

The agenda for each day of the conference contains direct links to the materials for that session.

Legal Information and Resources for Settlement Workers Training Conference

March 27 & 28, 2012



**Legal
Services
Society**



**Immigrant
PLEI
Consortium**



The agenda for each day of the conference contains direct links to the materials for that session.

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March 27 & 28, 2012

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- Welfare Law and How it Affects New Immigrants
- Disability Benefits for Persons with Disability Benefits (PWD) and Canada Pension Plan Disability (CPP)

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The agenda for each day of the conference contains direct links to the materials for that session.

Legal Information and Resources for Settlement Workers, Radisson Hotel, 8181 Cambie Road, Richmond, BC V6X 3X9 (Aberdeen skytrain)				
TUESDAY, MARCH 27, 2012 - 8:30 am - 5:00 pm & Dinner 6:00 pm				
8:00 - 9:00	Registration			
9:00 - 9:30	Opening Welcome to traditional Coast Salish territory, Debra Sparrows Welcome from Sherry MacLennan, Director, Public Legal Information and Applications, Legal Services Society (LSS) Announcements Baljinder Gill			
9:30 - 10:45	PLENARY PANEL - Legal Issues: the Role of Settlement Worker Presentations from a panel of resource people about: the difference between legal information and advice; ethical issues that may arise for settlement workers helping clients who have legal problems; boundaries relevant to work on legal issues; and making good referrals to legal information publications and services. The workshop will consider examples of when settlement workers have contributed positively, and consider what problems could arise. <i>Sadia Ramirez, MOSAIC; Manpreet Grewal, Abbotsford Community Services; Allan Parker, lawyer</i> BALLROOM (ABC)			
10:45 - 11:00	Break (15 minutes)			
11:00 - 12:30	Welfare Law and how it Affects New Immigrants An overview of BC's welfare legislation and regulations, that also considers issues relevant to new immigrants and refugees that settlement workers should know. <i>Alison Ward, lawyer, Community Legal Assistance Society</i> BRIDGEPORT ROOM	Update on the New Family Law Act An overview of new legislation and regulations and comments about how these changes could affect new immigrants <i>JP Boyd, lawyer</i> BALLROOM A	Human Trafficking Information about the legal issues that arise around human trafficking and what resources are available to help <i>Victor Porter, Office to Combat Trafficking in Persons; Norman Hopkins, Citizenship and Immigration Canada (CIC)</i> CAMBIE ROOM	Human Rights A workshop that gives an overview of human rights law and certain processes. It will consider issues such as: who gets protection, when they get it and what services are available to help with a complaint. <i>Robyn Durling, BC Human Rights Coalition</i> BALLROOM C
LUNCH 12:30-1:45	LUNCH (1.25 HOURS)			
1:45 - 3:15	Legal Resources and Services for Settlement Workers An opportunity to get moving after lunch and learn about legal resources and services relevant to the work they do. Participants will visit different groups on a circuit that will allow them to learn about resources and services and to ask questions in a smaller group. <i>Priyan Samarakoone, Access Pro Bono; Ashley Silcock, BC Coalition of People with Disabilities; Brenda Rose, Clicklaw, BC Courthouse Libraries; Lali Pawa, Court Information Program for Immigrants, Justice Education Society;</i> BALLROOM (ABC)			
3:15 - 3:30	Break (15 minutes)			
3:30 - 5:00	Residential Tenancy Legislation and Issues An overview of the legislation on rentals and discussion of the issues that affect new immigrants. <i>Kendra Milne, lawyer, Community Legal Assistance Society</i> BRIDGEPORT ROOM	Live In Caregivers Program A session that will set out the basic legal requirements of the Live-in Caregiver Program. It is important for settlement workers to understand the particular rules of this program in order to effectively help clients identify important issues, next steps, and helpful resources. <i>Ai Li Lim, West Coast Domestic Workers Association</i> BALLROOM A	REPEAT Update on the New Family Law Act An overview of new legislation and regulations and comments about how these changes could affect new immigrants <i>Jill Dempster, Ministry of Attorney General</i> CAMBIE ROOM	Family Law Resources and Services An opportunity for settlement workers to become more familiar with resources and services for immigrants dealing with family law issues. Participants will work through fact patterns and discuss with resource people (legal aid, duty counsel, Family Justice Counsellors, and others) what support they could provide and develop a plan to help their clients. <i>Carol Powlett, Family Duty Counsel; Benson Lee, Family Justice Counsellor; Richard Argue, Parenting After Separation; Stephanie Morgan, Legal Services Society</i> BALLROOM C
Evening	Networking dinner sponsored by Immigrant PLEI Consortium, Law Foundation of BC, and Legal Services Society, (cash bar 5 pm, dinner 6 pm) Keynote speaker, Alden Habacon, Director, Intercultural Understanding Strategy Development Office of the Vice-President, Academic, UBC <i>Do Immigrants Need Rules? Aspirations for a Socially Sustainable British Columbia in Multiculturalism 3.0</i> Dance presentation - Shan-E-Punjab Arts Club			

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WEDNESDAY, MARCH 28, 2012 8:30 am - 3:00 pm				
9:00 - 10:30	<u>Disability Benefits: Persons with Disability Benefits (PWD) and Canada Pension Plan Disability (CPP)</u> Information about the legal requirements for applying for disability benefits from the provincial and federal governments. Important distinctions between the PWD and CPP Disability will be explained. <i>Robin Loxton, Ashley Silcock, advocates, BC Coalition of People with Disabilities</i> BRIDGEPORT ROOM	<u>Legal Issues in Child Protection</u> A session designed to give settlement workers an overview of the child protection legal process, ensure that they understand important deadlines facing clients, and to inform them about all appropriate legal services and resources. <i>Carol Rosset, lawyer</i> BALLROOM A	<u>Working with LSS Intake</u> A session that will update settlement workers about LSS coverage for family and immigration issues. Information about the intake process and how best to help clients prepare for an LSS intake interview will also be part of the session. <i>Sherilyn Thompson, Silvia Tobler, Legal Services Society</i> CAMBIE ROOM	<u>Update on Recent Changes in Immigration Law</u> An overview of changes in immigration legislation, regulation and policy that will affect new immigrants and their families. <i>Deanna Okun-Nachoff, lawyer</i> BALLROOM C
10:30 - 10:45	Break (15 minutes)			
10:45-12:15	<u>Seniors' Legal Issues</u> Information about legal issues that affect seniors and how to help clients who might be dealing with elder abuse. <i>Kristine Chew, BC Centre for Elder Advocacy and Support</i> <i>Darae Lee, Settlement Worker, MOSAIC</i> BRIDGEPORT ROOM	<u>REPEAT Update on Recent Changes in Immigration Law</u> An overview of changes in immigration legislation, regulation and policy that will affect new immigrants and their families. <i>Deanna Okun-Nachoff, lawyer</i> BALLROOM A	<u>Employment Insurance</u> A workshop that builds on information presented in 2011 (available by webinar for those not at the first session). The workshop will consider legal issues relating to EI that are of particular concern to new immigrants, and work through scenarios that identify important issues and appropriate services. <i>Kevin Love, lawyer, Community Legal Assistance Society</i> CAMBIE ROOM	<u>Update on Refugee Law and Legal Resources and Referral Services for Refugee Claimants</u> A workshop that will provide an update on proposed refugee law reform, as well as information about a variety of services and resources designed to help refugees claimants with the application process. Staff from LSS will also talk about LSS coverage of immigration issues. <i>Rochelle Appleby, LSS contract lawyer; Loren Balisky, Director Kinbrace;</i> BALLROOM C
LUNCH 12:15 - 1:30	LUNCH (1.25 HOURS) PovNet lunch			
1:30- 3:00	<u>Sponsorship Breakdown</u> An overview of legal issues that arise when a sponsorship breaks down -- both for the person being sponsored and for the sponsor. <i>Kamaljit Lehal, lawyer</i> <i>Harjit Kaur, EVA</i> BRIDGEPORT ROOM	<u>Youth and the Law</u> An update about Youth Justice Act and how it affects new immigrants and their families, as well information about resources for youth dealing with the law. <i>Craig Sicotte, lawyer</i> BALLROOM A	<u>Employment Standards Act</u> An overview of the basics of employment law in BC, and legal information resources to help employees make a complaint to the Employment Standards Branch. <i>Chi Young Lee, lawyer</i> CAMBIE ROOM	<u>Legal Issues of Domestic Violence: Restraining Orders, Peace Bonds and other issues</u> A session that considers legal issues that arise for clients dealing with domestic violence and what settlement workers should know in order to best help their clients. Crown counsel will discuss the differences between peace bonds and restraining orders and the role of Crown in these cases. <i>Perminder Flora, Stopping the Violence, MOSAIC</i> <i>Crown Counsel</i> BALLROOM C
3:00 - 3:30	Closing Remarks from Wayne Robertson, QC, Executive Director, Law Foundation of British Columbia			

1. EMPLOYMENT



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Employment Insurance Training Session

What is Employment Insurance?

- EI is a government benefit designed to help certain workers who lose their job or, in some cases, workers who need time off work.

WHAT TYPES OF BENEFITS ARE
AVAILABLE FROM EI?

Regular Benefits

- Regular benefits are for people who lose their job through no fault of their own.

Regular Benefits:

What does it take to qualify?

- EI will look at the number of hours the **person worked in their “Qualifying Period”**, which is usually 52 weeks before they stopped working.
- Most people will need between 420 and 700 hours to qualify, depending on the unemployment rate in their area.

Person Laid-off and files
application Jan 1, 2012

2012
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2011
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2010
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

Red = Qualifying Period (52 weeks)

New Entrants and Re-Entrants

- People who are new to the Canadian workforce or re-entering the workforce after a lengthy absence need **910** hours of work in their Qualifying Period

Person Laid-off and files
application Jan 1, 2012

2012
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2011
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2010
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

Red = Qualifying Period (52 weeks)

Blue = New Entrant (52 weeks, less than 490 hours)

Number of Hours Needed

<u>Regional Rate of Unemployment</u>	<u>Hours</u>
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

Late Applications

- Claimant must file within 4 weeks of last day of work, otherwise they are late.
- Very important for Settlement Workers to watch this!
- A late application means the Commission will count back from date of application (not the date of stopping work) so the person may not get credit for all of the hours they worked

Laid-off
Jan 1, 2012

Applied
April 1, 2012

2012
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2011
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2010
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

Red = Qualifying Period (52 weeks)

Antedates

- Basically means back-dating an application to the week claimant stopped working
- Commission has a policy of automatically antedating any application made within 4 weeks of ending work.
- **If application late, must show "good cause"** throughout for the delay

ACTIVITY

- MAKE A LIST OF 10 THINGS THAT MIGHT GIVE A CLAIMANT “GOOD CAUSE” FOR FILING LATE
- MAKE A LIST OF 10 THINGS THAT WILL LIKELY NOT GIVE A PERSON “GOOD CAUSE” FOR FILING LATE

Regular Benefits: Disqualifications

- Voluntarily leaving a job without just cause
 - Just cause means no reasonable alternative to quitting considering all the circumstances
- Misconduct
 - Conduct inconsistent with the due and faithful discharge of the duties the person was hired to perform
 - Conduct must be “wilful” or at least so reckless as to approach wilful conduct.

ACTIVITY

- MANJEET COMES TO YOUR OFFICE. HER COWORKERS ARE HARASSING HER AND SHE DOESN'T THINK HER BOSS HAS PAID HER ALL WAGES. SHE WANTS TO KNOW IF IT'S OKAY FOR HER TO QUIT HER JOB?
- List 1 piece of information or advice you will not give Manjeet
- List 3 pieces of information you could give Manjeet.

Regular Benefits: What Will I Get

- People get between 14 and 45 weeks of benefits, depending on the unemployment rate in their area.
- People must claim all their benefits before their **“Benefit Period”** runs out, which is usually one year.
- Everyone must serve a 2 week waiting period without any benefits.

Regular Benefits: How Will My Cheque Be?

- EI pays 55% of the person's average weekly earnings.
- To determine average earnings, look at earnings in "Rate Calculations Period", which is usually 26 weeks before person stopped working.

Person laid-off and files
application Jan 1, 2012

2012

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2011

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

2010

Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec

- Red** = Qualifying Period (52 weeks)
- Blue** = New Entrant Period (52 weeks)
- = Rate Calculation Period (26 weeks)
- Yellow** = Benefit Period (52 weeks)

Special Benefits

- Special benefits are for people who need time off work for certain reasons.
- There are 4 types of special benefits:
 - Sickness benefits
 - Compassionate care benefits
 - Maternity benefits
 - Parental benefits
- Everyone needs 600 hours to qualify for special benefits.
- Everyone on special benefits receives 55% of their average weekly earnings.

Sickness Benefits

- A person may receive up to 15 weeks of benefits if they are too sick to work.

Compassionate Care Benefits

- A person may receive up to 6 weeks of benefits if they need time off work to care for someone who is likely to die in the next 6 months.

Maternity Benefits

- A woman who is pregnant may receive up to 15 weeks of benefits.
- A woman may start collecting these benefits up to 8 weeks before her due date.

Parental Benefits

- Up to 35 weeks of benefits can be paid to a parent who is caring for their new child.
- Parental benefits can be claimed by either parent.
- Parental benefits can be claimed by parents who have adopted a child.
- Parental benefits must be claimed within 1

Training Benefits

- EI may provide benefits to help retrain workers and get them back to work.
- Training benefits are available to people who are currently on EI, or people whose EI benefit period ended in the last 36 months.

Working While Collecting EI

- People can work part-time and still be entitled to receive EI benefits.
- A person collecting regular, parental, or compassionate care benefits can earn up to \$75 or 40% of their weekly benefits, whichever is higher. Any amount above this will be deducted.
- People collecting maternity or sickness benefits do not get any earnings exemption and all earnings are deducted.

Obligations while collecting EI

- Be available and looking for work.
- Accept suitable employment.
- Remain in Canada.
- Follow directions from EI staff.
- Report to EI.

Penalties and Violations

- Penalties can be imposed for **knowingly** providing false or misleading information.
- Penalties are usually a monetary amount (a fine).
- Violations increase the number of hours the worker will need to qualify for EI for the next 5 years.

Challenging a Penalty

- Person can argue they did not make false or misleading representations.
- Person can argue they did not provide the **information "knowingly"**.
- Person can argue that the amount of the penalty is too high. Must show Commission considered irrelevant factors or failed to consider relevant factors.

ACTIVITY

LIST 10 FACTORS THAT MIGHT BE
RELEVANT IN SETTING THE AMOUNT OF
A PENALTY

Appeals

- EI decisions can be appealed to the Board of Referees.
- The deadline is **30 days** from the date the EI decision is first communicated to the person.

Insurability Appeals

- The Canada Revenue Agency has exclusive power to determine certain EI matters, such as:
 - Whether the employment is covered by EI
 - How many hours and earnings the person had.
- Appeals from CRA decisions go to the Minister of National Revenue, then to the Tax Court.
- The Referees and the Umpire have no power over these matters.

QUESTIONS?

B.C. EMPLOYMENT STANDARDS: THEORY AND PRACTICE

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Introduction

- The *Employment Standards Act* (the “*ESA*”) sets down minimum standards for wages, hours of work, holidays, and other working conditions for employees in British Columbia.
- Employees may enter into agreements with their employers. However, no person can be compelled to give up the minimum rights guaranteed under statute.
- A contract may give an employee *more* than (s)he is otherwise entitled to, but – for example – an employee cannot be compelled to work for less than the minimum wage guaranteed under the *ESA*.
- The Employment Standards Branch (“*ESB*”) is responsible for administering the *ESA*. The *ESB*’s website contains substantial information regarding workers’ rights, including “factsheets” about specific industries and complaint forms for resolving disputes at the *ESB*.
- The *ESB* website address is: www.labour.gov.bc.ca/esb. The *ESB* can be reached toll-free in British Columbia at 1 800 663-3316.

“Mind the Gaps”

- The *Employment Standards Act* and *Regulations* provide inadequate protection for many vulnerable workers in British Columbia.
- Wherever possible, workers should negotiate separate contracts to supplement the minimal protections created by legislation.

Who is covered by the ESA?

- Only persons who fall under the definition of “employee” as defined in s.1 of the ESA will be covered under the ESA..
- In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include:
 - whether the worker provides his or her own equipment,
 - whether the worker hires his or her own helpers,
 - the degree of financial risk taken by the worker,
 - the degree of responsibility for investment and management held by the worker, and
 - the worker’s opportunity for profit in the performance of his or her tasks.
- An independent contractor is not protected by the ESA. However, just because an employer calls someone an independent contractor does not make him or her one.
- Generally speaking, the ESA is to be given a wide and liberal interpretation

Who is covered by the ESA?

- The *ESA* and the *ESA* Regulations apply to workers in BC except those working in the excluded occupations listed below:
 - (a) architects;
 - (b) chartered accountants;
 - (c) lawyer or articled students;
 - (d) chiropractors;
 - (e) dentists;
 - (f) professional engineers, or engineers in training;
 - (g) persons licensed as insurance agents or adjusters;
 - (h) members or articled students of the Corporation of Land Surveyors;
 - (i) doctors;
 - (j) naturopathic physicians;
 - (k) optometrists;
 - (l) persons authorized to practice podiatry;
 - (m) real estate agents;
 - (n) persons registered under section 35 of the *Securities Act*,
 - (o) veterinarians;
 - (p) professional foresters.

Minimum Standards of Employment

The ESA prescribes Minimum standards of employment in each of the following major areas:

- ▣ Minimum wage
- ▣ Hours of Work and Overtime
- ▣ Annual Vacations
- ▣ Statutory Holidays; and
- ▣ Compensation for Length of Service

MINIMUM WAGE



Minimum Wage

For most employees, minimum wage in British Columbia is as follows:

- General minimum wage
 - May 1, 2011 – \$8.75 per hour;
 - November 1, 2011 – \$9.50 per hour;
 - May 1, 2012 – \$10.25 per hour.

- Liquor Servers
 - May 1, 2011 - \$8.50 per hour;
 - November 1, 2011 - \$8.75 per hour;
 - May 1, 2012 - \$9.00 per hour.

Minimum Wage

Minimum Wage Exceptions:

- As of May 1, 2011, the first job/training wage of \$6.00 per hour for employees with less than 500 hours of paid work experience is no longer in effect.

- Live-in home support workers:
 - ▣ May 1, 2011 - \$87.50 per day or part day worked;
 - ▣ November 1, 2011 - \$95.00 per day or part day worked;
 - ▣ May 1, 2012 - \$102.50 per day or part day worked.

Live-in camp leaders:

- ▣ May 1, 2011 - \$70 for each day or part day worked;
- ▣ November 1, 2011 - \$76 for each day or part day worked;
- ▣ May 1, 2012 - \$82 for each day or part day worked.

Minimum Wage (cont'd)

- **RESIDENT CARETAKERS**: The minimum wage for a resident caretaker is calculated based on how many residential suites are contained in the building
 - May 1, 2011 – for an apartment building containing 9 to 60 suites, \$525 per month plus \$21.05 for each suite; and for an apartment building containing more than 60 suites, \$1,788.28 per month;
 - November 1, 2011 – for an apartment building containing 9 to 60 suites, \$570 per month plus \$22.85 for each suite; and for an apartment building containing more than 60 suites, \$1941.56 per month;
 - May 1, 2012 – for an apartment building containing 9 to 60 suites, \$615 per month plus \$24.65 for each suite; and for an apartment building containing more.
- **FARM WORKERS**: The minimum wage for a farm worker is not calculated on an hourly or daily basis, but on the crop harvested. The list of piecemeal wages for farm workers is included in the ESA.

HOURS OF WORK AND OVERTIME



Minimum Daily Hours

- **The Rule:** The *ESA* prescribes minimum daily wages where an employee arrives at work for a scheduled shift, but then the shift is changed at the last minute.
 - ▣ If an employee shows up for work and is told to go home, the employer must pay wages for at least two hours, even if there is no work to be done. If the employee was scheduled to work for more than eight hours on that day, the employer must pay a minimum of four hours.
- **The Exceptions:** There are some exceptions to the above rule:
 - ▣ If the employee is not fit to work, no wages have to be paid.
 - ▣ If it is completely beyond the employer's control that the work has been suspended (e.g. unsuitable weather), the employer is required to pay only two hours, even if the employee was scheduled for an eight hour shift.

Meal Breaks

- Employees are entitled to Meal Breaks of at least one half hour in length after they have been working for 5 consecutive hours.
- Unfortunately the Act does not stipulate that the employee must be paid wages during these breaks unless the employee is required to be available for work while on break.

Hours Free from Work

- Employers must ensure that their employees have at least 32 consecutive hours free from work per week. If this is not possible, they must pay the employee 1.5x the regular wage for time worked during the 32-hour period that the employee should have been free from work.
- The ESA states that employees must be given at least eight consecutive hours off between shifts. However, the ESA does not list a remedy for employees where their employer has breached this rule. Furthermore, the provision has an exception, “in the case of emergency”.

Split Shifts

- Although an employee's shift may be divided in the middle, the shift must always end within twelve hours of when it begins.

Overtime

- **Overtime Defined:** Where an employee works more than 8 hours per day or more than 40 hours per week (s)he is generally entitled to overtime pay (unless provided otherwise by an “averaging agreement”).
- **Daily Overtime:** An employee who is not working under an averaging agreement will accumulate daily overtime as follows:
 - ▣ for hours beyond 8 per day, employees must be paid 1.5x their regular wage, up to the 12th hour;
 - ▣ after 12 hours per day, employees must be paid 2x their regular wage.
- **Weekly Overtime:** If the employee worked more than 40 *regular* hours in a calendar week (counting only the first eight hours of each working day), the employer must pay any excess hours at 1.5x the regular wage.

Averaging Agreements

- Employers may sometimes avoid paying overtime wages where there the employee has entered into an “averaging agreement”.
- With a valid averaging agreement an employer would be entitled to average his/her employee’s hours of work over a period of 1-4 weeks. Under the agreement, the employee could work 20 hours in week 1 and 60 hours in week 2, but the employer would be entitled to average the hours over a two week period, thus determining that no overtime is payable.

Averaging Agreements (cont'd)

- An averaging agreement are only valid if they:
 - ▣ are in writing;
 - ▣ are signed by both parties before the start date;
 - ▣ specify the number of weeks over which the agreement applies;
 - ▣ specify the work schedule for each day covered by the agreement;
 - ▣ specify the number of times that the agreement may repeat; and
 - ▣ provide for a start date and an expiry date.
- Even under an averaging agreement, employees who work more than 12 hours a given day are entitled to 2x their regular rate of pay.
- Also, if the *average* week is more than 40 hours, the rate of pay is 1.5x the rate of pay for all time over 40 hours.

Prohibition Against Excessive Hours

- Section 39 of the *ESA* states that an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.
- Unfortunately, the Act does not set out any maximum working hours, or prescribe any penalty for an employer who violates this section.

LEAVES OF ABSENCE



Leaves of Absence under the ESA

- The ESA requires employers to provide UNPAID leave, as follows:
 - ▣ Pregnancy
 - ▣ Parental
 - ▣ Parental Responsibility
 - ▣ Compassionate Care
 - ▣ Jury Duty
- The Act does not prescribe PAID leave, which can only be secured under separate contract.

Sick Leave

- Both the ESA and the Regulations are silent about sick leave.
- However, an employer cannot unreasonably deny UNPAID leave for an employee who is incapable of working due to illness, particularly if work could endanger the worker's health and safety.

Pregnancy Leave

- **Start Date:** Leave entitlement starts no sooner than 11 weeks before the due date and no later than the actual birth date.
- **End Date:** Leave typically runs until the child is six weeks old, or for six weeks following the termination of a pregnancy.
- **Reduced/Extended Pregnancy Leave:** An employee can request less than 6 weeks of leave in writing. In special circumstances, she may also request 6 additional weeks of unpaid leave if she has faced complications related to her pregnancy or delivery.

Parental Leave

- Who may Take Parental Leave?
 - ▣ Birth Mothers: A birth mother is entitled to up to 35 weeks of UNPAID leave, unless she has not taken any pregnancy leave, in which case she is entitled to 37 weeks of parental leave.
 - ▣ Birth Fathers: Birth fathers are entitled to up to 37 weeks of UNPAID leave, which must be taken within the first year after the child's birth.
 - ▣ Adopting Parents: Same as Birth Fathers.
- Reduced/Extended Pregnancy Leave: An employee can request an extra five weeks of parental leave in writing if his/her child has a physical, psychological or emotional condition and requires “additional care”. Likewise, if the employee does not wish to use his/her entire leave allotment, notice should be provided in writing.

Compassionate Care Leave

- Employees are entitled to up to eight weeks of UNPAID leave to care for family members with serious medical conditions and significant risk of death within 26 weeks.
- Employees seeking leave under this section must provide their employers with a medical certificate.
- **Start Date:** Leave can begin at any time within the 26-week period following the doctor's certification (even if the certificate is not immediately available).
- **End Date:** Leave ends on the last day of the week in which the family member dies; after eight weeks of leave; or when the 26-week period expires.
- **Renewed Requests:** An employee can make a subsequent request for leave with a renewed medical certificate verifying that the family member has a significant risk of death within 26 weeks.

Bereavement Leave & Family Responsibility Leave

- **Bereavement Leave:** Employees are entitled to up to 3 days of unpaid leave on the death of a member of his/her immediate family

- **Family Responsibility Leave:** Employees are entitled to up to five days of UNPAID leave during each employment year to meet responsibilities related to
 - ▣ the care, health or education of a child in the employee's care, or
 - ▣ the care or health of any other member of the employee's immediate family.

Leave for Jury Duty

- An employee who is required to attend Court as a juror is considered to be on unpaid leave for the period of the jury duty.

ANNUAL VACATION



Annual Vacation

- **Entitlement:** Employees who have worked 12 consecutive months for their employers are entitled to at least two weeks annual vacation, whereas employees who have stayed with their jobs for 5 consecutive years are entitled to at least three weeks.
- **Holiday Time:** The ESA puts the burden on the employer to make sure that the employee takes the annual vacation within 12 months after completing the year of employment. The Act stipulates that the vacation time must be taken in periods of one or more weeks.

Vacation Pay

- **How Much?** Employers are liable for vacation pay in the amount of 4% of the employee's total wages during the year of employment, provided that the employee has worked a minimum of five calendar days. Where the employee has served an employer for 5 consecutive years, the rate of vacation pay is increased to 6% of the employee's total wages earned in the calendar year.
- **When?** Vacation pay must be paid to the employee at least 7 days before (s)he takes annual leave or, if the parties have agreed in writing, on each of the employee's scheduled paydays.
- **What About Unused Vacations?** Any unpaid vacation pay must be paid out by the employer at the termination of the employment contract.

STATUTORY HOLIDAYS



Statutory Holidays: Entitlement

- Employees are entitled to statutory holiday pay only if:
 - ▣ They have been employed with the employer for at least 30 calendar days before the statutory holiday; and
 - ▣ They worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday OR worked subject to an averaging agreement at any time within that 30 day period.

Statutory Holidays

- What is a “Statutory Holiday”? A “stat. holiday” is a day off with pay. In British Columbia, there are nine recognized stat. holidays, as follows:

New Years Day

Good Friday

Victoria Day

Canada Day

B.C. Day

Labour Day

Thanksgiving Day

Remembrance Day

Christmas Day

Statutory Holiday Pay

- **How Much Does the Employee Earn for the Day Off?** If the Employee doesn't work on the stat. holiday, the employer must pay an "average day's pay", not including overtime the worker might have earned.
- **What if the Employer Offers a Different Day Off?** Employers may substitute a separate day off (with pay) in place of the stat. holiday, but only with the employee's permission. The employer may also ask the employee to work, provided they pay overtime.
- **What if the Stat. Holiday Falls on a Regular Day Off?** The employer must pay for a stat. holiday even if the holiday falls on the employee's regular day off.

Working on a Stat. Holiday

- What if the employee works on the Stat. Holiday? If an employee works on a stat. holiday, (s)he must be paid 1.5x his/her regular wage up to the first 12 hours, and 2x regular wage for all additional hours. In addition, the employee is still entitled to an additional day off with an “average day’s pay”, as described above.

TERMINATION OF EMPLOYMENT



Termination of Employment

- **Employer's Right to Terminate Employment:** The ESA does not prohibit employers from terminating an employee *with or without cause*. The ESA merely states that an employer must either give an employee adequate notice of termination, or “compensation for length of service” unless the employer had “just cause” to terminate the contract.
- **Employee's Right to Terminate Employment:** The ESA does not limit an employee's right to terminate employment.
- **Contractual “Notice” Requirements:** Both parties may be subject to contractual “notice” periods that go beyond the terms of the ESA. It is advisable to carefully read the written contract before ending employment to ensure that there will be no liability for “breach of contract”.

Compensation for Length of Service (“Severance Pay”)

- An employee who has worked three months for an employer is entitled to one week’s wages as severance pay.
- The amount of severance pay extends to 2 weeks’ pay if the employee has worked 12 months prior to the termination, and an additional week of pay is added for each additional year of service, up to a maximum of 8 weeks’ pay.

Notice in Lieu of Compensation

- The employer can (and often does) avoid paying severance by giving the employee written notice of termination, and asking the employee to work out the remaining weeks.
- If the employee has worked for three months, (s)he is entitled to a minimum one week notice. For an employee who has worked for one year, two weeks' notice is required. An additional week notice is required for each additional year of service up to a total of eight weeks.

Voluntarily Leaving Employment

- If an employee *voluntarily* leaves a job, severance is not ordinarily payable.
- However, if an employee can show that the working conditions were substantially altered, or that the conditions of employment were intolerable or unsafe, (s)he may be entitled to severance pay.

“Just Cause”

- Employers are not required to pay severance pay, or to give “notice” if they can establish that they had “just cause” to terminate the employment.
- Certain types of conduct may constitute just cause if committed only once – theft, fraud, harassment of co-workers, or willful destruction of property. Other behaviour could lead to a finding of just cause if continued over a period of time, such as chronic absenteeism or lateness, unsatisfactory work, or minor violations of company policy.

COMPLAINTS AT THE ESB



ESB Complaints

- **Limitation Date:** Employees have only six months to file an employment standards complaint against their employers from the date of the contravention of the *ESA* or within six months of the last day worked.
- **Recovery Period:** Employees can only recover lost wages for the six month period immediately proceeding the complaint, or for the last six months of employment.
- **Complaints at Provincial or Supreme Court:** Employee who want to recover unpaid wages prior to the six month period prescribed in the *ESA* must file a separate civil action in provincial or supreme court.

Stages of Complaint Processing

- **Self-Help Kit:** Employees are generally required to send a request for payment directly to their employers using the kit provided on the ESB's website (some exemptions).
- **Filing the Complaint:** If the employer doesn't pay voluntarily, employees must file a complaint before the limitation period expires. Complaints can be filed online at www.labour.gov.bc.ca/esb/forms/esb_comp.htm, by fax, or by mail.
- **Mediation:** Once a complaint is filed, the ESB will appoint a mediator to try to bring about a negotiated resolution in an informal, non-adversarial setting.

Adjudication at the ESB

- If the parties do not reach a settlement at Mediation, the matter will be set down for adjudication. To succeed, complainants must provide sufficient evidence to prove their claim. They will be asked to present their documents, witnesses, and will be questioned directly by their employer and the hearings officer. Legal representation is allowed, but not required.
- Mandatory administrative penalties are imposed on employers who are found to violate the ESA: \$500 for a first time contravention, \$2,500 for a second contravention within a 3-year period, and \$10,000 for the third instance within that 3-year period. Penalties are incurred ***per violation***, therefore an employer who is found to have violated three separate conditions of the ESA will be fined \$1,500 plus any wages found owing to the employee. Administrative penalties are payable to the ESB, and not to the employee.

CONTACTS



ESB Offices

Richmond 250-4600 Jacombs Rd, Richmond, BC V6V 3B1 Phone: 604 660-4946 Facsimile: 604 660-7047	Dawson Creek 1201-103rd Avenue V1G 4J2 Phone: 250 784-2390 Facsimile: 250 784-2394
Kelowna 102, 1690 Powick Road Kelowna BC V1X 7G5 Phone: 250 861-7404 Facsimile: 250 861-7428	Nanaimo 2nd Floor, 6475 Metral Dr. V9T 2L9 Phone: 250 390-6186 Facsimile: 250 390-6195
Nelson 310 Ward Street V1L 5S4 Phone: 250 354-6550 Facsimile: 250 354-6692	Prince George 1577-7th Avenue V2L 3P5 Phone: 250 565-6120 Facsimile: 250 565-7110
Langley A207, 20159 – 88 Ave Langley, BC V1M 0A4 Phone 604 513-4635 Facsimile: 604 513-4622	Terrace 108-3220 Eby Street V8G 5K8 Phone: 250 638-6525 Facsimile: 250 638-6528
Victoria 2nd Floor - 880 Douglas St Victoria BC V8W 2B7 Phone: 250 952-0469 Facsimile: 250 952-0476	Website Address: www.labour.gov.bc.ca/esb/

Chi-Young Lee
Barristor & Solicitor
McCrea & Associates

Employment Standards Sample Scenario
PLEI Conference – March 2012

Ms. Slave was employed as a cook at Ms. Very Picky's restaurant, El Cheapo from **1 June 2011 until 30 September 2011**. Her work permit for El Cheapo's was issued only on 1 September 2011.

When she started work for Ms. Picky, even though they had a contract, Ms. Picky made her sign a document stating that she would accept payment for her work at **\$5/hour** and that she would only pay her for 40 hours per week, regardless of how many hours that she worked.

Ms. Slave signed the document because she wanted to start work as soon as possible given she was the sole supporter of her two children.

Ms. Picky liked to get frequent massages and facials to relieve the stress of running a busy restaurant. She would therefore leave El Cheapo in Ms. Slave's care quite frequently and typically from **7am to 8pm, Monday to Fridays**.

Ms. Picky would tell Ms. Slave that she could take her 30 minute lunch break whenever it was slow and in between serving customers, however she could not leave the restaurant.

Even though Ms. Slave's contract said that she would have Saturday and Sunday off, her employer always asked her to come in on Saturdays so that she could complete some retail therapy. Ms. Slave therefore worked every **Saturdays from 7am to 9pm**.

Ms. Slave did not get any of the statutory holidays off and did not receive any vacation time off or vacation pay.

On 30 September 2011, Ms. Picky fired Ms. Slave without giving her a reason. She then forced Ms. Slave to sign a document stating she "acknowledges that Ms. Picky does not owe her any wages" before releasing her final pay.

Ms. Slave comes to see. She would like to know if she is entitled to any money from her employment with Ms. Picky and if so how much.

Ms. Slave does not have any proof of the work she completed as she did not keep a time sheet or a calendar. She also never signed a written contract with Ms. Slave.

2. FAMILY



Legal
Services
Society



Immigrant
PLEI
Consortium



An Overview of the New *Family Law Act*

John-Paul Boyd
Aaron Gordon Daykin Nordlinger

27 March 2012
Legal Services Society
Legal Information and Resources for Settlement Workers Conference

Determining parentage, the care of children and mobility issues.

CHILDREN

Parentage

- *FLA* determines parentage for all purposes within province except adoption, and therefore binds Vital Statistics Office
- Parents are presumed to be **biological father** and **birth mother**

Parentage

- Donor of egg or sperm **is not parent**, unless assisted reproduction agreement to contrary
- Surrogate mother **is parent**, unless assisted reproduction agreement to contrary
- Agreement may name all of intended parents, donors and surrogate mother as **parents**

Guardianship

- Parents living together at child's birth are both **guardians** of child; parent may lose this status by agreement or order
- Parent never living with child is not guardian without appointing agreement or order, unless regularly cares for the child
- Non-parent may only be appointed guardian by court order

Guardianship

- Guardians have **parental responsibilities**, the duty to make decisions respecting a child in the best interests of the child
- Parental responsibilities may be allocated among or shared between guardians
- Guardians have duty to consult each other unless consultation would be unreasonable or inappropriate

Guardianship

- The time a guardian is with a child is **parenting time**
- During parenting time, guardian has care and control of child and responsibility for day to day decision-making
- Parenting time may be on terms and conditions, including supervision

Parenting arrangements

- Parenting arrangements are arrangements for **parental responsibilities** or **parenting time** under agreement or order
- No presumptions that parenting time should be shared equally or that parenting responsibilities should be allocated equally or shared equally

Contact

- People who are not guardians, including parents who are not guardians, have **contact** with a child
- Contact may be agreed to by all guardians, or may be granted by court
- Contact may be on terms and conditions, including supervision

Moving with a child

- Guardians wishing to relocate with child must give **60 days' notice** to guardians and persons with contact
- If objection, moving guardian must show that **1** move is made in good faith and **2** reasonable arrangements are proposed to preserve relationship with other guardians
- May be opposed on basis move is not in child's best interests

Moving with a child

- If guardians have equal time, moving guardian must show that **1** move is made in good faith, **2** reasonable arrangements are proposed to preserve relationship with other guardians, and **3** move is in child's best interests

Children's property

- Guardian is not trustee of child's property except for property in prescribed class or of value less than prescribed amount
- Trustee may be appointed by court or by trust instrument
- Trustee must deliver property and accounting to child at age 19 unless order or trust instrument to contrary

Making changes

- Orders about children can be changed if there is a change in the needs or circumstances of a child, including because of a change in someone else's circumstances
- The court can set aside an agreement about children if the agreement is not in the children's best interests

Withdrawal of minors, ranked obligations, effect of agreements, insurance to secure obligation and support binding on estate.

CHILD SUPPORT

Disqualifying minors

- Support obligation may terminate where minor voluntarily **withdraws** from parental charge or **marries**
- Minor may requalify for support on returning to charge of parents

Ranked priorities

- Duty of **non-parent guardians** secondary to obligation of parents
- Duty of **stepparents** secondary to both
- Stepparent's liability assessed considering length of time child and stepparent cohabited and standard of living enjoyed by child during relationship

The not-so-sweet hereafter

- Where payor has **insurance policy**, court may order that policy be maintained and that child or spouse be named as beneficiary
- Support obligation may be made **binding on payor's estate**, either at making of original child support order or upon recipient's application after payor's death

Making changes

- Orders about child support can be changed if there is a change in circumstances under the CSG or if new evidence about income becomes available
- The court can set aside an agreement about child support if it would make a different order

Who is a spouse, effect of agreements, insurance to secure obligation and support binding on estate.

SPOUSAL SUPPORT

Standing

- “Spouses” are 1 married spouses, 2 persons cohabiting in marriage-like relationship for more than two year and 3 persons cohabiting in marriage-like relationship shorter than two years who have had a child together
- Claim must be brought within two years of divorce or nullity for married spouses or separation for unmarried spouses

Duration and amount

- Entitlement determined determined by *Divorce Act* objectives
- If entitlement, amount and duration determined by *Divorce Act* factors
- Advisory Guidelines not referenced

Reviews

- Orders and agreements can provide for review of spousal support obligation upon **fixed date** or happening of **defined event**
- Review provisions may address manner of review and considerations on review
- Order or agreement may be reviewed upon party becoming eligible to receive **pension benefits** if silent as to effect

Support in the afterlife

- Payor can be required to maintain life insurance policy to secure spousal support obligation in same manner as for child support
- Spousal support can be made binding on payor's estate in same manner and on same test as for child support

Making changes

- Orders about spousal support can be changed if there is a change in means needs and other circumstances of a spouse or if new evidence about income becomes available
- The court can set aside an agreement about spousal support if the agreement was entered into unfairly or with inadequate information, or if the agreement is **significantly unfair**

Family property, family debt and excluded property.

PROPERTY AND DEBT

Standing

- “Spouses” are 1 married spouses, 2 persons cohabiting in marriage-like relationship for more than two years
- Claim must be brought within two years of divorce or nullity for married spouses or separation for unmarried spouses

Family property

- All property owned by either party at the date of separation is **family property**, including assets acquired after separation with family property
- Includes corporate interests, ventures and partnerships, bank accounts, annuities, RRSPs and private pensions
- Includes the increase in value of excluded property

Family debt

- All debt incurred by a spouse during the spousal relationship is **family debt**, including debt incurred after separation to maintain family property

Excluded property

- All property owned by a spouse prior to the commencement of the spousal relationship is **excluded property**
- Includes gifts and inheritances received during the relationship, certain court awards, certain insurance proceeds and certain trusts
- Includes property bought with excluded property

Presumptions

- Spouses are presumed to be entitled to **half** of family property and be **half** liable for family debts, regardless of use or contribution
- Excluded property is presumed to remain the property of the owning spouse

Triggering event and valuation

- One-half of all family assets vests in each spouse as tenants in common **on separation**, as well as responsibility for one-half of family debt
- Value of family property is fair market value; valuation date is date of **agreement** or **trial** dividing property or allocating debt

Dividing family property unequally

- The court may divide family property or family debt unequally if equal division would be **significantly unfair**
- Factors include length of spousal relationship, spouse's contribution to other's career, family debt exceeding family property, spouse's responsibility for increase or decrease in value of property or debt

Dividing excluded property

- The court may divide excluded property if it cannot divide family property located outside province or if it would be significantly unfair not to divide excluded property
- Factors are length of spousal relationship and spouse's direct contribution to excluded property

Arbitration, mediation, collaborative law, parenting coordination, conduct orders and enforcement of orders.

DISPUTE RESOLUTION PROCESSES

Dispute resolution processes

- New emphasis on and support for dispute resolution processes out of court
- New duty to make full and frank disclosure imposed on parties not litigating
- Better legislative support of agreements generally, and significantly strengthened support for agreements on property and spousal support

Family dispute resolution

- “Family dispute resolution” means services of family justice counsellor or parenting coordinator; mediation, collaborative law and arbitration; other processes prescribed by regulation
- “Family dispute resolution professionals” include: lawyers, mediators, arbitrators, parenting coordinators

Duties of professionals

- Family dispute resolution professionals must assess for **family violence** and extent to which it impairs party's capacity to bargain
- Must inform party of dispute resolution processes and **other resources**
- Must advise that agreements and orders about children must be made in children's **best interests only**

Family dispute resolution

- Parties required to comply with any mandatory dispute resolution processes prescribed by regulation
- Court may require parties to engage in dispute resolution process
- Court may adjourn proceeding while parties attempt to resolve issues before court

Parenting coordinators

- Parenting coordinators may assist with implementation of **parenting arrangements** or **contact** when appointed by order or agreement
- May resolve disagreements by **consensus** or by **binding determinations**
- Court may enforce, vary or set aside determinations

Conduct orders

- Court may make conduct orders for reasons including to: manage behaviour frustrating resolution, prevent misuse of court process, and facilitate settlement
- Orders include: dismiss or strike pleadings or application, judge seizing self of further applications, attend counselling, attend dispute resolution, restrict communications, restrict contact, maintain family home

Enforcement

- Withholding of or failure to exercise parenting time or contact enforceable by referral to dispute resolution or counselling, make-up time, reimbursement of expenses
- Agreements on children and support can be filed and enforced as orders

General enforcement powers

- Where no specific enforcement provision, may order may be enforced by (1) requiring security, (2) payment of party's **expenses**, or (3) payment of **up to \$5,000** as a fine or to party
- Where nothing else will secure compliance, court may order party be **jailed**
- Provisions not applicable to protection orders, only enforced by ***Criminal Code***, s. 127

Protection orders, best interests of children and screening for violence.

FAMILY VIOLENCE

Protection orders

- Variety of orders may be made to protect “at-risk family member”
- Orders include: restraints on communications, attending or entering place, following person, possessing weapons; directions to police to remove person from property, accompany person to remove belongings, seize weapons; requirement to report; other terms

Protection orders

- Other *FLA* orders suspended to extent of conflict with protection order, including protection order from another jurisdiction and no-contact and non-communication orders under *Criminal Code*
- Only enforceable under s. 127 of *Criminal Code*; no other remedy in *FLA* and *Offence Act* inapplicable

Best interests of child

- Factors include presence of family violence; if family violence, test is prescribed for court to assess impact of family violence
- Orders and agreements are not in the best interests of children unless they protect the well-being of children to the maximum extent possible

Screening for violence

- New requirement on professionals, including lawyers, mediators and family justice counsellors to screen for family violence and assess impact on safety and capacity of party to negotiate fair settlement

Children, child support, spousal support, property and debt, dispute resolution processes and court processes.

HIGHLIGHTS

Children

- New provisions on **parentage** addressing assisted reproduction and parental status for all purposes
- Parents cohabiting during child's life are **guardians** with **parental responsibilities** and have **parenting time** with child
- Non-guardians have **contact** with child

Children

- Cool new powers to **enforce** parenting time and contact
- Statutory test to determine **mobility** with shifting burden to establish best interests; only guardians may object
- New scheme for management of **children's property**, guardians not automatically trustees

Child support

- Statutory authority to terminate support for minors who **leave home** or **marry**
- Nifty **ranking of obligations** of parents, non-parent guardians and stepparent
- New criteria to establish extent of **stepparent** liability
- Obligation may be **binding on estate**

Spousal support

- Regime applies to unmarried couples in short cohabiting relationships who have a child
- The return of **misconduct**, in a limited way
- Remarkable new **deference to agreements** on spousal support
- Obligation may be **binding on estate**
- Advisory Guidelines not referenced

Property and debt

- Regime applies to unmarried couples cohabiting for at least two years
- New regime exempts assets **brought into relationship** and certain classes of assets acquired during relationship
- Shared assets are those **acquired during relationship** and **increase in value** of excluded assets

Property and debt

- Regime presumes equal liability for **debts** incurred during relationship
- New **deference to agreements** on property and debt;

Court processes

- New **enforcement powers** applicable in provincial court, including some with teeth
- New bundle of **conduct orders** and **protection orders** enabling better control of parties

An Overview of the New *Family Law Act*

John-Paul Boyd
Aaron Gordon Daykin Nordlinger

27 March 2012
Legal Services Society
Legal Information and Resources for Settlement Workers Conference

Family Law Act Bill 16-2011

Legal Information and Resources for Settlement Workers Conference
March 27, 2012

Civil Policy and Legislation Office
Ministry of Justice

The Reform Process

- 2005 – Family Justice Reform Working Group report:
A New Justice System for Families and Children
- 2006 - public launch of Family Relations Act Review
- 2007 – 14 discussion papers posted on Ministry website
- 2007-09 – extensive consultations with legal community and community groups, as well as citizen focus-groups
- Written submissions from 156 stakeholders
- 2010 – White Paper on Family Relations Act Reform
- 140 submissions from individuals and organizations
- Advisory group of senior family lawyers reviewed draft legislation

Family Law Act

- Royal Assent (final approval) November 24, 2011
- Bulk of Act not yet in effect
- When brought into effect, will replace the Family Relations Act
- Implementation: regulations, court rules, systems, policy and procedures, training, information
- Responds to over 30 years of social and legal change
- Focus on:
 - out-of-court dispute resolution and agreements
 - child-focused parenting arrangements after separation
 - safety

Key Areas of the Family Law Act

- Family dispute resolution and agreements
- Legal parentage
- Child's best interests
- Guardianship and parenting arrangements
- Parenting time and contact compliance
- Relocation
- Property and pension division
- Support
- Children's property
- Protection orders
- Conduct of proceedings

Encourage Cooperative Dispute Resolution

- Agreements
 - make, file, enforce
 - clear rules for changing property and spousal support agreements (s. 93 and s. 164)
- Family dispute resolution (s. 1 definition)
- Authority to set mandatory FDR processes (s. 9)

Family Dispute Resolution

- FDR professional (s. 1 definition)
- Duties of FDR professional:
 - screen for family violence;
 - discuss dispute resolution options;
 - advise of available resources;
 - advise that parenting agreements and orders must be made in child's best interests (s. 8)
- Authority to set qualifications and standards for FDR professionals , including standards for screening for family violence (s. 245)

Child's Best Interests

- Must consider **only** the child's best interests (s. 37(1))
- Best interests factors include (s. 37(2)):
 - child's views, unless it would be inappropriate
 - history of care
 - impact of family violence on the child
 - relevant civil or criminal proceedings
- Judges must consider specific factors in assessing family violence for the best interests test (s. 38)

Definition of Family Violence

- Includes (s. 1):
 - physical or sexual abuse
 - psychological or emotional abuse
 - in the case of a child, direct or indirect exposure to family violence
- Does not include use of reasonable force to protect oneself or others

Parenting Terminology

- Custody and access – gone
- New Act's terms:
 - guardian(s. 39)
 - parental responsibilities (s. 40 and 41)
 - parenting time (s. 40)
 - contact (s. 58 and 59)
 - parenting arrangements (s. 1)

Parenting Arrangements

- No presumptions (s. 40(4))
- Each guardian may exercise all parental responsibilities, unless agreement or order (s. 40(2))
- Parental responsibilities may be allocated or shared by agreement or order (s. 40(3))
- Guardians must exercise parental responsibilities in child's best interests (s. 43(1))
- Applicants for guardianship must provide evidence about child's best interests (s. 51(2))

Parenting Arrangements (2)

- No change to informal parenting arrangements without consulting other guardians (s. 48)
- Agreements and orders for parenting arrangements may include a dispute resolution mechanism (s. 44 and 45)

Contact

- Time with a child for non-guardians, e.g., grandparents (Part 4, Division 4)
- Agreement or order
- No parental responsibilities for non-guardians

Parenting Time and Contact Compliance

- Failure to exercise and wrongful denial of parenting time or contact with a child (Part 4, Division 5)
- Remedies: FDR, counselling, reimbursement of expenses, supervised transfer of child (s. 61 and 63)
- Additional remedies for wrongful denial(s. 61 and 231)
- Circumstances in which denial is not wrongful (s. 62)

Relocation

- Move that affects child's relationships after agreement or order made (s. 65)
- Notice requirement (s. 66)
- Moving guardian must show:
 - move is in good faith
 - reasonable arrangements to preserve relationship
- To oppose, other guardian must show move is not in child's best interests (s. 69)
- If guardians have equal or almost equal time with child, moving guardian must show good faith, reasonable arrangements and that move is in child's best interests (s. 69(5))

Property Division

- Family property (s. 84):
 - all property owned by either spouse at separation, except excluded property, plus
 - increase in value of excluded property during the relationship
- Excluded property (s. 85):
 - all property a spouse owns before the relationship
 - gifts and inheritances a spouse receives
 - certain court awards, insurance proceeds and trusts
- Family debt (s. 86):
 - all debt a spouse incurs during the relationship
 - debt a spouse incurs after separation to maintain family property

Property Division (2)

- Applies to married, **and** unmarried who lived together in a marriage-like relationship for 2 years (s. 3)
- General rule: on separation, family property and family debt divided equally (s. 81)
- Spouses may agree to a different division (s. 93)
- If no agreement, a judge may divide the family property and family debt unequally if equal division would be significantly unfair (s. 95)
- Time limits for applying: 2 years after divorce (married) or 2 years after separation (unmarried) (s. 198)

Support

- Child support (Part 7, Division 2)
 - duty to support child under 19 does not end if child voluntarily leaves because of family violence or intolerable circumstances (s. 147)
 - non-parent guardians' duty to support child is secondary to parents' duty (s. 147)
 - step-parents' duty to support child is secondary to parents' and non-parent guardians' duty (s. 147)

Support (2)

- Spousal support (Part 7, Division 4):
 - rules apply to (s. 3 definition of spouse)
 - married
 - unmarried and lived together in a marriage-like relationship for two years
 - unmarried and lived together in a marriage-like relationship for less than two years and have a child together
 - time limits for applying : 2 years after divorce (married) or 2 years after separation (unmarried) (s. 198)
 - spousal support obligations after death (s. 171)
- Parental support repealed November 24, 2011

Protection Orders/Conduct Orders

- New Act replaces Family Relations Act restraining orders with:
 - **protection orders** (Part 9) - to protect safety where there is a risk of violence
 - **conduct orders** (Part 10, Division 5) –to manage problem, but non-violent behaviour, which makes resolving a dispute more difficult

Protection Orders

- Order to protect safety of family members (s. 183)
- Broad definition of “family member” (s. 1)
- Application by family member or someone on family member’s behalf or court’s own initiative (s. 183)
- Judge must consider risk factors (s. 184)
- Order expires after 1 year unless it includes a different expiry date (s. 183)
- Enforcement of breaches under Criminal Code
- Family Relations Act restraining orders continue(s. 255)

Conduct Orders

- Not safety-related (s. 222)
- Orders on application or court's own initiative
- Examples of types of orders:
 - dismiss an application or prohibit an application without a judge's permission (s. 223)
 - require a person to attend FDR (s. 224)
 - restrict communications (s. 225)
- Remedies for breach in Family Law Act (s. 228)
- If breach of order restricting communications results in safety concerns, judge may make a protection order (s. 228)

Other Provisions

- Duty to disclose (s. 5)
- Remedies for misuse of court process (s. 221)
- Legal parentage (Part 3)
- Children's property (Part 8)

Conclusion

- Family Law Act as passed:
http://www.leg.bc.ca/39th4th/3rd_read/gov16-3.htm
- Provisions in force:
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/11025
- Ministry of Justice page:
<http://www.ag.gov.bc.ca/legislation/family-law/index.htm>
- Questions?

Children, Property, Debt and Support under the *Family Law Act*

John-Paul Boyd¹
March 2012

I. INTRODUCTION

The *Family Law Act*² passed third reading in the provincial legislature on 23 November 2011 and became law upon receiving royal assent the next day.³ It is not yet fully in force, and, according to the Attorney General's public comments, likely won't be until early- to mid-2013;⁴ given the scope and consequence of the reforms that will be brought into effect, this delay is a happy circumstance indeed. It's not just the bench and bar that needs to get up to speed on the new legislation; couples across the province, unmarried couples in particular, will need time to reflect on the strength and resilience of their present relationships.

The *Family Law Act* is wholly new to British Columbia, and no assumptions should be made that any particular provision has been carried forward unaltered from the *Family Relations Act*.⁵ Although some aspects of the legislation are a modest update of the *Family Relations Act*, such as the new act's discussions of child support and the problem of jurisdictional overlap between the Supreme Court and Provincial Court, the *Family Law Act*:

- a) imposes new and radically different legislative schemes on a number of traditional family law subjects (like the care of children, the division of property and the enforcement of court orders);
- b) codifies certain principles of the common law (conflicts of laws, fairness in negotiation processes);
- c) establishes regulatory mechanisms on matters new to provincial law (division of debt, parental mobility, parenting coordination); and,

¹ This paper is based on material originally prepared for the Pacific Business & Law Institute, published in February 2012.

² *Family Law Act*, SBC 2011, c. 25

³ The version of the *Family Law Act* available on the website of the Queen's Printer (www.bclaws.ca) displays only the portions currently in force. For the complete act, see the third reading bill published on the legislature's website at www.leg.bc.ca/39th4th/3rd_read/gov16-3.htm.

⁴ The Attorney General has stated that the act would be fully in force within 12 to 18 months of enactment (www2.news.gov.bc.ca/news_releases_2009-2013/2011AG0032-001483.htm), but later is more likely than earlier.

⁵ *Family Relations Act*, RSBC 1996, s. 128

- d) disposes of some subjects of long standing in the *Family Relations Act* (parental support, statutory offences).

This paper will briefly discuss some of the more important changes to the law relating to spousal support and child support, the care of children, and the act's renovated and remodeled scheme for the division of property and allocation of debt between spouses.

II. CHILDREN

The law on the care of children is one of the areas most significantly changed under the *Family Law Act* from the *Family Relations Act*. The act requires the use of new language and rests on a conceptual underpinning which casts parenting after separation in terms of the right of children to be properly cared for rather than in terms of parents' right to make decisions for their children or right to have their children for defined periods of time.

A. The Law at Present

The *Divorce Act* talks about the care of children in terms of "custody" and "access;"⁶ the *Family Relations Act* uses the terms "custody," "guardianship" and "access."⁷

Roughly speaking, custody under the *Divorce Act* has the same meaning as custody and guardianship have together under the *Family Relations Act* and includes the full bundle of rights involved in parenting a child: the right to make decisions about the child's education, religious instruction, diet, clothing, health care and sports activities; the right to determine where the child lives and with whom the child associates; and, the right to the day-to-day care and control of the child. Under the *Family Relations Act*, custody has the sense of a possessory right while guardianship is more plainly aimed at parenting rights and responsibilities.

Access under both acts refers to the time that the parent with the least amount of time with a child has with the child.

Under the *Divorce Act*, married spouses can apply for custody and access. Persons other than the spouses may also apply, but only with leave of the court. Under the *Family Relations Act*, any person can apply for custody, guardianship and access without needing to obtain leave. Most of the time it is parents who apply for custody, guardianship and access, but from time to time grandparents, other relatives and persons with a history of involved caring for a child will apply.

The court's treatment of these issues has evolved significantly over the past few decades, largely because of the win/lose mentality created by the labels "custody"

⁶ *Divorce Act*, RSC 1985, c. 3 (2nd Supp.), s. 16

⁷ *Family Relations Act*, Part 2

and “access.” Often the parent who didn’t get custody felt quite wounded by the implication that he or she was less of a parent and that his or her role in the child’s life had been marginalized. There was some truth to this, as the rights of custodial parents were significantly broader than the rights of parents without custody; in theory, a parent with custody, or guardianship under the *Family Relations Act*, had no right to get information from or give instructions to the important people involved in a child’s life, such as doctors, teachers, counsellors and instructors and was effectively cut out of the child-rearing aspect of parenting.

As a result, parents often fight about custody, guardianship and access with vigor and rancour, and engage in years-long legal battles at enormous financial and emotional expense. Whether as a result of this or an increasingly enlightened attitude about the effect of parental conflict on children, the courts have begun to grant joint guardianship more and more often, to the point where joint guardianship has become the starting point. Joint custody followed suit, once the bench and bar recognized that a parent could pursue joint custody without the necessity of an equal sharing of the child’s time.

At present, the unwritten presumption is that parents will have joint custody and joint guardianship of their children, providing that both parents were reasonably involved in parenting prior to separation, the parents are not pathologically conflictual and neither parent suffers from an obvious disqualifying problem such as drug or alcohol addiction. “Joint guardianship” in the contemporary context means that both parents have the right to be involved in making important parenting decisions and that each has the obligation to consult with the other in good faith when making such decisions.⁸ “Joint custody” has a less certain meaning as a result of the disconnect between custody and a parent’s time with the child and the heightened significance of the rights involved in joint guardianship, and really only signals the court’s view that a parent is a decent parent who ought not suffer the ignominy of losing the “custody” label.

B. The *Family Law Act*

Under the new act, the care of children is discussed in terms of “parental responsibilities,” the obligation to make parenting decisions on behalf of a child, and “parenting time” and “contact,” a person’s time with the child.

Under s. 39 of the *Family Law Act*, parents who live together are “guardians” of their children, while they are together and after their separation, subject to an order or agreement to the contrary. A parent who did not cohabit with the child and did not regularly care for the child is not a guardian.

⁸ The Joyce and Horn models of joint guardianship illustrate the reciprocal nature of parents’ rights and obligations toward each other when making parenting decisions.

- (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.
- (2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.
- (3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:
 - (a) section 30 applies and the person is a parent under that section;
 - (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
 - (c) the parent regularly cares for the child.

Under s. 40, only guardians have parental responsibilities and parenting time. People who are not guardians, who may include parents, have contact.

1. Parenting Arrangements

Parental responsibilities are non-exhaustively listed at s. 41 and include day-to-day decision-making, determining where the child resides and the manner of the child's education, giving or withholding permission on behalf of the child and so forth:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the *Infants Act*, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
 - (i) starting, defending, compromising or settling any proceeding relating to the child, and
 - (ii) identifying, advancing and protecting the child's legal and financial interests;

- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

Pursuant to s. 40(3), parental responsibilities may be shared between or allocated among guardians.

Parenting time is defined by s. 42 as the time a guardian is with a child. During a guardian's parenting time, the guardian has day-to-day care of the child and is responsible for day-to-day decision-making on behalf of the child.

"Parenting arrangements" means the arrangements that have been made in an order or agreement for the allocation of parental responsibilities and parenting time between guardians. Under s. 40(4), no particular parenting arrangements are presumed to be in the best interests of a child, including that parental responsibilities or parenting time should be shared equally, and that decisions should be made separately or by more than one guardian together.

2. Contact

A person who is not a guardian, including a parent who is not a guardian, may have "contact" with a child. Contact is not included in the term "parenting arrangements;" this term applies only to guardians.

III. CHILD SUPPORT

This area of the law is the least affected by the *Family Law Act*, perhaps because so much of the law is governed by the Child Support Guidelines,⁹ a federal regulation under the *Divorce Act*, adopted in British Columbia by the Child Support Guidelines Regulation,¹⁰ primarily concerning the calculation of child support and establishing certain minimum financial disclosure obligations.

A. The Law at Present

Parents have a duty under the common law and an obligation under the *Criminal Code*¹¹ to provide their children with the necessities of life. The *Family Relations Act*¹² and the *Divorce Act*¹³ codify this obligation for separated parents and stepparents, and require the party with the least amount of time with a child to provide a sum of money, usually monthly, to the parent with the most amount of time; the parent with the most amount of time with the child is presumed to meet

⁹ Federal Child Support Guidelines, SOR/97-175

¹⁰ Child Support Guidelines Regulation, BC Reg. 61/98

¹¹ *Criminal Code*, RSC 1985, c. C-46, s. 215(1)(a)

¹² *Family Relations Act*, ss. 88, 93

¹³ *Divorce Act*, s. 15.1

his or her obligation through the countless tangible and intangible contributions that parent makes in caring for and raising the child on a day-to-day basis.

A parent or stepparent can be required to pay child support, by an agreement or court order, until the child reaches 19, the age of majority in British Columbia. Child support can be payable after a child turns 19 if the child is “unable to withdraw” from the charge of a parent as a result of illness or disability, or attendance in a full-time program of post-secondary education.

Child support is tax neutral; the payor pays support in after-tax dollars and receives no tax credit or benefit for those payments, and the recipient receives support from the payor without having to declare it as taxable income.

Since 1997, the amount of child support payable has been determined by the Child Support Guidelines. The key presumption of the Guidelines is that child support should be determined by reference to the Guidelines tables, a series of charts specific to the payor’s province of residence which set out the amount owing based on the number of children and the payor’s income.¹⁴

There are, of course, exceptions to the tables amounts, most commonly where:

- a) the payor’s annual income is in excess of \$150,000 (Guidelines, s. 4);
- b) the child is 19 years or age or older (s. 3(2));
- c) the payor is a stepparent to the child (s. 5);
- d) the parties have split custody – each party has the primary care of one or more children (s. 8); and,
- e) the parties have shared custody – the parties share the child’s time equally or almost equally (s. 9).

When a family’s circumstances satisfy one of these exceptions, the court may depart from the Guidelines tables and make an order in a lesser amount than the tables would normally require, although, apart from the mandatory exception for split custody, it may choose not to do so and often doesn’t.

¹⁴ The tables were most recently updated on 31 December 2011 and in British Columbia generally decreased the amount payable by payors with incomes below \$50,000 and increased the amount payable for persons with incomes above that amount. Take care to ensure that the tables you are using are up to date.

B. The *Family Law Act*

1. Minor children ceasing to be eligible for child support

Under the present case law, children under the age of majority who marry or who withdraw from their parents' care and lead independent, self-sufficient lives – for example by getting a job and moving out – may cease to be eligible for child support. In such cases, the recipient of support no longer has a child living under his or her roof and the payor may be relieved of the obligation to provide the recipient with child support.

These rare circumstances are codified by the new legislation. Under s. 147, parents' obligation to pay support in respect of a minor ceases when a child marries or voluntarily withdraws from charge of his or her parents:

- (1) Each parent and guardian of a child has a duty to provide support for the child, unless the child
 - (a) is a spouse, or
 - (b) is under 19 years of age and has voluntarily withdrawn from his or her parents' or guardians' charge, except if the child withdrew because of family violence or because the child's circumstances were, considered objectively, intolerable.

The key to these new provisions is that the child's withdrawal must be "voluntary" and cannot result from domestic violence¹⁵ or otherwise intolerable living circumstances.¹⁶

A child who moves out, however, can return to eligibility by moving back home:

- (2) If a child referred to in subsection (1) (b) returns to his or her parents' or guardians' charge, their duty to provide support for the child resumes.

Similar provisions do not extend to children who marry, suggesting that marriage may be an absolute disqualification even where the marriage ends in divorce during the child's minority.

2. The obligations of non-parents

Section 5 of the Guidelines provides that the child support obligations of stepparents, defined as persons married to parents, may be determined in an amount different from the tables amount:

¹⁵ "Family violence" is defined in rather comprehensive terms at *Family Law Act*, s. 1.

¹⁶ It is curious, and seems somewhat unfair, that a payor's obligation to pay child support to the recipient would continue in respect of a child who has moved out because of objectively intolerable conditions in the recipient's home.

Where the spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of a child support order is, in respect of that spouse, such amount as the court considers appropriate, having regard to these Guidelines and any other parent's legal duty to support the child.

As a result of the Child Support Guidelines Regulation,¹⁷ this provision applies to all persons who have a *Family Relations Act* child support obligation, including guardians and common-law spouses. In general, s. 5 has resulted in the obligation of stepparents being treated as top-up to the obligation of the payor parent.¹⁸

The *Family Law Act* takes this concept one step further and ranks the obligation of parents, guardians and stepparents relative to each other, and establishes a new test to determine the amount owing by stepparents:

- (3) If a guardian who is not the child's parent has a duty to provide support for that child, the guardian's duty is secondary to that of the child's parents.

("Guardian," for the purposes of child support, is defined as excluding guardians who are not parents and whose only duty concerns the child's financial interests¹⁹ or legal interests.²⁰)

- (5) If a stepparent has a duty to provide support for a child ... , the stepparent's duty
 - (a) is secondary to that of the child's parents and guardians, and
 - (b) extends only as appropriate on consideration of
 - (i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and
 - (ii) the length of time during which the child lived with the stepparent.

In other words, a guardian's duty to pay child support is secondary to that of a parent and should be assessed in light of the parent's obligation to support the child; a stepparent's duty is tertiary and should be assessed in the narrow context of the child's standard of living and the length of the relationship between the stepparent and child, seemingly without reference to any other person's obligation to pay support.²¹

¹⁷ Child Support Guidelines Regulation, s. 1(3)(h)

¹⁸ *U.V.H. v M.W.H.*, 2008 BCCA 177; *Squire v Severs*, 2000 BCSC 853

¹⁹ For example, a guardian appointed as a property trustee under *Family Law Act*, ss. 175 to 181.

²⁰ Litigation guardians are appointed under *Family Law Act*, s. 201.

²¹ These factors seem to borrow from the reasoning in *U.V.H. v M.W.H.*; this case should be read for guidance until new case law develops specific to the *Family Law Act*.

3. Obligations surviving death

Under s. 170 of the *Family Law Act*, the court may order that a payor's obligation be secured against the possibility of death by the maintenance of a life insurance policy or as a debt of the payor's estate:

In an order respecting child support or spousal support, the court may provide for one or more of the following: ...

- (e) that a person who has a contract of life insurance within the meaning of Part 3 of the *Insurance Act*
 - (i) designate his or her spouse or child as a beneficiary, irrevocably or for the period designated by the court, and
 - (ii) either pay all premiums on the policy, or authorize his or her spouse to pay all premiums on the policy and to compensate the spouse for doing so; ...
- (g) subject to section 171 (1), that a duty to pay child support or spousal support continues after the death of the person having the duty, and is a debt of his or her estate for the period fixed by the court.

The test which must be met before a support obligation will be made binding on the payor's estate is set out at s. 171(1) and requires the court to examine whether the recipient's need is likely to continue past the death of the payor, whether the payor's estate is sufficient to meet the support obligation, taking into account other beneficiaries and the payor's creditors, and whether any other means exist to satisfy the recipient's need. Where a support order is made binding on a payor's estate, the payor's personal representative may apply to court for an order to vary or terminate the support order.²²

In the event that an agreement or order is silent on the issue of the payor's duties in the afterlife, under s. 171(3), a recipient may apply for an order that support continue nevertheless:

- (3) If a person having a duty to pay child support or spousal support under an agreement or order dies and the agreement or order is silent respecting whether the duty continues after the death of the person and is a debt of his or her estate,
 - (a) the person receiving support may make an application under section 149 or 165, and
 - (b) if, on consideration of the factors set out in subsection (1) of this section, an order is made, the duty to pay child support or spousal support continues despite the death of the person and is a debt of his or her estate for the period fixed by the court.

²² *Family Law Act*, s. 171(2)

4. Setting aside agreements on child support

The test to set aside an agreement on child support under the *Family Law Act* is set out at s. 148(3), which simply provides that on the application of a party, the court may set aside “all or part of an agreement respecting child support if the court would make a different order.” A lower threshold is difficult to conceive.

IV. SPOUSAL SUPPORT

The *Family Law Act* makes somewhat more substantial changes are made to the law on spousal support than the law on child support. The basic principles on the determination of entitlement, quantum and duration under the *Family Law Act* are harmonized with the *Divorce Act*, minimizing the opportunity for unmarried couples to be dealt with on a different standard than married couples, and standing to seek a spousal support order is expanded. Agreements on spousal support, which include agreements not to pay support, are significantly less susceptible to court challenge under the new act than under the *Family Relations Act*.

A. The Law at Present

Persons who qualify as spouses – married persons as well as persons cohabiting in marriage-like relationships for at least two years²³ – are entitled to seek orders for spousal support under the *Family Relations Act*.

An order for spousal support may be payable as a lump sum, but is more commonly paid on a monthly basis, either indefinitely or for a fixed period of time or until the occurrence of a specific event. Spousal support paid on periodic basis is taxable income in the hands of the recipient and tax-deductible, in the manner of RRSP contributions, in the hands of the recipient.²⁴

The law on spousal support is restated in the 1992 case of *Moge v Moge*,²⁵ in which the Supreme Court of Canada confirmed that, although the mere fact of marriage on its own does not give rise to a *prima facie* entitlement to support, there are three theoretical bases on which entitlement might found:

- a) *contractual* – when the parties have executed an agreement that requires one spouse to pay support to the other,

²³ *Family Relations Act*, s. 1(1)

²⁴ Recipients must report spousal support received at Line 128 of their T1 return; payors deduct support paid from their taxable income at Line 220.

²⁵ *Moge v Moge*, [1992] 3 S.C.R. 813. The court’s more recent decision in *L.M.P. v L.S.*, 2011 SCC 64 helpfully summarizes the court’s reasoning in *Moge* and the more important developments in the case law since 1992.

- b) *non-compensatory* – when a spouse has insufficient income available after separation to meet her reasonable needs and the other spouse has the means to pay it, and
- c) *compensatory* – when a spouse has suffered economic loss as a result of the relationship or decisions made during the relationship.

Under the *Family Relations Act*, a spouse's entitlement to support is determined by list of objectives set out at s. 89(1), while the amount and duration of an order for spousal support are determined, at least in theory, by reference to certain considerations listed at s. 93(4):

- (4) [T]he court may, as it considers appropriate, adjust the amount of its order ... to take into account the needs, means, capacities and economic circumstances of each spouse, including the following:
 - (a) the effect on the earning capacity of each spouse arising from responsibilities assumed by each spouse during cohabitation;
 - (b) any other source of support and maintenance for the applicant spouse;
 - (c) the desirability of the applicant spouse having special assistance to achieve financial independence from the spouse against whom the application is made;
 - (d) the obligation of the spouse against whom application is made to support another person;
 - (e) the capacity and reasonable prospects of a spouse obtaining education or training.

The importance of these considerations was substantially eroded by the introduction of the *Spousal Support Advisory Guidelines* in 2005 and its subsequent broad acceptance by the bench and bar.²⁶

The Advisory Guidelines prescribes a series of formulae to determine the quantum and duration of spousal support, once entitlement is determined or agreed. For couples without children, the Advisory Guidelines links the amount of support payable to the difference between the incomes of the payor and the recipient and the length of the parties' relationship,²⁷ and determines duration by the length of their relationship.²⁸ For couples with children, the amount of support is based on the difference between the parties' incomes net of all taxes, deductions and

²⁶ Carol Rogerson and Rollie Thompson, *Spousal Support Advisory Guidelines* (Ottawa: Department of Justice, 2008). The Advisory Guidelines was released in draft form in January 2005; the final version was released in July 2008.

²⁷ Under the "without children" formula, quantum is 1.5 to 2.0% of the difference between the parties' gross incomes per year of cohabitation.

²⁸ Under the "without children" formula, duration is 0.5 to 1.0 years per year of cohabitation.

benefits,²⁹ while duration is based on the length of the relationship and the age of the youngest child.³⁰

Although the Advisory Guidelines is an academic paper without regulatory effect, it has nevertheless found extraordinarily wide support across Canada, and has been endorsed by our Court of Appeal as a “useful tool”³¹ which is an appealable error to not consider when making a spousal support order.³²

B. The *Family Law Act*

1. Redefining “spouse”

The *Family Law Act* expands the meaning of spouse for the purposes of spousal support and stepparents’ liability for child support. Under s. 3(1), “spouse” now includes:

- a) persons who are married to one another;
- b) persons who have cohabited in a marriage-like relationship for at least two years; and,
- c) persons who have cohabited in a marriage-like relationship for less than two years but have had a child together.

2. Greater harmony with the *Divorce Act*

The new act’s approach to spousal support is a model of clarity and much improved over the *Family Relations Act*, and the basic tests for entitlement and the determination of quantum and duration duplicate those set out in the *Divorce Act*.

Under s. 160 of the *Family Law Act*, a person’s entitlement to spousal support is determined by reference to the objectives set out in s. 161,³³ and, where entitlement

²⁹ Under the basic “with children” formula, quantum is the amount which will leave the recipient with 40 to 46% of the difference of the parties’ combined individual net disposable incomes, roughly defined as the parties’ gross incomes less income taxes, statutory payroll deductions and real and notional child support, plus certain personal and all child-related tax deductions, benefits and credits, and adjusted to take into account the tax consequences of the payment and receipt of spousal support. For more a more detailed discussion of this formula, see John-Paul Boyd, *Obtaining Reliable and Repeatable SSAG Calculations* (Ottawa: Department of Justice, 2009).

³⁰ Under the basic “with children” formula, duration ranges from the longer of 0.5 years per year of cohabitation or the number of years until the youngest child enters full-time school, to the longer of 1.0 years per year of cohabitation or the number of years until the youngest child leaves full-time school.

³¹ *Yemchuk v Yemchuk*, 2005 BCCA 406

³² *Redpath v Redpath*, 2006 BCCA 338; *Domirti v Domirti*, 2010 BCCA 472

³³ *Divorce Act*, s. 15.2(6)

is found, the extent of the payor's duty is determined by applying the factors set out in s. 162:³⁴

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.
162. The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
 - (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together;
 - (c) an agreement between the spouses, or an order, relating to the support of either spouse.

3. A limited revival of misconduct

Spousal support has been administered on a no-fault basis in British Columbia since the introduction of the *Family Relations Act* in 1972 and generally in Canada since the 1968 amendments to the *Divorce Act*, with the effect that spousal misconduct, no matter how blameworthy or egregious, could not be considered in assessing a claim for spousal support.³⁵ Under s. 166 of the new act, however, the misconduct of a spouse can be taken into account in certain limited circumstances:

In making an order respecting spousal support, the court must not consider any misconduct of a spouse, except conduct that arbitrarily or unreasonably

- (a) causes, prolongs or aggravates the need for spousal support, or
- (b) affects the ability to provide spousal support.

The purposes of s. 166 seem fairly obvious: to address goldbricking spouses reluctant to embark on the necessary path toward independence and financial self-

³⁴ *Ibid.*, s. 15.2(4)

³⁵ For relatively recent discussions of this issue, see *Leskun v Leskun*, 2006 SCC 25 and John-Paul Boyd, "Tsunami in a Teapot: *Leskun v Leskun*" (2007) 40:1 UBC L.Rev. 293.

sufficiency; and, to punish payors engineering their economic circumstances so as to minimize their exposure to a support obligation after separation.

4. Obligations surviving death

Under s. 170 of the *Family Law Act*, the court may order that spousal support, like child support, be secured by the maintenance of a life insurance policy or as a debt of the payor's estate.

The test to make a spousal support obligation binding on the payor's estate is the same as the test to make child support binding and requires the court to examine whether the recipient's need is likely to continue past the death of the payor, whether the payor's estate is sufficient to meet the support obligation, and whether any other means exist to satisfy the recipient's need. Where a support order is made binding on a payor's estate, the payor's personal representative may apply to court for an order to vary or terminate the support order.

Where an agreement or order for spousal support does not address the effect of the payor's death, the recipient may apply for an order under s. 171(3) that a support obligation continue to hound the payor following his or her demise.

5. Setting aside agreements on spousal support

The test to set aside an agreement on spousal support under the *Family Law Act* is difficult and likely reflects government's wish to prioritize the resolution of certain family law disputes out of court.³⁶ Pursuant to s. 165(3), the court may not make an order on spousal support in the face of an agreement on spousal support, including an agreement that spousal support will not be paid,³⁷ until that part of the agreement has been set aside following an application made under s. 164.

Section 164 prescribes two tests for the setting aside of agreements on spousal support, one under subsection (3) that requires the court to examine the circumstances prevailing at the negotiation and execution of the agreement, and another under subsection (5) that looks at the parties' intentions in making the agreement and the extent to which the agreement had been relied upon over time:

- (3) On application by a spouse, the court may set aside or replace with an order made under this Division all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
 - (a) a spouse failed to disclose income, significant property or debts, or other information relevant to the negotiation of the agreement;

³⁶ See Division 1 of Part 2, "Resolution Out of Court Preferred."

³⁷ *Family Law Act*, s. 163(2)

- (b) a spouse took improper advantage of the other spouse's vulnerability, including the other party's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would under the common law cause all or part of a contract to be voidable.
- (4) The court may decline to act under subsection (3) if, on consideration of all of the evidence, the court would not replace the agreement with an order that is substantially different from that set out in the agreement.
- (5) Despite subsection (3), the court may set aside or replace with an order made under this Division all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
 - (a) the length of time that has passed since the agreement was made;
 - (b) any changes, since the agreement was made, in the condition, means, needs or other circumstances of a spouse;
 - (c) the intention of the spouses, in making the agreement, to achieve certainty;
 - (d) the degree to which the spouses relied on the terms of the agreement;
 - (e) the degree to which the agreement meets the objectives set out in section 161.

The first test assesses the essential fairness of the bargaining process, the adequacy of disclosure and the presence of any circumstances vitiating consent, essentially canvassing the highlights of three critical cases on family law agreements, *Rick v Brandsema*,³⁸ *Hartshorne v Hartshorne*³⁹ and *Miglin v Miglin*.⁴⁰ The second test calls for a longitudinal evaluation of an impugned agreement, in which the threshold issue of "significant unfairness" inversely correlates to the length of time passing between the execution of the agreement and the commencement of the application for an order that it be set aside.

These tests make important changes to the law on agreements for spousal support: attacks based on contract law are now largely codified; changes in circumstances used to challenge an agreement will no longer be "material" but "significantly unfair;"⁴¹ and unfairness is counterbalanced by reliance and the passage of time.

V. DIVISION OF PROPERTY AND ALLOCATION OF DEBT

The changes to the law on property division made by the *Family Law Act* are among the most profound and far-reaching of its reforms, and ought to cause couples throughout the province to pause and reflect on the adequacy of their relationships

³⁸ *Rick v Brandsema*, 2009 SCC 10

³⁹ *Hartshorne v Hartshorne*, 2004 SCC 22

⁴⁰ *Miglin v Miglin*, 2003 SCC 24

⁴¹ *L.M.P. v L.S.; Willick v Willick*, [1994] 3 S.C.R. 670; *L.G. v B.G.*, [1995] 3 S.C.R. 370

during this honeymoon period between the passage of the bill and the act coming fully into force in 2013.

In a nutshell, the act replaces the former regime with a brand new scheme, akin to that in place in Alberta and Ontario, aimed at the equalization of net worth acquired during a relationship. The scheme is equally applicable to persons in married and longer-term unmarried relationships, and essentially allows spouses to keep the property they bring into a relationship and share only in the increase in value of that property, plus the net value of any new property obtained after cohabitation.

A. The Present Law Applicable to Married Spouses

Married couples are presumptively entitled to a one-half interest in all property that qualifies as a “family asset.”⁴² A family asset is defined as any asset ordinarily used for a family purpose,⁴³ and for most couples all assets owned by either spouse qualify as family assets, including the family home and the family car, savings and pensions, and interests in corporations and ventures. Property owned by a business and used for business purposes may be excluded from the pool of family assets,⁴⁴ however the value of such assets is almost always captured in the value of the business that owns them, the shares of which usually qualify as a family asset.

The court may divide family assets unequally if an equal division would be unfair, having regard to a list of common sense considerations set out at s. 65:

- (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to
 - (a) the duration of the marriage,
 - (b) the duration of the period during which the spouses have lived separate and apart,
 - (c) the date when property was acquired or disposed of,
 - (d) the extent to which property was acquired by one spouse through inheritance or gift,
 - (e) the needs of each spouse to become or remain economically independent and self sufficient, or
 - (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

Although the application of these considerations is always extremely fact-specific, it is usually sufficient for a marriage to make it to about the seven-, eight- or nine-year mark for the presumption of equal entitlement to fully take root; in the case of

⁴² *Family Relations Act*, s. 56

⁴³ *Ibid.*, s. 58(2)

⁴⁴ *Ibid.*, s. 59

shorter marriages, the assets acquired during the relationship will usually be divided equally with each spouse retaining a greater share of those assets they separately brought into the marriage.

The *Family Relations Act* is silent on the allocation of debt between spouses. However, the court will generally deem both spouses to be responsible for the repayment of debt incurred for family purposes, and allocate debts incurred for primarily personal purposes to the spouse incurring them.⁴⁵

B. The Present Law Applicable to Unmarried Couples

The parts of the *Family Relations Act* governing the division of family property⁴⁶ apply only to married spouses as a result of the definition of “spouse” at s. 1. As a result, the law applying to the property rights of unmarried couples is the general law governing the rights of any unrelated parties in a fiduciary relationship or who jointly own property.

Unmarried partners who jointly own real property are subject to the remedies provided to all co-owners under the *Land Title Act*⁴⁷ and may seek an order for the sale of property and distribution of sale proceeds under the *Partition of Property Act*.⁴⁸ Such couples may also be subject to the equitable presumption of the intention to gift a one-half interest even where the parties’ contributions to the purchase of an asset are unequal.⁴⁹

Where only one party owns an asset, the non-owner must establish an entitlement to an interest in the asset by proving the existence of an express trust or that the owner had been unjustly enriched by the non-owner’s contributions;⁵⁰ the latter claim is by far the most common. The test for unjust enrichment requires the non-owning party to prove that:⁵¹

- a) the owner received a benefit,
- b) the non-owner suffered a loss directly relating to the benefit, and
- c) there was no juristic reason for the benefit and corresponding deprivation.

⁴⁵ *Mallen v Mallen* (1992), 40 R.F.L. (3d) 114 (BCCA); *Bryan v Chapman*, 2011 BCCA 278.

⁴⁶ *Family Relations Act*, Parts 5, “Matrimonial Property,” and 6, “Division of Pension Entitlement”

⁴⁷ *Land Title Act*, RSBC 1996, c. 250

⁴⁸ *Partition of Property Act*, RSBC 1996, c. 347

⁴⁹ *Boyd v Boyd*, (1992) 68 B.C.L.R. (2d) 201 (BCCA); *Zegil v Opie*, (1994) 8 R.F.L. (4th) 91 (OCJ)

⁵⁰ Non-owners were formerly able to assert the existence of a resulting trust, however such claims are no longer available as a result of the recent judgment in *Kerr v Baranow*, 2011 SCC 10.

⁵¹ *Kerr v Baranow* provides a complete overview of the contemporary law on unjust enrichment; the two seminal cases on the subject are *Peter v Beblow*, [1993] 1 S.C.R. 980 and *Pettikus v Becker*, [1980] 2 S.C.R. 834.

Where unjust enrichment is proven, the court will require the enriched party to compensate the deprived by paying a sum calculated either on the basis of either *quantum meruit*, the value of services rendered, or *quantum valebant*, the value of the benefit received. Where the enriched party lacks the liquid capital to satisfy the judgment, the court may impose a constructive trust on property owned by the enriched party in favour of the deprived party.

The law on unjust enrichment is complex, and therefore expensive to litigate, and rarely provides unmarried parties with property interests anywhere close to the interests the parties would have received had they been married.

C. The *Family Law Act*

1. Redefining “spouse”

The provisions for the division of property and debt under the *Family Law Act* apply to spouses who:⁵²

- a) are married to one another; or,
- b) are unmarried but have cohabited in a marriage-like relationship for at least two years.

Marital property rights have not previously been available to unmarried couples in British Columbia.⁵³

2. Parameters of the spousal relationship

The nature and extent of marital property interests under the new legislation are largely defined by the dates on which a relationship commences and concludes. Under s. 3(3) of the *Family Law Act*, a spousal relationship begins on the earlier of:

- a) the date of the parties’ marriage; or,
- b) the date the parties began to cohabit in a marriage-like relationship.

Although “spouse” is defined to include former spouses,⁵⁴ a spouse must bring a claim for the division of property or allocation of debt within two years of:⁵⁵

- a) the date of the parties’ divorce or declaration of nullity, in the case of married spouses; or,

⁵² *Family Law Act*, s. 3(1)

⁵³ *Family Relations Act*, s. 1(1) “spouse”

⁵⁴ *Family Law Act*, s. 3(2)

⁵⁵ *Ibid.*, s. 198(2)

- b) the date of the parties' separation, in the case of unmarried spouses.

The circumstances which constitute separation are not expressly defined by the new legislation, however s. 3(4) suggests some indicia the court may take into account in determining the date of separation while confirming that a couple may continue to cohabit after their separation without ceasing to be separated:

- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

3. Identifying shared property and sharable debt

The *Family Law Act* defines two critical classes of property, "excluded property" and "family property," and the membership of an asset in one class or the other will usually determine whether it will remain the property of the owning spouse upon relationship breakdown or must be divided between the spouses.

Excluded property presumptively remains the property of the owning spouse during and after the relationship,⁵⁶ and is exhaustively defined at s. 85(1) of the new act as follows (emphasis added):

- (1) The following is excluded from family property:
 - (a) *property acquired by a spouse before the relationship between the spouses began;*
 - (b) *gifts or inheritances* to a spouse;
 - (c) a settlement or an *award of damages* to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
 - (d) money paid or *payable under an insurance policy*, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
 - (e) property referred to in any of paragraphs (a) to (d) that is *held in trust for the benefit of a spouse;*
 - (f) property held in a discretionary trust

⁵⁶ *Ibid.*, s. 96

- (i) to which the spouse did not contribute,
- (ii) of which the spouse is a beneficiary, and
- (iii) that is settled by a person other than the spouse;
- (g) *property derived from property or the disposition of property* referred to in any of paragraphs (a) to (f).

Spouses are presumptively entitled to equal interest in all assets qualifying as “family property,” regardless of their respective use of or contribution to those assets.⁵⁷ Family property is defined at s. 84 (emphasis added):

- (1) Subject to section 85, family property is *all real property and personal property* as follows:
 - (a) *on the date the spouses separate*, property
 - (i) that is *owned by at least one spouse*, or
 - (ii) in which *at least one spouse has a beneficial interest*;
 - (b) after separation, property
 - (i) acquired by at least one spouse, or
 - (ii) in which at least one spouse acquires a beneficial interest, that is *derived from the property referred to in paragraph (a)* or from the disposition of that property.
- (2) Without limiting subsection (1), family property includes the following:
 - (a) a share or an interest in a *corporation*;
 - (b) an interest in a *partnership*, an association, an organization, a *business* or a *venture*;
 - (c) *property owing* to a spouse
 - (i) as a refund, including an income tax refund, or
 - (ii) in return for the provision of a good or service;
 - (d) *money* of a spouse in an account with a financial institution;
 - (e) a spouse’s entitlement under an annuity, a pension, a retirement savings plan or an income plan;
 - (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require its return or to direct its use or further disposition in any way;
 - (g) *the amount by which the value of excluded property has increased* since the later of the date
 - (i) the relationship between the spouses began, or
 - (ii) the excluded property was acquired.

To summarize the net effect of ss. 84 and 85 somewhat:

⁵⁷ *Ibid.*, s. 81(1)

- a) excluded property is all property brought into a relationship, as well as new property bought with excluded property;
- b) gifts, inheritances, court awards, certain insurance policy proceeds and certain trusts interests received during a relationship remain the property of the recipient as excluded property;
- c) family property is all property owned by either or both spouses, acquired after the date of cohabitation other than by the disposition of excluded assets; and,
- d) family property includes any increase in the value of excluded property after the date of cohabitation, or after the date of acquisition in the case of excluded property acquired during the relationship.⁵⁸

In addition, each spouse is presumed to be equally responsible for all liabilities qualifying as “family debt.”⁵⁹ Family debt is non-exhaustively defined at s. 86 as follows:

Family debt includes all financial obligations incurred by a spouse

- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property.

4. The triggering event

Spouses’ responsibility for family debt and entitlement to family property arises on separation, at which time the spouses’ interests in family property vest as tenants in common⁶⁰ and become mutually enforceable.⁶¹ The intriguing quality of separation as triggering event lies in its subtlety; this aspect of the legal consequences of separation is likely to pass unnoticed and unremarked by the majority of spouses, although it is arguably more consonant with people’s intuitive expectations.

This is a significant change from the triggering events available under the *Family Relations Act* – the execution of a separation agreement, the making of a declaration pursuant to s. 57,⁶² the making of an order for divorce and the making of a

⁵⁸ Although the question of what ought to happen when the value of excluded property declines during a relationship was raised in the white paper, the *Family Law Act* addresses only increases in value; see *White Paper on Family Relations Act Reform*, p. 93.

⁵⁹ *Family Law Act*, s. 81(a)

⁶⁰ *Ibid.*, s. 81(b)

⁶¹ *Ibid.*, s. 103(4)

⁶² *Family Relations Act*, s. 57: “On application by 2 spouses married to each other or by one of the spouses, the Supreme Court may make a declaratory judgment that the spouses have no reasonable prospect of reconciliation with each other.”

declaration of nullity – all of which required at least one spouse to take a positive legal step addressing the conclusion of the parties’ relationship.

5. Dividing property and allocating debt

Family property and family debt are presumptively divided and allocated equally between spouses. Except with respect to pensions, the mandatory valuation date is the date of the trial or agreement dividing property and debt.⁶³

Under s. 95, the court may divide either or both of family property and family debt unequally if an equal division would be “significantly unfair,” bearing mind a list of considerations much lengthier than that presently found at s. 65(1) of the *Family Relations Act* as follows (emphasis added):

- (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be *significantly unfair* to
 - (a) equally divide family property or family debt, or both, or
 - (b) divide benefits as required under Part 6.
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the *duration of the relationship* between the spouses;
 - (b) the terms of *any agreement* between the spouses, other than an agreement described in section 93 (1);
 - (c) a spouse’s *contribution to the career* or career potential of the other spouse;
 - (d) *whether family debt was incurred in the normal course of the relationship* between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the *ability of each spouse to pay a share of the family debt*;
 - (f) whether a spouse, after the date of separation, *caused a significant decrease or increase* in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially *reduced the value* of family property, or
 - (ii) *disposed of*, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse’s interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) *any other factor*, other than the consideration referred to in subsection (3), that may lead to *significant unfairness*.

⁶³ *Family Law Act*, s. 87(b)

An unequal division of family property or family debt may also be appropriate where an order for spousal support fails to adequately address a compensatory entitlement to spousal support:

- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 have not been met.

Excluded property is presumed to remain the property of the owning spouse but can be divided between spouses under s. 96 where: family property or family debt is located outside British Columbia and cannot be divided or allocated; or, if it would be “significantly unfair” not to divide the excluded assets:

The Supreme Court must not order a division of excluded property unless

- (a) family property or family debt located outside British Columbia cannot practically be divided, or
- (b) it would be significantly unfair not to divide excluded property on consideration of
 - (i) the duration of the relationship between the spouses, and
 - (ii) a spouse’s direct contribution to the preservation, maintenance, improvement, operation or management of excluded property.

The suite of orders available to give effect to an order dividing family assets under s. 66 of the *Family Relations Act* is continued in a more detailed manner at s. 97 of the new act and is expanded to assist in the allocation of family debt:

- (1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6, the Supreme Court may
 - (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
 - (b) despite sections 94 (2) and 215 (2), and subject to subsection (3) of this section, make any order that is necessary, reasonable or ancillary to give effect to the division.
- (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:
 - (a) declare who has ownership of, or right of possession to, property;
 - (b) require that title to a specified property granted to a spouse be transferred to, held in trust for, or vested in the spouse, absolutely, for life or for a term of years;
 - (c) require a spouse to pay compensation to the other spouse if property has been disposed of, transferred, converted, or exchanged into another form, or for the purpose of dividing the property;

- (d) require partition or sale of property and payment to be made out of the proceeds of sale to one spouse or both in specified proportions or amounts;
 - (e) require property forming all or a part of the share of either or both spouses to be transferred to, held in trust for, or vested in a child;
 - (f) require a spouse to give security, in any form the court directs, for the performance of an obligation imposed by an order under this section, including a charge on property;
 - (g) require a spouse to waive or release in writing any right, benefit or protection given by section 23 of the *Chattel Mortgage Act*, section 19 of the *Sale of Goods on Condition Act*, or section 58 or 67 of the *Personal Property Security Act*;
 - (h) subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt;
 - (i) require the sale of property for the purposes of paying an item of family debt;
 - (j) transfer property to a spouse.
- (3) An order in relation to family debt applies only as between the spouses and does not affect an agreement between a spouse and any other person.
- (4) Nothing in this section permits the Supreme Court to divide excluded property unless permitted under section 96.

6. Agreements on property and debt

Under s. 6(1) of the *Family Law Act*, parties may make an agreement that resolves a family law dispute, or resolves an issue that might become the subject of a family law dispute in the future. Spouses may therefore make agreements dividing property and allocating debt before, during and at the conclusion of a relationship.

Section 92 provides that such agreements may divide property and debt in any manner the parties wish, whether observing the scheme prescribed by the *Family Law Act* or not:

Despite any provision of this Part but subject to section 93, spouses may make agreements respecting the division of property and debt, including agreements to do one or more the following:

- (a) divide family property or family debt, or both, and do so equally or unequally;
- (b) include as family property or family debt items of property or debt that would not otherwise be included;
- (c) exclude as family property or family debt items of property or debt that would otherwise be included;
- (d) value family property or family debt differently than it would be valued under section 87.

Pursuant to s. 94(2), the court may not make an order on the division of family property or family debt in the face of an agreement on those subjects, until the relevant parts of the agreement have been set aside following an application brought under s. 93.

7. Setting aside agreements on property and debt

The test to set aside agreements for the division of property or allocation of debt under the *Family Law Act* is almost identical to the test prescribed in relation to agreements on spousal support. Section 93 sets out two tests, one under subsection (3) that requires the court to examine the circumstances prevailing at the negotiation and execution of the agreement, and another under subsection (5) that looks at the parties' intentions in making the agreement and the extent to which it had been relied upon over time:

- (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
 - (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- (4) The Supreme Court may decline to act under subsection (3) if, on consideration of all of the evidence, the Supreme Court would not replace the agreement with an order that is substantially different from the terms set out in the agreement.
- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
 - (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;
 - (c) the degree to which the spouses relied on the terms of the agreement.

These provisions significantly enhance the impregnability of marriage agreements and cohabitation agreements by establishing a test far more rigorous than mere unfairness,⁶⁴ however they put counsel to a correspondingly higher burden to draft agreements with punctilious care, bearing in mind the provisions of s. 93(3)(d) and (5), and will require that counsel:

⁶⁴ *Family Relations Act*, s. 65(1)

- a) insist upon generous disclosure, and make a record of the documents and information disclosed;
- b) require the other party to obtain independent legal advice; and,
- c) obtain medical certificates of competence when there are any doubts about a party's fitness or mental state.

VI. CONCLUSION

The support provisions of the *Family Law Act* contain important but limited improvements to the basic law on child support and spousal support. The act's provisions for the care of children, on the other hand, are entirely new to British Columbia, as is its scheme for the division of property and allocation of debt, in particular the extension of marital property rights to unmarried couples. The act's new deference to agreements on spousal support and property is remarkable and very much welcomed.

Government identified a number of criticisms of the *Family Relations Act* property regime in the 2010 white paper, including the following:⁶⁵

- a) it relies too heavily on judicial discretion;
- b) the case law on property division is inaccessible to people who are not lawyers;
- c) it is not always easy to determine whether an asset was used for a family purpose;
- d) the treatment of different categories of asset is inconsistent; and,
- e) it does not provide sufficient clarity about how specific types of property, such as inheritances, should be handled.

In support of the new model, the white paper argued that:⁶⁶

“The most compelling reasons for moving to an excluded property regime are to make the law simpler, clearer, easier to apply, and easier to understand for the people who are subject to it. The model seems to better fit with people's expectations about what is fair. They ‘keep what is theirs’, ... but share the property and debt that accrued during their relationship. Where one spouse enters the relationship

⁶⁵ *White Paper on Family Relations Act Reform: A Proposal for a New Family Law Act* (Victoria, Ministry of the Attorney General, 2010), pp. 79, 80

⁶⁶ *Ibid.*, p. 81

with more assets than the other, providing that spouses share the increase in the value of the excluded property promotes a fair outcome. ...

“Changing to an excluded property scheme removes the broad judicial discretion from the asset identification stage and leaves some discretion at the distribution stage. This change is designed to make it easier to identify property subject to division and, therefore, reduce the potential for disagreement.”

Others more cynical might take the contrary point, and argue that the new regime merely shifts ambiguity from the back end, sorting out the myriad range of outcomes following the end of a relationship, to the front end, establishing what was and wasn't excluded property at the beginning of the relationship. Few people commence a long-term relationship with a visceral appreciation of the legal consequences of its future conclusion; fewer yet will have the presence of mind to undertake the inventories and valuations that the *Family Law Act* seems to require.

Either way, whether government is proven right or the jaded cynic, what is clear is that the *Family Law Act* represents a fundamental sea change in the law of domestic relations in British Columbia, and counsel must sharpen their pencils and prepare for the new approach and analysis the new legislation requires.

Child Protection in B.C. Overview

Presenter:

Carol Rosset, Legal Counsel

March 28, 2012

Basic Principles

- Parents have a fundamental common law right entitling them, as opposed to the state, to care and custody of their child unless the safety and protection of the child requires removal from the family.
- Parents are responsible to provide the necessities of life and are financially responsible for their children.
- The state has an obligation to intervene in a family to protect children who are believed to be in need of protection.
- The *Child, Family and Community Service Act*, (CFCSA) is the provincial legislation that sets out the powers and responsibilities of the state in protecting children in B.C.

How it All Starts

- **DUTY TO REPORT NEED FOR PROTECTION**
- CFCSA (s. 14(1)); legal duty to promptly report if you have reason to believe a child needs protection (as per s.13).
- only exception are lawyers based on solicitor client privilege.
- Examples, teachers, police, community professionals, doctors, neighbours, family members, day care.

What must be reported s.13

- Child has been or is likely to be physically harmed, sexually abused or exploited by parent or other person and parent unwilling to unable to protect,
- Child has been or is likely to be physically harmed because of neglect by parent,
- Child is emotionally harmed by parent's conduct,
- Child is deprived of necessary health care, refuse treatment,
- Parent unable or unwilling to care for child and not made adequate provision for child's care, abandoned child, deceased,
- Child absent from home and in danger.

Who To Report To

- The *CFCSA* is administered by the Ministry of Children and Family Development.
- Under the Act, the Minister designates Directors.
- Directors delegate their responsibilities to social workers to carry out child protection work in B.C..
- MCFD and after hours social workers, the Helpline for Children (310-1234) provides 24-hour access to social workers in case of an emergency.
- Social workers are protected from civil liability while performing their duties under the Act. No person is personally liable for anything done or omitted in good faith, in acting under the Act. (s.101)

MCFD Process When Report Received

- On receiving a report about a child under s. [14](#), a director must assess the information in the report (s. [15](#)).
- MCFD social workers assess the seriousness of the risk the child is in currently and the nature of the protection concerns and assess the time line for taking further steps.
- Check for MCFD history on the family. Is there an open file?
- Is the child safe?
- Is the child and family visible in the community, availability of other family, friends, community supports?

MCFD Process Cont'd

- After the assessment, a director may offer support services to the child and family, refer the child and family to a community agency, or investigate the child's need for protection.
- At the completion of an investigation into whether a child needs protection, the social workers should take the most appropriate action that is least disruptive for the child. These actions may include:
 - providing or arranging the provision of support services to the family (s. [5](#));
 - supervising the child's care in the home (s. [29.1](#)); or
 - protecting the child through removal from the family and placement with relatives, a foster family, or specialized residential resources (ss. [30](#) and [35](#)).

Guiding Principles

S.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.

Alternatives to the removal of a child from a parent's care

Support Services for Families

- 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 (s. [5](#)).
- The services may include counselling, in-home support, respite care, and parenting programs. The initial term of the agreement must not exceed six months, but the agreement can be renewed for terms of up to six months each.
- A director may also make a written agreement with a parent who has custody of a child with special needs (s. [7](#)). The initial terms of the agreement must not exceed six months.

Voluntary Care Agreements

- A written agreement with a parent who has custody of a child and is temporarily unable to look after the child in the home (s. [6](#)).
- The agreement must include a description of the plan of care for the child, including where the child will be placed, a promise by the director to keep the parent informed of the child's progress and to involve the parents in decisions affecting the child, and a promise by the parent to maintain contact with the child.
- The agreement can be renewed, but the total duration of the agreement must not exceed:
 - 12 months, if the child is under age five;
 - 18 months, if the child is age five or over, but under age 12;
 - 24 months, if the child is age 12 or over.

Kith and Kin Agreements

- A director may also make a written agreement with a person who has established a relationship with a child or has a cultural or traditional responsibility towards a child, and is given care of the child by the child's parent (s. [8\(1\)](#)).
 - Although not restricted to First Nations, this can and should be explored as a matter of practice
- This agreement may provide for the director to contribute to the child's support while the child is in the person's care (s. [8\(2\)](#)).
- [Part 2.1](#) of the Act allows the director to make written agreements with youth and young adults for residential, educational or other support services, or for financial assistance (ss. [12.2\(2\)](#) and [12.3](#)).

Take Charge Provisions

- In certain circumstances, a director can intervene for up to 72 hours without removing a child.
- Child found unattended, child lost or has run away.
- A police officer may take charge of a child if the officer has reasonable grounds to believe that the child's health or safety is in immediate danger (s. [27](#)).

Protective Intervention Orders

- A protective intervention order allows a director to intervene to protect a child through court proceedings without having to take the child into the director's care.
 - This type of order may be appropriate where there is an abusive partner/parent and both the parent and child can be protected by such an order
- The court may grant an order prohibiting a person for a period of up to six months from contacting or interfering with the child, and/or prohibiting the person from residing with the child or entering premises where the child resides (s. [28\(3\)](#)).

Non Removal Supervision Orders

- The director may apply to a court for a supervision order under s. [29.1](#) where there are reasonable grounds to believe that the child needs protection and a supervision order would be adequate protection.
 - This section should be contemplated in conjunction with s. 5 of the *CFCSA*
- No later than 10 days after applying for a supervision order, the director must attend a presentation hearing (s. [33.1\(1\)](#)). Section [33.1](#) sets out that the director must give the child, if over 12 years old, and the person with care of the child, at least seven days notice of the presentation hearing. In practice, this notice requirement is often shortened because there are grounds to believe that the child needs protection when seeking a supervision order under s. 29.1.
- If the court finds reasonable grounds to support the director's concerns, then the court must make an interim supervision order and set the commencement date for a protection hearing.
- At the protection hearing, if the court finds that the child needs protection, then the court must order a supervision order under s. [41\(2.1\)](#) of the Act.

Supervision Orders Continued

- Under s. [41.1](#), the court may attach to a supervision order terms and conditions recommended by the director to implement a plan of care, including:
 - services for the child's parent or another person in the child's home;
 - daycare or respite care;
 - Expectations for parent, attend programs, abstain from alcohol/drugs, not expose to domestic violence;
 - the director's right to enter the home and to visit the child anytime; and
 - the requirement that the director remove the child if a person does not comply with terms of the order.

Alternatives to Court Process

Mediation

- 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 as a means of resolving the issue (s. [22](#)).
- Mediation is always an option at any stage of the proceedings and should be pursued in tandem with the court proceedings.
- If the parent is covered by a legal aid referral, there are hours allocated for a lawyer to prepare for and attend a mediation.
- Mediation is a process in which someone with special training (a mediator) helps people solve problems. The mediator works to help both sides listen to and understand each other and then together come up with a solution that feels fair. Mediators are not judges and they are not supposed to take sides. They will not tell you what to do.

Mediation Continued

Mediation can help you deal with issues such as:

- What do the parents want and what does the social worker want?
- What are the parents expected to do (or not do) to get their child back?
- What will the social worker do?
- What services can be provided to both the parents and the child?
- Access visits with the children.
- Working out a graduated return plan.
- Are there other family members who can help or take the children?
- Improve working relationship between social worker and parents.

A voluntary process. May get a written agreement. May include agreement to consent to court orders. Get a better understanding of the situation.

Additional Processes

- Family Group Conference
- Family Case Planning Conference (Robson Pilot)
- Court Processes:
 - Appearances on a court list
 - Family case conferences
 - trials

Removal of a Child

- S.30 remove without court order, if reasonable grounds to believe child in need of protection and health/safety in immediate danger and no less intrusive measure available that would protect the child.
- Must make reasonable efforts to promptly notify parents.
- Must attend court no later than 7 days after removal. Must if practicable notify parents and child 12 or over of court date.
- Director files court documents, including description of why child removed.
- S.35 Presentation Hearing a short summary trial process, director to show had grounds etc, any dispute about facts decided in favour of Director, if removal justified, then decide what order to make.
- Orders available: interim custody to Director, return to parent under interim supervision of Director, interim custody of other with others person's consent and under Director's supervision, return to parent.
- When court order made, must set date for nominal commencement of protection hearing not later than 45 days.

Protection Hearing

- Stricter service requirements: must serve parents, child if 12 or older, aboriginal band or organization.
- Serve at least 10 days before commencement of protection hearing, serve Court Application and Plan of Care.
- If court finds that child in need of protection: possible orders are temporary custody to Director, temporary custody to other person with person's consent and under Director's supervision, return to parent under supervision, continuing custody to Director.
- First appearance list, parents can request adjournment, mediation, if oppose must attend case conference, ultimately trial.

Extensions of Temporary Orders

- S.44, Director application to extend if circumstances that caused child to need protection are likely to improve within reasonable time.
- Extend temporary custody and temporary supervision orders,
- File application, 10 days notice.
- S.45 Maximum periods of temporary custody, age related, 12, 18 or 24 months.
- Can apply to extend total time in temporary custody.

Continuing Custody Orders

- S.49 if no significant likelihood that circumstances that led to removal will improve within reasonable time or parent will be able to meet child's needs. Parent unable/unwilling to resume custody, whereabouts unknown.
- Court documents filed must give 10 days notice of first court appearance.
- Last chance orders, 6 month temporary custody.
- Once CCO made, Director has sole guardianship of child.
- Access after CCO, depends on long term plan, adoption vs placing with family.

Cancelling CCOs

- S. 54 party to cco can apply to cancel.
- Two stage process, first apply to court for leave to make the application. If granted go on to set hearing for substantive application.
- Difficult to succeed, must show circumstances have changed significantly and cancelling would be in best interests of the child.

Transfers of Custody

- S. 54.1, Director may apply to permanently transfer custody of child who is in continuing custody of Director, to a person other than the child's parent. Eg. family member. Some funding may be available.
- MCFD out of the picture and future access with biological parent is as between person who gets custody and bio parent.

How to Help

- Assist client in applying for a legal aid referral to a lawyer right away.
- Accompany to meetings with social worker, with lawyer, to court.
- Keep notes so parent remembers things accurately.
- Get from social worker a list of what the parent can do to have the child returned. Are they realistic expectations? Can ask questions, negotiate.
- Assist parent to follow through and to contact social worker if any questions or difficulties in meeting expectations.
- Support parent to move forward, find services to address issues.



THE “SPANKING” LAW: SECTION 43 OF THE *CRIMINAL CODE*

Laura Barnett
Law and Government Division

Revised 20 June 2008

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THE "SPANKING" LAW: SECTION 43 OF THE *CRIMINAL CODE*

INTRODUCTION

Section 43 of the *Criminal Code* is controversial in that it expressly offers parents and teachers a defence when they use reasonable force to discipline a child. Given an increased recognition of the rights and best interests of children, many have called for an end to any form of physical punishment of children and youth in Canada, which would necessarily include the repeal of s. 43. Others, while acknowledging that abuse itself is never justified, have argued that minor physical correction is acceptable in certain circumstances and that individuals should not risk criminal prosecution as a result of their parenting techniques.

This paper reviews the content of s. 43 and its relatively recent judicial interpretation by the Supreme Court of Canada, a majority of which upheld the provision in 2004. It then discusses past proposals to repeal the section, and the legal effects that such a repeal would have, given the definition of assault in Canada's *Criminal Code* and the availability of common law defences. Finally, public opinion on abolishing s. 43, research regarding the effects of physical punishment and international perspectives on the issue are briefly examined.

SECTION 43 OF THE *CRIMINAL CODE*

Section 43 of the *Criminal Code*⁽¹⁾ reads as follows:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

(1) *Criminal Code*, R.S.C. 1985, c. C-46.

The defence of reasonable correction appeared in Canada's first *Criminal Code* in 1892. The content has remained virtually unchanged since that time, with the exception of the removal of masters and apprentices from among the relationships covered by the defence.⁽²⁾

**CANADIAN FOUNDATION FOR CHILDREN,
YOUTH AND THE LAW v. CANADA (ATTORNEY GENERAL)**

On 30 January 2004, the Supreme Court of Canada released its decision in the case of *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*.⁽³⁾ The issue was whether s. 43 is unconstitutional. Six of nine justices concluded that the provision does not violate the *Canadian Charter of Rights and Freedoms*,⁽⁴⁾ as it does not infringe a child's rights to security of the person or a child's right to equality, and it does not constitute cruel and unusual treatment or punishment. Three justices dissented in three different respects.

A. Opinion of the Majority

The majority of justices in *Canadian Foundation for Children, Youth and the Law* upheld s. 43 on the basis that it protects only parents, schoolteachers and persons who have assumed all of the obligations of parenthood. Further, it maintains a risk of criminal sanction if force is used for non-educative or non-corrective purposes, and limits the type and degree of force that may be used. The words "by way of correction" in s. 43 mean that the use of force must be sober and reasoned, address actual behaviour, and be intended to restrain, control, or express symbolic disapproval. The child must have the capacity to understand and benefit from the correction, so that s. 43 does not justify force against children under two or those with particular disabilities.

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- (2) Section 55 of the 1892 *Criminal Code* read: "It is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances."
- (3) *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, aff'g (2002), 57 O.R. (3d) 511 (C.A.), aff'g (2000), 49 O.R. (3d) 662 (S.C.) ["*CFCYL v. Canada*"].
- (4) *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 7 (security of the person), s. 12 (cruel and unusual punishment), and s. 15 (equality).

The words "reasonable under the circumstances" in s. 43 mean that the force must be transitory and trifling, must not harm or degrade the child, and must not be based on the gravity of the wrongdoing. Reasonableness further implies that force may not be administered to teenagers, as it can induce aggressive or antisocial behaviour, may not involve objects such as rulers or belts, and may not be applied to the head. While corporal punishment itself is not reasonable in the school context, a majority of the Supreme Court concluded that teachers may use force to remove children from classrooms or secure compliance with instructions.

B. Dissenting Opinions

In a first dissenting opinion, Binnie J. concluded that s. 43 violates children's equality under s. 15 of the Charter. However, the infringement is justified under s. 1 as reasonable in a free and democratic society, although only with respect to parents and persons standing in their place. Because the justification rests on respecting the family environment where only limited corrective force is used to carry out important parental responsibilities, Binnie J. concluded that the defence in s. 43 should not be available to teachers.

Arbour J., also dissenting, found s. 43 unconstitutionally vague and therefore a violation of children's security that is not in accordance with fundamental principles of justice under s. 7 of the Charter. Citing a lack of judicial consensus on what constitutes force that is "reasonable under the circumstances," she found s. 43 to be incapable of providing clear guidance to parents, teachers and law enforcers.

In a third dissenting opinion, Deschamps J. determined that s. 43 violates s. 15 of the Charter because it "encourages a view of children as less worthy of protection and respect for their bodily integrity based on outdated notions of their inferior personhood."⁽⁵⁾ Although reasonable flexibility in child-rearing is a valid objective, a law that permits more than only very minor applications of force unjustifiably impairs the rights of children. Deschamps J. would therefore have struck down s. 43 for both parents and teachers.

(5) *CFCYL v. Canada*, para. 232.

PROPOSALS FOR REFORM

In 1984, the Law Reform Commission of Canada recommended the repeal of s. 43 as a defence for teachers.⁽⁶⁾ A majority of the Commission suggested that s. 43 be maintained for parents, primarily out of concern that the criminal law would otherwise unduly encroach on family life for every trivial slap or spanking.⁽⁷⁾

There have been several legislative attempts to abolish corporal punishment over the past decade, all in the form of private members' bills introduced in the Senate or House of Commons.⁽⁸⁾ The most recent one was introduced in the Senate in October 2007 and received third reading in June 2008. The bill received first reading in the House of Commons on 20 June 2008.⁽⁹⁾

LEGAL EFFECTS OF A REPEAL OF SECTION 43

A. Application of Other *Criminal Code* Provisions

If s. 43 were repealed, the general assault provisions of the *Criminal Code* would apply to a parent, teacher or guardian who uses force against a child without the latter's consent. A statutory defence based on "reasonable correction" would no longer be available. Because s. 265 of the *Criminal Code* prohibits the non-consensual application of force and s. 279 prohibits forcible confinement of another person without lawful authority, there is concern that the abolition of the defence in s. 43 would criminalize parental conduct short of what is usually considered corporal punishment, such as restraining an uncooperative child in a car seat or physically putting a child to bed.

(6) Law Reform Commission of Canada, *Assault*, Working Paper 38, Ministry of Supply and Services, Ottawa, 1984, pp. 44 and 53.

(7) *Ibid.*, pp. 44-45 and 53.

(8) See, e.g., An Act to amend the Criminal Code (protection of children), Bill C-305, 2nd Session, 35th Parliament, 1996 (MP Robinson); An Act to amend the Criminal Code and the Department of Health Act (security of the child), Bill S-14, 2nd Session, 35th Parliament, 1996 (Sen. Carstairs); An Act to amend the Criminal Code (protection of children), Bill C-276, 1st Session, 36th Parliament, 1997 (MP Davies); An Act to amend the Criminal Code and the Department of Health Act (security of the child), Bill C-368, 1st Session, 36th Parliament, 1998 (MP Ianno); An Act to amend the Criminal Code (protection of children), Bill C-329, 1st Session, 37th Parliament, 2001 (MP Davies); An Act to amend the Criminal Code (protection of children), Bill S-21, 1st Session, 38th Parliament, 2004 (Sen. Hervieux-Payette); An Act to amend the Criminal Code (protection of children), Bill S-207, 1st Session, 39th Parliament, 2006 (Sen. Hervieux-Payette).

(9) An Act to amend the Criminal Code (protection of children), Bill S-209, 2nd Session, 39th Parliament, 2006 (Sen. Hervieux-Payette).

Possible responses are that such actions could be defended under common law doctrines, which are discussed below, or on the basis of a child's implied consent to allow a parent to care for and nurture him or her. Alternatively, law enforcers may, in practice, exercise discretion not to prosecute. Comparisons might be made to various types of unwanted contact between adults that legally constitute assault but are addressed through other measures, such as public education and workplace policies, or not addressed at all. Varying degrees of culpability, depending on the severity of the physical force used, may also be addressed through sentencing.

B. Resort to Common Law Defences

If the defence of reasonable correction in s. 43 were repealed, common law defences would remain.⁽¹⁰⁾ The common law defence of necessity precludes criminal responsibility in emergency situations for involuntary conduct aimed at protecting oneself or others. As it is based on true involuntariness of an action, the defence has been interpreted narrowly.⁽¹¹⁾ Three elements must be present: imminent peril or danger, the absence of a reasonable legal alternative, and proportionality between the harm inflicted and the harm avoided. While the defence might be available, for example, to a parent preventing a child from running into the street, it would not be available to a parent who, with or without thinking, strikes a child who is misbehaving.

The defence of *de minimus*⁽¹²⁾ is an alternative common law defence that precludes punishment for a trivial or technical violation of the law. Compared to that of necessity, this defence is more likely to relieve parents and guardians of criminal convictions resulting from minor forms of physical punishment. However, it may not be as available to teachers, given society's growing lack of acceptance of the use of corporal punishment in schools. The *de minimus* defence depends on whether the offence may be viewed as not serious, and the offender not deserving of criminal sanction.

(10) Common law defences are expressly available by virtue of s. 8(3) of the *Criminal Code*. Certain statutory defences, though limited in scope, would also remain available, such as those permitting no more force than is necessary to protect oneself (e.g., ss. 34, 35 and 37), to protect others (e.g., s. 37), or to protect property (e.g., s. 39).

(11) See, e.g., *R. v. Perka*, [1984] 2 S.C.R. 232, 13 D.L.R. (4th) 1 and *R. v. Latimer*, [2001] 1 S.C.R. 3, 193 D.L.R. (4th) 577.

(12) The full maxim is *de minimus non curat lex* and has been stated to mean that the law does not care for small or trifling matters: see Jean Héту, "De minimus non curat praetor: une maxime qui a toute son importance!" *Revue du Barreau*, Vol. 50, 1990, p. 1065.

C. Provincial Laws

Under their legislative authority over education and child protection, some provinces and territories have already prohibited corporal punishment in schools and childcare facilities.⁽¹³⁾ Quebec removed references to a “right of correction” from its *Civil Code* in 1994.⁽¹⁴⁾ However, legislation is inconsistent across the country. Should Parliament repeal s. 43 under its criminal law power, physical punishment of children would become unlawful in all Canadian jurisdictions. Any provincial or territorial law that remained inconsistent would yield to the paramount federal statute. The repeal of s. 43 would therefore create legal consistency across Canada.

PUBLIC OPINION AND SOCIAL SCIENCE RESEARCH

The issue of whether parents should be permitted to use physical punishment on their children is divisive in Canada. A national survey in 2003⁽¹⁵⁾ indicated that a large majority (69%) of Canadians were in favour of repealing s. 43 of the *Criminal Code* with respect to teachers. However, this majority was less supportive (51%) with respect to ending the provision for parents. The same survey found that respondents were more inclined to support the removal of s. 43 if guidelines were developed to prevent prosecutions of minor slaps or spansks (60%), research demonstrated that physical punishment is ineffective and potentially harmful (61%), or research showed that ending s. 43 would decrease abuse (71%).

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- (13) Physical punishment is prohibited under legislation governing day cares in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut and under legislation governing schools and education in British Columbia, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut: see Nico Trocmé *et al.*, *Physical abuse of children in the context of punishment*, Centre of Excellence for Child Welfare, Information Sheet #8E, Ottawa, 2003.
- (14) Reasonable and moderate correction was permitted under art. 651 of the *Civil Code of Quebec* (1980) (*An Act to establish a new Civil Code and to reform family law*), S.Q. 1980, c. 39, but did not reappear in the *Civil Code of Quebec* (1994), S.Q. 1991, c. 64. Opinion differs as to whether a right of correction, ancillary to the rights of custody, supervision and education, remains in Quebec’s general law: see Claire Bernard, “Corporal Punishment as a Means of Correcting Children,” Commission des droits de la personne et des droits de la jeunesse, Québec, November 1998.
- (15) Toronto Public Health, *National Survey of Canadians’ Attitudes on Section 43 of the Criminal Code*, September 2003.

Over 100 organizations and individuals in Canada have endorsed a position stating that physical punishment of children and youth plays no useful role in their upbringing, and calling for the same protection from assault as that given to Canadian adults.⁽¹⁶⁾ Other groups, conversely, support the parental protection offered by s. 43 and argue that parents should be free to decide how to discipline their children, provided that it is fair, reasonable and never abusive.⁽¹⁷⁾

There is a growing body of research indicating that corporal punishment has detrimental effects on children.⁽¹⁸⁾ It places children at risk of physical injury, physical abuse, impaired mental health, a poor parent/child relationship, and increased childhood and adolescent aggression and antisocial behaviour.⁽¹⁹⁾ However, other researchers dispute these findings. The two main criticisms are that research on the negative effects of corporal punishment does not adequately distinguish between physical punishment and physical abuse, and research cannot determine whether the negative outcomes attributed to physical punishment are actually caused by the punishment.⁽²⁰⁾

INTERNATIONAL PERSPECTIVES

In 1991, Canada ratified the United Nations *Convention on the Rights of the Child*, article 19 of which mandates the protection of children from all forms of physical or mental violence, injury or abuse.⁽²¹⁾ In response to reports from Canada regarding the action it

(16) Joan Durrant, Ron Ensom and Coalition on Physical Punishment of Children and Youth, *Joint Statement on Physical Punishment of Children and Youth*, Ottawa, September 2004 and March 2005.

(17) E.g., Coalition for Family Autonomy and REAL Women of Canada.

(18) See, e.g., Elizabeth Gershoff, "Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review," *Psychological Bulletin*, Vol. 128, No. 4, 2002. See also Murray A. Straus, David Sugarman and Jean Giles-Sims, "Spanking by Parents and Subsequent Antisocial Behavior of Children," *Archives of Pediatrics and Adolescent Medicine*, Vol. 151, No. 8, August 1997.

(19) See, e.g., Joan Durrant and Ron Ensom, *Physical punishment of children*, Centre of Excellence for Child Welfare, Information Sheet #7E, Ottawa, 2004.

(20) See, e.g., Robert E. Larzelere and Brett R. Kuhn, "Comparing Child Outcomes of Physical Punishment and Alternative Disciplinary Tactics: A Meta-Analysis," *Clinical Child and Family Psychology Review*, Vol. 8, No. 1, March 2005. See also Diana Baumrind, "Does Causally Relevant Research Support a Blanket Injunction Against Disciplinary Spanking by Parents?" Invited Address at the 109th Annual Convention of the American Psychological Association, San Francisco, August 2001.

(21) *Convention on the Rights of the Child*, 20 November 1989, CAN. T.S. 1992 No. 3, art. 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

has taken to meet the requirements of the Convention, the United Nations Committee on the Rights of the Child recommended that physical punishment of children in schools and families be prohibited and that s. 43 be removed.⁽²²⁾ At the same time, international covenants recognize the integrity of the family unit and indicate that parents have the primary responsibility for the upbringing and development of the child.⁽²³⁾ Further, in *Canadian Foundation for Children, Youth and the Law*, a majority of the Supreme Court of Canada considered the *Convention on the Rights of the Child* and concluded that it did not explicitly require state parties to ban all corporal punishment of children.⁽²⁴⁾

At least 19 countries have legislated bans on corporal punishment in both the home and school.⁽²⁵⁾ Other countries, or jurisdictions within them, have passed laws prohibiting force of certain types or in certain contexts. Although many countries have legislated against corporal punishment, most of the 193 parties to the *Convention on the Rights of the Child* have not. Further, those that have, including Sweden, Finland, Denmark, Norway and Austria, have apparently instituted non-criminal measures and reserve assault only for more serious conduct.⁽²⁶⁾ Because the definition of assault in Canada's *Criminal Code* is based on the non-consensual nature of the contact, there may be greater risk in Canada in extending the criminal law. It may be important to ensure that other defences are available so that parents are not criminally convicted for minor forms of physical punishment.

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- (22) United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Canada*, CRC/C/15/Add.37, 20 June 1995, paras. 14 and 25, and CRC/C/15/Add.215, 27 October 2003, para. 32. In response to Canada's second report, the Committee stated that "it is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the *Criminal Code*, which allows corporal punishment."
- (23) *International Covenant on Civil and Political Rights*, 16 December 1966, Can. T.S. 1976 No. 47, art. 23(1): "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, Can. T.S. 1976 No. 46, art. 10(1): "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children." *Convention on the Rights of the Child*, art. 18(1): "Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child."
- (24) *CFCYL v. Canada*, para. 33.
- (25) Austria, Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Israel, Iceland, Latvia, New Zealand, Netherlands, Norway, Portugal, Romania, Sweden and the Ukraine. Source: Global Initiative to End All Corporal Punishment of Children, London, U.K.
- (26) Sweden, for example, has legislated against physical punishment of children in its *Code of Parental Responsibilities*: see Adamira Tijerino, "Under Scrutiny: Corporal Punishment and Section 43 of the Criminal Code of Canada," Draft Document, B.C. Institute Against Family Violence, Vancouver, 2001 (section V).

CONCLUSION

In general, nobody disagrees with the proposition that children should be free from physical abuse and injury, and this is clearly not what the debate surrounding s. 43 of the *Criminal Code* is about. Rather, the debate is about the effects of minor forms of physical punishment and the appropriateness of using the criminal law to enforce a particular view of what constitutes proper parenting. Some are confident that prosecutorial discretion and existing common law defences will continue to prevent individuals from being charged or convicted for trivial slaps and spanks. Others fear that parents may face intervention from neighbours or passersby, investigations by police and even imprisonment for limited punishment of their children, or for a momentary but arguably human lapse of judgment.

Child welfare and protection laws go some distance in the prevention and detection of child abuse, and public education campaigns exist to encourage parents not to use even minor forms of physical punishment on their children. Given these developments, advocates for the repeal of s. 43 say that the provision sends the mixed message that it may be acceptable to strike a child. But those against the removal of s. 43 from the *Criminal Code* worry about an inverse message if the provision is repealed: criminal prosecution and conviction may result from any physical contact or restraint that is used against a child. As with most social issues, it is clear that there is no Canadian consensus, which is all the more understandable, given that even the Supreme Court of Canada and the United Nations Committee on the Rights of the Child have expressed divergent views on the acceptability of s. 43.

Justice Education Society of B.C.

Richard Argue MSW,RSW.
Program Facilitator

Parenting Programs Offered by the Justice Education Society

- Parenting After Separation (PAS)
- Separated with Children: Dealing with the Finances (FAS)
- Online Parenting After Separation

PAS Program Objectives

- Minimize the harmful effects of separation and divorce on parents and their children
- Provide information and support for participants going through the separation and divorce process
- Help parents build effective parenting strategies after separation.

What is PAS?

- Contracted service of the Ministry of the Attorney General since 1999
- Mandatory for most applicants and respondents in many provincial court registries
- Free program also open to other interested parties e.g.. Grandparents, partners, etc.
- Certificate of Attendance given along with PAS handbook

PAS Program structure/components

- Three hour program consisting of a combination of mini lectures, DVD' s and interactive videos
- Offered 12 times per month at 5 different locations throughout the Lower Mainland
- Focuses on
 - Practical/legal issues related to separation and divorce
 - The emotional and psychological aspects of separation and divorce

Goals of PAS

- Empower participants to make informed decisions around how to resolve parenting issues after separation in a manner that is in the best interest of the children through:
 - Considering how separation affects children and to look at ways of helping children through the separation process
 - Looking at the adult's emotional experience of separation and to what strategies can help them cope through this process
 - Informing participants about options to resolve family legal issues
 - Informing participants about community resources related to separation issues

PAS Agenda

- Introduction
- Judge' s Video
- Family Justice Counselor presentation
- The separation experience for adults
- The separation experience for children
- Relationship changes – Developing a Business like relationship

Judges Video

- Definitions of common legal terms related to separation and divorce
- Differences between the Supreme and Provincial Courts
- What Child Support is
- Alternative dispute resolution options
- Section 15 and views of the child reports

Family Justice presentation

- Role of the Family Justice Counsellor
- What is mediation – its benefits and when it is not appropriate
- What is child support
- What are Special Expenses
- What is Undue hardship

The Adults Experience of Separation

- How your experience matters to your
- Separation is a process of change/loss and grief for all parties
- How to take care of yourself and the emotional process of divorce
- Keeping your feelings separate from those of your children
- Getting to acceptance – the tasks of separating

The Children's experience of Separation

- Children often feel anger, sadness and confusion
- They may feel guilty/responsible
- They grieve the loss of the family being together
- They respond differently depending on their age.

The Children's experience (continued)

- What they need to hear
- What they don't need to hear
- Games some parents play
- How parents can help their children
- When to seek help for your children

Relationship changes

- Moving from an Intimate Relationship to a Businesslike relationship
- Moving from “attached to detached”
- They are your business partner for life
- Setting boundaries
- Managing yourself and your relationship with your child, not your former partner

Separated with Children – Dealing with the Finances (FAS)

- Provides information and resources about the financial aspects of separation
- Looks at how financial issues affect both adults and children
- Looks at ways for parents to become informed and learn ways to resolve financial issues after separation in a manner that is in the best interests of the children.

FAS Underlying Concepts

- Finances are often one of the reasons why parents separated
- Relationship breakdown changes family finances, impacting adults and children
- Separated parents often have difficulty talking about finances
- Communication and cooperation about finances must be a priority for parents
- Each parent in a dissolving relationship has to make important financial decisions

FAS Goals

- Assist parents in understanding the financial issues associated with separation
- How develop effective business-like strategies for communicating about financial matters
- How to use strategies for dealing with the financial impact of separation on children

FAS Topics

Topics include:

- Taking control of your personal finances

- Dealing with the emotions of separation

- Child support, spousal support and property division

- Special and extraordinary expenses

- Debt resolution

- Children, money and separation

- Financial resources

Resources

- www.justiceeducation.ca
- www.familieschange.ca
- www.kidsbc.ca
- www.westcoastfamily.org



Justice Through Knowledge

Pioneering public legal education for 20 years

Formerly the Law Courts Education Society of BC

Mandate & Objectives

- **Our Mandate**

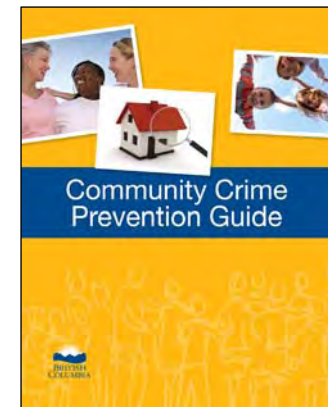
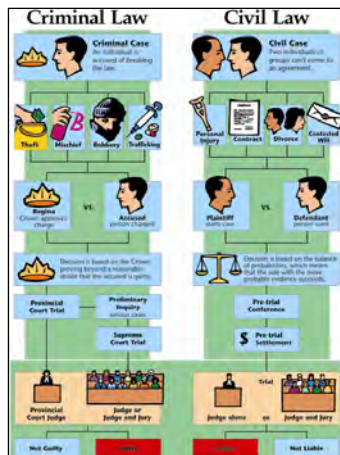
Building stronger communities by promoting understanding of, access to, and confidence in our justice system, at home and abroad.

- **Our Objectives**

- 1. To provide information and educational programs to the general public and to specific groups**
- 2. To make those working within the justice system aware of barriers to access faced by certain groups**
- 3. To continually identify new ways in which the justice system can be made more accessible to all**

Programs & Resources

- Over 100 programs and resources



Justice System Education Program

*Building bridges between
the courts and the
community since 1989.*



Formerly The Law Courts Education Society of BC

Through the Justice System
Education Program
over 1 million
British Columbians have seen
our courts in action



**Parenting
After
Separation**

*For your
child's future*



**A Handbook
for Parents**



Ministry of
Attorney General

**The Society's PAS programs
have educated over 25,000
separating parents on how
to create parenting plans
and avoid damaging their
children in the process.**

- Parenting After Separation
- Finances After Separation
- Children and Parents After Separation

Court Information Program for Immigrants



*Free legal education and
information in Spanish, Punjabi,
Hindi, Chinese & Vietnamese*

Formerly the Law Courts Education Society of BC

**The Court Information Program for Immigrants
has helped over 60,000 new immigrants access BC courts**



Online Resources – Alternate Languages

VictimsInfo.ca



Chinese
Mandarin
Vietnamese
Punjabi
Spanish
French

AdminLawBC.ca



Chinese
Punjabi
Spanish

SmallClaimsBC.ca



Chinese
Vietnamese
Punjabi
French



MOSAIC

LEGAL ISSUES OF DOMESTIC VIOLENCE: UNDERSTANDING ABUSE & APPROPRIATE LEGAL TOOLS & RESOURCES

Perminder Flora

Stopping the Violence Counsellor

MOSAIC

INTRODUCTION

- Role of the Stopping the Violence (STV) Counsellor
 - Counselling & Group Support
 - Advocacy
 - Crisis Intervention
 - Referrals & Resources
- Role of Settlement Worker
 - Provide support and assistance to newcomers to British Columbia.
 - First point of contact for many Newcomers



DOMESTIC VIOLENCE

- Domestic abuse, also known as intimate partner abuse, occurs when one person in an intimate relationship or marriage tries to **dominate and control the other person**.
- Domestic abuse that includes *physical violence* is called **Domestic Violence**.



Cycle of Violence

apologies,
excuses,
amends

tension
builds

abuse takes place



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www.kingfeatures.com



POWER AND CONTROL WHEEL



TYPES OF ABUSE & SIGNS TO LOOK FOR

○ Physical

- Hitting, slapping, pushing, shoving

○ Emotional

- Name calling, putting you down, humiliating you

○ Psychological

- Threatening to hurt you or your children, manipulation (eg. threatening to commit suicide if you leave or do not obey him)

○ Sexual

- Forcing you to do something you are not comfortable doing

○ Spiritual

- Not allowing you to practice your religious beliefs (or making you feel guilty about it)

○ Social

- Manipulating and/or controlling your social circle

○ Financial

- Controlling your finances, withholding financial information



ABUSE CAN AFFECT ANYONE...

○ Children

- Nearly 55,000 children and youth were the victims of a sexual offence or physical assault in 2009, about 3 in 10 of which were perpetrated by a family member.
- Six in ten children and youth victims of family violence were assaulted by their parents. **The youngest child victims (under the age of three years) were most vulnerable to violence by a parent.**

○ Seniors

- In 2009, police reported over 2,400 senior victims (65 years and older) of violent crime by a family member (Stats Canada, 2009) representing about one-third of all violent incidents committed against older adults.

○ Same sex couples

- The 2004 General Social Survey on Victimization found that while the overall proportion of those who experienced spousal violence and who indicated that they were gay or lesbian was low, **the rate of spousal violence reported between same-sex couples was twice the rate of violence between heterosexual couples** (15% versus 7%).

○ Women

- **Women continue to be more likely than men to be victims of spousal homicide. In 2009, the rate of spousal homicide against women was about three times higher than that for men.**

○ Men

- **10,273 incidents of violence in relationships were reported to BC police in 2005: 16% involved a female offender**



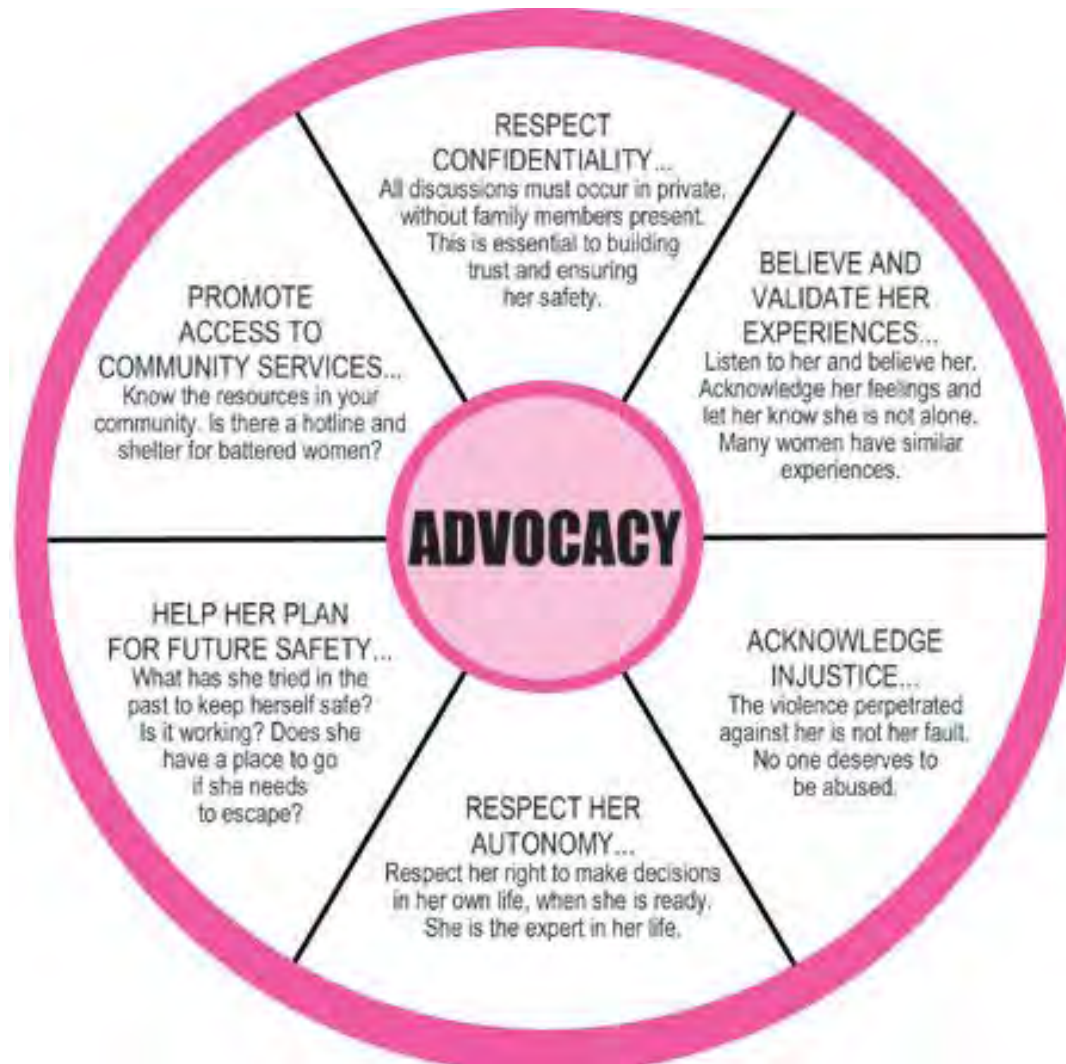
SCENARIO

Maria visits your office today to complete some important documents. You observe that Maria is not her bubbly self today and seems sad. She avoids eye contact and you notice that there is some bruising on her left arm.

What would you do next....?



ADVOCACY WHEEL



“WHY DO WOMEN STAY?”

- Dependency on the abusive partner
- Fearing for the safety of her children
- Afraid of losing immigration status
- Having difficulty speaking English
- Not aware of her rights in Canada
- Fear of homophobia if the relationship abuse is disclosed
- Loves the partner



WHAT IS A SAFETY PLAN?

- A safety plan is a personalized and practical plan for reducing the risk of being hurt by the abusive partner. By thinking through it in advance, a safety plan can help to avoid dangerous situations and know the best way to react when you are in danger.



SAFETY PLANNING

THINGS FOR YOUR CLIENT TO CONSIDER:

- Talk to a professional
 - STV Counsellor, Victim Services Worker, Multicultural Outreach Worker
- Know your rights
- Preparing to leave...
 - Keep a bag packed with essentials, money, keys, important documents and identification
 - Know where to go: transition house, family/friends
- Think about the children
- If in danger, call the police (crown will elaborate on process)
- Consider your Legal Options
- Familiarize yourself with community and justice related supports



TAKING CARE OF OURSELVES

- Establish boundaries
- Respect confidentiality
- Provide short term support and refer out to appropriate services
- Know who to go to for debriefing
- As a settlement worker, you may hear experiences which may have an impact on you. It is important to debrief and engage in positive activities which you enjoy to de-stress



RESOURCES

- Stopping the Violence Programs
- Multicultural Victims Services Programs
- Police Based Victim Services
- Housing, Transition Homes
- Income Assistance
- Legal Assistance
- Court Services
- VictimLINK
- MCFD
- Children Who Witness Abuse programs
- Pride Line BC
- BC Center for Elder Advocacy and Support
- Police



**Violence against
women in relationships
is not a private family
matter. Help is
available, whether the
victim want to stay in
the relationship or
leave.**



THANK YOU!

Contact Information:

Perminder Flora

STV Counsellor – MOSAIC

ph: 604-254-9626 ext 267

e-mail: pflora@mosaicbc.com





EMPLOYMENT PROGRAMS
ENGLISH LANGUAGE CENTRES
FAMILY PROGRAMS
INTERPRETATION SERVICES
SETTLEMENT SERVICES
TRANSLATION SERVICES

MOSAIC

SETTLEMENT WORKERS CONFERENCE

Wednesday, March 28, 2012

Overview

MOSAIC

- Who we are
- What we do

Immigrant Seniors

- Demographic overview
- Research data

Settlement and Legal Issues

- Individual, community, societal level
- Sponsorship
- Elder Abuse

MOSAIC

- A CARF accredited multilingual non-profit organization to strengthen communities, push for positive change and support people in building their new lives in Canada.
- Our mission is to empower immigrants, refugees and newcomers through leadership and innovation in service delivery, community-building and advocacy.

SERVICES AND PROGRAMS

Settlement Services

- Settlement
- Legal Advocacy
- FreeRunning
- Newcomers Centre for Children and Family
- MicroLoan
- Community Outreach
- Seniors Program

Employment Program

- Job Options
- Skills Connect
- Employment program of BC

Family Program

- Victim Services
- Building Blocks
- Men in Change
- Connecting Fathers
- Stopping the Violence
- NuYu

Interpretation & Translation

- Fee for Service

English Language Centre

- ELSA

MOSAIC SENIORS PROGRAM

- Funded by the United Way of Lower Mainland, Federal & Provincial Governments
- Services offered to Immigrant and refugee seniors 55 years and more



Government
of Canada

Gouvernement
du Canada



BRITISH
COLUMBIA

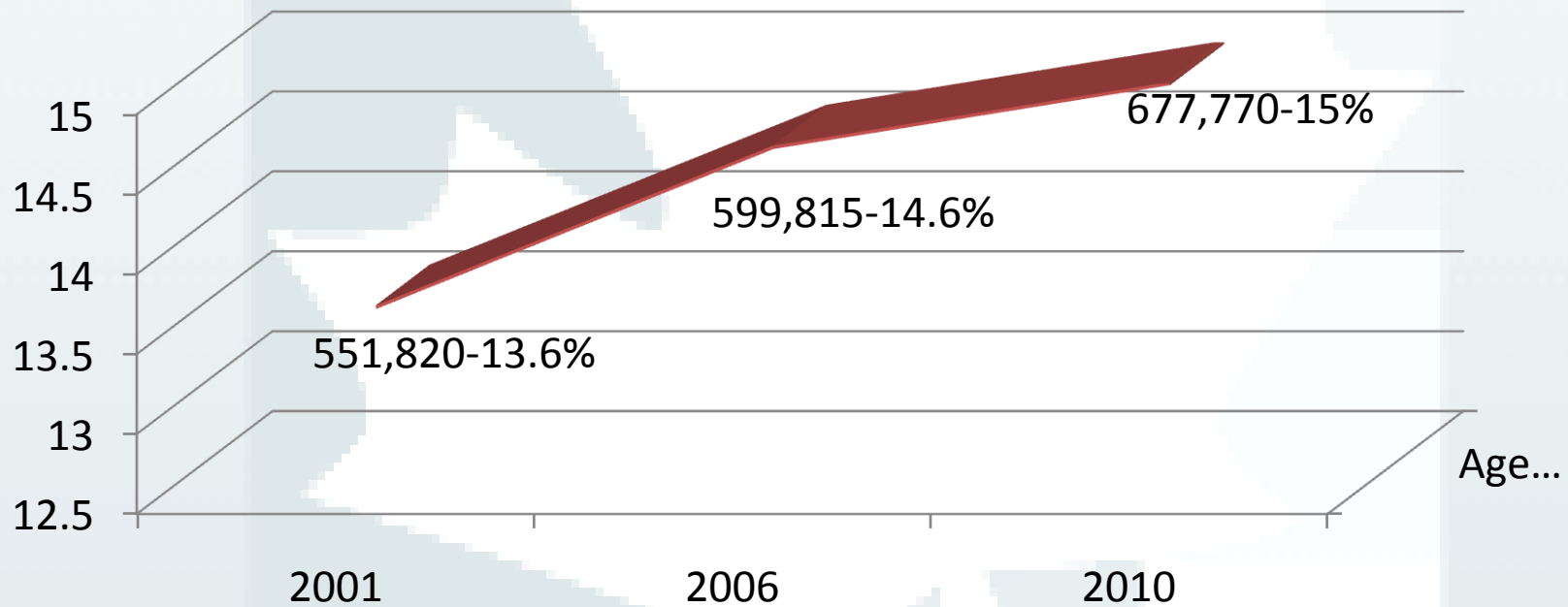
The Best Place on Earth



United Way

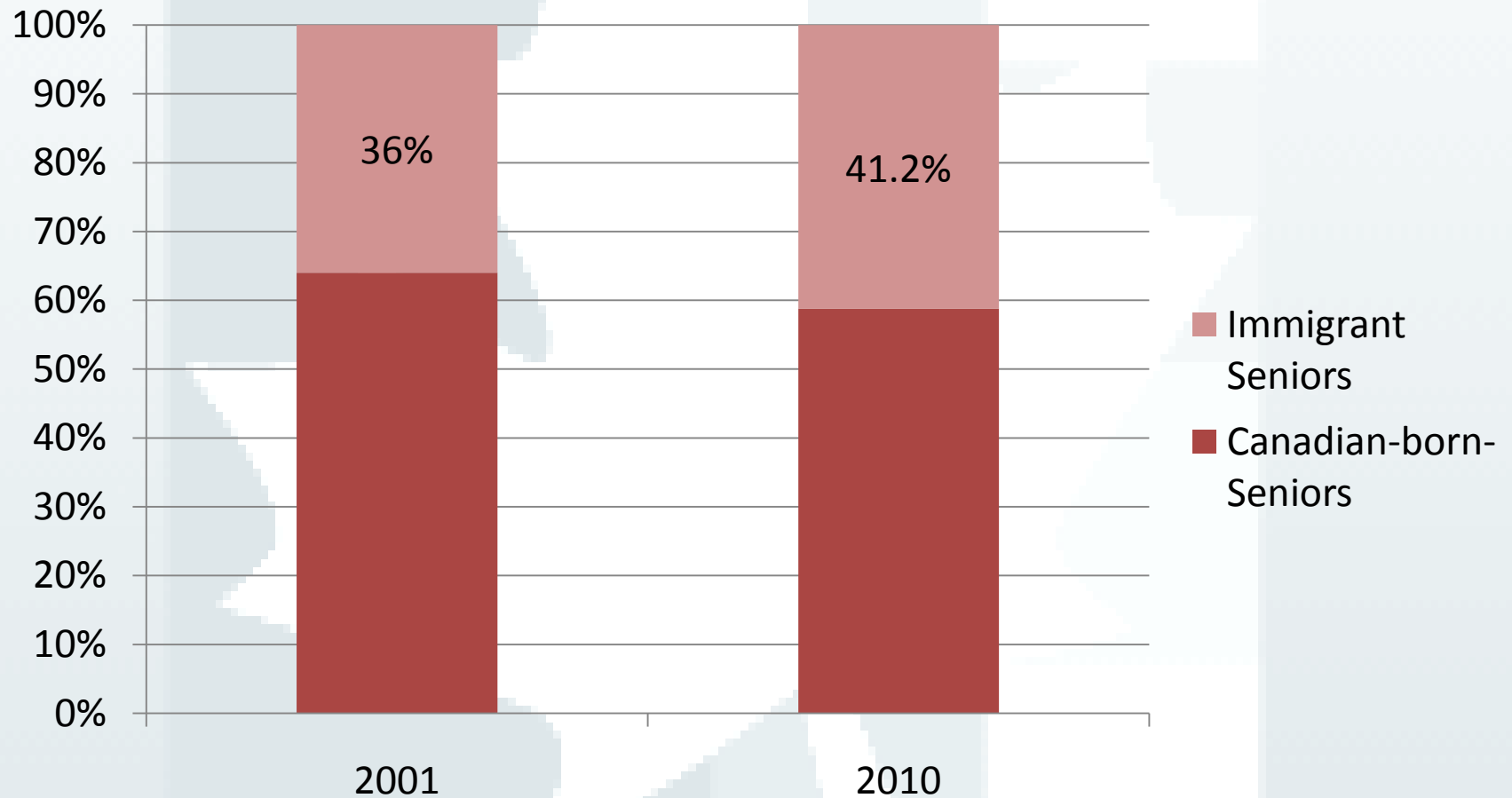
Demographic Overview

Age 65 +



Reference: A Profile of Seniors in British Columbia 2004, Immigrant Seniors in British Columbia, 2010 & Seniors Vulnerability Report, 2011

Immigrant Seniors



Reference: A Profile of Seniors in British Columbia 2004, Immigrant Seniors in British Columbia, 2010 & Seniors Vulnerability Report, 2011

2006 Census

- During the five year period from 2005-2009, 86.2% of new senior arrivals came to BC under the Family Class. (4,945 out of 5,733)
- Between 2005 and 2009, 54.7% (5,396 out of 9,876) of new senior arrivals to BC reported no official language ability.

Dimensions of Seniors Vulnerability

- Economic insecurity
- Social isolation
- Inadequate and unaffordable housing
- Poor mental and physical health
- Inaccessible transportation and built environment
- Food insecurity
- Physical mobility limitation
- Marginalized identities and cultures
- Barriers to multi-lingual communication and lack of multi-lingual services

Reference: Seniors Vulnerability Report (UWLM, 2011)

Most vulnerable seniors identified

- The “oldest old” women (85+)
- Unattached, single-income seniors
- Visible minority seniors
- Aboriginal seniors
- Recent immigrant seniors
- Seniors without a certificate, degree, or diploma
- Seniors with mobility limitations and/or chronic illnesses

Reference: Seniors Vulnerability Report (UWLM, 2011)

Settlement Challenges

Different Social Systems

- Societal functioning
- Values, Cultures
- Expectation & Role Changes within family & community



Settlement Challenges

Access to Information and Resources

- Language Barriers
- What? Where?
Who? How?



Settlement Challenges

Seniors Benefits

- OAS
- GIS
- CPP
- Allowances



Settlement Challenges

Social Isolation

- Family
- Ethnic Community
- Larger Community



Sponsorship

- From 2005 to 2009, 86.2% of new senior arrivals came to BC under the Family Class. (4,945 out of 5,733)- Census 2006
- As of November 5, 2011, sponsorship category for parents and grandparents is temporarily paused for 2 years.
- Parent and Grandparent Super Visa is introduced.



Sponsorship

- A contract (undertaking) with the government promising to provide financial support for basic requirements (food, clothing, shelter and any others) of their family members immigrating to Canada.
- The sponsor is obligated to provide the support for 10 years after that person becomes a permanent resident.

Sponsorship Breakdown

- Sponsor is not able to or not willing to provide support for basic needs (Food, clothing, housing, etc).
- Abusive relationships



Types of Abuse

Physical Abuse

Emotional/Psychological Abuse

Sexual Abuse

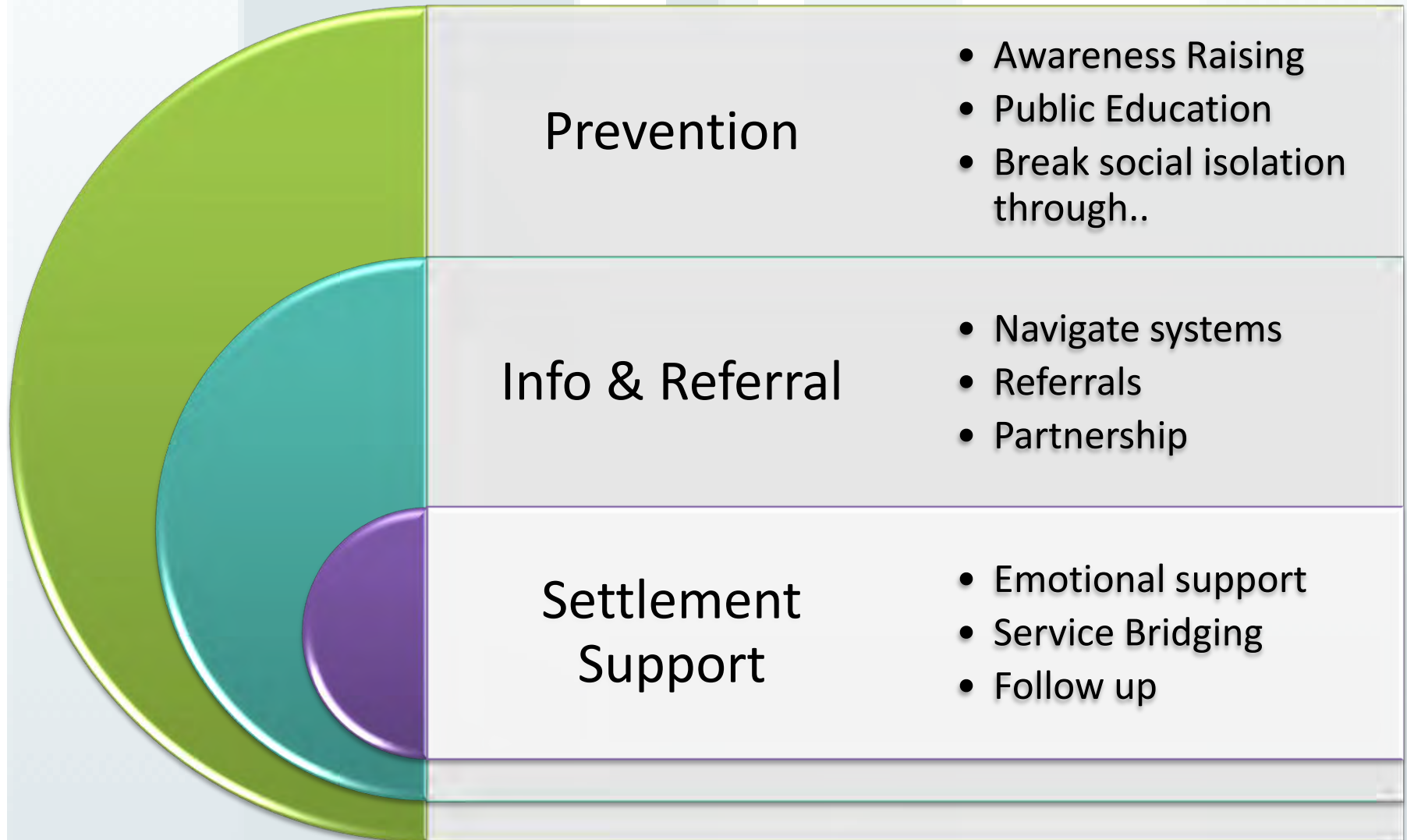
Financial Abuse

Neglect

As a Settlement Worker..



As a Settlement Worker..



BC Resources

- BC 211- Redbook Online
- RCMP Victim Services
- Community Based Victim Assistance Programs
- BCCEAS



MOSAIC

SENIORS CLUB

SETTLEMENT PROGRAMS

THANK YOU!



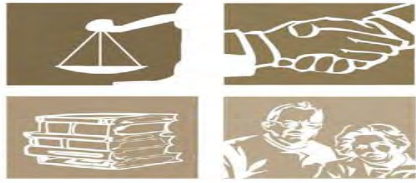
BC CENTRE FOR ELDER ADVOCACY SUPPORT

-
- Support
 - Outreach
 - Advocacy



BC CENTRE FOR ELDER ADVOCACY SUPPORT

-
- Legal Services
 - Adults 55 +
 - Financially or otherwise disadvantaged



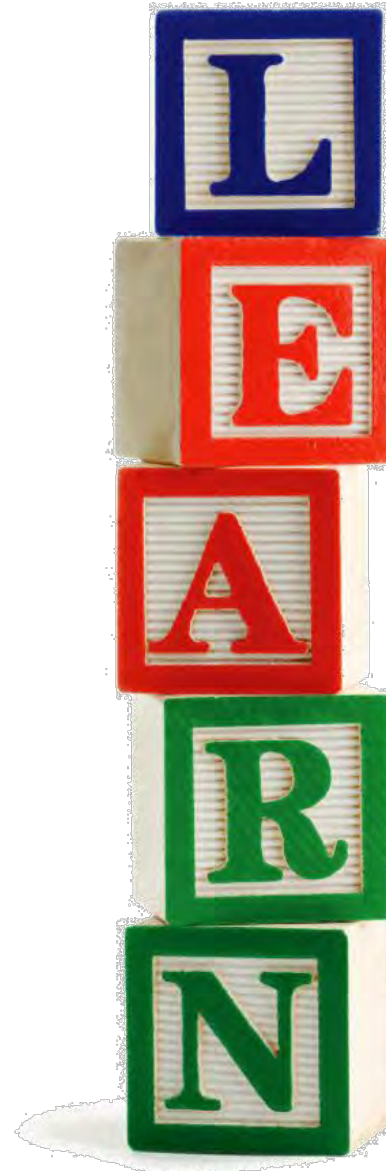
BC CENTRE FOR ELDER ADVOCACY SUPPORT



Powers of attorney and joint bank accounts

Learning Goals

1. What is a BC power of attorney?
2. How can a power of attorney protect your finances?
3. How can it be abused or misused?
4. How do joint accounts work?
5. What can be done about misuse or abuse?



What is a Power of Attorney?

- A legal document that gives somebody else the authority to “stand in your shoes” financially



Terminology

Donor

the person who appoints someone to stand in her shoes

Attorney

the person receiving authority to manage someone else's finances

Power of Attorney

the document that creates this relationship



Power of Attorney

- A written legal document
- Signed by you
- Appoints one or more people
- The person you designate makes decisions on your behalf



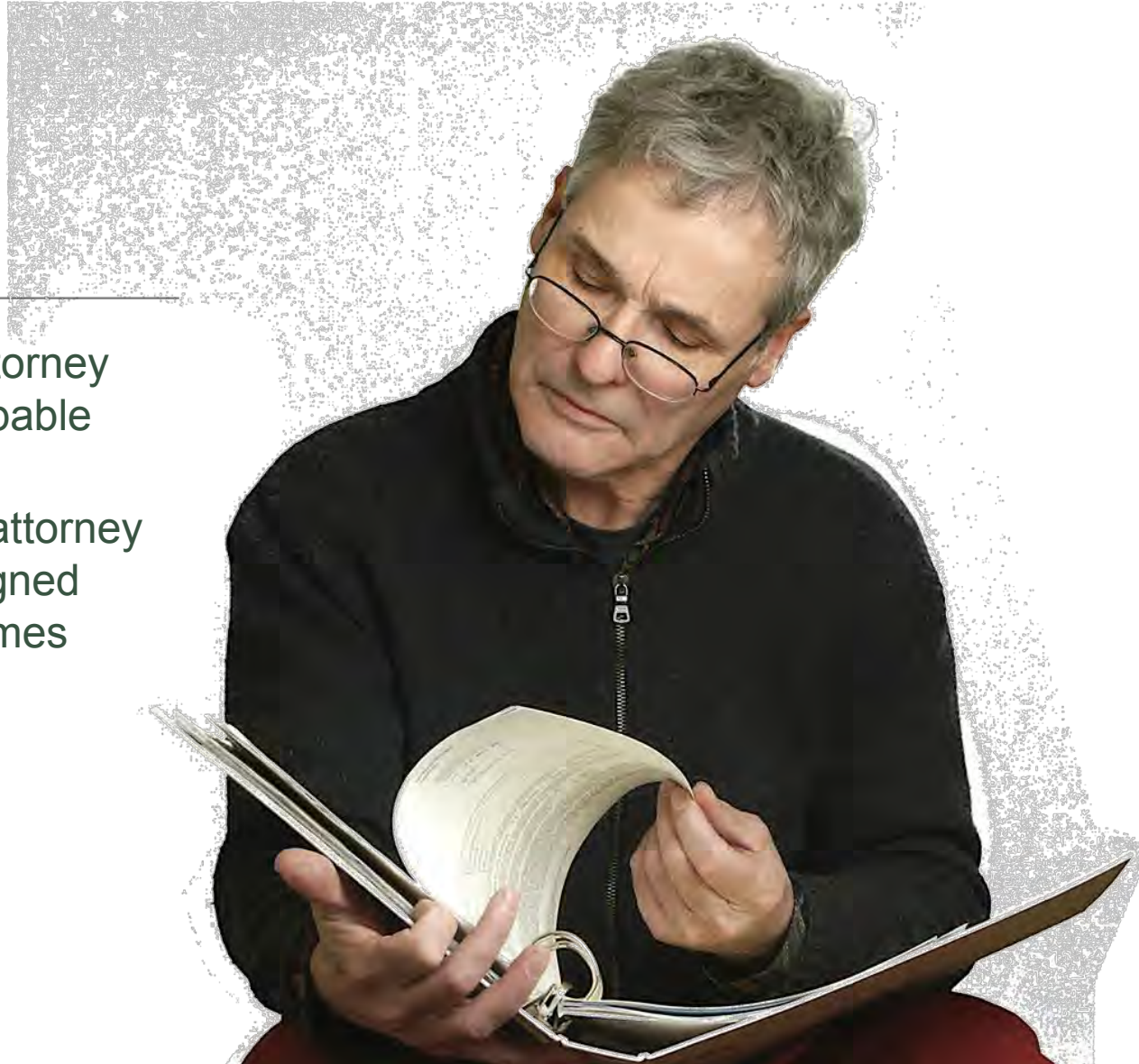
Power of Attorney

- Financial, business, banking and property decisions only
- Cannot apply to health or personal decisions



Advance Planning

- Creating a power of attorney requires a mentally capable donor
- All types of powers of attorney must be written and signed before the donor becomes incapable



What About Mental Capacity?

- Anyone can lose capacity at any time due to illness or accident
- Older adults may be at greater risk due to age-associated illnesses
- Ageism or age discrimination results in assumptions of incapacity



Planning for Future Decisions

Capable → You Decide

Incapable → Someone else
decides
(substitute
decision-maker)



Capacity Continuum



Capable ←————→ Incapable



1. Regular POA

Capable

Incapable

Active right away

Ends at point of incapability



2. Enduring POA

Capable

Incapable

Active right away

Continues past point of incapability





3. Springing POA

Capable

Incapable

NOT active right away

STARTS at point of incapability

Created, but dormant





4. Limited POA

Capable

Incapable

For a specific
time(s) or purpose(s)



If you are incapable, WHO makes your decisions?



Regular, Limited, or no POA	Enduring or Springing POA
Public Guardian and Trustee (PGT) locates someone PGT	Power of attorney

Review of Types of POA

1. Regular rare – ends on incapability
2. Enduring common – active now and continues into incapability
3. Springing somewhat common – not active until incapability and ends if the donor regains capability
4. Limited less common – for specific purposes and/or limited periods of time



How Can Powers of Attorney Be Used and Misused?



Financial Abuse

- Significant area of exploitation
- Most common form of elder abuse
- Can literally bankrupt the donor – **BE VERY CAREFUL** about WHO you appoint



Common Myths: Attorney

1. She isn't using the money anyway.
2. It isn't really her money – Dad earned it for me.
3. I'm just going to inherit it anyway – it's my money he's spending.
4. I don't care what she says – she gave me power of attorney and I know what's best for her...
5. He's so out of it, he'll never even miss it.



Common Myths: Donor

1. My son knows what I'd want.
2. She'd never do anything to hurt me.
3. I want to be fair to my kids – appoint all of them equally and this will make it all “even.”
4. I can't take it back!
5. My power of attorney from Ontario is just fine. I've already taken care of it all there...



WHO to Select for a Power of Attorney

Choose someone who will:

- Understand and respect their duties as an attorney
- Understand and respect your wishes
- Make ethical decisions
- Be good with details and record-keeping



Dealing with the Bank

- Be cautious about signing bank powers of attorney, or multiple powers of attorney
- New powers of attorney may revoke earlier powers of attorney



Joint Accounts

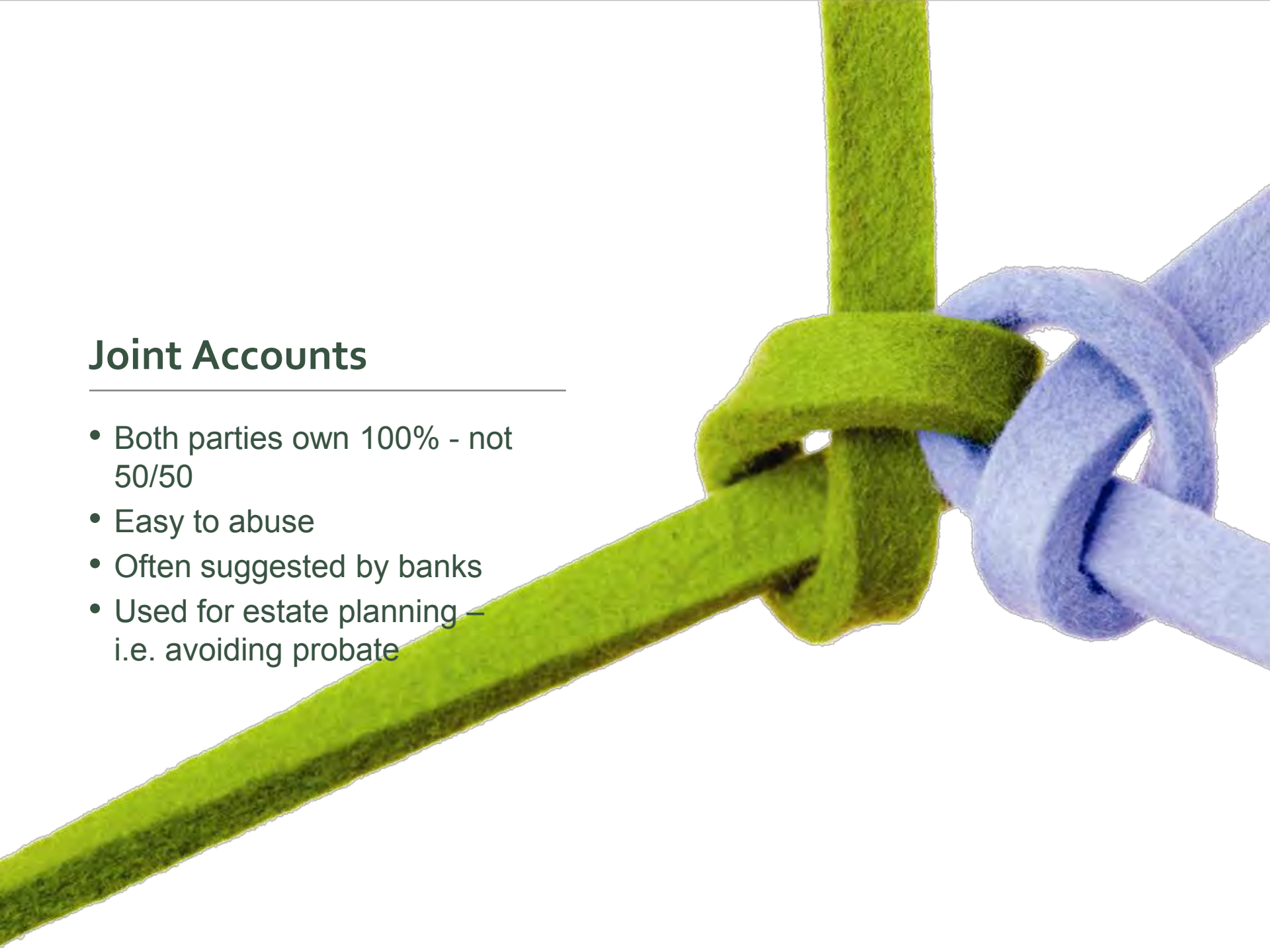
I'm sorry, Mr Bates -
she's already switched
the account to the Cayman
Islands in her name!



**TAKE SWIFT ACTION ON JOINT
BANK ACCOUNTS...**

Joint Accounts

- Both parties own 100% - not 50/50
- Easy to abuse
- Often suggested by banks
- Used for estate planning – i.e. avoiding probate



What Can Be Done About Abuse and Misuse?

- Civil law
- Criminal law
- Practical considerations



Civil Law

- Get an order to “Freeze Assets”
- Try to get assets back
- Sue for breach of fiduciary duty
- Can be difficult – may be nothing left



Criminal Law

- Theft
- Theft by person holding power of attorney
- Criminal breach of trust (conversion by trustee)
- Forgery
- Extortion
- Fraud



Practical Considerations

- Access to justice can be difficult
- Can't afford a lawyer
- May be vulnerable and/or incapable
- Shame
- Fear of what will happen





BC CENTRE FOR ELDER
ADVOCACY
SUPPORT

-
- Seniors Help and Advocacy Line
 - 9am to 1pm, Monday to Friday
 - 604-437-1940 (local)
 - 1-866-437-1940 (toll free)



BC CENTRE FOR ELDER
ADVOCACY
SUPPORT

Thank you!

YOUTH AND CRIMINAL LAW

Legal Aid Qualification

- No need to meet the usual criteria of being poor and there being a possibility of jail before you qualify for legal aid
- If a youth is facing criminal charges, he or she qualifies for a legal aid lawyer

Immigration Treatment of Youth Convictions

- The Immigration and Refugee Protection Act specifically excludes youth sentences from the admissibility provisions:
36(3)(e) inadmissibility under subsections (1) and (2) may not be based on ... an offence for which the permanent resident or foreign national is found guilty under the ... Youth Criminal Justice Act.

The Youth Criminal Justice Act

Special Courts, Procedures and Jails

Special Courts

The YCJA applies to young people who are from 12 to 17 years old *at the time the offence is committed.* (s. 2)

- Every case in youth court will, in its early stages, have to have some evidence presented proving the young person's age in order for the court to have jurisdiction.

Section 14 of the Youth Criminal Justice Act gives the Youth Justice Court exclusive jurisdiction over the criminal activity of young people.

- Even a Supreme Court Judge and Jury is deemed to be a Youth Justice Court where the accused is 12 to 17 and the YCJA dictates the procedure to be followed (s. 14).

Special Procedures

- Parental Involvement

The Act defines “parent” in section 2 as anyone fulfilling the role of parent.

Under the *Declaration of Principle*, the Act states in section 3 that:

Parents should be informed of measures or proceedings involving their children...

The Act states in section 26(1):

If a young person is arrested and detained in custody pending his or her appearance in court, the officer in charge at the time the young person is detained shall, as soon as possible, give or cause to be given to a parent of the young person, orally or in writing, notice of the arrest stating the place of detention and the reason for the arrest.

- As with the necessity of proving the young person’s **age**, there is also a requirement that the court confirm that a “parent” has **notice** of the charges before the court.
- This is often accomplished on the first appearance in court when the charges are usually read out and a parent is called forward to confirm the date of birth of their child.
- This can also be accomplished by the lawyer confirming that he or she has advised the parent of the charges and conveying to the court the youth’s date of birth.
- Section 26(2) also requires the police to notify the parents of any issuance of a summons, appearance notice etc.

The Act also provides a special role for parents in the court processes themselves.

- Section 31 provides for an adult (usually a parent) to act as the young person’s jailer if the young person would otherwise have been detained in custody.
 - Requires the adult to be able to “exercise control over the young person”
 - A hearing is often held where the adult can be cross-examined

- Section 40 requires the youth worker to get input, if possible, from the parents and extended family of a young person in the preparation of a pre-sentence report.
- Section 42 requires the judge on sentencing a young person to allow input from the parents and to consider their comments in formulating the appropriate sentence.

Section 19 of the Act provides for a conference to be held to give advice on any stage of the proceedings against a young person other than trial.

- Input from the parent is not mandated here, but in practice is always sought
- Section 41 requires the judge to consider the recommendations from a conference when sentencing a young person

- Pretrial Detention of Young Persons

- This issue will be addressed later under “sentencing” due to the wording of the YCJA.

- Admissibility of Youth Statements

There are a number of protections in place in the *Youth Criminal Justice Act* that enhance the Charter right to a lawyer and the right to remain silent.

- Section 25(1) of the Act specifies that the young person has the right to a lawyer at every stage of proceedings against him or her under the Act.
- Section 25(2) imposes on the police upon detention or arrest of a young person, a duty to tell the young person without delay of their right to a lawyer and to give the young person an opportunity to obtain legal advice.
- If a young person shows up without a lawyer at any stage of the youth court proceedings, section 25(3) instructs the youth court to halt proceedings and advise the young person of their right to have a lawyer present.

Section 146 of the YCJA is a comprehensive code protecting young people from having things they say to the police used against them, unless the procedures are very carefully followed. Section 146(2) reads in part:

No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in

authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless.....

- Less than eighteen
- Person in authority
- Prime suspect

Section 146 (2) continues:

...unless

- (a) The statement was voluntary;*
- (b) The person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that*
 - (i) the young person is under no obligation to make a statement,*
 - (ii) any statement made by the young person may be used as evidence in proceedings against him or her,*
 - (iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph ©, and*
 - (iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph ©, if any, unless the young person desires otherwise;*
- (c) the young person has, before the statement was made, been given a reasonable opportunity to consult*
 - (i) with counsel, and*
 - (ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and*
- (d) if the young person consults a person in accordance with paragraph ©, the young person has been given a reasonable opportunity to make the statement in the presence of that person.*

- Section 146 (4) allows a young person to waive these rights, but this must be video or audio taped or in writing

- These are the young person's rights, not the parents
 - The police will do their utmost to get the young person to waive these rights
- Youth Sentences

Purposes and Principles

Section 38 of the Youth Criminal Justice Act defines the *purpose* of sentencing young persons:

The purpose of sentencing under s. 42 is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Then, in section 38(2) the sentencing *principles* emphasized are:

- the sentence must be proportionate to the seriousness of the offence
 - all available sanctions other than custody that are reasonable
 - the least restrictive sentence capable of achieving the purposes above
 - the sentence that is most likely to rehabilitate the young person and
 - the sentence that will promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community
- Conspicuously absent is any mention of deterrence or denunciation. That may soon change. (Safe Streets and Communities Bill)

Section 39 (1) *A youth justice court shall not commit a young person to custody...unless*

- (a) The young person has committed a violent offence;*
- (b) The young person has failed to comply with non-custodial sentences;*
- (c) The young person has committed an indictable offence from which an adult would be liable to imprisonment for a term of more than two years and has a...pattern of findings of guilt...*

- Safe Street and Communities Bill

Pretrial Detention

Section 29 of the Act reads in part:

In considering whether the detention of a young person is necessary for the protection or safety of the public...a youth justice court...shall presume that detention is not necessary...if the young person could not...be committed to custody on the grounds set out in paragraphs 39(1)(a) to (c).

- Safe Street and Communities Bill

Available Sentences

While not technically sentences, the Crown can choose to simply send the young person a written warning and drop the charges (s. 8), or the Crown can refer the matter to “extra judicial sanctions” (diversion) (s. 10).

The actual judicial sentences available under the YCJA are found in s. 42. They are:

- Reprimand
- Absolute discharge
- Conditional discharge
- Fine up to \$1000, restitution or community work service
- Probation
- Intensive support and supervision order
- Custody and supervision order
 - Max 2 years generally
 - Max 3 years for some serious offences
 - Max 7 years for second degree murder
 - Max 10 years for first degree murder
- Deferred custody and supervision order
 - Max 6 months
 - Not for a serious violent offences

Sections 61 – 76 address the possibility of a young person getting an adult sentence. The test is whether or not a youth sentence “would be of sufficient length to hold the young person accountable for his or her offending behaviour” (s. 72).

- Programs are compared

Special Jails

- Section 85 of the YCJA requires the province to have 2 different levels of youth custody, one having less restraint than the other.
- The Burnaby Youth Custody Centre has “closed” or “secure” custody and then “open” custody.
- A person sentenced to the Youth Custody Centre can stay there until they reach the age of 20 if they behave (s. 93). However, they can be sent into an adult facility upon reaching age 18 if they misbehave (s. 92).

The Future

The current government in Ottawa is proposing changes to the Youth Criminal Justice Act including:

- Establishing specific deterrence and denunciation as sentencing principles similar to the principles provided in the adult criminal justice system
- Expands the case law definition of a violent offence to include reckless behaviour endangering public safety
- Amends the rules for pre-trial detention to facilitate the detention of young persons accused of crimes against property punishable by a maximum term of five years or more
- Authorize the court to impose a prison sentence on a young person who has previously been subject to a number of extrajudicial sanctions
- Requires the Crown to consider the possibility of seeking an adult sentence for young offenders 14 to 17 years of age convicted of murder, attempted murder, manslaughter or aggravated sexual assault
- Facilitates publication of the names of young offenders convicted of violent offences.

Working with LSS Intake



February 2, 2012

Sherilyn Thompson
Provincial Supervisor, Legal Aid Applications
Tel: 604-601-6093

How to apply for legal representation?

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



- ▶ **Come** into one of our Legal Aid offices (contact info available on our website www.legalaid.bc.ca.)

Our clients



Who qualifies?

A client qualifies for legal aid when:

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

Approved

What legal problems are eligible for coverage?

- ▶ **Criminal** – where charges are serious and jail is likely



Family Law



Child removal



Immigration



Financial Eligibility

Income chart(All case types)

Household Size

Monthly Net Income

1	\$1,450
2	\$2,030
3	\$2,600
4	\$3,170
5	\$3,750
6	\$4,330
7 or more	\$4,920

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

Appealing a refusal

- ▶ Client has right to appeal a refusal
- ▶ Coverage and financial eligibility reviews must be submitted within 30 days of being refused 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 info

More information

- ▶ Legal Services Society www.legalaid.bc.ca.
- ▶ Family Law in BC www.familylaw.lss.bc.ca

Presenter: Sherilyn Thompson

Provincial Supervisor, Legal Aid Applications

- ▶ Phone: 604-601-6093
- ▶ Fax: 604-682-0787
- ▶ Email: sherilyn.thompson@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, custody or access order where there is a risk of harm or violence to the client or to his or her child or children;
 - have custody of a child or children who have been unlawfully held by the access parent/party;
 - have been permanently or repeatedly denied access to a child or children;
 - need a physical restraining order or other legal assistance to protect themselves or their child or children from harm or violence;
 - need a non-removal order to prevent the other parent from permanently moving their child or children out of the province. The threat must be real and imminent, and involve a permanent change of residence;
- ❖ 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 (this applies to emergency referrals only).
- ❖ 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.

Exception reviews

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

- ❖ 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;
- OR
- ❖ a significant injustice can only be avoided by the appointment of counsel;
- OR
- ❖ the applicant is traumatized by past abuse such that he/she is unable to represent him or herself.

Exception Review Considerations:

- ❖ 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.

If legal representation is denied, an applicant may request a coverage review or a financial eligibility review.

CFCSA Coverage Guidelines

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.

Note: A parent may be eligible before the birth of the child(ren) if the client is otherwise eligible.

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.

If legal representation is denied, an applicant may request a coverage review or a financial eligibility review.

Immigration Coverage Guidelines

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.

Immigration coverage guidelines

An applicant is covered if he or she:

- ❖ is making a refugee claim in Canada, or
- ❖ faces an immigration proceeding that 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.

Note: 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

Referrals for refugee and protected persons claims made in Canada are issued for (in two stages):

- ❖ Personal Information Form (PIF) preparation, and
- ❖ representation at refugee hearings.

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 referrals if they determine that the applicant has a reasonable chance of being successful in his or her case.

- ❖ 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

If legal aid representation is denied, an applicant may request a coverage review or financial eligibility review.

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.

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.

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

Additional grounds for coverage

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.

Exception

Youth under the age of 18 who are not wards of the Ministry of Children and Family Development are covered for all federal charges regardless of financial eligibility or risk of jail.

If legal representation is denied, an applicant may request a coverage review or financial eligibility review.

3. HOUSING



Legal
Services
Society



Immigrant
PLEI
Consortium



RESIDENTIAL TENANCY LEGISLATION AND ISSUES FOR SETTLEMENT WORKERS

Presented by:
Kendra Milne
Community Legal Assistance Society
604-685-3425
kmilne@clasbc.net

Goals of the session

I hope that, through this session, you will:

- Gain a basic understanding of the role of tenancy legislation in BC;
- Become familiar with some of the key provisions of the legislation;
- Understand the meaning and importance of some of the documents clients may present or describe to you; and
- Be able to identify urgent issues and provide clients with the basic information they require.

Material contents

Overview of the legislation	2
When does the legislation apply?	3
Key provisions of the legislation	5
Important documents	8
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Urgent issues to watch out for and how to handle them	33
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Overview of the legislation

The landlord/tenant relationship is essentially based on a **contract** (a tenancy agreement) between landlord and tenant. Prior to there being legislation governing these contracts, tenants had very little protections. Their tenancies could be ended for no reason.

Today, there are 2 **statutes** that govern most landlord-tenant relationships in BC:

- *Residential Tenancy Act*
- *Manufactured Home Park Tenancy Act*

This legislation:

- Gives tenants greater security of tenure than they would otherwise have by only allowing a landlord to evict a tenant for specific reasons
- Puts limits on how a landlord can raise rent
- Codifies some of the rights and responsibilities of both landlord and tenants
- Creates an administrative decision maker - the Residential Tenancy Branch ("RTB") - for resolving disputes under both statutes

Parties cannot contract out of the Act (see s. 5 in both Acts). There are regulations under both pieces of legislation creating standard terms that apply to all tenancy agreements, whether oral or written (s. 12 in both Acts).

The Residential Tenancy Branch website <http://www.rto.gov.bc.ca/> contains a lot of helpful material, including:

- Forms for landlord and tenants
- Guidelines to understand rights and responsibilities at different points in a tenancy
- Fact sheets that explain some of the sections of the legislation and related legal concepts
- Rules of Procedure that govern how RTB disputes will be adjudicated

When does the legislation apply?

The *Residential Tenancy Act* applies to most conventional tenancy agreements for rental units (s. 2). Note the broad definitions in s. 1, especially:

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

These broad definitions allow the *RTA* to cover many types of tenancy situations, including:

- A tenant is living in the landlord's basement suite and doing odd jobs in exchange for the right to live there (i.e. no monetary rent is exchanged);
- A tenant is renting a manufactured home park pad and home from a landlord; or
- A tenant is renting a manufactured home from the owner, who in turn is renting a pad from a manufactured home park (the important part is that the tenant is renting an actual living accommodation and not supplying their own).

Meanwhile, the *Manufactured Home Park Tenancy Act* is designed to deal with situations where the tenant is renting the land only from the landlord, and supplies their own manufactured home to put on that land. The general idea is that, because the tenant has a very valuable possession on the land (the manufactured home), special protections and rules are required.

The *MHPTA* applies to most tenancy agreements regarding manufactured home sites (s. 2). Note the definitions in s. 1, especially:

"manufactured home" means a structure, whether or not ordinarily equipped with wheels, that is

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- (b) used or intended to be used as living accommodation;

"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;

"tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

WARNING!!! There are some tenancy-like situations that are excluded from both acts. Consider whether your clients are covered by the legislation, or whether they are excluded under s. 4 of either the *RTA* or *MHPTA*. **Exceptions include:**

- o Non-profit co-operative housing
- o housing provided by an educational institution to its students/employees
- o housing where the tenant shares bathroom or kitchen facilities with the owner
- o living accommodation included with, and rented under an agreement with, business premises
- o holiday accommodation
- o emergency/transitional housing
- o housing under the Community Care and Assisted Living Act, Continuing Care Act, Hospital Act, or Mental Health Act
- o jails
- o tenancy agreements with a term longer than 20 yrs
- o *AND MANY MORE*

If your client's case falls under the *RTA* or the *MHPTA*, then:

- Your client is entitled to all the rights and bound by all the responsibilities set out in the legislation; and
- Any disputes about the tenancy (excluding monetary claims for over \$25,000) go to the RTB, not the court.

Key provisions of the legislation

Security of tenure

The *RTA* and *MHPTA* set out that tenants can only be evicted for specific reasons and landlords must give specific periods of notice to tenants. The Acts also create an obligation for tenants to give adequate notice to a landlord if they want to move. This gives tenants some security in their housing in that they cannot be evicted without reason, and it attempts to allow landlords enough time to find a new tenant at the end of a tenancy. (See s. 44 of the *RTA*; 37 of the *MHPTA*)

There are two types of tenancies: month-to-month and fixed term. The type of tenancy impacts how the tenancy can be ended.

Month-to-month means that the tenant and landlord have not agreed on an end date for the tenancy. These tenancies are more flexible for tenants – they can end them at any time with adequate notice. Month-to-month tenancies are most commonly ended for the following reasons:

- Tenant's Notice (no fault): The tenant gives one month's written notice to end it (see s. 45 of the *RTA*; s. 38 of the *MHPTA*). The tenant must give notice before the monthly rent is payable to end the tenancy the following month. So, if rent is payable on the 1st of April and the tenant wants to end the tenancy on April 30th, the tenant must give notice by March 31st.
- Unpaid rent: The landlord gives a 10 day notice to end tenancy for unpaid rent AND the tenant does not pay the amount owing within 5 days (see s. 46 of the *RTA*; s. 39 of the *MHPTA*).
- Cause: The landlord gives a one month notice to end tenancy for "cause" (see s. 47 of the *RTA*; 40 of the *MHPTA*). This section allows the landlord to end the tenancy for bad behaviour on the part of the tenant, such as disturbing other tenants, endangering the landlord's property, failing to repair damage, and repeated late payments of rent.
- Landlord's use (no fault): The landlord gives notice to end for landlord's use of the property (see s. 42 of the *RTA*; 49 of the *MHPTA*). This covers situations like when the landlord wants a family member to live in the rental or wants to no longer rent the unit. In recognition that the tenant has done nothing to the end the tenancy in these situations, the tenant gets additional notice (2 months under the *RTA*; 12 months under the *MHPTA*) and compensation (1 month's rent under the *RTA*; 12 month's rent under the *MHPTA*).

A fixed-term tenancy means that the landlord and tenant have agreed that the tenancy will end on specific date, and not before. This means that, prior to the end of the fixed-term tenancy, the tenant cannot give notice (except in some limited situations where the landlord has breached the agreement or Act) and the landlord cannot end the tenancy without cause or unpaid rent.

At the end of a fixed-term tenancy, unless the tenancy agreement expressly says that the tenant will move out, the tenancy continues as a month-to-month tenancy (see ss. 44(1)(b) and 44(3) in the *RTA*; ss. 37(1)(b) and 37(3) of the *MHPTA*).

At any time, the landlord and tenant can agree in writing to end a tenancy, whether it's fixed-term or month-to-month (see s. 44(1)(c) in the *RTA*; s. 37(1)(c) in the *MHPTA*).

Rent increases

The legislation also protects tenants from arbitrary rent increases beyond a limited annual percentage that changes from year to year, and grants them at least three month's notice of any increase (see part 3 of the *RTA*; part 4 of the *MHPTA*).

However, the *RTA* and *MHPTA* also allow the landlord to apply to the RTB for bigger rent increases in some specific situations.

Other rights and responsibilities

In addition to the above, the *RTA* and *MHPTA* set out important rights and responsibilities for both landlords and tenants, such as:

- Mandatory tenancy agreement terms (s. 12 of both the *RTA* and *MHPTA*);
- Rules around security and pet deposits (ss. 17-21 of the *RTA*; s. 17 of the *MHPTA*);
- Mandatory inspections on move-in and move-out (s. 23 and 35 of the *RTA* only);
- When services can be terminated by a landlord (s. 27 of the *RTA*; s. 21 of the *MHPTA*);
- Tenant's right to quiet enjoyment of the rental unit (s. 28 of the *RTA*; s. 22 of the *MHPTA*);
- Landlord's access to the rental unit (ss. 29 and 31 of the *RTA*; ss. 23 and 25 of the *MHPTA*); and
- Rules around subletting (s. 34 of the *RTA*; s. 28 of the *MHPTA*).

RTB dispute resolution process

Disputes arising out of tenancy that falls under the *RTA* or the *MHPTA* must be decided by the Residential Tenancy Branch unless they are for more than \$25,000 in monetary compensation.

The Acts set out a fairly detailed set of guidelines for the Dispute Resolution Process and the Branch has developed its own Rules of procedure with additional details.

To assist the parties to a dispute, the Branch also publishes a number of very helpful guidelines and factsheets that explain in plain language how the process works and how to prepare for a hearing.

★ Some important aspects of the RTB dispute resolution process are:

- Hearings usually occur via telephone conference call;
- The RTB does not provide interpreters, so clients will need to bring their own if required;
- The process is quite informal;
- Once a decision is made, there are limited opportunities to review it with very short timelines;
- Parties can have advocates assist them during a hearing; and
- 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 – deadlines for doing this are strict and are set out in the Rules of Procedure.

Review

The Acts also set out a very limited process for requesting a review of a RTB decision or order if the tenant does not agree with the decision. The review requests are made to the RTB, and have very short timelines.

Important documents

The following pages are copies of important documents that a client may have received or may provide to you. Most RTB forms have plain language explanations of the client's options and other important information written on them – be sure to read the document carefully, including the section (if applicable) about when the document is deemed to be served.

If a client shows you a RTB document, be very sure to sort out what type of document it is because RTB timelines are **very short**. If you are unsure, call TRAC or the RTB information line right away.

Copies of all of these documents can be found on the RTB website, as well as other forms. These are just the most common or important documents.

10 Day Notice to End Tenancy for Unpaid Rent – page 1

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.

10 Day Notice to End Tenancy for Unpaid Rent – page 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 250-387-1602
(Toll Free) 1-800-665-8779
#RTB-30 (2011/04)



1 Month Notice to End Tenancy for Cause – page 1

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:	<input type="checkbox"/> Manufactured home site, <i>Manufactured Home Park Tenancy Act</i>
	<input type="checkbox"/> Rental unit, <i>Residential Tenancy Act</i>

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
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)



1 Month Notice to End Tenancy for Cause – page 2

REASONS FOR THIS 1 MONTH NOTICE TO END THE TENANCY (put an "x" in all the boxes that apply)	
<input type="checkbox"/>	Tenant is repeatedly late paying rent
<input type="checkbox"/>	Tenant has allowed an unreasonable number of occupants in the unit/site
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has:
<input type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord
<input type="checkbox"/>	put the landlord's property at significant risk
<input type="checkbox"/>	Tenant has engaged in illegal activity that has, or is likely to:
<input type="checkbox"/>	damage the landlord's property
<input type="checkbox"/>	adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
<input type="checkbox"/>	jeopardize a lawful right or interest of another occupant or the landlord
<input type="checkbox"/>	Tenant has caused extraordinary damage to the unit/site or property/park
<input type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site
<input type="checkbox"/>	Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
<input type="checkbox"/>	Tenant has assigned or sublet the rental unit/site without landlord's written consent
<input type="checkbox"/>	Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park
<input type="checkbox"/>	Rental unit/site must be vacated to comply with a government order
<input type="checkbox"/>	Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order
<input type="checkbox"/>	Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee
<input type="checkbox"/>	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
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • 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.

2 Month Notice to End Tenancy for Landlord's Use (RTA) – page 1

2 MONTH NOTICE TO END TENANCY FOR LANDLORD'S USE OF PROPERTY

Residential Tenancy Act, s. 49

2 MONTH NOTICE TO END TENANCY BECAUSE THE TENANT DOES NOT QUALIFY FOR SUBSIDIZED RENTAL UNIT

Residential Tenancy Act, s. 49.1

Form #RTB – 32

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

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 #	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 #	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 two months notice to move out of the rental unit located at:

Unit #	Street # and street name		City	BC	Postal Code
by (date when tenant must move out of the rental unit)					
Day	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 – 32 (2011/03)



2 Month Notice to End Tenancy for Landlord's Use (RTA) – page 2

REASONS FOR THIS 2 MONTH NOTICE TO END THE TENANCY (put an "x" in all the boxes that apply)	
<input type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
<input type="checkbox"/>	A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares
<input type="checkbox"/>	All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit
<input type="checkbox"/>	The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant
<input type="checkbox"/>	The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative
<input type="checkbox"/>	The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property
<input type="checkbox"/>	The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit

COMPENSATION FOR TENANTS
<ul style="list-style-type: none"> On or before the effective date of this Notice, the landlord must pay the tenant an amount equal to one month's rent payable under the tenancy agreement. If this Notice is ending a periodic tenancy, the tenant may withhold the last month's rent instead of being paid compensation. Compensation is not owed to tenants who receive this Notice because they do not qualify for the subsidized rental unit. If a tenant has already paid the last month's rent, the landlord must refund the rent as the compensation. If the landlord does not take steps toward the purpose for which this Notice was given or if the unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of this Notice, the landlord or purchaser must pay the tenant an additional amount equal to double the monthly rent paid under the tenancy agreement. If this is a periodic tenancy, a tenant who receives this Notice can give 10-days notice and move out early. The landlord must still pay the tenant one-month's rent as compensation.

WHEN THE TENANT WILL BE ASSUMED TO HAVE RECEIVED THIS NOTICE
<ul style="list-style-type: none"> 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
<ul style="list-style-type: none"> You have the right to dispute this Notice within 15 days after it is assumed to be received 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 for Dispute Resolution within 15 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (You can move out sooner). If you do not file the Application or move out, your landlord can apply for an Order of Possession that is enforceable through the court.

INFORMATION FOR LANDLORDS WHO WANT TO END A TENANCY
<ul style="list-style-type: none"> 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 if you believe the tenant does not intend to move out and the tenant's deadline to dispute this Notice has expired, you can apply to the Residential Tenancy Branch 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
<ul style="list-style-type: none"> 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.

12 Month Notice to End Tenancy for Conversion (MHPTA) – page 1

12 MONTH NOTICE TO END TENANCY FOR CONVERSION OF MANUFACTURED HOME PARK

Manufactured Home Park Tenancy Act, s. 42

Form #RTB – 31

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

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 12 months notice to vacate the manufactured home site located at:

Unit/site #	Street # and street name	City	Province Postal Code
by (date when tenant must move out of the rental unit or vacate the site)			
Day	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: 604-660-1020 250-387-1602 1-800-665-8779 (Toll free)
Website: www.rto.gov.bc.ca

#RTB – 31 (2011/03)



12 Month Notice to End Tenancy for Conversion (MHPTA) – page 2

REASON FOR THIS 12-MONTH NOTICE TO END TENANCY

The landlord has all necessary permits and approvals required by law and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.

TENANT COMPENSATION

- A landlord who gives a tenant this Notice must pay the tenant, on or before the effective date of this Notice, an amount equal to 12 months' rent payable under the tenancy agreement.
- Following receipt of this Notice, a tenant who has a periodic tenancy may at any time give the landlord a minimum of 10 days notice to end the tenancy. Rent is payable only until the date the tenant permanently vacates the site. The landlord must still pay the 12-months rent as compensation.
- A tenant's notice to move in response to this Notice does not affect the tenant's right to compensation.
- If steps have not been taken to accomplish the stated conversion of the manufactured home park within a reasonable period after the effective date of this Notice, the landlord must pay the tenant an additional amount equal to 6 times the monthly rent that would have been payable under 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

- An error in this Notice does not make it invalid.
- A tenant has the right to dispute this Notice within 15 days after it is assumed to be received 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 for Dispute Resolution within 15 days, you are presumed to accept that the tenancy is ending and you must vacate the manufactured home site on the date set out on page 1 of this Notice (you can move out sooner.) If you do not file the Application or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

INFORMATION FOR LANDLORDS WHO WANT TO END A TENANCY

- Take steps to confirm that the tenant actually receives the Notice when it is assumed to be received. A Dispute Resolution Officer may set the 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 vacate the site, or if you believe the tenant does not intend to vacate the site and the deadline for the tenant to dispute this Notice has expired, you can apply to the Residential Tenancy Branch 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) 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.

3 Month Notice of Rent Increase – page 1



Notice of Rent Increase – Residential Rental Units

#RTB-7

FORM DIRECTIONS: If you are accessing this agreement 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 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.

This form is used by the landlord to notify a tenant of a rent increase. The landlord must give the tenant at least three months notice. See page 2 for further information.

A. TO THE TENANT(s):

Full Name(s):

last name	first name	middle name(s)
last name	first name	middle name(s)

Mailing Address and Phone:

site number	box number	street number	street name
city	province	postal code	() home phone () business phone

Rental Address: (if different from above)

--

B. FROM THE LANDLORD: (if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)

Full Name:

last name	first name	middle name(s)

Mailing Address and Phone:

site number	box number	street number	street name
city	province	postal code	() home phone () business phone

FOR MORE INFORMATION

RTB website: www.rto.gov.bc.ca

Public Information Lines: 1-800-665-8779 (toll free) 604-660-1020 250-387-1602

3 Month Notice of Rent Increase – page 2

C. NOTICE OF RENT INCREASE:

1) Date of Last Rent Increase: (landlord to complete either option a or b)

a) the date your last rent increase came into effect was:
day month year

b) As this is your first rent increase, the date your rent was established:
day month year

2) Amount of Rent Increase:

- The current rent is: \$ ☐ weekly ☐ monthly ☐ other:
- The rent increase is \$ ☐ weekly ☐ monthly ☐ other:
- Your new rent will be: \$ ☐ weekly ☐ monthly ☐ other:
- Your new rent is payable starting on:
day month year

D. LANDLORD'S SIGNATURE: The information provided on this form is true and correct.

Landlord's Name: (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)

Landlord's Signature: _____ Date: _____

INFORMATION FOR LANDLORDS and TENANTS

GIVING A NOTICE OF RENT INCREASE UNDER THE RESIDENTIAL TENANCY ACT (RTA)

- Once a year, the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant(s) or 12 months after the date of the last legal rent increase for the tenant(s), even if there is a new landlord or a new tenant by way of an assignment.
- A landlord must give a tenant at least 3 whole month's notice, in writing, of a rent increase. *For example, if the rent is due on the first day of the month and the tenant is given notice any time in January, even January 1st, there must be 3 whole months before the rent increase begins. In this example, the months are February, March, and April, so the rent increase would begin on May 1st. The landlord must use this form, Notice of Rent Increase, and must serve according to the Residential Tenancy Act.*
- It is an offence for a landlord or a landlord's agent to collect a rent increase in any other way other than in accordance with Part 3 of the Residential Tenancy Act.
- A notice sent by mail (which is one method of service) is deemed to be received on the 5th day after it was mailed. *For example, a rent increase given personally to a tenant on or before January 31st, could be effective May 1st; a rent increase given by registered mail should be mailed on or before January 26th for the increase to be effective on May 1st.*
- A tenant may not apply for dispute resolution to dispute a rent increase that complies with Part 3 of the RTA.
- A landlord may only impose a rent increase up to the amount calculated in accordance with the regulations or as ordered by a dispute resolution officer. If a tenant believes that the rent increase is more than allowed by the regulations, the tenant may contact the Residential Tenancy Branch for assistance.
- For further information on rent increases, see Part 3 of the Residential Tenancy Act and Part 4 of the Residential Tenancy Regulation. You may also call the recorded 24-hour information line or visit the B.C. Government Web site to find out how to contact a Residential Tenancy Branch or to get more information (this information is at the bottom of page 1).

Landlord's Application for Additional Rent Increase – page 1



Residential
Tenancy Branch

Application for Additional Rent Increase

#RTB-16

This form is used by a landlord for a dispute resolution officer's approval for a rent increase in an amount that is greater than the amount specified in the Residential Tenancy Act (RTA) and the Manufactured Home Park Tenancy Act (MHPTA) and associated regulations. The information is collected under the RTA and MHPTA. Information collected in this form may be disclosed to the public in accordance with the Freedom of Information and Protection of Privacy Act. For further information on the collection, use and disclosure of this information, please phone 1 800 665-8779.

File #:

HOW TO COMPLETE THIS FORM ELECTRONICALLY: If you are accessing this form from the B.C. Government Web site, it can be printed and completed by hand (*print clearly, using dark ink*) or filled out while at the computer workstation—simply type your responses 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. Note, 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.

A. APPLICANT'S / LANDLORD'S NAME (if entry is a business name, enter the full legal business name in the 'last name' field box)

last name	first and middle name(s)

APPLICANT'S / LANDLORD'S ADDRESS FOR SERVICE

unit/site #	street address	city	province	postal code
day time phone number		other phone number		service fax

B. RENTAL ADDRESS: ☐ Residential ☐ Manufactured Home Park

street address	city	province	postal code

LANDLORD TO COMPLETE THIS PAGE, PLUS ADDITIONAL BOXES NOTED FOR APPLICABLE REASON(S) BELOW:

Please check off one or more of the following reasons that apply to your request for an additional rent increase:

- ☐ A) After the rent increase permitted by the Regulation, the rent for the rental unit or site is significantly lower than the rent payable for other rental units or sites similar to and in the same geographic area, as the rental unit or site (*complete boxes D, E and K*).
- ☐ B) The landlord has completed significant repairs or renovations to the residential property in which the rental unit is located that:
 - could not have been foreseen under reasonable circumstances, and
 - will not recur within a time period that is reasonable for the repair or renovation (*complete boxes C, D, F and K*) **OR**The landlord has completed significant repairs/renovations to the manufactured home park in which the manufactured home site is located that:
 - are reasonable and necessary, and
 - will not recur within a time period that is reasonable for the repair or renovation (*complete boxes C, D, F and K*).
- ☐ C) The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property or the manufactured home park (*complete boxes C, D, G, H and K*).
- ☐ D) The landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property or manufactured home park, if the financing costs could not have been foreseen under reasonable circumstances (*complete boxes C, D, G, I and K*).
- ☐ E) The landlord, as a tenant, has received an additional rent increase for the same rental unit or manufactured home site (*complete boxes D, J and K*).

C. PERCENTAGE RENT INCREASE REQUESTED

Permitted increase % + additional increase % = total increase %

D. SIGNATURE (required to commence dispute resolution proceeding)

I, the Applicant/Agent for the Applicant apply to the Director of the Residential Tenancy Branch for approval of this additional increase. The fee for this application, as established under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, may be paid by cash, debit card, credit card or money order. Applications submitted to a Service BC-Government Agent or BC Access Centre may be paid by debit card, cash or certified cheque.

NAME

last name	first and middle name(s)

SIGNATURE: _____ **DATE:** _____

#RTB-16 (2011/03) Office of Housing and Construction Standards Ministry of Energy and Mines

Landlord's Application for Additional Rent Increase – page 2

File #:

NOTICE [Responsibility of Applicant to Notify the Tenant(s)]

The Applicant must deliver a copy of this Application for Additional Rent Increase to *each* tenant named on the application within 3 days of the processing of this application by the Residential Tenancy Branch.

Where there are multiple tenancies affected by this application, tenants may choose to be represented by one or more of the tenants named on this application.

A landlord who applies for an increase because of significant renovations or repairs, or because an increase is required to compensate for a financial loss resulting from an extraordinary increase in operating costs, or because the landlord, acting reasonably, has incurred financial loss for the financing costs of purchasing the residential property or manufactured home park, must make a single application to increase the rent for all units in the residential property or sites in the manufactured home park by an equal percentage.

Information about the allowable annual rent increase is available by contacting any Residential Tenancy Branch.

FOR MORE INFORMATION . . .

RTB website: www.rto.gov.bc.ca

Public Information Lines: 1-800-665-8779 (toll free) 604-660-1020 250-387-1602

E. RENT LOWER THAN COMPARABLE UNITS OR SITES

	Rent Before Increase	# of units/sites	Rent Increase Permitted	Comparable Rent	Additional Increase Requested	% Increase Requested
Rent 1						
Rent 2						
Rent 3						

If rent for an individual unit or site is lower than other comparable units or sites in the building or park, attach details (e.g. standard rent for single wide or 1 bedroom units is "x"). If rents for all units or sites are lower than similar units or sites in buildings or parks within the geographic region, attach information on which comparison is based, including rent, size of unit or site, amenities, and services provided in each, with supporting documents as to how those comparisons were established.

F. SIGNIFICANT REPAIRS OR RENOVATIONS

Work Done	Cost	Year last done	Est. Year Next Req'd	For Rental Units under the RTA, Why Unanticipated; For Manufactured Home Sites under the MHPTA, Why Reasonable and Necessary

For rental units under the RTA: Attach invoices, explanation of why the work was required, and supporting information about why the work was unanticipated. If funds were set aside for this purpose, but were not adequate, please explain.

For manufactured home park sites under the MHPTA: Attach invoices, explanation of why the work was required, and supporting information about why the work was reasonable and necessary.

Landlord's Application for Additional Rent Increase – page 3

File #:

G. FINANCIAL STATEMENT INFORMATION

Total rent for period if all sites rented \$

Other income \$

Total operating costs for last fiscal year \$

Total financing costs for last fiscal year \$

Other costs for last fiscal year \$

Date of last fiscal year end

day month year

What types of costs were included as "other"?

The rent is payable: ☐ Monthly ☐ Weekly ☐ 2x/month ☐ Other

Attach financial statements for last fiscal year. If financial statements are not audited provide, before or at the hearing, sufficient evidence (e.g. supporting documentation) to verify accuracy.

H. EXTRAORDINARY INCREASE IN OPERATING COSTS

Type of cost (e.g., 'gas')	Cost last fiscal year	Cost previous fiscal year	Total Increase
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Did you receive any refunds, rebates, grants or financial assistance for the increased operating costs referred to above? ☐ yes ☐ no
If yes, please provide the source of assistance, the cost it applies to, the period to which it applies, and the total amount received.
Attach supporting evidence of additional costs incurred, additional information requested, and any relevant explanation of cost increases.

I. INCREASE IN FINANCING COSTS:

Date of purchase of property Interest rate at purchase %
day month year

Purchase price \$ Down payment \$

Date of latest change in interest rates Interest rate %
day month year

Impact on operating costs:
Total in last fiscal year \$ Total in previous fiscal year \$

Date of previous change in interest rates Interest rate %
day month year

J. LANDLORD, AS A TENANT, HAS BEEN ISSUED AN ADDITIONAL INCREASE UNDER THE REGULATION:

Rent before increase \$ Rent after increase \$ Date of Increase
Application for Additional Rent Increase FILE # day month year

[illegible]

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)

			BC	
Unit/site #	Street # and street name	City	Province	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 Kelowna: 305–478 Bernard Avenue
 - RTB Victoria: Suite 101 - 3350 Douglas Street
 - 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

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-12-T (2011/03)



Tenant's Application for Dispute Resolution – page 2

Tenant's Application for Dispute Resolution

Page 2

For RTB use only: File # _____

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

Application to Waive Filing Fee



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)

B.C.
suite or site number street number street name city province 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
<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>

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 _____

#RTB-17
(2011/03)

FOR MORE INFORMATION
RTB website: www.rto.gov.bc.ca

Public Information Lines: 1-800-665-8779 (toll free) 604-660-1020 250-387-1602

Residential Tenancy Branch
Office of Housing & Construction Standards
Ministry of Energy and Mines

Sample Notice of Dispute Resolution Hearing



August 31, 2011

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 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.

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

RESIDENTIAL TENANCY BRANCH

Office of Housing and Construction Standards
Residential Tenancy Branch

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

Telephone: 804 660-1020
Toll Free: 1 800 666-8779
Facsimile: 804 660-2363

Sample Residential Tenancy Branch Order



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

A handwritten signature in black ink, appearing to read "upns", written over a horizontal line.

Residential Tenancy Branch

Application to Review a Residential Tenancy Branch Decision – page 1



**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)

<input type="text"/>	<input type="text"/>	<input type="text"/>
last name	first name	middle name(s)
<input type="text"/>	<input type="text"/>	<input type="text"/>
last name	first name	middle name(s)

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

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
suite or site number	street number	street name	city	province	postal code
(<input type="text"/>) <input type="text"/>	(<input type="text"/>) <input type="text"/>	(<input type="text"/>) <input type="text"/>	(<input type="text"/>) <input type="text"/>	(<input type="text"/>) <input type="text"/>	(<input type="text"/>) <input type="text"/>
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	<input type="text"/>	<input type="text"/>	<input type="text"/>
Order	<input type="text"/>	<input type="text"/>	<input type="text"/>

Application to Review a Residential Tenancy Branch Decision – page 2

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.

Application to Review a Residential Tenancy Branch Decision – page 3

☐ C2. NEW AND RELEVANT EVIDENCE

List EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant.

If you have no other grounds, go to D.

If you have further grounds for review, go to C3.

☐ C3. FRAUD

Three elements are required to show a decision or order was obtained by fraud:

1. False information was submitted
2. The person submitting the evidence knew that it was false, **and**
3. The false information was used to get the desired outcome.

Which information submitted for the initial hearing was false and what information would have been true?

How did the person who submitted the information know it was false?

How do you think the false information was used to get the desired outcome?

Go to D.

Application to Review a Residential Tenancy Branch Decision – page 4

D. Signature(s) *(required to commence review)*

I/We, the Applicant(s)/Agent for the Applicant(s), apply to the Director of the Residential Tenancy Branch for a review of this decision and/or order of the Residential Tenancy Branch. I/We have read this application in full. The information provided is true and correct to the best of my/our knowledge.

Signature(s): _____ Date: _____
day month year

Date: _____
day month year

E. SUPPORTING DOCUMENTS and INFORMATION

ATTACHMENTS:

You **must attach** all written evidence to support your application, including a copy of the decision(s) and/or order(s) being reviewed.

Please **do not resubmit** evidence from the original hearing.

Please check off what is attached to this form:

- ☐ copy of decision or order you wish to have reviewed
- ☐ evidence proving the extraordinary conditions that prevented you from making your application for review on time, as described in Section A of this form
- ☐ evidence showing why you were not able to attend the original hearing, as described in C1 of this form
- ☐ new and relevant evidence that was not available at the time of the original hearing, as described in C2 of this form
- ☐ evidence showing how fraud was used to get the original decision or order, as described in C3 of this form
- ☐ additional pages *(state what the additional pages are for:)*

WHERE TO SUBMIT:

Submit completed *Application for Review Consideration*, with attachments and fee, to one of the following offices:

Residential Tenancy Branch

BURNABY: 400 - 5021 Kingsway V5H 4A5

VICTORIA: 101 - 3350 Douglas Street V8Z 3L1

INTERIOR: 305 - 478 Bernard Avenue, Kelowna V1Y 6N7

If there is no Residential Tenancy Branch office in your area, you can file your application at any

Service BC-Government Agent Office (To locate an office near you, call Enquiry BC 1 800 663-7867)

Referrals

General RTB Information:

Residential Tenancy Branch
604-660-1020 or 250-387-1602 or 1-800-665-8779
<http://www.rto.gov.bc.ca/>

Tenant-specific phone advice:

Tenants Resource and Advisory Centre (TRAC)
604-255-0546 or 1-800-665-1185

More detailed advice or representation for a RTB hearing:

Advocates (to find an advocate, see <http://www.povnet.org/>)

Urgent evictions or judicial reviews (RTB order already made):

Community Legal Assistance Society
604-685-3425 or 1-888-685-6222
www.clasbc.net

Urgent issues to watch out for and how to handle them

- Client received a notice to end tenancy
 - Figure out what type of notice it is (Is tenancy covered by RTA or MHPTA? 10 day? 1 month? 2 month? 12 month?)
 - Flag urgent deadlines for client (is it for non-payment and can client pay the outstanding amount within 5 days? Otherwise, sort out the deadline to dispute the notice)
 - Flag service provisions in form to calculate deadlines accurately
 - If client is disputing, refer to RTB website for prep materials and an advocate for assistance
- Landlord has been issued an Order of Possession
 - Sort out effective date of notice (may say in the order or may be calculated from date of service of the order)
 - Flag that date for client. Bailiff can evict on that date (it's a serious matter!)
 - Refer client to CLAS for assessment of case for judicial review *right away*
- Client has a RTB hearing coming up very quickly
 - Tell client that there are strict deadlines for submitting evince and it's their job to make their case
 - Refer client to RTB website for factsheets and guides on hearing prep, or TRAC for similar info
 - Refer to advocate for assistance with hearing
- Client lost an RTB hearing and is unhappy with the result
 - Confirm it is not an urgent eviction issue
 - If not urgent eviction, refer client to RTB or TRAC regarding applying for a review
 - If review is an option, note *short* deadlines (can be found on review application form)
 - Limited bases for review, so tell client to read information materials carefully

Client scenarios

- 1) A client contacts you and says she found an eviction notice in her mailbox yesterday and she has to move out in 9 days.
- 2) A client came home and found a Notice of Dispute Resolution Hearing taped to her door with some other papers. The hearing is two weeks from today.
- 3) A client complains that her landlord has not fixed a leak in her ceiling despite repeated requests.
- 4) A client contacts you and says that the Board of her housing co-op is kicking her out for having too many loud parties.
- 5) A client participated in a Dispute Resolution hearing last week. She was claiming damages from her landlord, but the DRO decided against her. She is very unhappy.
- 6) A client contacts you and says the Residential Tenancy Branch has issued an Order of Possession against her.

4. HUMAN RIGHTS



Legal
Services
Society



Immigrant
PLEI
Consortium





Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Victims of Trafficking in Persons

Citizenship and
Immigration Canada



**Legal Information and Resources
for Settlement Workers**

Law Foundation of B.C.

March 2012

Norman Hopkins
Regional Program Advisor

Citizenship & Immigration Canada
BC / Yukon Region



Canada



Government of Canada - Combating Trafficking in Persons

- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (“Palermo Protocol”)
- An offence under the *Criminal Code* and the *Immigration and Refugee Protection Act* (IRPA)
- The Government of Canada’s Interdepartmental Working Group on Trafficking in Persons (IWGTIP).
- Canada’s is a “**4-P**” approach:
“Prevention”, “Protection”, “Prosecution” & “Partnership”





Overview of CIC's Role in Combating Trafficking in Persons

CIC's role: Foreign National Victims of Trafficking in Persons ("VTIPs")

- **Prevention:** Visa Offices around the world
- **Protection:** Providing legal status in Canada
 - "VTIP Temporary Resident Permit (TRP)"
 - Work Permit
 - IFH Health Care coverage
- **Partnership:** Interdepartmental Working Group on Trafficking in Persons (IWGTIP)
- **Prosecution:** IRPA s.118 Offence
 - "trafficking in persons", punishable under s.120, by a fine up to \$1M or imprisonment for life, or both





Protection for Victims of Trafficking in Persons (VTIPs)

- Victims get immediate temporary immigration status
 - A TRP is used to overcome an inadmissibility
 - can be cancelled if no longer required or person no longer eligible
- Initial TRP for a “period of reflection” to consider options
- Longer term TRP for long-term protection
- ***Victims of trafficking are not required to participate in an investigation or testify against their trafficker to gain immigration status.***





Temporary Resident Permit (TRP)

- The Initial “Period of Reflection” 180 day TRP:
 - Evidence need not be conclusive
 - Fee-exempt
 - Health care services (including counselling) through Interim Federal Health Program (IFH)
 - May apply for a fee-exempt “Open” Work Permit





The Temporary Resident Permit (TRP)

- The Long Term TRP
 - Threshold of evidence higher (is a victim) and continued presence in Canada needed
 - Not fee-exempt
 - No Interim Federal Health, but health services may be available under provincial health coverage
 - Can apply to extend work permit but will not be fee-exempt
- CIC Officers consider:
 - Whether it is reasonably safe or possible for victim to return home
 - Whether victims are needed and/or willing to participate in investigation or prosecution of trafficker
 - Other information deemed necessary on a case-by-case basis





VTIP Immigration Interview

- Only CIC officers may issue TRPs to VTIPs
- In-person Interviews at local CIC offices
- CIC officers guidelines: treat VTIPs as victims of a crime; create comfortable environment for the victim to open up about her/his experience
- **Worth repeating**: to be issued a TRP by CIC, VTIPs are **NOT** required to cooperate with law enforcement (may be encouraged, but not required – unlike some other countries)





Immigration Counselling

- At the interview, CIC officers provide the victim with information on immigration options. These include:
 - A “Period of Reflection” TRP
 - Filing a refugee claim
 - Returning to their country of origin
 - Options toward Permanent Residence





Permanent Residence Options

- Trafficking victims *may* be eligible in several permanent resident categories:
 - Humanitarian and Compassionate consideration
 - Applying in a qualified category (in Canada or abroad)
 - Permit Holder Class
 - Protected Persons
- ***Note: Having received a TRP as a victim of trafficking does not exclude clients from becoming permanent residents by other means***





Who Should You Refer to CIC for TRP Consideration?

- Foreign National Persons you suspect of being victims of trafficking, when they:
 - Do not have or cannot provide proof of legal immigration status in Canada
 - Have temporary status in Canada (i.e., visitor, worker, student or existing TRP)
 - Have a pending refugee claim
- Please do **not** refer victims who have permanent resident status in Canada or are Canadian citizens





Notifying CIC

- CIC can be notified during regular business hours:
 - National Call Centre – 1-888-242-2100
 - Email: NHQ-VTIP-TPD@cic.gc.ca
 - Regional Contacts (OCTIP has a “VTIP Contacts” list for all responding organizations in BC, including CIC)
- Referrals from law enforcement agencies, other government departments/agencies, SPOs / NGOs, counsel or self-identifying clients
- Interview appointments made directly with local CIC
- During “off” hours (evenings/weekends):
 - CBSA has a 24 hour telephone number – 1-800-523-5072
 - CBSA will notify CIC as soon as possible
- CIC will refer victims to other agencies as necessary





Current Situation

CIC issued VTIP TRPs May 2006 – Sept 2011:

- Canada-wide: 126 TRPs issued to 69 victims
- BC/Yukon: 14 TRPs to 9 victims
- RCMP & VPD both have laid charges against alleged traffickers in Metro Vancouver





CIC is part of Government of Canada approach

- An important part of Canada's coordinated approach to combating this crime, and to protecting its victims
- “online training” available to SPOs - GoC funding to BC's OCTIP
- CIC VTIP Guidelines are public and on CIC's Website:

CIC guidelines located in the Immigration Inland Program
Manual (IP1)

at Section 16, and in
Appendices F, G & H

<http://www.cic.gc.ca/english/resources/manuals/ip/ip01-eng.pdf>


- CIC also has a public web page providing information:





CIC Web Page on VTIP:

<http://www.cic.gc.ca/english/information/applications/trp.asp>

 <http://www.cic.gc.ca/english/information/applications/trp.asp>

**Citizenship and Immigration Canada**
Citoyenneté et Immigration Canada



**Citizenship and Immigration Canada**
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Live in Canada
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Protection and assistance for victims of human trafficking

Citizenship and Immigration Canada (CIC) can help protect victims of trafficking by securing their immigration status with a special temporary resident permit (TRP). A TRP provides legal immigration status in Canada to potential victims and may be issued for up to 180 days. Depending on the person's situation, TRPs can be reissued at the end of the 180 day period.

Victims of trafficking who receive a TRP are eligible for health-care benefits and trauma counselling, and may also apply for a work permit.

Forms and Guides

[Applications from Outside Canada](#)
[Applications from Inside Canada](#)
[Citizenship Applications](#)

I Need To ...

[Find a CIC Office](#)
[Find an Application Form or Guide](#)
[Apply Online for My Off-Campus Work Permit](#)
[Apply Online for My Study Permit](#)
[Calculate My](#)



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

Canada 



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada



Thank You!

~

Questions?



Canada

BC's Office to Combat Trafficking in Persons

Legal Information and Resources for Settlement Workers



March 27, 2012

Victor Porter



Ministry of Justice

OCTIP 2012

Global Context: History

1926: Slavery Convention of the League of Nations

1948: Universal Declaration of Human Rights

1949: Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others

1956: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to *Slavery*

Universal Declaration of Human Rights

- Article 1 of the Universal Declaration declares:
 - *All human Beings are born free and equal in dignity and rights*
- Article 4 clearly states that:
 - *No one shall be held in slavery or servitude*



International Instruments

The Palermo Protocol

The Protocol to ***Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children***, was adopted by the United Nations in Palermo, Italy in 2000, supplementing the *Convention against Transnational Organized Crime*



**Canada
ratified the
Protocol in
2002**

UN Framework: The 4 Ps

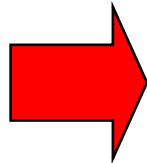
1. **Prevention** of trafficking in persons
2. **Protection** of victims of trafficking
3. **Prosecution** of offenders
4. **Partnerships**



Definition of Trafficking

ACT

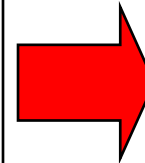
Recruit
Transport
Harbour
Control
movement



MEANS

May Include:

Threats
Coercion
Deception, or
Fear for safety
or safety of
another



PURPOSE

Labour and
Services
Sexual
Exploitation
Organ Removal

EXPLOITATION

Definition of Exploitation

Includes:

- **the sexual exploitation of others**
- **forced labour** or services
- **slavery** or practices similar to slavery
- **servitude**
- **removal of organs**

Exploitation Expanded

- Illegal Adoption
- Drug/Money Smuggling
- Child Soldiers
- Debt Bondage
- Servile Marriage?



Trafficking or Smuggling ?

Trafficking:

Once at their destination, trafficked persons are **exploited**.

Smuggling:

Once at their destination, smuggled persons are free to do as they please.



Trafficking vs. Smuggling

Trafficking	Smuggling
<ul style="list-style-type: none">• Not voluntary• Forced exploitation for labor or services• May involve movement• Can occur within own country• Crime against the person	<ul style="list-style-type: none">• Is voluntary• Always involves movement• Relationship ends at destination• Fees are paid in advance or upon arrival• Crime against the State

CANADA: Prosecution

Prosecution: 2 pieces of federal legislation

2002: Immigration and Refugee
Protection Act



2005: Criminal Code
Section 279.01-.04



Protection

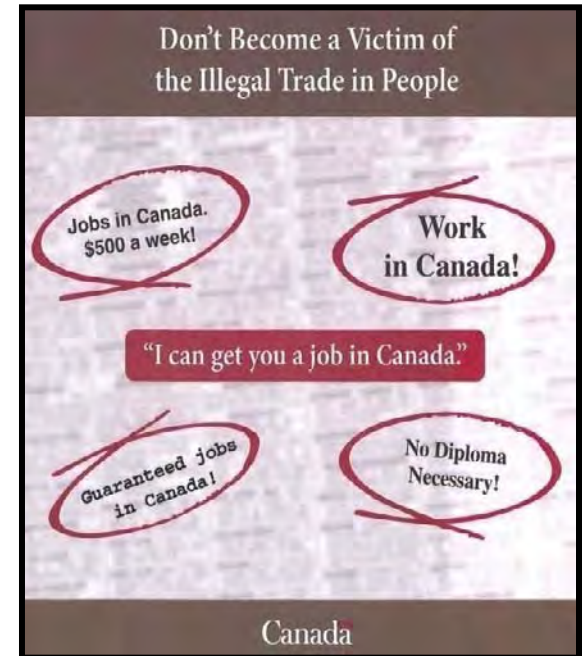
- In 2006 CIC introduced the Temporary Resident Permit for trafficked persons (VTRP)
- In 2007 the VTRP was amended from 120 days to 180 days.



Canada

Intergovernmental Working
Group on Trafficking in
Persons (IWGTIP)

RCMP Human Trafficking
National Coordination
Centre



Ng Case

- 1st human trafficking case in Canada
- Korean women found in Osoyoos



Canadian Trafficking Cases

- Imani Nakpangi (2008)
 - Sentenced to 5 years
 - His victims were 15 and 14 at the time they were recruited
- Laura Emerson (2009)
 - Sentenced to 7 years
 - 3 victims under 18 were held captive and forced into prostitution for up to a year

Current cases in British Columbia

Labour exploitation: 2 cases involving domestic workers

IRPA charges

Sexual exploitation : 1 case involving 4 minors exploited in the Lower Mainland

Criminal Code charges

Child Trafficking Situations

- Sexual Exploitation
- Labour and Domestic Servitude
- Illegal Adoption
- Drug Trafficking

Child Trafficking

- Traveling with an unrelated person posing as a family member
- Travelling unaccompanied
- No return date given
- Behave in a way that is not age appropriate

**UNODC Toolkit to Combat Trafficking in Persons; Pike, R. (2008). Child trafficking at ports of entry from Combating human trafficking: Cooperating to build best practices in B.C. and beyond. Vancouver, BC.*

World Health Organization

Guiding Principles

1. Do no harm
2. Know your subject and assess the risks
3. Prepare referral information
4. Adequately select interpreters and coworkers
5. Ensure anonymity and confidentiality
6. Get informed consent
7. Listen to and respect self assessment
8. Do not re-traumatize
9. Be prepared for emergency intervention
10. Put information collected to good use



Human Rights Approach

- Recognize violation of rights;
- Offer a viable route for escape;
- Provide care and assistance in regaining control of his/her life;
- Present fair and reasonable life options;
- Deliver justice (prosecution and punishment of traffickers) and redress for trafficked person.

Trafficking Indicators

- No ID or other travel documents (International)
- Movement restricted
- Distrustful of authorities
- No control over their money
- Owes money, honour bound to pay it off
- Accompanied by someone who speaks for them
- Signs of being controlled or abused
- Fear or anxiety

Top Concerns for Trafficked Persons

- Can I work and send money back home?
- Will I be deported?
- Can I go back home?
- Do I have to meet with law enforcement?
- I am scared for my safety
- I am scared for the safety of my family
- I am embarrassed and ashamed

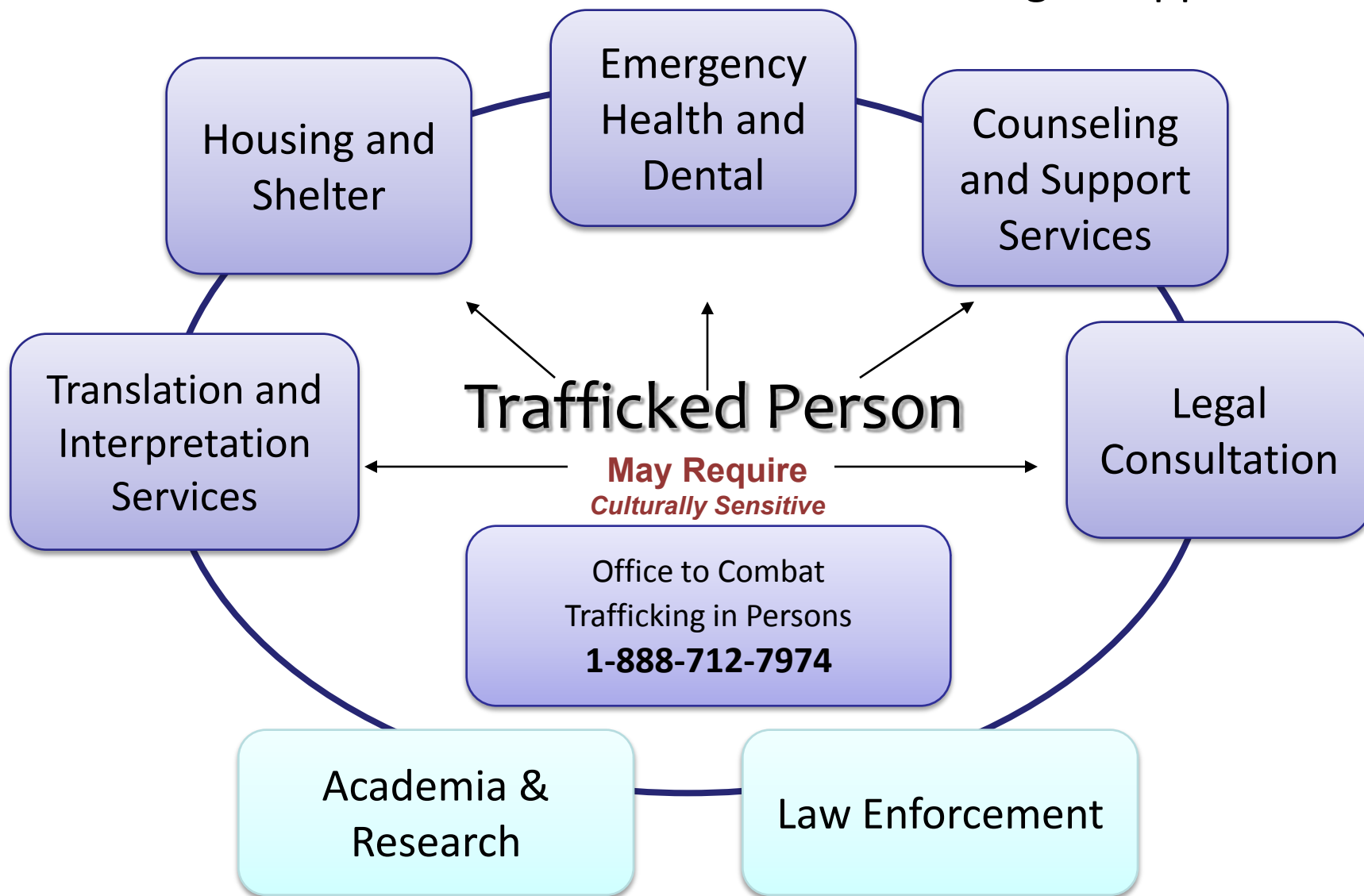
Office to Combat Trafficking in Persons (OCTIP)

- Opened July 2007 in Victoria, BC
- Ministry of Justice, Community Safety and Crime Prevention Branch
- Joint funding from Ministry of Children and Family Development

OCTIP's Current Work

- Awareness raising and education
- Curriculum development and training:
- <http://www.pssg.gov.bc.ca/octip/training.htm>
- International, domestic and aboriginal strategies
- Protocol development with key partners
- Development of service networks across British Columbia

OCTIP Service Coordination Model: a Human Rights Approach



What can we do?

The Office to Combat Trafficking in Persons (OCTIP)

Local Vancouver Office: (604) 660-5199

24 Hour Phone : 1-888-712-7974

The RCMP Human Trafficking Coordinator

Cpl. Jassy Bindra (604) 598-4603

Ministry of Children and Family Development

24 Hour Phone: (604)310-1234

Migrant Services Team (604) 660 – 4927

24 hour phone 1-800-663-9122

Thank you

BC Office to Combat Trafficking in Persons

24 Hours: 1-888-712-7974

email: octip@gov.bc.ca

www.pssg.gov.bc.ca/octip

Resources on Human Trafficking

Human Trafficking: Canada is Not Immune, online training course:

<http://www.pssg.gov.bc.ca/octip/training.htm>

Human Trafficking in Canada, Peoples' Law School:

http://publiclegaled.bc.ca/uploads/51/e2/51e2e9b456c0342bd6378c8365680b6c/English_Human-Trafficking-In-Canada_2010.pdf

5. IMMIGRATION



Legal
Services
Society



Immigrant
PLEI
Consortium





THE LIVE IN CAREGIVER PROGRAM

WEST COAST DOMESTIC WORKERS' ASSOCIATION

**PRESENTED TO THE INFORMATION AND LEGAL RESOURCE CONFERENCE FOR
SETTLEMENT WORKERS**

27 March 2012

OVERVIEW LCP



The Live In Caregiver Program (LCP) is a unique temporary foreign worker program because it permits the foreign worker to apply for permanent residence status after completing the requirements of the program.

ENTERING LCP

S 112 IRPR



- ▶ Apply for the work permit **outside** Canada
- ▶ Complete course of study equivalent to Canadian secondary school (12 years),
- ▶ 6 month full time classroom caregiver training, OR
- ▶ 1 year of full time paid employment in a field related to the employment for which work permit is sought (at least 6 months continuous with one employer),
- ▶ Ability to speak English/French to communicate effectively,
- ▶ Employment contract with prospective employer.

OVERVIEW LCP



24 Months/3900 hours , IRPR s. 113

After completing 24 months of authorized work before the **FOURTH** anniversary of arrival in Canada or 3900 hours of work within a minimum of 22 months (cap of 390 hours of overtime), the caregiver is eligible to apply for permanent residence within the live in caregiver class.

LCP Overview



- Caregivers in the LCP are admitted into Canada as temporary residents (temporary foreign workers).
- Until a caregiver in the LCP becomes a permanent resident, the caregiver must maintain status in Canada by renewing his/her work permit before the “valid to” date listed on the current work permit. A caregiver’s right to remain in Canada is contingent on his/her work permit.
- Immigration Canada can ask a caregiver to leave Canada immediately if the caregiver does not have a valid work permit.

WORK PERMITS

IRPR s. 194–196, s. 199, s. 200(1)(2)(3) , s. 203



- LCP permits are **employer-specific**. Caregivers are only authorized to work for the employer listed on the caregiver's work permit.
- LCP permits are generally issued for one year or more. However, permits may be issued with expiry dates beyond the 4 year period. This does not change the basic program requirement to complete 24 months within 4 years.
- LCP permits allow full-time study for less than six months. Caregivers who wish to study more than six months must obtain a study permit as well as their LCP permit.

CHANGING EMPLOYERS OR PERMIT EXTENSIONS

IRPR s. 201(1)(2)



WHAT TO DO?

PERMIT EXTENSIONS

- ▶ Submit applications for renewal of work permit to CIC

CHANGING EMPLOYERS

- ▶ Domestic Worker registration (Ministry of Labor).
- ▶ Employer to apply for a Labor Market Opinion at Service Canada.
- ▶ Application for work permit submitted to CIC

LMO PROCESS



Once the worker is registered, the employer has to apply for a labor market opinion with the registration confirmation.

In order to receive a positive response from Service Canada, the employer must demonstrate that the caregiver will be providing in home care and the conditions of employment must meet minimum employment standards including:

- ▶ minimum wage,
- ▶ adequate accommodation,
- ▶ 10 days of vacation per year.

Work Permit Applications



DOCUMENTS TO BE SUBMITTED TO CIC

- ▶ Work permit application (Application to Change Conditions or Extend Your Stay in Canada as a Worker, IMM 1249);
- ▶ \$150 fee receipt;
- ▶ Employment contract and job offer letter from the employer;
- ▶ Copy of passport (which must be valid for at least one year);
- ▶ Current work permit

BRIDGE EXTENSIONS



WHAT CAN A CAREGIVER DO IF HE/SHE IS BETWEEN EMPLOYERS AND A WORK PERMIT IS ABOUT TO EXPIRE?

Apply for a bridge extension. The caregiver submits the same additional documents as a work permit but the application must include an explanation of why the bridge extension is necessary. The CIC application form must specify bridge extension.

RESTORATIONS

IRPR s.182, s. 185, s. 200(1)



WHAT CAN A CAREGIVER DO IF HE/SHE HAS LOST STATUS IN CANADA (e.g. work permit already expired)?

IRPR allows caregivers to “restore” status as long as the caregiver applies for restoration within 90 days of losing status.

Application for restoration should include a new work permit application.

APPLYING FOR PR



What counts towards the 24 month target of authorized work?

- ▶ Caregiver has valid work permit(s) authorizing his/her employment during the specified period.
- ▶ Caregiver lived in the employer's house.
- ▶ Employee performed full time care giving work.
- ▶ Work carried out inside Canada.

APPLYING FOR PR



- Caregivers should continue to renew work permits until they receive open work permits. Until they receive open work permits, caregivers are subject to the same employment restrictions.
- Caregivers should continue to renew open work permits until they obtain permanent residence.

2 step PR process



▶ CIC processes PR applications in 2 steps

- First, CIC determines whether the caregiver has completed the LCP (24 months of authorized work, 3900 hours). If the caregiver passes this first step, the caregiver is granted approval in principle.
- The second stage of processing can be as short as 3 months but often takes as long as 2–3 years. For this stage, CIC looks at the caregiver's medical exams and police clearances and examines all family members including those who are not coming to Canada.

OPEN WORK PERMITS



What are open work permits and how can caregivers avail to them?

CIC will issue open work permits to caregivers if the following documents are submitted:

- ▶ a **COMPLETE** PR application, and
- ▶ an application for an open work permit.

This means that the caregiver must demonstrate that he/she has completed 24 months or 3,900 hours of authorized work.

Common Issues



Caregiver cannot complete 24 months of authorized work in 4 years.

- ▶ **Option One:** the caregiver can request landing through grant of an exemption based on humanitarian and compassionate grounds.
- ▶ **Option Two:** the caregiver can leave the country and re-enter the LCP.

Common Issues



Misrepresentation, IRPA s. 40(1) (2)

Misrepresentation is one of the most common grounds for alleging that a caregiver is inadmissible for landing.

The threshold for misrepresentation is broad:

“directly or indirectly misrepresenting or withholding material facts related to the matter...could induce an error in the administration of the Act”

Family Status

- Many caregivers are advised that they should declare that they are “single” even though they are married.
- It is extremely important to clear up misrepresentations as soon as possible, before the caregiver applies for Permanent Residence.

Common Issues



Unauthorized Work, IRPR s. 200(3)(e), IRPA s. 41

Any work not contemplated by conditions set out in the work permit.

Caregivers should be encourage to disclose and apply for restoration of status.

If CIC discovers that a caregiver has been engaged in illegal work, CIC can ask the caregiver to leave for violation of the IRPA and for misrepresenting to CIC.

COMMON ISSUES



Inadmissibility for criminal or medical reasons

IRPA, s. 36(1)(2), s.38(1)

- If a caregiver or a family member is found to be medically or criminally inadmissible, the caregiver will not be eligible for permanent residence in the live in caregiver class and may only be landed under special circumstances (humanitarian and compassionate grounds or granted a temporary resident permit).
- If a caregiver suspects that he/she or one of his/her family members may be medically or criminally inadmissible, he/she should seek legal advice immediately.

Common Issues



Receiving Social Assistance

Caregivers may be denied landing if they have received social assistance of any kind.

Common examples include welfare benefits and MSP premium assistance.

- ▶ EI is not considered social assistance.

Updates in Immigration Law

Presentation for Law Foundation of BC
Legal Advocate Training Conference
28 March 2012

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*Overview

- *Thumbnail Sketch of the Canadian Immigration System
 - *Temporary Residence Programs
 - *Permanent Residence Programs (excluding refugees and protected persons)
- *Recent and Upcoming Changes (the highlights)
 - *Changes to the TFW Program
 - *Changes to the Spousal Sponsorship Programs
 - *Changes to the Parent/Grandparent Sponsorship Program (including the Super Visa)
 - *Changes to H&C Processing

Temporary Residence Applications

* Visitors

* Workers

* Students

*Visitor Visas/Visitor Records

- * Foreign nationals from visa-requiring countries must apply for a visitor visa at a visa office outside Canada before seeking admission at a port of entry. To gain entry, visitors must establish that they only intend to enter Canada for a temporary purpose.
- * Visitors are generally authorized to stay in Canada for a six-month period following their entry. They can, however, apply within Canada to extend their temporary stay.

* “Super Visas”

- * In December 2011, CIC announced that eligible parents and grandparents may now obtain long term multiple-entry visas and an extended authorized stay for up to two years when seeking to visit a Canadian or permanent resident child or grandchild in Canada (info at www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob357.asp).
- * To establish their eligibility for a “super visa” applicants must demonstrate:
 - * that their child or grandchild is a Canadian citizen or permanent resident;
 - * that they have undergone medical examination and are not inadmissible on health grounds;
 - * that they have purchased private medical insurance from a Canadian insurance company, valid for a minimum period of one year (the policy must provide a minimum of \$100,000 coverage, with provision for health care, hospitalization and repatriation); and
 - * the child/grandchild concerned must provide proof of their capacity to provide financial support.

*Obtaining a Work Permit

- * The general rule is that, where a foreign national seeks to obtain a Canadian work permit:
 - * they must first secure a job offer in Canada;
 - * their intended employer must then obtain a positive “Labour Market Opinion” by demonstrating to Service Canada that the hiring of the foreign worker for the position will not have a negative impact on the Canadian labour market; and
 - * if they come from a visa requiring country, they must apply for their work permit at a visa office outside Canada whereas if they come from a visa exempt country, they may be able to apply for their work permit at a port of entry to Canada.

*LMO Exemptions

- * The following list includes some of the TFWs who are exempt from the LMO requirement:
 - * Applicants in the International Experience Canada program (e.g. working holiday permits holders);
 - * Intra-company transferees;
 - * Foreign nationals who have graduated from a participating post-secondary institution may obtain an LMO-exempt “post-graduation work permit” of up to three years duration;
 - * Spouses of “skilled workers”;
 - * Applicants under various international free trade agreements (e.g. NAFTA);
 - * Workers who have already received approval-in-principle for permanent residence in the live-in caregiver class, and those who have received a positive nomination certificate from the BCPNP;
 - * etc.

* April 2011 Amendments to the TFW program

- * Amendments to the TFW program, which came into effect on 1 April 2011, empower CIC, Service Canada/HRSDC and CBSA to:
 - * scrutinize the genuineness of jobs offered to TFWs and consider: a) whether the employer is actively engaged in business, b) whether the job offer is consistent with reasonable employment needs, c) whether the employer is reasonably able to fulfil the terms of the employment agreement, and d) whether the employer has demonstrated past compliance with federal/provincial/territorial agreements;
 - * evaluate whether employers accessing the TFW program have provided other FNs in their employ with wages, working conditions and employment conditions that were **substantially the same** as those items as set out in their initial employment offers over the last two year period.
- * In addition to the above, the 1 April 2011 amendments limit the total duration that a TFW can remain in Canada to four years (including only time worked after 1 April 2011).
- * Some TFWs are exempt from the four year cap, including:
 - * those who have received a positive PNP nomination or have first stage approval for permanent residence in the live-in caregiver class, the Federal Skilled Worker Class or the Canadian Experience class;
 - * NOC O and A occupations;
 - * TFWs employed under international agreements such as NAFTA, SAWP or the IEC; and
 - * Certain LMO exempt TFWs including spouses of full-time students, charitable/religious workers, intra-company transferees, researchers, academics, etc).

*Student Permits

- * Initial study permit applications must generally be made **outside** Canada; they may be made at a port of entry if the applicant is visa exempt, and if medical exams are not required or have already been processed.
- * Students must demonstrate that they have been admitted to the school of their choosing, that they can afford to pay the *international* student tuition, and that they have the means to support themselves during their studies.
- * Students may apply to renew their permits within Canada provided that they continue their studies. They will generally be able to bring their families with them to Canada on work or study permits.
- * College students are authorized to work on their own college campus. Students at certain universities may also be able to obtain authorization to work off campus.

*Canada/BC Immigration Agreement

- * Under the International Student Annex, graduates of certain BC private post-secondary career-training institutions may qualify for LMO-exempt post-graduation work permits, as part of a 2-year pilot project from Jan 2011 (info at www.cic.gc.ca/english/departments/media/backgrounders/2011/2011-02-22.asp);
- * Under the Temporary Foreign Worker Annex, spouses of “low skilled” workers and their working-aged dependent children (ages 18-22) may now qualify for open work permits as part of a pilot project from 15 August 2011-15 February 2013 (info at www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob337.asp);

Permanent Residence Applications

- * Family Class
- * Federal Skilled Worker Program
- * Provincial Nominees Program
- * Live-in Caregivers Class
- * Canadian Experience Class
- * Humanitarian and Compassionate Class

*The Family Class

- * The “Family Class” is the application stream that enables permanent resident and citizens of Canada to sponsor eligible family members
- * Family class applications are generally processed through a visa office outside of Canada, though it is possible to make an application inside Canada in the case of a spousal sponsorship
- * Sponsors can apply to bring their spouses, children, as well as their *parents/grandparents (although CIC announced a 2-year hiatus of the parent/grandparent category in November 2011)*
- * One cannot sponsor a sibling, niece/nephew or grandchild unless that family member is orphaned, under 18 years of age and not a spouse or common-law partner.
- * There is also a provision that allows one to sponsor a single relative of any age or relationship, but only if the sponsor does not have a living spouse, conjugal partner, child, parent, grandparent, sibling, uncle/aunt or nephew/niece who could be sponsored as a member of the family class, nor any relative who is a Canadian citizen or a permanent resident or registered as an Indian under the *Indian Act*.
- * Sponsors “undertake” to provide for the applicant’s financial needs or over a 3 years in the case of a spouse or a 10 year period in all other cases.

* CIC initiatives to curb “marriage fraud”

* CIC has introduced the following amendments to the spousal sponsorship policy:

* that sponsored spouses be prevented from sponsoring a subsequent spouse for 5 years after landing, regardless of why the first relationship ended. **This change came into effect 2 March 2012.** Info at

www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob386.asp.

* that sponsored spouses who have been in a relationship with their sponsor for two years or less be landed on a ***conditional*** basis, provided that they have no children with their sponsor. **This change has not yet come into effect and is currently open for public comment until 9 April 2012.** Info at

<http://canadagazette.gc.ca/rp-pr/p1/2012/2012-03-10/html/reg1-eng.html> and www.cic.gc.ca/english/departement/media/releases/2012/2012-03-09.asp

* The Federal Skilled Worker Program

- * The Federal Skilled Worker Program has undergone a series of transformations in recent years, all achieved by way of “ministerial instructions”. The latest instructions limited applications in this class to those who have or are:
 - * a valid offer of arranged employment, OR
 - * one year of continuous full-time paid work experience in one of the 29 occupations listed at www.cic.gc.ca/english/immigrate/skilled/apply-who-instructions.asp#list OR
 - * enrolled in a PhD program in Canada (or graduated from a Canadian PhD program within the past 12 months) and meet the criteria set out at www.cic.gc.ca/english/immigrate/skilled/apply-who-instructions.asp#list.
- * For those who meet the criteria to apply (above), eligibility is assessed on the points system based on:
 - * Education;
 - * Language;
 - * Work experience;
 - * Age;
 - * Arranged employment;
 - * Adaptability.
- * Further changes to the points system are anticipated in the near future.

*The Live-In Caregiver Program

- * To enter the LCP, workers must have the following qualifications:
 - * equivalent of Canadian secondary school graduation (equals 12 years of schooling);
 - * six months full-time training or twelve months relevant work experience within the last three years;
 - * ability to speak and read English or French;
 - * employment as a live-in caregiver with a Canadian employer.

* The Live-In Caregiver Program

- * Once in Canada, live-in caregivers are issued highly restrictive temporary work permits. Caregivers must work full-time and live in the home of the employer whose name appears on their work permit.
- * Caregivers must provide care to a child, elderly person or person with a disability.
- * Caregivers can apply for landing if, within the four year immediately following their admission to the LCP, they complete 24 months of authorized employment or 3900 hours of authorized employment within a period of not less than 22 months.
- * Caregivers are not generally allowed to bring their family members to Canada unless/until they are granted landing.
- * In December 2011, CIC began issuing open work permits to live-in caregivers who have completed their obligations and submitted an application for permanent residence with an open work permit application (prior to this change, open permits were not issued until approval-in-principle had been issued, approximately 12-16 months after PR application filing).

* The Provincial Nominee Programs

- * Each province and two of the territories have agreements with the federal government that enable them to nominate candidates for permanent residence on their selection criteria. PNP applicants must first apply to the province/territory of their choice. If they receive a positive nomination decision, they must then apply to CIC for screening on federal admissibility criteria (i.e. financial, medical, criminal, misrepresentation) **through the CIO in Sydney NS since Dec 2011** - info at www.welcomebc.ca/wbc/immigration/come/work/about/index.page?WT.svl=LeftNav
- * BC's PNP has five areas of focus:
 - * **Skilled Workers** with permanent job offers in NOC O, A or B occupations;
 - * **Recent international graduates** from recognized Canadian post-secondary institutions with permanent job offers;
 - * **Recent international post-graduates** from certain Canadian post-graduate degree programs (**pilot project to 28 May 2013**);
 - * **Designated health professionals** including: nurses and psychiatric nurses who are registered or eligible for registration in BC; physicians who have practiced in BC for at least 9 months and received a positive assessment from their supervising physician, and midwives who are eligible to register in BC and have been accepted into a established practice group in BC;
 - * **Low and semi-skilled workers** who have worked in BC for a minimum of 9 months in select occupations in the tourism (hospitality), food processing & long-haul trucking industries (**permanent project since August 2011**); and
 - * Investment-ready and qualified entrepreneurs and **business immigrants** who are ready to invest and settle in BC.

*The Canada Experience Class

- * There are two streams within this category that allow certain foreign nationals to qualify for landing based on Canadian educational credentials and/or work experience:
 - * In the ***worker stream***, eligible applicants must establish that they have completed 2 years of (legal) full-time paid employment in Canada in a managerial or professional field (NOC O, A or B) within the three year period prior to their application;
 - * In the ***student stream***, applicants must have graduated from a Canadian post-secondary institution, and completed 1 year of (legal) full-time paid employment in Canada in a NOC O, A or B occupation within the three year period prior to their application.

* Humanitarian and Compassionate Applications

- * For those applicants who do not fit into any of the categories already described, it is possible to apply for permanent residence on Humanitarian and Compassionate (“H&C”) Grounds.
- * To succeed on an H&C application for landing, it is necessary to demonstrate that the applicant would suffer “unusual, undeserved or disproportionate hardship”.
- * H&C applications are more likely to succeed with proof that the applicant is significantly established in Canada (e.g. a Canadian-born child, immediate family living in Canada).
- * **There have been two major changes to the H&C class in recent years:**
 - * In 2009, s. 25 of the IRPA was amended to make the examination of H&C requests from foreign nationals outside of Canada discretionary;
 - * In June 2010, the IRPA was again amended to prevent the Minister’s delegates from considering the risk factors that are taken into account when assessing whether a person is a Convention refugee under section 96 or a person in need of protection in H&C decision making.
- * **Another major change has been proposed in Bill C-31 which, if enacted, would prevent refugee claimants from making a concurrent application for permanent residence on H&C grounds, or from making an H&C application for one year after their refugee claim has been refused.**

Bill C- 31

“Protecting Canada’s Immigration System”

Presentation March, 2012

Rochelle Appleby – Legal Services Society

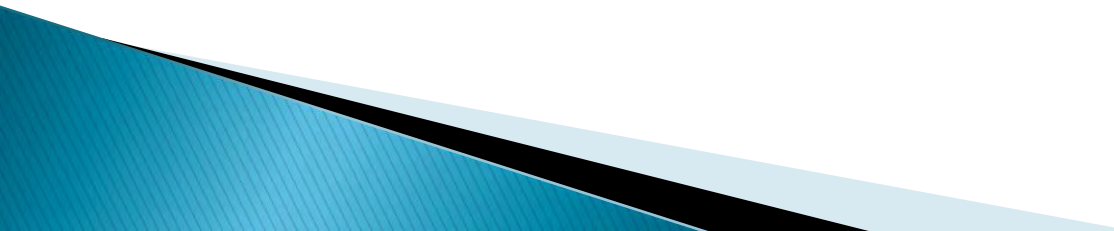


Balanced Refugee Reform Act

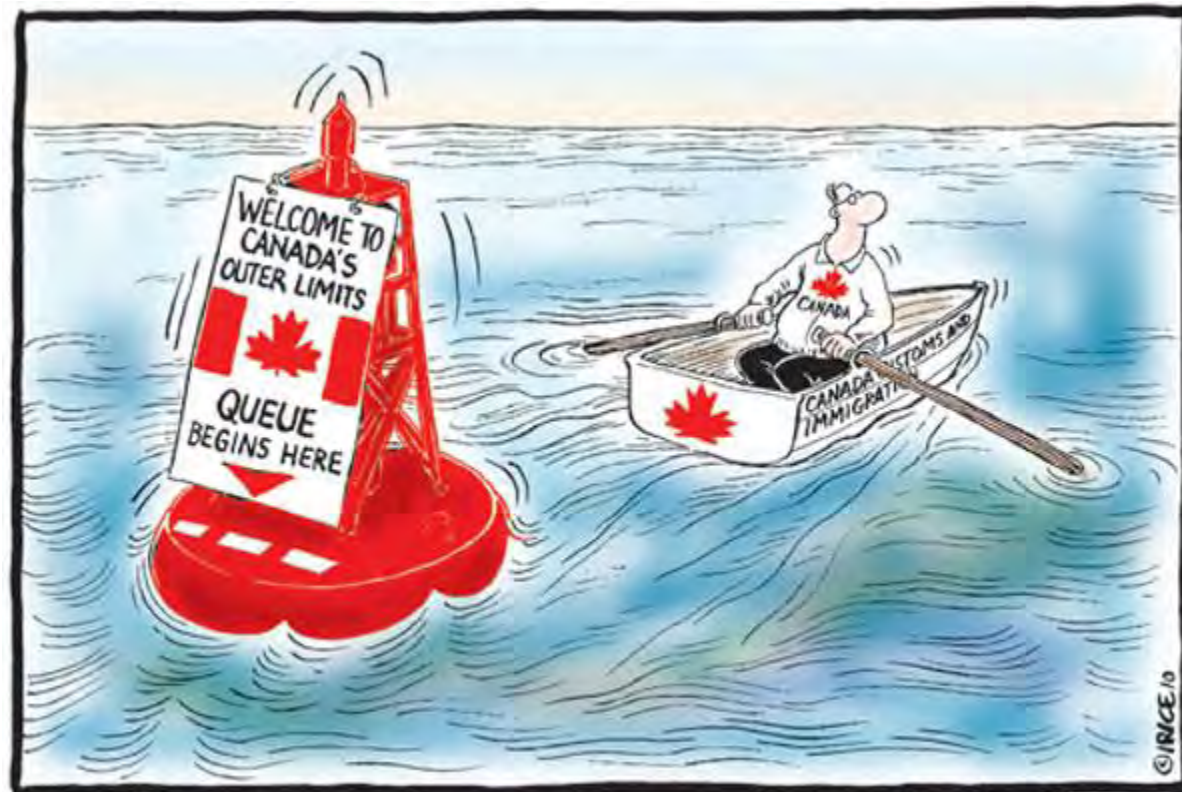
BRRA–Bill C–11

- ▶ Introduced “designated country of origin” (DCO)
- ▶ Introduced timelines for refugee hearings – 60 (DCO) and 90 days
- ▶ Introduced the Refugee Protection Division interview– eliminated the Personal Information Form (PIF)
- ▶ RPD members no longer Governor in Council (GIC) appointments
- ▶ Introduced the Refugee Appeal Division (RAD)
- ▶ Was to come into force (CIF date) December 1, 2011 – moved ahead to June 29, 2012

Bill C-31 key changes

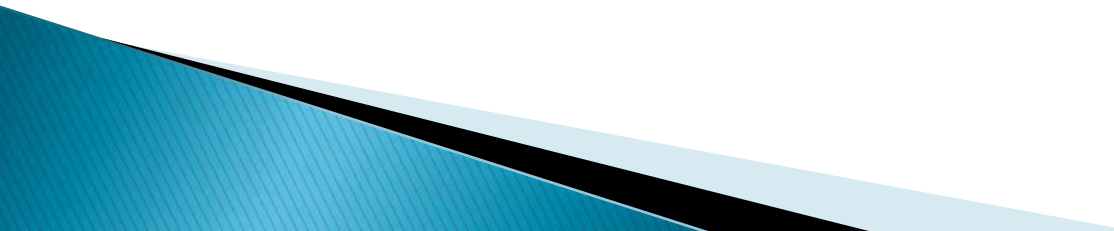
- ▶ Reduced timelines for refugee hearings even further
 - ▶ Changed process for DCO designation
 - ▶ Eliminated Interview process at RPD
 - ▶ Introduced bars to Refugee Appeal Division
 - ▶ Maintained one year restriction for PRRA applications
 - ▶ Introduced one year restriction for H&C applications
 - ▶ Limited stays of removal pending Judicial Reviews
 - ▶ Introduced loss of Permanent Resident status – cessation cases
 - ▶ Incorporated Bill C- 49/Bill C-4–anti smuggling legislation
 - ▶ Expanded grounds for detention
 - ▶ Introduced biometrics
- 

Canada's new system



PREPARING FOR THE NEXT BOATLOAD OF ASYLUM SEEKERS

Interview process eliminated

- ▶ Replaced by “basis of claim” form (BOC)
 - ▶ Form presented at eligibility interview for inland claimants
 - ▶ Form submitted 15 days after arrival for port of entry claimants
 - ▶ Access to counsel (legal aid) will be challenging– need to get clients to apply for legal aid early
 - ▶ What level of detail will be required in the BOC?
- 

Timelines reduced even further than in Bill C-11

- ▶ Time to Refugee Hearing:
 - Inland + DCO = 30 days
 - Port of entry + DCO = 45 days
 - All other claimants = 60 days
- ▶ Date for refugee hearing set at eligibility interview
- ▶ Impacts counsel– need to access counsel early so that counsel available to set refugee hearing dates

Process for DCO changed

- ▶ Process for designating a country of origin has changed
- ▶ Minister of Immigration–instead of independent committee–will create DCO list
- ▶ Formula has changed making it easier to designate a country
- ▶ Consequences of designation:
 - Shorten hearing times (30 or 45 days)
 - No access to RAD
 - No automatic stay of removal– JR applications
 - No work permits

Incorporates Bill C– 49/Bill C–4 anti smuggling provisions

▶ **Designated Foreign National**

- ▶ Group of persons whom the Minister “has reasonable grounds to suspect” arrived with the assistance of a smuggler
- ▶ A group of persons whom the Minister “is of the opinion” that the examination “cannot be conducted in a timely manner”

▶ **Consequences:**

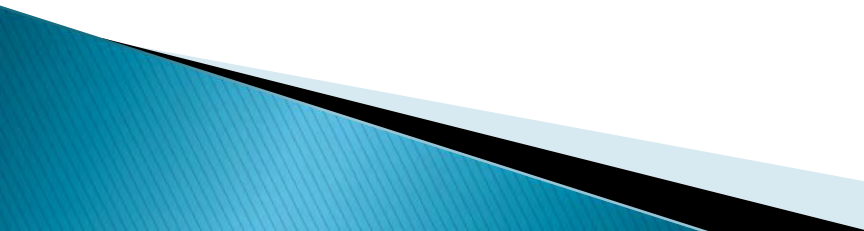
- ▶ Mandatory detention for 12 months (unless under the age of 16)
- ▶ No access to RAD
- ▶ No access to H&C for 5 years
- ▶ No right to apply for permanent resident status for 5 years from the date accepted as a refugee (no ability to sponsor relatives)
- ▶ No right to a travel document for accepted refugees

Bars to Refugee Appeal Division (RAD)

- ▶ **No access to RAD in the following cases:**
 - Persons from Designated Country (DCO)
 - Claimants found at RPD to have a manifestly unfounded claim (MUC) or no credible basis
 - Persons who arrived from safe third country
 - Persons whose claims were vacated or were found to cease being a refugee (cessation)
 - Designated foreign nationals

Restrictions on applications

PRRA & H+C one year

- ▶ Cannot apply for PRRA for one year after failed refugee claim
 - ▶ Cannot apply for H&C for one year after failed refugee claim (This is new in Bill C-31)
 - ▶ H&C cannot be filed once a refugee claim is started
 - ▶ Some thoughts:
 - Some claimants may benefit from filing an H&C application before legislation comes into force
 - Some clients may want to apply for H&C before or instead of claiming refugee status
 - Challenge is – H&C applications do not stop removal
- 

Stays of removal pending Judicial Reviews (JRs) limited

- ▶ No more automatic stay of removals for:
 - Claimants from DCOs
 - Persons designated as foreign nationals
 - Manifestly unfounded claims
 - No credible basis claims
 - Persons from Safe third country
- ▶ Must apply to Federal Court for a stay order

Cessation and Loss of PR status

- ▶ Minister can apply to RPD seeking cessation order
- ▶ If situation in country changes or person “re-availed” themselves of protection
- ▶ This can be done in cases of refugee claimants who already have permanent resident status (new in Bill C-31)
- ▶ If found to have ceased to be a refugee permanent resident status is revoked and person can be removed
- ▶ No right to appeal to RAD or IAD
- ▶ Some thoughts
 - obtain citizenship as soon as possible

Expanded grounds for detention

- ▶ Under current Act person can be detained if:
 - A. To establish identity
 - B. Where person will not report for removal or
 - C. If Minister is taking necessary steps to inquire into a reasonable suspicion that a person is inadmissible on grounds of security
- ▶ Bill C- 31 adds to (c):
 - Serious criminality
 - Criminality or
 - Organized criminality

Canadian Council for Refugees

- ▶ What the CCR is asking:

Canada's refugee legislation must be fair, affordable, independent, and comply with the Charter and Canada's international obligations.

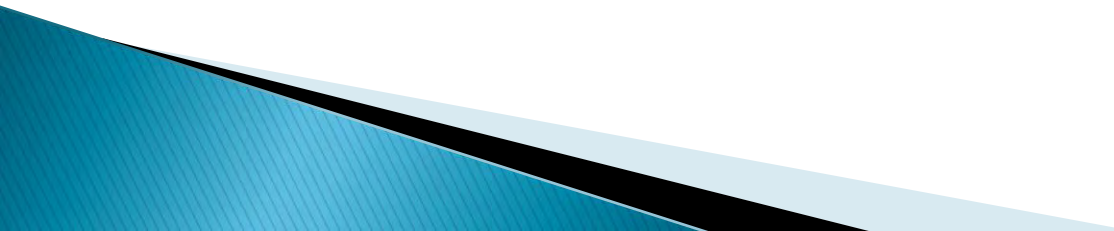
This means, at a minimum:

- Reasonable timelines for decision making
- No mandatory detention
- Access for all refused claimants to RAD and H+C
- Immediate access for all accepted refugees to Permanent Residency status, with no removal of such status in case of cessation.

Since Bill C-31 does not meet these standards, it should be withdrawn.

- ▶ CCRweb.ca/en/refugee-reform

Conclusion

- ▶ What can you do now?
 - ▶ How can groups work together to best serve our clients once the legislation comes into force?
 - ▶ Anticipated legal challenges to legislation
 - ▶ Feedback for legal aid?
- 

some supports for refugee claimants in metro Vancouver

first contact, housing, legal, ready, map,

refugee claimants

snapshot

- making claim for refugee protection in Canada
- ~1000 new claimants in Metro Vancouver annually
- many face multiple barriers on arrival
 - language, poverty (economic, conceptual), homelessness, complex systems

refugee claimants in the community

- refugee claimants are invisible in our neighbourhoods
 - they don't stand out, prefer to fit in
- remain very vulnerable in many ways
- settlement, legal, social, housing, neighbourhood agencies play an important role in being attentive to and empowering of refugee claimants

Some specific supports for refugee claimants

- First Contact
- Referral Network
 - housing, legal, other
- READY

First contact

what is it?

- project of Canadian Red Cross (Lower Mainland Region)
- Red Cross First Contact program aims to provide refugee claimants with the tools that will help prevent marginalization, distress and exploitation.
- 24 / 7 multilingual information and referral phone line for newly arrived refugee claimants
- CBSA and CIC help distribute First Contact information packet

first contact

how can I help?

- ask newly arrived refugee claimants if they have called First Contact
- 604-787-8858 or 1-866-771-8858
- help refugee claimants maintain as wide a support network as possible

referral Network

to support refugee claimants

- First Contact refers refugee claimants primarily to Inland Refugee Society
- Inland Refugee Society refers refugee claimants to housing and other supports
- all our agencies best serve refugee claimants by making sure their needs are being met by good referrals

referral housing

- refugee claimant housing organizations in Metro Vancouver
 - New Hope Community Services (Vancouver, Surrey)
 - Journey Home Community (Burnaby, New West)
 - Kinbrace (Vancouver)
- shelters and safe houses also help refugee claimants

Referral legal

- Legal Services Society of BC
- Law Students Legal Advice Program (UBC) - clinics
604-822-5791
- occasional / ongoing pro-bono legal help in various agencies
- increasing number of unrepresented refugee claimants

referral

other

- people who support refugee claimants should
 - keep a good, healthy list of other organizations who support refugee claimants
 - have trusted go-to guru(s) to get more information
- build trust with refugee claimants and other service providers
- help refugee claimants connect to supports in their neighbourhoods / region

READY

refugee hearing preparation

- helps refugee claimants prepare for their refugee hearings
- introduces refugee claimants to the hearing room and process
- provides basic refugee law education

REAdy

recognizing the problem....

- refugee claimants
 - are often “in the dark” about the hearing process
 - exhibit a sense of fate about the hearing event
 - lack awareness of their responsibility
 - simply “not ready” for their own hearing

ready

creating a solution....

- get refugee claimants into a hearing room
- provide accessible information about the refugee hearing and determination process
- allow refugee claimants to ask questions
- relieve anxiety and encourage refugee claimants to take action on their own cases
- have refugee claimants **READY** for their hearings

ready tours

- once per month (average) held in a refugee hearing room IRB-RPD 18th floor 300 West Georgia
- primarily for refugee claimants, but space for service providers
- Tribunal Officer talks on process and practicals of hearing
- READY committee member provides debrief and practical preparation advice at end of tour

ready

accessing the tours

- contact Fran Gallo (READY Coordinator)
ready@kinbrace.ca
- by registration only

Ready Guide

- [Refugee Hearing Preparation: A Guide for Refugee Claimants](#)
- printed material for refugee claimants to reinforce what they learn in a READY tour
- English and Spanish version available

READY future

- \$75,000 grant from the Law Foundation of BC for “READY: Navigating Refugee Reform”
 - update READY Guide to
 - provide orientation to service providers

A specific support for service providers

- MAP - Multi Agency Partners
- MAP - about refugee claimants
- MAP - a great networking and education resource

map

multi agency partners

- meets monthly at the Canadian Red Cross
- Mission:
 - To work collaboratively to identify barriers and provide solutions to promote the protection and well-being of refugee claimants and the community servicing them and to encourage networking and information sharing between the communities assisting refugee claimants.

MAp

get connected

- agencies serving refugee claimants are encouraged to become members and attend meetings
- meetings
 - agency updates and concerns
 - networking and collaboration (ngo, govt, inter-govt)
 - learning (emerging issues, agency presentations, trends)

The Refugee Claim Process

Under Canada's immigration laws, a person in Canada can claim status as a Convention Refugee or a person in need of protection.

Convention Refugees are people who are outside of their country who have a well-founded fear of persecution due to their race, religion, political opinion, nationality, or membership in a particular social group.

Persons in Need of Protection are people who face torture, risk to life, or risk of cruel and unusual treatment or punishment, if they return to their country of nationality or residence.

If you made your claim at the airport or at a land border, the next steps for you are to do your medical examination and complete your Personal Information form (PIF). See the bottom of this information sheet for more information.

Starting a Refugee Claim

If you did not make a refugee claim when you entered Canada, you have to complete the following steps.

1. Go to the Citizenship and Immigration Canada (CIC) Admissions office at 1148 Hornby Street in Vancouver (between 8:00 a.m. and 10:00 a.m.). Write down the date that you went because you will need it later.
2. Tell the person at the reception desk that you want to make a refugee claim. If needed, bring a friend or family member who can speak English or French. You will be given a short form to fill out, instructions for photos and an appointment time for your next meeting.
3. Fill out the form and have 12 passport-sized photos taken. You need 8 photos for the refugee claim and 4 photos for a medical examination.
4. Return to the CIC Admissions office for your appointment. Bring the completed form and the 8 photos. You also need to bring all your identity documents (passport, travel document, birth certificate, school records, national ID card, driver's license, etc.). CIC will take these documents and give you photocopies of them.
5. The officer will ask you about your route to Canada. You will also be fingerprinted, photographed and measured (height and weight).
6. The officer will give you more forms, including a medical form, and give you the date for your eligibility interview.

Refugee Serving Agencies: Many settlement agencies provide services to refugee claimants. Before you start your refugee claim, you should contact a settlement agency for assistance and information.



first CONTACT

CIC Forms and Documents

You have to fill out the forms that CIC gave you before your next interview with CIC. Make sure that you fill out the forms completely and accurately. You cannot leave any questions blank. If a question does not apply to you, write "n/a" which means "not applicable". Make copies of the forms to refer to later.

- **Schedule 1 - Background Information.** This form asks for a lot of information including who and what you are afraid of in your country. Answer the question about your fears briefly but accurately. You will explain your fears in more detail later, on another form.
- **Information on Individuals Seeking Refugee Protection.** This form asks for basic information about you, including your 'dependent family members'. Dependent family members are your spouse and children.

Medical Examination

All refugee claimants have to complete a medical examination. Make an appointment with a doctor from the list provided by CIC, as soon as possible. You need to have the medical examination before your eligibility interview.

Eligibility Interview

You must go to the CIC office on the date and time set for the eligibility interview. Bring the following documents:

- Your identity documents (passport, travel document, birth certificate, marriage certificate, school records, national ID card, driver's license, etc.)
- Your completed forms
- The medical letter that has been completed by the doctor

At the interview, an immigration officer will decide if you are eligible to make a refugee claim. Not all people are eligible to make a refugee claim in Canada. For example, people who are not eligible include people who have made a refugee claim in the past, war criminals, and Canadian citizens. **The officer does not decide if you are a refugee. The officer can only decide if you are eligible to make a refugee claim.**

Many questions that the officer will ask will be similar to the questions on the forms you completed. If you need an interpreter for this interview, CIC will provide one.

Describe truthfully what you are afraid of in your country. Be prepared to give details of who you fear and why.

Personal Information Form

If you are eligible to make a refugee claim, you will be given a Personal Information Form (PIF). You have to give the completed form to the Immigration and Refugee Board (IRB) **within 28 days.**

If you do not have a lawyer already, you should contact one to assist you with the PIF. If you are unable to afford a lawyer, you may be eligible for legal aid.

After you hand in your PIF to the IRB, a refugee hearing will be scheduled to hear your case.

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Thank you to our funders:



English - August 2008



Canadian Red Cross
Croix-Rouge canadienne

first **CONTACT**

Information

for

**Refugee
Claimants**

agency and can help you access places which provide food.



For more information on finding food, call First Contact at **604-787-8858** or **1-866-771-8858**.

Notes

Food



You can easily find grocery stores, as there are many throughout Vancouver and the surrounding areas. Check prices, as they may vary from one store to the other. Tax will be charged on products that are for immediate consumption (e.g. a ready-to-eat sandwich or a one-portion size yogurt).

Emergency: Free Meals and Food Banks

There are some places that offer **free meals**. Use them if you have no other resources.

A **food bank** is a place where you can pick up a bag of donated food for free. Community organizations run these to assist low-income people. Food banks are offered on a weekly basis. You often need to be registered for this service. It is also possible to have a 'one-time crisis bag' if you do not have any identification. Items donated are non-perishable. Milk for babies and diapers are provided in most food banks. For food bank info call **604-876-3601**.

Some settlement agencies that work with refugee claimants run their own food banks or offer free meals. These services are usually for their clients, so you may need to register. See the 'Settlement Services' section for a list of settlement agencies. First Contact can help you connect with a settlement

Clothing



In Vancouver, there are distinct seasons. The summer (approximately from June to September) is generally sunny and warm.

The rainy period usually starts in October or November and lasts until April or May. Winter (from December to February) is the coldest season. Temperatures may at times go down to the freezing point. You need appropriate clothes and shoes to protect you from the rain and cold.

Stores with Inexpensive Clothing

In Canada, it is common to buy second-hand clothes (clothes that belonged to someone else before). You will find them in stores that are called '**second-hand**' or '**thrift**' stores. These stores sell clean used clothing. There are many second-hand stores throughout the region. Some examples are:

- The Salvation Army
- Saint Vincent De Paul Association
- Value Village

Some settlement agencies also provide clothing for free to refugee claimants. See the 'Settlement Services' section for a list of settlement agencies. First Contact can help you connect with a settlement agency and can help you find places which provide clothing.



For more help with finding clothing, call First Contact at **604-787-8858** or **1-866-771-8858**.

Other options

Hotels are often quite expensive. Don't expect to find anything under \$80-\$100 per room per night.

Hostels / Backpacker hostels are not as expensive as hotels. They offer mostly dormitories or shared rooms, although some may have private rooms. Expect to pay around \$20-\$30 per person per night in dormitories.



For help or for more information and referrals to housing providers, call First Contact at **604-787-8858** or **1-866-771-8858**.

Notes

Housing



Housing is expensive in Vancouver and the surrounding areas. For many people it is difficult to find a place to live. There are a few places for refugee claimants, but these can be hard to get. All major cities have shelters, and it is possible to stay in one until you can find a better place to live. First Contact can help you find a place to stay anytime during the day or night. Call us at 604-787-8858 or 1-866-771-8858.

Things You Should Know About Shelters

Shelters are free but should only be considered if you have no other options. They are not always safe. Some of them are located in unsafe neighbourhoods (see ‘Safety’ notes in ‘Additional Information’ section). Some of them may be uncomfortable. You may have to share a dormitory or a room with other people, some of whom may have mental health or addiction issues. Many shelters also separate men from women.

Always make sure to keep your belongings close to you and to keep important documents, identification, and money with you at all times. Some shelters provide storage space, but they do not provide a lock. You can purchase a lock for one dollar in ‘dollar stores’. Many shelters are open 24 hours, but in some cases you have to be out during the day. Shelters tend to fill up quickly, on a first come, first served basis.

At all times, **children** age 4 or under travel for free. Children age 5 to 13, secondary school students age 14 to 19 with a GoCard, and **seniors** age 65 and older have access to **concession** fares, which means they pay less than regular adults.

Discount fares are available after 6:30pm, from Monday to Friday, on Weekends (Saturday and Sunday) and on Holidays. During those hours, adults and concessions pay for 1 zone, no matter the number of zones they travel in.

Tickets

If you pay directly on the bus, fares must be paid in cash, and you must have the exact change. Bus drivers do not carry change. At SkyTrain and SeaBus stations, you may purchase individual tickets in vending machines. Each ticket allows you to travel for a period of 90 minutes. You can transfer between bus, SkyTrain and Seabus in any direction. Keep your ticket with you at all times while using Public Transit. Transit police may ask to see your ticket and will give you a fine if you do not have one.



Booklets of 10 tickets (FareSavers), daily or monthly passes (FareCards) are also available in stores identified with a FareDealer sign (7-Eleven, Safeway and many London Drugs).



For more information, call First Contact at **604-787-8858** or **1-866-771-8858**.

Transportation



In Canada, **taxis** are expensive. It is more affordable to use the **public transportation system** (often called **Public Transit**), which is a combination of:

- Buses (express and standard)
- SkyTrain (train above ground)
- SeaBus (boat)

Look for this symbol in purple for SkyTrain Stations on the map



Zones

The Transit System divides Vancouver and the surrounding areas into 3 zones which are identified by colours on Transit maps.

Zones	Colours	Cities	Fare
Zone 1	Yellow	City of Vancouver only	\$2.50
Zone 2	Red	Burnaby, New Westminister, Richmond, North Vancouver and West Vancouver	\$3.75
Zone 3	Green	Surrey, Delta, Langley, Maple Ridge, Pitt Meadows, Coquitlam, Port Coquitlam and Port Moody	\$5.00



The number of zones you travel through during your trip determines your fare. For example, if you go from Burnaby (zone 2) to Downtown Vancouver (zone 1), you must pay for 2 zones.

If you go from Surrey (zone 3) to Vancouver (zone 1), you must pay 3 zones for going through zone 2 as well.

Not Sure If it's an Emergency? Call a Nurse

The BC NurseLine is a confidential health information and advice service available 24 hours a day. Registered nurses can answer your questions about health topics and they can help you identify symptoms and decide when to see a doctor. This service is available to you even if you do not have a Personal Health Number (BC CareCard) yet. The BC NurseLine is available in your own language; you simply need to ask for translation services in your language. The phone numbers to reach the BC NurseLine are:

- In Greater Vancouver: 604-215-4700
- Toll-free in BC: 1-866-215-4700
- For deaf and hearing-impaired persons: 1-866-889-4700 (in English only)

Health Clinics (Non-Emergency Service)

It is difficult to find a family doctor, but there are community clinics where you can go for non-emergency health services. You need to have your Interim Federal Health (IFH) document to receive services without paying (see IFH section below). Here is a list of some clinics where you can go. They are all located on the map. Please go to the one nearest your home. They all have different opening hours, so you should call before you go. Some of them may require that you have an appointment. First Contact can help you connect with the clinic.

Burnaby:

- **New Canadian Clinic (Edmonds Medical)**
204 - 7315 Edmonds Street, Burnaby
Tel: 604-528-5007

> *Continued on next page...*

Health



Emergencies

For emergencies where you need help from the police, ambulance or fire service, call **911**. If you or someone with you has chest pain, difficulty breathing, or severe bleeding, it could be life-threatening, call 911. This emergency service is free, accessible 24 hours a day, and is available in your own language. When you call, say 'police', 'ambulance', or 'fire' and then the language you speak.



Many **hospitals** have emergency service open 24 hours a day. At any time, if you need to see a doctor for an emergency, you can go to the nearest hospital. See the map in this booklet for the location of hospitals that have an emergency service. If you do not have any medical coverage, you will have to pay.

Look for this symbol in red for Hospitals and other Health Services on the map



For **dental emergencies**, go to the emergency service of the nearest hospital.

If you are concerned about a poisoning or exposure to a toxic substance, call **Poison Control**. This service is available 24 hours a day, free of charge. The service is in English only (although brochures in other languages are available). But if there is an emergency, you can always call 911.

To reach Poison Control:

- In Greater Vancouver: 604-682-5050
- Toll-free in BC: 1-800-567-8911

Immigration Medical Exam (IME)

As part of the claim process, you will have to go for an Immigration Medical Exam (IME). Before you go to your IME, talk to your settlement worker who will give you more information and will help you prepare. You must do your exam in the time given before you can receive your eligibility document from CIC (please follow the instructions given to you by CIC).

Interim Federal Health (IFH)

The Interim Federal Health, or IFH, is a free medical coverage provided by the Canadian federal government. It is intended to cover the services of family doctors as well as emergency medical services with dentists and eye doctors until such time as you qualify for medical coverage from the province of British Columbia. You must have your IFH document with you to receive these services. The initial coverage period is one year and the expiry date is shown on your eligibility document. Since this is an important document, you should make a photocopy of it that you keep in a safe place.

IMPORTANT: It is your responsibility to keep this coverage up-to-date. Allow at least one month for the renewal. If your coverage has lapsed you will not be able to get medical attention or you will have to pay for it.

Settlement agencies can provide you with more information regarding medical examination and coverage. They can also explain how the Canadian health system works. Please read the 'Settlement Services' section for a list of settlement agencies.

> Continued on next page...

Surrey:

- **New Canadian Clinic**
(located in DIVERSEcity)
1107 - 7330 137th Street, Surrey
Tel: 604-953-5030

Vancouver:

- **Bridge Clinic**
(Located in Raven Song Community Health Centre)
2450 Ontario Street, Vancouver
Tel: 604-709-6434
- **Downtown Community Health Centre**
569 Powell Street, Vancouver
Tel: 604-255-3151
- **Evergreen Community Health Centre**
3425 Crowley Drive, Vancouver
Tel: 604-872-2511
- **Mid-Main Community Health Centre**
3998 Main Street, Vancouver
Tel: 604-873-3666
- **Pacific Spirit Community Health Centre**
2110 West 43rd Avenue, Vancouver
Tel: 604-261-6366
- **Pender Community Health Centre**
59 West Pender Street, Vancouver
Tel: 604-669-9181
- **Raven Song Community Health Centre**
2450 Ontario Street, Vancouver
Tel: 604-709-6400
- **REACH Community Health Centre**
1145 Commercial Drive, Vancouver
Tel: 604-254-1354
- **South Community Health Office**
6405 Knight Street, Vancouver
Tel: 604-321-6151
- **Three Bridges Community Health Centre**
1292 Hornby Street, Vancouver
Tel: 604-736-9844

Various organizations offer **support services**, as well as **support groups** that meet regularly. Your settlement worker can help you connect with appropriate organizations. First Contact can also provide you with more information. Call us at 604-787-8858 or 1-866-771-8858. Please also read 'Other Important Phone Numbers' in the 'Additional Information' section for details on other important services.

Some organizations serve specific groups such as women, members of the Lesbian, Gay, Bisexual and Transgendered (LGBT) community, or specific cultural and ethnic groups. Examples include (they are located on the map):

- **AIDS Vancouver**
1107 Seymour Street, Vancouver
Tel: 604-893-2270
- **MOSAIC – Counselling support services for women victims of violence**
1720 Grant Street, Vancouver
Tel: 604-254-9626
- **Rainbow Refugee Committee**
(Located in The Centre for Lesbian, Gay, Transgendered and Bisexual People and their Allies)
1170 Bute Street, Vancouver
Tel: 604-684-5307



For more information, call First Contact at **604-787-8858** or **1-866-771-8858**.

Counselling and Support Services

In Canada, it is common for people to access counselling and support services when they feel depressed or suffer from emotional discomfort. You do not have to have a mental health condition to access those services. Seek help if you or a family member displays the following symptoms:

- Crying, feeling tired or sad for more than just a few days
- Feeling a loss of interest in daily activities
- Having a change in weight, appetite or sleep
- Having bad dreams, concentration problems, irritability
- Feelings of anger or guilt

If you are a victim of domestic abuse and violence, or have survived political violence, torture, or trauma, there are organizations that can help you.

Counselling services are **confidential**. What you tell the counsellor remains between the two of you. Ask your counsellor about confidentiality policy.

These are some of the organizations that provide counselling services. If needed, they can provide an interpreter. They are both located on the map.

- **Settlement Orientation Services (S.O.S.)
– Vancouver Refugee Services Alliance (VRSA)**
411 Dunsmuir Street, Vancouver
Tel: 778-328-8888
- **Vancouver Association for the Survivors of Torture (VAST)**
2618 East Hastings, Vancouver
Tel: 604-299-3539

To apply for Legal Aid, contact the Legal Services Society (LSS) office nearest to you, or one of the Legal Aid offices. You can also phone their Call Centre at 604-408-2172 locally, or 1-866-577-2525 if you are not in the Lower Mainland. You must show proof of income, identity and any documentation that can support your claim. It takes about three to five business days for the Legal Aid office to decide if you qualify to get a lawyer. If you do not hear back from them, call or go to the office.

Your settlement worker can help you apply for Legal Aid, or can help you find a lawyer if you do not qualify for Legal Aid.

Legal Aid Offices

This is a list of **Legal Aid offices** in the Lower Mainland. Phone before you go because opening hours may vary and some of them may require an appointment.

Look for this symbol in green for Legal Services on the map



Abbotsford:

- **Chris Maddock, Barrister & Solicitor (c/o Abbotsford Community Services)**
2420 Montrose Avenue, Abbotsford
Tel: 604-852-2141

Chilliwack (not on map):

- **Chris Maddock, Barrister & Solicitor**
(c/o Chilliwack Community Services)
45938 Wellington Avenue, Chilliwack
Tel: 604-793-7243

North Vancouver:

- **Dan M. Sudeyko, Barrister & Solicitor**
(c/o North Vancouver Provincial Courthouse)
200 East 23rd Street, North Vancouver
Tel: 604-980-7000

> Continued on next page...



Legal Services



The refugee claim process is a **legal process**. A **refugee lawyer** can help you with the claim process, and particularly to fill out the **Personal Information Form**

(PIF), which is the form that you use to apply for refugee status in Canada. For more detailed information, please see the Legal Services Society Fact Sheet provided in this booklet. You have the possibility to choose a lawyer if you want to. Be sure that your lawyer is registered with The Law Society of BC. Settlement agencies can advise you on how to work with a lawyer.

Legal Aid

There is free legal assistance for people with low income applying to get refugee status in British Columbia. To apply you must show proof of your income, e.g. welfare check stub. **Legal Aid** currently covers the cost of a lawyer and the cost of an interpreter to help the lawyer prepare your Personal Information Form (PIF). Claimants coming from certain countries must also complete a screening form before they can get a referral for a lawyer.

Legal Aid may also cover additional time to have a lawyer represent you at your Refugee Claim Hearing, or to get assistance with a Judicial Review, Pre-Removal Risk Assessment (PRRA), or Humanitarian and Compassionate (H&C) applications. These require separate applications and approval by the Legal Aid office before you can get a lawyer.

Apply for Legal Aid as soon as you get the Eligibility Document from Citizenship and Immigration Canada (CIC), or Canada Border Service Agency (CBSA) if you made your application at the airport, or a border crossing. You have only 28 days to fill out and return your completed Personal Information Form.

If you are in detention, you have a right to legal advice. Call the Brydges Line at 1-866-458-5500. Available 24 hours a day, 7 days a week.



For more information or for help connecting with legal services, call First Contact at **604-787-8858** or **1-866-771-8858**.

Notes

Port Coquitlam:

- **Port Coquitlam Courthouse**
Room 323, 2620 Mary Hill Road, Port
Coquitlam
Tel: 604-472-0634

Richmond:

- **Robert Parsonage, Barrister & Solicitor**
300 – 8055 Anderson Road, Richmond
Tel: 604-273-9311

Surrey:

- **Surrey Regional Centre**
Suite 1370, Central City Tower One
13450 – 102nd Avenue, Surrey
Tel: 604-585-6595

Vancouver:

- **Vancouver Regional Centre**
Suite 425 (intake); Suite 400
(administration)
510 Burrard Street, Vancouver
Tel: 604-601-6206 (intake), 604-601-6000
(administration)

Legal Advice

Some settlement agencies organize free legal clinics on a regular basis to provide their clients with more legal information on the claim process (or parts of it). Contact your settlement agency for more information on these services.

Legal Clinics are also offered by Access Justice. You can have a 30-minute free consultation with a lawyer. Call 604-878-7400 (or 1-877-762-6664 if you are outside of the Greater Vancouver area) to make an appointment.

It is also possible to have a free immigration consultation with a lawyer at the Salvation Army Pro Bono and Justice Services. Call 604-694-6647 for more information.

1. Refugee-Specific Agencies

These agencies specialize in the refugee claim process and have a wide range of services for refugee claimants. Services are offered in many languages. Call first to make sure that they can help you with your particular question, or call First Contact at 604-787-8858 or 1-866-771-8858 for more details.

Surrey:

- **DIVERSEcity**
1107 - 7330 137th Street, Surrey
Tel: 604-597-0205
- **OPTIONS Services to Communities Society**
103 - 6844 King George Hwy, Surrey
Tel: 604-572-4060

Vancouver:

- **Vancouver Refugee Services Alliance (VRSA)**
Immigrant Services Society (ISS)
530 Drake Street, Vancouver
Tel: 604-684-7498
Inland Refugee Society
430 - 411 Dunsmuir Street (4th floor),
Vancouver
Tel: 778-328-8888
Mennonite Central Committee (MCC)
660 East 51st Street, Vancouver
Tel: 604-325-5524
Settlement Orientation Services (S.O.S.)
430 - 411 Dunsmuir Street (4th floor),
Vancouver
Tel: 778-328-8888

2. Immigrant-Serving Agencies

Serving in various languages, these agencies provide services for refugee claimants but **do not specialize in refugee claims**. Their services vary, but they will help you find the services that you need. Call first to make sure that they can help you with your particular question.

> Continued on next page...



Settlement Services



Many agencies offer settlement services to help newcomers adjust to their new life in Canada and services specifically for refugees making a claim. Settlement agencies provide a wide-range of services including:

- Orientation to Canada and Canadian culture
- Orientation to the refugee claim process
- Paralegal services (filling out forms such as work permits, eligibility forms, welfare forms)
- Locating housing, shelter, and temporary accommodation
- Providing and locating food
- Providing and locating clothing
- Financial assistance with transportation and orientation to the transportation system
- Health services and orientation to the Canadian Health System
- Counselling and support services
- Accessing legal services and lawyers
- Interpretation and translation
- English-language classes
- Information about the education system
- Employment services

Settlement services are **free** and are offered in **many languages** (some services are not free, such as translation of documents). The many different agencies listed below are divided into three categories: refugee-specific agencies, and community and multicultural agencies.

First Contact can help you connect with these agencies. Call us at 604-787-8858 or 1-866-771-8858.

Look for this symbol in orange for Settlement Services on the map



- **Progressive Intercultural Community Services (PICS) Society**

109 - 12414 82nd Avenue, Surrey

Tel: 604-596-7525

S.U.C.C.E.S.S.

206 - 10090 152nd Street, Surrey

Tel: 604-588-6869

Vancouver:

- **Collingwood Neighbourhood House**
5288 Joyce Street, Vancouver
Tel: 604-435-0323
- **Jewish Family Services Agency**
305 - 1985 West Broadway, Vancouver
Tel: 604-257-5151
- **La Boussole**
612 East Broadway, Vancouver
Tel: 604-683-7337
- **Little Mountain Neighbourhood House**
3981 Main Street, Vancouver
Tel: 604-879-7104
- **MOSAIC (Multilingual Orientation Services Association for Immigrant Communities)**
1720 Grant Street, Vancouver
Tel: 604-254-9626
- **Multicultural Family Centre**
1145 Commercial Drive, Vancouver
Tel: 604-254-6468
- **Progressive Intercultural Community Services (PICS) Society**
8157 Main Street, Vancouver
Tel: 778-371-8552
- **S.U.C.C.E.S.S.**
300 - 8268 Granville Street, Vancouver
Tel: 604-323-0901
- **S.U.C.C.E.S.S.**
5834 Fraser Street, Vancouver
Tel: 604-324-1900
- **S.U.C.C.E.S.S.**
28 West Pender Street, Vancouver
Tel: 604-684-1628

> Continued on next page...



Abbotsford:

- **Mennonite Central Committee (MCC)**
31414 Marshall Road, Abbotsford
Tel: 604-850-6639

Burnaby:

- **Immigrant Services Society (ISS)**
207 - 7355 Canada Way, Burnaby
Tel: 604-395-8000
- **S.U.C.C.E.S.S.**
118 - 5021 Kingsway, Burnaby
Tel: 604-430-1899

Coquitlam:

- **Immigrant Services Society (ISS)**
100B - 3020 Lincoln Avenue, Coquitlam
Tel: 778-284-7026
- **S.U.C.C.E.S.S.**
2058 Henderson Place, 1163 Pinetree Way,
Coquitlam
Tel: 604-468-6000
- **S.U.C.C.E.S.S.**
435B North Road, Coquitlam
Tel: 604-936-5900

New Westminster:

- **Centre of Integration for African Immigrants (CIAI/CIIA)**
640 Clarkson Street, New Westminster
Tel: 604-759-0240
- **Immigrant Services Society (ISS)**
301 - 321 6th Street, New Westminster
Tel: 604-525-9144

Richmond:

- **S.U.C.C.E.S.S.**
220 - 7000 Minoru Boulevard, Richmond
Tel: 604-279-7180

Surrey:

- **DIVERSEcity**
1107 - 7330 137th Street, Surrey
Tel: 604-597-0205

Richmond:

- **Richmond Multicultural Society**
210 - 7000 Minoru Boulevard, Richmond
Tel: 604-279-7160

Surrey:

- **Surrey Community Services Society**
9815 140th Street, Surrey
Tel: 604-584-5811

Squamish (not on map):

- **Sea to Sky Community Services**
38144 2nd Avenue, Squamish
Tel: 604-892-5796 or 1-877-892-2022

Vancouver:

- **Educacentre College**
896 West 8th Avenue, Vancouver
Tel: 604-708-5100
- **Frog Hollow Neighbourhood House**
2131 Renfrew Street, Vancouver
Tel: 604-251-1225
- **Kiwassa Neighbourhood House**
2425 Oxford Street, Vancouver
Tel: 604-254-5401
- **Multicultural Helping House Society**
4802 Fraser Street, Vancouver
Tel: 604-879-3277
- **South Vancouver Neighbourhood House**
6470 Victoria Drive, Vancouver
Tel: 604-324-6212

Whistler (not on map):

- **Whistler Community Services Society**
6195 Lorimier Road, Whistler
Tel: 604-932-0113

White Rock:

- **Peace Arch Community Services**
882 Maple Street, White Rock
Tel: 604-531-6226



For more information or help with connecting with a settlement agency, call First Contact at **604-787-8858** or **1-866-771-8858**.

3. Community and Multicultural Agencies

These agencies serve the general population that live in their community. Their services vary, but in general, they can help you get services such as food, clothing and general orientation. Some offer services in languages other than English. Call first to make sure that they can help you with your particular question.

Abbotsford:

- **Abbotsford Community Services**
2420 Montrose Avenue, Abbotsford
Tel: 604-859-7681

Burnaby:

- **Burnaby Multicultural Society**
6255 Nelson Avenue, Burnaby
Tel: 604-431-4131
- **Canadian Lutheran World Relief**
202 - 5066 Kingsway Avenue, Burnaby
Tel: 604-435-9750
- **South Burnaby Neighbourhood House**
4845 Imperial Street, Burnaby
Tel: 604-431-0400

Chilliwack (not on map):

- **Chilliwack Community Services**
45938 Wellington Avenue, Chilliwack
Tel: 604-792-4267

Langley:

- **Langley Community Services Society**
5339 - 207 Street, Langley
Tel: 604-534-7810

Mission (not on map):

- **Mission Community Services Society**
33179 2nd Avenue, Mission
Tel: 604-826-3634

North Vancouver:

- **North Shore Multicultural Society**
207 - 123 East 15th Street, North Vancouver
Tel: 604-988-2931

Domestic Violence

Domestic violence is illegal in Canada and may result in police intervention and criminal charges. Domestic abuse occurs when one person in an intimate relationship or marriage tries to dominate and control the other person. An abuser doesn't "play fair" and uses fear, guilt, shame, and intimidation to wear you down and gain complete power over you. An abuser may threaten you, hurt you, or hurt those around you. Domestic abuse that includes physical violence is called domestic violence. **If you're afraid for your immediate safety or the safety of others in your care, call 911.** You can also call the VictimLink at 1-800-563-0808 for assistance and information (this service is available 24 hours a day in many languages). There are also places called 'transition houses' where women can go if they want to leave their relationship and need a safe place to go. Call First Contact for more information or for help to contact a transition house.

Smoking

Smoking is not allowed inside buildings. You can be fined for smoking indoors including hotels, restaurants and office buildings.

Notes on the Geography of the Region

- **Vancouver** refers strictly to the city of Vancouver, just as Surrey, Burnaby and New Westminster are cities as well
- **Metro Vancouver** and the **Greater Vancouver Regional District** refers to Vancouver plus the surrounding cities, which includes Burnaby, New Westminster, Surrey, Richmond, Delta, White Rock, Langley, Maple Ridge, Pitt Meadows, Coquitlam, Port Coquitlam, Port Moody, North Vancouver, West Vancouver, and a few smaller ones
- **Lower Mainland** is the Greater Vancouver Regional District plus the Fraser Valley Regional District (which comprises the cities of Abbotsford, Chilliwack, Mission and Hope)

> Continued on next page...

Additional Information

Important Government Agencies

- **Immigration and Refugee Board (IRB)**
300 West Georgia Street
- 16th floor, Vancouver
- **Citizenship and Immigration Canada (CIC)**
1148 Hornby Street,
Vancouver
- **Canada Border Services Agency (CBSA) Enforcement**
300 West Georgia Street - 7th floor,
Vancouver

Look for the Canadian flag for Government Agencies on the map



Public Libraries (Free Access to Internet)

There are public libraries in each municipality, and there is Internet access at most of them. Some settlement agencies also have computers that you can use. Ask your settlement worker about it.

Look for this symbol in blue for Public Libraries on the map



Sending Your Children to School

School is free and mandatory for children until the age of 16. The school year starts in September and finishes in June. You need to register your child at the local school board. Most school boards in the Greater Vancouver area have settlement workers who speak a wide range of languages and who can help you with registration. Call First Contact to get in touch with your local Settlement Worker in Schools.

Special Note Around Parenting

Hitting / slapping children as discipline is not tolerated in Canada and the parent could be reported to the child welfare authorities. In cases where the authorities feel that the child is being abused, the child could be taken away from his/her parents. Some settlement agencies have support groups for parents who are new to Canada. Call First Contact for more information.

- Your immigration eligibility document
- Proof that you do not have any other resources to finance your basic needs such as shelter and food
- An address, even if it is temporary or you are in an emergency shelter (have the name of the shelter where you are staying)
- Address of the closest welfare office to where you live; the welfare office needs to see your address including your postal code
- Completion of an orientation session: Once you make contact with the welfare office you need to follow their instructions including the completion of an orientation session via the Internet
- File or reference number: At the end of the orientation session you will get a number. Write it down and take it to the welfare office to prove you completed the orientation session

Understanding Phone Numbers

There are 2 telephone area codes in the Greater Vancouver (including Abbotsford and Mission): 604 and 778. The urbanized area north of Greater Vancouver to Whistler uses the 604 area code. The area code for the rest of the province is 250. Phone numbers are composed of the area code + the local phone number. When calling, you must dial all 10 numbers (area code + local phone number, for example 604-709-6600).

Almost all phone numbers in the Greater Vancouver area are local calls. A recorded message will play if you have dialled a long distance number and will provide redialling instructions. When it is long distance, even within the 604/778 area code, you will need to dial -1- before the area code (for example 1-604-709-6600).

Local calls are free from a landline in a house or an office. If calling from a public telephone (the phones located outside on the street or main commercial areas, etc.), you will have to insert one 25¢ coin (and sometimes two).

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Safety

Canada is not a dangerous country and the crime rate is relatively low, but there are areas and neighbourhoods that are not as safe as others. One of them is an area generally referred to as the Downtown Eastside, which is located just east of the Vancouver downtown area. There are homeless people who sleep on sidewalks and a number of people who have drug addictions in this area. Most people in this area are not dangerous, but you should remain careful at all times when in this area.

The following safety tips will help you remain safe:

- Avoid narrow alleys and poorly lit streets, and take the long way if it is safer
- Tell friends or family when and where you are going
- Avoid travelling alone if you can
- Pay attention to what happens around you at all times (on the street, the bus, the SkyTrain, etc.)
- Make a note of emergency numbers (see 'Other Important Phone Numbers' in this section)
- Do not be afraid to alert the police if you feel threatened in any way, even if you don't speak English
- If there is an emergency, call 911 (this is a free call from any public phone)

Financial Assistance

Employment Assistance, often called 'Welfare' or 'Income Assistance' is available for people with low or no income. This is money or benefits that the provincial government (Ministry of Housing and Social Development) gives to people who qualify because of financial hardship. Settlement agencies can help you apply for Employment Assistance.

To receive this financial assistance you must have been accepted by CIC as eligible for the refugee claim process. You need the following (make sure that you have all the information that is needed, or you will have delays in getting your first cheque):

- **Youth Against Violence Line:**
24 hours a day, any language. Call 1-800-680-4264.

Acronyms Commonly Used

Acronyms	What it stands for
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada
CBSA	Canadian Border Services Agency
ESL	English as a Second Language
GST	Goods and Services Tax
H&C	Application for permanent residence based on humanitarian and compassionate considerations
IFH	Interim Federal Health
IRB	Immigration and Refugee Board
LSS	Legal Services Society
MHSD	Ministry of Housing and Social Development (Formerly MEIA: Ministry of Employment and Income Assistance)
MSP	Medical Services Plan
PIF	Personal Information Form (application for refugee status in Canada)
PRRA	Pre- Removal Risk Assessment
PST	Provincial Sales Tax
UNHCR	United Nations High Commission for Refugees
VPD	Vancouver Police Department
SIN	Social Insurance Number



For more information, call First Contact at **604-787-8858** or **1-866-771-8858**.

A **toll-free** number is a special number beginning with 1-800 that you can call without charge. They include 1-800, 1-888, 1-877 and 1-866. If calling from a public phone, you may or may not need to insert a 25¢ coin. It is different for each number. 1-900 numbers are not free.

Other special numbers are 3-digit emergency numbers such as 911. They are free of charge from any phone, anywhere in British Columbia.

How to Read Addresses

Addresses in Canada are often written as follows: suite or apartment number, followed by the street number and name, city, province and postal code. For example, 900 - 3400 Lake City Way, Burnaby, BC, V5A 4Y2 would indicate that the apartment or suite is 900 and that the building is located at 3400 Lake City Way in Burnaby. If there is no suite or apartment included in the address only the building number will be indicated.

Other Important Phone Numbers

- **Alcohol and Drug Line:**
Free alcohol and drug counselling in your area. Call 604-660-9382.
- **Crisis Intervention and Suicide Prevention Centre of British Columbia:**
24 hours a day. Call 604-872-3311 or 1-800-784-2433.
- **INFORM Line – Information Services Vancouver (ISV):**
Any kind of social or government service information. 24 hours and multilingual. Call 604-875-6381. Also call the INFORM Line for any kind of counselling.
- **Victim Information Line (VictimLINK):**
Assistance and information for people who have been victims of any type of crime. Available 24 hours a day in many languages. Call 1-800-563-0808.

Thank you to our funders:



vancouver
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WelcomeBC



For feedback on the program, staff, or volunteers,
please contact:

First Contact Coordinator

Tel: 604-709-6656

Email: firstcontact@redcross.ca



Canadian Red Cross
Croix-Rouge canadienne

www.redcross.ca/lowermainland

Sponsorship Breakdown

Legal Issues Affecting Women Dealing with Family Violence
in British Columbia

March 28, 2012

Kamaljit Lehal, Immigration Lawyer, Supervising Lawyer of Immigrant, Refugee and Non-Status Women's Project

Harjit Kaur, Program Manager, Ending Violence Association of BC

Ending Violence Association of BC (EVA BC)

- EVA BC is a not for profit provincial umbrella mandated to provide support to over 240 community based anti violence programs throughout BC
 - Direct Support to Programs
 - Newsletter and Website
 - Training
 - Regional Support Conference Calls
 - Resource Development
 - Program Access to Legal Information
 - Research and Policy Analysis

Violence Against Women

Video Clip
“Why Did I Stay”





Safety of Immigrant and Refugee Women Initiative

■ Developed a number of resource documents:

- 8 Provincial Briefing Notes
- 6 Federal Briefing Notes
- A Literature Review
- Annotated Bibliography and
- Focus Groups Summary

These are all available on our website at www.endingviolence.org

Challenges facing Immigrant and Refugee women:

-  Isolation
-  Language barriers
-  Myths
-  Re-victimization

Re-victimization

- Of non-status women
- Of women sponsors
- Of women who are sponsored
- By systems that operate in vacuums

Re-victimization of Non-Status Women

Women are without status or fall out of status due to:

- Sponsorship applications being severed due to family violence
- Visitor or student visas expired
- Legal Option available to women:
 - Humanitarian & Compassionate application
 - IP 5: Section 13.10 (a victim of family violence)
 - Legal aid coverage

Re-victimization of Non-Status Women

- Real risk of deportation
- Shelters are not immune to CBSA enforcement
- H & C process is time consuming and access to benefits is very limited to non-existent
- There are some options for those who are victims of human trafficking

Using A Safety Lens

We recommend that:

- Expedited H & C process
- Temporary Resident Permit
- Removals deferred or delayed pending
 - H & C application
 - Decision on custody matters

Re-victimization of Women Sponsors

- Sponsorship Undertaking for spouses is 3 years
 - The undertakings are a contractual obligation on the sponsor to repay any monies paid to their sponsored relative in the form of social assistance.
 - The collection may be held off if “the default is the result of abuse” but resumed once “circumstances have changed”
- The net effect is that some women choose to remain in the abusive relationship

Re-victimization of Sponsored Women

- A sponsored woman who leaves an abusive relationship is often living in marginalized circumstances
- If they have children and want to sponsor family to assist them they will be ineligible if they are on welfare
 - They could apply to sponsor, be refused, and then be embroiled in a lengthy appeal on H & C grounds

Re-victimization Arising from Systems Operating in Vacuums

■ Immigrant women without status are facing many systems simultaneously:

■ Immigration

■ Family Law

■ Criminal Justice System

Re-victimization by the Systems

Cont'd

- Even within systems there are sub-systems that work in isolation of one another
- For example:
 - The removals branch of immigration has a mandate to remove
 - Removal can occur even while an H & C application is underway

Re-victimization by Systems Cont'd

- The systems tend to work in isolation of one another
- For example: In the case of a non-status women, the removals process is not concerned with outstanding family custodial matters
 - The best interest of the child is ignored

Recent Immigration Changes/Proposals

- 5 year sponsorship bar
- Proposed 2 year conditional permanent resident status
- Super Visa

CASE SCENARIO

Jennifer

Solutions

- The need to view the issue of domestic violence involving immigrant/refugee women through a safety lens
 - Ensure that safety of women is the paramount concern
- Integrity of the Immigration System
- Ensure a coordinated response to women's safety
- OUTCOMES

Breaking Down the Silos

- The end result we all wanted is the safety for women and their children
- Collaboration with the other service providers in providing legal information and support
- Communicating with those persons and levels of government that have the ability to create change
- Accepting the other persons point of view

A Note about Coordination and Referral

- Research shows that coordinating the work of the various response systems is crucial to keeping women safe. *
- A woman's safety will be jeopardized if institutions / community resources responding to her requests for aid are inaccessible, unresponsive and/or uncoordinated
- It is important to make appropriate referrals in DV and SA cases, but everyone has a critical role to play.

*Gamache, D., J.Edleson and M. Schock, "Coordinated police, judicial and social service response to woman battering..."

Refer to Specialized Services

- Extensive Network
- Community Based Victim Service Programs
- Transition Houses
- STV Counselling Programs
- Women's Centres
- Coordination Initiatives Supported by CCWS

How to make an effective referral

How a referral is made is as important as whether or not the information is given.

Suggestions:

- If you are confident that a survivor will accept a direct referral, give her the name and phone number of the agency or individual.

Referrals, cont...

- If a survivor is very hesitant, suggest that you make the appointment and go with her. Check this procedure first with the staff or agency to which you are referring.
- If a survivor seems slightly hesitant, talk about any concerns or suggest that you arrange the contact and have her follow up.

Victim Services and Community Programs

- Crime Victim Assistance Program (CVAP)
- VictimLINK (1-800-563-0808)
- Over 400 programs delivered through non governmental agencies, some in partnership with police
- Victim Safety Unit
- www.MultiLingoLegal.ca
- Youth Against Violence Line (1-800-680-4264)

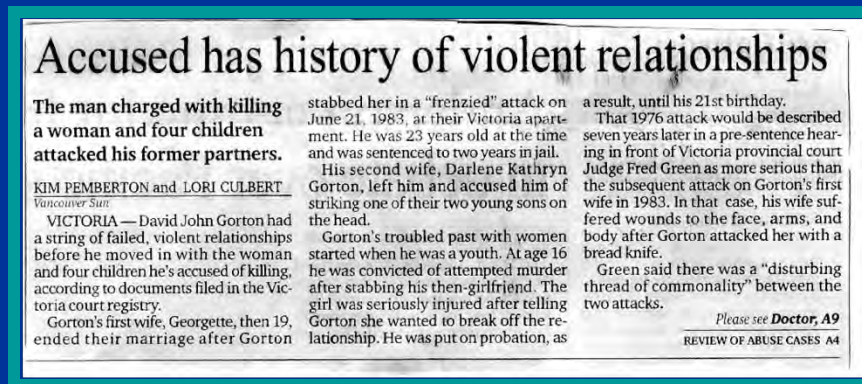
VictimLINK 1-800-563-0808

- Victims in need of immediate crisis support on issues relating to family and sexual violence, or a referral to a local victim service program as well as community and government resources, can call **VictimLINK**.
- **VictimLINK** is a province-wide telephone service available 24 hours a day, 7 days a week in 130 languages, including 17 North American Aboriginal languages.



Going Forward

- Much more work to be done for marginalized women in particular
- Numerous deaths in BC of immigrant women suggest more training, standards, access to interpreters needed



Discussion

Questions

Comments



PROVINCIAL BRIEFING DOCUMENT 2: EXECUTIVE SUMMARY

Collection of Sponsorship Debt Accrued by Abused Immigrant Women

Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children. Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the period named in a sponsorship undertaking she has signed. The undertaking makes her legally responsible for that debt. Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to enormous debt. While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date. While the legal obligations contained in sponsorship undertakings are a federal matter, the collection of sponsorship debt has been assigned by the Federal Government to the provinces. Therefore, a potential resolution of the issue of sponsorship debt for abused women lies in provincial policy change.

Recommendations

Immediate

1. As part of its *Domestic Violence Action Plan*, the BC Government should address the most pressing issues putting abused immigrant women at risk, including the need to cancel sponsorship debt accrued by women who have been abused by their sponsoree.
2. The BC Government should develop an accessible and effective process by which women can demonstrate that they are victims of domestic violence.

Medium-term

3. The BC Government should develop guidelines for provincial officials so that once abuse has been “proven” it will generally be considered grounds for cancelling sponsorship debt.

Longer-term

4. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who have outstanding sponsorship debt arising from a sponsorship undertaking because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance.
5. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance.

PROVINCIAL BRIEFING DOCUMENT 2

Collection of Sponsorship Debt Accrued by Abused Immigrant Women¹

ISSUE: Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children.

KEY POINTS

The current situation

- Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the period named in a sponsorship undertaking she has signed. The undertaking makes her legally responsible for that debt.
- Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to enormous debt.
- While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date.
- While the legal obligations contained in sponsorship undertakings are a federal matter, the collection of sponsorship debt has been assigned by the Federal Government to the provinces. Therefore, a potential resolution of the issue of sponsorship debt for abused women lies in provincial policy change.

Potential remedies

- A requirement that a victim must repay a debt incurred by an offender may be considered a form of re-victimization. It may also constitute an infringement of the *Canadian Charter of Rights and Freedoms, Section 7 - Life, liberty and security of person*. It could be argued that Canadian policies that make it difficult for a woman to leave an abusive relationship are themselves a form of abuse that threatens her right to life or security of person.

¹ This briefing document may also apply in situations where any other family member has accrued sponsorship debt because of abuse by his/her sponsor, such as a senior abused by a son or daughter whom they have sponsored.

- Sponsorship Undertakings and sponsorship debt may also constitute infringements of the Charter's *Section 15 – Equality Rights*, that states that every individual has the right to equality before the law and equal protection and benefit of the law. It could be argued that the burdens imposed on abused immigrant women by sponsorship undertakings and sponsorship debt constitute unequal treatment before the law.
- Discretion is already inherent in many aspects of the federal and provincial positions on the accrual and collection of sponsorship debt. Therefore, one option for addressing the burden placed on abused women by sponsorship debt may be for BC's Ministry of Housing and Social Development to develop policy to guide discretion in these matters. Policy could state that once abuse had been determined, such abuse should generally be considered grounds to cancel sponsorship debt. Such policy would also have to address the difficulties some immigrant women face in meeting the requirement for "substantial proof".

Bars to sponsorship

- A further complicating issue is that sponsors who have an outstanding debt arising from an undertaking are ineligible to sponsor anyone else under the family class. Women with such outstanding sponsorship debt could still make the application to sponsor other family members, which would inevitably be refused, and then they could appeal the matter to the Immigration Appeal Division (IAD) on Humanitarian and Compassionate (H & C) grounds. Such an appeal would be complex, time-consuming, and best handled by a lawyer. Legal Aid, however, is generally not available for these cases.
- In addition, an abused immigrant woman² who was sponsored under the family class and is forced to claim social assistance because of fleeing an abusive relationship is ineligible to sponsor under the family class while she is in receipt of such services.
- A provincial policy of cancellation of sponsorship debt in cases of domestic violence would remove these bars to sponsorship.

THE CONTEXT

Provincial discretion to suspend or cancel debt

- The current federal *Application to Sponsor and Undertaking* addresses the issue of abuse by stating that "The Minister and the province concerned may choose not to take enforcement action to recover money...if the default is the result of abuse..." However, the document goes on to say that "The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed." (Citizenship and Immigration Canada, 2009). Therefore, the decision to suspend collection results in a debt that hangs over the woman and may be collected at any time.

² This could include so-called 'mail-order brides', a term used to describe women who met their foreign spouses through an international introduction or 'pen-pal' agency. (The controversy around the use of the term 'mail-order bride' is acknowledged. In the absence of another more 'neutral' term, the term 'mail-order bride' is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or 'pen-pal' agency.)

- Provincial and federal discretion appears to be inherent in the wording of the federal undertaking. As noted above, the undertaking states that the federal and provincial governments *may* choose not to collect the debt in circumstances of abuse and *may* collect the debt when circumstances change. The undertaking further states that the sponsor “...will continue to be in default until the amount of benefits received are repaid in full or *repaid to the satisfaction of the government concerned* (italics added). (Citizenship and Immigration Canada. (2009).
- The BC government also has the discretion to forgive debts under section 18 of the BC *Financial Administration Act*.
- In 2006, the then BC Ministry of Community Services announced that its relevant collection branch, the Ministry of Employment and Income Assistance “was prepared to suspend debt collection and interest accrual where there was substantial proof of abuse or threat of abuse by a sponsoree, and where collection could potentially harm the sponsor’s health or safety.” (Correspondence from Deputy Minister Sheila Wynn, received September 21, 2006). However, while suspension of the debt and interest accrual in circumstances of abuse suggests some provincial movement in favour of a sponsor who is a victim of abuse, this policy addresses only suspension, not forgiveness of the debt. In addition, it is difficult for many women who are victims to meet the criteria of “substantial proof”. This is especially true for immigrant women in rural areas where access to services is limited.

Impact of bars to sponsorship

- An inability to sponsor family members to come to Canada may seriously impact abused immigrant women’s ability to settle in Canada and earn their own living because it increases their social isolation, deprives them of emotional support necessary to recover from trauma, and cuts off potential financial and child-care support from family members.
- The predicament for many women is that they cannot find a job because they do not have the education or language skills, so they are forced to accept social assistance. For many this creates a vicious cycle: they are alone with young children or they cannot upgrade their skills and find work because they need family to help look after their children, but they cannot get their family here because they are receiving social assistance. For other women who are working, the job is often poorly paid and does not enable them to pay back money owed in the form of sponsorship debt. So they are unable to bring their family members here to provide the support they need to upgrade their skills in order to earn a higher wage.

Legal responses

- There have been successful attempts by counsel and agencies such as BC Public Interest Advocacy Centre to have the Province cancel collection of sponsorship debt in situations of abuse. However, the successes pertain to an old form of the undertaking which contained vaguer wording than the current undertaking and did not contain language stating that governments could collect on sponsorship debts even if they arose out of circumstances of abuse. Also, these cases occurred through settlement negotiations or on an individual basis: there is as yet no case precedent which can be consistently applied in other cases.

- In a recent decision, the Ontario Court of Appeal in *Mavi v. Canada (Attorney General)*, 2009 found that governments, in the exercise of their discretion regarding the collection of sponsorship debt, have a duty of procedural fairness to those from whom they are trying to collect this debt. This means that sponsors' individual circumstances must be considered before the government can collect on sponsorship debts and that they cannot force people to pay substantial sponsorship debts without first providing them with an opportunity to explain why they should not have to pay. Leave has recently been granted to appeal this decision to the Supreme Court of Canada.
- In an earlier case (*Singh v. Minister of Employment and Immigration*, [1985]), the court found that, unless it specifically states that it applies only to Canadian citizens, the *Charter of Rights and Freedoms* applies to anyone on Canadian soil. Thus, refugees have a right to *Section 7 – Life, liberty and security of person* protection and therefore have a right to procedural fairness, including oral hearings, because their security of person is at stake.
- While the *Mavi* decision was based on administrative law arguments, there are also potential constitutional (*Section 7- Life, liberty and security of person* or *Section 15 - Equality rights*) arguments against the collection of sponsorship debt when there are health and/or safety concerns, including abuse of the sponsor.
- Regarding *Section 15*, only those who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debt. Thus, only those people who have signed sponsorship undertakings are responsible for paying back their spouses' social assistance. It is arguable that this constitutes unequal treatment before the law. Additionally, domestic violence is suffered disproportionately by women. Therefore, the health and safety repercussions of sponsorship debt incurred as a result of domestic violence are suffered disproportionately by women, which may also constitute an infringement of *Section 15*.
- Constitutional challenges have thus far not reached the courts.

Information to women

- Research and the experience of front-line workers indicate that abused immigrant, refugee, and non-status women often do not have accurate information about sponsorship, including their obligations and rights. It is important that they are provided with complete, accurate, and consistent information about sponsorship at every opportunity, before they enter Canada, immediately upon entry, and at various points thereafter. Ministries and agencies responding to the needs of immigrant women must themselves have accurate and consistent information about sponsorship for abused immigrant women and must have adequate and linguistically appropriate information resources to provide to the women.

RECOMMENDATIONS

1. In the interest of safety for abused immigrant women and their children, the BC Government should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are victims of domestic violence.
2. The BC Government should develop an accessible and effective process by which women can demonstrate that they are victims of domestic violence.

3. The BC Government should take immediate steps to ensure that criteria for meeting the burden of “substantial proof” of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.
4. The BC Government should develop guidelines for provincial officials so that once abuse has been “proven” it will generally be considered grounds for cancelling sponsorship debt.
5. The BC Government should work with Citizenship and Immigration Canada (CIC) to facilitate coordination of federal and provincial policies and practices to ensure that abused immigrant women are freed from sponsorship debt arising from domestic violence, which may involve ensuring that sponsorship debt does not accrue or that accrued sponsorship debt is cancelled once abuse has been demonstrated.
6. The province should work with the Federal Government to ensure that wording in the federal undertaking clearly states that the provinces have the right not only to suspend debt collection, but to cancel it.
7. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who have outstanding sponsorship debt arising from a sponsorship undertaking because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance.
8. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance.
9. As part of its *Domestic Violence Action Plan*, the BC Government should address the most pressing issues putting abused immigrant women at risk, including the need to cancel sponsorship debt accrued by women who have been abused by their sponsoree.
10. As part of its *Domestic Violence Action Plan*, the BC Government, in consultation with Legal Services Society, should ensure that abused immigrant women who have legitimate needs for legal representation on issues related to sponsorship debt and cannot afford to pay for it are able to obtain legal representation through Legal Aid.
11. The BC Government should work with CIC and provincial ministries and community agencies to ensure that abused immigrant women are provided with accurate and consistent information on:
 - the facts about sponsorship;
 - their rights in Canada;
 - relevant Canadian laws, including immigration, family, civil, and criminal law;

- options and services available to them in Canada, including language training, settlement services, skills training, social assistance, cultural support services, legal advocacy, and victim support services.

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FEDERAL BRIEFING DOCUMENT 4: EXECUTIVE SUMMARY

Sponsorship Debt for Abused Women

Sponsorship debt or threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children. Sponsorship debt may be accrued by a woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the sponsorship period. Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to large debt. While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in cases of abuse, the debt is not cancelled and may be collected at a later date. A further complicating issue is that sponsors who have an outstanding sponsorship debt are ineligible to sponsor anyone else under the family class.

Recommendations

Immediate

1. In the interest of safety for abused immigrant women and their children, Citizenship and Immigration Canada (CIC) should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are abused by their sponsoree, both by forgiving existing sponsorship debt and by revising sponsorship undertakings to ensure that such debt is not accrued or is forgiven in situations where such abuse has been demonstrated. Discretion of officials should be guided to the extent that, once abuse has been demonstrated, it will generally be considered grounds for cancelling sponsorship debt.
2. CIC should take immediate steps to ensure that criteria for meeting the burden of “substantial proof” of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.
3. CIC should work with the provinces to develop consistent policy, guidelines, and practices to ensure that immigrant women are freed from sponsorship debt arising from domestic violence.
4. The Federal Government should ensure that wording in the federal undertaking clearly states that the provinces have the right to not only suspend debt collection but cancel it.

Medium-term

5. CIC should implement policy that women who have outstanding sponsorship debt because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.
6. CIC should implement policy that abused immigrant women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.

FEDERAL BRIEFING DOCUMENT 4

Sponsorship Debt for Abused Women¹

ISSUE: Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children.

KEY POINTS

The current situation

- Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse then collects social assistance within the three years (or, under an older form of the undertaking, ten years) named in a sponsorship undertaking she has signed. This undertaking makes her legally responsible for that debt.
- Sponsorship debt or threat of sponsorship debt may act as a deterrent to women leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to large debt.
- While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date.

Potential remedies

- A requirement that a victim must repay a debt incurred by an offender may be considered a form of re-victimization. It may also constitute an infringement of the *Canadian Charter of Rights and Freedoms, Section 7 - Life, liberty and security of person*. It could be argued that Canadian policies that make it difficult for a woman to leave an abusive relationship themselves constitute a form of abuse that threatens her right to life or security of person.
- Sponsorship Undertakings and sponsorship debt may also constitute infringements of the Charter's *Section 15 – Equality Rights* that states that every individual has the right to equality before the law and equal protection and benefit of the law. It could be argued that the burdens imposed on abused immigrant women by sponsorship undertakings and sponsorship debt constitute unequal treatment before the law.

¹ This briefing document may also apply in situations where another family member has accrued sponsorship debt because of abuse by his/her sponsor, such as a senior abused by a son or daughter whom they have sponsored.

- There have been successful attempts by counsel and agencies such as the BC Public Interest Advocacy Centre (PIAC) to have the Province of BC cancel the collection of sponsorship debts in individual situations of abuse.
- Discretion is already inherent in many aspects of the federal and provincial positions on the accrual and collection of sponsorship debt. Therefore, one option for addressing the burden placed on abused women by sponsorship debt may be for both Citizenship and Immigration Canada (CIC) and provincial ministries to develop policy to guide discretion in these matters. Policy could state that once abuse had been determined, it should generally be considered grounds to cancel sponsorship debt. Such policy would also have to address the difficulties some immigrant women face in meeting the “substantial proof” requirement.

Bars to sponsorship

- A further complicating issue is that sponsors who have an outstanding debt arising from an undertaking are ineligible to sponsor anyone else under the family class. Women with such outstanding sponsorship debt could still make the application to sponsor other family members, which would inevitably be refused, but they could appeal the matter to the Immigration Appeal Division (IAD) on Humanitarian and Compassionate (H&C) grounds. Such an appeal would be complex, time-consuming, and best handled by a lawyer. Legal Aid, however, is generally not available for these cases.
- In addition, an abused immigrant woman² who was sponsored under the family class and is forced to claim social assistance because of fleeing an abusive relationship is ineligible to sponsor under the family class while she is in receipt of such services.

THE CONTEXT

Sponsorship application and undertaking

- The Federal Government treats sponsors and sponsorees who are victims of abuse very differently. The current *Sponsorship Agreement* addresses the issue of domestic violence perpetrated against *sponsored persons* by stating that: “Sponsored persons and/or their family members who are being abused or assaulted by their sponsors should seek safety away from their sponsors even if this means that they will have to apply for social assistance benefits. A sponsor cannot force Citizenship and Immigration Canada to remove you from Canada.” (Citizenship and Immigration Canada, 2008). This encouragement for sponsored victims of domestic abuse to leave their abuser is in marked contrast to the penalties imposed on abused *sponsors* who leave their abusive sponsorees, in the form of sponsorship debt incurred if their abuser subsequently receives social assistance.
- The CIC *Application to Sponsor and Undertaking* appears to be inconsistent on the matter of eligibility of an applicant who has previously sponsored someone who has (or whose family members have) received social assistance during the period covered by the undertaking. Section *E. Eligibility Assessment* states that if an applicant answers “yes” to

² This could include so-called ‘mail-order brides’, a term that refers to women who met their foreign spouse through an international introduction or ‘pen-pal’ agency. (The controversy around the use of the term ‘mail-order bride’ is acknowledged. In the absence of another more ‘neutral’ term, the term ‘mail-order bride’ is used in this document. However, there is no intent to stereotype or denigrate immigrant women who have married a Canadian as a result of an introduction or ‘pen-pal’ agency.)

the question “Have persons you previously sponsored or their family members received social assistance during the validity period of the undertaking?” they are not eligible to be a sponsor and should not submit their application. On the other hand, the final paragraph in Section G. *Undertaking* states the applicant’s understanding that they will not be allowed to sponsor another person “....if I am in default of any sponsorship undertaking. This holds true for both this undertaking and any past undertakings where I have not satisfactorily paid back my debts.” This clearly implies that it is not the fact that sponsored persons received social assistance that is the bar to sponsorship, but the unpaid sponsorship debt.

- Furthermore, while it is possible (albeit, expensive) to appeal a negative response to a sponsorship application, this is not stated on the *Application to Sponsor and Undertaking*. On the contrary, the form states that if an applicant is ineligible for any of the reasons contained in Qs. 5 – 13, they should not submit their application.
- Until 2002, the older forms of sponsorship undertakings imposed a ten-year period of financial responsibility. This was reduced to three years after organizations such as the National Organization of Women and the Law (NAWL) advocated for changes. NAWL provided a written brief to the 2001 Standing Committee on Citizenship and Immigration backed by a study which analyzed the impact of spousal sponsorship undertakings on the equality rights of immigrant women. (Coté et al, 2001; Han, 2009). These formed the basis for comments contained in the *Regulatory Impact Analysis Statement* (RIAS) for the *Immigration and Refugee Protection Regulations* published in the *Canada Gazette* in 2002.
- In section XIV of RIAS, it was acknowledged that the length of the spousal sponsorship undertaking was decreased because of concerns that the undertaking aggravated domestic violence: “The Regulations take into account the protection of ...spouses, common-law partners and conjugal partners from violence. The duration of sponsorship for a spouse, common-law partner and conjugal partner was decreased from 10 to 3 years given concerns that domestic violence is aggravated by the implied dependency created by the undertaking of support.” (*Regulatory Impact Analysis Statement. Immigration and Refugee Protection Regulations* C. Gaz. 2002). While a three-year undertaking is clearly preferable to a ten-year undertaking, the government’s acknowledgement that this was changed because the ten-year undertaking aggravated domestic violence is also applicable to the current undertaking. The difference is in degree, not in substance.
- The current *Application to Sponsor and Undertaking* addresses the issue of abuse by stating that “The Minister and the province concerned may choose not to take enforcement action to recover money... if the default is the result of abuse...” However, the document goes on to say that “The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed.” (Citizenship and Immigration Canada, 2009). Therefore, the decision to suspend collection results in a debt that hangs over the woman and may be collected at any time.
- Federal and provincial discretion appears to be inherent in the wording of the undertaking. As noted, the undertaking states that the federal and provincial governments *may* choose not to collect the debt in cases of abuse and *may* collect the debt when circumstances change. The undertaking further states that the sponsor “...will continue to be in default until

the amount of benefits received are repaid in full or *repaid to the satisfaction of the government concerned* (italics added). (Citizenship and Immigration Canada, 2009).

Provincial suspension of debt collection

- In 2006, BC Ministry of Community Services announced that its relevant collection branch “was prepared to suspend debt collection and interest accrual where there was substantial proof of abuse or threat of abuse by a sponsoree, and where collection could potentially harm the sponsor’s health or safety.” (Correspondence from Deputy Minister Sheila Wynn, 2006). However, while suspension of debt and interest accrual in circumstances of abuse suggests some provincial movement in favour of an abused sponsor, this policy addresses only the suspension of debt, not forgiveness of the debt. In addition, it is difficult for many women who are victims to meet the criteria of “substantial proof”. This would be especially true for those immigrant women in rural areas where access to services may be limited.
- The BC Government also has the discretion to forgive debts under section 18 of the BC *Financial Administration Act*.

Impact of bars to sponsorship

- An inability to sponsor family members to come to Canada may seriously impact abused immigrant women’s ability to settle in Canada and earn their own living because it increases their social isolation, deprives them of emotional support necessary to recover from trauma, and cuts off potential financial and child-care support from family members.
- The predicament for many women is that they cannot find a job because they do not have the education or language skills, so they are forced to accept social assistance. For many this creates a vicious cycle: they are alone with young children, they cannot upgrade their skills and find work because they need family to help look after their children. But they cannot get their family here because they are receiving social assistance. For others who are working, the job is often poorly paid and does not enable them to repay sponsorship debt. So they are unable to bring family members here to provide the support they need to upgrade their skills in order to earn a higher wage.

Legal responses

- The successful attempts to cancel sponsorship debt collection in BC pertain to an old form of the undertaking which contained vaguer wording than the current undertaking and did not contain language stating that governments could collect on the sponsorship debts even if they arose out of circumstances of abuse. In addition, these successful cases occurred through settlement negotiations or on an individual basis, and there is as yet no case precedent which can be consistently applied in other cases.
- In a recent decision, the Ontario Court of Appeal in *Mavi v. Canada (Attorney General)*, 2009 found that governments, in the exercise of their discretion regarding the collection of sponsorship debt, have a duty of procedural fairness to those from whom they are trying to collect this debt. This means that sponsors’ individual circumstances must be considered before the government can collect on sponsorship debts and that they cannot force people to pay substantial sponsorship debts without first providing them with an opportunity to

explain why they should not have to pay. Leave has recently been granted to appeal this decision to the Supreme Court of Canada.

- In an earlier case (*Singh v. Minister of Employment and Immigration*, [1985]), the court found that, unless it specifically states that it applies only to Canadian citizens, the Canadian *Charter of Rights and Freedoms* applies to anyone on Canadian soil. On this basis, refugees have a right to *Section 7 – Life, liberty and security of person* protection and therefore have a right to procedural fairness, including oral hearings, because their security of person is at stake.
- While the Mavi decision was based on administrative law arguments, there are also potential constitutional (*Section 7- Life, liberty and security of person* or *Section 15 - Equality rights*) arguments against the collection of sponsorship debt when there are health and/or safety concerns, including abuse of the sponsor.
- With respect to *Section 15*, only those who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debt. Thus, only those who have signed these undertakings are responsible for paying back abusive spouses' social assistance. It is arguable that this constitutes unequal treatment before the law. Additionally, domestic violence is suffered disproportionately by women. Therefore, the health and safety repercussions of sponsorship debt incurred as a result of domestic violence are suffered disproportionately by women, which may also constitute an infringement of *Section 15*.
- Constitutional challenges have thus far not reached the courts.

RECOMMENDATIONS

1. In the interest of safety for abused immigrant women and their children, Citizenship and Immigration Canada (CIC) should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are abused by their sponsoree, both by forgiving existing sponsorship debt and by revising sponsorship undertakings to ensure that such debt is not accrued or is forgiven in situations where such abuse has been demonstrated. Discretion of officials should be guided to the extent that, once abuse has been demonstrated, it will generally be considered grounds for cancelling sponsorship debt.
2. CIC should take immediate steps to ensure that criteria for meeting the burden of "substantial proof" of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.
3. CIC should work with the provinces to develop consistent policy, guidelines, and practices to ensure that immigrant women are freed from sponsorship debt arising from domestic violence.
4. The Federal Government should ensure that wording in the federal undertaking clearly states that the provinces have the right to not only suspend debt collection but cancel it.
5. CIC should implement policy that women who have outstanding sponsorship debt because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social

assistance. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.

6. CIC should implement policy that abused immigrant women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.
7. CIC should state in the *Application to Sponsor and Undertaking* and in other information available to immigrant women that, while certain factors may make an applicant initially ineligible to sponsor a family member, such decisions can be appealed, and what first steps a woman must take to launch such an appeal.
8. CIC should take proactive steps to ensure that adequate, linguistically appropriate information is provided to immigrant women both before they immigrate and immediately upon arrival. Particular attention should be paid to finding effective ways to inform so-called 'mail-order brides' about the realities of immigrating to Canada and about the particular vulnerabilities they may face. Accurate and consistent information should be provided on:
 - the facts about sponsorship;
 - the nature, dynamics, and risks of domestic violence;
 - their rights in Canada;
 - relevant Canadian laws, including immigration, family, civil, and criminal law;
 - options and services available to them in Canada;
 - any sponsorship or criminal history of their proposed sponsor.

This includes helping to ensure that other ministries and agencies responding to the needs of immigrant women have accurate and consistent information about sponsorship to provide to abused immigrant women.

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6. RESOURCES & SKILLS



Legal
Services
Society



Immigrant
PLEI
Consortium



Excerpt from the Training Manual for Legal Information and Outreach Workers (LIOWs) created by Legal Services Society (LSS)

Legal Information, NOT Advice

LIOWs can provide legal information and referral services, but cannot provide legal advice or representation. It is, however, likely that LIOWs will often be asked for legal advice – people want help with their problems and are often not familiar with the concepts of different levels of service (information or advice or representation).

This section considers what is considered legal information and what is legal advice.

Legal information

You are providing legal information when you respond to questions such as:

“what is the law about...”,

“how do I?”

with referrals to resources that explain the relevant law or procedure, or to an advocate or lawyer who can help them analyze information.

Legal advice

You are providing legal advice when you answer questions such as

“What should I do?”,

“Did I do the right thing?” or

“What would you do?”.

In response to these questions you must explain that you can only provide legal information, not advice.

One way you could explain this to your clients, and set appropriate limits on what they tell you and what help they ask for, is by saying something like:

“I can help you find information about the law but I cannot give you legal advice or tell you what to do. Our services are confidential but if the other side of your dispute asks for information we will give him or her help as well.”

Scope of LIOW work

Can I help people find legal information?	
You can	You cannot
<ul style="list-style-type: none"> Point people in the right direction to find legal information in the form of PLEI (public legal education or information) print and web materials, and other community resources that can help them. Give brief help to find legal resources and assistance. 	<ul style="list-style-type: none"> Research case law and legislation that is not available in PLEI materials - Guess – if in doubt, refer the person to another service or resource Develop an ongoing relationship where the person may view you as a legal advisor, rather than a source of information and referral. Keep open files or notes for people you have helped
How can I help people who are dealing with lawyers and courts?	
You can	You cannot
<ul style="list-style-type: none"> Organize people before going to see the lawyer – do they have their papers ready? Do they know what to expect when they meet the lawyer? Help them find services at court and at Local Agent or other LSS service Tell people about existing PLEI resources and services that may be useful 	<ul style="list-style-type: none"> Attend meetings at court and make notes of legal advice – duty counsel and advice lawyers should provide notes to their clients if needed Check with lawyers about conflicts of interest Recommend a particular lawyer Explain a lawyer's letter (you must refer a client back to lawyer for explanation) File documents for people at registry Provide secretary/legal assistant services to lawyer or their client Communicate messages back and forth between lawyers and their clients Schedule duty counsel /advice lawyer appointments Recommend arguments to make in court or to the other side Talk to the other side or their lawyer on behalf of someone you have helped Appear in court for a person

Can I help people with court forms?

You can	You cannot
<ul style="list-style-type: none">• Tell them generally what kind of information they can put on the form, and where• Example: “this is where you would say what you want the court to order”, not “this is what you should say in that box”• Refer them to duty counsel or advice lawyers when help is needed to fill out forms – for example because they cannot read or write	<ul style="list-style-type: none">• Choose or recommend the words for the person to use• fill out forms even if the person is self represented/not legally trained/unable to read or write• fill out a form because of a language barrier



WELCOME TO MOSAIC SETTLEMENT AND INTEGRATION PROGRAM

WHAT CAN SETTLEMENT WORKERS DO TO ASSIST IMMIGRANTS AND REFUGEES?

- Assess needs to identify areas of concern.
- Work with clients toward the resolution of **client's** identified issues and needs.
- Provide **basic information about Canadian society including British Columbia's** legal system, employment and labour market opportunities, health care services, housing, educational institutions and English training.
- Refer to English Language Services for Adults (ELSA) and employment programs.
- Assist with resume writing and with the completion of basic forms.

SETTLEMENT WORKERS CANNOT GIVE LEGAL ADVICE, A settlement worker will give you general information only. For legal advice, please consult a qualified lawyer who is a member in good standing with the Law Society of British Columbia (Tel: 604-669-2533); or, **consult with a community legal advocacy program that is supervised by a lawyer and who is a member in good standing with the Law Society of British Columbia.** The Law Society of BC governs lawyers in British Columbia, for more information on lawyers, please visit: <http://www.lawsociety.bc.ca>

The settlement worker will go over this information with you before you start. If you have any questions, s/he will be happy to answer.

As a client, you have the right to refuse or withdraw from offered services at any time without fear of reprisal or discrimination.

I have read and understood the content of this Waiver Form.

Client' signature

Worker signature

Translators Declaration (where client does not understand English and this form was not available in their language).

Before this document was signed by the client, I interpreted it for the client from English into the _____ language (in which I am fluent).

Interpreter's name: _____

Interpreter's signature: _____

Response to Complaints

Clients have the right to expect a respectful and timely response to all complaints regarding their relationship with MOSAIC. If you are concerned about the services you **received, please request a copy of MOSAIC's Client Complaints and Grievances** procedures or go to our website at www.mosaicbc.com.

List of resources on disability Issues

1. CPP Disability Application Guide
<http://www.bccpd.bc.ca/docs/cppapplicationguide.pdf?LanguageID=EN-US>
2. Help Sheet #2 PWD Application Guide
<http://www.bccpd.bc.ca/docs/hs2.pdf>
3. Help Sheet #5A Appealing denial of PWD benefit (Reconsideration)
<http://www.bccpd.bc.ca/docs/hs5a.pdf>
4. Help Sheet #3 Checklist for PWDs
<http://www.bccpd.bc.ca/docs/hs3.pdf>
5. Help Sheet #7 Health Supplements for PWDs
<http://www.bccpd.bc.ca/docs/hs7.pdf>

*Please note that copies of these documents can be found in section 7 of these materials.

Are you a member of the public or helping someone with a legal problem?

The Clicklaw website offers a single place to start on the Internet for quality legal information, education and help for British Columbians. Here are five key ways you can use Clicklaw:

The screenshot shows the Clicklaw website interface. At the top, there's a navigation bar with links like 'British Columbia, Canada', 'Laws, Cases & Rules', 'Blog', 'About Us', 'Contact', and 'Contributors'. Below this is the Clicklaw logo and a search bar. The main content area is divided into several sections: 'Solve Problems', 'Learn & Teach', 'Reform & Research', and 'HelpMap'. Each section has a brief description and a list of links. For example, 'Solve Problems' includes links for 'Your money', 'Your family', 'Your daily life', 'Your safety', 'Your communities', and 'Your legal system'. 'Learn & Teach' includes links for 'Access resources that build awareness of laws and how the legal system works.' 'Reform & Research' includes links for 'Access resources that feature analysis and reform of the law and the legal system.' 'HelpMap' includes links for 'Find someone in your community who can help with legal problems.' 'Common questions' includes links for 'Popular questions' and 'New or updated questions'. 'What's new on Clicklaw' includes links for 'Law Week in BC, April 2011', 'Waiving Filing Fees in Small Claims Court', and 'JusticeBC'. 'Find us on Facebook & Twitter' includes links for 'Facebook' and 'Twitter'.

1 In **Solve Problems**, find understandable information on your legal rights and options to solve legal problems

2 Choose from over 100 **common questions**, which offer starting points for common legal problems

3 On **HelpMap** search for someone in your community who can help with legal problems

4 Find resources and services that are in **languages** other than English

5 See **what's new** on the Clicklaw blog or find Clicklaw on Facebook or Twitter



The Clicklaw HelpMap

Integrated with Google Maps, the HelpMap assists the public in British Columbia in finding those who can provide assistance with legal problems in their community. It also assists service providers and helpers who are making referrals for clients who have legal issues.



HelpMap

Find someone in your community who can help with legal problems.

Three steps to finding law-related assistance on the HelpMap

1 Search by keyword or city/town at www.clicklaw.bc.ca. Or you can browse by topic.

Search the HelpMap for law related help with a Keyword OR Location

Keyword

or

Location

Go

Campbell River
Chilliwack
Clinton

2 [optional] Refine your search by topic, location, type of service, or language.

Refine your search

HelpMap

Campbell River

Topic

Legal help & lawyers (16)

Abuse & family violence (15)

Family law (14)

Crimes & offences (13)

Victims of crime (11)

more topics...

Location

Language

Type of service

Your search results

Results: 1 to 5 of (27)

Sort by: relevance | most viewed | alphabet

Lawyer Referral Service

Lawyer Referral Service is a program that connects you with the right lawyer. Lawyers who participate in the program offer an initial consultation of up to 30 ... [+ more details](#)

From The Canadian Bar Association BC Branch (CBABC)

Topics: Abuse & family violence; Accidents & injuries; Alternatives to court; Business & non-profits; [+ all topics](#)

Legal Aid Intake Services

The Legal Services Society (LSS) provides intake at more than 50 legal aid office and courthouse locations across BC. To qualify for a legal aid lawyer, ... [+ more details](#)

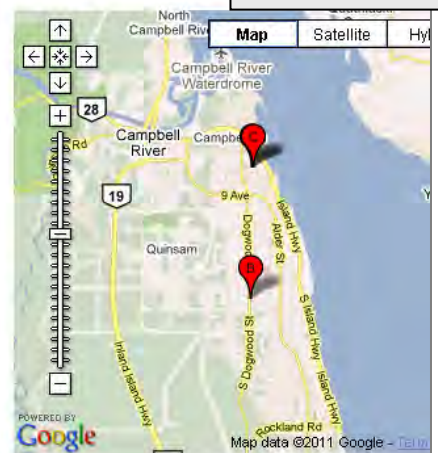
From Legal Services Society

Topics: Abuse & family violence; Children & teens; Crimes & offences; Family law; [+ all topics](#)

Campbell River Courthouse

500 - 13th Avenue, Campbell River, BC, V9W 6P1

3 Click on a service to see details on the Clicklaw HelpMap.



What can you find on the HelpMap

- pro bono clinics, community legal clinics, and legal aid offices
- organizations with community legal advocates
- court registries
- courthouse libraries
- Native Courtworkers
- victim support programs
- key government agencies
- dozens of other law-related helping services



TRAC TENANT RESOURCE & ADVISORY CENTRE

BC RESIDENTIAL TENANCY LAW



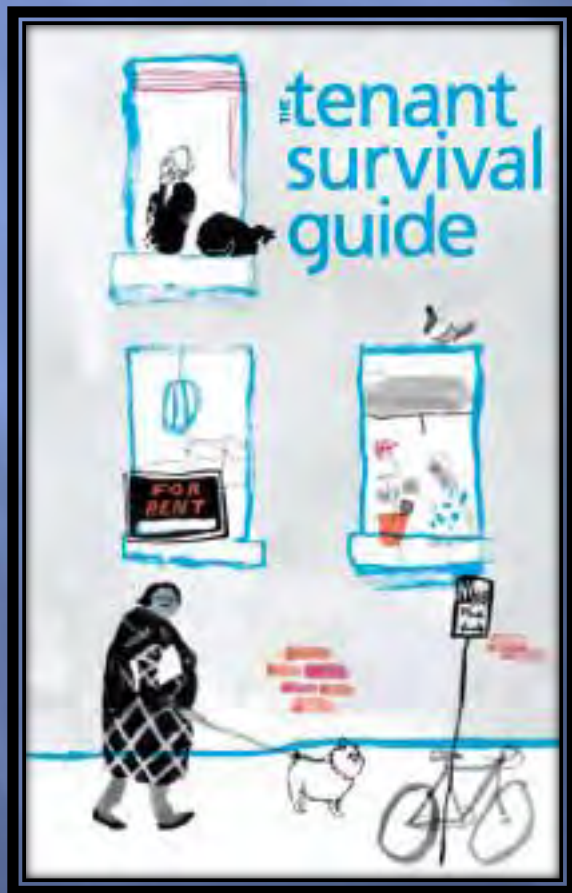


TRAC TENANT RESOURCE & ADVISORY CENTRE

- ❑ Provincial non-profit organization that provides free legal information on Residential Tenancy Law to BC tenants.
- ❑ Public legal education workshops: approximately 115.
- ❑ Advocate training sessions: approximately 15.
- ❑ Infoline calls: approximately 7,000 per year.
 - Sept 1 –Dec 31, 2011: Repairs (37%), evictions (20%), quiet enjoyment (14%), security deposits (14%).
- ❑ Advocate calls/emails: approximately 600 per year.
 - 604-255-3099
- ❑ PovNet email list (Housing) and PovNetU (Residential Tenancy Levels 1 and 2)

TRAC RESOURCES

Tenant Survival Guide:
English, Traditional
Chinese, Spanish



Landlord Guide: English,
Traditional Chinese,
Punjabi



TRAC RESOURCES

Newcomers Guide:
Simplified Chinese,
Korean, French, Persian

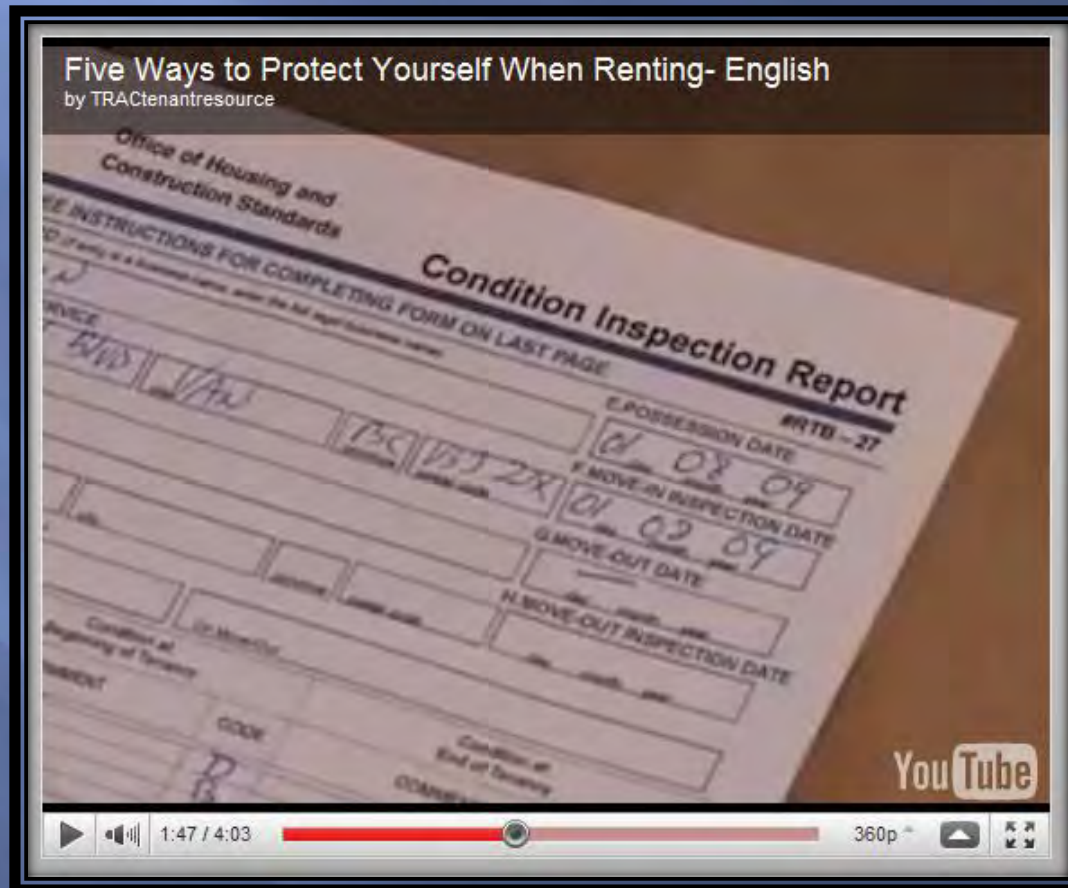
Translated Tenancy
Agreement Forms:
Simplified Chinese,
Traditional Chinese,
Punjabi



住宅 租務協議					
可以在卑詩省政府網站(www.rto.gov.bc.ca) 找到的住宅租務協議翻譯本。					
重要事項: 住宅租務處(RTB)認為,這份住宅租務協議準確反映住宅租務法(RTA)及附隨的條例。RTB並沒有就這份協議的使用作出任何陳述或擔保。房東及租客可能想就這份協議是否滿足其個人或商業需要,取得獨立意見。如流動房屋及流動房屋所佔地是以單一租屋合同租用的,可使用這份協議表格。若為流動房屋所佔地的租用,應使用流動房屋所佔地租務協議。 租客和房東這兩個詞在此租屋合同裏的意思,與在住宅租務法(RTA)裏的相同,並且有單數的含意。在此租屋合同裏,住宅物業這個詞的意思與在RTA裏的相同。住宅物業是指:一幢建築物、一幢建築物的一部分或有關連的建築群,裏面有一或多個出租單位或公用地方;那幢建築物、有關連的建築群或公用地方所位於的那一或幾塊土地;位於那一或幾塊土地上的出租單位及公用地方及其他建築物。					
如需要額外空白處來列出有關各方,可填妥並附上有關各方一覽表					
以下兩方之間的住宅租務協議: (使用完整、正確的法定姓名) 房東: (如房東一欄要輸入的是商號,用“姓”那一格來輸入完整的法定商號)					
姓	名				
姓	名				
和租客:					
姓	名				
姓	名				
租給租客之處的地址 (在此合同裏稱為“出租單位”):					
單位號碼	地址	城市	B.C.	省	郵政編碼
送達 <input type="checkbox"/> 房東 <input type="checkbox"/> 房東代理人 的地址:					
單位號碼	地址	城市	省	郵政編碼	
日間電話號碼	其他電話號碼	送達傳真號碼			
[Chinese Traditional] “此翻譯本並非法律文件。法定協議必須為英文版本。” 第1頁, 共6頁					

TRAC RESOURCES

5 Ways to Protect Yourself When Renting Video: 18 languages



TRAC RESOURCES

Comparative Fact Sheets: BC Tenancy Law vs. Tenancy Laws in China, Philippines, Korea, India, Mexico

ਕੀ ਮਾਲਕ-ਮਕਾਨਾਂ ਅਤੇ ਕਿਰਾਏਦਾਰਾਂ ਲਈ ਕਾਨੂੰਨ ਬੀ.ਸੀ. ਅਤੇ ਇੰਡੀਆ ਵਿਚ ਵੱਖੋ ਵੱਖਰੇ ਹਨ?

	ਬ੍ਰਿਟਿਸ਼ ਕੋਲੰਬੀਆ	ਇੰਡੀਆ
ਕਿਰਾਏਦਾਰੀ ਕਿੰਨੀ ਕੁ ਆਮ ਹੈ?	ਜੀ ਜੀ ਵਿਚ 30% ਟੈਂਸਰ ਕਿਰਾਏ 'ਤੇ ਰਹਿੰਦੇ ਹਨ: • 52% ਵੈਨਕੂਵਰ ਵਿਚ • 25% ਸਰੀ ਵਿਚ	30% ਸ਼ਹਿਰੀ ਟੈਂਸਰ ਕਿਰਾਏ 'ਤੇ ਹਨ 4% ਪੇਂਡੂ ਟੈਂਸਰ ਕਿਰਾਏ 'ਤੇ ਹਨ
ਕੀ ਅਜਿਹੇ ਕਾਨੂੰਨ ਹਨ ਜਿਹੜੇ ਕਿਰਾਏਦਾਰਾਂ ਅਤੇ ਮਾਲਕ-ਮਕਾਨਾਂ ਨੂੰ ਕਵਰ ਕਰਦੇ ਹਨ?	ਹਾਂ। ਕਾਨੂੰਨ ਦਾ ਨਾਂ ਰੈਜ਼ੀਡੈਂਸ਼ਲ ਟੈਨੈਂਸੀ ਐਕਟ ਹੈ। ਰੈਜ਼ੀਡੈਂਸ਼ਲ ਟੈਨੈਂਸੀ ਬਰਾਂਚ ਕਾਨੂੰਨ ਬਾਰੇ ਮਤਭੇਦਾਂ ਦਾ ਨਿਮਾਣਾ ਕਰਦੀ ਹੈ। ਵੈਬਸਾਈਟ ਦੇਖੋ: www.rto.gov.bc.ca	ਹਾਂ। ਇਹ ਜਿਲ੍ਹੇ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ; ਉਦਾਹਰਣ ਲਈ, ਢਿੱਲੀ ਕਿਰਾਇਆ ਐਕਟ 1995 ਅਤੇ ਮਹਾਰਾਸ਼ਟਰ ਕਿਰਾਇਆ ਐਕਟ 1999
ਸਕਿਊਰਟੀ ਡਿਪਾਜ਼ਿਟ ਕਿੰਨਾ ਹੋ ਸਕਦਾ ਹੈ?	ਮਾਲਕ-ਮਕਾਨ ਸਕਿਊਰਟੀ ਡਿਪਾਜ਼ਿਟ ਦੀ ਮੱਗ ਕਰ ਸਕਦਾ ਹੈ ਜੋ ਕਿ ਇਕ ਮਹੀਨੇ ਦੇ ਅੰਦਰ ਕਿਰਾਏ ਤੋਂ ਹੁੰਦਾ ਹੈ।	ਇਹ ਨਿੱਜੀ ਇਕਾਰਾਨਾਮੇ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ। ਇਹ ਅਕਸਰ ਤਿੰਨ ਮਹੀਨਿਆਂ ਦਾ ਕਿਰਾਇਆ ਹੁੰਦਾ ਹੈ।
ਮਾਲਕ-ਮਕਾਨ ਲਈ ਸਕਿਊਰਟੀ ਡਿਪਾਜ਼ਿਟ ਵਾਪਸ ਦੇਣਾ ਕਦੋਂ ਜ਼ਰੂਰੀ ਹੈ?	ਜਦੋਂ ਕਿਰਾਏਦਾਰ ਮੁੜ ਹੋਰ ਥਾਂ ਜਾਂਦਾ ਹੈ ਜਾਂ ਮਾਲਕ-ਮਕਾਨ ਲਈ ਆਮ ਤੌਰ 'ਤੇ 15 ਦਿਨਾਂ ਦੇ ਅੰਦਰ ਅੰਦਰ ਸਕਿਊਰਟੀ ਡਿਪਾਜ਼ਿਟ ਮੋੜਨਾ ਜ਼ਰੂਰੀ ਹੈ।	ਇਹ ਨਿੱਜੀ ਇਕਾਰਾਨਾਮੇ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ।
ਕਾਨੂੰਨ ਵੱਧ ਤੋਂ ਵੱਧ ਕਿੰਨਾ ਕਿਰਾਇਆ ਵਾਧਾਉਣ ਦੀ ਆਗਿਆ ਦਿੰਦਾ ਹੈ?	ਮਾਲਕ-ਮਕਾਨ ਸਾਲ ਵਿੱਚ ਇੱਕ ਵਾਰੀ ਕਿਰਾਇਆ ਵਾਧਾ ਸਕਦਾ ਹੈ। • ਵੱਧ ਤੋਂ ਵੱਧ ਵਾਧਾ = ਮਹਿੰਗਾਈ +2% 2011 ਲਈ, ਇਹ 2.3% ਹੈ। ਵੈਬਸਾਈਟ ਦੇਖੋ: www.rto.gov.bc.ca	ਇਹ ਇਸ ਢੰਗ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ ਕਿ ਹਰ ਜਿਲ੍ਹੇ ਵਿੱਚ ਕਿਹੜਾ ਕਿਰਾਇਆ ਕੰਟਰੋਲ ਐਕਟ ਲਾਗੂ ਹੁੰਦਾ ਹੈ।
ਮੁਰੰਮਤਾਂ ਲਈ ਕੌਣ ਜ਼ਿੰਮੇਵਾਰ ਹੈ?	ਕਾਨੂੰਨ ਇਹ ਮੱਗ ਕਰਦਾ ਹੈ ਕਿ ਮਾਲਕ-ਮਕਾਨ ਆਸਾਈ ਅਤੇ ਟੂਟਫੇਜ਼ ਦੀ ਮੁਰੰਮਤ ਕਰਨ। ਆਪਣੇ ਵੱਲੋਂ ਕੀਤੇ ਗਏ ਨੁਕਸਾਨ ਲਈ ਕਿਰਾਏਦਾਰ ਜ਼ਿੰਮੇਵਾਰ ਹਨ।	ਇਹ ਨਿੱਜੀ ਇਕਾਰਾਨਾਮੇ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ।
ਕਿਰਾਏਦਾਰਾਂ ਲਈ ਮੁੜ ਹੋਰ ਜਾਣ ਲਈ ਕਿੰਨੇ ਸਮੇਂ ਦਾ ਨੋਟਿਸ ਦੇਣਾ ਜ਼ਰੂਰੀ ਹੈ?	ਮਹੀਨਾ-ਤੋਂ-ਮਹੀਨਾ ਦੀ ਕਿਰਾਏਦਾਰੀ ਲਈ ਕਿਰਾਏਦਾਰਾਂ ਲਈ ਇੱਕ ਪੂਰੇ ਮਹੀਨੇ ਦਾ ਲਿਖਤੀ ਨੋਟਿਸ ਦੇਣਾ ਜ਼ਰੂਰੀ ਹੈ। ਪਰੀ ਮਿਆਦ ਦੀ ਲੀਜ਼ ਰੱਖਣਾ ਅੱਖਾ ਹੈ।	ਇਹ ਨਿੱਜੀ ਇਕਾਰਾਨਾਮੇ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ।
ਕਿਸੇ ਕਿਰਾਏਦਾਰ ਤੋਂ ਮਕਾਨ ਖਾਲੀ ਕਰਾਉਣ ਲਈ ਮਾਲਕ-ਮਕਾਨ ਲਈ ਕਿੰਨੇ ਸਮੇਂ ਦਾ ਨੋਟਿਸ ਦੇਣਾ ਜ਼ਰੂਰੀ ਹੈ?	ਜਿਹੜਾ ਮਾਲਕ-ਮਕਾਨ ਕਿਰਾਏਦਾਰ ਤੋਂ ਮਕਾਨ ਖਾਲੀ ਕਰਾਉਣਾ ਚਾਹੁੰਦਾ ਹੈ ਉਸ ਲਈ ਇਹ ਦੋਨਾਂ ਜ਼ਰੂਰੀ ਹੈ: • ਕਿਰਾਇਆ ਨਾ ਦੇਣ ਦੀ ਸੂਚਨਾ ਵਿਚ 10 ਦਿਨਾਂ ਦਾ ਨੋਟਿਸ; • ਜੇ ਕਿਰਾਏਦਾਰ ਦਾ ਵਤੀਰਾ ਖਾਲੀ ਕਰਵਾਉਣ ਲਈ ਕਾਰਨ ਹੈ ਤਾਂ ਇਕ ਮਹੀਨੇ ਦਾ ਨੋਟਿਸ; • ਮਾਲਕ-ਮਕਾਨ ਦੀ ਵਰਤੋਂ ਲਈ ਦੋ ਮਹੀਨਿਆਂ ਦਾ ਨੋਟਿਸ; ਉਦਾਹਰਣ ਲਈ, ਵੱਡੀਆਂ ਮੁਰੰਮਤਾਂ ਜਾਂ ਮਾਲਕ-ਮਕਾਨ ਦੇ ਮਾਪ ਜਾਂ ਸੱਚ ਮੁੱਢ ਹੋ ਕੇ ਆ ਸਕਦੇ ਹਨ।	ਇਹ ਨਿੱਜੀ ਇਕਾਰਾਨਾਮੇ 'ਤੇ ਨਿਰਭਰ ਕਰਦਾ ਹੈ।
ਜੇ ਕਿਰਾਏਦਾਰ ਦਾ ਮਤਭੇਦ ਹੋਵੇ ਤਾਂ ਕੀ ਹੁੰਦਾ ਹੈ?	ਮਤਭੇਦ ਦੇ ਹੱਲ ਦੀ ਸੁਣਵਾਈ ਲਈ ਕਿਰਾਏਦਾਰ ਰੈਜ਼ੀਡੈਂਸ਼ਲ ਟੈਨੈਂਸੀ ਬਰਾਂਚ ਕੋਲ ਅਪਲਾਈ ਕਰ ਸਕਦੇ ਹਨ। ਅਪਲਾਈ ਕਰਨ ਦਾ ਖਰਚਾ 50 ਡਾਲਰ ਹੈ। ਵੈਬਸਾਈਟ ਦੇਖੋ: www.rto.gov.bc.ca	ਕਿਰਾਏਦਾਰਾਂ ਨੂੰ ਅਦਾਲਤ ਵਿੱਚ ਜਾਣਾ ਪਵੇਗਾ ਜਿਹੜਾ ਕਿ ਹੌਲੀ ਅਤੇ ਮਹਿੰਗਾ ਹੋ ਸਕਦਾ ਹੈ।

ਬੀ.ਸੀ. ਦੇ ਕਿਰਾਏਦਾਰੀ ਨਾਲ ਸੰਬੰਧਿਤ ਕਾਨੂੰਨਾਂ ਬਾਰੇ ਮੈਨੂੰ ਅੰਗਰੇਜ਼ੀ ਅਤੇ ਪੰਜਾਬੀ ਵਿਚ ਜ਼ਿਆਦਾ ਜਾਣਕਾਰੀ ਕਿੱਥੋਂ ਮਿਲ ਸਕਦੀ ਹੈ?

- ਰੈਜ਼ੀਡੈਂਸ਼ਲ ਟੈਨੈਂਸੀ ਧਰਾਰ, ਬੀ.ਸੀ. ਸਰਕਾਰ ਦਾ ਵੈਬਸਾਈਟ: www.rto.gov.bc.ca
- ਟਰੈਕ ਟੈਨੈਂਟ ਰੀਜ਼ਰਸ ਐਂਡ ਐਡਵਾਈਜ਼ਰੀ ਸੈਂਟਰ ਵੈਬਸਾਈਟ: www.tenants-bc.ca (ਈਡਿਟ ਨਾਮਲ ਹਨ)

ਇਹ ਪ੍ਰੋਜੈਕਟ ਕੇਨੇਡਾ ਸਰਕਾਰ ਅਤੇ ਜੀ ਸੀ ਸੂਬੇ ਤੋਂ ਮਿਲੇ ਫੰਡਾਂ ਨਾਲ ਸੰਭਵ ਹੋਇਆ

TRAC RESOURCES

Template Demand Letters

Heat Demand Letter (Restricting an Essential Service)

Date:

Tenant's Name:

Tenant's Address:

Landlord's Name:

Landlord's Address:

Dear _____,

I have now been without heat for _____ days. The weather is getting colder and it is your legal obligation under our tenancy agreement to provide me with the services that are included in the rent. This includes heat which is an essential service. The *Residential Tenancy Act (RTA)* clearly states that landlords must not terminate or restrict essential services or facilities without an order from the Residential Tenancy Branch (RTB). Cutting off an essential service is illegal under section 27 (1) of the *RTA* and an offence under section 95 (1) (e) of the *RTA*. Please refer to Policy Guideline 22: Termination or Restriction of a Service or Facility (www.rto.gov.bc.ca/documents/GL22.pdf) for more information.

If the heat is not turned on immediately I will be taking legal action through the RTB. In addition to requesting an order that you comply with the *RTA*, I have the right to ask for compensation, which will be directly related to the length of time it takes to rectify the situation.

Thank you,

(Signature)

Tenant's Name:

Always keep a copy of any correspondence you send to your landlord for future reference. It is also beneficial to have someone witness delivery of the letter and sign the copy you keep indicating the date and method of service. This can be used as evidence if you need to pursue further action through a dispute resolution hearing.

tenants.bc.ca

Multilingual
Videos
(20 languages)

Multilingual
Publications
(20 languages)

Facebook

63 fans

The screenshot shows the TRAC website with several elements highlighted by red circles and arrows pointing to external labels:

- Links:** A red circle around the 'Links' menu item in the top navigation bar.
- Tenant Survival Guide:** A red circle around the 'Your Tenant Guidebook' icon in the main content area.
- Donations:** A red circle around the 'Donate Online Now' button in the main content area.
- What's New:** A red circle around the 'What's New' section header.
- Multilingual Videos:** A red circle around the 'Videos' icon in the left sidebar.
- Multilingual Publications:** A red circle around the 'We have print material in these languages' text in the left sidebar.
- Facebook:** A red circle around the 'Like' button on the Facebook widget at the bottom.

The website content includes a header with navigation links (Home, About TRAC, etc.), a large photo of a diverse group of people, and various service icons like 'Calling the Tenant Infoline', 'Tips & Help', and 'Frequently Asked Questions'. The footer lists social media links and funders.

Links

Tenant
Survival
Guide

Donations

What's New?

Twitter

190 followers

B.C. Home

Ministry of Public Safety
and Solicitor General

Residential Tenancy Branch

1. [Know Your Rights & Responsibilities](#)
2. [Resolving Issues](#)
3. [How to Apply for Dispute Resolution](#)
4. [Completing the Dispute Resolution Process](#)

E-SERVICE

→ [Application for Dispute Resolution](#)

RESOURCES

- [Legislation & Rules](#)
- [Publications](#)
- [Forms & Fees](#)
- [Residential Tenancy Video](#)
- [Search decisions made by Dispute Resolution Officers](#)
- [Deposit Interest Rates & Calculator](#)
- [News](#)
- [Administrative Penalties](#)
- [Contact Us](#)
- [Government Agent Offices](#)
- [More assistance for tenants and landlords](#)

B.C. Home > PSSG > Residential Tenancy Branch > Home

Ministry of Public Safety and Solicitor General

Residential Tenancy Branch



The Residential Tenancy Branch provides landlords and tenants with information and dispute resolution services. The information on this web site will help you understand your rights and responsibilities under British Columbia's Residential Tenancy Act and Manufactured Home Park Tenancy Act.

→ 1. Know Your Rights & Responsibilities

- ▶ [What everyone needs to know](#)
- ▶ [Security deposits, pet deposits and inspections](#)
- ▶ [Repairs and maintenance](#)
- ▶ [Ending a tenancy](#)
- ▶ [More](#)



→ 2. Resolving Issues

- ▶ [How landlords and tenants can resolve disputes themselves](#)
- ▶ [How the Residential Tenancy Branch can help](#)
- ▶ [The formal dispute resolution process](#)
- ▶ [More](#)



→ 3. How to Apply for Dispute Resolution

- ▶ [Where to find the Application for Dispute Resolution form](#)
- ▶ [Apply for Registered Landlord Designation](#)
- ▶ [Fees](#)
- ▶ [More](#)



→ 4. Completing the Dispute Resolution Process

- ▶ [What is Dispute Resolution?](#)
- ▶ [The Dispute Resolution hearing](#)
- ▶ [Dispute Resolution Officer's decisions and orders](#)
- ▶ [More](#)



RTB Latest News

December 10, 2018

Monetary Order Worksheet now available
[More](#)

September 30, 2010
Canadian Pest Management Association - New Non-Profit Stakeholder Agency
[More](#)

September 21, 2010
Correction to RTB form Notice of Rent Increase – Manufactured Home Site (auto-calculating version) RTB-11A
[More](#)

August 30, 2010
Allowable Rent Increases for 2011
[More](#)

May 12, 2010
Reminder - the Kelowna office has moved
[More](#)

February 8, 2010
Direct Request Process
[More](#)

January 4, 2010
Deposit Interest Rate for 2010
[More](#)

September 10, 2009
Tenants and Landlords - Watch a video and learn about your rights and responsibilities
[More](#)

August 31, 2009
Allowable Rent Increases for 2010
[More](#)

3. How to Apply for Dispute Resolution

RESOURCES

- [Legislation & Rules](#)
- [Publications](#)
- [Forms & Fees](#)
- [Residential Tenancy Video](#)
- [Search decisions made by Dispute Resolution Officers](#)

RTB Latest News

TRAC CONTACT INFO

- ▣ Website: www.tenants.bc.ca
- ▣ Infoline:
 - 604.255.0546
 - 1.800.665.1185 (toll free)



Facebook Page: Search “TRAC Tenant Resource & Advisory Centre”



www.twitter.com/TRAC_BC

Welfare Law for Settlement Workers, March 27, 2012

Welfare law resources:

- a) Welfare law 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

Except for the forms regulation, these are all available online at <http://www.eia.gov.bc.ca/ministry/leg.htm>

The *Employment and Assistance Forms Regulation* is available at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_315_2005

- b) Welfare Policy:

The Ministry of Social Development (MSD) has a public policy manual called the Online Resource. It is located at http://www.gov.bc.ca/meia/online_resource/
The best way to search the Online Resource is by using the index at http://www.gov.bc.ca/meia/online_resource/or_index/

Remember that policy is NOT law. This policy manual is only MSD's *interpretation* of the law.

- c) PovNet listserve on welfare issues:

This is a closed list-serve for welfare advocates maintained by PovNet. To subscribe, email penny@povnet.org with a request to be subscribed to the welfare lists, the name of the agency you work for, and a brief description of the work that you do.

- d) *Your Welfare Rights: A User's Guide to BC Employment and Assistance*

This is a booklet published by the Legal Services Society for people who are applying for, or receiving, income assistance, and their advocates. A new edition of *Your Welfare Rights* will be available in early April 2012. To order, see <http://www.lss.bc.ca/publications/index.php>

Your Welfare Rights is also online at <http://www.lss.bc.ca/publications/pub.php?pub=167>

7. WELFARE AND DISABILITY BENEFITS



Legal
Services
Society



Immigrant
PLEI
Consortium



Welfare Law for Settlement Workers, March 27, 2012

Welfare law resources:

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Child in the Home of a Relative Program Transition Regulation

Except for the forms regulation, these are all available online at <http://www.eia.gov.bc.ca/ministry/leg.htm>

The *Employment and Assistance Forms Regulation* is available at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_315_2005

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The best way to search the Online Resource is by using the index at http://www.gov.bc.ca/meia/online_resource/or_index/

Remember that policy is NOT law. This policy manual is only MSD's *interpretation* of the law.

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Your Welfare Rights is also online at <http://www.lss.bc.ca/publications/pub.php?pub=167>



Application Guide

Series funded by the Notary Foundation of BC and the Law Foundation of British Columbia.

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The BC Coalition of People with Disabilities (BCCPD) has prepared this guide to help you understand how to apply for the Canada Pension Plan disability benefit (CPP-D). The guide reviews the eligibility rules for CPP-D and provides a step-by-step explanation of how to complete the application form.

About CPP

The Canada Pension Plan (CPP) is administered by the federal government. The department responsible for CPP is Human Resources and Skills Development Canada (HRSDC) – Service Canada.

The CPP operates in every province, except Quebec, which has a similar program called the Quebec Pension Plan. The CPP benefits program includes:

- Disability benefits
- Benefits for children of people receiving CPP disability benefits
- Retirement pensions
- Death benefits
- Survivor benefits
- Benefits for children of deceased contributors

Payment Rates

Most people who work in Canada contribute to the CPP and so are eligible for a CPP retirement pension. The amount of CPP retirement benefits a person receives is based on the contributions on annual earnings they make above a minimum amount.

The CPP-D amount a person receives is based on a portion of his or her estimated retirement benefit and a flat rate amount. In 2011, for example, the monthly flat rate amount was \$433.37. CPP-D is linked to inflation so the rates change slightly each year. In 2011, the maximum monthly benefit amount was \$1,153.37. The average monthly benefit in 2010 was \$809.50.

For people who are receiving CPP disability benefits, the plan also provides a benefit for each child under the age of 18. In 2011, the amount was \$218.50. This benefit is for the child and is paid to the custodial parent. When a child turns 19 and continues to attend school on a full-time basis, the benefit will then be paid directly to him/her until he/she reaches the age of 26.



If you find that your monthly CPP-D rate is less than the provincial disability assistance rate (for example, the maximum amount for a single person with the Persons with Disabilities designation is \$906 a month), you may be eligible for a top-up from the provincial government. Contact your local Ministry of Social Development (MSD) office for more information about this.

Qualifying for CPP-D

To qualify for CPP-D, you must:

- Be under 65 years of age
- Have made the required amount of contributions
- Have a “severe and prolonged” disability as defined in the CPP legislation

Contributions

To qualify for CPP-D, you must have worked and contributed to CPP for a certain amount of time.

The Minimum Qualifying Period (MQP)

The MQP is the minimum period of time that you must have worked and contributed to CPP in the years immediately before you became disabled (as defined in the CPP legislation) in order to be eligible for CPP-D benefits.

The MQP is calculated by looking at the number of recent calendar years in which you have made contributions to CPP. In order to qualify for CPP-D, you must prove that you became disabled by the end of your MQP. The end of a person’s MQP is usually December 31st of his or her last qualifying year.

If you have worked only four years, then you must have made valid contributions to CPP in **each** of these four years in order to be eligible for CPP-D.

If you have worked more than four years, then in most cases it is necessary for you to have made valid contributions to CPP in at least **four out of the last six years** before you became disabled. This is known as the “four out of six year rule.” It applies to anyone who became disabled **on or after January 1st, 1998**.



But if HRSDC determines that you became disabled earlier, between **January 1, 1987 and December 31, 1998**, the rules are different. You must have worked and contributed to CPP in either:

- **two of the last three years** before you became disabled, or
- **five of the last ten years** before you became disabled.

Finally, if you are applying for CPP-D after February 29, 2008, and HRSDC determines that you became disabled **on or after December 1, 2006**, and if you have made contributions to CPP for 25 years or more, then you do not need to have contributions in four out of the last six years. You can qualify if you worked and contributed to CPP in just **three of the last six years** before you became disabled.

Note | HRSDC is currently limiting its application of this rule to people who became disabled on or after December 1, 2006, but there is a good argument the rule should apply to anyone who applies after February 29, 2008, regardless of when they became disabled.

Special Provisions

In some situations, or “special provisions”, you may be eligible for CPP-D even if your contributions do not meet the requirements outlined above. Please see Appendix A in this guide for details about these special provisions.

Other Issues Related to Contributions

- If you worked in Quebec, your Quebec Pension Plan contributions can be combined with your CPP contributions.
- If you have worked in another country that has a social security agreement with Canada, contributions to the social security program in that country may be used to help you meet the CPP contribution requirement.
- If you are separated or divorced (including a common-law relationship), you may claim part of your ex-partner’s CPP contributions, while you were living together. This is called “credit splitting” and these contributions or credits may help you qualify for CPP-D, even if you have not worked.



Definition of CPP-D

If you have made the required contributions, the next step is to show that you meet the definition of disability contained in the CPP legislation. To do this you must show that your disability is both **severe and prolonged**.

The CPP legislation defines “severe” as a condition that makes “a person incapable of regularly pursuing any substantially gainful occupation”.

“Prolonged” is defined “as such severe disability is likely to be long continued and of indefinite duration or is likely to result in death...”

Please see Appendix B in this guide for the exact wording of the definition.

The Application

Step 1 • Obtain and Review Your Application

You can get a CPP-D application form by contacting your local Service Canada office or by phoning the general information number: 1-800-277-9914.

Application forms can also be downloaded and printed from the Service Canada website at www.servicecanada.gc.ca.

The application includes a General Information Guide to help you fill out the form. We recommend you read the Guide before you begin.

- The **Application for CPP-D** asks for basic information about the applicant and any dependent children.
- **Questionnaire for Disability Benefits**. We will focus on this form in Step 2 of this guide.
- The **Authorization to Disclose Information/Consent for Medical Evaluation** allows HRSDC 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.
- The **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. Please see Appendix A in this guide for more information on this.



Step 2 • Filling Out the Questionnaire for CPP-D

Some questions in the Questionnaire for CPP-D are particularly important and may influence the outcome of your application. Most of the questions we review in this section give you the opportunity to describe the nature and extent of your disability.

The more thorough the information you provide, the better. We recommend that, when you fill in the application, you describe a day when the limitations associated with your disability are the most severe. In this way, HRSDC will have the best opportunity to see how your disability affects your day-to-day life and your ability to work.

The following questions on the questionnaire need to be carefully and thoroughly answered.

Question 5

The date you stopped work is entered here. This is important because benefits are payable from the fourth month after the applicant is considered to have become disabled. In this section, you must also explain why you stopped working. If a disability was a factor in ending your employment, it is important to explain that.

Questions 11 and 12

If you show that you plan to return to work, or that your doctor thinks you should, your application will probably be turned down. In order to qualify for CPP-D, you must show that you will not be able to work for the foreseeable future.

Question 16

This question asks when you felt you could no longer work because of your disability. The answer given here will often match with Question 5 which asks for your last day of work. If the two dates are different, it is important to explain why.

Question 18

This question asks you to describe your “illness or impairments”. Clearly state the nature of your disability or disabilities here.



Question 19

Before answering this question about why you can't work, it is helpful to complete Question 22 first. Once you have a good picture about your limitations, it is easier to explain why you can't work at any job and why an employer, if made aware of your limitations, would not hire you.

Question 20

If you have other "health-related conditions or impairments" which have not been described in Question 18, they should be explained thoroughly here. Even if your "primary" disability is not severe enough, according to the CPP definition, the combination of other limitations or impairments may make you unable to work.

Question 21

Another way to explain the extent of your disability is to describe how it has affected non-work related activities, like hobbies, sports or volunteer work, and other social activities. You should describe any limitations that your disability has created in these activities.

Question 22

This section gives you the opportunity to describe how many day-to-day activities are affected by your disability. There are a series of boxes with headings such as sitting, standing, sleeping, driving, etc., and you are asked to describe limitations in these areas.

Again, this section should be filled in describing a "bad" day to give the most realistic picture of your disability. For each activity, try to be as detailed as possible about what you **cannot** do, rather than what you can do.

Please see Appendix C in this guide for step-by-step assistance on how to answer this question.

Questions 23-25

These questions focus on the medical practitioners you have seen over the past two years. Include all your medical practitioners and any hospital stays you have had.

Questions 26-29

List all medications and treatments you have had. Treatment includes physiotherapy, chiropractic visits and counselling. Also list any assistive devices that you use.



Question 30

We recommend that you indicate that you would consider vocational rehabilitation, if your condition improves.

TIP | Remember to sign the questionnaire and put your Social Insurance Number (SIN) on every page.

Step 3 • Medical Report

As far as HRSDC is concerned, the Medical Report is the most important part of the application. Your doctor must provide details about your medical condition(s), history, prognosis and treatment.

You should ask the doctor who knows the most about your disability to complete the Medical Report. We recommend that you speak to this doctor, before giving them the forms, to see if they support your application. It is a good idea to tell the doctor how your condition affects your daily life.

Remember, if you have a new doctor who does not know you very well, they may not be able to provide enough detail to HRSDC. It may be a good idea to schedule a couple of visits before you ask the doctor to complete the Medical Report.

HRSDC suggests that your doctor submit any reports from specialists you have seen. Speak to your doctor about letters and reports in your file.

TIP | Remember, in order to qualify for CPP-D, your condition must be both severe and prolonged.

Some Tips for Talking With Your Doctor

- Make an appointment to talk about your CPP-D application. When you visit your doctor, it's a good idea to show your doctor the sample letter provided in Appendix D in this guide or use the letter as a model for writing your own.
- Ask your doctor whether or not they feel that your disability creates a severe barrier to employment, not only now, but in the future.
- Ask your doctor how long your disability is going to last. Your doctor does not have to indicate that you will be disabled for the rest of your life but he/she should indicate that your disability will not improve for the foreseeable future.



If your doctor is not supportive, consult an advocate.

Who Should Fill Out the Medical Report?

The General Practitioner (GP)

The advantage of using information from a GP is that they are probably the doctor who knows you the best. Also, if you have more than one disabling condition, the GP may have the best understanding of how all your disabilities affect you and your ability to work.

The Specialist

The advantage of getting information from a specialist (e.g. psychiatrist, neurologist or surgeon) is that they usually have more in-depth knowledge of a specific condition. Also, the opinion of a specialist may be given more weight by HRSDC than the opinion of a GP.

On the other hand, specialists will usually only provide information on the condition that they are treating and may not know how all your disabilities interact and impact your life. Also, because they may only have seen you once or twice, the specialist might not know you as well as your GP.

Your medical practitioners have the choice of returning the completed Medical Report to you or submitting it directly to HRSDC. We suggest that you ask your doctor to return the Medical Report to you so that you can send it to HRSDC with your application. This will help avoid confusion and possible delays in processing your application.

Step 4 • Other Supporting Documentation

You can include additional documentation with your application. For example, there may be medical letters and reports which provide useful information about your disability. However, review this documentation carefully. It will not help your application if the medical reports are out of date or if a doctor indicates that you should be able to return to work in the near future.

Other health professionals can be asked to provide support letters (e.g. a chiropractor, physiotherapist or psychologist). Information that describes how your disability affects your daily life and your ability to work can be very useful.

Family and friends can also be asked to provide letters, although this kind of information is often considered of secondary importance by HRSDC.



Step 5 • Putting Your Application Together

A complete application will include:

- The Application for Disability Benefits
- The Questionnaire for Disability Benefits
- The Authorization to Disclose Information/Consent for Medical Evaluation
- The Medical Report
- The Child-rearing Dropout Provision form (if relevant)
- Any other supporting documentation you have obtained

Step 6 • Submitting Your Application to HRSDC

The General Information Guide included with your application outlines the steps you need to take to ensure that HRSDC receives all the necessary information.

A brief overview

If you are mailing your application:

- Indicate your Social Insurance Number on all the pages.
- Sign and date all forms.
- Enclose the Medical Report from your physician.
- If your children do not have a social insurance number, enclose proof of birth (certified copies are acceptable).

TIP | If you are mailing your application, it is a good idea to send it by registered mail. Be sure to keep a photocopy for your records.

If you are submitting your application in person:

- Go to your local Service Canada office.
- If you have children and they do not have a social insurance number, bring proof of their birth to the appointment with you.
- Ask the staff person how long it will take to receive a response.

Review page 4 of the General Information Guide to ensure that you have the right documents.

An adjudicator will usually phone you to confirm that your application has been received and to answer any questions you may have. Your adjudicator may also phone you if they need more information.



If your application is approved

Congratulations! You will receive your first payment about 4 to 6 weeks after your application is approved. Your first payment will consist of a retroactive lump sum and a monthly benefit payment cheque. Your lump-sum amount starts accumulating four months after HRSDC has determined you were disabled under the CPP rules. Remember CPP is taxable income. Phone 1-800-277-9914 for more information.

If your application is not approved

If your application is denied, you can appeal the decision within 90 days. Please see our CPP-D publication, *Appeal Guide: Part One–The Reconsideration Request*.



Appendix A | Special Provisions (CPP Contributions)

If your contributions into CPP do not meet the requirements outlined in the “Qualifying for CPP-D” section of this guide, you may still be eligible if one of the special provisions below describes your situation.

Late Applicant Provision

This may be used by people who did not apply for CPP-D as soon as they became disabled. When people wait too long to apply, the contribution rules may mean they are ineligible for benefits.

When someone applying for CPP-D has not paid enough into CPP under the current contribution requirements, HRSDC automatically looks at his or her contributions to see when they last paid enough into CPP to qualify for benefits. For example, if someone has enough contributions between 1987 and 1997 (but not after that date) the rules that would apply to them would be the ones that were in place between 1987 and 1997.

Under the Late Applicant Provision, an applicant must prove they were disabled by the MQP date and prove that the disability has been continuous from that date until the present.

Child Rearing Drop-Out Provision

Parents, who have taken time out of work to raise children under the age of seven and were in receipt of the family allowance or child tax credit, may apply for this provision. If the parent had little or no earnings during these years, they can be excluded from the rule that is used to calculate their contributions. Although the parent would still need valid contributions, this provision could extend his or her MQP.

Incapacity Provision

When a person is unable to apply for CPP-D benefits because of the severity of their physical or mental condition, this provision enables them to apply at a later date. You still need to meet the MQP requirements, but this provision could help you to receive more retroactive benefits.



Automatic Reinstatement Provision

When a person who was receiving CPP-D has returned to work and then finds that she cannot continue because of the same or related disability, she can apply to have her CPP-D restarted. This is only possible if you stop working within two years of when you came off CPP-D. You must tell HRSDC within one year from the date you stopped working that you need to have your benefits reinstated.

Automatic Reinstatement means you do not have to go through the same process that you did when you first applied for CPP-D. However, you have to fill out an application for reinstatement and you need a letter from your doctor saying that the same condition prevents you from working. Once HRSDC accepts an application for reinstatement, CPP-D benefits begin the month after the person is unable to work. This rule is for people who were on CPP-D, returned to work and then stopped receiving benefits as of January 31st, 2005 or later.

Fast-track Reapplication Provision

This provision is only available for people who return to work after receiving CPP-D, but stop again within five years because of the same or related disability. In this case, you must have made valid contributions in each year since you started working. After five years, the standard application process and four out of six year rule apply.

Other Issues Related to Contributions

- If you worked in Quebec, your Quebec Pension Plan contributions can be combined with your CPP contributions.
- If you have worked in another country that has a social security agreement with Canada, contributions to the social security program in that country may be used to help you meet the CPP contribution requirement.
- If you are separated or divorced (including a common law relationship), you may claim part of your ex-partner's CPP contributions during the time that you were living together. This is called "credit splitting" and these contributions or credits may help you qualify for CPP-D, even if you have not worked.



Appendix B | CPP Legislation Definition of Disability

Section 42(2) of the Canada Pension Plan defines disability. It says that:

- (a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a **severe** and **prolonged** mental or physical disability, and for the purposes of this paragraph,
 - i) a disability is **severe** only if by reason thereof the person in respect of whom the determination is made is **incapable regularly of pursuing any substantially gainful occupation**, and
 - ii) a disability is **prolonged** only if it is determined in prescribed manner that the disability is likely to be **long continued** and of **indefinite duration** or is likely to result in death; and
- (b) a person shall be deemed to have become or to have ceased to be disabled at such time as is determined in prescribed manner to be the time when he became or ceased to be, as the case may be, disabled, but in no case shall a person be deemed to have become disabled earlier than fifteen months before the time of making any application in respect of which the determination is made.

(R.S.C. 1985, c.30 (2nd Supp.), s. 2(2))



Appendix C | Question 22

Question 22 is a functional assessment to evaluate your physical and cognitive abilities. It is very important to answer each part of this question in as much detail as possible. Most of us want to be seen in our best light. However, please remember to provide a realistic picture of your disability by describing a “bad day”.

As you complete the various sections of Question 22, it may help you to use the questions below as a guide.

Sitting/standing

- How long can you sit comfortably? What happens to you when you stay in one position too long? Does it cause pain? Where? Do you need to use any type of special back support or foot rest? Do you need to sit in a specific type of chair? What do you have to do once discomfort sets in?
- How long can you stand in one place? Do you need support to stand? Does standing cause you pain? Where? What happens if you stand for too long?

Walking

- How far can you walk and how long does it take you? Do you need to stop and rest? What happens if you walk too far? Can you walk up and down hills or stairs, or are you limited to flat ground? Do you lose your balance? Does walking cause pain? Where?

Lifting/carrying

- How much weight can you pick up? How far can you carry it? What happens to you when you carry something? Does it cause pain? Where?

Reaching

- Can you reach up for things? Can you reach across for things (e.g. to the back of a cabinet)? What happens when you try? Does it cause pain? Where? Does reaching affect your balance?



Bending

- Can you bend over to pick an object off the floor? Does it cause pain or cause you to lose your balance? Do you get dizzy? Can you only bend from a seated position? Does it cause pain? Where? Do you need to hold onto a firm surface when you bend over?

Personal needs

- Do you need help to feed yourself? Do you have trouble swallowing? Do you have any other problems with eating? Do you need assistance to get in and out of the shower or bath? Do you need special devices (bath seats, grab bars, etc.)? Can you reach up to wash your own hair? Do you need help getting dressed?

Bowel and bladder habits

- Do you need to get up at night to use the washroom? Are your outings away from home restricted by the need to be near a washroom? Do you have any other problems in this regard?

Household maintenance

- Are you able to do your own cooking? Do you have any restrictions, such as simple meals only, because you aren't able to stand very long? Do you need help shopping—reaching items from store shelves, carrying bags, putting groceries away, etc.? Can you do your own cleaning—making the bed, laundry, using strong smelling cleansers, washing floors, vacuuming, etc.? What happens when you do? Does it take much longer than it would a person without your medical conditions?

Seeing/hearing

- Do you have any problems with vision or hearing—blurred vision, poor night vision, ringing in your ears, etc.?

Speaking

- Do you have any problems with your voice? Do you sometimes have to struggle to find the words you want? Do the wrong words come out?



Remembering

- Do you forget things easily? What kinds of things (appointments, today's date, your own phone number or other important items)? Do you start something, leave the room and completely forget what you were doing? Do you forget routine things, like taking medications?

Concentrating

- Do you lose your place in a conversation or when reading a book? Can you follow the plot of a TV show or movie? Do you remember what you have read or watched?

Sleeping

- How well do you sleep at night? Do you lie awake for a long time or fall right to sleep and waken several times a night? Do you need medication to help you sleep? Do you have a hard time finding a comfortable position because of pain? Do you feel rested and refreshed when you get up in the morning?

Breathing

- Do you have any breathing problems such as shortness of breath? Does extreme heat or cold affect your breathing? Do you stay inside when the air quality index is high? Do you lose your breath when walking along the street or climbing stairs?

Driving a car

- Are you able to drive for only short distances? Does driving cause you pain anywhere? Have you had to stop driving because of your condition? (Your answer to this question should be consistent with your response to the sitting/standing section of Question 22).

Using public transit

- Are you able to use the buses and/or transit system? What happens if you do? Do crowds of people or the starting or stopping motions bother you? Do you need to have a seat in order to use transit?



Appendix D | Sample Letter for Your Doctor

Date

Name

Return address

Dear Doctor _____:

I am writing to ask you to complete a Medical Report for my application for Canada Pension Plan disability benefits. I am enclosing the Medical Report form.

In order to qualify for CPP disability benefits, I must provide medical evidence to show that:

- ever since I last worked (date _____), my disabilities have prevented me from regularly maintaining “substantially gainful” employment in any job (not just my previous job); and that
- my condition is not likely to improve for the foreseeable future.

If you are able to complete the Medical Report for me, please include:

- A list of all my medical conditions and symptoms (Questions 3-4)
- All relevant medical reports, letters and test results (Question 6A).
- A description of all the functional limitations arising from my impairment (Question 6B).
- A list of all the medications and treatments I have tried, and an indication of whether they have helped or not (Questions 8-9).
- A realistic (rather than an optimistic) prognosis (Question 10).
- Comments on how my impairment regularly prevents me from pursuing and maintaining gainful employment (Question 11).
- Comments on whether I could realistically be retrained for other types of work (Question 11).

I would be happy to discuss my application with you. If possible, please show me the form when you have completed it, so that we can go over it together before it is submitted. Thank you for your help with my application.

Sincerely,

[Name & Signature]



Appendix E | Contacts and Resources

Human Resources and Skills Development Canada (HRSDC) - Service Canada

> For applications and Reconsideration Requests

The mailing address for Service Canada depends on which province or territory you live. Contact Service Canada by phone to find out which mailing address you should use. For BC residents, the contact information is:

PO Box 1177 Victoria, BC V8W 2V2

Ph: 1-800-277-9914 (English)

Ph: 1-800-277-9915 (French)

TTY: 1-800-255-4786

Website: <http://www.servicecanada.gc.ca/>

Office of the Commissioner of Review Tribunals (OCRT)

> For Review Tribunal requests

When you mail the OCRT about your file, remember to include your Social Insurance Number (SIN) or Appeal Number.

P.O. Box 8250, Station "T"

Ottawa, Ontario

K1G 5S5

Ph: 1-800-363-0076 (Toll free)

Ph: 1-613-946-0320 (from outside Canada)

Fax: 1-866-263-7918 (Toll free)

Email: info@ocrt-bctr.gc.ca. For security reasons, do not include your Social Insurance Number (SIN) in any electronic correspondence.

Website: http://www.ocrt-bctr.gc.ca/index_e.html

Notice of Appeal Form: http://www.ocrt-bctr.gc.ca/forms/notapp_e.html.

The OCRT has produced an excellent video called "Your Best Shot". It is about appealing to a Review Tribunal. The Catalogue Number is HP24-5/2003-V. To have this video mailed to you, phone the OCRT at the number above.

The OCRT also has a "Book of Authorities" on its website. This resource has a detailed index of decisions by the Courts and Pension Appeals Board that might help your appeal. Just click "Decisions" on the left side of their home page.



Pension Appeals Board (PAB)

If you lose at the Review Tribunal, you may want to appeal to the PAB. The PAB posts a link to all of its decisions on its website. Unfortunately, the decisions are not indexed. You might want to read a few decisions to get an idea about how appeals are decided and what decision makers look for.

P.O. Box 8567
Station "T"
Ottawa, Ontario
K1G 3H9
Ph: 1-888-640-8001
Fax: (613) 995-6834
Email: info@pab-cap.gc.ca
Website: <http://www.pab-cap.gc.ca>

The CPP Series is available at: www.bccpd.bc.ca/library.



**Prepared by BC Coalition of People with Disabilities'
CPP Disability Benefits Advocacy Program.**

204-456 W. Broadway, Vancouver, BC V5Y 1R3 | tel 604.872.1278
fax 604.875.9227 | Toll Free 1.800.663.1278

Information in this guide is based on the legislation that was current at the time of writing. The legislation and policy may be subject to change. Please check the date on this guide.



The Persons with Disabilities (PWD) Application

This Help Sheet is funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.

The BC Coalition of People with Disabilities has prepared this Help Sheet to help you complete the Ministry of Social Development's (MSD) designation application form for the Persons with Disabilities (PWD) benefit.

This Help Sheet provides you with easy to follow directions that take you through the application form step-by-step. It includes letters to give to your doctor and assessor (a health care professional who must describe your disability on the form). There is also a checklist to help you identify the daily living activities you need assistance with.

Before you do anything, please read this guide and the designation application carefully. If you cannot understand the guide or the form, ask a friend, family member or advocate to help you.

Getting started

If you already receive income assistance, contact your local MSD office and ask for a PWD application. If you do not yet receive assistance, contact our office for information or see our Help Sheet 12.

What you will get with PWD

- You will receive up to \$906 a month if you are a single person without dependants
- You will not be expected to look for work
- You will be able to keep up to \$500 a month in earned income



Advocacy Access is a program of BC Coalition of People with Disabilities

Ask about other Help Sheets in this series. All our publications are available at www.bccpd.bc.ca. Information in this Help Sheet is based on the legislation that was current at the time of writing. The legislation and policy may be subject to change. Please check the date on this Help Sheet.



- You will be eligible for a range of health supplements
- You will be eligible for an annual bus pass (\$45 per year)

What does “disability” mean?

This is a summary of the definition of a person with a disability. To be eligible for PWD:

- you must be at least 18 years of age
- your disability must be severe and be expected to last for at least two years, and
- it must directly and significantly restrict your ability to perform daily living activities (explained on page 3).

Also, because of your disability, you need:

- significant help from another person, **or**
- help from an assistive device (e.g. a wheelchair), **or**
- help from an assistance animal

The PWD Designation Application

The designation application form for PWD has three sections:

Section One: is the section you fill out

Section Two: is the section your doctor fills out

Section Three: is the section an “assessor” fills out. An assessor can be:

- your doctor (your doctor can fill out Sections Two and Three), or
- a registered psychologist, or
- a registered nurse or registered psychiatric nurse, or
- an occupational therapist, or
- a physical therapist, or
- a social worker, or
- chiropractor, or
- nurse practitioner.

You are asked to fill out the sections of the designation application form in order. In other words, Section One must be completed first, then Section Two, and then Section Three.



Section One (for you to fill out)

When you look at Section One (page 3 of the application) you will see that it says you can have someone help you to fill it out. You may find it helpful to have a friend, family member or advocate help you complete it.

A - Personal Information

Complete this part by filling out each box with your name, date of birth, address etc. If you do not have a phone remember to put “no phone.”

B - Disabling Condition (your disability)

When you look at Section One of the application form, you will see it says “you are not required to complete this section.” **However, we strongly advise that you do complete it. The more information that you provide the Ministry about your disability, the better it is.**

Because you have to complete Section One first, the doctor and assessor may use it as a guide when they fill out their sections: Sections Two and Three. So it is important to include as much information as you can about your disability when you answer Question B.

Before you answer the questions in Section One, it is a good idea to do a first draft on a separate piece of paper. You may want to have someone else, like an advocate or friend, look at your first draft to help make sure that you have remembered everything that you want to include. When you are ready, write your answer on the application form.

B (1.) “Please describe your disability.”

It is important that you clearly list and explain all your disabilities. For example, you may have Hepatitis C, and depression, and anxiety, and learning disabilities. Again, the more information you can include the better it is.

B (2.) “How does your disability affect your life and your ability to take care of yourself?”

Think about all the ways that your disability makes it difficult or impossible to do the things you need to do on a regular basis. The Ministry lists the following as daily living activities:

- performing personal hygiene and self care (for example, bathing)
- preparing meals
- taking medications
- keeping the home clean
- shopping for personal needs



- moving about indoors and outdoors
- using public or personal transportation facilities (for example, a bus)
- managing personal finances

For people with mental health disabilities daily living activities also include:

- making decisions about personal care, activities, or finances
- relating to, communicating with, or interacting with others effectively (in other words, getting along with other people).

Before you answer the question “how does your disability affect your life and your ability to take care of yourself?,” look at the checklist attached to this Help Sheet. Go through it and mark things that you cannot do or find it hard to do on your bad days. Then, using the checklist as a guide, write out the answer to the question. If you need help to complete any of the activities on the list, remember to include this in your answer, **even if you are not actually getting the help you need.**

You should think about any ongoing help you get from friends, family, support groups, mental health teams, or other forms of counselling. Also consider any assistive devices you may need such as canes, splints or grab bars.

Another issue to think about is how long it takes you to complete one of the activities above when no help is available. For example, it may take you 2 or 3 times longer than other people to wash your dishes. Remember to include these examples when you answer question B(2).

C - Declaration and Notification

When you have completed Section One remember to sign your name and to date your form. You are also asked to have your signature witnessed, but this is not mandatory.

If someone is unable to sign the PWD designation application due to mental incapability, it may be signed by a guardian or someone with legal authority.

Section Two (for your doctor to fill out)

Section Two (page 6 of the application), is the part that your doctor must fill out. It begins with some directions and information for your doctor. He or she must fill out the part of Section Two that begins on page 8 and says “to be completed by the applicant’s physician only.” If you have more than one doctor, ask the doctor who knows you best to fill out the form.

Because Section Two is to be completed by your doctor we are not going to go through each question. We will give you a few general ideas that we think will help.

**Make an appointment with your doctor to discuss the form**

Section Two has many questions for your doctor to answer. Your doctor's ability to answer them correctly will depend on how well he or she knows you. Meet with your doctor to discuss the form and go through the questions before he or she fills it out. This is particularly important if you do not have a family doctor and you go to a walk-in clinic.

What to take with you when you go to see your doctor:

- Your PWD designation application form with your section completed
- You may want to photocopy and complete Section Two and then show it to your doctor to see if they think it is accurate. If your doctor agrees with what you have written they may want to use it as a guide. It will make their job easier and help them understand how your disability affects you on a daily basis
- Page 7 of this guide: "letter to doctors"
- A copy of your completed checklist

Section Three (for your assessor or doctor to fill out)

Section Three (page 13 of the application) is the part that your assessor or doctor must fill out. It begins with some directions and information for your assessor or doctor.

Take a look at the list of assessors who can fill out Section Three listed on page 2 of this guide. Your assessor must be a registered professional. For example, if a social worker is filling out Section Three for you, he or she must be working as a social worker for the provincial government or, if they are in private practice, registered under the Social Workers Act. An Employment and Assistance worker (EAW) cannot act as an assessor. Remember, if you do not have an assessor, your doctor can complete Section Three.

What to take with you when you go to see your assessor:

- Your PWD designation application form with your section and your doctor's section completed
- You may want to photocopy the form and this time fill out Section Three. Show your completed copy of Section Three to your assessor
- Page 8 of this guide: "letter to assessors"
- A copy of your completed checklist



Application Checklist and submitting your application

When your PWD application is completed, look at the Applicant Checklist on page 23 of the form. Make sure that you have included everything. If you want the Health Assistance Branch to confirm it has received your application, put your name and address in the space provided under the client checklist. **Do not forget to make a photocopy of your completed form.**

When you are sure that everything is complete, mail your application by putting it in the envelope included with the form. No postage is required.

Frequently Asked Questions

Below are answers to questions that we are frequently asked.

Q: What do I do if I don't have a doctor?

A: We know that finding a doctor can be difficult but you must have a doctor complete Section Two of the PWD application. Once you have found a doctor, it is a good idea to see him or her a few times before you ask to have the form completed. It is important that they know you.

Q: Do I have to pay to have my doctor or assessor to fill out the application?

A: No, the provincial government pays doctors and assessors to do this. Health professionals should not charge you any extra fees.

Q: What do I do if I do not know any health professionals who can be my assessor?

A: The Ministry will accept only certain professionals as assessors on your PWD designation application. There is a list of accepted professionals in the application. Ask your doctor to complete the assessor section if you do not have another health professional who knows you.

Q: What if I am turned down for PWD ?

A: You have the right to appeal if you are turned down for PWD. You have 20 business days from the day you receive the letter telling you that your application has been rejected to give the Ministry your reconsideration request. You must get the reconsideration request form from a MSD office.

We recommend that you phone your local MSD office as soon as you receive the PWD denial letter. Within about 24 hours, the office should put together a reconsideration package that includes the reconsideration request form, a copy of your application and any other information that was sent in with your PWD application.



Remember to include any supporting letters with the reconsideration request before the 20 business day deadline. For more information on appealing, please see our Help Sheets 5A and 5B.

If you miss the 20 business day deadline (or are worried you cannot meet the deadline), ask MSD for an extension. You also have the right to re-apply if you have new information that you can add about your disability. If you need assistance with your appeal, you should contact your local advocacy group.

Q: Are children eligible for PWD ?

A: No. You have to be 18 years old to receive PWD benefits. You can begin the PWD application process up to 6 months before your 18th birthday.

Q: Is the PWD designation permanent? Will the Ministry ask me to reapply for PWD in the future?

A: Although the PWD designation is not a permanent designation, the current MSD practise is not to ask people to reapply for PWD. In other words, you will not be asked to complete another 23-page application.



Letter to doctors

Dear Doctor:

Your patient is applying for the PWD (disability) designation and needs your assistance with the application. Section Two is to be completed by the applicant's physician. You may also be asked to complete Section Three – the Assessor Report. To assist you and your patient in completing this form we have highlighted below the key components of the PWD eligibility requirements. We hope you will have the opportunity to discuss the application with your patient before you fill it in.

- The applicant's medical condition(s) must be deemed to be a **severe physical or mental impairment**. It should be noted that if your patient has a number of medical conditions they can combine to severely impair the person's functioning. It is helpful if you assess the full impact (especially on bad days) of your patient's disability and to use the word "severe" to describe the level of impairment.
- The impairment must be expected to continue for at least **2 years**.
- The impairment must **significantly restrict your patient's ability to perform daily living activities** either continuously or periodically for extended periods. You are asked to assess your patient's functional skills (such as walking, climbing stairs, lifting and carrying, mental functions) and their ability to manage daily living activities. Daily living activities include personal care, meal preparation, management of medications, housework, shopping, mobility, use of transportation, management of finances and social functioning. Please indicate all the tasks that your patient has difficulty performing. If your patient is restricted periodically, it is important to note the frequency and duration of the limitations.
- As a result of the above limitations, **significant help from other people or assistive devices** must be required. Support people may include family, friends, health professionals, and community agencies. It should be noted when assistance is needed but not available – in these circumstances the applicant may struggle and take longer than normal to complete tasks.

The above outline describes the key PWD eligibility criteria. Your patient should be able to provide you with more details about how their disability affects their daily functioning. May we suggest that you return the application form to your patient once you have completed your section(s).

Thank you for your assistance and co-operation.



Letter to assessors

Dear Health Professional:

Your patient is applying for the PWD (disability) designation and needs your assistance with the application. Section Three—the Assessor Report—is to be completed by the applicant’s physician or a qualified assessor. (The list of licensed professionals who may complete the assessor report is on page 14 of the application form.) To assist you and your patient/client in completing this form we have highlighted below the key components of the PWD eligibility requirements. We hope you will have the opportunity to discuss the application with your patient/client before you fill it in.

- In order to qualify for the PWD designation the applicant must have a severe physical or mental impairment that significantly restricts their ability to perform daily living activities either continuously or periodically for extended periods, and as a result of this disability, significant help from others or assistive devices must be shown to be needed.
- As the assessor, you are asked to assess the applicant’s physical and mental ability in relation to their ability to perform daily living activities. Daily living activities include personal care, housework, shopping, meal preparation, mobility in and outside of the home, managing finances and medication, using transportation, and social functioning.
- The form is designed so that the assessor has to measure the applicant’s ability to perform daily tasks on the basis of whether they need help from other people, an assistive device, or whether they take much longer to do things on their own. A person can be deemed to require help even if it is not available to them. Someone with a mental health condition, for example, may be marginalized and isolated but refuse help because of their poor social functioning – such a person can be deemed to require ongoing assistance.
- If your client has “periodic” restrictions it is important to note the frequency and duration of their limitations. If they are struggling to do things on their own, it is helpful to estimate how much longer than normal it may take them to complete a task. In situations where symptoms may vary from day to day be sure to explain the impact of “bad days” on your client’s overall functioning.

The above outline describes the key PWD eligibility criteria. Your client/patient should be able to provide you with more details about how their disability affects their daily functioning. May we suggest that you return the application form to your patient once you have completed your section.

Thank you for your assistance and co-operation.



Checklist of Daily Living Activities

Persons with Disabilities (PWD) Designation Application

This checklist is to help applicants complete Section One of the PWD designation application. The rules say that to get disability benefits you must show that you need help with daily living activities. The checklist will help you understand what daily living activities the Ministry thinks are important and help you identify whether you have limitations in these areas. You can also show it to your doctor or assessor to help them understand what daily living activities you need help with.

When going through the checklist, you should also ask yourself the following questions:

- Which activities do I have problems doing at least some of the time?
- If I have problems part of the time, how often do these problems happen?
- If there is no one to help me, what help do I need?
- If there is no help and I must do things on my own, how much longer than normal does it take to do it?

There are two sections at the end of the checklist to help you think about the people or assistive devices you may be getting or need help from. If you need help from people or assistive devices that are not on the list, jot this down in the “Other” space.

My disability makes it difficult for me to do the following activities:

1. Personal care routines:

- o getting in and out of the bathtub
- o standing in the shower
- o reaching up and down to wash my body or hair
- o shaving, brushing my teeth, hair and washing my face
- o remembering or having the motivation to do at least basic hygiene daily
- o getting ready for bed
- o getting in or out of bed
- o dressing

2. Preparing and eating meals:

- o standing at the sink, counter and stove
- o moving food from shelves to counters to stoves and ovens
- o chopping, peeling, mixing or stirring food
- o opening cans and jars, opening and resealing bags
- o understanding recipes and labels
- o remembering to take food off the stove or out of the oven
- o remembering to throw out expired or “gone off” food
- o chewing and swallowing
- o remembering to eat regular meals and healthy foods



3. Taking medications:

- o remembering to take the right medications at the right doses at the right times
- o getting prescriptions filled and remembering to get them re-filled

4. Keeping the home clean:

- o doing dishes and putting them away, cleaning counters and sink, cleaning floors
- o cleaning my bathtub, toilet, bathroom sink and floor
- o vacuuming, dusting, cleaning windows
- o carrying, doing and folding my laundry and putting it away
- o remembering or having motivation to keep my home clean

5. Shopping for personal needs:

- o walking around stores, standing long enough to make good choices from the shelves and managing cash register line-ups
- o picking out items from shelves, loading them in the basket, taking them out of the basket and putting them onto the cashier's desk
- o taking the groceries home (carrying them to the bus, on the bus, to my home, or loading them into and out of my car)
- o not getting anxious, scared, frustrated or angry in stores because of crowds, the light, sound and motion or long line-ups

6. Moving about indoors and outdoors:

Indoors

- o going up and down stairs or ramps
- o getting in and out of furniture including my bed
- o opening and closing doors and drawers
- o walking from room to room
- o bending to pick things off the floor
- o kneeling and getting up from a kneeling position

Outdoors

- o walking on flat ground
- o walking on uneven ground
- o going up or down stairs or ramps
- o going out without being anxious or scared

7. Using public or personal transportation:

- o walking to and standing at the bus stop
- o getting on and off the bus or train
- o standing, getting in and out of my seat and remembering to get off at my stop
- o understanding bus or train schedules



8. Managing personal finances:

- understanding bills and remembering to pay them on time including the rent
- budgeting for groceries and other things I need
- stopping myself from buying things I don't need

Because of my mental health disability I:

- experience a lot of anxiety, agitation, stress, or depression
- experience a lot of confusion
- have difficulty making decisions and planning ahead
- have difficulty doing the most important things first and finishing tasks
- have difficulty making rational (good) choices
- have difficulty remembering information and remembering appointments
- experience sensitivity to light, sound and motion
- have difficulty socializing without becoming anxious and scared
- have difficulty interacting with friends, family, and/or my partner
- have difficulty interacting with strangers in public
- have difficulty establishing and maintaining relationships with people
- have difficulty asking for help when I need it
- experience difficulty being able to deal with unexpected situations

Communication (Note: English language issues are not relevant here)

- have difficulty making myself understood by others when I speak or write
- have difficulty understanding what others say to me
- have difficulty understanding what I read
- have difficulty hearing what others say to me in person or on the phone
- feel anxious or scared when I speak to or listen to other people

I get or need help from:

- community agencies
- counsellors
- family members
- friends
- health professionals
- home support workers
- roommates
- support groups
- volunteers
- other _____



I get or need help from the following assistive devices:

- ☐ adaptive housing
- ☐ bathing aids
- ☐ braces
- ☐ breathing device
- ☐ cane
- ☐ commode
- ☐ communication devices
- ☐ crutches
- ☐ feeding device
- ☐ hospital bed
- ☐ interpretive services
- ☐ lifting device
- ☐ ostomy or urological appliances
- ☐ prosthesis
- ☐ scooter
- ☐ splints
- ☐ orthotics
- ☐ toileting aids
- ☐ walker
- ☐ wheelchair
- ☐ other_____

I need or have an assistance animal

- ☐ yes



**Prepared by Advocacy Access
a program of BC Coalition of People with Disabilities**

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tty 604.875.8835 • toll free 1.800.663.1278 • www.bccpd.bc.ca

This Help Sheet is funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.



Checklist for the Persons with Disabilities (PWD) Benefit

This Help Sheet is funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.

These are some of the programs and benefits you **may be** eligible for if you receive the Persons With Disabilities (PWD) benefit from the Ministry of Social Development (MSD).

See **MSD Programs** on page 2 for benefits or supplements available through the Ministry. Benefits from other sources are listed under **Benefits Through Other Organizations**, on page 5.

Helpful tips

Apply for a Bus Pass

One of the first things you should do once you have been approved for PWD is to apply for the Annual Bus Pass. Phone the Bus Pass Program at 1-866-866-0800 and ask for an application form to be mailed to you. When you receive it, you can pay the \$45 fee at your local bank and the Bus Pass Program will mail you the pass.

Toll-Free Calling

To avoid long distance charges, you can call MSD free from anywhere in BC at 1-866-866-0800.

You can also call Service BC when you phone a government office in Victoria. They will connect you and you will not be charged long distance rates. Call Service BC at 604-660-2421 or 1-800-663-7867 and ask for the office you want. If you do not know the phone number you need, Service BC will also be able to help you with this. TTY calls from Vancouver: 604-775-0303. TTY calls from elsewhere in BC: 1-800-661-8773.



Advocacy Access is a program of BC Coalition of People with Disabilities

Ask about other Help Sheets in this series. All our publications are available at www.bccpd.bc.ca. Information in this Help Sheet is based on the legislation that was current at the time of writing. The legislation and policy may be subject to change. Please check the date on this Help Sheet.



MSD Programs

The following programs and benefits are available through MSD.

Benefits you are automatically eligible for when you have PWD

- ☐ **Dental coverage, including denture services, of up to \$1,000 over a 2-year period.**
This \$1,000 limit can only be exceeded in exceptional circumstances such as in the emergency relief of pain. Dentists must get approval before they do any dental work.
- ☐ **Glasses** - lenses and frames every 3 years
- ☐ The MSD pays up to \$44.83 for an **optometrist's exam** and \$48.90 for an **ophthalmologist's exam**, every 2 years.
- ☐ **Medical Services Plan (MSP) coverage**
- ☐ **Prescription drugs**
- ☐ **Annual bus pass**

Benefits you may be eligible for when you have PWD

Health Benefits

There are several health benefits you may be eligible for once you receive PWD, if you meet the requirements. Contact your local MSD office for information on the items below to find out how to apply.

- ☐ **Diet allowances** ranging from \$10 - \$50 per month for specific diagnoses only.
MSD does not have a standard application form. You can ask your doctor to write a note listing your condition and the kind of special diet you need. This is a renewable benefit.
- ☐ **Monthly Nutritional Supplement benefit (MNS)** of up to \$205 per month for people with nutritional needs because of a chronic health condition. This benefit is divided into a vitamin amount (\$40) and a nutritional amount (\$165). If you receive the vitamin amount, you can also receive the diet allowance. However, if you receive the nutritional amount, you are not eligible for the diet allowance. To obtain an MNS application, contact your MSD office.



☐ **Disposable medical or surgical supplies**

For example, personal self-care items.

☐ **Extra chiropractic, massage therapy, physiotherapy and podiatry visits.**

☐ **Medical equipment and devices, including mobility aids**

For example, hearing aids, wheelchairs, canes, walkers, crutches, custom-made foot wear.

☐ **Medical transportation**

Funding for transportation to medical appointments. This must be approved in advance by MSD.

☐ **Transportation allowance** to and from residential alcohol and drug treatment facilities.

Also see Help Sheet 7: Health Supplements for People with Disabilities.

Employment Income

☐ **Earnings exemption**

You may earn up to \$500 income per month without affecting your benefits. If your partner (married or common law) is also on PWD, the earnings exemption for both of you is \$750. You must report all income to MSD, but if your monthly income stays the same you do not have to report it after the first month. If your income changes (up or down), you must report it to MSD on your cheque stub by the 5th day of the following month.

Also see Help Sheet 9: Employment Plans and People with Disabilities.

Volunteer Programs

☐ **Community Volunteer Supplement (CVS)**

You may receive up to \$100 income per month for volunteer work. Please note that there is a long waiting list for this program. Contact MSD for information.

☐ **Training Initiative Supplement (TIS)**

You may receive \$50 per month for volunteer work. Please note that there is a long waiting list for this program. The TIS is limited to 12 out of 36 months. You cannot receive both the TIS and CVS. Contact your MSD office for information.

Also see Help Sheet 10: Employment, Education and Training Supplements for People with Disabilities.



Other MSD benefits

☐ **Special Transportation Subsidy**

For people unable to use public transit, including handyDART. Contact MSD for information.

☐ **Moving costs and security deposits**

Contact your MSD office for information.

☐ **Christmas Supplements**

\$35 for a single person; \$70 for couples; \$70 for families, plus \$10 per child.

☐ **Crisis Supplements**

Up to \$100 per person per year for clothing, \$20 per person per month for food, and emergency rent assistance. Funding may also be provided for a one-time emergency need.

☐ **Natal Allowance of \$45 per month**

You will need to provide a doctor's letter.

☐ **Guide Animal Supplement of \$95 per month**



Benefits Through Other Organizations

These programs and benefits are available through various organizations and agencies.

Housing

☐ **Accessible/Affordable Housing**

Phone the BC Housing Management Commission (BC Housing) at 1-800-257-7756. Website: www.bchousing.org.

☐ **Additional Home Owner Grant for People with Disabilities**

For home owners with disabilities. Contact your municipal property tax department.

☐ **Property Tax Deferment**

Contact your municipal property tax department.

Transportation

For some of these programs you must have limited mobility

☐ **Autoplan Disability Discount (ICBC)**

Phone 604-661-2100 or 1-800-663-3051 if you are outside the Lower Mainland. You can also contact your local ICBC agent. You must be in receipt of the Provincial Motor Vehicle Fuel Tax Rebate. Website: www.icbc.com.

☐ **BC Ferry pass**

Apply directly to the BC Ferry Corporation. You will need a Release of Information form from your MSD office. Phone 1-888-223-3779 for an application form or go to the website at www.bcferries.bc.ca.

☐ **Federal Excise Gasoline Tax Refund**

Phone the Canada Revenue Agency at 1-877-432-5472. The phone lines are open from 12 p.m. to 9 p.m. (BC time). Website: www.servicecanada.gc.bc/en/goc/gasoline_tax_refund.shtml.

☐ **Flight Discount**

Your attendant may accompany you free of charge; ask the airline for details.

☐ **Provincial Motor Vehicle Fuel Tax Rebate**

Phone the BC Consumer Taxation Branch at 1-877 388-4440
Website: www.gov.bc.ca/sbr.



☐ **Parking Permits for People with Disabilities**

To apply for a permit phone:

- Beacon Community Services (Sydney) 250-656-5537
- City of Kelowna 250-763-6011
- Cowichan Valley Independent Living Resource Centre 250-746-3930
- Kamloops People in Motion 250-376-7878
- Nanaimo Independent Living Centre 250-758-5547
- Richmond Centre for Disability 604-232-2404
- Vernon Independent Living Resource Centre 1-877-288-1088
- Victoria Disability Resource Centre 250-595-0044
- Wescom Medi-Lend (Langford) 250-478-5373

For all other areas phone: Social Planning and Research Council of BC 604-718-7744.

☐ **HandyDART**

Look for the HandyDART listing in your phone book.

☐ **HandyPass and Taxi Saver**

In the Lower Mainland, contact your local TransLink office or go to www.translink.bc.ca. People in other areas should contact their local transit office.

☐ **Greyhound (and bus lines other than transit) and Via Rail**

Attendants travel free with a Disability Travel Card from the Lions Society of BC.

Phone 604-873-1865, or 1-800-818-4483 if you are outside the Lower Mainland.

Blind or sight impaired individuals can present their CNIB Card.

Obtain the application form from your MSD office

Leisure

☐ **Camping is free in BC Provincial Parks**

Obtain a Release of Information form from a MSD to give to campsite operators.

Full or partial funding is available for camping at certain recognized camps.

☐ **Fishing License fee reduction**

Look under Service BC Government Agents in the blue pages of your local phone book. They will be able to provide you with the information you need and an application form.

☐ **Access to Recreation/Community Centres and Programs**

Most municipalities provide some assistance for people with disabilities who want to access their recreational programs. Call your local recreation/community centre for information.



Other programs you may find helpful

Equipment and assistive devices

For information on equipment and assistive devices to assist you with daily living activities, contact the provincial government's Personal Supports Information Line at 1-888-818-1211, TTY 1-800-661-8773 or visit www.personalsupports.bc.ca. You can also contact the non-profit BC Personal Supports Network at 1-877-333-7554 or www.bcpsn.org.

Registered Disability Savings Plan (RDSP)

This is a new initiative that is available to people with disabilities and their families. There are 3 steps you must follow to be eligible for the RDSP.

1. Make sure you are eligible and apply for the Disability Tax Credit.
2. Have a valid Social Insurance Number.
3. Be up-to-date in filing your tax returns.

You can find many free RDSP resources on our website at www.bccpd.bc.ca/rdsp.htm.

BC Hydro Energy Savings Kits

BC Hydro provides free energy saving kits for low income people and families. The kit includes items such as low-flow shower heads, weather stripping and compact fluorescent light bulbs. To qualify, you must have a BC Hydro account in your name. Call BC Hydro at 1-877-431-9463 or contact the BCCPD office.



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This Help Sheet is funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.



ADVOCACY ACCESS
HELPSHEET
BC DISABILITY BENEFITS

5A

MARCH 2011

Appealing Denial of the Persons with Disabilities (PWD) Benefit: The Reconsideration Request

This Help Sheet is funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.

If you have applied for the Persons with Disabilities (PWD) benefit and have received a letter from the Ministry of Social Development (MSD) denying your application, you have the right to appeal the Ministry's decision. You can file a Request for Reconsideration.

This Help Sheet is designed to help you understand the appeal process and how to make your Request for Reconsideration. The Help Sheet gives you information that may improve your chance of being successful in asking the Ministry to reconsider and approve your application for PWD.

If you are looking for assistance to apply for PWD, see Help Sheet 2.

How to appeal the denial of your PWD benefit

There are two levels in the appeal process:

Level 1: The Request for Reconsideration

If your Request for Reconsideration is successful the MSD will give you the PWD benefit.

Level 2: The Appeal Tribunal

If the MSD turns down your Request for Reconsideration you can go to Level 2 of the appeal process and ask for an Appeal Tribunal. Help Sheet 5B can help you with the Appeal Tribunal.



Advocacy Access is a program of BC Coalition of People with Disabilities

Ask about other Help Sheets in this series. All our publications are available at www.bccpd.bc.ca. Information in this Help Sheet is based on the legislation that was current at the time of writing. The legislation and policy may be subject to change. Please check the date on this Help Sheet.



How to apply for a Request for Reconsideration

When you receive a letter from the MSD saying that your application for the PWD benefit has been denied, you should take the following steps:

1. Act immediately

It is very important to start work on your Request for Reconsideration right away. You have 20 business days to get your completed request to your local MSD office. Day 1 is the day after you receive the denial letter from the MSD. From that day, you count weekdays, but not weekends or holidays.

While it is better to do your Request within the 20 business days, the Ministry will allow an extension if you need additional time to obtain and submit supporting documentation, but you must notify the Ministry **before** the end of your 20 business day deadline. If you are given an extension, the Reconsideration decision will be made 20 business days from the day your extension is granted. Please note that, even if you have an extension, you must submit your supporting documentation **before** the extension deadline.

In special situations, the MSD may permit you an extension if you miss your original 20-business day deadline, for example if you are too sick to inform the Ministry that you want to ask for a Reconsideration or that you need an extension. You should contact the Ministry as soon as you can and explain why you have missed the deadline.

TIP: Write the date on the top of the denial letter from the MSD as soon as you get it, so you can always figure out how many days you have before the deadline.

2. Get a Request for Reconsideration form

You get the Request for Reconsideration form from an Employment and Assistance Worker (EAW). Advocates do not have copies of these forms.

TIP: Call before you go to your MSD office to pick up the Request for Reconsideration form. That way, an EAW will be able to fill out their sections of the form before you pick it up.

When you leave your MSD office you should have the following:

- a) The Request for Reconsideration form.
- b) The denial letter from the MSD that says the Ministry has turned down your application for PWD. You should already have a copy of this letter.
- c) The PWD Designation Decision Summary. These sheets, included with the denial letter, are usually 3 pages long and explain in detail why the MSD has denied your PWD application.



- d) A complete copy of your PWD application.
- e) Any letters or records you or your doctor may have sent to the MSD with your PWD application.

3. Complete the Request for Reconsideration form

Section One: This should have been completed by an EAW. It includes your name and current address. Make sure this information is correct.

Section Two: This is completed by an EAW. Check to make sure all the following information is there:

- a) What the MSD's decision is. Usually the EAW will have written what your PWD denial letter says.
- b) The date you received the denial letter from the MSD. Check to make sure the date is correct as this affects how long you have left out of the 20 business days to submit your Request for Reconsideration. We recommend that you write down the date your Request for Reconsideration is due.
- c) The definition of the Persons with Disabilities benefit from the Act. The PWD definition says that:
 - you must be at least 18 years of age
 - you must have a severe mental or physical impairment
 - your doctor must say that your impairment will last for at least 2 years
 - a doctor or health professional must say you are significantly restricted in your ability to do daily living activities (see below)
 - because of your disability, you need the significant help or supervision of another person or help from an assistive device (e.g. cane) or assistance animal

Daily living activities are defined as:

- performing personal hygiene and self care (for example, bathing)
- preparing meals
- taking medications
- keeping the home clean
- shopping for personal needs
- moving about indoors and outdoors
- using public or personal transportation facilities (for example, a bus)
- managing personal finances

For people with mental health disabilities daily living activities also include:

- making decisions about personal care, activities, or finances
- relating to, communicating with, or interacting with others effectively (in other words, getting along with other people).



Section Three: This section is completed by you. You must write down the reasons you believe you qualify for PWD. Before you do this, you should be clear about why the Ministry has turned down your PWD application. This means you need to carefully read the denial letter and the PWD Case Profile sheets. Often PWD applications are turned down because:

- your doctor did not make it clear that your condition is “severe.”
- your doctor wrote that you are “independent” in many daily living activities and that you do not need any help to complete them.
- your doctor has not provided enough information about your limitations.

It is a good idea to ask your doctor to write you a support letter addressing the key issues before you complete Section Three. For more on this see the Additional Supporting Information section below.

Section Four: This section is also completed by you. You must sign the form, date it and include your phone number if you have one.

4. Additional Supporting Information

Additional information—particularly medical letters—is very important for the best chance of success with your PWD Request for Reconsideration. Here are some ideas that may help:

- a) Talk to your doctor about your PWD denial and explain that you need their help with your Reconsideration. If your doctor is supportive, ask him or her to write a letter that explains why you meet the PWD eligibility requirements. It is a good idea to remind your doctor about how your disability restricts your daily living activities and about the kind of help you need from other people, assistive devices or assistance animals. Remember, the doctor must write a letter and give it to you before the Reconsideration deadline.
- b) It may also help your Request for Reconsideration if you get information or letters from professionals and support people that are familiar with your limitations. The MSD will put more value on letters from health professionals than one from friends or family; but a letter from someone who helps you or gives you support can still be helpful.



5. Submit your Request for Reconsideration

As soon as you have completed your Request for Reconsideration take it to your local MSD office. Check the deadline. Do not wait until the last minute. **Make sure you get a copy.**

Remember, if the MSD turns down your Request for Reconsideration, you can request an Appeal Tribunal. See Help Sheet 5B for information on this.



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Health Supplements for People with Disabilities

This Help Sheet funded by the Legal Services Society of BC, Human Resources and Skills Development Canada: Homelessness Partnering Strategy and the Health Sciences Association of British Columbia.

If you have a disability, you may be able to access a range of medical services and supplies provided by the Ministry of Social Development (MSD). The BC Coalition of People with Disabilities has prepared this Help Sheet about health supplements to help you understand what services and supplies you may be eligible for from MSD.

You should talk to MSD about any of the services and supplies listed here. They will be able to explain how you apply for them.

It is important to understand that the MSD will not reimburse you for any of these services and supplies. The Ministry must provide authorization for most of the supplements listed in this Help Sheet **before** you may access them. Also, you may be asked if you can afford to pay for them yourself before they are provided to you.

Who is eligible

You may be eligible for a range of health supplements from the MSD if any of the following describes your situation:

- You are receiving the Persons with Disabilities (PWD) benefit
- You are a dependent of a person receiving PWD
- You are a single person receiving the Persons with Persistent and Multiple Barriers to employment (PPMB)
- You are living in a household where one or more adults receive PPMB



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- You live in a special care facility or if you have been admitted to hospital for extended care
- You are the dependant of a person in special care

Medical Services Only (MSO)

You will be eligible for health supplements from MSD, if you fit into any of the following categories:

- you went off PWD benefits for employment and you are receiving Medical Services Plan (MSP) Premium Assistance
- you were receiving PWD or PPMB benefits and have turned 65, and you are eligible to receive the Guaranteed Income Supplement or federal Spouse's Allowance
- you were receiving PWD benefits, but leave the program because your CPP disability benefits are higher than the PWD rate
- you were receiving MSO benefits prior to 2002

However, you will **not** be able to access:

- diet supplement
- Monthly Nutritional Supplement
- natal supplement, or
- orthodontics

Direct and imminent life-threatening health need

MSD may grant certain health supplements—medical supplies, medical equipment and devices, medical transportation—even if you do not normally qualify for health coverage, when the following conditions apply:

- you are facing a direct and imminent life-threatening need
- you have no other resources to meet that need
- you are receiving MSP Premium Assistance, and
- you meet all the regulatory requirements for the medical supplies, medical equipment or medical transportation

If you are still not sure whether you are eligible for health supplements from the MSD, contact MSD or an advocate.



Health supplements: what you may be able to obtain

There are different kinds of health supplements. Some require no pre-approval from the MSD. These are:

- Medical Service Plan (MSP)*
- Prescription drugs covered by Pharmacare*
- Eye glasses every 3 years for adults, with a prescription, or every year for dependent children*

*Everyone on income and disability assistance is entitled to this coverage.

Dental supplements

Basic dental services

These services are provided based on a Schedule of Fee Allowances and are administered by Pacific Blue Cross. MSD pays only for the services listed in this schedule, at the amount listed. Dentists may charge an extra fee, if they think the MSD rate is not sufficient

- Adults are entitled to basic dental coverage of \$1,000 over a 2-year period
- Dependent children receive \$1,400 basic dental coverage over a 2-year period

Other dental supplements

- Crown and bridgework supplement: may be provided if your dental condition cannot be corrected by basic dental services and it has been confirmed that you are unable to use a removable denture for major health reasons.
- Dentures: full and partial dentures may be provided or replaced if certain conditions are met. These conditions include whether you have had extractions in the past 6 months or whether you have been on assistance for at least 2 years. MSD can pay more than the basic dental coverage limit of \$1,000 for dentures, in some cases. Generally, MSD will not pay for replacement dentures more than every 5 years, however, Health Assistance Branch may approve an exception to the 5-year rule, if loss or damage was beyond your control and new dentures are necessary to avoid health problems.
- Emergency dental and denture services for immediate relief of pain or to control infection or bleeding or other serious health problems may be provided.
- General anaesthetic or intravenous sedation provided in a dentist's office may be authorized in special circumstances.
- Orthodontic services may be covered when strict eligibility requirements are confirmed by an orthodontist.



Other health supplements

You should talk to MSD about the supplements listed below. To qualify for them, you may be required to supply medical information. Some of them also require you to provide financial information.

Optical

Eye Exams

- MSD pays up to \$44.83 for an optometrist's exam and \$48.90 for an ophthalmologist's exam, every 2 years. To obtain an eye exam, you will need to provide your optometrist or ophthalmologist with your Care Card. The MSP may pay the full cost for an exam, if you have a particular medical condition. As well, you may be able to get an exam more often than every 2 years. Check with your ophthalmologist or optometrist to see if you qualify.

Basic Eyewear

- MSD may provide single vision or bi-focal lenses and frames every 3 years for adults or once a year for children, with a valid prescription.
- Eyeglass lenses more frequently than every 3 years: Your physician must confirm that you have a specific medical condition such as, for example, diabetes and your ophthalmologist or optometrist must confirm that you need a new prescription.
- Eyeglass repairs.
- Specialized eyewear, such as tinted lenses or contact lenses, if basic eyewear does not meet your needs. The need for the eyewear must be confirmed by your ophthalmologist or optometrist and pre-authorized by Health Assistance Branch.

Medical supplies

MSD may pay for medical or surgical supplies, if they are required for any of the following purposes:

- wound care
- ongoing bowel care
- catheterization
- incontinence
- skin parasite care
- limb circulation care



These supplies must be prescribed by a doctor or nurse practitioner, the least expensive appropriate supplies, and necessary to avoid an imminent and substantial danger to health. And, there must be no other resources available to you. MSD does not consider nutritional items or prescription drugs medical supplies.

Medical equipment and devices

MSD can pay for certain medical equipment or devices, if the following conditions are met:

- payment is approved in advance by the Ministry
- there are no other resources available
- the equipment is the least expensive appropriate medical equipment

In most situations, MSD will ask for a prescription from a doctor or nurse practitioner and/or an assessment from a health professional, such as an occupational therapist or physical therapist.

MSD can purchase or replace equipment, but they do not have to replace or repair equipment that they consider to be damaged through misuse.

MSD can pay for the following equipment and devices:

1. canes, crutches, and walkers
2. wheelchairs
3. wheelchair seating systems
4. scooters
5. bathing and toileting aids
6. hospital beds
7. pressure relief mattresses
8. floor or ceiling lift devices
9. positive airway pressure devices (eg. CPAP machines)
10. orthoses (custom made or off-the-shelf foot orthotics, custom made footwear, a permanent modification to footwear, off-the-shelf orthopaedic footwear, an ankle brace, an ankle-foot orthosis, a knee-ankle-foot orthosis, a knee brace, an upper extremity brace, a cranial helmet, a torso or spine brace)
11. hearing aids



For some of the above categories of equipment and devices, MSD has also imposed additional restrictions such as spending limits (e.g. they will not pay more than \$3,500 for a scooter) and replacement time limits (they will not replace a wheelchair for at least 5 years).

Extended therapy

- Acupuncture, chiropractic, massage therapy, naturopathy, physiotherapy or podiatry visits: A physician must confirm that you have an acute need for the service. You must have used the 10 visits allowed under the Medical Services Plan. The Ministry can approve up to 12 extra visits in a 1-year period.

Medical transportation

- If you have no other means of getting to a medical appointment, the Ministry can pay for transportation costs to a doctor's office, clinic or hospital. The Ministry must agree to cover these expenses before your appointment. MSD can pay for transportation, meals and accommodation, if the only available medical treatment is at an out-of-town medical facility.

Alcohol and drug treatment supplement

Up to \$500 a year can be paid to cover the cost of alcohol and drug counselling, and treatment services.

Monthly diet supplements

There are 9 monthly diet supplements you may be eligible for. There is no special application form for these supplements. To qualify, your doctor must state your medical condition in writing, the kind of diet you require and how long you need it. MSD can ask you to renew the request every 12 months or 24 months. Because MSD will only pay for one diet supplement at a time, apply for the highest diet allowance you think you are eligible for.

The supplements and their special requirements are as follows:

1. High protein diet: You may be eligible for a monthly high protein diet supplement of \$40 a month. In order to qualify, your physician must say that you have 1 or more of the following conditions:

- Cancer (if you are receiving therapy or medical treatment)
- Chronic bacterial infection
- Chronic inflammatory bowel disease
- Crohn's disease
- Hepatitis B or C
- HIV/AIDS



- Hyperthyroidism
- Osteoporosis
- Tuberculosis
- Ulcerative colitis

You may also qualify for a supplement, if your physician, dietician, or nutritionist state that you need either of the following:

2. **Gluten-free diet** (\$40 per month)
3. **Low-sodium diet** (\$10 per month)
4. **Ketogenic diet** (\$40 per month)
5. **Phenylalanine diet** (\$40 per month)

Or, if you have one of the following conditions:

6. **Cystic fibrosis** (\$50 per month)
7. **Diabetes** (\$35 per month)
8. **Dysphagia** (\$40 per month)
9. **Kidney dialysis** (\$30 per month)

Monthly Nutritional Supplement (MNS)

You may be eligible for a monthly nutritional supplement of up to \$205 a month, if you are receiving PWD—people receiving PPMB are not eligible. The nutritional supplement is divided into 2 parts for a total of \$205 a month:

1. Nutritional items: \$165. This part of the benefit will only be provided if you need to supplement your regular diet. You cannot receive both this supplement and a diet supplement (e.g. high protein diet).
2. Vitamin or mineral supplementation: \$40.

To receive the nutritional allowance you must have a chronic and progressive deteriorating condition causing at least 2 of the following symptoms:

- Significant deterioration of a vital organ
- Immune suppression (moderate to severe)
- Malnutrition
- Significant muscle mass loss
- Significant neurological degeneration
- Significant weight loss
- Underweight status



To qualify for the nutritional items or the vitamin/mineral supplementation, your doctor must state that you need each of these supplements to alleviate your identified wasting symptoms and to prevent † an imminent danger to your life. This means your health will deteriorate significantly without the nutritional supplement. Contact MSD and ask for a Monthly Nutritional Supplement application form. Ask your doctor to complete the form, and return it to MSD.

MSD can require you to re-apply for the MNS.

Short-term nutritional supplement

Provides nutritional supplementation products, such as Ensure or Boost, for a 3-month period. Your doctor must confirm an acute short-term need for a caloric (nutritional) supplement to prevent critical weight loss resulting from 1 of the following:

- Serious disease
- Severe injury
- Surgery
- Treatment side effects

Natal supplement

If you are pregnant, you will be eligible for a natal allowance during your pregnancy and until your child reaches 7 months of age. To qualify for this allowance, you must provide documentation from a medical practitioner or a midwife registered with the College of Midwives. You will receive:

- \$45 a month, if you are pregnant with one child
- \$90 a month, if you are pregnant with more than one child

Infant formula

MSD can also provide infant formula for children under 12 months of age if:

- a child has a medical condition where a specialized infant formula is required, or
- the child is at risk of contracting a transmittable disease from the mother's breast milk.



Tube feed nutritional supplement

MSD can provide nutritional products to people whose primary source of nutrition is through tube feeding.

Right to appeal

If your application for any of these health goods and services is denied you have the right to appeal. Contact MSD immediately after you receive your denial. You may want to ask an advocate to help you with your appeal.



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Legal Information and Referral Resources

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-ALaw 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

It is also available as wiki that is updated at :
http://wiki.clicklaw.bc.ca/index.php?title=Legal_Help_for_British_Columbians

- **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 order 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/publications>

B. Legal research

- **BC Laws**

Up-to-date versions of BC laws and regulations are now available for FREE on the internet at <http://www.bclaws.ca/>. (Until January 1st 2009, you could not get current versions of all BC legislation, except on certain sites that posted the law relevant to their work.) 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 more information about research 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 <http://www.justiceeducation.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
- **Legal Rights for You Website** information for students about their legal rights and responsibilities www.legalrights4u.ca
- **Small Claims Website** www.smallclaimsbcc.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

The BC Human Rights Coalition provides information about human rights issues on their website under “services – information” www.bchrcoalition.org

Income assistance (welfare)

- **Legal Services Society**

LSS has resources on welfare on its publications page at <http://www.lss.bc.ca/publications/subject.php?sub=17>

- **Ministry of Social Development**

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**

The Centre provides information about these issues at <http://www.nidus.ca/>

2. 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://www.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 number: 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 ProBono**

106 - 873 Beatty St.

Vancouver, BC

V6B 2M6

<http://www.accessprobono.ca/>

E-mail: help@accessprobono.ca

Client number: 604-878-7400 or 1-877-762-6664

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 Canada, V6J 2B3

Phone: 604-684-7378

Toll-free in BC: 1 800 330-WCEL

Fax: 604-684-1312

Email: admin@wcel.org

Web: 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)

- **Salvation Army Pro Bono Program**

555 Homer Street

Vancouver, BC V6B 1K8

Telephone: 604-694-6647

Fax: 604-681-3005

www.probono.ca

This program has lawyers who volunteer to provide pro bono legal advice for 30 minutes at legal clinics throughout BC.

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.

- **UBC First Nations Legal Clinic**

Suite 101 - 148 Alexander Street
Vancouver, BC V6Z 1B5
Tel:(604) 684-7334
Toll Free: 1-888-684-7334
Fax: (604)684-7874
<http://www.law.ubc.ca/fnations/clinic.html>

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”)**

411 Dunsmuir Street
Vancouver, BC V6B 1X4
Telephone: 604-437-1940
Fax: 604-437-1929
Toll Free: 1-866-437-1940
<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.

- **BC Coalition for People with Disabilities (“BCCPD”)**

204-456 W. Broadway
Vancouver, BC V5Y 1R3
Telephone: 1-800-663-1278
Fax: 604-875-9227
<http://www.bccpd.bc.ca/>

The Coalition provides advocacy services for people with disabilities and produces legal information materials on disability issues.

- **BC Human Rights Coalition (“BCHRC”)**

#1202 – 510 West Hastings Street
Vancouver, BC V6B 1L8
Telephone: 604-689-8474 (Collect calls accepted)
Toll free: 1-877-689-8474 (Within Canada)
Fax: 604-689-7511
<http://www.bchrcoalition.org>

BCHRC has human rights clinic operating together with CLAS to provide free legal information and advice as well as legal representation before the BC Human Rights Tribunal in Vancouver.

- **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

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

www.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**

1-800-563-0808

www.victiminfo.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 Organization ("WAO")**

Ministry of Skills Development and 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.

List of advocates funded by the Law Foundation can be found at [lawfoundationbc.org](http://www.lawfoundationbc.org)