family issues. Such tribunals – created in close collaboration with different Aboriginal communities or nations – could reflect Aboriginal ways and cultural practices and be culturally relevant to specific Aboriginal peoples. The Province could exercise this power to establish an administrative tribunal specifically for Aboriginal child welfare or to establish a pilot project that the CFCSA contemplates to increase the use of an ADR system that could reduce the high numbers of Aboriginal child welfare matters in the courts, and as part of an access to justice initiative based on the CFCSA's guiding principles.*
- *Options for parallel legal institutions within the framework of Aboriginal legal orders where – perhaps by protocol or agreement between Aboriginal peoples and the Crown – decisions are respected across jurisdictions. In some cases this could involve an Aboriginal group passing its own child welfare laws, that would apply to the child or family irrespective of residence on or off reserve, and which envisions the judicial and administrative institutions necessary to carry out that legislative scheme.*

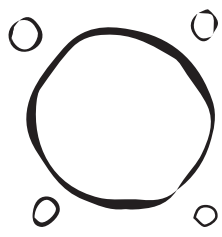
BEST PRACTICE 8.01

Aboriginal communities can make applications concerning their child members orally in court

1. Aboriginal communities can make applications concerning their child members orally in court, and should tell the Court that:

- *They are self-represented and want to make an application orally, and without notice, under s. 66(1)(b) of the CFCSA (which allows the Judge to allow for informal proceedings), and the Rules (Rule 1(4) which allows a party to make an application in person (orally) without filing a form;*
- *The specific order that they are asking the court to make (for example: for access to a child; to have the matter adjourned to allow the Aboriginal community time to identify alternate placements for the children or to work out a plan which would preserve the child's Aboriginal identity and connection to their Aboriginal culture; to have a matter transferred to a registry that is closer to the child's home community); and*
- *Explain why it is in the child's best interests that the order be granted, and how the child will benefit from having the order made. For example: the order may allow the child's Aboriginal identity and cultural heritage to be preserved, or for a preventative approach to be taken with the goal of restoring the family's ability to safely care for the child.*

08. Forms and Making Applications



08. Forms and Making Applications

I. Introduction

The CFCSA, Regulations and Rules set out the law and process of child protection matters. The purpose of the CFCSA Rules is to "promote the safety and well-being of children by allowing court decisions to be obtained fairly and efficiently". Where necessary to ensure the best result for children, the Rules or procedures may allow for some flexibility.

Appendix A of the CFCSA Rules contains Forms that can be used when asking the court to make certain orders. Some of these forms are for use by the director (for example, Form 1 is a Presentation Form, and contains information which the director must file when they take a child into care); other forms can be used by the director, parents, Aboriginal communities or others to make an application about a child. There are no specific forms for use by Aboriginal communities.

There are two ways for Aboriginal communities to ask the court to make an order about a child: (1) File a written application, using the forms provided in the CFCSA Rules; or (2) Make an in-person application in court. The Judge has the discretion to decide whether to allow an application to be made orally, or to require that official forms be filed to make an application.

Orders that Aboriginal communities could ask a Court to make include (but are not limited to):

1. Access to a child in:
   a. interim or temporary custody (s. 55), or
   b. continuing custody (s. 56);
2. Changes to supervision, temporary custody or access orders (s. 57);

3. Disclosure (s. 64 or 79);
4. Adding the Aboriginal community as a party to a proceeding (s. 39(4));
5. Transferring the file to a different registry (Rule 8(12)), or with the consent of all parties (Rule 8(13));
6. Allowing parties to appear by, or for CFCSA proceedings to be conducted by, telephone (Rule 1(7));
7. Cancelling a Continuing Custody Order (CCO) (s. 54) (CFCSA Rule 8(6)) [If the Aboriginal community was a party to the CCO application]; or
8. Having custody of a child transferred to a third party after a CCO (s. 54.1).

Provisions of the CFCSA and Rules, which impact how child welfare proceedings may be carried out, include:

- Hearings may be as informal as a judge allows (s. 66(1)(b));
- Courts can admit hearsay evidence, or written statements (s. 68) (which could include statements or letters drafted by the Aboriginal community) or affidavits (Rule (4(1)) where Aboriginal communities want to give evidence about their application, or to introduce written materials in support of their application; and
- A judge may permit an application to be made orally in court, without the filing of a form (Rule 1(4)).

The best interests of the child are most important. Where an Aboriginal community makes an application, they should be prepared to explain how the order that they are seeking is in the child's best interests, and this could include evidence about preserving a child's aboriginal identity and heritage.

II. In Person Applications (Without Filing a Form)

If an Aboriginal community appears in Court on a child protection matter, they can orally request that certain decisions or orders about a child be made. An application made orally will only be allowed to proceed where the Court decides it is in the best interests of the child, and allowing the application to be made orally does not prejudice the interests of the other parties, or where the other parties consent. Depending on the circumstances of the case, and the position taken by the director or parents, the Court may refuse to hear

an oral application and require that the Aboriginal community file a written application for the order that they are seeking.

BEST PRACTICE 8.01

Aboriginal communities can make applications concerning their child members orally in court

1. Aboriginal communities can make applications concerning their child members orally in court, and should tell the Court that:

- *They are self-represented and want to make an application orally, and without notice, under s. 66(1)(b) of the CFCSA (which allows the Judge to allow for informal proceedings), and the Rules (Rule 1(4) which allows a party to make an application in person (orally) without filing a form;*
- *The specific order that they are asking the court to make (for example: for access to a child; to have the matter adjourned to allow the Aboriginal community time to identify alternate placements for the children or to work out a plan which would preserve the child's Aboriginal identity and connection to their Aboriginal culture; to have a matter transferred to a registry that is closer to the child's home community); and*
- *Explain why it is in the child's best interests that the order be granted, and how the child will benefit from having the order made. For example: the order may allow the child's Aboriginal identity and cultural heritage to be preserved, or for a preventative approach to be taken with the goal of restoring the family's ability to safely care for the child.*

III. Forms

The Rules and CFCSA set out when an application must be filed, how the other parties must be provided with copies of the application (served), and what evidence must be filed in support of that application. An application is filed with the Court Registry, and the Court Registry assigns a date and time when the matter can be heard. An application can only be made without advance notice, if the Judge allows it.

A. Steps in Applying for an Order:

1. Complete the application for the Order or Form.
2. File the application by taking it to the Provincial Court Registry (can also be mailed in). The Registry will provide a date/time for the hearing requested.
3. Parties who seek an order, must provide notice to (serve) the other parties.
   - Documents may be served by leaving a copy with a person, by registered mail or facsimile transmission, or by leaving a copy at, or by facsimile transmission to, that lawyer's office.
   - Usually service is required at least two days before the hearing (business days, weekends and holidays would not count).
   - The Rules provide a form for parties to provide a certificate of service (Form 9) which you must provide to the Registry after you have served the other parties.
4. Appear in Court at the date and time set by the Registry. Where Aboriginal communities are self-represented, they should clearly state this for the record. Explain to the Court what order is being asked for and why. Explain why the order is in the child's best interests, which could include: that it helps to maintain a child's aboriginal and cultural identity, keeps the child137 safe, or involves the child's Aboriginal community in planning for their care.

B. User-Generated Forms for Aboriginal Communities

There are no forms specifically for Aboriginal communities. Under Rule 8(19), if you are using your own form, it must be "substantially the same" as the court forms, and any areas that are different from the court forms must be in bold print.

The forms provided in this Guidebook are not official. These forms should be used as a guide for orders that Aboriginal communities could ask a Court to make about their child members. The CFCSA, Rules and Regulations all have as their purpose the best interests of children, and rules and procedures can be relaxed where it is necessary to achieve the best result for children.

- Parties should review forms with a lawyer (or duty counsel at your local courthouse) BEFORE filing with the court registry.
- Not all general forms are included in this Guidebook. Other forms are available through the Provincial Court Registry, or online. These include: Form 3 (Change or Cancel an Order), Form 4 (Subpoena), Form 8 (Notice of Address for Service), Form 10 (Order), and Form 11 (Written Consent).
- See the CFCSA Rules online at www.bclaws.ca; Forms are available online at www.ag.gov.bc.ca/courts/family/info/forms.htm
- Copies of the forms provided here can be downloaded from the websites of www.nzenman.org or at www.ubcic.bc.ca in fillable PDF format.

APPLICATION FOR AN ORDER

Form 2

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

Court File Number:
Court Location:

In the matter of the child(ren):

Name(s) — Date(s) of Birth (mo/day/yr)

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

The parent(s) of the child(ren) is/are:

Name(s)

_____
_____
_____

This application is filed by:

Indian Band/Aboriginal Organization/Designated Representative

_____

Address_____City_____B.C.

Postal Code_____Phone_____Fax_____

Notice to:

Name(s) [Parents, Director, any other parties] — Address(es) (include tel. & fax if applicable)

_____
_____
_____
_____
_____
_____

The child is aboriginal: ☒ Yes ☐ No

Amendments have been made to this Form to reflect orders an Aboriginal community may want to apply for. Under Rule 8(19), if people use a form they made themselves, it must be "substantially the same" as the court forms, and any differences must be in bold print.

Details of the order requested and the section of the Act or Rule relied upon are included below.

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

Date and time will be provided by the Registry when the Application is filed

APPLYING FOR:
This lists the order that the court will be asked to make, and the section of the Act or Rule that allows it.

ORDER FOR ACCESS

I will apply to this court on [date]_____ at [time]_____ ☐ am ☐ pm

at [court location]_____

FOR:

☐ **An order for access to a child(ren) in ☐ interim or temporary custody (section 55) or ☐ continuing custody (section 56) of the director.**

If applying for this order, fill out the following:

We are applying for access visits to the child(ren) as follows (propose how access should occur; how often; if, or how, it will be supervised; if any travel or other costs or involved who should be responsible for those (director, Aboriginal community, etc.):

_____

_____

_____

To allow this access is in the child's best interests as it (check all that apply):

- ☐ **helps the child(ren) to maintain their aboriginal identity**
- ☐ **helps the child(ren) to main their connection to their aboriginal cultural heritage**
- ☐ **allows for continuity in the child(ren)'s life by maintaining relationships with extended family members, elders, or other members of their Aboriginal community**
- ☐ **allows the child(ren) to maintain their spiritual and religious identity and participation as a member of the _____ Aboriginal community/First Nation**
- ☐ **Other (list):** _____

_____

Where the child(ren) is/are under continuing custody of the director (a CCO), this access is consistent with the plan of care because it (check all that apply):

- ☐ **allows the child to maintain a connection with their Aboriginal identity**
- ☐ **preserves the child's Aboriginal cultural heritage**
- ☐ **involves the child's Aboriginal community in planning for their care**

If the child(ren) is/are 12 years of age or older, access is consistent with the wishes of the child(ren):

- ☐ **yes**
- ☐ **no**
- ☐ **the child(ren) was raised in care, and s/he may not know about their Aboriginal community or possibilities for involvement with their Aboriginal community, and the Aboriginal community would like an opportunity to meet with the child and to discuss with them options for them to be connected to their Aboriginal community; or**
- ☐ **other (explain)** _____

_____

_____

ORDER FOR PARTY STATUS

A child's Aboriginal community is entitled to notice and usually is added as a party when they appear at hearings involving their child members. If this has not happened (either they did not appear at earlier stages, or because the registry did not add them as a party) then it may be necessary for Aboriginal communities to apply for party status.

☐ **An order adding _____ Aboriginal community/First Nation [the child's Aboriginal community] as a party (s. 39(4))**

a. The child(ren) is Aboriginal and is ☐ registered or ☐ entitled to be registered as a member or ☐ recognized as a member of the _____ First Nation/Aboriginal Community.

b. The _____ First Nation/Aboriginal Community seeks party status to allow it to be actively involved and fully plan for the care, safety and future of their child member(s).

The _____ First Nation/Aboriginal Community makes this application for an order that:

"The _____ First Nation (an Aboriginal Community as designated under the CFCSA and Regulations) be added as a party to this proceeding under section 39(4) of the Child, Family and Community Service Act."

ORDER FOR DISCLOSURE

A party to a proceeding is entitled to disclosure of the protection concerns. The first step would be for the Aboriginal community to request disclosure from the director. If disclosure is not received, it may be necessary to seek an order for disclosure.

☐ **An order for disclosure (ss. 64 and 79(a))**

a. To fully and effectively participate in the planning for the care of the child(ren) and to help to ensure their safety and well-being the _____ Aboriginal community/First Nation requires disclosure.

b. The _____ Aboriginal community/First Nation requires disclosure of all relevant facts about the protection concerns to take an informed position in these court proceedings, and to act to ensure the safety of the children.

ORDER TO TRANSFER REGISTRY

☐ **An order to have a file transferred to the _____ court registry [(Rule 8(12) or if by consent (Rule 8(13))]**

The _____ First Nation/Aboriginal Community makes this application for an order that this file be transferred to the _____ Registry. It is in the child(ren)'s best interest that this file be transferred because:

☐ **this would allow the child(ren)'s Aboriginal community to fully participate in planning for their care (sections 3(b) and (c));**

☐ **the child(ren) is/are normally resident closest to the _____ Registry;**

☐ **members of the child(ren)'s Aboriginal community cannot fully participate if the matter proceeds where it currently is due to prohibitive costs and distance and time necessary to travel to that registry; or**

☐ **Other reasons: _____**

ORDER TO APPEAR BY TELECONFERENCE

☐ **An order to allow the**

☐ _____ **Aboriginal community/First Nation,**

Contact person/telephone number to make arrangements:

_____

to appear by teleconference (Rule 1(7)) at all future hearings regarding this matter. This is in the child(ren)'s best interests because:

☐ **otherwise the** _____ **Aboriginal community/First Nation cannot fully participate in planning for the care and safety of the child(ren) due to the distance and cost of travel to attend hearings; or**

☐ **other reasons:** _____

☒ **Under Rule 7(2) we request that the director's lawyer prepare the order if granted.**

Dated _____

Signature of Applicant or Agent

Address for service if different from Applicant's:

Address _____ City _____ B.C.

Postal Code _____ Phone _____ Fax _____

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

AFFIDAVIT

Form 7

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

Court File Number:
Court Location:

In the matter of the child(ren):

Name(s)	Date(s) of Birth (mo/day/yr)

The parent(s) of the child(ren) is/are:

Name(s)

_____

_____

_____

I, [name] _____

of [Address] _____ [City] _____

[Province] _____

swear that:

1. I know or firmly believe the following facts to be true. Where these facts are based on information from others, I have stated the source of that information and I firmly believe that information to be true.
2. I make this affidavit in relation to an application by ☐ me or by ☐ _____ Aboriginal community/First Nation. I am the ☐ Chief ☐ Elected Councilor ☐ Social Development Worker ☐ or [list position: Elder/member/etc.] _____ of the _____ Aboriginal community/First Nation.
3. The _____ Aboriginal community/First Nation recognizes the child, _____ as a member of the _____ Aboriginal community/First Nation. Their ☐ mother ☐ father ☐ grandparent(s) _____ is/are a member of the _____ Aboriginal community/First Nation.

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

[Here aboriginal communities could provide any additional information that they believe would help the Court to make an informed decision about the child(ren) and family.]

Include relevant information to support any orders you are seeking.

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

[If any supporting documents are attached fill out the following:]

The following documents are attached and marked as Exhibits to this affidavit.

- ☐ Exhibit "____": _____
- ☐ Exhibit "____": _____
- ☐ Exhibit "____": _____
- ☐ Exhibit "____": _____

☒ Rule 5(3) If any part of this affidavit is defective or does not comply with the proper form, I seek permission of the Judge to use this affidavit.

SWORN BEFORE ME at
[location]_____,
in the Province of British Columbia,
on [month/day/year]_____

_____
A Commissioner for taking Affidavits
for British Columbia

Name of Commissioner:

)
)
)
)
)
)
)
)

_____
[signature]

This affidavit is filed by:

Name_____

Address_____City_____Prov_____

Postal Code_____Phone_____Fax_____

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

CERTIFICATE OF SERVICE

Form 9

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

Court File Number:
Court Location:

In the matter of the child(ren):

Name(s)	Date(s) of Birth (mo/day/yr)

The parent(s) of the child(ren) is/are:

Name(s)

_____

_____

_____

I certify that I, [name] _____

of [Address] _____

[City] _____ [Province] _____

served [Name of person served] _____

on [Date] _____

at [Address] _____

with a copy of: (List each document served)

_____

_____

_____

_____

☐ by leaving the copy with him or her personally;

☐ by mailing the copy to him or her by registered mail. Attached and marked as an exhibit to this certificate is:

- ☐ the original acknowledgement of receipt card, marked Exhibit "____"; or
- ☐ the unopened envelope returned by Canada Post, marked Exhibit "____".

☐ by sending the copy by facsimile transmission. Attached and marked as Exhibit "____" to this

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

certificate is a transmission report generated by the sending machine, confirming transmission to

[Number]_____ which is the facsimile number of

[Name]_____

Signature

Dated _____

COPIES NEEDED:
1 – COURT FILE 2 – APPLICANT 3 – RESPONDENT 4 – EXTRA COPY FOR SERVICE
5 – PROOF OF SERVICE 6 – LAWYER'S OR FAMILY COPY

ABORIGINAL CHILD ABORIGINAL COMMUNITY PLAN OF CARE

Court File Number:
Court Location:

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

We rely on the following:

- ☐ **Section 68(2)(b) a Court may admit as evidence "(b) any oral or written statement or report the court considers relevant".**
- ☐ **Rule 4(1)(c) which says that a Court can rely on evidence given under s. 68(2)(b).**

It is in the best interests of Aboriginal children that their Aboriginal community be fully and actively involved in planning for their care, and that their Aboriginal identity, culture and relationships within their cultural community and extended family be maintained.

The _____ Aboriginal community/First Nation files this document (Aboriginal Child Aboriginal Community Plan of Care) and requests the Court take into consideration in making Orders concerning our Child members.

A Plan of Care for a child in interim, temporary or continuing custody of the director should plan for the preservation of an Aboriginal child's identity and cultural heritage.

In the matter of the child(ren):

Name(s)	Date(s) of Birth (mo/day/yr)

The parent(s) of the child(ren) is/are:

Name(s)

_____

_____

_____

This Plan of Care is filed by:

Aboriginal Organization/First Nation/Designated Representative

_____

Address_____City_____B.C.

Postal Code_____Phone_____Fax_____

- ☐ **CFCSA Regulation (ss. 7 and 8) requires that a child's plan of care include whether the child's Aboriginal community was involved in the development of the plan, and their views on it, and a description of how the director proposes to meet the child's need for continuity of their cultural heritage, religion, language, social and recreational activities, and steps to preserve an Aboriginal child's cultural heritage and identity.**
- ☐ **Section 70 of the CFCSA says that children in care have the right to receive guidance and encouragement to maintain their cultural heritage.**
- ☐ **Section 71 of the CFCSA lists priorities to place Aboriginal children within their cultural community or extended family.**

We file this Proposed Plan of Care, to:

- ☐ **Maintain the child(ren)'s Aboriginal identity and heritage (sections 2(f), 4(1)(e), 4(2))**
- ☐ **Maintain the child(ren)'s connection to their Aboriginal community and extended family (section 2(e))**
- ☐ **Involve the child(ren)'s Aboriginal community in planning for their care (sections 3(b) and (c))**

The child(ren)'s Aboriginal community

- ☐ **has not been provided with the Director's proposed plan of care, or**
- ☐ **has reviewed the Director's proposed Plan of Care and [check one of the following]**
  - ☐ **Supports the proposed plan**
  - ☐ **Does Not Support the proposed plan**
  - ☐ **Supports the proposed plan with the following changes:**

_____

_____

_____

The _____ Aboriginal community/First Nation has identified the following steps that should be taken, or resources relied on, to preserve the child's Aboriginal culture and identity:

An Aboriginal Cultural Preservation Plan for this/these child(ren) could include:

(a) Cultural factors that need to be included in a child's plan of care (identify specific steps or opportunities for a child to participate in cultural activities that maintain or establish their connection to their land and culture, such as language classes, gathering activities, spiritual or cultural celebrations, community dinners or sporting events, or other activities):

_____

_____

_____

(b) Cultural or community supports or programs within the _____ Aboriginal community/First Nation to assist the family in addressing protection concerns, and/or maintain the child's connection with their Aboriginal community and cultural heritage:

(c) Less disruptive means than removal to keep families together (including culturally-based and appropriate resources within the community) that should be explored, or potential alternate caregivers within the child's cultural community or extended family, family or community members that could take care of the child on a temporary basis while the child protection matter is addressed to keep the child within their extended family or cultural community; or, on a permanent basis, if necessary, which would keep the child within their extended family, community, or nation where the parent(s) are unable to address the child protection concern:

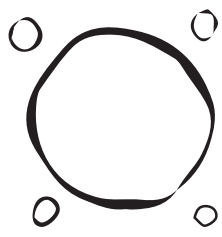
(d) Family or community members that play an important role in the child's life (such as elders or extended family members), together with a proposal for how to maintain those relationships:

(e) **Network of people or supports to assist the family in addressing protection concerns, or where it is not possible to restore a family's ability to parent, to assist in keeping a child safe and ensure that they can grow to adulthood within their culture:**

(f) **Elders, cultural or spiritual supports from within the nation who can work with the child or family within a traditional wellness or healing model:**

(g) **Alternative or traditional decision making processes – including those based in Aboriginal traditions – that the Aboriginal community may wish to refer the matter to, as allowed under s. 22 of the CFCSA:**

09. Sources



09. SOURCES

I. CASES

A.[...] (First Nation) v. Children's Aid Society of Toronto, 2004 CanLII 34409 (ON SC)

A.J. v. S.J.M. 1994 CanLII 264 (BC SC)

A.L. et al v. D.K. et al 2000 BCSC 480 (CanLII)

A.N.G. (Re) 1996 BCPC 1 (CanLII)

Adoption - 07202, 2007 QCCQ 13341

Alberta (Aboriginal Affairs and Northern Development) v. Cunningham 2011 SCC 37

B.C. Birth Registration No 1994-09-040399,Re, 1998 CanLII 5839 (BCSC)

British Columbia (Director of Family & Child Services) v. W.(D.), 2002 BCPC 616 (B.C. Prov. Ct.)

Brown v. Attorney General of Canada, 2014 ONSC 6967 (CanLII)

C.D.R1. and C.D.R2. v. Native Child and Family Services of Toronto (CFSA s.144) 2007 CFSRB 20 (CanLII)

C.M.B. v. Ministry for Children and Families 2000 BCSC 774 (CanLII)

Campbell v. British Columbia (A.G.), [2000] B.C.J. No. 1525

Canada (A.G.) v. Canadian Human Rights Commission, 2007 SCC 26, [2007] 2 S.C.R. 292

CAS v. L.T. and R.S. 2013 ONSC 6512 (CanLII)

Casimel v. I.C.B.C. [1994] 2 C.N.L.R. 22 (B.C.C.A.)

Catholic Children's Aid Society of Toronto v. C.(B.) and H.(J.C.) 2004 ONCJ 27 (CanLII)

Child and Family Services of Winnipeg (East) v. K.A.D. et al, [1995] M.J. No. 178; Man.R. (2d) 262

Children's Aid Society of Halifax v. H. 2006 NSSC 1 (CanLII)

Children's Aid Society of Owen Sound and Grey County v. P.(C.) 2004 ONCJ 453

Children's Aid Society of Sudbury and Manitoulin v. B.(J.) 2007 ONCJ 137

CJK v. Children's Aid Society of Metropolitan Toronto, [1989] 4 CNLR 75

Connolly v. Woolrich (1867), 1 C.N.L.C. 70 (Que. S.C.)

Corbierre v. Canada (Minister of Indian and Northern Affairs), [1999] 2 S.C.R. 203

D.(M.B.) v. Saskatchewan (Minister of Social Services) 2001 SKQB 513 (CanLII)

D.C.W. v. Alberta (Child, Youth and Family Enhancement, Director), 2012 ABPC 199 (CanLII)

Delgamuukw v. B.C. [1993] 5 W.W.R. 97 (BCCA)

Delgamuukw v. B.C. [1997] 3 S.C.R. 1010

Dilico Anishinabek Family Care v. M.T. 2010 ONCJ 105 (CanLII)

Director v. C.S. and J.K. 2007 BCPC 19 (CanLII)

Director v. K. (T.L.), [1996] B.C.J. No. 2554 (Prov. Ct)

Director v. K.S. 2013 BCPC 100 (CanLII)

Director v. M.W. and A.M.S. (Re S.M.S.) 2003 BCPC 396 (CanLII)

Director of Family and Child Services v. M.B. 2003 BCPC 0429

Family and Children's Services of Waterloo Region v. Bonnie Y. and Frank D. (1988), [1995] W.D.F.L. 1011, [1988] O.J. No. 2699 (Ont. Prov. Ct., Fam. Div.)

First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada, (2012) [Ongoing]

G. (B.J.) v. G. (D.L.) 2010 YKSC 44, 324 D.L.R. (4th) 367

H.(D.) v. M.(H.), [1998] 3 C.N.L.R. 59

H.(D.) v. M.(H.) 1999 CanLII 710 (SCC), [1999] 1 S.C.R. 761

Haida Nation v. B.C. (Ministry of Forests), [2004] 3 S.C.R. 511

Hamilton Health Sciences Corp. v. D.H., 2014 ONCJ 603 (CanLII)

In re Wanomi P., (1989) 216 CA3d 156

In the Matter of Q. (N.), [2004] 3 C.N.L.R. 262; 2003 YKTC 35 (CanLII)

J.B.B. (Re), 2008 SKQB 419 (CanLII)

Jane Doe v. Awasis Agency of Northern Manitoba, [1990] 72 DLR (4th) 738

Kenora-Patricia Child and Family Services v. P.(L.) 2001 CanLII 32703 (ON CJ)

L. (M.S.D.), Re 2007 SKQB 200 (CanLII)

L. (M.S.D.), Re 2008 SKCA 48 (CanLII)

Lovelace v. Canada, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981)

M.-K.K. (Dans la situation de), (2004) R.D.F. 264 (C.A.)

M.M. (Re), 2013 ABPC 59 (CanLII)

M.S. v. G.S. 2013 BCSC 1744 (CanLII)

McIvor v. Canada (Registrar, Indian and Northern Affairs) 2007 BCSC 827, supp'l 2007 BCSC 1732, 2009 BCCA 153

Mitchell v. M.N.R., [2001] 1 S.C.R. 911

Mitchell v. Peguis Indian Band, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 (S.C.C.)

N.H. and D.H. v. H.M., M.H. and the Director of Child, Family and Community Service, [1988] BCJ No. 221 (QL)

*N.P. v. British Columbia (Director of Child, Family and Community Services),*1999 CanLII 6514 (BCSC)

Natural Parents v. Supt. of Child Welfare, [1976] 2 S.C.R. 751, (1975) 60 D.L.R. (3d) 148

New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46

New Brunswick (Minister of Health and Community Services) v. L.(M), 1998 CanLII 800 (SCC), [1998] 2 S.C.R. 534

NIL/TU,O Child and Family Services v. BCGEU [2010] 2 S.C.R. 696

Nowegijick v. The Queen, [1983] S.C.J. No 5, [1983] 1 S.C.R. 29

Prince & Julian v. HMTQ et al, 2000 BCSC 1066 (CanLII)

Quebec (A.G.) v. Canadian Owners and Pilots Assn, [2010] 2 S.C.R. 526

R. v. Badger, [1996] 1 S.C.R. 771

R. v. Bear's Shin Bone (1899), 4 Terr. L.R. 173 (N.W.T.S.C.)

R. v. Bernard, 2005 SCC 43, [2005] 2 S.C.R. 220

R. v. Côté, 1996 CanLII 170 (SCC), [1996] 3 S.C.R. 139

R. v. Find, 2001 SCC 32

R. v. Gladue, 1999 CanLII 679 (SCC), [1999] 1 S.C.R. 688

R. v. Hape, 2007 SCC 26; [2007] 2 S.C.R. 292

R. v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433

R. v. Marshall (I), [1999] 3 S.C.R. 456

R. v. Pamajewon, [1996] 2 S.C.R. 821

R. v. Powley, [2003] 2 S.C.R. 207

R. v. Sparrow, [1990] 1 S.C.R. 1075

R. v. Sundown, [1999] 1 S.C.R. 393

R. v. Van der Peet, [1996] 2 S.C.R. 507

R. v. Williams, [1998] 1 S.C.R. 1128

R.S.B. (Re) [1994] 4 CNLR 191

R.T. (Re) 2004 SKQB 503 (CanLII), 2004 SKQB 112 (CanLII)

Racine v. Woods [1983] 2 S.C.R. 173 (S.C.C.); 1983 CanLII 27 (SCC)

Re A.L.S., [1996] B.C.J. No. 2668 (Prov. Ct.)

Re Aubichon (1970), 4 R.F.L. 39 (Sask Q.B.).

Re Beaulieu's Petition (1969), 3 D.L.R. (3d) 479 (N.W.T.T.C.)

Re C.I., 491 Mich. 81, 82 (2012)

Re D(J), [2003] 4 C.N.L.R. 1 2003 SKQB 309

Re Katie's Adoption Petition (1961), 32 D.L.R. (2d) 686 (N.W.T.T.C.)

Re Nelson and Children's Aid Society of Eastern Manitoba (1975) 56 L.R. (3d) 567 (Man. CA)

Re Tagornak Adoption Petition, [1984] 1 C.N.L.R. 185 (N.W.T.S.)

Re Wah-Shee (1975), 57 D.L.R. (3d) 743 (N.W.T.S.C.)

Reference re Child Welfare Act 1984 ABCA 28 (CanLII)

RRE (Re) 2011 SKQB 282 (CanLII)

S.(E.G.) v. Spallumcheen Band Council, [1999] 2 C.N.L.R. 318 (B.C.S.C.)

Saskatchewan (Social Services) v. L.B. 2009 SKQB 46 (CanLII)

Saskatchewan (Social Services) v. S.E. and E.E. [1992] 5 W.W.R. 289 (Sask. U.F.C.)

Simon v. The Queen, [1985] 2 S.C.R. 387

T.E. v. Alberta (Child, Youth and Family Enhancement Act, Director) 2013 ABPC 265 (CanLII)

T.(E.J.) v. V.(P.M.), (1996) 110 Man. R. 219 (Man. C.A.)

Tearoe v. Sawan, 1993 CanLII 2581

Tsilhqot'in Nation v. B.C. 2004 SCC 44

Van de Perre v. Edwards, [2001] 2 S.C.R 1014

Wesley v. CFCS, 2006 BCSC 1666

Winnipeg (Child and Family Services) v. M.A. 2002 MBQB 209

Winnipeg Child and Family Services (East) v. T.S.L., 125 D.L.R. (4th) 255

II. LEGISLATION

Adoption Act, RSBC 1996, c. 5

California Rules of Court, Rule 5.484(c)

Child and Family Services Act, RSO 1990, c. C.11

Child, Family and Community Service Act [RSBC 1996] Ch. 46

Child, Family Community Service Regulation, B.C. Reg. 527/95

Constitution Act, 1867

Constitution Act, 1982

Indian Act, R.S.C., 1985, c. I-5

Indian Child Welfare Act, 25 U.S.C. §§ 1901-63

Provincial Court (Child, Family, Community Service Act) Rules, B.C. Reg. 533/95

Spallumcheen (Splatsin) "A by-law for the Care of Our Indian Children" (Bylaw #3-1980)

The Child and Family Services Act, S.S. (1989-90), c. C-7.2

The Representative for Children and Youth Act, SBC 2006, Ch. 29

Tsawwassen First Nation 2009 Children and Families Act (Available online: www.tsawwassenfirstnation.com/laws-regulations-and-policies/laws/)

United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007, United Nations Resolution adopted by the General Assembly 61/295

III. BOOKS AND ARTICLES

2012 City of Vancouver Area Profile (Available online: http://vancouver.ca/files/cov/profile-dtes-local-area-2012.pdf)

Aboriginal Affairs and Northern Development Canada, *Fact Sheet – Urban Aboriginal Population in Canada, N.D.* (Available online: www.aadnc-aandc.gc.ca/eng/1100100014298/1100100014302)

Atwood, B. "Permanency for American Indian and Alaska Native Foster Children: Taking Lessons from Tribes" (2009) Capital U.L.R. Arizona Legal Studies Discussion Paper No. 08-22

Blackstock, C., "First Nations child and family services: restoring peace and harmony in First Nations communities" in K. Kufedlt & B. McKenzie (Eds.), *Child Welfare: Connecting Research Policy and Practice*. (Waterloo, Ontario: Wilfred Laurier University Press: 2003)

Borrows, John and Rotman, Leonard. *Aboriginal Legal Issues: Cases, Materials & Commentary* (2003: LexisNexis; Markham, Ont.)

Brant Castellano, Marlene. *Contemporary Family Trends, Aboriginal Family Trends: Extended Families, Nuclear Families, Families of the Heart* (The Vanier Institute of the Family, Occasional Papers, 2002)

Bull, Samuel. "The Special Case of the Native Child" The Advocate (1989) Vol 4

Bureau of Indian Affairs, *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* (Bureau of Indian Affairs, Interior; Federal Register, Vol. 80, No. 37, February 25, 2015)

California Center for Judiciary Education and Research, of the Administrative Office of the Courts. *Bench Handbook The Indian Child Welfare Act (Revised 2013)*

California Indian Legal Services, *California Judges Benchguide: The Indian Child Welfare Act* (Sacramento, CA: California Indian Legal Services, 2012)

Calverley, D., Cotter, A., & Halla, E. 2010. "Youth custody and community services in Canada – 2008/2009," Juristat 30(1). Ottawa, ON: Statistics Canada

Canadian Judicial Council, *Statement of Principles on Self-Represented Litigants and Accused Persons*, September 2006

Dussault, Justice Rene, "Indigenous Peoples and Child Welfare: The Path to Reconciliation" First Peoples Child & Family Review, Vol. 3:3 (2007)

Ferris, P., Simard, E., Simard, G. and Ramdatt, J. "Weechi-it-te-win Family Services: Utilizing a Decentralized Model in the Provision of Bi-Cultural Services" (2005, Promising Practices in First Nations Child Welfare Management and Governance Series, First Nations Child and Family Caring Society of Canada)

First Nations Child and Family Caring Society of Canada. *Indigenous Children: Rights and Reality. A Report on Indigenous Children and the U.N. Convention on the Rights of the Child.* (Toronto: First Nations Child and Family Caring Society of Canada, 2006)

Friedland, Hadley. "Tragic Choices and the Division of Sorrow: Speaking About Race, Culture and Community Traumatisation in the Lives of Children" (2009) 25 Can. J. Fam. L. 223 - 256

Graham, L. "Reparations, Self-Determination, and the Seventh Generation" 21 Harv. Hum. Rts. J. 47

Hughes, T. "BC Children and Youth Review - Keeping Aboriginal Children Safe and Well" (Victoria: April 2006)

ICWA Special Committee State Court Administrative Office July, 2012 (Michigan)

Indian Child Welfare Act of 1978: A Court Resource Guide

Justice Within: Indigenous Legal Traditions (Ottawa: Law Commission of Canada, 2006)

Kirwin, Lynn M. "Child Protection Law in Canada" [Toronto: Carswell, 2010, 2nd ed.]

Kline, Marlee. "Child Welfare Law, 'Best Interests of the Child' Ideology, and First Nations." Osgoode Hall L.J. 30.2 (1992): 375-425

Lynch, Philip. "Keeping Them Home: The Best Interests of Indigenous Children and Communities in Canada and Australia" (2001) 23 Sydney L. Rev. 501

Macdonald, K. "Customary Adoption in British Columbia: Recognizing the Fundamental Differences" (2009) 14 Appeal: Rev. Current L. Reform 17

Macdonald, Kisa. "Returning to Find Much Wealth: Identifying the Need for a Revised Judicial Approach to Aboriginal Kinship in British Columbia." (2010) 15 Appeal 114-135

Ministry of Children and Family Development, *Aboriginal Children in Care*, October 2009 Report, Prepared by Research, Analysis and Evaluation Branch (Available online: http://www.fndirectorsforum.ca/downloads/Aboriginal-children-in-care-10-09.pdf)

Ministry of Children and Family Development, *Educational Experiences of Children Under a Continuing Custody Order*. (Victoria: Ministry of Children and Family Development, 2012)

Minnesota Judicial Branch. *Minnesota Judges Juvenile Protection Benchbook (November 2011)* "Chapter 35: Indian Child Welfare Act"

National Collaborating Centre for Aboriginal Health: "Aboriginal and Non-Aboriginal children in child protection services" (National Collaborating Centre for Aboriginal Health, 2013)

Native American Rights Fund. *A Practical Guide to the Indian Child Welfare Act*. (Denver: Native American Rights Fund, 2011) [available online at www.narf.org]

Olthuis, Kleer, Townshend LLP, *Aboriginal Law Handbook* (4th) (2012, Thomson Reuters Canada Ltd., Toronto)

Research Report for Bio Med Central Ltd., 2014 (Contributors Barker, Kerr, Alfred, Fortin, Nguyen, Wood, DeBeck), "High prevalence of exposure to the child welfare system among street-involved youth in a Canadian setting: implications for policy and practice". (BMC Public Health 2014, 14:197) (Available online: http://www.biomedcentral.com/1471-2458/14/197)

Royal Commission on Aboriginal Peoples. *Report of the Royal Commission on Aboriginal Peoples. Vol. 1: Looking Forward, Looking Back.* (Ottawa: Royal Commission on Aboriginal Peoples, 1996)

Sarich, Anthony (Commissioner), *Report on the Cariboo-Chilcotin Justice Inquiry* (Victoria Ministry of Attorney General, 1993)

Smith, Ashley. "*Aboriginal Adoptions in Saskatchewan and British Columbia: An Evolution to Save or Lose Our Children?*" (2009) 25 Can. J.F.L. 297

Special Report by the Council of Child and Youth Advocates "Aboriginal Children and Youth in Canada: Canada must do better" submitted to UN Committee on the Rights of the Child 2011

St. Lewis, Joanne. "Virtual Justice: Systemic Racism and the Canadian Legal Profession" in *Racial Equality in the Canadian Legal Profession* (Ottawa: Canadian Bar Association, 1999)

Sullivan, Ruth. *Statutory Interpretation* (2nd) (Toronto: Irwin Law, 2007)

Turpel-Lafond, M.E., Representative for Children and Youth. "Aboriginal Children, Human Rights as a lens to break the intergenerational legacy of Residential Schools." Submission to the Truth and Reconciliation Commission of Canada (July 2012)

Turpel-Lafond, Mary Ellen. "*Some Thoughts on Inclusion and Innovation in the Saskatchewan Justice System*" (2005) 68 Sask. L. Rev. 293

Walkem, A. "Indigenous Laws in the Area of Children and Families: Transformative Possibilities of Recognition" (Continuing Legal Education Society of British Columbia Conference: Indigenous Legal Orders and the Common Law, Vancouver, November 2012)

Walkem, A. *Building Bridges: Improving Legal Services for Aboriginal Peoples* (Vancouver: Legal Services Society of B.C., 2007)

WRAPPING OUR WAYS AROUND THEM

ABORIGINAL COMMUNITIES AND THE CFCSA GUIDEBOOK



Photos courtesy of (left to right): Royal BC Museum, Blend Images, Nadya Kwandibens - Redworks Studios, Nadya Kwandibens - Redworks Studios.

ISBN 978-0-9940652-0-9

BCPIAC
Public Interest Advocacy Centre
208-1090 W. Pender St, Vancouver BC V6E 2N7 Coast Salish Territory
604.687.3063 fax 604.682.7896 www.bcpiac.com

May 2, 2017

To All Candidates in the 2017 BC Provincial Election:

Re: Access Barriers to Applying for Income Assistance

We are writing to you as a candidate in the provincial election on behalf of more than sixty undersigned organizations to collectively express our concerns regarding chronic and serious barriers British Columbians face when attempting to apply for income assistance. It is our hope that you will pursue this issue, as it affects British Columbians in all corners of the province.

Barriers to accessing income assistance have been steadily worsening over the past several years as the Ministry of Social Development and Social Innovation (the "Ministry") has increasingly moved to online application processes. This has been coupled with a corresponding reduction in the number of Ministry staff available to provide in person or over the phone assistance to those citizens applying for income assistance. By way of example, fourteen Ministry offices have closed across the province since 2005, while other offices have reduced hours or have been replaced by generic ServiceBC offices. This under resourcing of the Ministry coupled with its insistence on an increasingly technological interaction with the public has led to the entirely foreseeable consequence of downloading much of the responsibility to provide accessible services onto community agencies, such as those signing this letter.

The latest iteration of the online application process creates new and substantial barriers for those who either do not have access to a computer or lack the computer literacy necessary to navigate the online processes. Now, *before someone can even apply* for assistance, they must complete the following steps:

- Create an email address (if applicant does not have one, which is the case for many older and/or more vulnerable applicants);
- Create a My Self Serve account, and wait for an email confirmation link;
- Create a 4-digit PIN;
- Create a BCeID user ID and password to log into My Self Serve account;

Since its introduction in February, the latest version of the application process has prompted a flood of calls and emails to our office from advocates and individuals confounded by these new requirements. With permission from the authors, we share the following excerpts:

> "*The new application process simply doesn't work for many that need to access income assistance. I recently met with a client who is homeless and does not have a computer – the Ministry told him he was ineligible for in-person intake because our organization*

could assist him instead. This is despite the fact that our organization does not generally assist with the application process because we view it as the Ministry's job to assist, and because it is so cumbersome and time-consuming. My client nearly gave up applying for income assistance at multiple points, despite being eligible, and I know there are many people who, because they cannot navigate the bureaucratic and technological hurdles, simply give up on the meager support available. In-person assistance is the only method that actually works for the majority of people who need these services."

– Daniel Jackson, Legal Advocate, Together Against Poverty Society, Victoria

"*…[I] had a horrible experience with the new on-line system. I was assisting a client a day or 2 after the new system was launched. Trying to register the client and set up her [My Self Serve] account was a nightmare. Her appointment ended up being a 2-part appointment b/c we had to wait for her registration number. The 2nd appointment we completed the on-line application which in my opinion was not 'streamlined', efficient or 'more user-friendly'. At that time we were unable to download the documents for the application and the client had to physically take them into the office."*

– Christine Dunlop, Legal Advocate, Quesnel Tillicum Society, Native Friendship Centre, Quesnel

Our overarching message is that many applicants require in person assistance with the application process – and this help is simply not being provided. Despite repeated assurances that there is now a "supported application" whereby applicants unable to use the online application can contact the Ministry to request telephone intake, there is a complete disconnect between these assurances and the actual experiences of British Columbians attempting to access direct help from the Ministry. In person services are not being provided and wait times on the Ministry's centralized phone line have averaged over 45 minutes over the past six months.

We ask that all candidates commit to speaking out in favour of making income assistance accessible to those that need it by:

- Providing timely <u>in person</u> individualized assistance to those that need it
- Providing computers and Ministry staff at every Ministry office for the purposes of helping applicants through the application process
- Modifying the online application to eliminate the requirement for an email address and BCeID

We are calling for action in the form of fully resourcing the Ministry to fulfill its duty to the citizens of British Columbia.

Sincerely,

BC Public Interest Advocacy Centre

Erin Pritchard & Michael Seaborn
Staff Lawyers

c. Jay Chalke, BC Ombudsperson

Signatories:

1. Abbotsford Community Services (Abbotsford)
2. Action Committee of People with Disabilities (Victoria)
3. Active Support Against Poverty (Prince George)
4. Africa Great Lakes Networking Foundation (Vancouver)
5. The Anglican Diocese of New Westminster Eco-Justice Unit (New Westminster)
6. Atira Women's Resource Society (Vancouver)
7. BC Government and Service Employees' Union
8. BC Health Coalition
9. BC Poverty Reduction Coalition
10. Burnaby Community Services (Burnaby)
11. Carnegie Community Action Project (Vancouver)
12. Chimo Community Services (Richmond)
13. Citizens for Accessible Neighbourhoods (Vancouver)
14. Coalition of Child Care Advocates of BC
15. Community Legal Assistance Society (Vancouver)
16. Council of Senior Citizen Organizations in British Columbia
17. Dawson Creek Native Housing Society (Dawson Creek)
18. Disability Alliance BC
19. Downtown Eastside SRO Collaborative (Vancouver)
20. Downtown Eastside Women's Centre (Vancouver)
21. Family Tree Family Centre (Kamloops)
22. First Call: BC Child and Youth Advocacy Coalition

23. First United Church Community Ministry Society (Vancouver)
24. Fort St John Women's Resource Society (Fort St. John)
25. Golden Family Center (Golden)
26. Golden Women's Resource Centre (Golden)
27. Gordon Neighbourhood House (Vancouver)
28. Greater Vancouver Food Bank (Vancouver)
29. Interior Community Services (Kamloops)
30. Kamloops and District Elizabeth Fry Society (Kamloops)
31. Kamloops YMCA-YWCA, Violence Against Women Intervention and Support Services (Kamloops)
32. The Kettle Society Advocacy Service (Vancouver)
33. Megaphone Magazine (Vancouver)
34. MS Society of Canada, BC & Yukon Division (Burnaby)
35. Nelson CARES - The Advocacy Centre (Nelson)
36. The Nelson Committee on Homelessness (Nelson)
37. New Westminster & District Labour Council (New Westminster)
38. Nicola Valley Advocacy Centre (Merritt)
39. North Shore Community Resources (North Vancouver)
40. North Shore Homelessness Task Force (North Shore)
41. Okanagan Advocacy and Resource Society (Vernon)
42. Opportunities Advocacy Services (Campbell River)
43. Penticton and Area Access Society (Penticton)
44. Phoenix Centre (Kamloops)
45. Pivot Legal Society (Vancouver)

46. Prince Rupert Unemployed Action Centre (Prince Rupert)
47. Quesnel Tillicum Society, Native Friendship Centre (Quesnel)
48. Raise the Rates (Vancouver)
49. The Realistic Success Recovery Society (Surrey)
50. Sheila Nelson (Kamloops)
51. South Peace Community Resources Society (Dawson Creek)
52. STEPS Forward - Inclusive Post-Secondary Education Society (Vancouver)
53. St. Paul's Advocacy Office at St. Paul's Anglican Church (Vancouver)
54. Terrace and District Community Services Society (Terrace)
55. Together Against Poverty Society (Victoria)
56. Vancouver Rape Relief and Women's Shelter (Vancouver)
57. Vancouver South Presbytery Community Advocacy Programme (United Church of Canada) (Vancouver)
58. Wachiay Friendship Centre (Courtenay)
59. West Coast LEAF (Vancouver)
60. Vancouver District Labour Council (Vancouver)
61. Vancouver Island Human Rights Coalition (Victoria)
62. Victoria Disability Resource Centre (Victoria)

Welfare Law Basics
Legal Aid Bootcamp: Community Workers' Conference
May 4, 2017

Welfare law resources:

a) Welfare law in BC consists of the following **Acts and Regulations:**

Employment and Assistance Act
Employment and Assistance Regulation
Employment and Assistance for Persons with Disabilities Act
Employment and Assistance for Persons with Disabilities Regulation
Employment and Assistance Forms Regulation
Child in the Home of a Relative Program Transition Regulation

These are all available online at http://www.eia.gov.bc.ca/ministry/leg.htm

b) Welfare Policy manual:

The Ministry of Social Development and Social Innovation (MSDSI) policy manual is called the BC Employment and Assistance Policy and Procedures Manual; it is located at http://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual

Remember that policy is NOT law. This policy manual is only MSDSI's *interpretation* of the law.

c) PovNet listserve on welfare issues:

PovNet (www.povnet.org) is a BC based organization that works to build an online anti-poverty community and connect advocates and community workers.

PovNet hosts private list-serves about specific legal issues for advocates and community workers, including a welfare law list to which over 300 advocates, community workers and lawyers around BC subscribe. It is a very useful resource that you can use to ask specific questions you have. You can also learn from the list-serve by reading other people's questions and answers.

To subscribe to the PovNet welfare list, email nicky@povnet.org, with your name, information about where you work and what kind of work you do, and a request to be subscribed to the welfare list. Or, contact 604-876-8638 for more information.

d) ***How to Apply for Welfare***
http://www.lss.bc.ca/publications/pub.php?pub=491

This is a new booklet published by LSS that explains the eligibility criteria for welfare in BC, and steps to apply for income assistance and disability assistance, and how to dispute ministry decisions. It is current to March 2017. Hard copies can be ordered free through the above link.

e) Disability Alliance BC help sheets and application/appeal guides

Disability Alliance BC (formerly called the BC Coalition of Persons with Disabilities) is a provincial, cross-disability advocacy organization with advocates who specialize in PPMB, PWD and CPP disability benefits. . Their website is at http://www.disabilityalliancebc.org

As part of their advocacy program, DAC has prepared a series of over 20 help sheets and application/appeal guides on PWD and PPMB benefits from MSDSI. These are an invaluable resource. They include:

- a step-by-step guide to the PWD application (including sample letters to doctors)
- a guide to making a reconsideration request regarding PWD benefits;
- a guide to tribunal appeals regarding PWD benefits;
- a step-by-step guide to the PPMB application (including sample letters to doctors);
- a guide to making reconsideration requests regarding PPMB benefits;
- a guide to tribunal appeals regarding PPMB benefits;
- a guide to enhanced medical coverage from MSDSI;
- a guide to trusts for people with the PWD designation; and
- a guide to employment and PWD benefits.

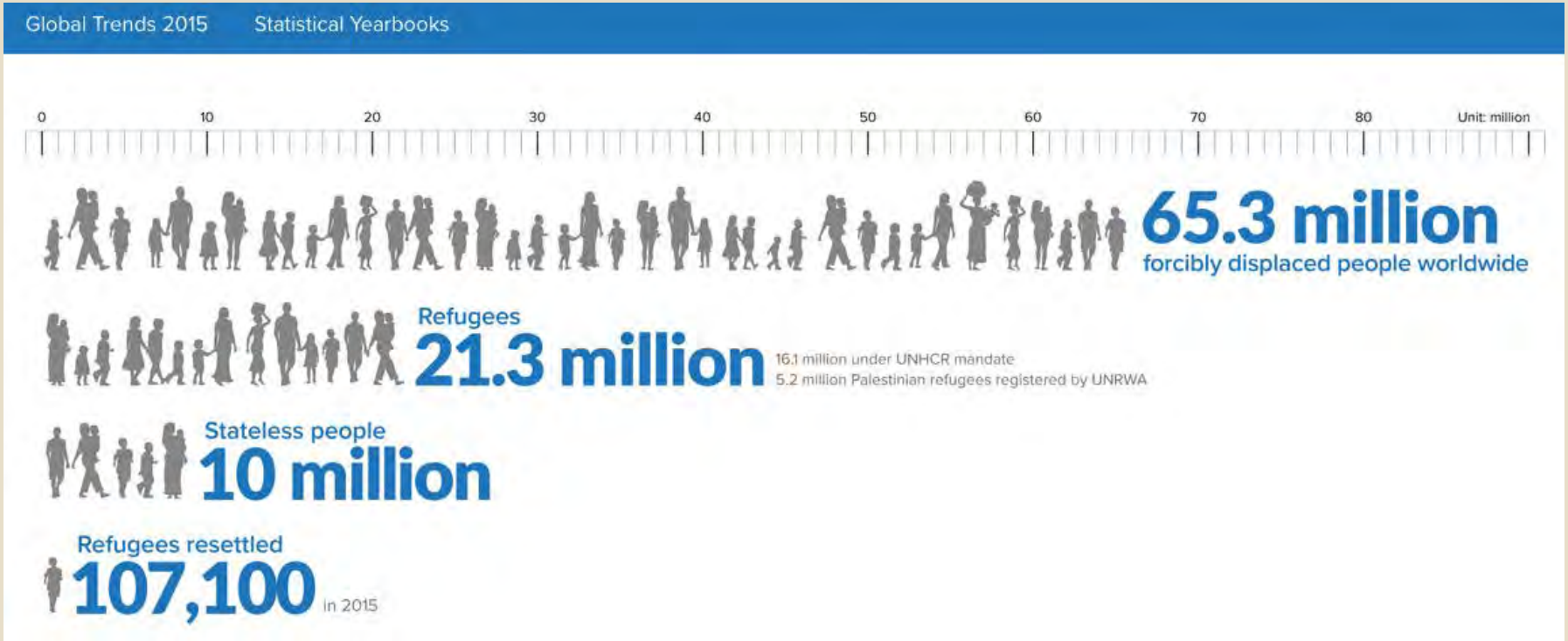
These helpsheets are online at http://www.disabilityalliancebc.org/money.htm

Refugees and the Law

ERICA OLMSTEAD
BARRISTER & SOLICITOR
PHONE: 604-646-4684
E-MAIL: ERICA@EDELMANN.CA

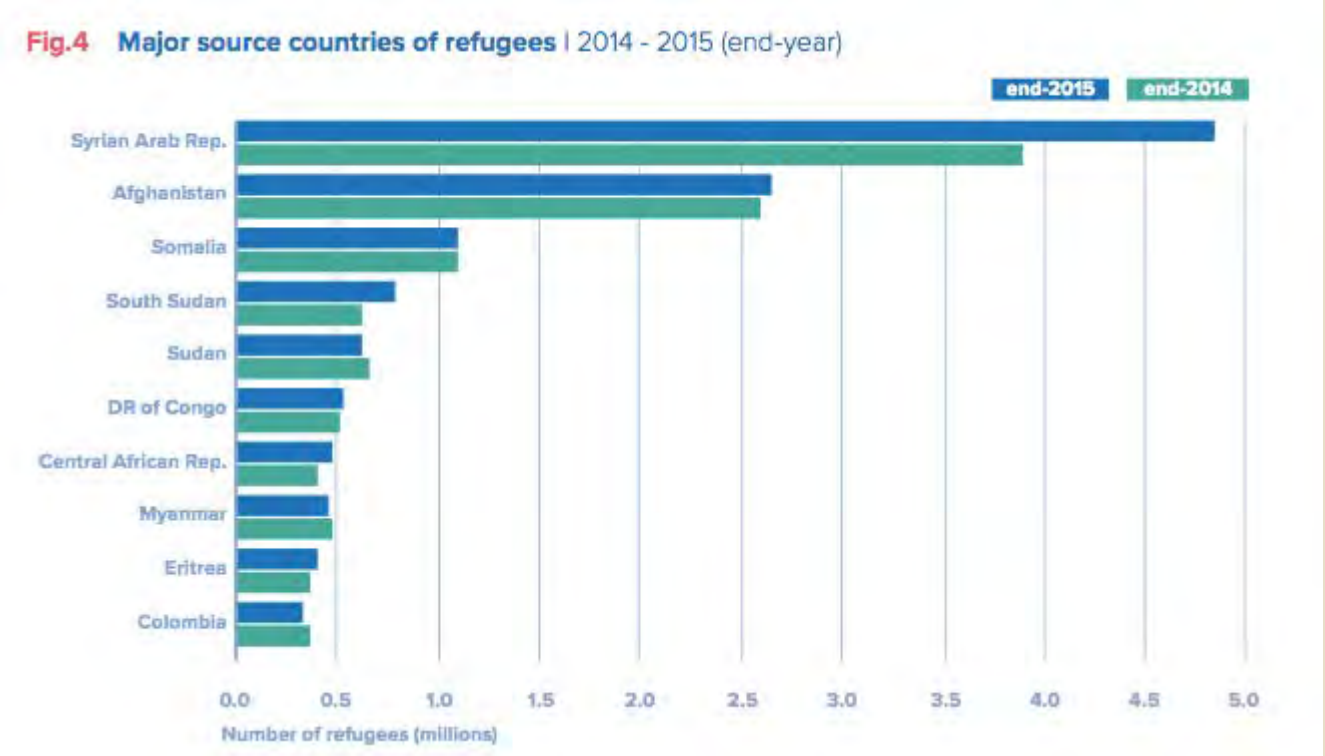
MAY 4, 2017 – LEGAL SERVICES SOCIETY CONFERENCE

Worldwide Figures at a Glance (2015 - UNHCR)



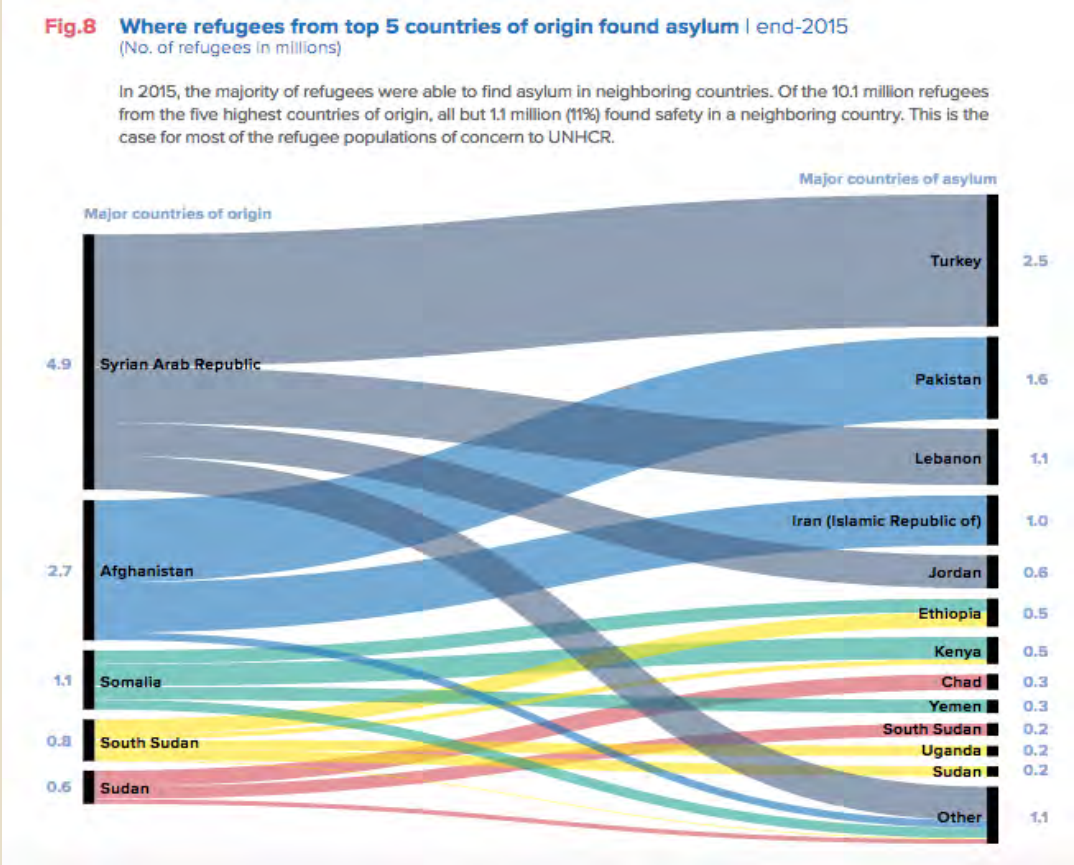
- 51% of refugees worldwide ate under the age of 18 (up from 41% in 2009)

Figures at a Glance (2015 - UNHCR)



- 53% of refugees worldwide came from three countries

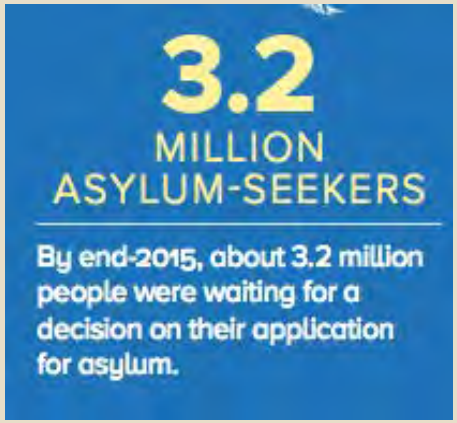
Figures at a Glance (2015 - UNHCR)



❖ Most refugees find asylum in neighbouring countries

Asylum Seekers

- **Resettlement from a third-country** (where a durable solution has not been found)
  - Only a small number of States take part
  - 2015:
    - **Canada – 20,000** (2017: 10,000)
    - United States – 66,500
    - Australia – 9,400



- **Inland Refugee/Asylum claims** (2015)
  - Germany – 441,900 (722,000 in 2016)
  - **USA** - 172,700
    - 23,533 approved + 10,215 family derivative status (2014)
  - Sweden – 156,400
  - Russia – 152,5000

  - **Canada – 16,900** (2015)
    - 7749 approved + 3227 family dependents (2014)

Canada Refugee Figures

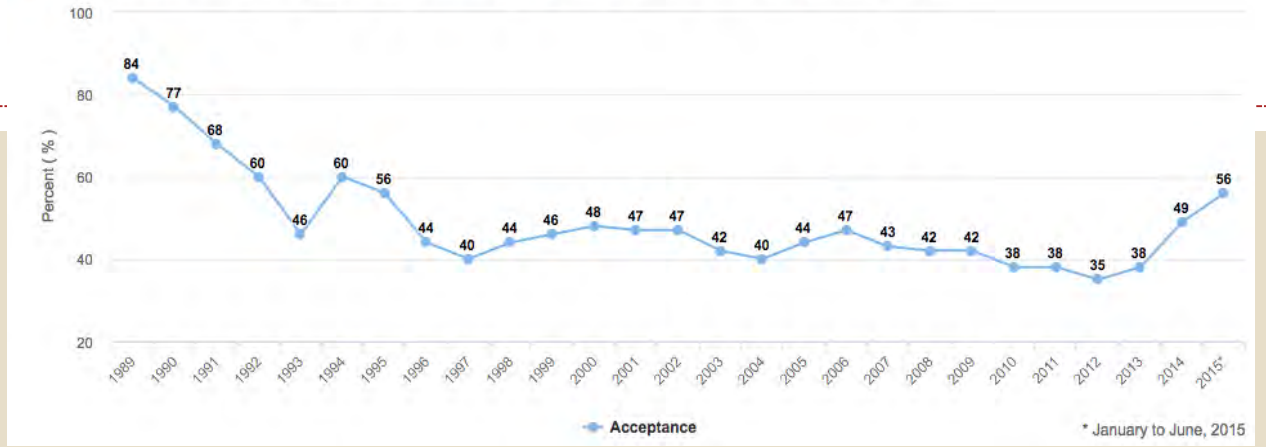
Per year / over last 10 years:

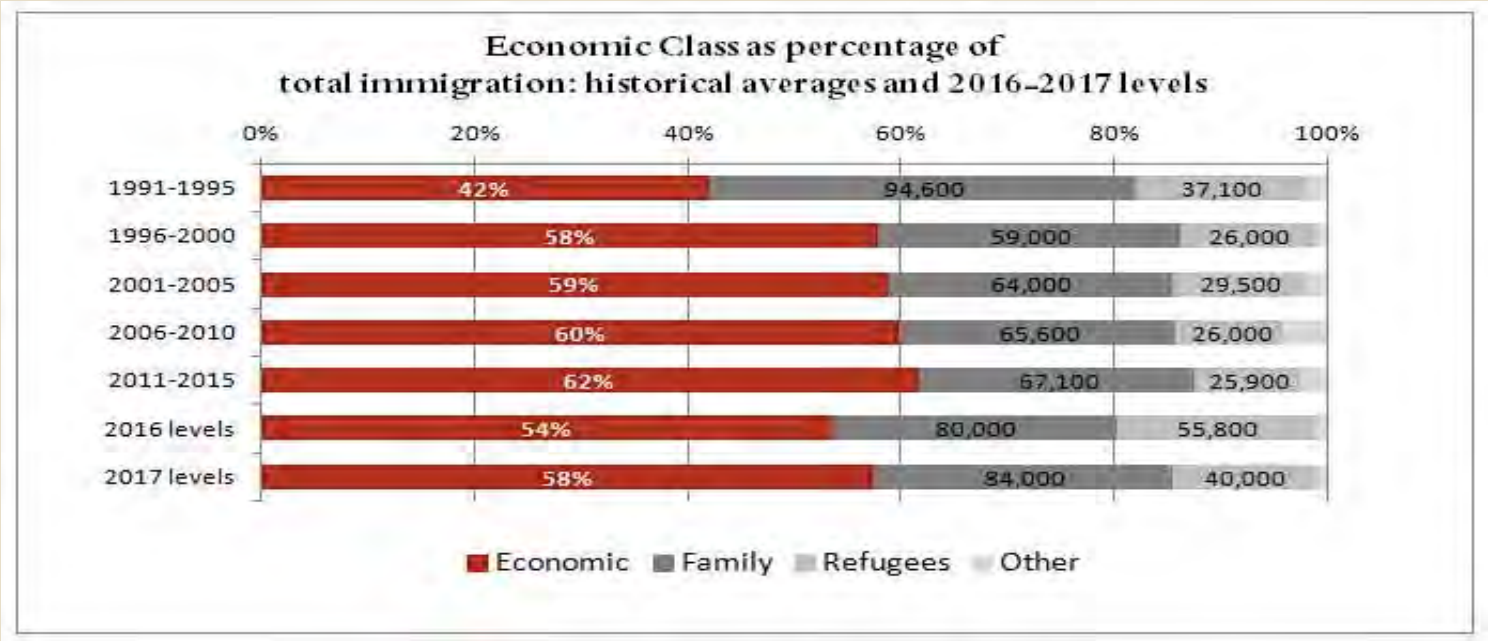
- **26,000 average refugees arrive in Canada –**
- 11,000 - refugees who came to Canada and successfully claimed refugee status
- 4,000 were their dependants.

- 7,000 refugees received government assistance to resettle in Canada, and
- 4,000 privately sponsored (by citizens and community groups)

Category	2010	2011	2012	2013	2014
Government-assisted refugees	7,264	7,363	5,412	5661	7573
Privately sponsored refugees	4,833	5,584	4,225	6269	4560
Blended Visa Office-Referred refugees				153	177
Refugees landed in Canada	9,038	10,743	8,586	8036	7749
Refugee dependants	3,562	4,183	4,856	3712	3227

5. Refugee claims accepted by the IRB, per cent of finalizations, 1989-2015



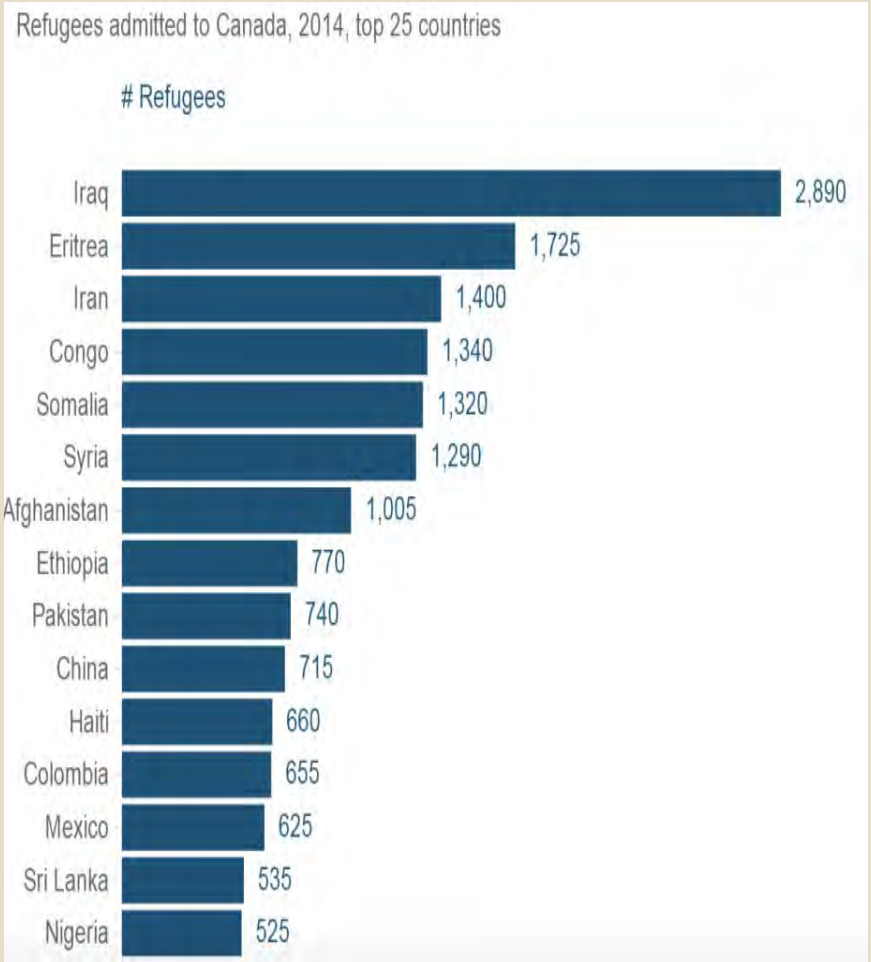


Canada - Source Countries

Refugees landed in Canada, plus dependants, 2004-2013

Search...

Source country	refugees
Colombia	17381
China	15344
Sri Lanka	12326
Pakistan	10641
Haiti	7872
Mexico	6512
India	4988
United States	4451
Nigeria	4441
Zimbabwe	3969



Refugee definition

UN CONVENTION REFUGEES, IRPA s.96

96. A Convention refugee is a person who, by reason of a **well-founded fear** of **persecution** for reasons of race, religion, nationality, membership in a particular social group or political opinion,

is **outside each of their countries of nationality** (or habitual residence, if stateless) and is **unable** or, by reason of that fear, **unwilling** to avail themself of the **protection** of each of those countries (no state protection;

Nowhere in that country they could go to be safe (Internal flight alternative)

Refugee definition

PERSONS IN NEED OF PROTECTION, IRPA s. 97

97. (1) A person in need of protection is a person in Canada whose removal to their country of nationality or former habitual residence (if stateless), would subject them personally:

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(b) risk to life or of cruel and unusual treatment or punishment

Refugee definition

- 1951 Convention Relating to the Status of Refugees and 1967 Protocol - Signatory
- Principle of *Non-refoulement* – Article 33(1) of the Refugee Convention:
  - "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
- *Definitions* do not include refugees fleeing famine, poverty, natural disasters or wars.
  - factors may be relevant in determining issues such as internal flight alternative.
- Subjective/Objective fear/credibility (~delay/failure to claim)

Prohibitions

- Exclusion:
  - Should the person be excluded from Canada's protection because they have status in another country (Article 1E) or
  - because they do not deserve Canada's protection (Article 1F) for example because of war crimes, serious criminality, crimes against humanity, etc.?

Making a refugee claim in Canada

- **Where:** Port of entry* or Inland IRCC office
  - Except at US border (Safe-third country agreement)
- **How:** Say “refugee” “fear” to a CBSA or IRCC officer
- **When:** Before a removal order is issued, and (for inland claimants) preferably before their status has expired
- **To whom:** IRCC or CBSA officer [*A99(3)*]

Exceptions to Safe Third Country Agreement

Does not apply, R159.2-R159.6 [*A101(1)(e)*] :

- (a) a location that is not a port of entry (**irregular entry**);
- (b) a port of entry that is a harbour port, including a ferry landing or, with some exceptions, an airport
- (c) **Qualifying Family member in Canada** with status or pending claim [includes parents, child, spouse, grandparents/ children, uncle, aunt, nephew or niece] *not "in-laws"*
- (d) Unaccompanied Minors
- (e) Document Holders or Visa Exemptions [eg. Mexico]
- (f) Public Interest Exception - Death Penalty Cases (if not inadmissible)

See: http://www.cic.gc.ca/english/department/laws-policy/menu-safethird.asp

Persons **ineligible** to claim

- **Removal order** issued [*A99(3)*]
- Previously granted refugee status [*A101(1)(a)*]
- **Previous claim rejected** [*A101(1)(b)*]
- Previous claim found ineligible [*A101(1)(c)*]
- Convention refugee in another country and can return there [*A101(1)(d)*]
- Arrived from designated **Safe Third Country** (United States) unless falls into exceptions
- Determined to be **inadmissible** on grounds of security, violating human or international rights, serious criminality or organized criminality [*A101(1)(f)*]

Claim made inside Canada – the process

- What is a BOC?
  - BOC & other CIC forms must be filed before presenting to initiate inland claim.
  - For Port of Entry claims, all forms are completed except BOC must be filed within 15 days.
  - Hearing normally scheduled in 60 days (30 days for designations; security check postponements).
- Identity issue*
- Eligible to apply for:
  - work permit/study permit (1-4 months+ to process)
  - Social assistance
  - Interim Federal Health Care
  - *After* claim initiated
- Should begin to gather corroborative evidence asap

Claim made inside Canada – the process

- Acceptance of the claim –
  - Protected person permanent residence application
- Refusal of the Claim –
  - Refugee Appeal Division (or judicial review)
  - Removal order is stayed until appeal period expires or appeal is denied
  - Can submit new evidence to RAD (not on JR)

Other avenues for status

- **Humanitarian and compassionate applications**
- **Pre-removal risk assessment applications**
- **People without status – stateless, non-removable**
  - **Eligible for work permit, study permit and social assistance**
  - **MSP**
  - **No ability to travel outside the country**

- **10 million stateless people worldwide** who have been denied a nationality and access to basic rights such as education, healthcare, employment and freedom of movement.

Overseas sponsorship

- Sponsor: Group of 5 Canadians or permanent residents, Sponsorship agreement holders or community group
- Refugee:
  - Definition under s. 96 (not 97); or
  - Persons who "have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violations of human rights" (ss. 146-147 *IRPR); or*
  - Per Minister's public policy categories. Recent examples include IRCC's temporary public policy to facilitate the sponsorship of Syrian and Iraqi refugees;
  - s. 25.1 *IRPA*, allows the Minister to grant an exemption if the Minister is of the opinion that it is justified by humanitarian & compassionate considerations relating to the applicant, taking into account the best interests of a child directly affected
- Must be recognized as refugee by UNHCR or another state –
  - unless policy exemption or SAH sponsor
- Outside country of origin/risk
- No reasonable prospect of a durable solution in current country
- will be able to become successfully established in Canada?
  - Unless in "urgent need of protection" or "vulnerable"; rarely applied in practice
- Must declare ALL relatives (children/spouse) or will be barred from sponsoring in future (Reg 117)

Loss of status

- Inadmissibility (all immigrants):
  - Security, violating human or international rights, serious criminality (6 mo+ imprisonment, or potential of 10 year or more sentence) or organized criminality
  - Medical/family/financial – N/A to refugees/PRs
- Danger Opinion: Required to remove an inadmissible refugee
- Cessation: loss of refugee status for reavailment of protection of country of origin (obtaining passport / returning to country of origin) or re-establishment
- Vacation: loss of refugee status for fraudulent claims

Support is critical

- Finding housing, navigating the world and succeeding in their claim
  - Evidence gathering, filling forms, emotional support, referrals, etc.
- Health – physical/ psychological
  - Bridge Health Clinic, VAST
- Family or community organizations
  - SOS/Mosaic, Red Cross, VAST, Inland Refugee Society, Options, Kinbrace, ISS of BC etc., Ready Tours
- Legal representation
  - Legal Services Society, Law Students Legal Advice Program, Pro Bono BC
- Difficulties if detained



Tips for support workers

- Contact LSS or counsel *before* going to CBSA/Police/IRCC
- Credibility – first impressions matter forever
- Documentation to support claim – Begin gathering asap. Brainstorm. Send scanned copies first – followed by originals in the mail.
- Vulnerability/mental health issues/trauma – refer to VAST or counsellor for assessment asap.

ELDER ABUSE, NEGLECT & SELF NEGLECT



How to recognize it?

How to respond to it?

seniors first BC

LSS – Legal Aid Bootcamp
Thursday, May 4, 2017

Seniors First BC programs:

- Public Education – workshops and presentations
- Seniors Abuse & Information Line (SAIL)
- Victim Services Program
- Legal Programs – Legal Advocate & Lawyers

For more information see seniorsfirstbc.ca

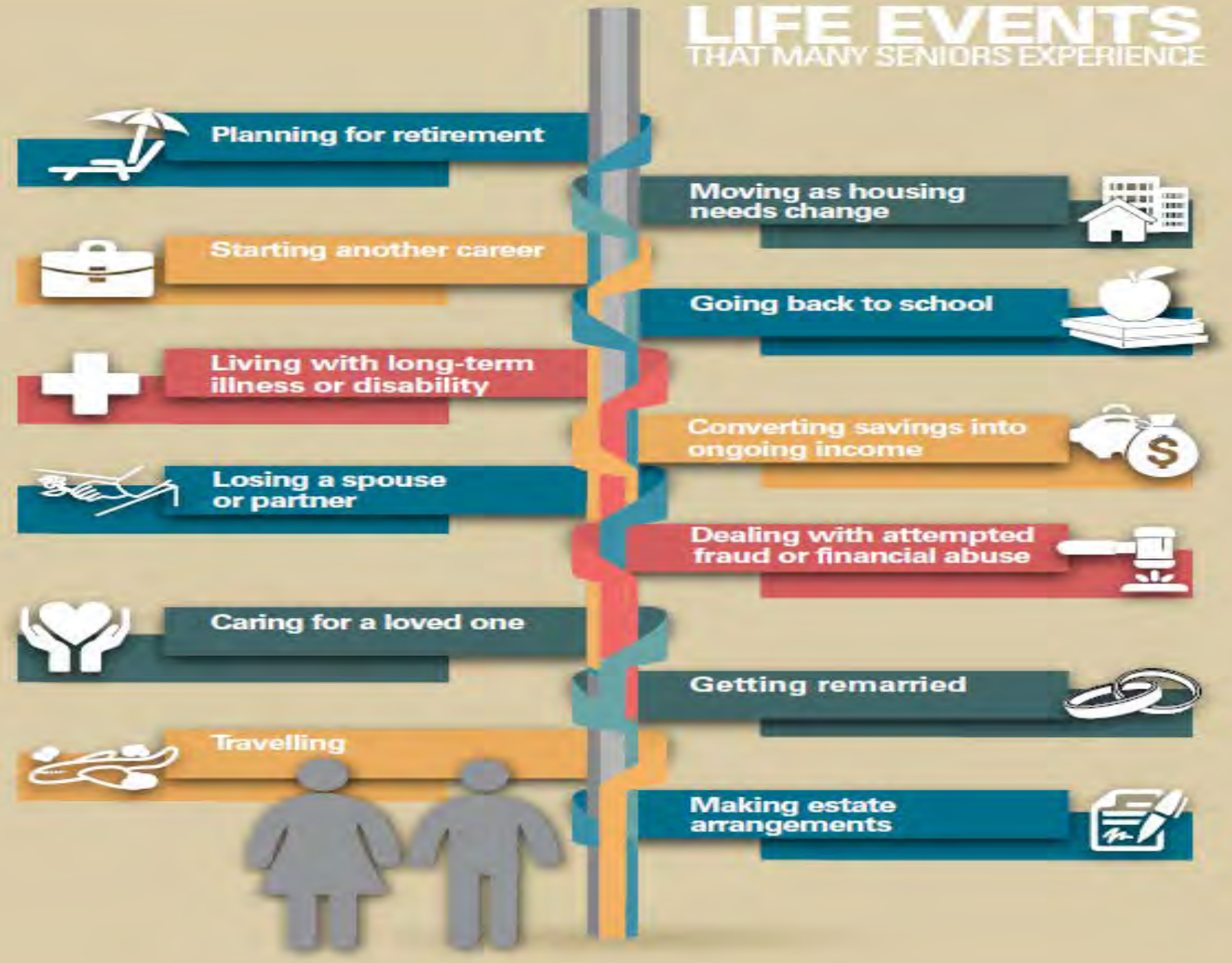
Mental Capacity and Elder Abuse

Vulnerability to abuse and/or neglect increases as a result of:

- Diminished mental capacity
- Ageist beliefs or actions by others
- Occurrence of significant life events



LIFE EVENTS
THAT MANY SENIORS EXPERIENCE



Mistreatment of Older Adults

- Acting = causing physical, mental, financial or sexual harm to an older adult.

  → *ELDER ABUSE*

- Not acting = Not providing care or assistance to a dependent person

  → *NEGLECT*

- Not acting = Not providing or seeking care for self – putting own health, safety or well-being at risk

  → *SELF NEGLECT*

Many Types of Elder Abuse

- Physical
- Psychological / Emotional
- Sexual
- Chemical (medications)
- Spiritual
- Financial
- Forced Confinement
- Institutional
- Neglect

NOTE – Self Neglect is not a form of elder abuse but is included in responses.

Elder Abuse – Potential Abusers

- Family Member
- Partner/Spouse
- Child/Grandchild
- Neighbour
- Friend
- Caregiver
- Building Manager
- Doctor
- Lawyer
- Trustee
- Substitute Decision-Maker
- Legal Guardian

...Anybody....

Elder Abuse Can Happen…

- At home
- In a hospital
- In a care facility or nursing home
- In the community



Prevalence of Elder Abuse

INTO THE LIGHT – National Prevalence Study

- Largest prevalence study ever conducted in world
- Surprising results:
  - 7.5% abused
  - With neglect added – 8.2%
  - Psychological – 2.7%
  - Financial – 2.6%

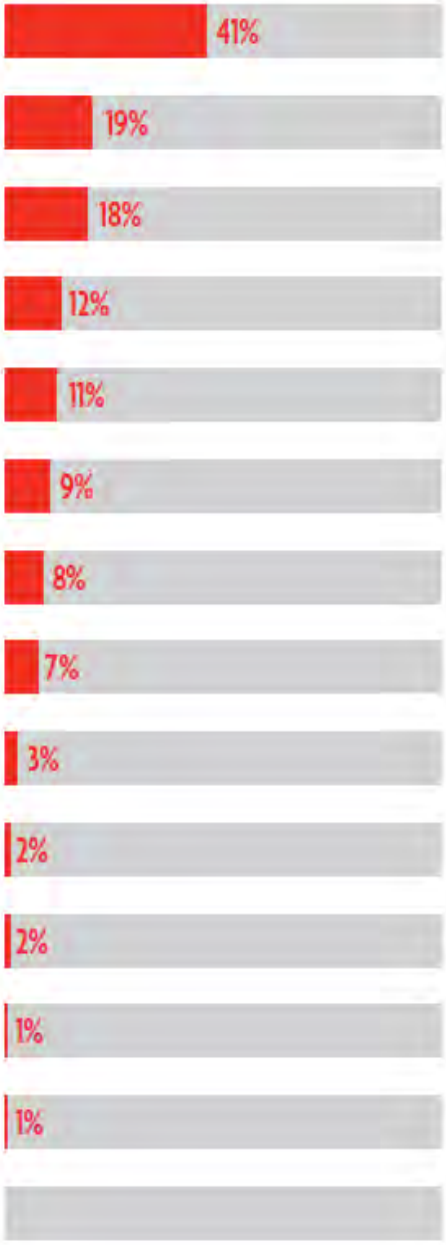
- Compare with a Vancity Study:
  - 6.4% self-reported financial abuse
  - But when presented with list of scenarios, 41% reported experiencing at least one type of abuse





seniors first BC

Types of Senior Financial Abuse Personally Experienced



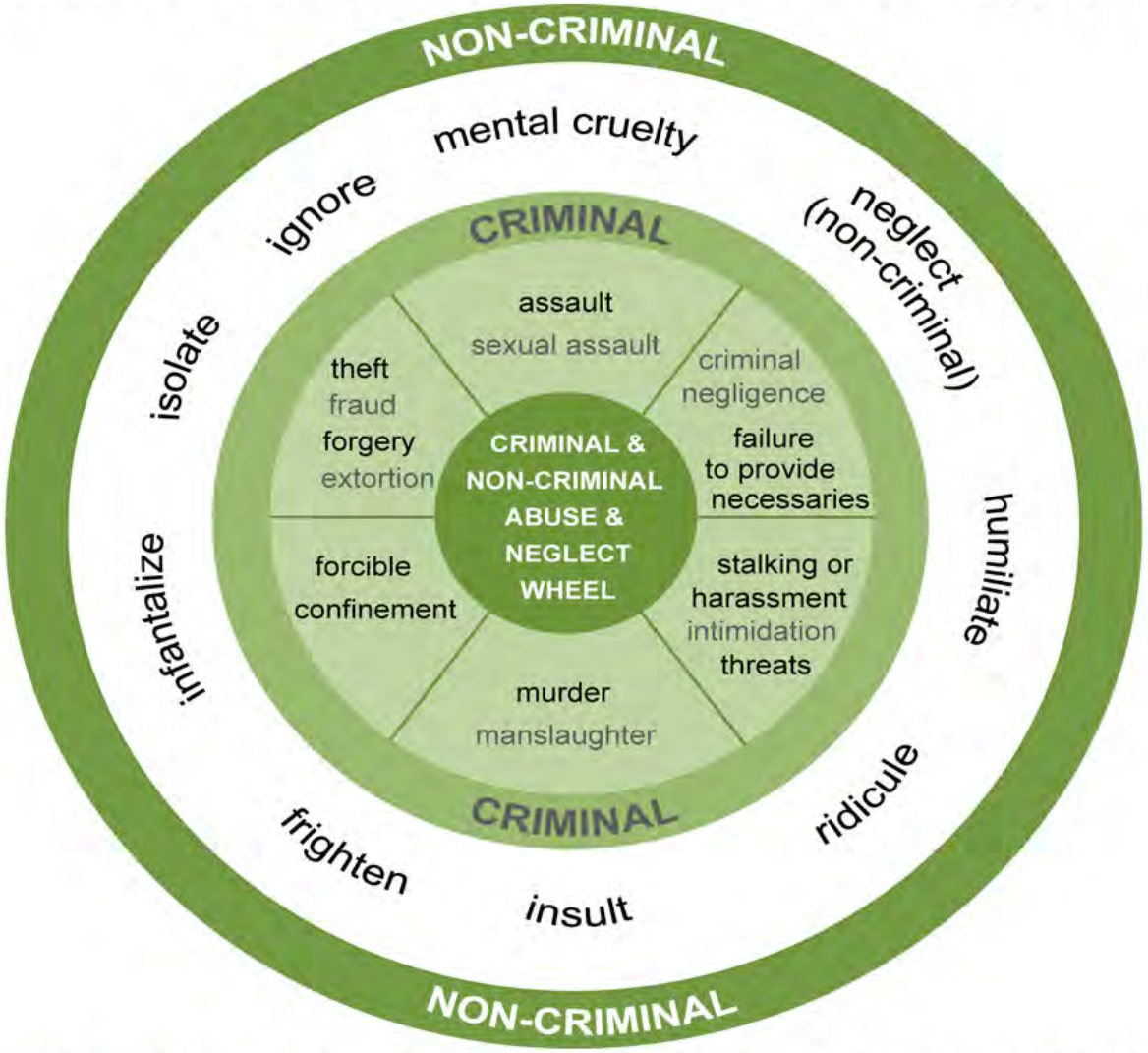
41%	**Proportion of seniors experiencing at least one type of abuse.**
19%	Borrow money from you without your knowledge, or not pay back money you have loaned them
18%	Pressure you to give them money
12%	Offer to do a job for you for a set fee, only to not complete the job after they have been paid, or start the jobs and then say it will cost more than they said to complete
11%	Take a valuable possession from your home, either to keep it themselves or to sell it and keep the money
9%	Pressure you to buy them something, or make a payment on something for them
8%	Forge your signature
7%	Use your money to buy themselves something without your permission by misusing your credit card or bank card or withdrawing money from your account, even if it was a joint account
3%	Sent money to someone in response to an email either requesting to help or offering you a prize which turned out to be fake
2%	Pressured by someone to remortgage your home, to help them out financially
2%	Pressure you to change beneficiaries on your life insurance or other investments
1%	Pressure you to change your will
1%	Pressure you to sell your home or move from your home to help out financially
	Pressure you to change your power of attorney, or use that power to do something that is not in your benefit

What Does the Law Say?

- There is no crime called elder abuse or neglect
- Some abuse is illegal
- Some abuse is not a crime



Criminal and Non-Criminal Abuse & Neglect Wheel



Abuse tends to escalate and crimes often overlap and blend together.

ADAPTED, WITH PERMISSION, FROM ELDER ABUSE: THE HIDDEN CRIME — ADVOCACY CENTRE FOR THE ELDERLY, TORONTO

Responses



Calling the Police



- The safety of the older adult is of paramount importance in any abuse and neglect situation.
- 911 should always be called if immediate safety is an issue.
- Police will investigate, arrest & charge an offender

For Those Unable to Seek Help

Adult Guardianship Act ("AGA")– Part 3

The purpose of this Part is to provide for support and assistance for adults who are abused or neglected and who are unable to seek support and assistance because of

(a) physical restraint,
(b) a physical handicap that limits their ability to seek help, or
(c) an illness, disease, injury or other condition that affects their ability to make decisions about the abuse or neglect.

Role of Designated Agency

If a Designated Agency (DA) under the AGA receives information about possible abuse, neglect or self-neglect of an adult, it must:



- look into the situation;
- involve the adult as much as possible; and
- report criminal offences against an adult to the police.

***NOTE** - All the regional health authorities are designated agencies, along with Providence Health for their patients and Community Living BC for their residents*

Getting in the Door



If access to the suspected abused or neglected person is denied, designated agencies have authority under *AGA* to enter the premises:

- Emergency Access, without court order or warrant;
- Urgent situations, a Warrant either from a Justice of the Peace; or
- With a Court Order.

May get assistance of police in carrying out duties.

Designated Agency "Tool Kit"



- Work with community services to offer support and assistance.
- Involve the Public Guardian & Trustee to protect assets.
- Civil "No Contact" and financial support orders.
- Apply to civil court for a Support & Assistance Order if the adult is abused or neglected, refuses assistance and is mentally incapable of deciding not to accept the assistance.

Public Guardian and Trustee

PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

604-660-4444

www.trustee.bc.ca

- Investigates allegations of financial abuse through its Assessment and Investigation Services (AIS)
- Emergency powers to freeze accounts and protect assets
- Manages financial decisions when appointed as Statutory Property Guardian
- Assists and provides resources to substitute decision-makers

seniors first BC

For Those Able to Seek Help



Why Criminal Route May Not Work

- Criminal prosecutions are often difficult, as the victim may be reluctant to cooperate in a prosecution against their loved one;
- The victim may have poor health and possible present or impending mental incapacity;
- The prosecution may take so long that the victim dies before the case goes to court; and
- The perpetrator may be the only significant person in the victim's life and to report and testify against them would result in loneliness and pain from the perceived consequences of the intervention.

Peace Bonds & Family Protection Orders

- Part 9 (ss. 182-191) of the *Family Law Act*, now provides a comprehensive code for protecting "at-risk family members" that is not tied to any other aspect of a family law case.
- The court is required to consider not only physical violence, but whether there is a pattern of emotional or psychological abuse that constitutes "a pattern of coercive and controlling behaviour" towards a family member.
- The court must also consider the family member's perception of the risk, as well as the particular vulnerabilities of the family



Caring for the Family Caregiver

Those providing care for an older loved one may be so focused on that care, that they neglect their own well-being.

This can affect the quality of care they provide, and may even lead to abuse or neglect.

The BC government lists a number of resources for family caregivers



What is Social Isolation

- A lack of meaningful social contact
- A lack of meaningful relationships



Social Isolation and Elder Abuse

BEING CONNECTED:



- Helps to stop abuse
- Helps abuse to get noticed
- Helps people affected by abuse to get necessary support and assistance

Victim Services

BRITISH COLUMBIA VictimLinkBC
Information and Support for All Victims of Crime

Police based and community based victim services workers can:

- Offer info, practical assistance and emotional support to victims of crime and elder abuse.
- Communicate needs of older adult to police and/or Crown counsel
- Provide info about status of investigation or other criminal justice system process
- Liaises with other community agencies

Responses to Financial Abuse



Informal Responses - advance planning documents (EPOA, s. 7 RA), informal banking arrangements (direct deposit, PAP), joint accunts, trusts

Agency Responses - various agencies that may investigate and respond - DA, PGT, Pension Trusteeship, Statutory Property Guardian

Possible Responses to Financial Exploitaiton

Civil Remedies - civil courts and Civil Resolution Tribunal, civil restitution, committeeship , support and assistance order

Criminal Remedies - criminal offences, offences by attorney/agent, restituion, enhanced sentencing

Compare - Requirements & Results

Power of Attorney

- Power of Attorney document
- Legislated formal validity requirements – capacity test
- Legislated duties
- Access to *all* property, but *no* ownership
- Death ➲ EPOA ceases

Joint Bank Account

- Signature cards
- No legislated duties
- Access to *only* account, with ownership
- Death ➲ 'right of survivorship' [subject to resulting trust]

Is misappropriation really actionable?

Power of Attorney

- Attorney has legal authority to do anything the senior can do
- except make a Will

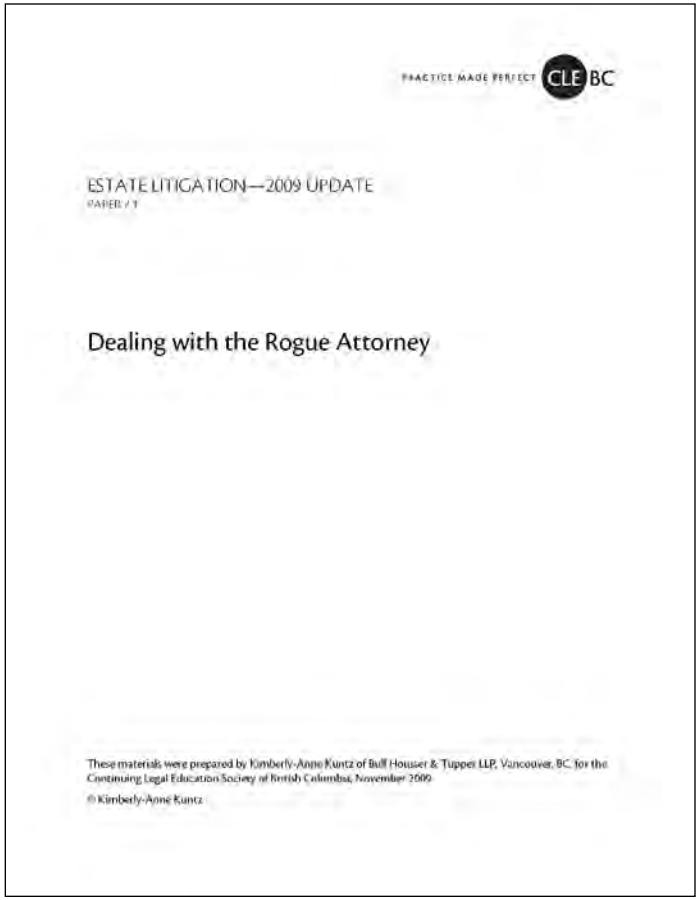
Joint Bank Account

- Joint account holder has a form of legal title on the bank account, or money on deposit

Dealing with the Rogue Attorney

Discusses:

- duties and responsibilities
- Examples of misuse of POA
- Remedies to stop rogue attorney:
  - Can Third Parties Demand an Accounting?
  - Revocation or Termination of the Power of Attorney
  - Intervention by the PGT
  - Recourse Through the *Patients Property Act*
  - Claims by Committees or Estate Representatives


PRACTICE MADE PERFECT CLE BC

ESTATE LITIGATION—2009 UPDATE

PAPER 7.1

Dealing with the Rogue Attorney

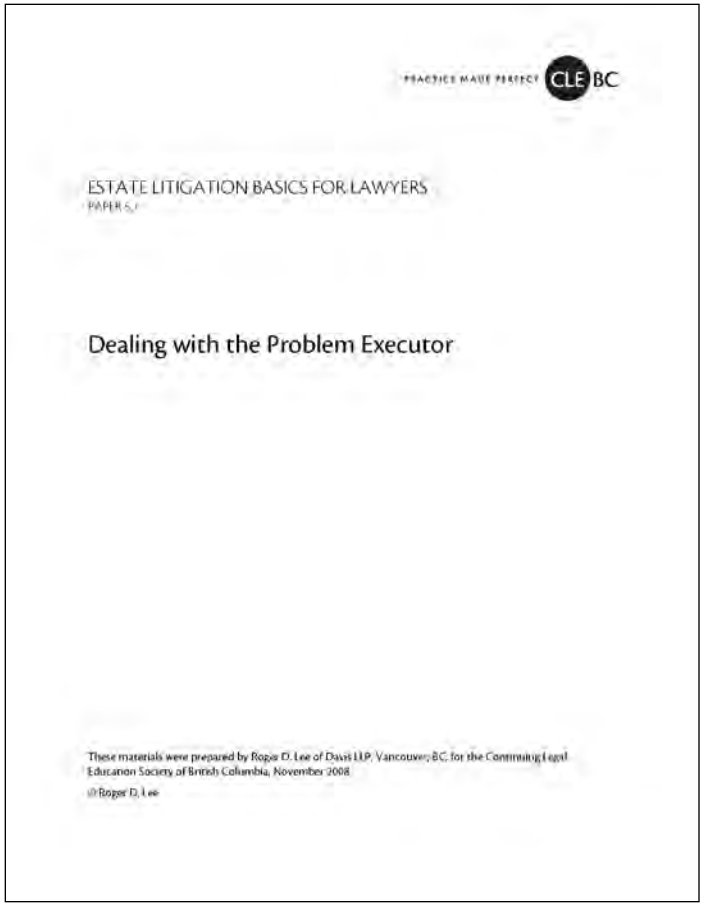
These materials were prepared by Kimberly-Anne Kuntz of Bull Housser & Tupper LLP, Vancouver, BC, for the Continuing Legal Education Society of British Columbia, November 2009.

© Kimberly-Anne Kuntz

Problem Executors

Covers three main areas:

- the basic duties and obligations of an executor, and how to use that to control the executor;
- contested passing of accounts; and
- when and how to remove an executor.



PRACTICE MADE PERFECT CLE BC

ESTATE LITIGATION BASICS FOR LAWYERS

PAPER 5.1

Dealing with the Problem Executor

These materials were prepared by Roger D. Lee of Davis LLP, Vancouver, BC, for the Continuing Legal Education Society of British Columbia, November 2008.

© Roger D. Lee

Rebuttable Presumption/Restitution

When older adults advance money or property to adult children, the presumption is a loan, bargain, resulting trust (see *Pecore v Pecore*).

This presumption, along with the remedy of civil restitution based on the principle of avoidance of unjust enrichment, greatly simplifies recovery work in this area.



Civil Restitution

To succeed in a restitution claim, a plaintiff need only show that

1. the defendant received an enrichment
2. it was to the detriment of the plaintiff, and
3. there is no good reason in law ('juridical reason') for the defendant to retain that benefit.

"The unique advantage of a claim for restitution is that it is usually not necessary to show a "meeting of minds" or even a "common intention" between the older-adult plaintiff and defendant recipient of money or property in respect of which recovery is sought. This body of law alleviates the need for much evidence concerning what were the precise terms that the parties intended…"

Graham Webb, Advocacy Centre for the Elderly, Toronto

Undocumented Loans

With most ‘family loans,’ no mention is made about how or when they should be paid back, indeed likely no documentation at all.

In the case of these ‘demand obligations’ loans, ‘discovery’ is on the first day of default after a demand for repayment has been made and no payment is made. [section 14 of the *Limitation Act*].



Note that there are two parts to this ‘discovery’ – a demand is made, and the person who borrowed the money does not comply.

From the date the payment was demanded and no payment made, the clock starts to run for the two year limitation period.

Financial Abuse & FPO's

The definition of "family violence includes:

(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….



RESOURCES



Your Support Staff

Your support staff may know more than you think about:

- Client's capacity
- Abuse +/or neglect by friends, family members
- Undue Influence

People who are on their best behaviour with you, can act quite differently in the reception area.



seniors first BC

Seniors Abuse and Information Line (SAIL)

604-437-1940 | 1-866-437-1940 (toll free)
Available 8am to 8pm daily, excluding holidays

TTY: 604-428-3359 | 1-855-306-1443 (toll free)
Available 9am to 4:30pm Monday-Friday

Language Interpretation
Available 9am to 4:30pm Monday-Friday

Seniors First BC 'For Professionals' Pages

Information and resources to help you and your team better accommodate older clients and improve the delivery of services to them:

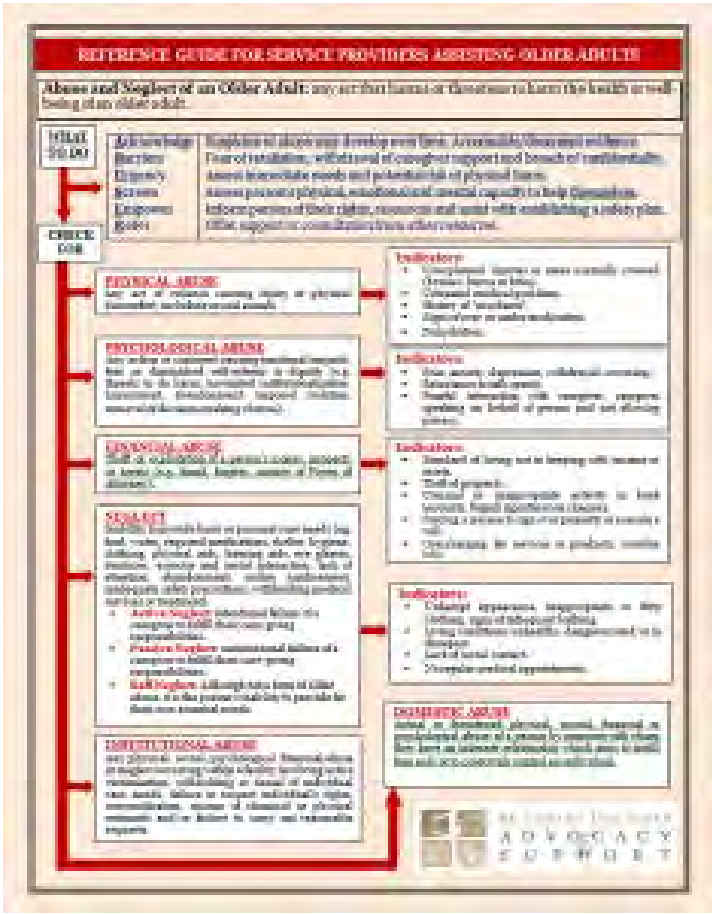
1. Accommodating older adults
2. Ethical Challenges
3. Incapacity Issues
4. Supported Decision Making
5. Timeliness and Efficiency
6. Specific Areas of Elder Law
7. Public Legal Education Resources



Reference Guide for Service Providers

Our Reference Guide for Service Providers Assisting Older Adults helps you identify and respond to elder abuse and neglect. It includes:

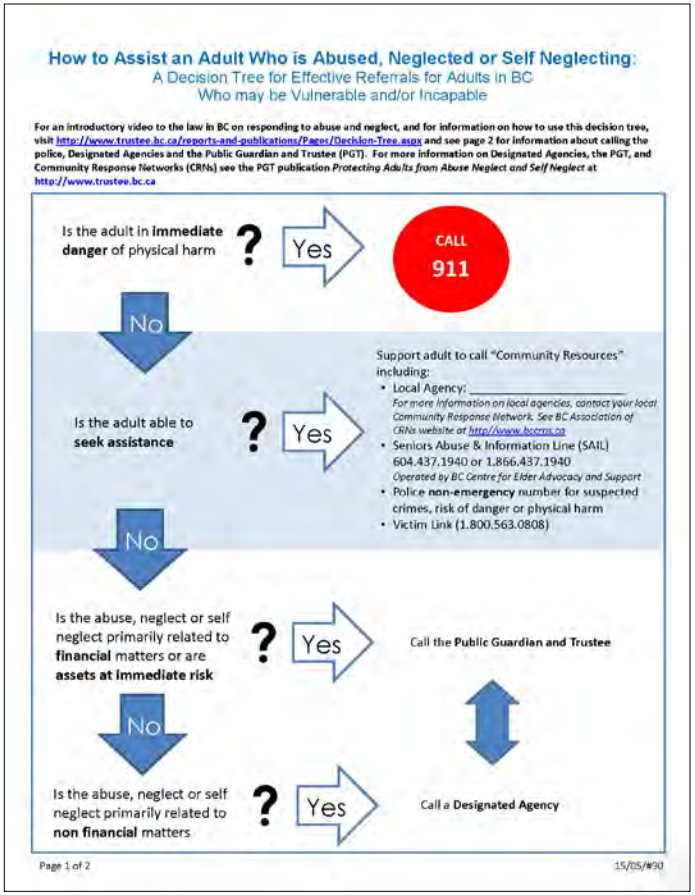
- What to check for
- Indicators
- Interview Strategy
- Possible Interventions
- If client doesn't consent, maintain contact to initiate:
  - Education
  - Safety Plan
- Useful Help Numbers



seniors first BC

PGT's 'Decision Tree'

- The PGT has developed a 'decision tree' to ensure effective referrals for adults who may be vulnerable and/or incapable
- There are also five videos available online:
  1. How to use the Decision Tree
  2. Overview of the Legislative Changes
  3. The Role of Designated Agencies
  4. The Role of the PGT
  5. The Role of the Police



How to Assist an Adult Who is Abused, Neglected or Self Neglecting:
A Decision Tree for Effective Referrals for Adults in BC
Who may be Vulnerable and/or Incapable

For an introductory video to the law in BC on responding to abuse and neglect, and for information on how to use this decision tree, visit http://www.trustee.bc.ca/reports-and-publications/Pages/Decision-Tree.aspx and see page 2 for information about calling the police, Designated Agencies and the Public Guardian and Trustee (PGT). For more information on Designated Agencies, the PGT, and Community Response Networks (CRNs) see the PGT publication *Protecting Adults from Abuse Neglect and Self Neglect* at http://www.trustee.bc.ca

Is the adult in **immediate danger** of physical harm ? Yes → CALL 911

No

Is the adult able to **seek assistance** ? Yes →

Support adult to call "Community Resources" including:
- Local Agency: _____
  For more information on local agencies, contact your local Community Response Network. See BC Association of CRNs website at http://www.bccrns.ca
- Seniors Abuse & Information Line (SAIL) 604.437.1940 or 1.866.437.1940
  Operated by BC Centre for Elder Advocacy and Support
- Police **non-emergency** number for suspected crimes, risk of danger or physical harm
- Victim Link (1.800.563.0808)

No

Is the abuse, neglect or self neglect primarily related to **financial** matters or are **assets at immediate risk** ? Yes → Call the **Public Guardian and Trustee**

No

Is the abuse, neglect or self neglect primarily related to **non financial** matters ? Yes → Call a **Designated Agency**

Page 1 of 2 15/05/#90

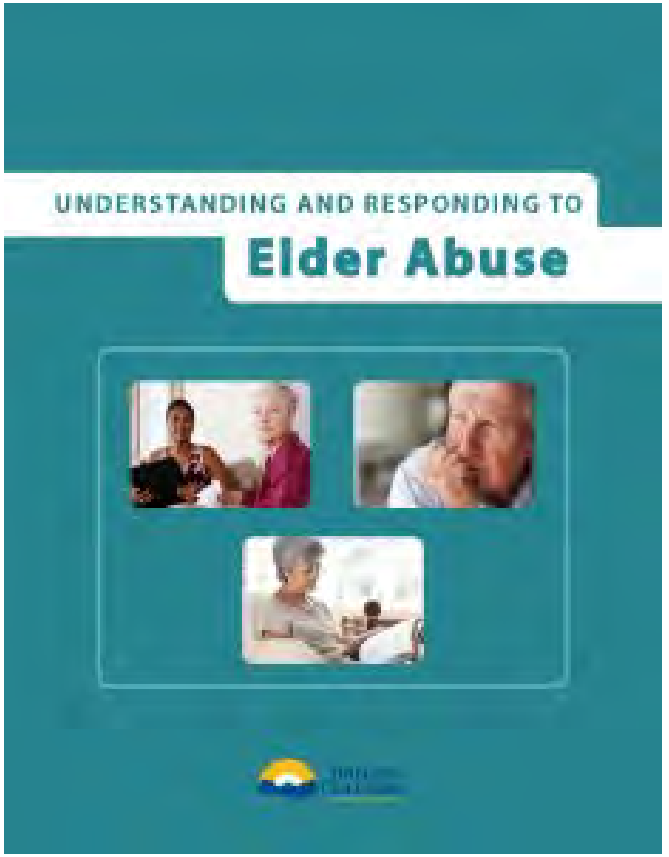
Understanding & Responding to Elder Abuse - E-Book

Covers:

- types of elder abuse and risk factors:
- B.C. government programs and community services available; and,
- practice tips on how to work with older adults who have been abused.

Also includes:

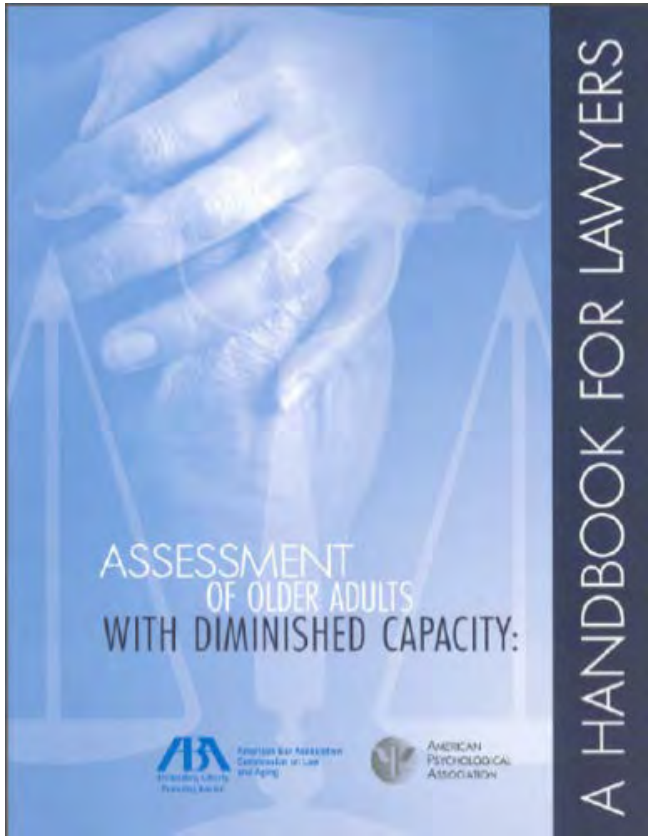
- resources, information + links;
- video interviews with local stakeholders, and
- role play video scenarios on how to address different types of elder abuse.



ABA Handbook for Lawyers

Developed jointly by ABA/APA

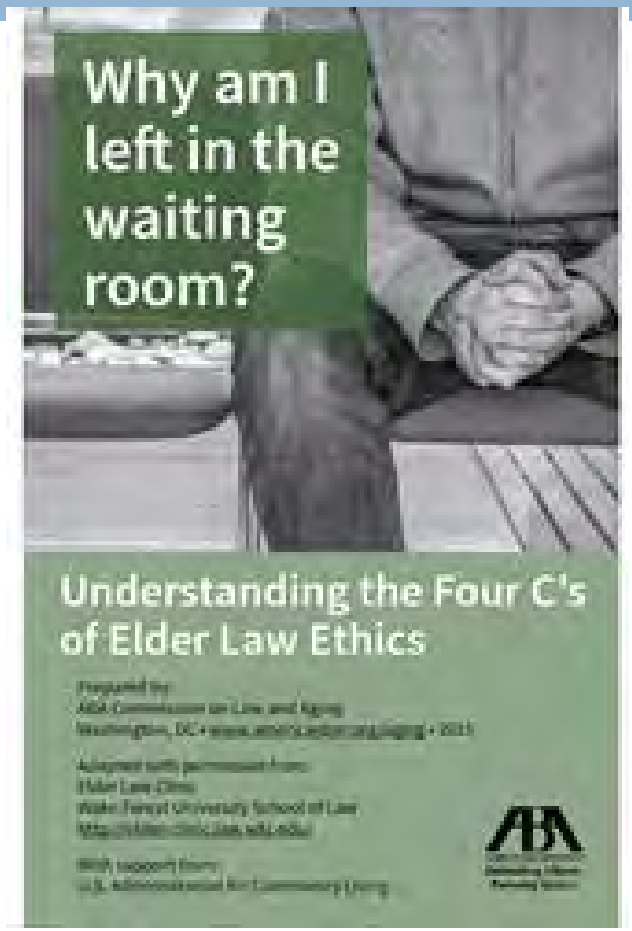
- This handbook recommends a procedure for conducting an assessment and a suggested capacity worksheet
- Suggests how to enhance capacity where possible
- When/how to refer for medical assessments
- Using and understanding capacity assessment reports



Excluding 3rd Parties

This ABA pamphlet explains to 'friends' and relatives why the lawyer needs to meet with a client alone if at all possible to properly address the four C's of Elder Law Ethics:

1. **Client ID** (who is the client – what are instructions)
2. **Conflicts of Interest** (only one client if possible)
3. **Confidentiality** (and protection of legal privilege)
4. **Competency** (assessing capacity)

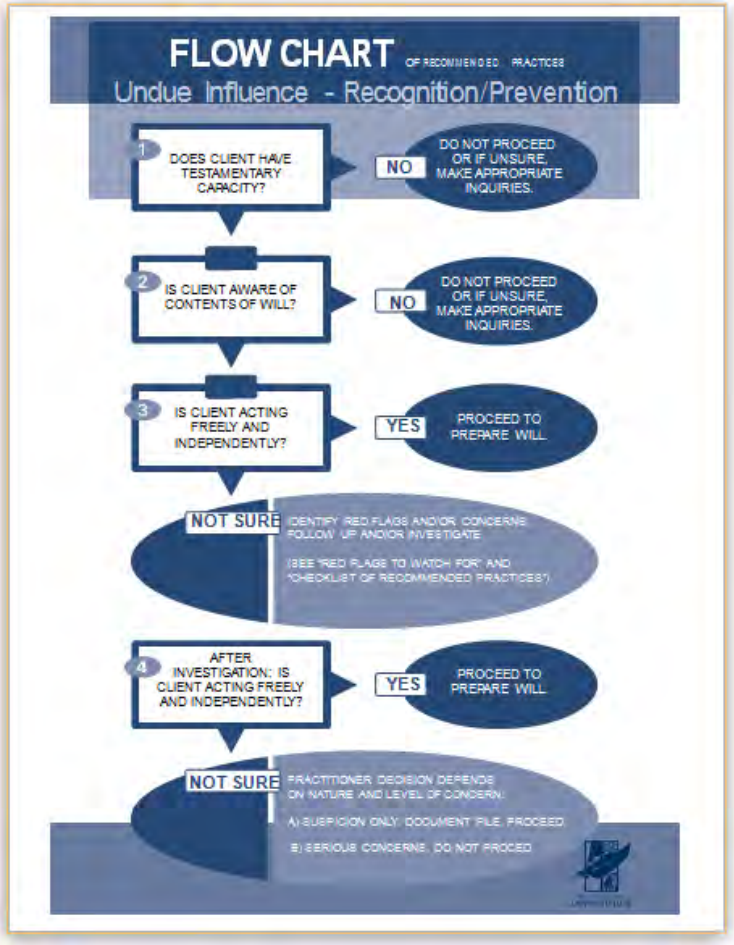


seniors first BC

Undue Influence

The BC Law Institute has prepared a guide book ("*Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide*"). It includes

- a checklist of recommended procedures, useful in any situation where undue influence is suspected.
- a list of 'red flags' to watch for; and,
- A flowchart

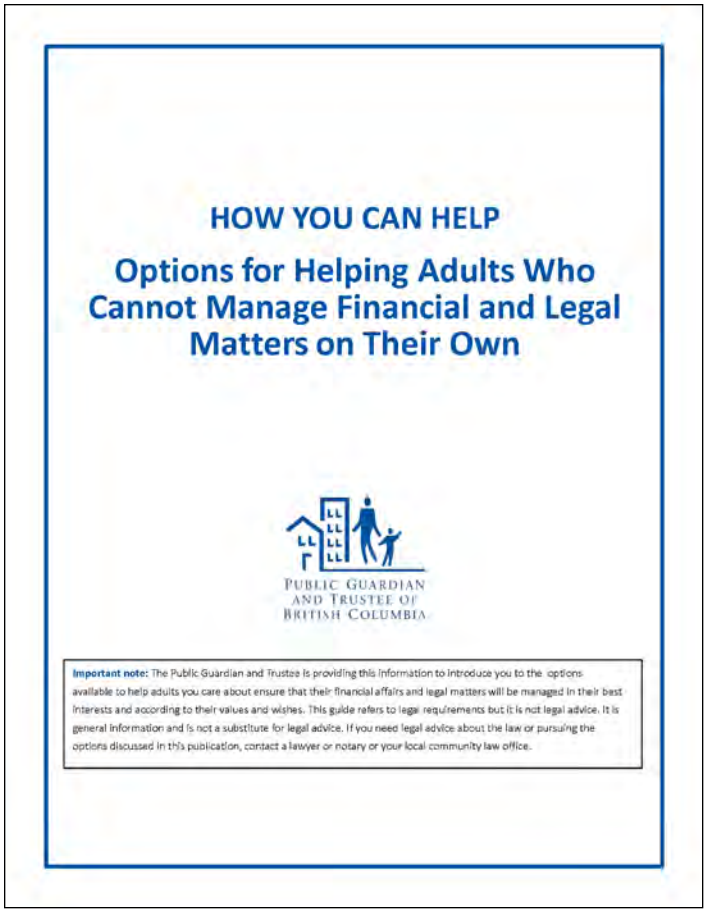


seniors first BC

PGT Booklet – How You Can Help

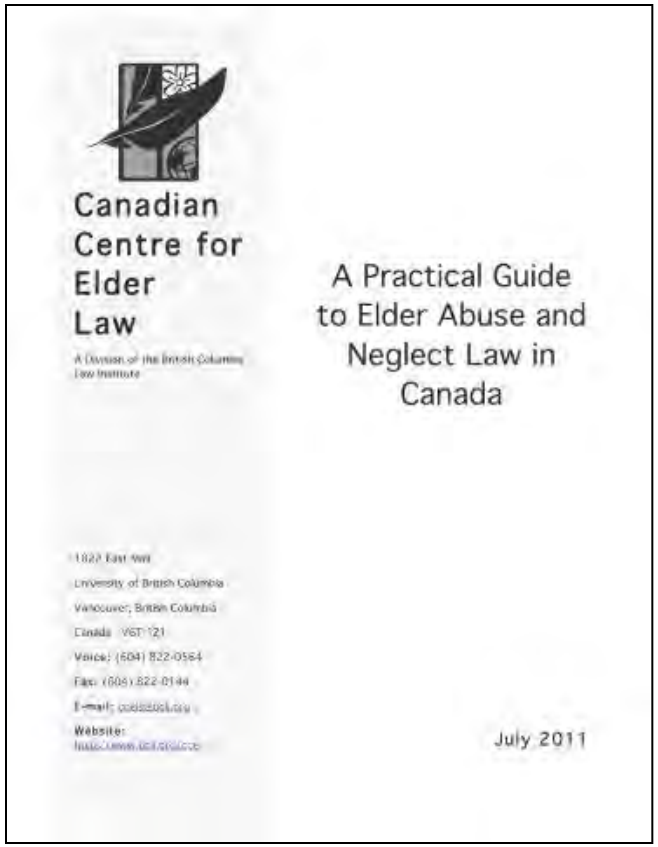
Discusses:

- Informal options:
  - Direct deposits -& pre-authorized payments
  - Joint bank accounts
  - IT clinics
- Personal Planning Options
  - EPOA's
  - S. 7 RA for routine financial management
- Other Legal Options
  - Federal Pension Trustee
  - Committee of Estate
  - PGT as Statutory Property Guardian
- When You Have Concerns
- Helpful Links



A Practical Guide to Elder Abuse/Neglect Law in Canada

- defines elder abuse and gives examples,
- sets out guiding principles for responding effectively (see above),
- discusses the law and whether elder abuse and neglect is a crime,
- Discusses Ageism, Elder Abuse and Human Rights Law
- Mental Capacity and Consent
- Professional Confidentiality and Solicitor-Client Privilege
- Mandatory Reporting of Elder Abuse
- Reviews the law and resources in each of the provinces and territories



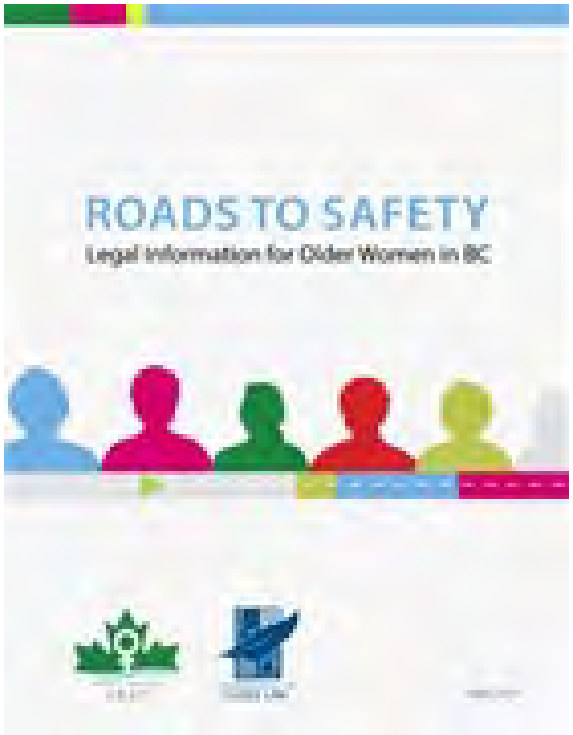
NOTE – will be revised and updated this year

seniors first BC

Roads to Safety

Legal Information for Older Women in BC:

- Decision-making rights and capacity,
- Substitute decision-makers and the abuse of decision-making authority
- Protection orders and peace bonds
- Options to assist older women who are facing abuse and cannot take action to protect themselves
- Public pensions
- Basics of property division after separation or divorce, including pension division
- Steps to protect assets in cases of financial abuse



Elder Abuse is Wrong

Intended as a resource booklet for older adults who may be suffering from abuse by someone they trust.

Covers:

- Physical Abuse
- Sexual Abuse
- Emotional Abuse
- Financial Abuse
- Neglect
- Institutional Abuse or Neglect
- Help Available
- How to report abuse
- How to build a reference list



Government of BC

The BC government has a web page on Protection from Abuse and Neglect, with the following brochure and fact sheets in English, French, Traditional Chinese, and Punjabi.

Brochures

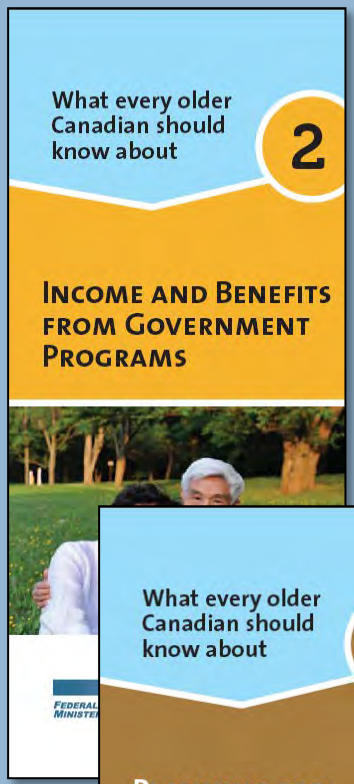
- Responding to Elder Abuse: Resources
- Financial Abuse: Protecting British Columbia's Seniors
- Are You Dating? Older Adults and Healthy Relationship
- How to Tell Someone You Are Being Abused: Starting the Conversation

Fact Sheets

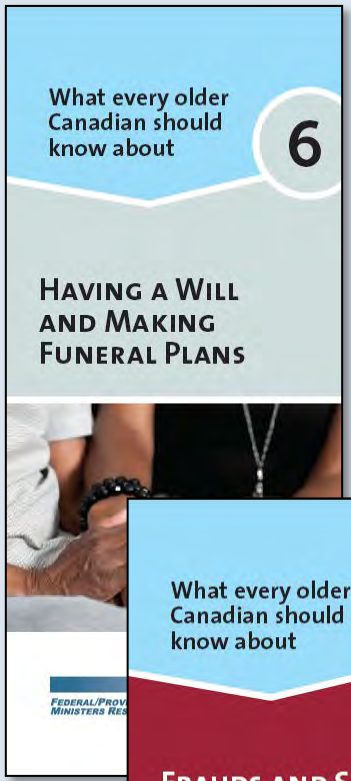
- Are you dating
- How to tell someone you are being abused
- Responding to Elder Abuse
- Financial Abuse

What Every Older Canadian Should Know About:



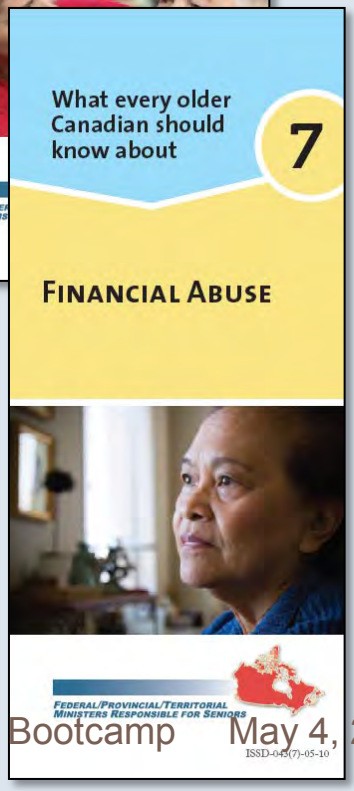


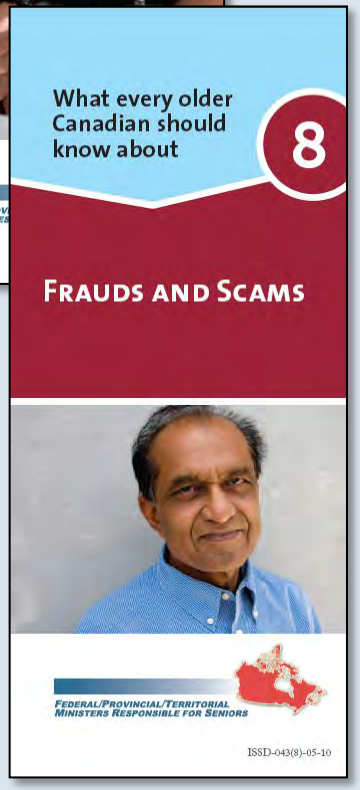








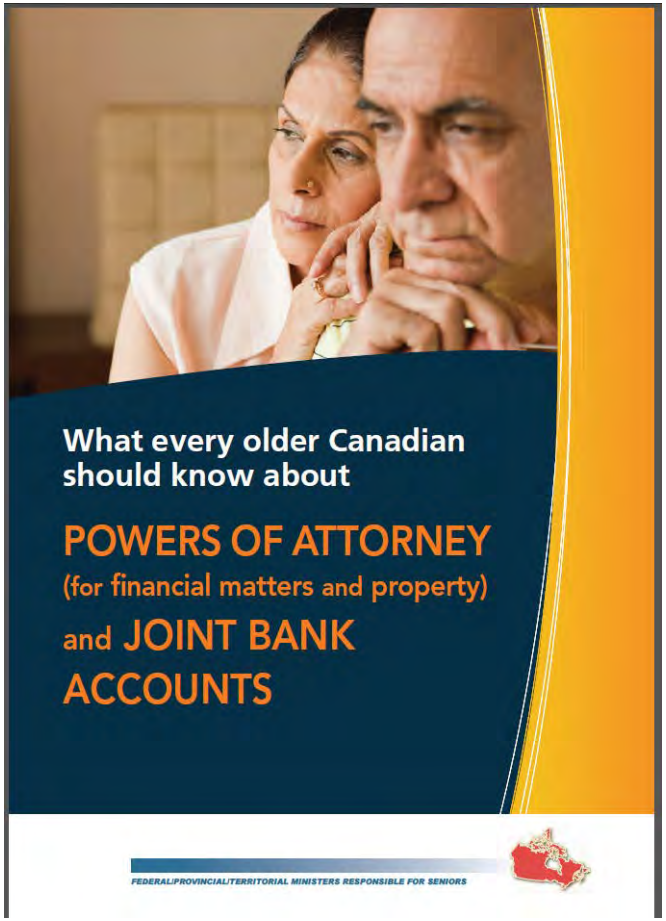




POAs and Joint Bank Accounts

The Federal, Provincial and Territorial Ministers Responsible for Seniors developed this guide book

It discusses the pros and cons of Powers of Attorney and Joint Bank Accounts.



When I'm 64 Series

- From People's Law School & Seniors First BC
- Three booklets on services, benefits and advance planning for older adults







Community Response Networks (CRNs)

- CRNs are groups of local people and organizations in a community who work together to ensure an appropriate and coordinated response to adult abuse, neglect and self-neglect.
- This involves prevention, education, advocacy, protocols…
- They develop a contact list for each community.

BC CRNs

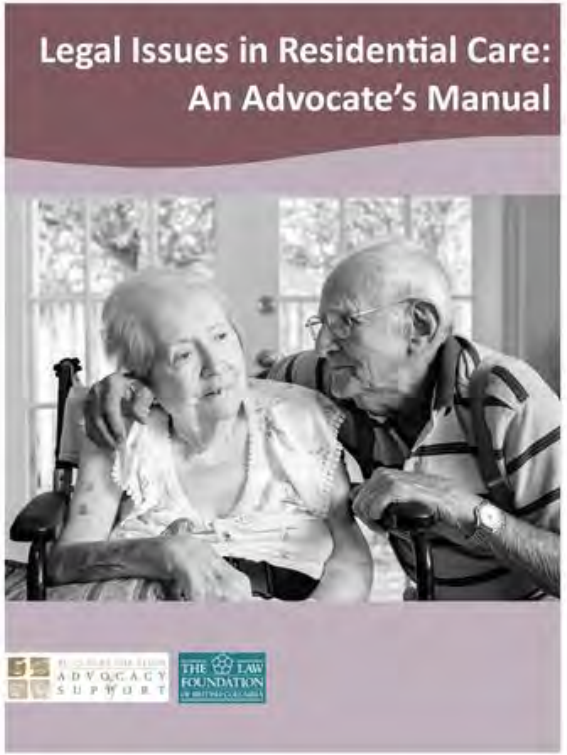
BC Association of Community Response Networks

Stopping Adult Abuse and Neglect …Together

seniors first BC

Involuntary Separation

- If a couple is no longer able to live together for reasons beyond their control, such as when one partner has to move into a residential care facility
- OAS, GIS and Allowance payments can be calculated based on individual rather than combined income
- CPP pension credits can also be split
- May be entitled to other benefits based on lower income



The Never-Ending Client? – Release Info

Permitted Responses to Requests

I authorize the lawyers at _____ to release any files to the following persons who initiate a request for information to them:

- ❑ My appointed attorney (agent) under an enduring power of attorney
- ❑ My appointed Representative under a Representation Agreement, living trust or will
- ❑ Any court having jurisdiction over me or my financial affairs
- ❑ My health care providers
- ❑ The following family and friends: _____
- ❑ If such a request for information is made to _____, I request that _____ advise me of such request.

The Never-Ending Client? – Prevent Abuse

Disclosures to Prevent Abuse or Neglect When Capacity Declines

In the event that I may experience a decline in my capacity, I authorize _____ to:

- ❑ Report suspected neglect, financial, or other abuse to appropriate agencies.
- ❑ Meet with me privately to assess my wishes, even if my appointed agent, representative, a family member, caregiver, or friend disagrees.
- ❑ Petition a Court for a Committeeship (guardianship) to protect my safety or my estate.

The Never-Ending Client? – After Death

Permitted Actions After My Death

I authorize _____ to do the following after my death:

- ❑ Explain to my appointed Executor/trix, Trustee, or agents under Beneficiary Agreements what legal tasks need to be undertaken.
- ❑ Explain to the beneficiaries receiving my assets about their rights.
- ❑ Disclose my intent, including testimony in any legal proceeding concerning my estate, in making a trust, will, beneficiary designation, and/or joint property arrangements, except for those matters I have instructed _____ to keep confidential.

The Never-Ending Client? – Other Clauses

Payment to Seniors First BC

I authorize payment to _____ for the services described above at the rate of $____/hour plus any necessary disbursements.

I agree that _____ has no affirmative duty to monitor or supervise my situation or advocate for me or my estate. I reserve the right to revoke my consent at any time. I agree that this right is personal to me and that, during my lifetime, this right to revoke may not be exercised by my agent under my enduring power of attorney.

Best Practices



Best Practices – 1 of 2

- ✓ All staff trained on dementia recognition & diminished capacity
- ✓ All staff trained in basic communication techniques, aging process, disability concerns, & avoiding stereotypes
- ✓ Do walk-through/wheel through/ checklist to ensure elder/disability friendly office
- ✓ Protocol - interview client alone (unless client asks for support person); stress confidentiality



Best Practices – 2 of 2

- ✓ Develop ongoing relationship with capacity assessment specialists
- ✓ Be familiar with legal tests of capacity for common legal transactions
- ✓ Understand incapacity provisions of LSBC's Code of Conduct
- ✓ Review ABA's "Assessment of Older Adults with Diminished Capacity: Handbook for Lawyers" and worksheet; use as framework



The End

Questions?

BC CENTRE FOR ELDER ADVOCACY AND SUPPORT

RESOURCES ON ELDER ABUSE PREVENTION

Seniors Abuse & Information Line (SAIL)

Metro Vancouver: 604-437-1940 | Toll Free: 1-866-437-1940
Available: 8:00 am to 8:00 pm, daily (excluding holidays)

TTY: 604-428-3359 | Toll Free: 1-855-306-1443
Available: 9:00 am to 4:00 pm, Monday to Friday (excluding holidays)

Language Interpretation
Available: 9:00 am to 4:00 pm, Monday to Friday (excluding holidays)

SAIL is a safe place for older adults, and those who care about them, to talk to someone about situations where they feel they are being abused or mistreated, or to receive information about elder abuse prevention.

Website: www.bcceas.ca

For Emergencies - call 911

Help / Crisis Lines

VictimLINK (24-hour service daily)
Toll-Free: 1-800-563-0808 | TTY: 604-875-0885 | Website: www.victimlinkbc.ca

A confidential, multilingual phone service for all victims of crime and immediate crisis support to victims of family and sexual violence.

Seniors' Distress Line (24-hour service daily)
Phone: 604-872-1234 | Toll-Free: 1-800-784-2433 | TTY: 1-866-872-0113 | Website: www.crisiscentre.bc.ca

A confidential, multilingual phone service that offers free emotional support for people experiencing feelings of distress or despair.

To Report Elder Abuse or Neglect Cases

If you have concerns that an adult is abused, neglected or self-neglected and, appears to be mentally incapable or physically unable to get help on their own, you can report the situation to the **Designated Agency** or Community Living BC (for adults with a developmental disability). Under the *Adult Guardianship Act*, designated agencies have a mandate to look into reports of abuse, neglect and self-neglect of adults who can't get help on their own.

Vancouver Coastal Health & Providence Health Care
ReAct Adult Protection Program: 1-877-732-2899 | Website: www.vchreact.ca/report.htm

Fraser Health
Toll-Free: 1-877-732-2808 |
Website: www.fraserhealth.ca/health-info/health-topics/adult-abuse-and-neglect/

Island Health
South Island: 1-888-533-2273 | *Central Island:* 1-877-734-4101
North Island: 1-866-928-4988 | Website: www.viha.ca/abuse

Interior Health
Toll-Free: 1-844-870-4754 | Website: www.interiorhealth.ca/reportabuse

Northern Health
Prince George Adult Protection Line: 250-565-7414 | Toll-Free: 1-844-465-7414 |
Website: www.northernhealth.ca

Community Living BC
Toll-Free: 1-877-660-2522 | Website: www.communitylivingbc.ca

To Report Financial Abuse Cases

Public Guardian and Trustee of BC (PGT)

If you have concerns about an adult's ability to manage his/her financial and personal care matters, you can contact the Public Guardian and Trustee of BC.

PGT provides services to adults who may need help managing their affairs, as well as to their families, legal representatives, the courts and general public.

General Inquiries
Phone: 604-660-4444 | Toll-Free: 1-800-663-7867 | Website: www.trustee.bc.ca

Services to Adults – Assessment and Investigation Services
Phone: 604-660-4507 | Toll-Free 1-877-511-4111

Financial Abuse Prevention Resources

Better Business Bureau of Mainland BC
Phone: 604-682-2711 | Toll-Free: 1-888-803-1222 | Website: www.bbb.org/mbc

Maintains a searchable database of reports on businesses (consisting of any complaints processed and governmental action involving their practices), and directory of Accredited Businesses. Also receives consumer complaints relating to marketplace transactions, including advertising claims.

BC Securities Commission – Investor Education
Phone: 604-899-6854 | Toll-Free: 1-800-373-6393 | Website: www.investright.org

Assists with questions and concerns relating to the Canadian securities industry, and offers tools for investors to research and assess potential investments.

Consumer Protection BC
Toll Free: 1-888-564-9963 | Website: www.consumerprotectionbc.ca

Assists with concerns about consumer transactions, and oversees licensing of the following industries: debt collection/pooling, bailiff, travel agency/wholesaler, cemetery and funeral service, telemarketing, film retailer/distributor, and theatre businesses.

Canadian Anti-Fraud Centre
Toll-Free: 1-888-495-8501 | Website: www.antifraudcentre-centreantifraude.ca

Receives reports of fraud by phone or online, and provides up-to-date fraud news and resources.

National Do Not Call List (DNCL)
Toll-Free: 1-866-580-3625 | TTY: 1-888-362-5889 | Website: www.lnnte-dncl.gc.ca

Register your phone number by phone or online to reduce telemarketing calls you receive. DNCL also receives consumer complaints about telemarketing calls.

Charities Listings - Canada Revenue Agency
Toll-Free: 1-800-267-2384 | TTY: 1-800-665-0354 | Website: www.cra-arc.gc.ca/charities

Maintains a searchable database of registered Canadian charities, and receives complaints or concerns.

Get Cyber Safe – Public Safety Canada
Toll-Free: 1-800-830-3118 | Website: www.getcybersafe.gc.ca

Provides public education on internet security and ways to protect yourself.

Financial Abuse Prevention Resources (continued)

Bank of Canada
Toll-Free: 1-800-303-1282 | TTY: 1-888-418-1461 |
Website: www.bankofcanada.ca/banknotes

Provides public education on checking Canadian bills for authenticity; and works with police and prosecutors to monitor and respond to counterfeiting activity.

Ombudsman for Banking Services and Investments (OBSI)
Toll-Free: 1-888-451-4519 | TTY: 1-855-889-6274 | Website: www.obsi.ca

Assists in resolving disputes between participating financial institutions and their customers, after customers exhaust internal complaint systems in such firms.

Equifax Canada
Toll-Free: 1-800-465-7166 | Website: www.equifax.ca

A national credit bureau that maintains consumer credit reports and histories. Call to request free credit report and place fraud alert on file (if you are a victim of fraud).

TransUnion Canada
Toll-Free: 1-800-663-9980 | Website: www.transunion.ca

A national credit bureau that maintains consumer credit reports and histories. Call to request free credit report and place fraud alert on file (if you are a victim of fraud).

Advance Planning Resources

Wills Clinic
Phone: 604-424-9600 | Email: willsclinic@accessprobono.ca |
Website: accessprobono.ca/willsclinic

Trained lawyers and articling students draft and execute simple wills, representation agreements and powers of attorney for low-income seniors (age 55+) and people with terminal illnesses by appointment only.

Law Students' Legal Advice Program
Phone: 604-822-5791 | Website: www.lslap.bc.ca

Law student clinicians draft and execute simple wills, representation agreements and powers of attorney; and also offer free legal advice and representation on select legal issues at clinics throughout Metro Vancouver for low-income individuals by appointment only.

Advance Planning Resources (continued)

NIDUS Personal Planning Resource Centre and Registry
Voicemail: 604-408-7414 | Toll-Free: 1-877-267-5552 | Email: info@nidus.ca | Website: www.nidus.ca

Provides information on personal planning, specializing in Representation Agreements; operates a Registry for storing personal planning documents; and offers one-to-one assistance by appointment ($25 or sliding scale).

"My Voice: Expressing My Wishes for Future Health Care Treatment" Guide
Toll-Free: 1-800-663-6105 | Website: www.seniorsbc.ca/advancecare

Provides information on advance care planning and worksheets (including advance directives) online.

Print copies can be ordered by phone through Crown Publications – call 1-800-663-6105. *A charge for shipping and handling, plus applicable taxes will be applied to your order.*

People's Law School
Phone: 604-331-5400 | Email: info@publiclegaled.bc.ca | Website: www.publiclegaled.bc.ca

Offers public legal information and resources through plain-language publications (e.g. "When I'm 64") and workshops.

Lawyer Referral Service
Phone: 604-687-3221 | Toll-Free: 1-800-663-1919 | Website: cbabc.org/For-the-Public/Lawyer-Referral-Service

Provides contact information on lawyers by geographical area and legal specialty (e.g. wills and estates). You contact lawyers to set up an appointment – first 30 minute consultation costs $25 + tax.

Society of Notaries Public of BC
Phone: 604-681-4516 | Toll-Free: 1-800-663-0343 | Website: www.notaries.bc.ca

Maintains a directory of BC Notaries online, and handles questions and complaints. Services that BC Notaries provide include: wills, representation agreements, and powers of attorney.

The Bloom Group Community Services Society – Adult Guardianship Program
Phone: 604-606-0335 | Website: www.thebloomgroup.org/our-work/adult-guardianship

Manages income of low-income individuals who are no longer able to care for their own financial needs.

Government Resources

Office of the Seniors Advocate
Toll-Free: 1-877-952-3181 | Website: www.seniorsadvocatebc.ca |
Email: info@seniorsadvocatebc.ca

A go-to resource for seniors information and referral, answered by knowledgeable staff.

BC Ombudsperson
Toll-Free: 1-800-567-3247 | Website: www.bcombudsperson.ca

Receives enquiries and complaints about the practices and services of selected public agencies.

Office of the Assisted Living Registrar
Toll-Free: 1-866-714-3378 |
Website: www2.gov.bc.ca/gov/content/health/accessing-health-care/assisted-living-registrar

Offers information about assisted living residences and services, and receives complaints about the health and safety of individuals residing in private-pay or publically subsidized assisted living residences.

Government of BC
Website: www.SeniorsBC.ca

Offers provincial government information and resources for older adults, their families and caregivers.

HealthLink BC (24-hour service daily)
Phone: 811 | TTY: 711 | Website: www.healthlinkbc.ca | Email: healthlinkbc@gov.bc.ca

Provides non-emergency health information and advice by phone.

Service BC
Vancouver: 604-660-2421 | Toll-Free: 1-800-663-7867 | TTY: 1-800-661-8773 |
Website: www.servicebc.gov.bc.ca

Provides information about and access to provincial government programs and services by phone.

Government Resources (continued)

BC Directory of Victim Service and Violence Against Women Programs
Website: www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/service-providers/directory-of-victim-service-and-violence-against-women-programs

Provides contact info for Victim Service & Violence Against Women Programs in BC.

Government of Canada
Toll-Free: 1-800-622-6232 | Website: www.seniors.gc.ca

Offers federal government information and resources for older adults, their families and caregivers.

Other Provincial Resources

BC Association of Community Response Networks
Website: www.bccrns.ca

A provincial association comprised of local networks that facilitate prevention and education activities with stakeholders toward an end to abuse, neglect and self-neglect of adults in British Columbia.

How to Assist an Adult Who is Abused, Neglected or Self Neglecting:

A Decision Tree for Effective Referrals for Adults in BC Who may be Vulnerable and/or Incapable

For an introductory video to the law in BC on responding to abuse and neglect, and for information on how to use this decision tree, visit http://www.trustee.bc.ca/reports-and-publications/Pages/Decision-Tree.aspx and see page 2 for information about calling the police, Designated Agencies and the Public Guardian and Trustee (PGT). For more information on Designated Agencies, the PGT, and Community Response Networks (CRNs) see the PGT publication *Protecting Adults from Abuse Neglect and Self Neglect* at http://www.trustee.bc.ca

Is the adult in **immediate danger** of physical harm ? Yes → **CALL 911**

No ↓

Is the adult able to **seek assistance** ? Yes →

Support adult to call "Community Resources" including:

- Local Agency: _____
  For more information on local agencies, contact your local Community Response Network. See BC Association of CRNs website at http//www.bccrns.ca
- Seniors Abuse & Information Line (SAIL) 604.437.1940 or 1.866.437.1940
  Operated by BC Centre for Elder Advocacy and Support
- Police **non-emergency** number for suspected crimes, risk of danger or physical harm
- Victim Link (1.800.563.0808)

No ↓

Is the abuse, neglect or self neglect primarily related to **financial** matters or are **assets at immediate risk** ? Yes → Call the **Public Guardian and Trustee**

No ↓

Is the abuse, neglect or self neglect primarily related to **non financial** matters ? Yes → Call a **Designated Agency**

15/05/#90

Police	Designated Agency: Regional Health Authorities and Community Living BC (CLBC)	Public Guardian and Trustee (PGT)
For a video on role of the Police, visit **http://www.trustee.bc.ca/reports-and-publications/Pages/Decision-Tree.aspx**	For a video on the role of Designated Agencies, visit **http://www.trustee.bc.ca/reports-and-publications/Pages/Decision-Tree.aspx**	For a video on role of the PGT, visit **http://www.trustee.bc.ca/reports-and-publications/Pages/Decision-Tree.aspx**
Governing Legislation:	**Governing Legislation:**	**Governing Legislation:**
Criminal Code RSC 1985 c. C-46	*Adult Guardianship Act* RSBC 1996 c. 6	*Public Guardian and Trustee Act* RSBC 1996 c.383
Why would you call?	**Why would you call?**	**Why would you call?**
You suspect a crime has occurred, might occur or someone is exhibiting behavior indicating a lack of wellbeing and unpredictability.	You are concerned that an adult is being abused, neglected or is self neglecting and is unable to seek support and assistance on his or her own due to: • physical restraint, • a physical handicap limiting ability to seek help, or • an illness, disease, injury or other condition affecting ability to make decisions about the abuse or neglect The adult may live in his or her own home, the home of a relative, a care facility, or any other place except correctional centres.	You have reason to believe that an adult is not capable of managing his or her financial and legal affairs and there is imminent risk to his or her assets. Concerns may include: • the adult appears to be under duress and going along with decisions he or she does not agree with • there may be financial mismanagement of an adult's financial affairs • the adult may not be able to look after his or her financial affairs and needs someone to make financial decisions • someone with authority to manage the adult's financial affairs may not be fulfilling his or her duties and responsibilities
Where should you call?	**Where should you call?**	**Where should you call?**
• Emergency - Call 911 if you suspect o Immediate risk to a person's physical safety, or o A crime is occurring • Local Police non-emergency Tel: _____	See www.trustee.bc.ca *Assessment and Investigation Services* for links to all Designated Agencies, or visit your Health Authority website (search abuse and neglect) • Local Health Authority Tel: _____ • Local Community Living BC (CLBC) Tel: _____	See www.trustee.bc.ca *Assessment and Investigation Services* for PGT referral form. Contact Information: • Toll free Tel: 1.877.511.4111 • Local Tel: 604.660.4507 • Toll free Fax: 1.855.660.9479 • Local Fax: 604.660.9479 • Email: AIS-HCD@trustee.bc.ca
What can you expect?	**What can you expect?**	**What can you expect?**
You will be asked to provide information about the nature of your concern, the adult you feel is a victim and any possible suspect(s). You can expect that some basic information about yourself will also be requested.	You will be asked to provide information about the adult and the nature of your concern.	You will be asked to provide information about the nature of your concern, personal information about the adult and any decision maker.
Actions May include:	**Actions May include:**	**Actions May include:**
• Attending the location • Dispatching special units where available • Visiting adult, gathering information and evidence which may indicate a criminal offence such as: o assault, sexual assault, o failure to provide necessities of life o theft, theft by power of attorney o fraud, forgery, extortion • Liaising with Designated Agency and/or Public Guardian and Trustee as required • Assessing for adult's wellbeing • Considering peace bonds, no contact orders • Referring to community resources • Considering/recommending charges	• Interviewing adult and others • Requesting information • Offering support and assistance (includes referral to community resources) • Liaising with Public Guardian and Trustee and/or police as required • Reporting suspected crimes to police • Exercising emergency powers to enter and remove adult to a safe place • Obtaining a restraining order • Obtaining a court order for support and assistance	• Gathering additional information • Requesting account information from financial institutions and current decision makers (attorney, representative, trustee, committee) • Liaising with Designated Agency, community services, or police, as appropriate • If urgent risk to assets, exercising protective powers such as: o stopping withdrawals or sale of assets o redirecting income for the adult's health or safety • Looking for an appropriate decision maker. If none, and a decision maker is needed, consider obtaining authority as Committee of Estate, or in exceptional circumstances, Committee of Person.

Developed in partnership by the Public Guardian and Trustee, RCMP BC "E" Division, Crime Prevention Services, and Fraser Health Authority
© Public Guardian and Trustee. Licensed under CC BY-NC-ND 3.0 https://creativecommons.org/licenses/by-nc-nd/3.0/. It can be used without asking permission, but must not be used for commercial purposes or altered in any way. For inquiries contact the PGT at mail@trustee.bc.ca.
Readers are referred to their organization's accompanying training materials and organizational policies for making reports to the police, designated agencies, or the PGT.

REFERENCE GUIDE FOR SERVICE PROVIDERS ASSISTING OLDER ADULTS

Abuse and Neglect of an Older Adult: any act that harms or threatens to harm the health or well-being of an older adult.

WHAT TO DO

Acknowledge	Suspicion of abuse may develop over time. Accumulate/document evidence.
Barriers	Fear of retaliation, withdrawal of caregiver support and breach of confidentiality.
Urgency	Assess immediate needs and potential risk of physical harm.
Screen	Assess person's physical, emotional and mental capacity to help themselves.
Empower	Inform person of their rights, resources and assist with establishing a safety plan.
Refer	Offer support or consultation from other resources.

CHECK FOR

PHYSICAL ABUSE

Any act of violence causing injury or physical discomfort, including sexual assault.

Indicators:

- Unexplained injuries in areas normally covered (bruises, burns or bites).
- Untreated medical problems.
- History of "accidents".
- Signs of over or under medication.
- Dehydration.

PSYCHOLOGICAL ABUSE

Any action or comment causing emotional anguish, fear or diminished self-esteem or dignity (e.g. threats to do harm, unwanted institutionalization, harassment, abandonment, imposed isolation, removal of decisions making choices).

Indicators:

- Fear, anxiety, depression, withdrawal, cowering.
- Reluctance to talk openly.
- Fearful interaction with caregiver, caregiver speaking on behalf of person and not allowing privacy.

FINANCIAL ABUSE

Theft or exploitation of a person's money, property or assets (e.g. fraud, forgery, misuse of Power of Attorney).

Indicators:

- Standard of living not in keeping with income or assets.
- Theft of property.
- Unusual or inappropriate activity in bank accounts, forged signatures on cheques.
- Forcing a person to sign over property or execute a will.
- Overcharging for services or products, overdue bills.

NEGLECT

Inability to provide basic or personal care needs (e.g. food, water, required medications, shelter, hygiene, clothing, physical aids, hearing aids, eye glasses, dentures, exercise and social interaction, lack of attention, abandonment, undue confinement, inadequate safety precautions, withholding medical services or treatment).

- **Active Neglect**: intentional failure of a caregiver to fulfill their care-giving responsibilities.
- **Passive Neglect**: unintentional failure of a caregiver to fulfill their care-giving responsibilities.
- **Self Neglect**: Although not a form of elder abuse, it is the person's inability to provide for their own essential needs.

Indicators:

- Unkempt appearance, inappropriate or dirty clothing, signs of infrequent bathing.
- Living conditions unhealthy, dangerous and/or in disrepair.
- Lack of social contact.
- No regular medical appointments.

INSTITUTIONAL ABUSE

Any physical, sexual, psychological, financial abuse or neglect occurring within a facility involving active victimization, withholding or denial of individual care needs, failure to respect individual's rights, overmedication, misuse of chemical or physical restraints and/or failure to carry out reasonable requests.

DOMESTIC ABUSE

Actual or threatened physical, sexual, financial or psychological abuse of a person by someone with whom they have an intimate relationship which aims to instill fear and/or to coercively control an individual.

BC CENTRE FOR ELDER ADVOCACY AND SUPPORT

REFERENCE GUIDE FOR SERVICE PROVIDERS ASSISTING OLDER ADULTS

INTERVIEW STRATEGY

1. **Develop trust and be sensitive to person's culture, religion, comfort level and timing in obtaining disclosure:** interview alone, listen, be patient, non-threatening and non-judgmental, validate feelings and offer emotional support, avoid premature assumptions and suggestions.

2. **Note suspicious histories:** Explanation is vague, bizarre or incongruent with type or degree of injury, denial of obvious injury, long delay between injury and treatment.

3. **Be alert to person's wishes and assess ability to understand.** Try to assess whether the person "understands" and "appreciates" what is happening and what their needs are.

4. **Identify what information is missing:** Frequency, duration, urgency, need for physical examination.

5. **Be aware of interdependent relationships/power differences:** Be cautious of involvement of third party who may be the abuser, note conflicting histories. Where appropriate, interview family members but remember it is key to **TALK TO THE OLDER ADULT** even if family is available.

POSSIBLE INTERVENTIONS

- Consider impact on the person, their wishes, and their ability to recognize that they may be a victim of abuse.
- Note their understanding and appreciation of the consequences of their decisions.
- Understand that often before a person will seek or agree to accept help, they need to be able to trust you and know that you will follow through with the help you offer to give.
- Your role could be singular or part of a team of service providers that could support the person to be healthy and safe. Be aware of appropriate resources or know how to link with the broader community.
- Follow your professional standards in obtaining client consent.
- If client does not consent, maintain contact to initiate: A. Education and/or a B. Safety Plan (see below).

A. Education

- Provide information and support according to the interests expressed by the person.
- Be aware of services outside the health care system which are specific to the needs of any older adult or specific to the needs of the older persons who are being victimized or are at risk, including social services, legal services, financial assistance, housing options and the faith community.

B. Safety Plan

The plan may include a change to an element of their environment or their relationship which could result in the elimination of the role of the abuser or context of the abuse.
Consider:

- Home visits, telephone contact, contact with other family and friends, regular appointments
- Secure assets (e.g. hide emergency money somewhere outside home.)
- Give copies of important documents and keys to trusted friends or family members
- Plan escape by packing a bag of extra clothing, medicine and personal aids (glasses, hearing aids)
- Keep phone numbers of friends, relatives, shelters or other trusted individuals handy.

C. Coordination And Consultation Help Numbers

Some of these organizations will provide direct assistance and others will refer callers to local organizations to get information or assistance. This is not an exhaustive list. It is important to develop your own list of local contacts.

BC Centre for Elder Advocacy and Support – Seniors Abuse and Information Line..... 1-866-437-1940
BC Association of Community Response Networks.....1-604-513-9758
VictimLINK.....1-800-563-0808
Seniors Health Care Support Line.....1- 877-952-3181
HealthLINK BC.....8-1-1
Public Guardian and Trustee..... 1-800-663-7867
Crisis Intervention and Suicide Prevention Centre.....1-866-784-2433
Alzheimer Society – Dementia Helpline.....1-800-936-6033
BC Ombudsperson.....1-800-567-3247

Adapted by the BC Center for Elder Advocacy and Support, from prior versions by the Advocacy Centre for the Elderly, and the Hamilton Council Against Abuse of Older Person, both in Ontario
Version 2.0 March, 2013